

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**FILED**

**April 3, 2000**

**Cecil Crowson, Jr.  
Appellate Court Clerk**

No. M1999-01313-SC-DPE-PD

ROBERT GLEN COE,

Movant,

STATE OF TENNESSEE,

Respondent.

MOTION TO MODIFY EXECUTION DATE;  
MOTION FOR ORDER TO ALLOW MENTAL PROFESSIONAL  
ACCESS TO ROBERT COE

COMES NOW your movant, Robert Glen Coe, through his undersigned counsel of record and moves this Honorable Court pursuant to *Van Tran v. State* 6 S.W. 3d 257 (1999) and *Coe v. State*, W1999-01313-SC-DPE-OD (March 6, 2000) for this court to modify the execution date currently set by this court and further prays this court enter an order requiring Warden Bell to allow counsel to have Mr. Coe evaluated by a mental health professional. In support of this motion, your movant would show unto the court as follows:

1. On December 15, 1999, this Honorable Court set an execution date for Robert Coe for March 23, 2000 and remanded the case to the Criminal Court of Shelby County, Tennessee, to determine whether Mr. Coe was competent to be executed under *Ford v. Wainwright*, 477 U.S. 399 (1986) and *Van Tran v. State, supra*.

2. At the hearing, psychiatrist Dr. William Kenner testified that Mr. Coe suffers from Dissociative Identity Disorder. Furthermore, Dr. Kenner testified that the presence of stressors cause Mr. Coe to become psychotic and thus incompetent to be executed under both *Ford* and *Van Tran*. Dr. Kenner testified within a reasonable degree of medical certainty that when execution was imminent, Mr. Coe would become psychotic and incompetent to be executed under *Ford* and *Van Tran*. (See *Coe v. State*, Slip Opinion pp. 8-11).

3. In this Honorable Court's opinion, the Court found that since on the last interview (January 12, 2000), Dr. Kenner found Mr. Coe to be competent, that Mr. Coe was in fact presently

competent to be executed and thus it was immaterial that Dr. Kenner testified he would become incompetent as the execution neared.

4. This court specifically addressed in a footnote that Mr. Coe would have to file a motion for a stay with an affidavit from a mental health professional showing a substantial change in his competency in order to prevent Mr. Coe's execution, if he became incompetent as Dr. Kenner testified when execution was imminent:

In his reply brief, filed March 2, 2000, the appellant argues that the evidence at the hearing "overwhelmingly" establishes that he will be incompetent on March 23, 2000, the day of his scheduled execution. He specifically relies upon the testimony of Dr. Kenner and Dr. Merikangas in support of his assertion. The issue before the trial court was the appellant's present competency to be executed. The evidence in this record overwhelmingly supports the trial court's finding that the appellant is presently competent to be executed. As we stated in Van Tran "if a prisoner is found to be competent, subsequent Ford claims will be disallowed unless the prisoner, by way of a motion for stay, provides this Court with an affidavit from a mental health professional showing that there has been a substantial change in the prisoner's mental health since the previous determination of competency was made and the showing is sufficient to raise a substantial question about the prisoner's competency to be executed." 6 S.W. 3d at 272. Thus, any future change in the appellant's mental health must be raised as provided in Van Tran. We emphasize, however, that conclusory affidavits will not satisfy the showing that there has been a substantial change in the prisoner's mental health sufficient to "raise a substantial question about the prisoner's competency to be executed." Id.

Slip Opinion, p. 49.

5. Counsel attempted to obtain access to Mr. Coe for an evaluation by a mental health professional when execution was imminent. However, Warden Bell told counsel that State policy will not allow Robert Coe to be evaluated by a mental health professional absent a court order. See Affidavit of Robert Hutton, attached hereto as Exhibit 1.

6. In essence, the State's policy of refusing counsel access to Mr. Coe with a mental health professional deprives Mr. Coe of any redress in the courts to litigate a substantial change in his competency which is guaranteed by Ford and Van Tran, and further constitutes a denial of access to the courts as guaranteed by the Tennessee Constitution, Article 1, Section 17.

7. Because of the refusal of the Warden to allow access with a mental health professional, counsel needs an order allowing mental health professionals access to Mr. Coe and a brief continuance of the execution date in order to allow the mental health professionals to evaluate Mr. Coe, and prepare an affidavit that is more than conclusory in accordance with the Van Tran

standard cited above.

WHEREFORE, PREMISES CONSIDERED, your movant prays that this court enter an order:

1. Continuing the execution date; and
2. Ordering the Warden at Riverbend Maximum Security Institution to allow a mental health professional to evaluate Mr. Coe in order to prepare a motion for stay of execution due to a substantial change in competency.

Respectfully Submitted:

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By: Robert Hutton

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion and Affidavit upon Glenn Pruden, Assistant Attorney General, by facsimile this \_\_\_\_\_ day of April, 2000.

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