

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

GARRY THOMAS ALLEN,)	
)	
Appellant,)	
)	
vs.)	Case No. C-88-37
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

APPLICATION FOR EXECUTION DATE

COMES NOW E. Scott Pruitt, Attorney General of the State of Oklahoma, and hereby respectfully requests that this Court set an execution date pursuant to 22 O.S.Supp.2004, §1001.1(E) & (F), for thirty (30) days after December 28, 2011, or at the earliest date this Court deems fit, so that the lawful conviction and sentence of the State of Oklahoma may be carried out.

In support of this Application, the State would show this Court the following:

1. Defendant Garry Thomas Allen is incarcerated in the Oklahoma State Penitentiary pursuant to a judgment and sentence rendered in the District Court of Oklahoma County, State of Oklahoma, Case No. CRF-86-6295, for Murder in the First Degree for the 1986 murder of his wife, Lawanna Gail Titsworth. The Petitioner was sentenced to death.

2. Allen filed a petition for writ of certiorari challenging his conviction and sentence with this Court in Case No. C-88-37. This Court affirmed the judgment but vacated his sentence and remanded for a new sentencing proceeding because the trial court failed to consider the sentencing option of life without the possibility of parole. *See Allen v. State*, 1991 OK CR 35, 821 P.2d 371.

3. Allen was again sentenced to the death penalty. Although this Court struck the “great risk of death to more than one person” aggravating circumstance for insufficiency of the evidence, the Court affirmed the sentence in *Allen v. State*, 1996 OK CR 9, 923 P.2d 613.

4. On April 28, 1997, the Supreme Court of the United States granted certiorari review on the issue of Allen’s competence to enter his guilty plea and remanded the case to this Court for reconsideration in light of *Cooper v. Oklahoma*, 517 U.S. 348, 116 S.Ct. 1673, 134 L.Ed.2d 498 (1996). See *Allen v. Oklahoma*, 520 U.S. 1195 117 S.Ct. 1551, 137 L.Ed.2d 699 (1997).

5. Upon reconsideration, this Court found Allen was nevertheless competent to enter his plea. *Allen v. State*, 1998 OK CR 25, 956 P.2d 918.

6. On November 9, 1998, the Supreme Court of the United States denied certiorari review of Allen’s case. *Allen v. Oklahoma*, 525 U.S. 985, 525 S.Ct. 985, 142 L.Ed.2d 405 (1998).

7. Allen filed an application for post-conviction relief in this Court in Case No. PCD-97-311. The application for post-conviction was denied in an unpublished opinion. *Allen v. State*, PC-97-311 (Okla.Crim.App., July 20, 1998).

8. Allen then filed a Petition for Writ of Habeas Corpus on August 3, 1999, in the United States District Court for the Western District of Oklahoma. On April 3, 2002, the District Court denied the petition on the merits.

9. A panel of the Tenth Circuit Court of Appeals unanimously affirmed the District Court on May 19, 2004. *Allen v. Mullin*, 368 F.3d 1220 (10th Cir. 2004). The petition for rehearing and for rehearing *en banc* was denied on June 21, 2004.

10. Allen sought certiorari review in the United States Supreme Court and was denied such on February 22, 2005. *Allen v. Mullin*, 543 U.S. 1156, 125 S.Ct. 1301, 161 L.Ed.2d 122 (2005). At that time, all appeals in state and federal courts had been exhausted and this Court set an execution date of May 19, 2005.

11. Prior to the execution date, the Warden of the Oklahoma State Penitentiary provided notice to the District Attorney for Pittsburg County that there was good reason to believe Allen had become insane, pursuant to Section 1005 of the Oklahoma Code of Criminal Procedure (22 O.S.2001, § 1005).

As required by § 1005, the District Attorney filed a petition in Pittsburg County District Court, styled and numbered as *In re: Garry Thomas Allen*, Case No. C-05-510, raising the question of Allen's sanity to be executed. The Honorable Thomas M. Bartheld, District Judge, entered a stay of execution pending resolution of the question of Allen's sanity.

13. Prior to jury trial of Allen's sanity, his counsel petitioned the Court of Criminal Appeals for a writ of mandamus and/or prohibition relating to an interlocutory ruling of the trial court. The Court of Criminal Appeals denied a writ on the merits on October 12, 2005, *Allen v. State*, No. PR-2005-813 (Okl.Cr. Oct. 12, 2005) (unpublished); rehearing was denied on November 17, 2005. *Allen v. State*, No. PR-2005-813 (Okl.Cr. Nov. 17, 2005) (unpublished).

