

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

PAUL DENNIS REID, JR.,)	
)	
Appellee,)	Case No. M2005-02398-SC-S10-PD
v.)	
)	
STATE OF TENNESSEE,)	
Appellant.)	

**ON EXTRAORDINARY APPEAL FROM THE ORDER OF
THE MONTGOMERY COUNTY CIRCUIT COURT**

APPELLEE’S PETITION TO REHEAR

INTRODUCTION

Comes counsel for the Appellee and moves this Court to grant this Petition to Rehear, pursuant to Tennessee Rules of Appellate Procedure, Rule 39, because 1) the Court’s opinion incorrectly states material facts; 2) the Court’s opinion fails to clarify the competency standard for proceeding on a post-conviction petition filed by a “next friend;” and 3) the Court erred in failing to find a prima facie showing of present incompetence.

The Court should grant this petition to rehear, correct the factual inaccuracies, clearly identify the competency standard to be met in next friend post-conviction litigation as that standard found in *Rees v. Peyton* and Tennessee Supreme Court Rule 28, §11(B)(1), find that a sufficient prima facie showing of present incompetence has been made, and remand the case to the Montgomery County Circuit Court for an evidentiary hearing at which counsel have the opportunity to meet the requirements of this newly announced procedure for filing a post-conviction petition by next friend.

FACTUAL INACCURACIES

1. The Court's opinion repeatedly misstates the nature of the competency litigation in the Davidson County post-conviction court, which is currently pending before this Court in *Reid v. State*, No. M2005-00260-SC-S09-PC. The issue in that case is Mr. Reid's competency to proceed in litigating his post-conviction petition, but the opinion erroneously characterizes the issue as competency to withdraw the post-conviction petition.

2. Mr. Reid initiated proceedings in the Davidson County post-conviction case by signing a petition asserting various claims arising from his ongoing delusional beliefs that he is the subject of a government/military experiment video-recording his every word and movement, torturing him, "coaching" his attorneys and others involved in his case as to what to say and do, and assisting in his wrongful convictions by withholding the surveillance tapes which will exonerate him. Prior to filing the amended petition in that case, counsel filed a motion for an order finding Mr. Reid incompetent to proceed and staying the proceedings. Following briefing, the post-conviction court established a process for filing an unverified amended petition and for determining petitioner's competency to proceed in the post-conviction process.

3. The post-conviction court appropriately recognized the issue of competency to proceed as one of first impression. If the issue were withdrawal of the petition, the post-conviction court would have conducted proceedings in accordance with Tennessee Supreme Court Rule 28, § 11(B)(1). Mr. Reid did not request to withdraw his post-conviction petition and the post-conviction court did not proceed in any way upon that premise.

4. The Davidson County post-conviction court granted Appellant's Rule 9 application to appeal the court's competency procedure order on January 21, 2005, stating as follows: "It is crucial that our appellate courts address and establish a procedure for determining

a petitioner's competency to proceed at the post-conviction level." The Court of Criminal Appeals denied permission for interlocutory appeal by Order entered March 14, 2005. On April 13, 2005, counsel for Appellant filed with this Court an application for permission to appeal from denial of the Rule 9 application. This Court granted permission to appeal on June 27, 2005. The briefing from all parties addressed the issue of competency to proceed at post-conviction, and no party suggested that Mr. Reid had attempted to dismiss his Davidson County post-conviction petition.

