

IN THE CRIMINAL COURT OF SHELBY COUNTY TENNESSEE  
AT MEMPHIS  
DIVISION 3

OFFICE OF THE CLERK

No. B 73812, 73813  
73814

STATE OF TENNESSEE,  
v.  
ROBERT GLEN COE

**PETITION TO PROHIBIT EXECUTION UNDER  
COMMON LAW, *FORD V. WAINWRIGHT*, 477 U.S. 399 (1986)  
AND THE TENNESSEE CONSTITUTION**

Comes the Petitioner, Robert Glen Coe, and pursuant to all applicable law, including common law, the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, *Ford v. Wainwright*, 477 U.S. 399 (1986), and Article I §§ 6, 8, 9, 13, 15, 16, 17, 20 & 32 of the Tennessee Constitution, and respectfully moves this Court to prohibit his execution based upon his mental incompetency. Petitioner would respectfully show that he is not competent to be executed. Petitioner files this petition to comply with an order of the Tennessee Supreme Court issued in this case on December 15, 1999. By filing this petition, Petitioner does not in any way concede the propriety or constitutionality of any statements or procedures discussed in the case of Van Tran v. State, \_\_\_ S.W.3d \_\_\_ (Tenn. 1999). The holding of Van Tran was that the petitioner could not raise a claim of incompetency in a post-conviction hearing. Van Tran also contains extensive *dicta* concerning standards governing competency and procedures for determining competency. While the Van Tran dicta is not binding (because it is *dicta* and because Petitioner submits that application of such *dicta* is prohibited, as invading the separation of powers under Article II §1 & 2 of the Tennessee Constitution, *See e.g., Ballentine v. Mayor of Pulaski*, 83 Tenn. 633 (1885)), Petitioner also has numerous objections to applying that *dicta* to the proceedings on this petition. While some such objections will be referred to in this

petition, Petitioner does not waive the right to raise any and all relevant objections by other pleading or otherwise before this Court, as appropriate.

I.  
PRELIMINARY MATTERS

Petitioner was convicted of first-degree murder, aggravated kidnapping, and aggravated rape in the Criminal Court of Shelby County, Tennessee. State v. Robert Coe, Nos. B-73812, 73813, 73814. Petitioner has not previously challenged his competency to be executed, although a competency hearing was held at the time of trial, and is part of the record in this matter.

II.  
THRESHOLD SHOWING THAT ROBERT COE IS NOT COMPETENT  
TO BE EXECUTED

Petitioner Robert Coe provides this Court a preliminary showing that he is not competent to be executed. Robert Coe does so in accordance with the Van Tran *et al.* By presenting evidence in support of this showing in this petition, Robert Coe does not waive the right to present any and all evidence in support of his claim at a hearing before this Court.

A.  
PRE-1999 HISTORY OF MENTAL ILLNESS, INCOMPETENCE, AND INSANITY

The record demonstrates that Robert Coe has previously been found to be insane and incompetent, the product of psychosis and schizophrenia. In 1975, Dr. Robert J. Wald noted that Robert demonstrated vague paranoia, a lack of logical thought process, and inappropriate affect. Tr. 1849-1853.<sup>1</sup> Dr. Wald concluded that Robert was "[a] seriously disturbed young man . . . who certainly manifests aspects of a schizoid personality," and who had the potential to become "blatantly psychotic" in the future, concluding that Robert was incompetent to stand trial. *Id.* Dr. Wald again evaluated Robert in 1975, and found that even though Robert no longer fell within the psychotic or borderline psychotic range of functioning, Robert was indeed insane at the time of an offense in Florida. Tr. 1871-1875.

Similarly, in 1975, Psychiatrist J.R. Lombillo, M.D. determined that Robert was insane,

incompetent to stand trial, and in need of psychiatric treatment. Tr. 1854-1856. Dr. Lombillo reported that Robert suffered from "auditory hallucinations," and had experienced a childhood rife with physical and sexual abuse at the hands of his father. *Id.* Months later, in September 1975, Dr. Lombillo once again evaluated Robert and again found him to be mentally ill. Tr. 1866-1871. Dr. Lombillo diagnosed Robert as having, *inter alia*, an acute schizophrenic reaction, chronic schizophrenia, and a long history of alcohol and drug abuse. *Id.* When evaluated approximately a year later, in the fall of 1976 (after Robert had been placed in the Florida State

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<sup>1</sup> All references to the trial record are denominated as Tr. \_\_\_\_\_. All of the records presented at trial and cited herein were part of Trial Exhibit 70. Petitioner incorporates those portions of the trial record by reference.

