

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JANET KIRKPATRICK)
Next Friend for Paul D. Reid)
) NO. 3:03-0365
v.) JUDGE CAMPBELL
) DEATH PENALTY
RICKY BELL, Warden)

ORDER

Pending before the Court is a Motion for Stay of Execution and the Appointment of Counsel by Next Friend on Behalf of Paul Reid ("Motion"). The Court held a hearing on the Motion on April 28, 2003. For the reasons described herein, the Motion for "Next Friend" status by Janet Kirkpatrick is DENIED; the Motion for Stay of Execution is DENIED; and the Motion for Appointment of Counsel is DENIED.

Paul Dennis Reid ("Reid") is scheduled to be executed on April 29, 2003, at 1:00 a.m. for the murders of Sarah Jackson and Steve Hampton in 1997 at a Captain D's restaurant in the Donelson area of Nashville, Tennessee. State v. Reid, 91 S.W.3d 247 (Tenn. 2002). The execution is less than 13 hours away.

I. Procedural History in Federal Court

On Tuesday, April 22, 2003, the Tennessee Supreme Court denied a Motion to Stay Reid's execution that was filed by Reid's state attorneys over his objection.

Late Friday, April 25, 2003, Reid's sister, Janet Kirkpatrick ("Kirkpatrick") filed the pending Motion for Stay of Execution and the Appointment of Counsel by Next Friend on Behalf of Paul Reid. About an hour later, the Court held a hearing to decide the procedure to be

This document was entered on
the docket in compliance with
Rule 58 and/or Rule 79 (a),
FRCP. on 4/28/03 By af

14

followed in deciding the Motion. The Respondent, Ricky Bell, (“State”) asked the Court to have until Monday, April 28, 2003, to file a response to the Motion. At the conclusion of the hearing, the Court ordered as follows:

For the reasons stated from the bench, the following procedures and deadlines shall be followed regarding the pending Motion:

1. Respondent shall have 24 hours – until 5:00 p.m., Saturday, April 26, 2003 – to file an initial written response to the pending Motion;
2. Any mental evaluation of Paul Dennis Reid by Respondent shall take place before 5:00 p.m., Sunday, April 27, 2003;
3. The parties shall file any supplemental pleadings or documents by 5:00 p.m., Sunday, April 27, 2003;
4. The Court will hold a hearing on Monday, April 28, 2003, at 8:00 a.m. Paul Dennis Reid shall be present at the hearing. By contemporaneous Order, the Respondent is ordered to produce Mr. Reid for the hearing;
5. The pending Motion will be decided on the record unless a party files by 5:00, Sunday, April 27, 2003, a written request to present live testimony. In the event live testimony is permitted, the parties shall expect time limitations;
6. Nothing herein shall prevent any party from making an emergency request to the Court prior to the hearing.

On Saturday, April 26, 2003, the State filed a Response in Opposition to the Motion. On Sunday, April 27, 2003, Kirkpatrick filed a Reply to the State’s Response. Kirkpatrick also filed the following documents: Notice of Intent to Use Exhibits at Hearing; Supplemental Notice of Intent to Use Exhibits at Hearing; and Notice of Intent to Present Live Testimony and Exhibits.

The State, despite being given the specific opportunity by the Court to have Reid evaluated on Sunday, April 27, 2003, took no steps to do so.

The Court held a 3-1/2 hour hearing on the merits of the Motion on Monday, April 28, 2003, commencing at 8:00 a.m.

II. "Next Friend" Status

It is undisputed that prior to the hearing Reid both publicly and privately disclaimed and denounced any efforts to stay his execution. Reid has refused a direct appeal to the Supreme Court, a State post-conviction petition and a Federal habeas corpus petition. 28 U.S.C. § 2254.

The case of West v. Bell, 242 F.3d 338 (6th Cir. 2001), which originated in this Court, provides helpful context. Federal courts are courts of limited jurisdiction. There is no proceeding before this Court filed by Reid that would permit the entering of a stay of execution. Id. at 340. Reid must invoke the Court's jurisdiction and not simply fail to waive it. There is no "jurisdictional basis" for this Court "to assume control of the state's processes," unless Reid is incompetent. Id. at 343. In the absence of an adequate finding of incompetence, Reid is considered a "responsible human being entitled to enter or stay out of federal court." Id. An "infinite desire to thwart the just processes of the law is not the only sign of mental competence. We must not assume that it is impossible for even a death-sentenced prisoner to recognize the justice of his sentence and to acquiesce in it." Id. This Court is "without the jurisdictional prerequisites necessary" to issue a stay, unless Reid is incompetent. Id.

"Supreme Court case law tells us that a 'next friend' may sue in place of a death-sentenced prisoner only when that person clearly shows that the prisoner is not competent." West, 242 F.3d at 341, citing Whitmore v. Arkansas, 495 U.S. 149, 164-66, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) and Rees v. Peyton, 384 U.S. 312, 314, 86 S.Ct. 1505, 16 L.Ed.2d 583 (1966). The "burden is still on the putative 'next friend' to demonstrate, not simply assert, the

incompetence of the prisoner.” West, 242 F.3d at 341. The “Next Friend” must demonstrate, in the words of Rees, that the prisoner does not have “capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or ... suffer[s] from a mental disease, disorder, or defect which may substantially affect his capacity in the premises.” Rees, 384 U.S. at 314; West, 242 F.3d 341.

The bottom line is this Court does not have jurisdiction to stay the execution of Reid unless Kirkpatrick proves that Reid suffers from a mental disease or defect which: (1) prevents Reid from understanding his legal position and the options available; or (2) prevents him from making a rational choice between his options. Whitmore, 495 U.S. at 166; Rees, 384 U.S. at 314.

