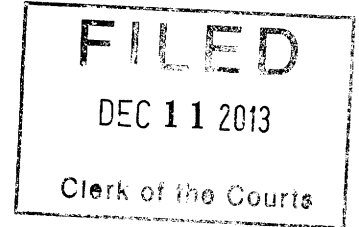


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. BILLY RAY IRICK

Criminal Court for Knox County
No. 24527



No. M1987-00131-SC-DPE-DD

ORDER

On September 27, 2013, the Tennessee Department of Correction adopted a new lethal injection protocol that provides that inmates sentenced to death be executed by the injection of a lethal dose of a single drug, Pentobarbital. On October 3, 2013, the State filed a Motion to Reset Execution Date for Billy Ray Irick. On October 10, 2013, Mr. Irick filed a response in opposition to the State's motion. On October 22, 2013, this Court set an execution date for January 15, 2014. On December 6, 2013, Mr. Irick filed a "Motion to Alter, Amend or Modify Order Setting Execution Date."

Mr. Irick represented that he is a plaintiff in West et al. v. Schofield et al., No. 13-1627-I (Davidson Chancery, filed Nov. 20, 2013), a declaratory judgment action challenging the constitutionality of the State's new one-drug lethal injection protocol. He attached a copy of the Complaint for Declaratory Judgment in that case, and the chancery court's scheduling order dated December 3, 2013, which reflects that a trial date has been set for July 7, 2014. Mr. Irick requested that the Court reset his execution date for a date following the resolution of the declaratory judgment action.

The Court notes that the pending declaratory judgment action complaint alleges that (1) the new lethal injection protocol violates the Eighth and Fourteenth Amendments to the United States Constitution, and Article 1, section 16 of the Tennessee Constitution because it creates a risk of unnecessary pain when carried out in the manner prescribed; (2) the new lethal injection protocol violates the Eighth and Fourteenth Amendments to the United States Constitution, and Article 1, section 16 of the Tennessee Constitution because it requires the use of compounded Pentobarbital from non-FDA-approved sources, and compounded Pentobarbital has the potential to be contaminated or sub-potent, presenting a substantial risk of pain and suffering when administered according to the protocol; (3) the new lethal injection protocol violates the Eighth and Fourteenth Amendments to the United States

Constitution, and Article 1, section 16 of the Tennessee Constitution because it fails to provide for the adequate qualification and training of personnel, presenting the substantial risk of unnecessary pain and suffering during the execution process; (4) the new lethal injection protocol violates the Eighth and Fourteenth Amendments to the United States Constitution, and Article 1, section 16 of the Tennessee Constitution because it fails to conform to those accepted medical practices necessary to minimize the known risks involved in execution by lethal injection, presenting a substantial risk of unnecessary pain and suffering; (5) the new lethal injection protocol violates Article VI, section 2 to the United States Constitution and Article I, section 8 of the Tennessee Constitution (the federal and state supremacy clauses) because its provisions violate various federal and state drug laws; and (6) the secrecy provisions of Tennessee Code Annotated section 10-7-504(h)(1), which shield from disclosure the identity of persons or entities involved in the process of executing a sentence of death, violate Article VI of the United States Constitution, the First and Fourteenth Amendments to the United States Constitution, Article 1, sections 8 and 17 of the Tennessee Constitution, and Article II, section 2 of the Tennessee Constitution, because they deny death-sentenced inmates access to the courts, deny death-sentenced inmates due process, violate the federal and state supremacy clauses, and violate the constitutional provisions for separation of powers.

Previously, this Court has recognized that

The principles of constitutional adjudication and procedural fairness require that decisions regarding constitutional challenges to acts of the Executive and Legislative Branches be considered in light of a fully developed record addressing the specific merits of the challenge. The requirement of a fully developed record envisions a trial on the merits during which both sides have an opportunity to develop the facts that have a bearing on the constitutionality of the challenged provision.

State v. Stephen Michael West, No. M1987-000130-SC-DPE-DD (Tenn. Nov. 29, 2010) (Order). Mr. Irick is correct that currently, there is no controlling law in Tennessee on the constitutionality of the use of the single drug, Pentobarbital, to execute a death row inmate.

Upon due consideration, Mr. Irick's Motion is GRANTED. This Court's Order of October 22, 2013, is vacated, and the execution date for Mr. Irick is reset to October 7, 2014. Accordingly, it is hereby ORDERED, ADJUDGED and DECREED by this Court that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute the sentence of death as provided by law on the 7th day of October, 2014, unless otherwise ordered by this Court or other appropriate authority.

Counsel for Mr. Irick 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