

*Ad Et 9/10/10*

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

2010 SEP 13 AM 10:20

**STATE OF TENNESSEE**

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APPELLATE COURT CLERK  
NASHVILLE

**Respondent-Appellee**

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**M1987-00131-SC-DPE-DD**

**v.**

\*

**Trial Court No. 24527**

\*

**BILLY RAY IRICK**

\*

\*

**Petitioner-Appellant**

\*

**DEATH PENALTY**

\*

\*

**APPEAL OF KNOX COUNTY CRIMINAL COURT'S  
JUDGMENT OF COMPETENCY TO BE EXECUTED**

**REPLY BRIEF OF THE PETITIONER-APPELLANT**

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## REPLY BRIEF OF THE PETITIONER-APPELLANT

The defendant files the following reply brief principally to address two contested issues of law discussed in the State's brief. The first of these issues is whether the case of Panetti v. Quarterman, 551 US 930 (2007), along with other relevant United States Supreme Court precedents govern competency determinations in this state insofar as said decisions differ from this court's ruling in Van Tran. The second issue is, assuming Panetti and other relevant United States Supreme Court precedents are controlling law, whether such precedents articulate substantive standards or whether they simply articulate procedural requirements for competency determinations.

### **Panetti and Ford are authoritative and controlling.**

On page 12 of its brief, the State states, in part, "Panetti does not alter this Court's authoritative interpretation of Ford as set forth in Van Tran v. State..." Insofar as the State may be arguing that the State's interpretation of the Eighth Amendment to the United States Constitution is immune from federal review, defendant respectfully disagrees. In Ford v. Wainwright, 477 US 399 (1986), the United States Supreme Court held that the Eighth Amendment against cruel and unusual punishment applies to the states and categorically prohibits the execution of a prisoner who is insane. Id. at 409-10. It is the United States Supreme Court that defines the parameters and contents of Eighth Amendment protections.

In the cases adopting categorical rules the Court has taken the following approach. The Court first considers "objective indicia of society's standards, as expressed in legislative enactments and state practice" to determine whether there is a national consensus against the sentencing practice at issue. [Citing Roper v. Simmons, 543 US 551, 572 (2005)]. Next, guided by the "standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eight Amendment's text, history, meaning and purpose [cites omitted], the Court must determine in the exercise of

its own independent judgment whether the punishment in question violates the Constitution. [Citing Roper, 543 US at 572].

Graham v. Florida, 130 S.Ct. 2011, 2022 (2010).

Since there is no question but that the intention and effect of Panetti was to clarify Ford's competency-for-execution and "substantial threshold showing" standards (see Thompson v. Bell, 580 F3d 423, 434 (6th Cir. 2009), Panetti, along with Ford and other United States Supreme Court precedents, are authoritative and controlling as to Irick's competency determination in the context of the Eighth Amendment's prohibition against cruel and unusual punishment.

**Panetti and Ford promulgated substantive standards for competency determinations.**

The importance of Panetti to this court's review of the trial court's determination of defendant's competency stems not only from the procedural requirement for a hearing, which was met in this case, but the substantive holding as to what constitutes relevant criteria for determining competency to be executed. While there is no "strict test for competency" applicable to all circumstances, nevertheless, the Panetti court held that it was "error to derive from Ford, and from the *substantive* standard for incompetency its opinions broadly identify, a strict test for competency that treats delusional beliefs as irrelevant once the prisoner is aware the State has identified the link between his crime and the punishment to be inflicted." Panetti, 551 US at 959. (Emphasis supplied). The court went on to find that the lower court's conception of incompetency was "too restrictive" to provide a prisoner the protection granted by the Eighth Amendment. Id. at 956-57.

