



STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
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October 9, 2018

HAND DELIVERED AND SENT VIA EMAIL

Kelley J. Henry
Office of the Federal Public Defender
Middle District of Tennessee
810 Broadway, Suite 200
Nashville, TN 37203-3805

Re: *State of Tennessee v. Edmund Zagorski*, M1996-00110-SC-DPE-DD

Dear Ms. Henry:

This letter is in follow-up to a document captioned “Affidavit Concerning Method of Execution” which was delivered to Warden Tony Mays at approximately 5:30 p.m. on October 8, 2018, and with which Mr. Zagorski purports to waive his right to have his October 11 execution carried out by lethal injection and purports to choose to be executed by electrocution. The purported waiver and election are ineffective and, even if effective, would be incapable of implementation consistent with the protocol at this late stage. *See West v. Schofield*, 468 S.W.3d 482, 493 & fn.13 (Tenn. 2015).

The Affidavit Concerning Method of Execution is incorporated in and is part of the Department’s execution protocol. Because you insisted, in your letter to the Warden of Aug. 30, 2018, that he refrain from presenting the form Affidavit to your client as called for by the protocol, the Department served the form Affidavit by email on September 11, 2018, to you on behalf of Mr. Zagorski for his consideration and signature. Since the Affidavit was not completed and returned to the Department—as necessary for compliance with the protocol—by close of business on September 27, 2018, pursuant to the Tennessee Supreme Court’s 7/10/18 Order, the Department notified you by letter dated September 27, 2018, that Mr. Zagorski’s execution would be carried out by lethal injection.

The Affidavit apparently signed by Mr. Zagorski on October 6, 2018, and served upon the Warden yesterday, October 8, is ineffective as a waiver of execution by lethal injection since it contains unilateral alterations to the form that render any waiver impermissibly conditional and in direct contravention of established Supreme Court precedent in *Stewart v. LaGrand*, 526 U.S. 115 (1999). Moreover, as the Tennessee Supreme Court has acknowledged, the lethal injection and electrocution protocols “prevent the Commissioner and TDOC from undertaking any last-

minute switch from lethal injection to electrocution.” See *West v. Schofield*, 468 S.W.3d 482, 493 & fn.13 (Tenn. 2015).

As a result, please be advised that, pursuant to Tenn. Code Ann. § 40-23-114 and Tennessee’s Lethal Injection Manual (revised July 5, 2018), Mr. Zagorski’s execution scheduled for Thursday, October 11, 2018, will be carried out using a three-drug combination consisting of Midazolam, Vecuronium Bromide, and Potassium Chloride.

Sincerely,



Debra K. Inglis

Deputy Commissioner of Administration and General Counsel