

**IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE**  
**DIVISION I**

**STATE OF TENNESSEE**

**V.**

**CASE NO. 24527**

**BILLY RAY IRICK, ALIAS**

**STATE'S RESPONSE TO PETITION TO DETERMINE**  
**PRESENT INCOMPETENCY TO BE EXECUTED**

Comes the State of Tennessee, by and through the District Attorney General for the Sixth Judicial District, in response to the Petition to Determine Present Competency to be Executed, filed by Mr. Billy Ray Irick, in this case. The State asserts that the Defendant has failed to meet the required threshold to support his claim of present competency to be executed as established by the Tennessee Supreme Court in Van Tran v. State, 6, S.W.3d 257 (Tenn. 1996). Accordingly, his petition should be denied without further hearing.

A. Introduction.

Mr. Billy Ray Irick is currently incarcerated at the Riverbend Maximum Security Institution in Nashville, Tennessee. Mr. Irick is on death row for the 1985 rape and murder of Paula Dyer. In 1985, Mr. Irick confessed to the anal rape, vaginal rape and murder of this seven-year-old girl. On November 3, 1986, a jury sentenced Mr. Irick to death for the murder of Miss Dyer.

The Tennessee Supreme Court recently set an execution date for Mr. Irick of December 7, 2010. The Defendant has filed a claim that he is presently incompetent to be executed and this

claim was referred to this Court under the provisions of Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999).

This matter is now before this Court to determine whether the petitioner has made a sufficient showing of present incompetency, so as to qualify for a hearing on this issue.

B. The Standard at this Stage of the Proceedings.

In Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999), the Tennessee Supreme Court created a two-part “cognitive” test to determine the present incompetency of a death row inmate facing execution. This two-part test is a cognitive test that requires a court to consider the following questions:

1. Does the prisoner presently lack the mental capacity to understand the fact of his impending execution? and,
2. Does the prisoner presently lack the mental capacity to understand the reason for his impending execution?

See id. at 266.

C. The Procedure For Determining Competency To Be Executed

In addition to establishing the standard by which present incompetency to be executed claims are to be evaluated, the Van Tran Court also adopted the following procedure for evaluating such claims:

1. The issue of competency to be executed is generally not considered ripe for determination until execution is imminent.
2. The issue of competency to be executed should be raised by the prisoner after the State has moved the Tennessee Supreme Court to set an execution date. The prisoner should raise the issue of competency in his response to the motion to set an execution date.
3. If the Tennessee Supreme Court enters an Order setting an execution date, the Court will also remand the issue of competency

to the trial court where the prisoner was originally tried and sentenced.

4. Within three days of entry of the Order of remand, the prisoner shall file a petition in the trial court. The petition shall clearly set forth the facts alleged to support the claim that execution should be stayed due to present mental incompetence. The petition shall have attached to it affidavits, records, or other evidence supporting the factual allegations of mental incompetence.

5. The State shall file a response within three days of the filing by the prisoner.

6. Within four days of the filing of the response, the trial court shall decide if a hearing is warranted. This decision depends upon whether the prisoner has made the required threshold showing that his competency to be executed is genuinely in issue. The burden placed on the prisoner sets a high or substantial threshold showing before he is entitled to a hearing.

See, id. at 267.

#### C. Mr. Irick Has Failed To Meet The Threshold Requirement

Mr. Irick has filed a lengthy petition and numerous supporting documents on the issue of whether he is presently incompetent to be executed. Despite the volumes of paper, Mr. Irick has completely failed to meet the threshold burden set for him in Van Tran. 6 S.W.3d at 269 (“We adopt a rule that places the burden on the prisoner to make a threshold showing that he or she is presently incompetent.”) In order to meet the burden, the Defendant should submit affidavits, depositions, medical reports or other credible evidence sufficient to demonstrate that there exists a genuine question regarding petitioner’s present competency to be executed. Id.

The Van Tran Court emphasized that the proof required to meet the threshold showing “must relate to present incompetency” and include “recent mental evaluations or observations of the prisoner”. Id. at 269 (emphasis added). However, the vast majority of the mental health material submitted with the Defendant’s petition is very old and stale and not relevant to the

question of present incompetency to be executed. Instead, the focus is on the Defendant's mental state at the time of the offense and/or his competency for trial in 1986. The Tennessee Supreme Court specifically warned prisoners that they cannot meet their initial threshold if the only evidence they submit is "stale in the sense that it relates to the prisoner's distant past competency or incompetency." *Id.* at 269. See also, Thompson v. State, 134 S.W.3d 168, 177 (Tenn. 2004) ("The threshold is not satisfied by evidence of the prisoner's distant past incompetency.").

Almost all of the mental health records, submitted in support of the current petition, are between 10 to 45 years old. The only exception to this is the recent work done by Dr. Peter I. Brown, M.D. Dr. Brown met with Mr. Irick in December 2009 and January 2010. It is important to note that Dr. Brown was never asked to give his opinion on the two-part cognitive test set forth in Van Tran for determining competency to be executed. Instead he was only asked to evaluate Mr. Irick "...to identify clinical factors related to issues of aggravation or mitigation concerning his offense." (Rpt. Of Dr. Brown, p. 1).

