

MAY - 2 2013

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MICHAEL S. RICHIE  
CLERK

BRIAN DARRELL DAVIS, )

Appellant, )

v. )

THE STATE OF OKLAHOMA, )

Appellee. )

No. D-2003-256

**ORDER SETTING EXECUTION DATE**

Before the Court is the State of Oklahoma's request to set an execution date in this case. Davis has exhausted all his regular appeals in this State and in the federal court system;<sup>1</sup> and on April 15, 2013, the State filed an Application for Execution Date in this case, under 22 O.S.2011, § 1001.1(D). On April 17, 2013, Davis filed an Objection to Setting of Execution Date and Request to Temporarily Hold Setting of Execution Date in Abeyance in this Court. On that same date, the State filed a Response to this filing by Davis; and on April 18, 2013, Davis filed a Reply to this State Response. This Court has reviewed all these filings.

Davis objects to the setting of an execution date at this time and requests that this Court temporarily decline to do so. Davis cites a number of external "issues" 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

<sup>1</sup> *Davis v. State*, 2004 OK CR 36, 103 P.3d 70 (direct appeal); *Davis v. State*, 2005 OK CR 21, 123 P.3d 243 (post conviction); *Davis v. Workman*, 695 F.3d 1060 (10<sup>th</sup> Cir. 2012), *cert. denied*, *Davis v. Trammell*, \_\_\_ U.S. \_\_\_, \_\_\_ S.Ct. \_\_\_, \_\_\_ L.Ed.2d \_\_\_, 2013 WL 991266 (April 15, 2013) (denial of habeas corpus affirmed and certiorari denied.)

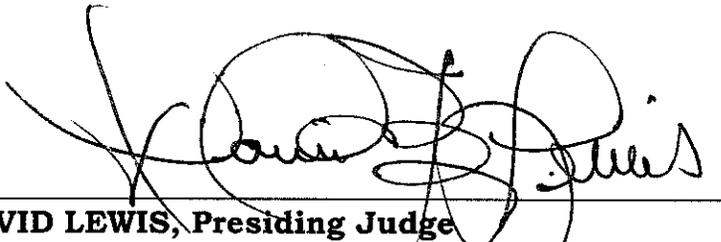
the Budget Control Act of 2011) for panel lawyers appointed under the Criminal Justice Act to represent capital defendants in the Oklahoma clemency process; (2) the pursuit of criminal charges against members of the Oklahoma Pardon and Parole Board, by the Oklahoma County District Attorney, for alleged 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 and alleged serious illness of the agency's deputy director.

Davis fails to establish, however, that any of these factors can be reasonably expected to impact or undermine the clemency process in his case. He provides no evidence that his attorney's ability to prepare for his upcoming clemency hearing is adversely affected because of the budget cuts. As the State correctly notes, Davis' counsel in the Oklahoma clemency process has the benefit of the extensive investigation conducted prior to the budget cuts "by the many attorneys, investigators and staff who have already expended vast time and resources re-investigating this case through direct appeal, post-conviction and habeas corpus review." 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 Davis 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 Davis has not 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 Davis has exhausted all his regular appeals and no stay of execution is in place, this Court is required to set an execution date. Davis’ execution date is set for Tuesday, June 25, 2013.

**IT IS SO ORDERED.**

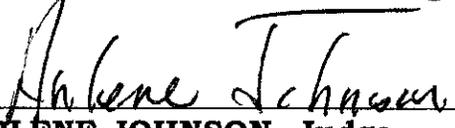
**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 2<sup>nd</sup> day  
of May, 2013.

  
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**DAVID LEWIS, Presiding Judge**

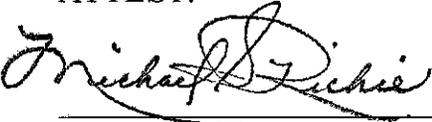
  
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**CLANCY SMITH, Vice Presiding Judge**

  
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**GARY L. LUMPKIN, Judge**

  
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**CHARLES A. JOHNSON, Judge**

  
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**ARLENE JOHNSON, Judge**

ATTEST:

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Clerk