Furthermore, federal courts have identified a "baseline definition" for competency to guide state and lower federal courts in competency determinations. In a recent *habeas* review of the Mississippi Supreme Court's competency determination, the federal district court stated:

...In the Eighth Amendment context, "insanity" does have a baseline definition: the test for competence to be executed involves not only a prisoner's factual awareness of the crime, the impending execution, and the State's reason for executing the prisoner, but also some degree of "rational understanding" between the crime and the punishment. Panetti v. Quarterman, No. A-04-CA-042-SS, 2008 WL 2338498, \*31 (W.D. Tex. March 26, 2008) (quoting Panetti, 127 S.Ct. at 2861).

Billiot v. Epps, 671 FSupp2d 840, 852 (S.D. Miss. 2009).

In this case, the factual and medical proof demonstrate that Irick has no "rational understanding" of the connection between the death of Paula Dyer and his scheduled execution because he suffered a floridly psychotic episode at the time of the offense leaving him with no memory of having committed the crime. As a result, he steadfastly denies his guilt and correspondingly believes the state is executing an innocent person. In Panetti, the United States Supreme Court found that "gross delusions stemming from a severe mental disorder may put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose," thereby rendering a defendant incompetent to be executed. Panetti, 551 US at 958-59. The only difference between Panetti and Irick is that Irick's gross delusions which severed the cognitive link between his crime and his punishment occurred at the time of the offense. (As previously stated, Irick has also been diagnosed as *presently* suffering from (1) cognitive disorder; (2) psychotic disorder; (3) paranoid personality disorder; and (4) schizoid personality disorder). Nevertheless, Irick's gross delusions and his psychotic experience left him in the same position as Panetti, that is, without any rational understanding of the reason for his execution despite Irick's apparent "competence" at the time he was examined by Dr. Seidner which allowed him to identify his sentence of death, the stated reason for his execution, and the identity of the victim.

Irick's inability to make the link between his actions and his punishment of death is also central to the issue of retributive value discussed in Ford and Panetti. The Panetti court found that, in most cases, the imposition of the death penalty "has the potential to make the offender recognize at last the gravity of his crime and to allow the community as a whole...to affirm its own judgment that the culpability of the prisoner is so serious that the ultimate penalty must be imposed." Panetti, 551 US at 957. However, the court found such retributive value questionable "if the prisoner's mental state is so distorted by a mental illness that his awareness of the crime and punishment has little or no relation to the understanding of those concepts shared by the community as a whole." Id. at 958-59. This is of course the case with Irick, who believes he is innocent of the crime.

Another basis for the trial court error in finding Irick to be competent can be explained in its failure to review the question in light of other United States Supreme Court precedents which reflect on what constitutes cruel and unusual punishment. In Billiot, the court stated:

"However, the Court's citations to Roper, Atkins and Ford suggest that Eighth Amendment analysis of a defendant's competence to be executed must include consideration of society's current perception of capital punishment and the effect of that perception on the determination of what constitutes cruel and unusual punishment in the context of competence to be executed. As the Court recognized in Atkins, a claim that punishment is excessive is judged not by the standards that prevailed in 1685 when Lord Jeffreys presided over the 'bloody Assizes' or when the Bill of Rights was adopted, but rather by those that currently prevail. [Citing Atkins v. Virginia, 536 US 304, 311 (2002)] More recently, the court reasoned that the Eighth Amendment scope must continue to evolve 'because [t]he standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.' [Cites omitted].

Billiot, 671 FSupp2d at 852.

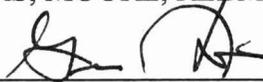
When, as here, the defendant has unquestionably suffered from mental illness throughout his life, including psychotic episodes which left him unable to remember the Paula Dyer offenses and

therefore unable to rationally understand the basis for his execution, current and prevailing attitudes require that Irick not be executed.

### CONCLUSION

For the reasons stated herein and those in his original brief to this court, defendant respectfully prays that he be found incompetent to be executed.

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### CERTIFICATE OF SERVICE

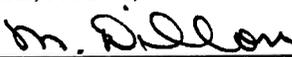
The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause via facsimile or U.S. Mail addressed as follows:

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