

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

ROBERT GLEN COE v. STATE OF TENNESSEE

No. M1999-1313-SC-DPE-PD

FILED

April 11, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

DISSENT

I dissent from the order setting the execution of Robert Glen Coe and continue to adhere to the view that the protocol established in Van Tran v. State¹ does not sufficiently protect Mr. Coe's federal and state constitutional rights not to be executed if he is insane.

I have identified three specific deficiencies in the procedure adopted by the Court: 1) the procedure allows the execution of prisoners who are mentally unable to consult with and assist their counsel,² 2) the procedure denies prisoners the factual determination of competency by a jury of his or her peers, and 3) even after prisoners meet the burden of a threshold showing of present incompetence, the State is not required to prove the prisoners' competence to be executed. Additionally, I provided what I deemed to be substantial justification for concluding that these deficiencies in the procedure not only violate the Fourteenth Amendment and public standards of decency and propriety, but also compromise the integrity of the ultimate determination of competency. I have consistently expressed this conviction in previous dissents filed in this matter. See Coe v. State, No. M1999-01313-SC-DPE-PD, 2000 WL 246425 (Tenn. Mar. 6, 2000)(Birch, J., dissenting); Order, No. M1999-01313-SC-DPE-PD (Tenn. Mar. 10, 2000); Order, No. M1999-01313-SC-DPE-PD (Tenn. Mar. 15, 2000); Order, No. M1999-01313-SC-DPE-PD (Tenn. Mar. 20, 2000); Order, No. M1999-01313-SC-DPE-PD (Tenn. Mar. 21, 2000).

Though the Sixth Circuit has held the Van Tran v. State procedures adequate under federal law, Coe v. Bell, No. 00-5419 (6th Cir. Apr. 11, 2000), I remain of the opinion that these deficiencies violate the Tennessee Constitution. See Tenn.Const. art. I, §§ 8 & 9.

¹Van Tran v. State, 6 S.W.3d 257, 274-77 (Tenn. 1999).

²Additionally, the federal district court has identified another missing component; the protocol for determining mental competence to be executed under Van Tran v. State, allows "a petitioner who is 'aware' of the punishment, but not aware of the reason for it," to be executed. Coe v. Bell, slip op. at 31, No. 3:00-0239 (M.D.Tenn. March 29, 2000).

It is for these reasons that I would require a rehearing on Mr. Coe's mental competence to be executed under a protocol that adequately protects his constitutional rights.

ADOLPHO A. BIRCH, JR., JUSTICE