

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Robert Glen Coe v. State of Tennessee

For Publication

No. M1999-01313-SC-DPE-PD

FILED

April 3, 2000

**Cecil Crowson, Jr.
Appellate Court Clerk**

DISSENT

I would grant the petitioner's "Motion to Rescind Order Setting Execution Date; or in the Alternative for Stay of Execution" filed March 31, 2000.

As expressed in the motion, the Court's *sua sponte* setting of an execution six days from the date of that order, and seven days after the denial of the habeas corpus petition in the United States District Court, Middle District, does not allow the petitioner a reasonable opportunity to appeal the District Court's ruling to the United States Court of Appeals, 6th Circuit, or the United States Supreme Court. See Coe v. Bell, No. 3:00-0239 (M.D. Tenn., Mar. 29, 2000). As a matter of fact, six days is even less than the time allotted for a petitioner to respond to a motion to set an execution date in the fairly expedited procedure set out in Van Tran v. State, 6 S.W.3d 257, 267 (Tenn. 1999) ("The prisoner will have ten days from the filing of the motion of the State Attorney General to file a response and raise this issue.").

Accordingly, I would:

- (1) grant the petitioner's motion to rescind this Court's order setting the execution date for April 5, 2000;
- (2) require the Attorney General to file a motion for this Court to set another execution date; and following that motion,
- (3) set the execution date in an order which allots a reasonable period of at least fourteen days between the date of that order and the execution date.

ADOLPHO A. BIRCH, JR., Justice