5. On page 3 of the slip opinion, the Court states that in the Davidson County post-conviction proceedings "the Davidson County Criminal Court required a prima facie showing of mental incompetency before granting a full competency hearing and required a finding of mental incompetency to preclude the withdrawal of a pending post-conviction action." As stated above, the issue in the Davidson County post-conviction proceedings is not withdrawal of the petition.¹

6. On page 8 of the slip opinion, the Court states that in *State v. Reid*, No. M1999-00803-SC-DDT-DD (filed April 22, 2003), the Court had denied a motion for stay of execution "after Reid indicated that he wanted to withdraw his post-conviction petition in Davidson County." That case also did not involve the withdrawal of a pending post-conviction petition. Rather, his attorneys at the time moved for a stay of execution based upon two grounds. First, counsel asserted that denying a stay would deprive Reid of the right to file a petition within one year. *See State v. Paul Dennis Reid, Jr.*, No. M1999-00803-SC-DDT-DD, slip op. at 2 (Tenn. 2003) (memorandum opinion and order). Second, counsel asserted that Mr. Reid was unable to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation under the *Rees v. Peyton* standard. *Id.* This court found insufficient evidence –

¹ The opinion again, at p. 3-4, 4, and 8, inaccurately characterizes the issue in the Davidson County post-conviction court as "an attempted withdrawal of a properly filed petition for post-conviction relief" and "his effort to withdraw his post-conviction petition in Davidson County, Tennessee."

counsel only tendered an unsworn letter by Dr. Auble, who had not examined Mr. Reid at the time – to “call into doubt Mr. Reid’s present capacity to understand his legal position and options or to make a rational choice among these options.” *Id.* at 3.

7. On page 11 of the slip opinion, the Court states “Reid has never been found mentally incompetent by any court....” In fact, Mr. Reid was found incompetent to stand trial on criminal charges in Harris County, Texas and was incarcerated at length in the state correctional psychiatric facility.

8. On page 3 of the slip opinion, the Court states “The petition cited mental competency evaluations that had been performed on Reid in prior proceedings, *see Reid*, 164 S.W.3d at 304-06, as well as competency evaluations related to Reid’s effort to withdraw a separate post-conviction petition pending in Davidson County, Tennessee.” The petition did not cite mental competency evaluations referenced in *State v. Reid*, 164 S.W.3d at 304-06. The competency evaluations cited by counsel, which were attached to the Motion for Appointment of Counsel, are the October 23, 2003 report of Dr. Keith Caruso (I 30-41) and the January 15, 2005 report and affidavit of Dr. Pamela Auble (I 42-48). Both evaluators found Mr. Reid to be presently incompetent.

UNCLEAR STANDARD FOR DETERMINING INCOMPETENCE

9. This Court has previously recognized, in the unpublished opinion and order in *State v. Paul Dennis Reid, Jr.*, No. M1999-00803-SC-DDT-DD (Tenn. 2003) (memorandum opinion and order) that the appropriate standard of competency when determining whether a potential petitioner may forego his right to file a post-conviction petition is *Rees v. Peyton*, 384 U.S. 312, 314, 86 S.Ct. 1505, 1506, 16 L.Ed.2d 583 (1966). In that case, the Court inquired as to “Mr. Reid’s present capacity to understand his legal position and options or to make a rational

choice among these options.” *Id.* at 3. In various parts of the slip opinion in this case, the Court cites to *Rees v. Peyton* and to federal cases which apply this competency standard in next friend litigation, for example, *West v. Bell*, 242 F.3d 338, 341 (6th Cir. 2001) (“capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or . . . suffer[s] from a mental disease, disorder, or defect which may substantially affect his capacity in the premises”); *Brewer v. Lewis*, 989 F.2d 1021, 1026 (9th Cir. 1993) (“meaningful evidence that [the inmate] was suffering from a mental disease, disorder, or defect that substantially affected his capacity to make an intelligent decision”); and *Whitmore v. Arkansas*, 495 U.S. 149 (1990) (“meaningful evidence that he was suffering from a mental disease, disorder, or defect that substantially affected his capacity to make an intelligent decision”).²

10. In the specific section titled “Standards in Tennessee” the Court does not explicitly state the standard for determining incompetence in a next friend post-conviction proceeding. The Court requires a next friend to allege specific facts in attempting to demonstrate incompetence and requires that the “supporting evidence must satisfy the standard required in determining whether mental incompetency may toll the post-conviction statute of limitations.” *See* slip opinion at p. 10.

