

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

ROBERT GLEN COE,)
)
 Plaintiff,)
)
 vs.) No. 00C-1089
)
 DON SUNQUIST, Governor of the State)
 of Tennessee, DONAL CAMPBELL,)
 Commissioner, Tennessee Department of)
 Corrections; RICKY BELL, Warden,)
 Riverbend Maximum Security Institution;)
 VIRGINIA LEWIS, Warden, Special Needs)
 Facility; JOHN DOE 1-100, in their)
 official capacity only,)
)
 Defendants.)

RESTRAINING ORDER

This cause came to be heard this 18th day of April, 2000, upon Plaintiff's Motion for a Temporary Restraining Order. After a review of the verified complaint, memorandum of law submitted by Plaintiff, exhibits, affidavits, testimony of Warden Ricky Bell and oral argument of counsel for both Plaintiff and Defendant, the Court finds as follows:

1. This Court has jurisdiction over this matter. Plaintiff seeks Declaratory Judgment that the "protocol" for implementing lethal injection as a means of execution is illegal because the rulemaking concerning how the lethal injection would be administered and what drugs and amounts should be used was not established pursuant to the Uniform Administrative Procedures Act, sec 4-5-101, et seq, T.C.A. Plaintiff also challenges the legality of a physician participating in the execution. These issues have not been previously addressed by any court nor were they considered by the Supreme Court of Tennessee. Therefore this is a question of law that is not affected by the doctrine of *stare decisis* and this court is the proper tribunal with original jurisdiction.
2. The Uniform Administrative Procedures Act applies to the rulemaking concerning the utilization of lethal injection as a means of execution. Section 40-23-114 authorized the department of correction to promulgate rules controlling lethal injection. The Department of Corrections is an "agency" as considered by the Act, Section 4-5-102(2), T.C.A., and pursuant to Section 4-5-202, T.C.A., rulemaking of the agency was required to be preceded by public hearings. Such hearings were not held. The only procedure followed by the agency in promulgating these rules were visits by warden Bell and other non-medical personnel to other states that used lethal injection. The "team" then determined that similar drugs would be

used in Tennessee. It appears that there was no attempt to comply with the provisions of the Uniform Administrative Procedures Act.

3. The rules established by the Department of Corrections therefore appear to be illegal.
4. It further appears that no licensed medical doctor may participate in any way in connection with an execution by lethal injection because of ethical rules of the AMA and TMA.
5. It therefore appears that Plaintiff is likely to succeed on the merits of his complaint and that he will suffer irreparable harm, death, unless a restraining order is issued and further hearings are held.

IT IS ORDERED that defendants are hereby enjoined and restrained from carrying out the planned execution of Plaintiff on or about April 19, 2000, pending further orders of this court. No bond is required of Plaintiff. A hearing on Plaintiff's motion for Preliminary Injunction shall be held on Thursday April 20, 2000, at 1:30 p.m. This Order shall remain in full force and effect pending further orders of this court or the appellate courts of the State of Tennessee.

It is further ORDERED that an interlocutory appeal is suggested to the Court of Appeals pursuant to Rule 9, T.R.A.P.

Enter this _____ day of April, 2000.

Thomas W. Brothers, Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order has been delivered to all counsel, on this ____ day of _____, 2000.

Deputy Clerk