

IN THE CRIMINAL COURT OF DAVIDSON COUNTY, TENNESSEE

ABU ALI ABDUR'RAHMAN,)	
)	
Petitioner,)	
)	
v.)	Case No. 87-W-417
)	(Death Penalty)
STATE OF TENNESSEE,)	
)	
Respondent.)	

**RESPONSE IN OPPOSITION TO
MOTION FOR STAY OF EXECUTION**

Six days prior to his execution, which, by order of the Tennessee Supreme Court dated January 15, 2002, is scheduled for April 10, 2002, Abdur'Rahman asks this Court for a stay to allow consideration of six claims presented in a contemporaneously-filed motion to reopen post-conviction. None of the claims meets the criteria to reopen under Tenn. Code Ann. §40-30-217(a) and, indeed, as Abdur'Rahman admits in his motion to reopen, he has previously litigated claims of constitutional error challenging his conviction and death sentence on direct appeal, in post-conviction proceedings, and in federal habeas proceedings.

Tenn. Code Ann. §40-30-220(b) provides:

Where a petitioner is under a sentence of death and the petition is not the first petition under this part attacking that judgment, or a motion to reopen has been filed, no court shall stay the execution unless a court of competent jurisdiction first finds that a motion to reopen which meets the requirements set out in §40-30-217 has been granted.

In other words, this court is without authority to grant a stay unless it first determines that the criteria to reopen under §40-30-217(a) have been satisfied. For the reasons set forth in the State's response in opposition to the motion to reopen post-conviction petition, no such showing can be made here. Accordingly, Abdur'Rahman's motion for a stay of execution should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Response has been hand delivered
on this the _____ day of April, 2002, to:

Donald E. Dawson
Office of the Post-Conviction Defender
530 Church Street, Suite 600
Nashville, TN 37243

JOHN ZIMMERMANN
Senior Assistant District Attorney General