

IN THE SUPREME COURT OF TENNESSEE

2013 OCT -3 PM 12: 27

AT NASHVILLE

APPELLATE COURT CLERK
NASHVILLE

STATE OF TENNESSEE,)
)
 Movant,)
)
 v.)
)
 OLEN E. HUTCHISON,)
)
 Defendant.)

No. M1991-00018-SC-DPE-DD

MOTION TO RESET EXECUTION DATE

By order dated September 30, 2003, the defendant Hutchison having exhausted the standard three-tier appeals process, this Court set an execution date of March 11, 2004, in the above styled matter. On January 22, 2004, the United States District Court for the Eastern District of Tennessee entered a stay of execution pending disposition of a motion for relief from judgment in his federal habeas proceeding under Fed. R. Civ. P. 60(b). On March 30, 2010, the district court denied Hutchison's motion and dismissed the federal habeas action. *Hutchison v. Bell*, No. 3:98-cv-664, 2010 WL 1330296 (E.D. Tenn. Mar. 30, 2010).¹ The court

¹ The district court initially transferred the motion to the United States Court of Appeals for the Sixth Circuit under then-controlling case law holding that such motions be treated as successive habeas petitions subject to prior authorization from the court of appeals. The Sixth Circuit subsequently retransferred the case to the district court for reconsideration in light of *Gonzalez v.*

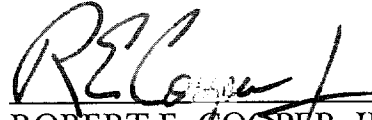
subsequently denied a certificate of appealability to the United States Court of Appeals for the Sixth Circuit. *See* Fed. R. Civ. P. 22(b); 28 U.S.C. § 2253(c)(1). The Sixth Circuit likewise denied Hutchison's application for a certificate of appealability and denied rehearing of that decision. The United States Supreme Court denied a petition for writ of certiorari on June 25, 2012. *Hutchison v. Colson*, 133 S.Ct. 27 (2012).

The federal habeas corpus proceeding having been dismissed and all appeals in that matter concluded, the previously-entered stay of execution is terminated by operation of law. *See* 28 U.S.C. § 2251(a)(1) ("A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding.").

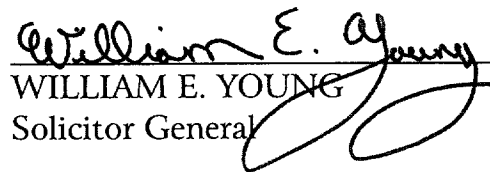
WHEREFORE, pursuant to its obligation under R. 12(4)(E), Rules of the Supreme Court of Tennessee, the State of Tennessee provides notice to this Court of the order of the United States District Court denying relief from judgment, and respectfully requests that this Court reset the date of execution for Hutchison to a date no less than seven (7) days from issuance of an order of this Court granting the State's motion.

Crosby, 545 U.S. 524 (2005), which established circumstances under which a post-judgment motion may be treated as a proper Rule 60(b) motion.

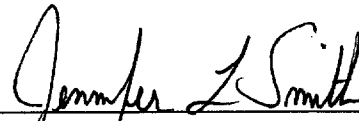
Respectfully submitted,



ROBERT E. COOPER, JR.
Attorney General & Reporter



WILLIAM E. YOUNG
Solicitor General



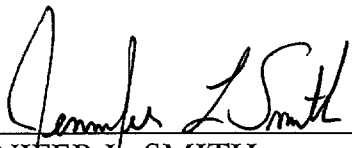
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² Counsel prefers to be notified of any orders or opinions of the Court by email at Jennifer.Smith@ag.tn.gov.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion has been forwarded via facsimile and U.S. mail, first-class postage prepaid, on the 3rd day of October, 2013 to:

Dana Hansen Chavis
Federal Public Defender Services
800 S. Gay St, Suite 2400
Knoxville, TN 37929



JENNIFER L. SMITH
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