14. The United States Supreme Court denied Allen's petition for a writ of certiorari to the Court of Criminal Appeals on March 27, 2006. *Allen v. District Court of Oklahoma, Pittsburg County*, 547 U.S. 1043, 126 S.Ct. 1623, 164 L.Ed.2d 338 (2006).

15. The jury trial was conducted from April 28 to May 1, 2008, pursuant to § 1005. The jury returned a verdict that Allen was sane to be executed. On September 28, 2009, the District Court denied Allen's motions for new trial.

16. Allen filed a Notice of Intent to Appeal in the District Court on October 7, 2009. On December 8, 2011, this Court dismissed Allen's appeal. *Allen v. State*, 2011 OK CR 31, ___ P.3d ___ (Okl.Cr. Dec. 8, 2011).

17. On December 28, 2011, Judge Bartheld vacated the stay of execution he granted in *In re: Garry Thomas Allen*, Case No. C-05-510. Attachment A.

18. When an execution date has been set and a stay issued, the provisions of 22 O.S.Supp.2004, § 1001.1(E) & (F), apply. Each of these subsections provide that an execution date shall be set by operation of law thirty (30) days after the dissolution (subsection E) or vacation (subsection F) of the stay of execution.¹

¹ Subsection E states, in pertinent part:

After an execution date has been set pursuant to the provisions of this section, should a stay of execution be issued by any state or federal court, a new execution date shall be set by operation of law thirty (30) days after the dissolution of the stay of execution.

Subsection F states, in pertinent part:

After an execution date has been set pursuant to the provisions of this section, should a stay of execution be issued by any state or federal court and then vacated by such court, the sentence of death shall be carried out as ordered prior to the issuance of such vacated stay of execution. If the prior execution date has expired prior to the vacation of the stay of execution, a new execution date shall be set by operation of law thirty (30) days after the vacation of the stay of execution.

The above considered, the State respectfully requests that this Court set an execution date thirty (30) days after December 28, 2011, or at the earliest date this Court deems fit.

Respectfully submitted,

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA



ROBERT L. WHITTAKER, OBA #9570
ASSISTANT ATTORNEY GENERAL

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Oklahoma City, OK 73105-4894
(405) 521-3921

ATTORNEYS FOR APPELLEE

CERTIFICATE OF MAILING

On this 28th day of December, 2011, a true and correct copy of the foregoing was mailed to:

Kristi Christopher
P.O. Box 926
Norman, OK 73070

John David Echols
610 S. Hiawatha
Sapulpa, OK 74066



ROBERT L. WHITTAKER

IN THE DISTRICT COURT OF PITTSBURG COUNTY
STATE OF OKLAHOMA

RECEIVED AND FILED
IN THE DISTRICT COURT
AT PITTSBURG, OKLAHOMA

2011 DEC 28 AM 9:54

In Re: GARRY THOMAS ALLEN,)
Department of Corrections,)
Inmate No. 129275)

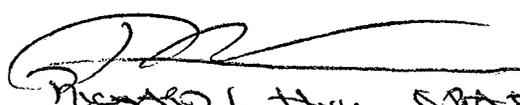
Case No. C-05-510
BY CINDY SMITH
DEPUTY

ORDER VACATING STAY OF EXECUTION

Before this Court, on this 28 day of December, 2011, appears the *Motion to Vacate Stay of Execution* filed by the State of Oklahoma on Decmeber 8, 2011. The Court, being informed in the premises and having reviewed the pleadings, finds that the issue of the sanity of Garry Thomas Allen for execution has been resolved at the jury trial conducted from April 28 through May 1, 2008, by the verdict finding Garry Thomas Allen sane for execution, and by the Oklahoma Court of Criminal Appeals' dismissal of Mr. Allen's appeal in *Allen v. State*, 2011 OK CR 31 (Dec. 8, 2011). The Court further finds that there is no longer a need for the execution to be stayed and hereby vacates the stay of execution previously issued in this case on May 18, 2005.

THEREFORE, IT IS ORDERED that the order directing stay of the execution of the sentence of death of Garry Thomas Allen in Oklahoma County District Court Case No. CRF-86-6295 is vacated.


THOMAS M. BARTHELD
DISTRICT COURT JUDGE


RICHARD L. HINE
ASSISTANT CLERK

COUNTY OF PITTSBURG }
STATE OF OKLAHOMA } ss
I, CINDY SMITH, Court Clerk in and for Pittsburg County State of Oklahoma do hereby certify that the within and foregoing is a full, true and correct copy of the original Order as the same appears on file and record whereof I hereunto set my hand and seal.
This 28 day of Dec
CINDY SMITH, Co
Deputy

