

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

ROBERT GLEN COE)
) No. 3:92-0180
v.) Judge Nixon
)
RICKY BELL, Warden)

ORDER

Pending before the Court is Respondent's Motion to Alter/Amend Order and Memorandum Entered 14 January 2000, (Doc. No. 468), to which Petitioner has responded, (Doc. No. 471). Respondent submits that those portions of the Court's Memorandum and Order entered January 14, 2000, addressing whether a Ford claim may be brought pursuant to 28 U.S.C. § 2241 or § 2254, constitute an advisory opinion and should be stricken. (Doc. No. 468 at 2.)

Upon review of its Memorandum and Order, as well as the parties' briefs and arguments submitted in relation to Petitioner's Statement in Support of This Court's Jurisdiction Over Petitioner's Initial Habeas Petition, (Doc. No. 434), the Court finds Respondent's Motion to be without merit. Respondent itself initially raised the issue of whether the Court had jurisdiction to consider a Ford claim in light of the restrictions set forth in 28 U.S.C. § 2244. (See Nov. 19, 1999 Tr. at 11; Nov. 30, 1999 Tr. at 17-18.) Although Respondent is correct that the Court's Opinion does not resolve a live controversy, it does, however, properly consider in *dicta* an issue placed before the Court by the parties. (Nov. 19, 1999 Tr. at 11; Nov. 30, 1999 Tr. at 17-18.) Thus, the Court FINDS that those portions of

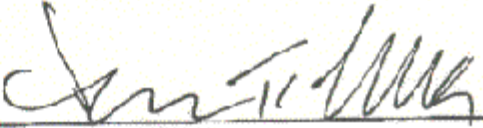
its Order and Memorandum addressing the § 2244 issue initially raised by Respondent do not constitute an advisory opinion. Accordingly, Respondent's Motion is hereby DENIED.

However, in order to eliminate any confusion regarding the import of those portions of the January 14th Memorandum and Order relating to the filing of Ford claims, the Court hereby AMENDS the Memorandum, (Doc. No. 458), and Order, (Doc. No. 459), to clarify that the Court's opinion does not grant Petitioner permission to file a Ford claim with this Court, but rather considers the proper method for raising such a constitutional claim in a federal district court. Accordingly, the contemporaneously filed Memorandum and Order shall replace the Memorandum and Order entered on January 14, 2000.

Also pending before the Court is Petitioner's Motion to Alter or Amend the January 14, 2000 Order and Memorandum, (Doc. No. 470), to which the State has responded, (Doc. No. 472). In accordance with the reasoning set forth in the January 14th Order and Memorandum, Petitioner's Motion is hereby DENIED.

It is so ORDERED.

Entered this the 25th day of February, 2000.



JOHN T. NIXON
UNITED STATES DISTRICT COURT