

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
JUL 26 2010
Clerk of the Courts

IN RE:) KNOX COUNTY
BILLY RAY IRICK) Supreme Court No. 180
)

M 1987-00131-SC-DPE-DD

RESPONSE TO MOTION FOR ADDITIONAL TIME

The State of Tennessee (“State”) submits this Response to Billy Ray Irick’s (“Irick”) “Motion for Additional Time to Prepare and Present Evidentiary Hearing as to Incompetence to be Executed.” By his Motion, Irick asks that this Court’s decision in *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999), be overruled. As he has failed to articulate any reason for doing so, the Motion should be denied.

On July 19, 2010, this Court remanded Irick’s claim of incompetency to be executed to the Criminal Court of Knox County “for an expeditious determination of his present competency, including the initial determination of whether he has met the required threshold showing,” according to the timetable set forth in *Van Tran. State v. Irick*, No. M1987-00131-SC-DPE-DD (Tenn. July 19, 2010). Irick now maintains that this order violates the due process precepts of *Ford v. Wainwright*, 477 U.S. 399, 426 (1986), and *Panetti v. Quarterman*, 551 U.S. 930, 952 (2007). (Mot. at 1.)

Irick's argument is a curious one. *Van Tran* was decided according to the standards announced in *Ford*. See *Van Tran*, 6 S.W.3d at 265-66, 268, 270-71 (citing *Ford*). That decision accordingly furnishes no basis for overruling *Van Tran*. *Panetti* changed nothing. The *Panetti* Court reiterated that "once a prisoner has made a substantial threshold showing of insanity" the basic requirements of due process require "an opportunity to submit evidence and argument from the prisoner's counsel, including expert psychiatric evidence that may differ from the State's own psychiatric examination." *Panetti*, 551 U.S. at 949, 950 (internal quotation marks omitted).

Irick has not yet made a threshold showing of incompetency to be executed—the proceedings for that initial determination are still underway. See *Van Tran*, 6 S.W.3d at 268-69 (setting forth deadlines for filing of petition, response, and trial court determination whether a hearing is warranted). In connection with his petition, however, it is clear that Irick has lodged "an extensive psychological history" with the court (Mot. at 2), has sought and received "an update of all medical records from Riverbend Maximum Security Institute" (Resp. Mot. Set Execution Date at 31), and has been examined by Drs. Peter Brown and Malcolm Spica (*id.* at 32). Should there exist "a genuine disputed issue regarding the prisoner's competency," Irick has had ample opportunity to present "affidavits, depositions, medical reports, or other credible evidence sufficient to demonstrate" it. *Van Tran*, 6 S.W.3d at 269. The due process clause requires no more. See, e.g., *Ford*, 477 U.S. at 426, 427 (stating that the

State “may require a substantial threshold showing of insanity merely to trigger the hearing process” and granting the States “substantial leeway to determine what process best balances the various interests at stake”) (Powell, J., concurring).

Should Irick satisfy the required threshold showing, he will be entitled to both a mental evaluation by at least one appointed expert and an adversarial hearing at which the rules of evidence are not strictly enforced. *Van Tran*, 6 S.W.3d at 270-71. That procedure is in fact more generous than is mandated by *Ford* and *Panetti*. See *Ford*, 477 U.S. at 426 (stating that “ordinary adversarial procedures—complete with live testimony, cross-examination, and oral argument by counsel—are not necessarily the best means of arriving at sound, consistent judgments as to a defendant’s sanity”) (Powell, J., concurring); *Panetti*, 551 U.S. at 949 (stating that Justice Powell’s concurrence is controlling). Neither decision imposes a particular timeframe on Tennessee. All that is required, rather, is an “opportunity to be heard.” *Ford*, 477 U.S. at 424 (Powell, J., concurring). Allowing ten days for a mental evaluation, ten days for an evidentiary hearing, and a further five days for a determination by the trial court does not transgress against that rudimentary requirement. Irick’s motion should therefore be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been forwarded via Facsimile and First-Class U.S. mail, postage prepaid on this the 26th day of July, 2010 to: Howell G. Clements, Clements & Cross, 1010 Market Street, Suite 401, Chattanooga, TN 37402 and C. Eugene Shiles, Spears, Moore, Rebman, & Williams, P.O. Box 1749, Chattanooga, TN 37401.

The undersigned attorney of record prefers to be notified of any orders or opinions of the Court by Facsimile at (615) 532-7791.

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