

Nos. 00-7620, 7621

IN THE
SUPREME COURT OF THE UNITED STATES

PHILIP R. WORKMAN,
Petitioner,

v.

RICKY J. BELL, Warden,
Respondent.

In re PHILIP R. WORKMAN,
Petitioner.

RESPONSE IN OPPOSITION TO PETITIONER'S
APPLICATION FOR STAY OF EXECUTION OF DEATH SENTENCE

PAUL G. SUMMERS
Attorney General & Reporter
State of Tennessee

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Counsel for Respondent

On the basis of petitioner Workman's previously filed Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit and Petition for Writ of Habeas Corpus,

he has now filed with this Court an application to stay execution of his sentence of death, which is set for January 31, 2001.¹

In order to secure a stay of execution, petitioner must demonstrate a substantial likelihood of success on the merits of his petitions. *See Bush v. Gore*, 121 S.Ct. 512 (2000)(order granting application for stay)(Scalia, J., concurring); *see also Delo v. Blair*, 509 U.S. 823 (1993)(per curiam)(particularly egregious to enter a stay of execution upon a second or subsequent habeas petition absent substantial grounds on which relief may be granted). For all of the reasons set forth in respondent's brief in opposition to the Petition for Writ of Certiorari, the petition is without merit and should be denied. Likewise, and for all the reasons set forth in respondent's brief in opposition to the Petition for Writ of Habeas Corpus,² that petition is also without merit and should be denied. Accordingly, petitioner has not demonstrated and cannot demonstrate a substantial likelihood of success on the merits of either of these petitions.

Petitioner's application to stay execution of his sentence of death should be denied.

Respectfully submitted,

PAUL G. SUMMERS

¹ This application was filed by petitioner on December 14, 2000, in the United States Court of Appeals for the Fifth Circuit in this proceeding.

² With respect to petitioner's effort to present a freestanding habeas claim, a federal court recently ruled in *Herrera v. Collins*, 116 F.3d 1133 (1997), and respondent's reference in his brief in opposition to a January 14, 2001, hearing on petitioner's renewed application for execution elsewhere, *see* respondent's Brief in Opposition, p. 11 n. 11, respondent further informs the Court that, at the conclusion of the January 14 hearing, the Tennessee Board of Probation and Parole announced its concluding recommendation, by a vote of 4-1, that the government of Tennessee deny the application for elsewhere.

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been forwarded to counsel for the petitioner by facsimile to Christopher M. Minton, Office of the Post-Conviction Defender, 530 Church Street, Suite 600, Nashville, Tennessee 37243 on this the 26th day of January, 2001.

JOSEPH F. WHALEN
Assistant Attorney General