III. Kirkpatrick’s Motion

Kirkpatrick initially argues that as Reid’s sister she is dedicated to his interests and, thus, is an appropriate “Next Friend.” This is uncontested by the State.

Kirkpatrick next argues that Reid is mentally ill and that the mental illness prevents him from making a rational choice between his options of being executed in a few hours and continuing his appeals and living.

Kirkpatrick relies primarily on the reports of three mental health experts who evaluated Reid late last week after the Tennessee Supreme Court declined to issue a stay of execution. The three experts are: Keith Caruso, M.D., Xavier Amador, Ph.D., and James Kyne, Ph.D. Time constraints do not permit a lengthy discussion of those experts’ opinions. But, in summary, the experts opine that Reid is incompetent to waive his appeals due to severe mental disease.

Kirkpatrick also relies, in part, on the opinion of Pamela Auble, Ph.D.; a judicial adjudication of incompetence in 1978; and a 92 page letter written by Reid to state authorities in April, 2003.

IV. State's Response

The State contends that a sufficient showing has not been made to warrant conferral of "Next Friend" status on Reid's behalf.

The State relies, in part, on Reid's various letters to State authorities foregoing his appeals; two State Courts having previously found Reid competent in related cases involving murders at McDonalds and Baskin Robbins; and the Tennessee Supreme Court's recent rejection of a stay of execution.

The State stresses that on April 22, 2003, the Tennessee Supreme Court declined to stay Reid's execution. State v. Reid, No. M1999-00803-SC-DOT-DD (Tenn., April 22, 2003). The Tennessee Supreme Court noted that Reid has been twice found competent to stand trial, after lengthy hearings, in two other capital cases as recently as May, 2000. The Tennessee Supreme Court found that Reid has clearly indicated that he has no desire to pursue any post-conviction remedies. Finally, the Tennessee Supreme Court concluded that Reid is a "responsible person" and that no "truly new factual assertions that call into doubt Mr. Reid's present capacity to understand his legal position and options or to make a rational choice among these options" had been presented. Pursuant to Franklin v. Francis, 144 F.3d 429 (6th Cir. 1998), the State argues that this Court must defer to the Tennessee Supreme Court's decision that Reid is competent to waive his post-conviction rights and be executed.

The State further argues that the Tennessee Supreme Court properly followed the Rees standard when it concluded that nothing had been presented to call Reid's present competency into question. This determination, according to the State, is neither contrary to, nor involved an unreasonable application of, clearly established Federal law. Therefore, the State contends, this Court is bound by the decision of the Tennessee Supreme Court. 28 U.S.C. § 2254(d). Alternatively, the State argues that Kirkpatrick has not carried her burden of proof to achieve "Next Friend" status. Urgent time constraints do not permit further elaboration on the State's position.

V. Hearing

The Court held an evidentiary hearing over the objection of the State. The hearing was held pursuant to the inherent powers of the Court for the reasons stated from the bench.

Reid testified at length in response to questions by the Court and counsel. Also testifying on behalf of Kirkpatrick were Dr. Xavier Amador, Robert Kirkpatrick, the brother-in-law of Reid, and Michael Engle, one of Reid's State attorneys.

The Court finds based on the bearing, demeanor and deportment of Reid, and the entire record, that Reid has knowingly, intelligently, voluntarily, and rationally decided to be executed rather than pursue further appeals and post-conviction options.

The Court finds Reid has a mental illness. Reid, for instance, believes the military causes ringing in his ears for its own purposes. Reid has other unfounded fantasies about military surveillance and other conspiracies. The controlling question, however, is whether Reid's mental problems prevent him from choosing to be executed or pursuing his appeals and living.

Reid is aware he will be executed within hours. Reid knows why he is to be executed. Reid understands execution is final and irreversible. Reid knows that he has the option of staying his execution by simply pursuing appeals. Reid's mental illness is not the proximate cause of Reid's decision to choose execution.

The Court finds that Reid has the present capacity to understand his legal position and options and to make a rational choice among these options and has done so.

The Court further finds that the April 22, 2003, decision of the Tennessee Supreme Court was neither contrary to, nor involved an unreasonable application of, already established Federal law based on the record before the Tennessee Supreme Court at that time. Considering the new facts developed since April 22, 2003, the decision of the Tennessee Supreme Court remains correct.

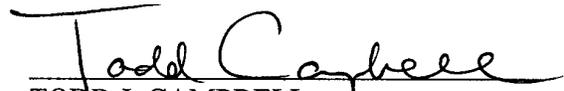
The parties dispute whether this Court is bound by the decision of the Tennessee Supreme Court. The State relies on Franklin v. Francis, 144 F.3d 429 (6th Cir. 1998). Kirkpatrick argues 28 U.S.C. §§ 2254(d) and (e) do not apply to a "Next Friend" petition since it is not a claim for relief. Kirkpatrick, alternatively, argues that Franklin is not procedurally or factually on point with this case. The Court need not resolve this dispute since Kirkpatrick has failed to carry her burden even if the Court is not bound by the decision of the Tennessee Supreme Court.

VI. Conclusion

For the reasons described above, the Motion for "Next Friend" status by Janet Kirkpatrick is DENIED; the Motion for Stay of Execution is DENIED; and the Motion for Appointment of Counsel is DENIED.

The Clerk is directed to transmit a copy of this Order to the Court of Appeals for the Sixth Circuit immediately.

IT IS SO ORDERED.


TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE