

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE V. EDMUND ZAGORSKI

Circuit Court for Robertson County
No. 6052

FILED
SEP 07 2010
Clerk of the Courts

No. M1996-00110-SC-DPE-DD - Filed: September 7, 2010

ORDER

On July 6, 2010, the State filed a motion to set an execution date for Edmund Zagorski. The State alleges that Mr. Zagorski has completed the standard three-tier appeals process and that an execution date should therefore be set in accordance with Tennessee Supreme Court Rule 12.4(A).

On August 16, 2010, Mr. Zagorski filed a "Response to Motion to Set Execution Date" and a "Request for Oral Argument on Motion to Set Execution Date." In his response he requests that in the interest of justice this Court deny the State's motion, grant him relief from his convictions and sentences, and order a new trial and/or sentencing hearing. Mr. Zagorski requests this relief for several reasons. First, he contends that three of his statements to law enforcement officers were obtained in violation of his right to counsel and that two of these statements were the product of the unbearable and unconstitutional conditions of his confinement in the Robertson County Jail. He says that this Court's determination that any error in the admission of the statements was harmless, see State v. Zagorski, 701 S.W.2d 808, 812 (Tenn. 1985), is flawed in light of the subsequent decision in Arizona v. Fulminante, 499 U.S. 279 (1991). He also asserts that the trial court instructed the jury in violation of Sandstrom v. Montana, 442 U.S. 510 (1979), that malice was presumed from the killing. Finally, Mr. Zagorski says that the trial court's definition of "mitigating" unconstitutionally misled the jury regarding the scope and meaning of mitigating circumstances.

On August 25, 2010, the State filed a reply to Mr. Zagorski's response and request for oral argument. The State says that unless the Court construes the response as a request to recall mandate under Rule 42(d) of the Tennessee Rules of Appellate Procedure, the response provides no authority for disturbing the final judgment in Mr. Zagorski's case. The State further asserts that recall of mandate is inappropriate because this procedure has never been used to review claims that could have been, but were not, presented on the original trial and

appeal and because Mr. Zagorski has not established the extraordinary circumstances necessary to warrant such relief. The State further states that Mr. Zagorski's request for oral argument should be denied since argument would not significantly assist the Court in its decision on the State's Motion to Set Execution Date. On August 26, 2010, Mr. Zagorski filed a reply to the State's reply, in which he disputes the State's characterization of his response as a motion to recall mandate.

Upon due consideration of the State's motion, Mr. Zagorski's response, the exhibits to the response, the State's reply, and Mr. Zagorski's reply, the Request for Oral Argument is denied and the State's Motion to Set Execution Date is granted. It is therefore ordered that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute the sentence of death as provided by law at 10:00 p.m. on the 11th day of January, 2011, or as soon as possible thereafter within the following twenty-four hours, unless otherwise ordered by the Court or other appropriate authority.

Counsel for Mr. Zagorski shall provide a copy of any order staying execution of this order to the Office of the Clerk of the Appellate Court in Nashville. The Clerk shall expeditiously furnish a copy of any order of stay to the Warden of the Riverbend Maximum Security Institution.

PER CURIAM