

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. EDMUND ZAGORSKI

Circuit Court for Robertson County
No. 6052

No. M1996-00110-SC-DPE-DD

FILED

MAR 15 2018

Clerk of the Appellate Courts
Rec'd By _____

ORDER

On January 31, 2014, this Court reset the execution of Edmund Zagorski for December 9, 2014. On October 22, 2014, the Court vacated its January 31, 2014 order due to a pending interlocutory appeal in a declaratory judgment action challenging the constitutionality of Tennessee's lethal injection protocol. The October 22, 2014 order stated that, upon final disposition of the interlocutory appeal in the declaratory judgment action, this Court shall exercise its authority to set a new date of execution. *See* Tenn. Sup. Ct. R. 12.4(E) ("Where the date set by the Court for execution has passed by reason of a stay or reprieve, this Court shall sua sponte set a new execution date when the stay or reprieve is lifted or dissolved, and the State shall not be required to file a new motion to set an execution date."). Although the interlocutory appeal was resolved against Mr. Zagorski, this Court delayed setting an execution date until the conclusion of the declaratory judgment action through its appeal. Ultimately, this Court affirmed the trial court's dismissal of the claims in the declaratory judgment action. *West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017).

On January 11, 2018, the State filed a notice that the United States Supreme Court had denied certiorari in the two petitions seeking review of this Court's decision in *West*. *See Stephen Michael West, et al. v. Tony Parker, et al.*, 138 S.Ct. 476 (Nov. 27, 2017); *Abu Ali Abdur'Rahman, et al. v. Tony Parker, et al.*, 138 S.Ct. 647 (Jan. 8, 2018). On February 15, 2018, the State filed a Motion to Set Execution Date for Mr. Zagorski; the Motion expressly asked the Court to set the execution date prior to June 1, 2018. On March 1, 2018, Mr. Zagorski filed a response in opposition to the State's Motion.

On March 2, 2018, the Tennessee District Public Defender's Conference filed a motion requesting permission to file a brief as amicus curiae in this appeal. On March 5, 2018, the Tennessee Association of Criminal Defense Lawyers and Individual Tennessee Attorneys filed a similar motion. On March 9, 2018, the State filed a response opposing the filing of amicus briefs.

After due consideration, it is ORDERED that the motions requesting permission to file amicus briefs are GRANTED. The brief lodged by the Tennessee District Public Defender's Conference and the brief filed by Tennessee Association of Criminal Defense Lawyers and Individual Tennessee Attorneys shall be accepted as filed as of the date of this order. There is no need for a reply brief from the State. The costs associated with these motions are assessed equally between the Tennessee District Public Defender's Conference, and Tennessee Association of Criminal Defense Lawyers and Individual Tennessee Attorneys.

It is further ORDERED that the State's Motion to Set Execution Date is denied insofar as it seeks a date prior to June 1, 2018. The Court intends to enter a separate order setting an execution date in this matter in accordance with its authority pursuant to Tennessee Supreme Court Rule 12.4(E). The costs of the State's Motion are assessed to the State of Tennessee.

PER CURIAM