² The Court’s opinion also cites state next friend cases which apply the *Rees v. Peyton* standard or a higher standard, e.g., *State v. Ross*, 863 A.2d 654, 662 (Conn. 2005) (“defendant is competent to waive further challenges to death sentence when ‘he has [the] capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation’”); *Commonwealth v. Haag*, 809 A.2d 271, 279-80 (Pa. 2002) (“In discussing the judicial inquiry into the degree of competency that satisfies the *Whitmore* standard, we stated that it “is not dependent upon the use of certain magic words to describe the prisoner’s competency or lack thereof, but instead requires that the fact-finder make a conscientious effort to determine whether the prisoner is capable of making a rational decision to forego the potential avenues of appeal that are available to him.”); *Franz v. State*, 754 S.W.2d 839, 843 (Ark. 1988) (criticizing *Rees* and adopting “higher criterion” to include “capacity to understand the choice between life and death and to knowingly and intelligently waive any and all rights to appeal his sentence”) (overruled on other grounds by *State v. Robbins*, 5 S.W.3d 51, 55 (Ark. 1999).

11. It is unclear whether the Court intends to also apply the *Nix* tolling standard (“inability to manage his personal affairs or understand his legal rights and liabilities”) to a next friend post-conviction proceeding filed prior to exhaustion of the statute of limitations or whether the Court intends to apply the *Rees v. Peyton* standard (“meaningful evidence that he was suffering from a mental disease, disorder, or defect that substantially affected his capacity to make an intelligent decision”). The Court should grant this petition to rehear in order to clarify this issue and avoid unnecessary litigation in this and other cases.

12. To the extent that this opinion may be interpreted (or misinterpreted) by lower courts to apply the *Nix* standard of competency to a timely next friend post-conviction action, such application violates the U.S. Constitution, Amendments 5, 8, and 14. The *Nix* standard solely contemplates whether a petitioner is unable either to manage his personal affairs or to understand his legal rights and liabilities. *Nix* at 463. This standard in no way attempts to assess whether a mental illness or defect is affecting a person’s ability to exercise or waive his legal rights, which is an integral inquiry in *Rees v. Peyton* and Supreme Court Rule 28, § 11.

13. The *Nix* standard applies in reference to a non-capital petitioner’s³ failure to file a post-conviction petition within the one year statutory time limitation in Tenn. Code Ann. § 40-30-106(b). A petitioner’s cognitive ability regarding understanding when he must file a lawsuit is very different from the cognitive abilities required to make a knowing, intelligent, voluntary, and competent decision whether to pursue or waive available legal remedies. “*Competency* is a broad concept, encompassing many different legal issues and contexts.” Kaplan & Sadock, *Comprehensive Textbook of Psychiatry*, 3981 (8th Ed. 2005). “In general, *competency* refers to some minimal mental capacity required to perform a specific, legally recognized act or to assume

³ Petitioner *Nix* was not under death sentence. The heightened need for reliability in capital cases should require a different tolling standard for a capital petitioner who files after expiration of the statute of limitations.

some legal role.” *Id.* The specific acts and legal role of a capital post-conviction petitioner are those necessitated by the requirements of Tenn. Code Ann. § 40-30-107(b)(1) and Tenn. Sup. Ct. R. 28, § 6(C). So the standard must relate to those tasks.

14. The ability to understand one’s legal rights and liabilities is a much more minimal inquiry than the question of whether a mental illness or defect is affecting one’s ability to make a knowing, intelligent, and voluntary choice among legal options, and is akin only to the “knowing” prong of the latter standard. Further, the other component of the *Nix* standard -- ability to manage one’s “personal affairs” -- generally relates to a person’s ability to manage their money, conduct business, make decisions regarding their health care, associate with friends and family, and so forth. These are not issues with a clear nexus to a petitioner’s ability to make rational, knowing, and voluntary decisions about capital post-conviction litigation.

