

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

JAMES LEE JONES, aka )  
ABU ALI ABDUR=RAHMAN, )  
v. ) DAVIDSON COUNTY CRIMINAL  
STATE OF TENNESSEE. ) No. M1988-00026-SC-DPE-PD

RESPONSE TO ANOTICE OF PUTATIVE *FORD* CLAIM AND  
MOTION TO MODIFY *VAN TRAN* PROCEEDING

I. **ABDUR=RAHMAN HAS NOT ESTABLISHED ANY ENTITLEMENT TO THE PROCEEDINGS SET FORTH BY THIS COURT IN *HECK VAN TRAN V. STATE*, 6 S.W.3D 257 (TENN. 1999).**

In *Ford v. Wainwright*, 477 U.S. 399 (1986), the United States Supreme Court held that the Eighth Amendment precludes the execution of a prisoner who is incompetent B i.e. who does not understand the fact of his execution or the reason for it. Recognizing such a prohibition, in *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999), *cert. denied*, 529 U.S. 1091 (2000), this Court set forth the procedure that a prisoner sentenced to death must follow in order to assert his constitutional right to challenge his competency to be executed.

In his pleading before this Court, Abdur=Rahman acknowledges that he is not currently incompetent but asserts that there is a probability that he will become incompetent at or near the time of his execution. This Court has previously held that such allegations are insufficient to delay an execution. *Coe v. State*, 17 S.W.3d 193, 221 n.15 (Tenn. 2000)(noting that *Van Tran* makes a specific provision for later-arising claims of incompetence). Since Abdur=Rahman

does not allege that he is *currently* incompetent, *Van Tran* does not permit a remand for a competency hearing;<sup>1</sup> this Court should thus set an execution date forthwith.

**II. THE *VAN TRAN* PROCEDURE PROVIDES A PROPER VEHICLE TO PROTECT A DEFENDANT=S RIGHTS UNDER *FORD*, AND THUS NO MODIFICATIONS ARE WARRANTED.**

Abdur=Rahman asserts that, because he is currently competent, conducting a *Ford/Van Tran* hearing at this time would violate his constitutional rights. He thus requests this Court to Amodify@ its established proceedings and order the Warden to grant him access to mental health professionals and to conduct a *Ford/Van Tran* hearing Aat any time he becomes incompetent for his execution.@ Because this Court=s established procedures already provide for the possibility of future incompetence, no such modifications are needed.

**A. Entitlement to a hearing:**

Abdur=Rahman=s motion seems to be based upon a misapprehension that, despite his assertion that he is currently competent, this Court will nonetheless set an execution date several months into the future and proceed with a full competency hearing under the schedule set forth in *Van Tran*. As noted above, however, the State submits that such action is unwarranted and would constitute nothing more than a waste of scarce judicial resources to reach a preordained result B that Abdur=Rahman is, as he admits, currently competent. As noted above, in *Coe* this Court addressed a Aputative *Ford* claim@ and found that *Van Tran* provided for the possibility of future incompetence. The State submits that Abdur=Rahman=s admission of current

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Indeed, to do so at present would constitute a waste of judicial resources, given Abdur'Rahman's admissions and the conclusions set forth in Dr. Woods' affidavit.

competence has the same effect as a judicial determination of competence envisioned in *Van Tran*.

In *Van Tran* this Court stated that:

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. Cf. Ariz.Rev.Stat. Ann. ' 13-4024(B) (West 1999).

*Van Tran*, 6 S.W.3d at 272. Because Abdur=Rahman concedes his *current* competence, the State submits that should he purport to *become* incompetent prior to the execution date set by this Court, he must establish that there has been a *substantial* change in his mental health *that* is *sufficient* to raise a substantial question about [his] competency to be executed. *that* If he can make such a showing, by something more than conclusory affidavits, then this Court can issue a stay and remand the matter to the trial court for a hearing on his competency.

***B. Access to mental health professionals:***

In addition to the ability to seek a hearing, which already exists, Abdur=Rahman also asks that this Court issue an order to the Warden mandating that he allow Abdur=Rahman Aaccess to mental health professionals at all times prior to his execution.@ Initially, the State submits that such an order is unnecessary as Abdur=Rahman has pled no facts supporting an inference that the Warden will deny reasonable access in the period leading up to the execution.

It appears from the motion that Abdur=Rahman=s request stems from the holding of the United States District Court in *Coe v. Bell*, 89 F. Supp. 2d 962 (M.D. Tenn. 2000), *vacated as moot*, 230 F.3d 1357 (Table)(6th Cir. 2000), where that court was asked to order the Warden to allow both counsel and a mental health professional to be present and witness the execution. The court granted the request as to counsel but denied it as to the mental health professional.

In denying relief as to the mental health professional, the district court noted:

Because the present statute, [Tenn. Code Ann. '40-23-116], governing who may be present at an execution was in place when *Van Tran* was written, that statute had to have been in the contemplation of the Tennessee Supreme Court when it was promulgating the procedures to be followed for the determination of a prisoner=s competency to be executed. That statute does not provide for the presence of either the prisoner=s counsel or a mental health professional at the execution. Therefore, the Tennessee Supreme Court has determined that the Asubstantial change in the prisoner=s mental health@ must occur, be substantiated by a mental health professional, and presented to the court within some reasonable time frame before the execution. A day B perhaps. An hour B definitely not. [Footnote: Even if both counsel and a mental health professional were present, the feasibility of drafting an affidavit, presenting it to the Tennessee Supreme Court and securing redress from that court within an hour of execution is remote.] These procedures comport with due process, the Eighth Amendment, and common sense. [Footnote: The fact that a person faced with certain death by execution might become fearful, overcome by strong emotions or even panic-

stricken does not mean that he or she is incompetent under Tennessee law to be executed. Perhaps it was to avoid the presentation of *Ford* claims based upon these predictable emotional responses to execution that the Tennessee Supreme Court structured the provision about subsequent *Ford* claims in the way it did.]

*Coe v. Bell*, 89 F.Supp.2d at 965. While true, as Abdur=Rahman states, that this Court is not bound by the holdings of the United States District Court, the State submits that, as that court noted, A due process, the Eighth Amendment and common sense@ support the holding of the district court that there is no requirement to allow a mental health expert to be present during the final hour preceding the execution.

## CONCLUSION

For the reasons stated, the State requests that this Court deny Abdur=Rahman=s request to A modify@ the procedures set down in *Van Tran*, and set an immediate date for his execution.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing Response has been forwarded via Facsimile and First-Class U.S. mail, postage prepaid, on this the \_\_\_\_ day of December, 2001, to:

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