

IN THE SUPREME COURT OF ALABAMA

EX PARTE DOYLE LEE HAMM)
)
In re: State of Alabama,)
)
Petitioner,)
)
v.) No. 1881555
)
Doyle Lee Hamm,)
)
Respondent.)

**STATE'S REPLY TO HAMM'S RESPONSE TO THE
STATE'S MOTION TO SET AN EXECUTION DATE**

There is no question that now is the "appropriate time" to enter an order fixing Hamm's execution date. Ala. R. App. P. 8(d)(1). Hamm does not dispute that he has completed his direct appeal, state post-conviction review, and federal habeas review and that his conviction and sentence are final. Thus, there is no impediment to setting Hamm's execution date. Given that Hamm's conventional appeals were concluded in 2016, his execution date should be set forthwith.

Despite the fact that Hamm does not dispute that his conventional appeals have concluded, Hamm unsurprisingly argues for more delay. Resp. 1-3. Hamm alleges that he is suffering from cranial and lymphatic cancer, suggesting that IV access may not be possible.

He requests that his execution be delayed until after he receives Dr. Mark Heath's report. Dr. Heath¹ will be traveling to Alabama to evaluate Hamm at Donaldson Correctional Facility sometime in September 2017. Resp. 3-5.

As set forth in the State's motion, there are currently no pending challenges to the validity of Hamm's conviction and death sentence. Hamm provides absolutely no substance for his position that his execution should be delayed, as he fails to provide any specifics as to how long he contends this Court should refuse to set his execution date. Nor does he point to any pending state or federal court case that would prevent this Court from setting his execution date, thus revealing that his argument is nothing but a bald request for an undetermined delay of his execution.

In addition, although Hamm received radiation treatments for cancer in 2014, and although his cancer condition has deteriorated since March 2017, Hamm's attorney has not attempted to have him evaluated and has no lawsuit pending based on his current medical

¹ Dr. Heath is an anesthesiologist, not an oncologist.

condition.² Hamm had ample time to raise this challenge *before* the State petitioned for his sentence to be carried out. The fact that he waited until after the State had asked that an execution date be set strongly suggests that his action is brought solely for delay and not for any legitimate purpose.

If this Court does not set Hamm's execution date, it will ensure that his execution will not be set for an undetermined amount of time. As set out in the State's motion, it is time for this Court to set an execution date for carrying out Hamm's duly-adjudicated sentence of death pursuant to Rule 8(d)(1) of the Alabama Rules of Appellate Procedure for the murder/robbery of Patrick Cunningham in January 1987.

² Should Hamm file a lawsuit challenging his execution, the court where the lawsuit is filed would be in the best position to litigate whatever challenge he brings. This Court should not defer its decision-making authority to set an execution date simply because such litigation is a possibility.

CONCLUSION

The State respectfully requests that this Court issue an order setting Hamm's execution date.

Respectfully submitted,

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s/ Thomas R. Govan, Jr.
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s/ Beth Jackson Hughes
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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2017, I filed the foregoing with the clerk of the court, and I served a copy on the attorney for Hamm by email, as follows:

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s/ Beth Jackson Hughes
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