

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

PAUL DENNIS REID, JR.,)	
)	NO.: M2001-02753-SC-DDT-DD
Petitioner,)	
)	Trial Court No. 38887
STATE OF TENNESSEE,)	
)	Death Penalty
)	EXECUTION DATE: June 28, 2006
Respondent.)	Filed: June 27, 2006

PETITION FOR REHEARING

AND

**RENEWED MOTION FOR A STAY AND REMAND FOR
CONSIDERATION UNDER *FORD* AND *VAN TRAN***

On June 26, 2006, this Court denied the motion seeking a stay of execution and a remand to the Montgomery County Circuit Court for a determination as to whether Mr. Reid is incompetent to be executed under the principles announced in *Ford v. Wainwright*, 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986) and *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999).¹ The Court’s order was brief, stating only that the Court had “considered the allegations contained in the motion, the response, and the reply to the response and hereby denies the motions for remand and for stay.” (June 26, 2006, Order.) For the reasons set forth below, this Court

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This motion was originally filed “by and through” Mr. Reid’s sister as “next friend”. In the Reply filed to the State’s response, counsel noted that under Tenn. Code Ann. §40-30-206(e) the post-conviction defender had authority to initiate a claim that an inmate was incompetent to be executed and asked the Court to also consider this as a motion filed by the post-conviction defender under that statute.

should grant this petition for rehearing and grant the motion to remand to the trial court for consideration of Mr. Reid's incompetence to be executed.

Further, this Court should consider the affidavit of Xavier Amador, Ph.D., as additional supporting evidence of Mr. Reid's incompetence under *Ford* and *Van Tran*. (Affidavit of Xavier Amador attached.) Undersigned counsel have a duty to raise the issue of incompetence to be executed to the attention of the Court whenever that incompetence arises. Although based upon counsel's own observations of Mr. Reid, the voluminous mental health record concerning Mr. Reid, and affidavit of George W. Woods, M.D., counsel are of the firm professional opinion that Mr. Reid was incompetent for execution when they filed the motion denied on June 26, the new evaluation by Dr. Amador further convinces counsel that Mr. Reid is currently extremely psychotic and does not comprehend the reason for his execution. Consequently, he is presently incompetent to be executed. Therefore, at the direction of the Post-Conviction Defender and pursuant to the authority in Tenn. Code Ann. § 40-30-206(e), counsel renew the motion to grant a stay and remand for consideration of Mr. Reid's incompetence to be executed under *Ford* and *Van Tran*.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING AND RENEWED MOTION

A. Several Issues in the Original Motion Were Left Unanswered.

This motion raised several issues of Due Process, Equal Protection and Cruel and Unusual Punishment that the Court has left unanswered. As noted in the Reply to the State's Response, there is no dispute about the following:

1. Mr. Reid's mental illness results in his believing that his life is run by a government program, Scientific Technology, and that he is being executed because he is poised to expose this program and reveal his innocence;

2. An allegation has been made in this Court, supported by an expert's affidavit, that Mr. Reid is not competent under *Ford v. Wainwright*, 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986) and *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999);

3. Given these facts, if this case arose after a full round of state and federal post-conviction review, and after the state sought an execution date, this Court would remand this case to the trial court for a *Ford* determination; but

4. There is no extant procedure for a remand to protect the insane when a case is in the posture of Mr. Reid's case.

None of these issues was addressed in the Court's summary dismissal. Yet, all raise serious claims under the Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 8, 13, 16, 17, and Article XI, § 16, of the Tennessee Constitution.

B. Mr. Reid Has Been Denied Due Process, Fundamental Fairness, Equal Protect and Access to the Courts.

In *Van Tran v. State*, 6 S.W.3d 257, this Court created the sole procedure for raising a claim that a death sentenced inmate is incompetent for execution under *Ford v. Wainwright, supra*. This Court also accepted both the recognition of the common law right for a prisoner sentenced to death to assert a claim of present incompetency and the Eighth Amendment preclusion of incompetent persons from execution. *Van Tran v. State*, 6 S.W.3d at 260. This Court further recognized the obvious that "Until the very moment of execution, the issue of a prisoner's competency to be executed 'can never be conclusively and finally determined.'" *Id.* at 266-267 (quoting *Ford v. Wainwright*, 477 U.S. at 429). Following these

pronouncements, this Court established the exclusive procedure for raising and determining issues of incompetence to be executed. These procedures apply to a unique class of death sentenced inmates - those who have completed the direct appeal, state post-conviction and federal habeas review process (three-tier review process) and concerning whom the State has filed a motion for to set an execution date. See *Van Tran v. State*, 6 S.W.3d at 267. This Court premised this process of the faulty and erroneous conclusion that only after the full three-tier review had been completed would an execution in Tennessee be “imminent.” However, Mr. Reid falls within a separate distinct class of death sentenced inmates - inmates who for whatever reason have failed to initiate that second or third tier of the review process and who have execution dates set by this Court without a motion from the State. Clearly, individuals who either “volunteer” for execution prior to the completion of the three-tier process or individuals who default into execution prior to the completion of the three-tier process may be among the most vulnerable death sentence inmates due to the types of serious mental illness evidenced by the mental health history and current evaluations of Mr. Reid.

Therefore, the Court’s June 26, 2006, summary denial of the stay and remand denied Mr. Reid’s rights to due process, equal protection, access to the courts, and the right to be free from cruel and unusual punishment, under the Eighth and Fourteenth Amendments to the United States Constitution by the following:

Differential Treatment

Under the procedures set forth in *Van Tran*, death sentenced inmates who have completed the three-tier review process have, *inter alia*, the following protections:

1. A clear procedure and opportunity to request a review of their incompetence to be executed. *Id.* at 267.

2. No threshold showing of incompetence in this Court. *Id.* (“The prisoner will have ten days from the filing of the motion of the State Attorney General to file a response and to raise this issue. [citation omitted] This Court will not make a determination of the issue. ... in the order setting the execution date, this Court will remand the issue of competency to be executed to the trial court ...” (emphasis added)).

To the contrary Mr. Reid and the class of inmates into which he falls:

1. Have no process by which he can request a review of his incompetence to be executed.

2. Appears from the Court’s June 26 order to be required to meet some unidentified standard of proof in order to get a remand.

Denial of Access to the Courts.

Despite the Court’s acknowledgement that incompetency to be executed can arise at any time, this Court has closed the door to those in Mr. Reid’s class of death sentenced inmates by not permitting a review of his claim of incompetency for execution.

Denial of Due Process.

The denials cited above apply equally to the issue of the denial of due process. The Court has failed not only to create a process but by its June 26 summary Order has declined to inform Mr. Reid of the process he failed to meet. Therefore, the psychotic, delusional, severely mentally ill Mr. Reid sit poised for execution by the power and in the name of the people of Tennessee without any ability to bring to this Court a claim of incompetency to be executed. It is hard to imagine a more complete denial of due process.

Denial of the Right To Be Free From Cruel and Unusual Punishment.

The absence of procedures by which a severely mentally ill, psychotic and delusional death sentenced inmate such as Mr. Reid can raise a claim of incompetence to be executed vastly increases that likelihood that the State of Tennessee will execute an inmate who is incompetent under *Ford v. Wainwright*, *supra*, and *State v. Van Tran*, *supra*. In fact, the failure of this Court to create a process by which an inmate in Mr. Reid's procedural posture to have a determination made of his competency to be executed belies the United State's Supreme Court assumption in *Ford* that "no State in the Union permits the execution of the insane." *Ford v. Wainwright*, 477 U.S. at 408. The *Ford* Court noted that: "The Eighth Amendment prohibits the State from inflicting the penalty of death upon a prisoner who is insane. Petitioner's allegation of insanity in his habeas corpus petition, if proved, therefore, would bar his execution." *Id.* at 410. Thus, an inmate in Mr. Reid's procedural posture whose execution is barred if insane, but who has no procedural avenue with which to raise the claim creates a substantial likelihood that he will be executed in violation of the Eighth Amendment and the common law rule against the execution of the insane. The likelihood of the execution of an

inmate whose execution is constitutionally barred is a violation of the fundamental precepts of the Eighth Amendment, that the death penalty cannot be arbitrarily administered. See, e.g., *Furman v. Georgia*, 408 U.S. 238 (1972).