PRIMA FACIE EVIDENCE OF INCOMPETENCE WAS SHOWN

15. A sufficient prima facie showing of present incompetence was demonstrated in the Montgomery County Circuit Court in the pleadings filed by counsel. Judge Gasaway, presiding in the post-conviction court, was also the presiding judge at the trial of this case and conducted a competency hearing prior to that trial. As such, he is familiar with Mr. Reid’s history of mental illness, brain damage and the previous findings of incompetency in Texas. As the court noted at the hearing in this case, “Mr. Reid’s competency has always been at issue from virtually the date of his arrest.” (*See* Transcript of September 29, 2005 Hearing at p. 22.)

16. The post-conviction court was informed that Mr. Reid’s competency had been called into question in the Davidson County post-conviction court and that this Court had granted an appeal to determine appropriate procedures for a competency determination in *Reid v. State*, No. M2005-00260-SC-S09-PC. Counsel also noted that the last hearing to be conducted

regarding Mr. Reid's competency was in the federal court next friend litigation (later mooted) wherein the Sixth Circuit found un rebutted evidence of Petitioner's incompetency. *Kirkpatrick v. Bell*, 64 Fed.Appx. 495, 2003 WL 21054667 (6th Cir. 2003). (I 3-4)

17. In the Motion for Appointment of Counsel (which included an affidavit of counsel Gleason) counsel advised the court that Mr. Reid currently suffers from severe delusions which "render[] him unable to rationally communicate with counsel, make decisions about pursuing further appeals, and/or execute legally binding documents on his own behalf." (I 26). In the Petition filed on behalf of Mr. Reid, counsel advised that Mr. Reid cannot "reliably relate what happened, what information was presented, and what people said or did at the time of the trial because his perceptions and memory are significantly impaired by his mental illness. Further, his delusional disorder renders him unable to have a rational understanding of the role of current counsel and the nature of his current legal proceeding. Indeed, his delusions affect every aspect of his life, including normal daily activities such as sleep, his expectations of interactions with others, and health care decisions." (I 18)

18. In further explication of Mr. Reid's current mental status and how his illness affects his ability to make decisions in regard to litigation, counsel attached to the Motion for Appointment of Counsel two expert reports regarding Mr. Reid's competency -- the October 23, 2003 report of Dr. Keith Caruso (I 30-41)⁴ and the January 15, 2005 report and affidavit of Dr. Pamela Auble (I 42-48)⁵. Both evaluators found Mr. Reid to be presently incompetent and stated

⁴ Dr. Caruso was the court-appointed expert to assess Mr. Reid's competency in his second Davidson County trial in March and April 2000 when the last state court competency proceedings were conducted. (I 31)

⁵ Dr. Auble is a neuropsychologist who, having evaluated Mr. Reid in January 1998 (I 43, 47) and on several occasions thereafter, and spent numerous hours interviewing him, family members, and reviewing records, has a fully informed, longitudinal view of Reid's competency status.

at length the basis for these conclusions. The information presented in these reports includes the following:

a) “Mr. Reid has continued to have significant delusions that he is being constantly monitored and tormented by the military government through the use of scientific technology. His delusions have been well documented in the material which I reviewed, in my interview with him, in my previous evaluations, and in the records which I have reviewed about Mr. Reid in the past.” (I 43) (Auble report).

b) “The delusions affect his life and behavior in a pervasive way. Mr. Reid believes and has always believed that the delusions are fact rather than being a product of mental illness. He has consistently denied that he suffers from any type of mental illness.” *Id.*

c) “During my contact with Mr. Reid in the past, he was often unwilling to discuss his delusional beliefs because he did not want others to perceive him as mentally ill. This has changed. When I interviewed Mr. Reid yesterday, he was willing to discuss the ways in which the scientific technology was being used to torture him and to make his life not worth living. He stated that the torture had gradually increased from 1985 to the present, and that the torture was worse now than it had been when I had seen him in the past.” (I 44)

d) “The torture includes, but is not limited to, hearing voices, physical sensations and pain, and the manipulation of Mr. Reid’s behavior and the behavior of all of the people around him. The scientific technology causes heart symptoms and can make his organs implode.” *Id.*

e) “His arrest in 1997 and the subsequent trials were all set up by the military government in their recurring attempts to kill Mr. Reid. The players in the trials were all coached and manipulated to perform in certain ways, and the outcome of the trials was fixed beforehand.

