

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

FILED

December 10, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

ROBERT GLEN COE,)
Respondent,)

V.)

PD)
STATE OF TENNESSEE,)
Movant.)

S.Ct. No. M1999-01313-SC-DPE-

ORDER

This cause came on to be heard upon the motion of the State of Tennessee requesting that an execution date be set in the above-styled case. On December 9, 1999, the respondent, Robert Glen Coe, filed a Response to Motion to Set Execution Date, in which he alleges that the State's motion should be denied because he is still pursuing remedies in the federal and state courts. In the response Coe also asserts that the issue of his competency to be executed is not ripe for determination because of these pending proceedings and that he therefore reserves the right to raise this issue in this Court at a later time.

In Van Tran v. State, ___ S.W.3d ___ (Tenn. 1999), this Court held that a prisoner under sentence of death should raise the issue of competency to be executed in the first instance in this Court when the prisoner files his or her written response to the motion of the State Attorney General to set an execution date. Erroneously interpreting language in Van Tran discussing the Court's decision regarding when it would entertain challenges to competency, Coe argues that a claim of competency to be executed only becomes available upon the conclusion of all state and federal appeals, which have not yet concluded in this case. Under Van Tran, however, a respondent must raise the issue of his or her competency to be executed in the response to the State's motion to set an execution date or risk waiver of that issue.

Because the issue of competency has not been raised as required by the procedures adopted by this Court in Van Tran, this Court holds that the respondent has until Monday, December 13, 1999, at 4:30 p.m. Central Standard Time to supplement his response to the State's motion to set the execution or the issue of respondent's competency to be executed will be waived.

FOR THE COURT:

Riley Anderson, Chief Justice