

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

<b>ROBERT GLEN COE,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	<b>No. 97-5148</b>
<b>v.</b>	)	<b>M.D.Tenn. No. 3:92-0180</b>
	)	<b>(Senior Judge Nixon)</b>
<b>RICKY BELL, Warden,</b>	)	
	)	
<b>Respondent.</b>	)	

**EMERGENCY MOTION TO ORDER DISTRICT COURT  
TO RELEASE STATE CRIMINAL TRIAL RECORD EXHIBIT  
BACK TO THE SHELBY COUNTY CRIMINAL COURT**

**I. Background**

On 14 January 2000, respondent filed a motion requesting the United States District Court for the Middle District of Tennessee release State's Exhibit 64 (taped confession of petitioner Coe) back to the custody and control of the Shelby County Criminal Court. (State's Exhibit 64 was originally ordered transferred from the Shelby County Criminal Court to the District Court for use in this habeas corpus proceeding. *See* Order to

Transmit Physical Evidence entered Dec. 20, 1995 (Doc. 185) .) The purpose of this request was to make this exhibit available for use at the competency for execution hearing set for 24 January 2000 in Memphis. It was asked that State's Exhibit 64 be released to Nick Owens, Evidence Custodian for the Shelby County Criminal Court on Tuesday, 18 January 2000. *See Motion to Release Exhibit to the Shelby County Court, Jan. 14, 2000 .*

Due to the above time constraints, this motion was promptly delivered to the District Court's Courtroom Deputy, Mary Conner, by the Clerk's office. Shortly thereafter, on 14 January 2000, Ms. Conner informed respondent that petitioner's counsel stated that he intended to file a response to the motion. Within three hours of respondent filing his motion to release State's Exhibit 64 on 14 January 2000, the District Court entered its memorandum and order concluding that its jurisdiction over this habeas corpus proceeding "is limited to executing the appellate mandate." *See Memorandum, Jan. 14, 2000, at 1.*

When Mr. Owens presented himself at the District Court Clerk's

Office at 10:30 a.m. on 18 January 2000, he was informed that no order had been entered releasing State's Exhibit 64 to his custody. Shortly thereafter, respondent was informed by the Clerk's Office that the District Court would not issue a release order until petitioner's response was received. At approximately 12:30 p.m. on 18 January 2000, Ms. Conner confirmed that no order would be forthcoming on respondent's motion until the court received petitioner's response. Accordingly, respondent immediately filed a Motion to Reconsider Waiting for Response from Petitioner to Motion to Release Exhibit to the Shelby County Criminal Court, requesting that the District Court order the release of State's Exhibit 64 on or before 3:00 p.m., C.S.T., 19 January 2000. The District Court has failed to do so.

## II. Argument

As respondent has consistently maintained since denial of certiorari by the United States Supreme Court, and the District Court's 14 January 2000 Order confirms, the District Court's remaining jurisdiction over this habeas corpus proceeding is purely ministerial in nature. *See In re Sanford*

*Fork & Tool Co.*, 160 U.S. 247, 255-56 (1895). Respondent's motion and motion to reconsider ask the District Court to do nothing more than perform a proper ministerial act. It is beyond comprehension how the requested release of State's Exhibit 64 to its lawful custodian, now that all substantive aspects of this habeas corpus proceeding have concluded, can be seen as adversarial, requiring a response (presumably in opposition) from petitioner. It is impossible to see how petitioner would suffer any harm, much less irreparable harm, if the District Court promptly ordered the release of State's Exhibit 64 to its lawful custodian for use in the competency for execution hearing 24 January 2000.

Although M.D.Tenn. L.R. 8(b)(3) allows a non-moving party 10 days within which to respond to a motion, petitioner possesses no conceivable grounds for objecting to the release of State's Exhibit 64 to its lawful custodian. Moreover, in light of the imminency of the state court competency hearing, waiting the permitted 10-days for a response would preclude critical evidence from being available for the state trial court's consideration within the time frame mandated by the Tennessee Supreme

Court. See *VanTran v. State*, 6 S.W.3d 257, 272 (Tenn. 1999). Moreover, under M.D.Tenn. L.R. 7(g)(5), even the Clerk of the District Court is permitted to sign such an order as is contemplated by respondent's motions, and M.D.Tenn L.R. 14 requires the destruction of evidence not withdrawn within 30 days of final judgment.

### III. Conclusion

Based upon the foregoing, respondent asks this Court to grant its emergency motion and order the immediate release of State's Exhibit 64 to Mr. Nick Owens, Evidence Custodian of the Shelby County Criminal Court.

Respectfully submitted,

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