Hospital),<sup>2</sup> Dr. Lombillo again concluded that Robert suffered severe mental illness, suffering from a severe mental disturbance and poor impulse control: "He belongs in a psychiatric unit . . . ." Tr. 1931-1939. Dr. Wald also re-evaluated Robert, finding that Robert was unable to tolerate mild to moderate stresses in his environment, and unable to control or direct his behavior. Tr. 1928-1931.

Around the time of his trial, Robert Coe demonstrated psychotic thinking, schizophrenic tendencies, and diminished reasoning capacity (Allen Battle, Tr. 1722-26). Based upon his testing and interviews with Robert, Dr. Allen Battle concluded that Robert had psychotic tendencies. Tr. 1727. He also emphasized that Robert's childhood was "chaos" and "grossly" abnormal, marked by his father's sexual abuse of Robert's sisters in front of Robert. Tr. 1728-1729.

Similarly, David Cook, M.D., concluded that Robert was hallucinatory, with a diagnosis of schizophrenia. Tr. 1786-1787. Dr. Cook described Robert's horrendous childhood: "The word catastrophic . . . would be a gross understatement." Tr. 1787. At age eight (8), Robert started

having sex forced upon him by his father. Tr. 1788. Robert's actions during his interview with Dr. Cook confirmed the existence of psychotic thinking. Tr. 1791-1792. Dr. Cook concluded that Robert was a paranoid schizophrenic. Tr. 1794.

In addition, during Robert's incarceration by the State of Tennessee, his mental illness has persisted. Throughout his incarceration, *state doctors* have treated him with dozens of drugs used in the treatment of mental illness, having treated him with a laundry list of antipsychotic, antiseizure, anti-anxiety, and antidepressant medications:

Mellaril (1996), Thorazine (1995), Trilafon (1996, 1996), Xlonopia (1989, 1990), Tegretol (1989, 1991), Lithium (1989), Sinequan (1984, 1989) Serax (1992) Anafranil, Prozac (1994, 1995), Zoloft (1994), Elavil (1983, 1984, 1994), Desyrel (1998), Paxil (1997), Imipramine (1997), Trazadone (1995, 1996), Valium (1989, 1991, 1994), Vistaril (1984, 1986, 1989), Buspar (1988), Alaxax (1983), Ativan, Diazepam.

These drugs have been used to treat ongoing manifestations of his life-long mental illness, including suicide attempts, depression, paranoia, including, for example the following

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<sup>2</sup> Robert had been evaluated at the Florida State Hospital by C.O. Onate, M.D., who diagnosed him with a differential diagnosis of chronic schizophrenia. Robert was medicated twice a day with Thorazine and Artana.

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mental disturbances; (1981) suicidal thoughts; (1983) head-banging and paranoia; depression; (1984) suicide attempt; depression; flat affect; marked tremor; "dead feeling" in head; (1987) under psychiatric treatment; suicide threatened; (1988) suicide threat; (1989) ordered restrained while sleeping; suicidal; manic; (1990) suicidal thoughts; paranoia; loose associations and bizarre thoughts; (1994) suicide precautions taken; (1995) suicide precautions; (1996) paranoia, psychotic behavior. In addition, his psychiatric symptoms also appear to be exacerbated by any number of different stressors, including, for example, execution dates or court proceedings.

## B. ROBERT COE'S CURRENT MENTAL HEALTH

As of late December 1999, Robert Glen Coe has again shown signs of incompetence, which establish, as a threshold matter, that he is not competent to be executed under applicable legal standards. In support of this petition, he attaches the affidavit of Dr. William Kenner, M.D., a forensic psychiatrist from Nashville, Tennessee, who has recently conducted a preliminary evaluation of Robert Coe's competency. In particular, it appears that Robert Coe, who has suffered a lengthy history of mental illness, is delusional.

That affidavit provides, in pertinent part that, under standards discussed in Van Tran:

5. It is my professional opinion that Robert Coe suffers from a major mental illness. He has been diagnosed in the past as suffering from schizophrenia; I agree that he suffers from chronic schizophrenia. The severity of his mental illness has fluctuated over time. It is my opinion that Robert Coe is not faking his mental illness, a finding which is consistent with those of other mental health professionals who have examined Robert Coe.

