

IN THE SUPREME COURT OF TENNESSEE

IN RE: Amendment to Supreme Court Rule 28, Sections 11 and 12

Filed November 21, 2002

ORDER

Supreme Court Rule 28 is hereby amended by re-designating current Section 11 as Section 12 and by including the following language as Section 11.

Sec. 11. Withdrawal of Post-Conviction Petition in Capital Case.

(A) Determination of Trial Court— Before allowing a petitioner under sentence of death to withdraw the petitioner’s post-conviction petition, the trial court shall address the petitioner personally in open court and ascertain that the petitioner

- (1) does not desire to proceed with any post-conviction proceedings;
- (2) understands the significance and consequences of withdrawing the post-conviction petition; and
- (3) is knowingly, intelligently, and voluntarily, without coercion, withdrawing the petition; and
- (4) is competent to decide whether to withdraw the post-conviction petition.

The hearing at which the trial court addresses the petitioner shall be recorded. At the hearing the trial court may consider any evidence and argument relevant to items (1) through (4). The trial court shall enter an order granting or denying withdrawal of the petition and stating the court’s findings regarding items (1) through (4). An order of the trial court granting withdrawal and dismissing the petition shall become final thirty days after its entry.

(B) Competency –

- (1) The standard for determining competency of a petitioner to withdraw a post-conviction petition and waive further post-conviction relief under this section is: whether the petitioner possesses the present capacity to appreciate the petitioner’s position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether the petitioner is suffering from a mental disease, disorder, or defect which may substantially affect the petitioner’s capacity.
- (2) A petitioner is presumed competent to withdraw a post-conviction petition and

waive post-conviction relief; however, if a genuine issue regarding the petitioner's present competency arises during the hearing provided for in (A), supra, the trial court shall enter an order appointing at least one, but no more than two, mental health professionals from lists submitted by the State and counsel for the petitioner. The order shall direct that the petitioner be evaluated by the appointed mental health professionals to determine the petitioner's competency and that the appointed mental health professionals file written evaluations with the trial court within ten days of the appointment unless good cause is shown for later filing. Upon filing, the trial court clerk shall forward a copy of the written evaluations to counsel for the petitioner and to the State.

(3) If a genuine issue regarding the petitioner's present competency exists after the filing of evaluations by the appointed mental health professionals, the trial court shall hold a separate hearing on the record, allowing the introduction of testimony, exhibits and evidence, to determine the petitioner's competency. After the hearing, the trial court shall file detailed written findings of fact regarding the court's competency determination, which shall be included in the court's order granting or denying withdrawal of the petition.

(C) Appeal– Whenever a trial court determines that the petitioner is competent to withdraw the petition, the order of the trial court finding the petitioner competent and dismissing the petition may be appealed under T.R.A.P. 3. If the trial court has granted a motion for dismissal of post-conviction counsel, post-conviction counsel shall nonetheless have standing to appeal the sole question of whether the petitioner was competent to withdraw the petition. The issue of competency will be reviewed as an issue of fact and the trial court's finding will be presumed correct, unless the evidence in the record preponderates against it.

FOR THE COURT:

Frank F. Drowota, III, Chief Justice