These symptoms were present to some degree in the past (particularly the manipulation and coaching of the people around Mr. Reid), but they have worsened over the past few years.” *Id.*

f) “There are also two new types of symptoms from this current material and from my current interview which were not present to any great extent in the past. First, Mr. Reid now has beliefs that some events and statements repeat themselves in the exact same way more than once.... Second, Mr. Reid now has memories of events that apparently have never occurred.” *Id.* These include events related to his current legal representation and to factual issues relevant to his previous trials. *Id.*

g) “Mr. Reid is unable to manage his personal affairs⁶ or to understand his legal rights as these related to the factual issues in the case.” *Id.*

h) Mr. Reid’s “knowledge of the events of his trial, his communications with his attorneys at the time, and the evidence against him are all impaired by his delusional disorder.” (I 45) He is not able to “reliably relate what happened, what information was presented, and what people said or did at the time of the trial because his perceptions and memory are significantly impaired by his mental illness.” *Id.*

i) “Mr. Reid’s understanding of his legal rights and liabilities as these relate to the factual issues in his case are also compromised by his mental illness. He has a legal right to post-conviction relief, but Mr. Reid sees this process as being controlled by the military government with the players being coached as to what they say and do.⁷ Thus, the process is meaningless and the outcome a foregone conclusion.” *Id.*

⁶ This includes his ability to make decisions relevant to medical treatment because he believes that any symptoms he suffers are caused by scientific technology acting upon him and thus, there is no point in seeking medical treatment.” *Id.*

⁷ Regarding his attorneys, Mr. Reid “has expressed beliefs that counsel is working for the military government instead of for his benefit, and that some of his counsel (both now and in the past) are not actually attorneys.” *Id.*

j) Mr. Reid's function has deteriorated in the past several years. *Id.* "In particular, Mr. Reid is showing evidence of perseveration⁸ and confabulation⁹, and he is also reporting more severe symptoms in a more open manner now than he has ever done in the past." *Id.*¹⁰

k) Mr. Reid "suffers from delusions, which are fixed false irrational beliefs that cannot be shaken in the face of evidence that others would consider to be reliable: Reid currently has persecutory, paranoid delusions that he is being tormented by experiments run on him by the military government using scientific technology. He feels that his only relief from this torment will be death and sees no alternative." (I 39) (Caruso report)

l) Mr. Reid believes that he has been under 24-hour surveillance by the military government since he was incarcerated in Ellis II unit of the Texas prison system in 1985. (I 32) When he was released from prison in 1990 and arrived in Fort Worth, Texas, "the military government had already been there and coached everybody." *Id.* In late 1990, Reid wrote to Texas governor Ann Richards complaining about the surveillance. *Id.*

m) Mr. Reid believes that the military government tried to kill him by rendering him unconscious, resulting in a motor vehicle accident in Texas in 1990, wherein he suffered closed head trauma with loss of consciousness. *Id.* Mr. Reid believes that the military government tried to kill him again through the Oklahoma City bombing. (I 33) He believes that he was

⁸ "Perseveration" is "(1) Pathological repetition of the same response to a different stimuli, as in a repetition of the same verbal response to different questions. (2) Persistent repetition of specific words or concepts in the process of speaking. Seen in cognitive disorders, schizophrenia, and other mental illness." Kaplan & Sadock, *Comprehensive Textbook of Psychiatry*, 856 (8th Ed. 2005).