No mental health expert has been presented by the prisoner that has given an opinion concerning his present competency to be executed. The lengthy petition and documentation in this case only contain the unsupported, conclusory assertions of counsel that Mr. Irick is presently incompetent to be executed. The Van Tran Court has stated that this will ordinarily be insufficient for the prisoner to meet his required threshold showing. 6 S.W.3d at 269 ("[U]nsupported conclusory assertions of a family member of the prisoner or an attorney representing the prisoner will ordinarily be insufficient to satisfy the required threshold showing.").

Mr. Irick makes no attempt to meet the first prong of the two-part cognitive test established in Van Tran – that the prisoner be aware of the punishment he or she is about to suffer. Mr. Irick apparently does know that the government is seeking to execute him. For example, according to Dr. Brown, within the last few months Mr. Irick has told Dr. Brown “that the government has systematically portrayed him as ‘sub-human’, in part to legitimize his execution.” (Rpt of Dr. Brown, p. 15)(emphasis added).

Counsel for Mr. Irick make an attempt to meet the second prong of the cognitive test - that the prisoner understand why he or she is being executed - by claiming that Mr. Irick has no current recollection of the murder and rape of Miss Dyer. This assertion, even if true, does not meet the test set forth in Van Tran. Mr. Irick does not need to have a current recollection of the events of April 15, 1985, to be competent to be executed. He simply needs to be aware of the facts of why the State is seeking to execute him. In reviewing the various mental health records it is clear that Mr. Irick understands that he has been convicted of the rape and murder of Miss Paula Dyer and that is why the State is seeking to execute him.

For example, the examination of Dr. Brown undercuts the factual claim that Mr. Irick does not remember the events of April 15, 1985. Mr. Irick initially confessed to the rape and murder of Miss Dyer. Shortly after his confession, Mr. Irick begins to claim that he cannot remember the events of that night because he was too intoxicated. Dr. Brown questions Mr. Irick about the murder and Mr. Irick denies being guilty of the rape and murder. However, Mr. Irick merely denies the charges and cannot provide any account of what did happen. Dr. Brown makes the following observation:

He does frequently say “I can’t remember” about a variety of events. However, this appears to be a mechanism to avoid thinking about painful situations and to forestall further questions or discussion rather than true amnesia.

Rpt of Dr. Brown, p. 16 (emphasis added).

Moreover, even if one believes his claims of amnesia, the Defendant's assertions of factual innocence clearly demonstrate he is aware of the crime for which the State is seeking to execute him. Dr. Brown indicates that during a discussion concerning his conviction, the Defendant asserted, "It is just not in me to do this. If I thought I had done this I would kill myself." Rpt of Dr. Brown, p. 16. Whether or not he believes he did it, the Defendant clearly understands that the crime occurred and that the State blames him for it. A belief in one's own guilt is not required for execution, only an understanding of the reason for the execution. Van Tran, 6, S.W.3d at 266.

The insufficiency of this petition becomes very apparent when this petition is compared and contrasted with the petition filed in the case of Thompson v. State, 134 S.W.3d 168 (Tenn. 2004). The petition in Thompson contained affidavits from three mental health experts where each expert opined that Mr. Thompson was not competent to be executed.

The trial court in Thompson examined the petition, and the supporting documents, and held that the prisoner had failed to meet the initial burden that was necessary to proceed to an evidentiary hearing. The Tennessee Supreme Court conducted a de novo review. Despite the fact that the defendant had submitted three affidavits from mental health experts stating he was not competent to be executed, the Tennessee Supreme Court affirmed the summary denial of the petition without a hearing or further proceedings. Id. The Thompson Court explained, "Simply put, a prisoner need only be aware of 'the fact of his or her impending execution and the reason for it' to satisfy the competency required for execution of the death penalty." Id. at 184.

D. Conclusion.

The petition filed by Mr. Irick fails to properly raise any real issue as to whether Mr. Irick is aware of the fact of his impending execution and the reason for it. Mr. Irick has completely failed to meet his threshold burden in this petition. The State would respectfully ask that this Court deny the petition without further proceedings.

E. Expert Available to Examine Mr. Irick.

While the State does not believe that any further examination of Mr. Irick is proper under the Van Tran decision, the State does provide the information listed below in compliance with the procedure mandated by the Tennessee Supreme Court:

Dr. Clifton R. Tennison, Jr., M.D.  
Helen Ross McNabb Center  
201 West Springdale Avenue  
Knoxville, Tennessee 37917  
(865) 637-9711  
(CV in materials filed by Mr. Irick)

RESPECTFULLY SUBMITTED,

RANDALL E. NICHOLS  
DISTRICT ATTORNEY GENERAL



BY: \_\_\_\_\_  
LELAND L. PRICE, BPR# 018853  
Assistant District Attorney General  
Suite 168, City-County Building  
P.O. Box 1468  
Knoxville, TN 37901  
Telephone: (865) 215-2515

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this pleading has been forward to the following:

C. Eugene Shiles, Jr. Esq.  
Post Office Box 1749  
Chattanooga, Tennessee 37401-1749  
[ces@smrw.com](mailto:ces@smrw.com)

Howell G. Clements, Esq.,  
1010 Market Street  
Suite 404  
Chattanooga, Tennessee 37402

this the 26 day of July, 2010.

BY: \_\_\_\_\_  
  
LELAND L. PRICE  
ASSISTANT DISTRICT ATTORNEY