

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

ABU-ALI ABDUR'RAHMAN)
)
 Plaintiff,)
)
 vs.) No. 02-895-I
)
 RICKY BELL, in his official capacity as)
 the Warden of Riverbend Maximum)
 Security Institution, and the)
 TENNESSEE DEPARTMENT OF)
 CORRECTION,)
)
 Defendants.)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT**

Preliminary Statement

The plaintiff, Abu-Ali Abdur'Rahman, is an inmate in the custody of the Tennessee Department of Correction, housed under sentence of death at the Riverbend Maximum Security Institution. Abdur'Rahman petitions the Court for relief under the Declaratory Judgment Act, Tenn. Code Ann. § 29-14-101, *et seq.*, regarding his election of the electric chair as the method of his execution. The Courts of this State, however, have held that this statute does not authorize suits for declaratory relief against the State of Tennessee or any of its officers. Although a declaratory judgment action may be brought against a state agency under the Uniform Administrative Procedures Act (UAPA) to challenge the "legal validity or applicability of a statute, rule or order of an agency to specified circumstances, " a prerequisite to such an action is that the party first seek a declaratory order from the agency.

Because the Court lacks jurisdiction to consider plaintiff's request for relief under the Declaratory Judgment Act and because plaintiff does not allege that he has sought a declaratory order under the provisions of the UAPA, the petition must be dismissed.

Furthermore, as demonstrated in the affidavit of Donal Campbell, Commissioner of the TDOC, the Department has considered Mr. Abdur'Rahman's petition and has determined that he will be offered an additional opportunity to reconsider his previous decision regarding the method of his execution. Therefore, the petition is now moot.

Argument

I. THE CHANCERY COURT LACKS SUBJECT MATTER JURISDICTION OVER PLAINTIFF'S SUIT FOR RELIEF UNDER THE DECLARATORY JUDGMENT ACT, TENN. CODE ANN. § 29-14-101, ET SEQ.

Mr. Abdur'Rahman seeks relief under the Declaratory Judgment Act, Tenn. Code Ann. § 29-14-101, *et seq.*, against Ricky Bell, Warden of the Riverbend Maximum Security Institution, and the Tennessee Department of Correction concerning his waiver of his right to be executed by lethal injection. This claim is barred, however, under the doctrine of sovereign immunity as well as the provisions of Tenn. Code Ann. § 20-13-102(a). *Watson v. Tennessee Department of Correction*, 970 S.W.2d 494 (Tenn. App. 1998).

In *Watson*, the Court of Appeals considered whether a party can bring an action against the State pursuant to the Declaratory Judgment Act, Tenn. Code Ann. § 29-14-101 *et seq.* Relying upon the analysis in *Spencer v. Cardwell*, 937 S.W.2d 422 (Tenn. App. 1996), the Court determined that such a suit could not be brought, noting that "no suit against the State may be sustained absent express authorization from the Legislature." *Watson*, 970 S.W.2d 494, 496 (citing *Spencer v. Cardwell*, 937 S.W.2d 422, 423 (Tenn. App. 1996)). The Court explained that Tenn. Code Ann. § 20-13-102(a) prohibits a court from entertaining a suit "against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds, or property." Tenn. Code. Ann. § 20-13-102(a). This statute, the Court determined, applies to actions brought pursuant to the Declaratory Judgment Act. *Watson*, 970

S.W.2d at 496. The limitation in Tenn. Code Ann. § 20-13-102(a) "bars not only suits with a view to reach state funds, but also suits 'with a view to reach the state' itself." *Id.*, (quoting *Spencer*, 937 S.W.2d at 424); *see also Greenhill v. Carpenter*, 718 S.W.2d 268 (Tenn. App. 1986); *Hill v. Beeler*, 199 Tenn. 325, 331-32, 286 S.W.2d 868, 870-71 (Tenn. 1956).

Mr. Abdur'Rahman's request for relief against Warden Bell and the Tennessee Department of Correction is a suit against the state, barred under the provisions of Tenn. Code Ann. § 20-13-102(a) and the doctrine of sovereign immunity. Therefore, because the Court lacks subject matter jurisdiction to consider Mr. Abdur'Rahman's request for relief, his petition must be dismissed.

**II. AS HE HAS FAILED TO PETITION THE TDOC FOR
A DECLARATORY ORDER, MR. ABDUR'RAHMAN IS NOT
ENTITLED TO RELIEF UNDER TENN. CODE ANN. § 4-5-225**

Tenn. Code Ann. § 4-5-225 authorizes the Davidson County Chancery Court to issue a declaratory judgment to determine "[t]he legal validity or applicability of a statute, rule or order of an agency to specified circumstances . . . if the court finds that the statute, rule or order, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the complainant." Tenn. Code Ann. § 4-5-225(a). As set forth in the statute, the proper respondent to such an action is the agency. *Id.* Assuming, arguendo, that the petition to withdraw his waiver is a challenge to "[t]he legal validity or applicability of a[n] . . . order of an agency to specified circumstances," Mr. Abdur'Rahman cannot proceed as he has not exhausted his administrative remedies.

In order to seek a declaratory judgment under Tenn. Code Ann. § 4-5-225,

however, Abdur'Rahman must first seek a declaratory order from the Department. As provided for by the statute:

A declaratory judgment shall not be rendered concerning the validity or applicability of a statute, rule or order unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue a declaratory order.

Tenn. Code Ann. § 4-5-225(b); *see also Watson*, 970 S.W.2d 494, 497.

Abdur'Rahman does not allege that he has requested a declaratory order from the Department of Correction prior to filing his petition with this Court. Therefore, the Court lacks jurisdiction and the petition should be dismissed.

III. THE PETITION IS MOOT AS PLAINTIFF IS BEING GIVEN AN OPPORTUNITY TO RECONSIDER HIS WAIVER.

As noted above, Mr. Abdur'Rahman has not sought a declaratory order as required by Tenn. Code. Ann. § 4-5-225(b). Nor has he availed himself of the procedure for resolution of inmate complaints provided under the TDOC's policy governing inmate grievance procedures.¹

In the interest of judicial and administrative economy, however, the Department has considered Abdur'Rahman's petition. Based upon the unique circumstances presented, Mr. Abdur'Rahman will be afforded an opportunity to reconsider his waiver of lethal injection as the method of his execution. (*See Affidavit of Donal Campbell*). In light of this fact, the challenge

¹ TDOC Policy 501.01(IV)(A) provides that inmates may file grievances concerning the substance or application of a written or unwritten policy or practice, any single behavior or action toward an inmate by staff or other inmates, or any condition or incident within the department or institution which personally affects the inmate complainant. (*See Affidavit of Donal Campbell*). The TDOC grievance procedure provides for three levels of review of inmate complaints. (*Id.*). An appeal of a warden's response to a grievance may be made to the Assistant Commissioner of Operations or his designee. (*Id.*).

to the validity of his previously executed waiver is now moot.

Conclusion

For the foregoing reasons, the defendants submit that the petition should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded by first-class mail, postage prepaid, to: Bradley A. MacLean, STITES & HARBISON, PLLC., SunTrust Center, Suite 1800, 424 Church Street, Nashville, TN 37219 and to William P. Redick, Jr., 810 Broadway, Suite 201, Nashville, TN 37203 on this the _____ day of _____ 2002.

STEPHANIE R. REEVERS
Associate Deputy Attorney General