6. It is my professional opinion that Robert Coe is incompetent to be executed, since he has delusional beliefs about the reasons for his execution. Those delusions render him incompetent.

7. It is also my professional opinion that, given the fluctuating course of his mental illness, as an execution draws nearer, the stress of the entire situation has the potential to exacerbate Robert Coe's mental illness and increase his psychotic symptoms.

See Exhibit 1 (Affidavit of Dr. William Kenner, M.D.).

Dr. Kenner's affidavit raises the clear concern that Robert Coe is not competent to be executed under the applicable standards governing review of this claim. Coupled with Robert Coe's long history of mental illness and previous diagnoses of incompetency, Dr. Kenner's current evaluation provides a substantial showing that Robert Coe is incompetent to be executed, and will be incompetent to be executed on March 23, 2000 under governing standards of the common law, the United States Constitution, and the Tennessee Constitution, cited *supra*.

III.  
APPOINTMENT OF EXPERTS

In accordance with the opinion in Van Tran, Petitioner Robert Glen Coe respectfully moves this Court to appoint him experts in support of his petition. As the opinion in Van Tran states:

If . . . the trial court determines that the prisoner has satisfied the required threshold showing, the Court shall enter an order appointing at least one, but no more than two, mental health professionals from each list submitted by the respective parties.

Van Tran, 1999 WL 1060443, p.\* 10.

Recognizing that Van Tran only permits the appointment of "at least one, but no more than two" mental health experts, Petitioner respectfully requests that this Court appoint the following experts for purposes of full evaluation of Robert Coe and testimony in this matter:<sup>1</sup>

Dr. William Kemner, M.D., of Nashville, Tennessee. Dr. Kemner is a licensed forensic psychiatrist who charges \$295 per hour for his services. (C.V. attached as Exhibit 2.)

Dr. James Markingus, M.D., of New Haven, Connecticut, is a Diplomate of the American Board of Psychiatry And Neurology, who is certified in both Psychiatry and Neurology. His fee is \$3000 per day for evaluation, and \$4000 per day for testimony, excluding travel expenses. (C.V. attached as Exhibit 3.)

IV.  
REQUEST FOR JURY TRIAL

Robert Coe respectfully requests that this Court grant him a jury trial on this matter.

Because he is requesting the enforcement of his common law right, he is entitled to a jury trial on this matter as a matter of common law, and under both the United States Constitution (See U.S.Const. Amend. VI & VII & VIII) and the Tennessee Constitution, Article I §8 (no man may be deprived of life except by judgment of his peers), Article I §9 (right to jury trial). See also Van Tran v. State, \_\_\_ S.W.3d \_\_\_ (Tenn. 1999)(Birch, J., dissenting). Robert Coe also requests the jury be instructed that the State must prove mental competency beyond a reasonable doubt in accordance with the commonlaw, the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and Article I, § 8 and 9 of the Tennessee Constitution.

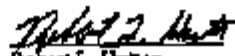
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<sup>1</sup> To the extent that this Court does not feel constrained by Van Tran's limitations on the number of experts to be appointed, Petitioner would respectfully request that this Court allow him to supplement his current request for additional experts and/or funds for the presentation of this petition.


CONCLUSION

WHEREFORE, this Court should order a hearing on Petitioner's competency, appoint all experts requested by Petitioner in support of his constitutional claim, and empanel a jury for purposes of making a determination of this issue.

Respectfully Submitted,

  
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**CERTIFICATE OF SERVICE**

I certify that a true and exact copy of the foregoing Application for Permission to Appeal has been served upon John Campbell, Assistant District Attorney, 30th Judicial District, 201 Poplar Avenue, Suite 301, Memphis, TN 38103-1947 by placing a copy of same in the United States mail, postage prepaid, this 29th day of December, 1999.<sup>4</sup>



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<sup>4</sup>Although dicta in *Van Tran* says the Attorney General should be served with a copy of the Petition, the Tennessee Supreme Court has held in these proceedings that Mr. Paul Summers, the Attorney General for the State of Tennessee is disqualified and may not participate in further proceedings in this case. Additionally, because this matter is currently pending before the trial court, there is no statutory authority for the Attorney General to be involved in the proceedings at this point.





8. Further affiant sayeth not.

William Kenner MD

William Kenner, M.D.

Subscribed and sworn before me this 28  
day of December, 1999

Shenita Stone Earls

Notary Public, State of Tennessee

My Commission Expires:

**My Commission Expires on July 27, 2002**