

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

ROBERT GLEN COE, )  
 )  
 Plaintiff, )  
 )  
 vs ) No. 3-00-0246  
 ) Judge Trauger  
 RICKY BELL, in his Official Capacity )  
 as Warden of Riverbend Maximum )  
 Security Institution, )  
 )  
 Defendant. )

**DEFENDANT'S RESPONSE TO PLAINTIFF'S AMENDED  
REQUEST FOR PRELIMINARY INJUNCTIVE RELIEF**

**Preliminary Statement**

The plaintiff, Robert Glenn Coe, has amended his civil complaint filed pursuant to 42 U.S.C. § 1983, to request injunctive relief prohibiting his execution "unless the Warden allows counsel, and a mental health professional to be present at the execution with access to a telephone, to safeguard his meaningful access to the courts." (Amended Complaint, p. 5). Defendant Bell submits that the right of access to the courts does not require that a mental health professional be present at plaintiff's execution and that the motion for preliminary injunctive relief should be denied.

**Argument**

**The Right of Access to the Court Does not Require that  
Plaintiff Be Afforded a Mental Health Professional at his Execution.**

Plaintiff bases his claim that he is entitled to have his attorney, equipped with a telephone, and a mental health professional present at his execution upon the constitutional right of access to the courts. In *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977), the Supreme Court held that the First, Sixth, and Fourteenth Amendments create a "fundamental constitutional right of access to the courts [that] requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *Id.* at 828. More recently, the Court has recognized that the right of access to the courts requires authorities to provide prisoners with "[t]he tools ... that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement." *Lewis v. Casey*, 518 U.S. 343, 358, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996). The scope of the right of access, however, is quite limited. Prisoners need only have "the minimal help necessary" to file legal claims. *Id.* 518 U.S. at 360. The "tools" referenced by the Court, moreover, do not include any right to expert proof or testimony.

Plaintiff does not allege that he is in need of mental health treatment, rather, his demand for a mental health professional is solely for the purpose of serving as an witness to his competency at execution. His claim that he requires a mental

health professional at his execution is based upon conjecture that he is likely to become incompetent at the time of his execution. According to plaintiff, if he becomes incompetent, he will be unable to seek redress from the Courts.

Plaintiff has been declared competent to be executed by the Tennessee Supreme Court. *Coe v. State*, 2000 WL 246425 (Tenn. Mar. 6, 2000), cert. denied \_\_\_ U.S. Mar. 22, 2000). This Court has denied plaintiff's application for a writ of habeas corpus on the ground that he is not competent to be executed. *Coe v. Bell*, U.S.D.C. (M.D. Tenn.) No. 3:00-0239 (Mar. 29, 2000). Plaintiff has submitted no proof, or even alleged, that his condition has substantially deteriorated since his previous finding of competency.

Plaintiff's claim that he will become incompetent and require a mental health professional to attest to that incompetency, like his claim he will need an attorney to present his claim to the court, is hypothetical. Such a claim cannot satisfy the requirement of "actual injury" under *Lewis v. Casey, supra*. In *Casey*, the Supreme Court clarified the standing requirements for a constitutional challenge based on access to the courts and held that a prisoner alleging constitutional deprivation of access to the courts must demonstrate actual injury, and that the remedy ordered must be limited to rectifying the actual injury demonstrated. Plaintiff fails to make such a showing.

In order to obtain either a preliminary or permanent injunction, the plaintiff must demonstrate that failure to issue the injunction is likely to result in

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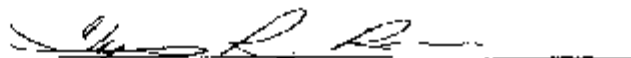
irreparable harm. *Kallstrom v. Columbus*, 136 F.3d 1055, 1068 (6<sup>th</sup> Cir. 1998). Plaintiff has not presented proof sufficient to conclude that he will suffer harm should injunctive relief not be granted. Therefore, his request for a preliminary injunction requiring the presence of a mental health professional and his attorney, with access to a telephone should be denied.

#### Conclusion

For the reasons set forth above, the defendant submits that plaintiff's request for preliminary injunctive relief should be denied.

Respectfully submitted,

  
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#### Certificate of Service

I hereby certify that a true and exact copy of the foregoing has been hand-delivered to Robert L. Hutton, Esq. on this the 30 day of April, 2000.

  
STEPHANIE R. REEVERS

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