

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

PHILIP RAY WORKMAN)

v.)

STATE OF TENNESSEE)

)
)
)

No. M1999-01334-SC-DPE-PD

Filed - January 9, 2007

**STATE’S REPLY TO RESPONSE TO MOTION
TO RESET EXECUTION DATE**

On December 15, 2006, the State of Tennessee moved that this Court reset the date for execution of Philip Workman’s 1982 death sentence. On January 5, 2007, Workman responded to that motion. But his response is not well-taken, for the following reasons. First, Workman is simply wrong to intimate that a stay of execution remains pending in the federal district court on a successive habeas petition he filed on September 3, 2003. As the State’s motion to reset reflects, the federal court granted a stay of execution on September 1, 2004, in the wake of Workman’s filing of a motion for relief from judgment under Fed.R.Civ.P. 60(b). While the order was entered on the dockets of two cases — No. 94-2577 (Workman’s 1994 habeas petition) and No. 03-2660 (Workman’s 2003 successive habeas petition) — the order was *precisely the same* in each instance. (See Attachments A and B hereto.) And this stay order, which was granted pending the Court’s ruling on the Rule 60(b) motion, has since been dissolved by its own terms.

Second, Workman asks this Court to speculate regarding what the United States Court of Appeals for the Sixth Circuit is likely to do with his appeal from the federal district court’s denial of his Rule 60(b) motion, and to decline to reset a date of execution in order to ensure that the Sixth Circuit can “engage in thoughtful, unhurried, consideration” of that appeal. In support of this

argument, he points to the cases of Abu-Ali Abdur'Rahman and Donnie Johnson, two other Tennessee capital prisoners. But Workman's case is not Abdur'Rahman's, nor is it Johnson's. If the Sixth Circuit should determine that a stay of execution is necessary and warranted in order to decide Workman's appeal, it may of course issue one. But Workman has not provided this Court with a proper reason to decline to enforce his now twenty-four-year-old sentence. Finally, Workman's contention that this Court as presently constituted is not the "Supreme Court" contemplated by Tenn.Sup.Ct.R. 12.4(E) because there is currently a vacant position on the Court is without merit. Article VI, § 2, of the Tennessee Constitution plainly provides that "[t]he concurrence of three of the Judges shall in every case be necessary to a decision." Thus a judgment of this Court is valid where there is a quorum of three or more of the regular judges present and participating, and three judges concur in the judgment. *See Radford Trust Co. v. East Tennessee Lumber Co.*, 92 Tenn. 126, 21 S.W. 329, 331 (1893).

The State's motion to reset the date for execution of Workman's sentence should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been delivered by first class mail, postage prepaid, and by facsimile, to Christopher Minton, at 810 Broadway, Suite 200, Nashville, Tennessee, 37203, on this the _____ day of January, 2007.

JOSEPH F. WHALEN
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