

STATE OF TENNESSEE

Office of the Attorney General



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December 10, 2021

District Attorney General Glenn Funk
20th Judicial District
Washington Square, Suite 500
222 2nd Avenue North
Nashville, Tennessee 37201

Re: *Abu-Ali Abdur'Rahman v. State*, No. 87-W-417 (Davidson Cnty. Crim. Ct.)

Dear General Funk,

I write this letter in response to recent action that has been taken in the above-referenced case. In 2019, you and Mr. Abdur'Rahman sought and obtained an agreed order modifying Mr. Abdur'Rahman's death sentence to life imprisonment. Because this modification violated the Post-Conviction Procedure Act (the "Act"), my office appealed to the Court of Criminal Appeals, which, as you know, vacated the agreed order and remanded for further proceedings. *Abdur'Rahman v. State*, No. M2019-01708-CCA-R3-PD, 2020 WL 7029133 (Tenn. Crim. App. Nov. 30, 2020).

On November 9, 2021, you again sought and obtained a modification of Mr. Abdur'Rahman's sentence. My office has reviewed the court's order, and we have significant concerns about its legality. Despite these concerns, we have decided not to appeal, in part, because we think it would be unfair to expose Mr. Abdur'Rahman to continued uncertainty about his sentence.

This decision not to appeal should not be taken by you or anyone else as tacit approval of the order obtained or the positions you have taken. Indeed, we believe this new order violates the Act in at least three ways:

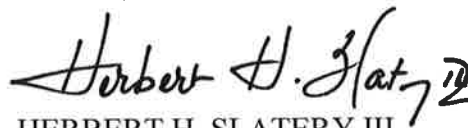
1. The post-conviction court, following your lead (Stipulations, ¶¶67-72), held that it could rely entirely on your refusal to contest relief as a basis for vacating Mr. Abdur'Rahman's death sentence (Order, ¶¶66-72), which was contrary to the holding of the Court of Criminal Appeals.

2. You attempted to waive any statute of limitations “defense” (Stipulations, ¶80), but the statute of limitations under the Act is explicitly jurisdictional and therefore cannot be waived, Tenn. Code Ann. § 40-30-102(b). Presumably, waiver was attempted to get around the fact that *Foster v. Chatman*, 136 S. Ct. 1737 (2016), did not announce a new, retroactive rule of law, which renders Mr. Abdur’Rahman’s claims untimely.
3. The underlying juror-discrimination issue has been previously determined by many courts, including the Tennessee Supreme Court. *State v. Jones*, 789 S.W.2d 545, 548-49 (Tenn. 1990); *State v. Abdur’Rahman*, No. M1988-00026-SC-DPE-PD (Tenn. Apr. 5, 2002). Previously determined issues are outside the scope of post-conviction review.

Further, the rapid-plea procedure employed below—apparently designed to frustrate appellate review of this order—would be no barrier to a state appeal, since a judgment in a criminal case is not final until 30 days pass or a timely notice of appeal is filed. *State v. Pendergrass*, 937 S.W.2d 834, 837 (Tenn. 1996) (citing Tenn. R. App. P. 4(c), (d)). And, as the Court of Criminal Appeals held, my office has the authority to appeal from a final judgment in a post-conviction proceeding, and you cannot interfere with that right of appeal. See *Abdur’Rahman*, 2020 WL 7029133, at *5-7 & n.5.

Although we have chosen not to appeal this order, we will continue to monitor all efforts to unlawfully modify or vacate final judgments, and we will take whatever action is necessary and appropriate to ensure that the law is followed.

Sincerely,

A handwritten signature in black ink that reads "Herbert H. Slattery III". The signature is written in a cursive, flowing style with a large, stylized "H" and "S".

HERBERT H. SLATTERY III
Attorney General and Reporter