C. Additional Proof of Incompetency To Be Executed

In this affidavit, Dr. Amador, relates that on June 26, 2006, he reviewed the material in the record concerning Mr. Reid's mental health, including his own prior evaluation, consulted with Dr. George Woods, interviewed members of the present defense team and Mr. Reid's sister, Linda Martiniano, and spoke with Mr. Reid.² (Affidavit of Xavier Amador, ¶¶ 14, 17, 20; attached.) Dr. Amador's evaluation on June 26, revealed the following:

1. Based upon his continued work on this case, and the interviews on consultations conducted on June 26, Dr. Amador was able to confirm one of the provisional diagnoses he made in 1999. As a result, he has now opined "within a reasonable degree of professional certainty, that Mr. Reid has a Psychotic Disorder with Delusions, Due to A General Medical Condition. The General Medical Condition in this instance involves functional impairment and structural damage to the Left Temporal Lobe of his brain.) (*Id.*, at ¶¶ 17-18.)
2. Dr. Amador noted that, "during my one hour conversation with him today, he became paranoid about me and accused me of being manipulated by ST. Sever hours later I learned that he now suspects I might be in charge of ST." Dr. Amador continued noting that this is the first instance of Mr. Reid incorporating him into the delusions and that "The speed with which he came

² One of the serious problems with the lack procedures set up by this court for initiating a *Ford* claim is that after an inmate is placed on "death watch", mental health professionals are not permitted to meet with the inmate at the prison. Therefore, Dr. Amador's evaluation on June 26, was limited to the phone interview.

paranoid of me and incorporated me into his delusions is a clear sign of a worsening of his symptoms.” (*Id.*, at ¶ 25.)

3. “Because of his medical condition and resulting psychotic symptoms, Mr. Reid is not aware that his death by lethal injection is ‘punishment’ and is not aware of the reasons for it.” (*Id.*, at ¶ 26.)

4. “Although [Mr. Reid] can parrot back what he has been told in court and from the media coverage that he sees, but he believes none of it.” He believes everything has been orchestrated by government Scientific Technology, he delusions incorporate everyone around him, and his death is the only way he can escape Scientific Technology. “It is not punishment, it is an escape from ST.”

5. “Today [June 26], Mr. Reid’s speech was pressured, his thought processes were disordered and several delusions and hallucinations were readily apparent. His mood fluctuated wildly from warmth and affection to anger and paranoia. In the time that I have known him I have never before found him to be this ill and out of touch with reality.” (*Id.*, at ¶ 28.)

Based upon the opinions of both Dr. Woods, submitted as an attachment to the original motion and the June 26 affidavit of Dr. Amador, there is no escaping the conclusion that Mr. Reid is currently incompetent to be executed under *Ford* and *Van Tran*, and that this Court’s failure to allow him a hearing on this issue will result in Tennessee’s execution of an insane man and render Tennessee’s death penalty even more arbitrary.

RELIEF REQUESTED

WHEREFORE, this petition to rehear and renewed motion requests that this Court stay the scheduled execution and remand this matter to the Montgomery Circuit Court for that court to receive a petition with appropriate support that Mr. Reid is incompetent to be executed and for that court to conduct a review under the procedures set out in *Van Tran*.

Respectfully submitted,

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STATE OF TENNESSEE)
) ss
COUNTY OF DAVIDSON)

AFFIDAVIT

I, Kelly A. Gleason, after having been duly sworn, aver and say as follows:

All of the factual assertions contained in this Motion are true and correct to the best of my knowledge and belief.

FURTHER THE AFFIANT SAITH NOT.

Kelly A. Gleason, Affiant

Sworn to and subscribed before me on this the _____ day of June, 2006.

My Commission Expires: _____

NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion was sent by facsimilie and/or email to Jennifer L. Smith, Associate Deputy Attorney General, Criminal Justice Division, P.O. Box 20207, Nashville, TN 37202-0207 on this the _____ day of June, 2006.

Kelly A. Gleason