⁹ "Confabulation" is "Unconscious filling of gaps in memory by imagining experiences or events that have no basis in fact, commonly seen in amnesic syndromes; should be differentiated from lying." Kaplan & Sadock, *supra*, 851.

¹⁰ The deterioration could be caused by any or all of three factors: 1) the continuing effects of "his psychiatric illness (variously characterized as delusional disorder, schizophrenia, schizoaffective disorder, bipolar disorder) which waxes and wanes over time"; 2) early onset dementia; and 3) solitary confinement and sensory deprivation from his living situation at Brushy Mountain State Penitentiary. (I 45-46).

framed for seven murders in Tennessee in 1997 in another attempt by the military government to kill him. *Id.*

n) “Reid currently believes that everyone whom he encounters is involved in the military government conspiracy. He stated that he had reached a point of resignation where he does not hold it against people any longer, as he realizes that people really have no choice but to comply. He believes that his family, attorneys, judges, experts, guards, police, and other inmates are all involved.” *Id.*

o) Reid believes that currently, scientific technology is tormenting him in a number of ways, including causing ringing in his ears every day at varying, sometimes excruciatingly painful volumes. *Id.* He has attempted to hang himself seven times at Brushy Mountain to relieve the pain. *Id.*¹¹

p) Mr. Reid believes scientific technology is used to torture his mind and body. *Id.* He believes that “his ‘mind is always radiated by scientific technology’....” *Id.* The military government uses scientific technology to “put thoughts in his mind.” (I 34)¹²

q) The scientific technology is also used to cause “skin ‘flickering,’ which he described as similar to an itch or slight pressure, ‘like someone is touching you with their index finger or repetitiously tapping you.’ He stated that scientific technology can be used to make any part of his body itch. Of late, he had felt the skin between his anus and testicles ‘flickering,’ which is intended to make him believe that he has a vagina. He believed that scientific technology was being used to awaken him early in the morning with this sensation. He said that

¹¹ “He noted that he got so far as cutting off his breathing on one occasion, but panicked and stopped. Reid stated that he had elected to allow the State to execute him ‘in order to escape the ringing in (his) ears and the other effects of scientific technology.’” *Id.*

¹² “Reid gave an example having thoughts put in his mind, citing a passenger jet crash in Queens County, New York on his birthday on November 12, 2001. Reid claimed, ‘They gave me prior knowledge they were going to crash a jet in Queens.’ He said that the thoughts were passed into his head ‘like an antenna through limes and wires to your radio or TV.’” *Id.*

inmates at Brushy Mountain have been coached to come up to him and call him a ‘pussy’ and remark that ‘they’re at the asshole end of this scientific technology.’” *Id.*

r) Mr. Reid believes that Dr. Caruso is involved in the military government conspiracy. *Id.* Reid admitted that in the past “he used to try to conceal his beliefs in his torment by scientific technology because he ‘didn’t want people to think (he) was crazy.’ He added that now he was tired and was ‘just going to tell the truth.’” (I 35)

s) “Reid had initially been willing to accept that it was a sign from God when the Sixth Circuit Court of Appeals had stayed his execution. He then signed the appeal papers that attorney Mike Engle had brought to him ‘for (his) mother.’ He stated that he had subsequently realized that the Sixth Circuit had merely stayed his execution because they were coached by the military government conspiracy. He realized that this would allow for his continued torture using scientific technology.” *Id.*

t) Mr. Reid suffers from grandiose and paranoid delusions, though insertion, and his judgment is “severely impaired by his psychosis.” (I 36) “Reid’s delusions are bizarre, in that they include mind control, coaching of others by the military government, constant surveillance, psychological experimentation, and a conspiracy to kill him that long predated the instant offenses.” (I 38)

u) Mr. Reid suffers from a severe mental disease which prevents him from making a rational choice regarding his legal options. (I 39) Reid experiences his symptoms (persecutory, paranoid delusions) as coercive and in his “untreated psychotic state,” he is unable to make a voluntary choice in regard to abandoning his appeals. *Id.*

v) Mr. Reid is incompetent to make his own treatment decisions.¹³ (I 40)

