

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

APR 24 2013

JAMES LEWIS DEROSA,)
)
 Appellant,)
 v.)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

MICHAEL S. RICHIE
CLERK

Case No. D-2001-1416
NOT FOR PUBLICATION

ORDER SETTING EXECUTION DATE

James Lewis DeRosa was tried by jury and convicted of two counts of First-Degree Felony Murder (Robbery with a Dangerous Weapon), for the murders of Curtis and Gloria Plummer, in violation of 21 O.S.Supp.2000, § 701.7(B), in the District Court of LeFlore County, Case No. CF-2000-635. On both counts, the jury found each of the two aggravating circumstances alleged: (1) that the murder was “especially heinous, atrocious, or cruel,” and (2) that the murder was “committed for the purpose of avoiding or preventing a lawful arrest or prosecution.” 21 O.S.1991, § 701.12(4) & (5). In accord with the jury’s recommendation, the trial court, the Honorable Doug Gabbard, II, sentenced DeRosa to death on both counts. This Court affirmed DeRosa’s first-degree murder convictions and his death sentences on direct appeal, see *DeRosa v. State*, 2004 OK CR 19, 89 P.3d 1124, and the United States Supreme Court denied certiorari review. See *DeRosa v. Oklahoma*, 543 U.S. 1063, 125 S.Ct. 889, 160 L.Ed.2d 793 (2005). In addition, DeRosa’s application for state post-conviction relief was denied by this Court in an unpublished order on May 3, 2004. *DeRosa v. State*, Case No. PCD-2002-624 (Okla. Crim. May 3, 2004).

On December 23, 2005, DeRosa filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Oklahoma, pursuant to 28 U.S.C. § 2254. The federal district court denied the requested habeas corpus relief in an unpublished opinion filed on September 27, 2010. *See DeRosa v. Workman*, 2010 WL 3894065 (E.D. Okla. 2010). The United States Court of Appeals for the Tenth Circuit then affirmed this denial of federal habeas corpus relief on May 25, 2012. *See DeRosa v. Workman*, 679 F.3d 1196 (10th Cir. 2012). The United States Court of Appeals for the Tenth Circuit subsequently also denied a request by DeRosa for a rehearing, either by the panel or *en banc*. *See DeRosa v. Workman*, 696 F.3d 1302 (10th Cir. 2012).

DeRosa then filed a petition for a writ of certiorari in the United States Supreme Court. On March 25, 2013, the United States Supreme Court denied DeRosa's request for a writ of certiorari. *See DeRosa v. Workman*, No. 12-8632, 2013 WL 507101, __ S.Ct. __ (2013).

This Court finds that DeRosa has exhausted all his regular appeals in this State and in the federal court system; and on March 25, 2013, the State filed an Application for Execution Date in this case, under 22 O.S.2011, § 1001.1(D). On March 26, 2013, DeRosa filed an Objection to Setting of Execution Date and Request to Temporarily Hold Setting of Execution Date in Abeyance in this Court. On April 1, 2013, the State filed a Response to this filing by DeRosa; and on April 3, 2013, DeRosa filed a Reply to this State Response. This Court has reviewed all these filings.

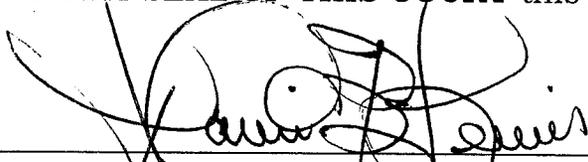
DeRosa objects to the setting of an execution date at this time and requests that this Court temporarily decline to do so. DeRosa cites a number of external “factors” that he maintains make it imprudent, at the current time, to set an execution date in his case: (1) the potential impact of “Sequestration” (Under the Budget Control Act of 2011) and its resulting furlough days and “re-ordering of priorities” in the Federal Public Defender’s Office on the ability of his capital habeas attorneys to represent him within the Oklahoma clemency process; (2) the pursuit of criminal charges against members of the Oklahoma Pardon and Parole Board, by the Oklahoma County District Attorney, for alleged violations of the Oklahoma Open Meeting Act; (3) a related investigation of the Oklahoma Pardon and Parole Board by the Oklahoma Attorney General; and (4) the retirement of the executive director of the Pardon and Parole Board.

DeRosa fails to establish, however, that any of these factors can be reasonably expected to impact or undermine the clemency process in his case. As the State correctly notes, Federal Public Defender’s Office attorneys (who will represent DeRosa in the Oklahoma clemency process) have already extensively investigated his case and have been representing him for many years. Furthermore, the Oklahoma County District Attorney will have no involvement in the clemency process, and the Oklahoma Attorney General’s Office is not involved in any criminal investigation of the Oklahoma Pardon and Parole Board. This Court finds that DeRosa has failed to show that any of the factors cited in his Objection to Setting of Execution Date filing can be reasonably expected to impact or undermine the clemency process in his case.

Under State law, this Court must set a date of execution in a capital case after the dissolution of any stay of execution issued by a state or federal court. 22 O.S.2011, § 1001.1(D). This Court notes that DeRosa has not even alleged “that there exists a significant possibility of reversal of [his] conviction, or vacation of [his] sentence,” under 22 O.S.2011, § 1001.1(C). As DeRosa has exhausted all his regular appeals and no stay of execution is in place, this Court is required to set an execution date. DeRosa’s execution date is set for Tuesday, June 18, 2013.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 24th day of April, 2013.



DAVID B. LEWIS, Presiding Judge



CLANCY SMITH, Vice Presiding Judge



GARY L. LUMPKIN, Judge



CHARLES A. JOHNSON, Judge



ARLENE JOHNSON, Judge

ATTEST:


Clerk