

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

March 21, 2000

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

ROBERT GLEN COE,)
)
Appellant,)
)
v.)
) NO. M1999-01313-SC-DPE-PD
)
STATE OF TENNESSEE,)
)
Appellee.)

DISSENT

Robert Glen Coe has filed a motion requesting that this Court issue a certificate of commutation as provided by Tenn. Code Ann. § 40-27-106 (1997).

After a painstakingly thorough review of the voluminous record filed in this cause, I remain firmly convicted, as I stated previously in Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999) (Birch, J., separately concurring and dissenting) and Coe v. State, No. M1999-01313-SC-DPE-PD, 2000 WL 246425 (Tenn. Mar. 6, 2000) (Birch, J., dissenting) that

1. The protocol to determine a prisoner's competency to be executed, adopted by the majority in Van Tran, violates the Fourteenth Amendment to the United States Constitution, public standards of decency, and public standards of propriety; and
2. The ineffective methodology used by the majority to determine a prisoner's competency to be executed is one with which I expressly disagree.

It results that the application of this protocol in Coe's proceedings provides, in the least, an extenuating circumstance that mandates the commutation of his sentence of death.

Because this Court is not of one mind on the commutation issue, I am firmly persuaded that it is my duty to separately address Coe's request for a recommendation of commutation and to do so on the record.

Now, therefore, in accordance with that duty described above, pursuant to and independent of the enabling statute cited herein, and after a careful consideration of the pertinent parts of the entire record, I do hereby certify to His Excellency, the Honorable Don Sundquist, Governor of the State of Tennessee, that the punishment of

death ought to be commuted.

ADOLPHO A. BIRCH, JR., Justice