¹³ “He does not recognize that he is mentally ill, believing instead that his delusions are true.” *Id.*

The sum total of the above information available to the Montgomery County Circuit Court justifies a prima facie finding of present incompetency. *See, e.g., Cogburn v. State*, 281 S.W.2d 38, 39-30 (Tenn. 1955) (a court must initiate an investigation into competency if it “has facts brought to its attention which raise a doubt of the then sanity of the accused”); *State v. Taylor*, 771 S.W.2d 387 (Tenn. 1989) (citing *Drope v. Missouri*, 420 U.S. 162, 95 S.Ct. 896, 908, 43 L.Ed.2d 103 (1975)) (“irrational behavior,” demeanor, and “any prior medical opinion are all relevant” to present competency); *Bishop v. Superior Court*, 724 P.2d 23, 27-28 (Ariz. 1986) (“It is counsel who spends time with a defendant in a manner which allows observation of the facts necessary to determine the issues to be decided at the competency hearing. Unlike any of the adversarial issues, on the question of competency to comprehend the proceedings and assist the attorney, the defense lawyer is often the most cogent witness.”); *Wilcoxson v. State*, 22 S.W.3d 289, 310-311 (Tenn. Crim. App. 1999) (counsel ineffective for failing to raise client’s competency as an issue when client had previously been diagnosed with schizophrenia and bipolar disorder, had previously taken antipsychotic medication, and claimed powers of mind control); *People v. Stankewitz*, 648 P.2d 578 (Cal. 1982) (competency hearing should have been conducted where defense counsel voiced doubts about defendant's competency and a psychiatrist testified that defendant's delusional and paranoid thoughts prevented him from cooperating in the conduct of his defense); *Lafferty v. Cook*, 949 F.2d 1546 (10th Cir. 1991) (defendant with a factual understanding of the proceedings against him was incompetent as he lacked a rational understanding of the proceedings because of his paranoid delusional system); *Pate v. Smith*, 637 F.2d 1068 (6th Cir. 1981) (Petitioner was entitled to a competency hearing once the state trial court entertained doubts about his competency.); *Harper v. Parker*, 177 F.3d 567 (6th Cir. 1999) (State-provided collateral counsel properly represented the petitioner because once petitioner's

competency was put in question, he could not waive his right to have his competence determined, and state-provided counsel were necessary to complete judicial review of issue; district court properly held a preliminary hearing to determine whether there was sufficient evidence of incompetency to require a full evidentiary hearing.); *Drope v. Missouri*, 420 U.S. 162, 95 S.Ct. 896, 908, 43 L.Ed.2d 103 (1975) (competency hearing should have been conducted in light of petitioner’s suicide attempt combined with his history of bizarre behavior and diagnosis of “borderline mental deficiency” and “chronic anxiety reaction with depression”).

WHEREFORE, undersigned counsel respectfully request the Court to grant this petition to rehear, correct the factual inaccuracies, clearly identify the competency standard to be met in next friend post-conviction litigation as that standard found in *Rees v. Peyton* and Tennessee Supreme Court Rule 28, §11(B)(1), find that a sufficient prima facie showing of present incompetence has been made, and remand the case to the Montgomery County Circuit Court for an evidentiary hearing at which counsel have the opportunity to meet the requirements of this newly announced procedure for filing a post-conviction petition by next friend.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the forgoing motion has been mailed via U.S. Mail, postage pre-paid, to Associate Deputy Attorney General Jennifer L. Smith, Criminal Justice Division, P.O. Box 20207, Nashville, Tennessee, 37202-0207 on this the _____ day of May, 2006.

Kelly A. Gleason
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