

**IN THE SUPREME COURT OF TENNESSEE**

**AT NASHVILLE**

**IN RE: GREGORY THOMPSON            ) COFFEE COUNTY  
  ) ORIGINAL APPEAL NO.  
  ) M1987-00067-SC-DPE-DD**

**Filed: October 13, 2005**

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**MOTION TO STRIKE  
“SUPPLEMENTAL AFFIDAVIT OF FAYE SULTAN, Ph.D.”**

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On September 29, 2005, Thompson filed a motion for a stay of his February 7, 2006, execution date, citing a “substantial change in [his] mental health status.” In support of the motion, Thompson submitted an affidavit of Faye Sultan, Ph.D., in which she opined that Thompson is presently incompetent to be executed. The State filed a response to the motion explaining why the affidavit failed to meet the threshold set by this Court in *Van Tran* to obtain further judicial competency proceedings, *i.e.*, that there be a “substantial change” in the prisoner’s mental health since the previous determination of competency sufficient to raise a substantial question about the prisoner’s competency to be executed. *Van Tran v. State*, 6 S.W.3d 257, 272 (Tenn. 1999). Thompson’s appointed counsel has now submitted to the Court under cover letter to the Chief Deputy Clerk a “Supplemental Affidavit of Faye Sultan, Ph.D.” Counsel states in his cover letter that the supplemental affidavit is being submitted as a “reply to the State’s response” in this case. Because the latest submission is both unauthorized and improper, it should be stricken and/or form no basis for the Court’s disposition of Thompson’s motion for a stay of execution.

First, there is no provision in either the rules of appellate procedure or the procedure

delineated in *Van Tran* for a reply to a response to a motion. Tenn. R. App. P. 22(a). In addition, the affidavit is accompanied by no legal argument, citation to authority or other direct reply by Thompson's appointed counsel. Nor is it based on any additional observation or psychological evaluation of Thompson by Dr. Sultan since her previous affidavit. It is merely an amplification of the first affidavit filed in an apparent attempt to cure the legal deficiencies identified by the State's response. The State is aware of no authority permitting the submission of additional *evidence*, without legal argument, citation to authority, or other legal basis supporting the relief requested, in response to a motion or other filing by a party. *See, e.g.*, Tenn. R. App. 22(a) (“[A] motion shall state the grounds on which it is based and the order or other relief requested.”); Tenn. R. App. P. 27(a)(7) (Brief of appellant shall contain “[a]n argument . . . including the reasons why the contentions require appellate relief, with citations to authorities and appropriate references to the record.”). It would indeed be a curious judicial procedure that permits a movant to mutate the evidence on which he relies in response to each successive pleading filed by the opposing party. Moreover, if a party appellant who is represented by counsel is prohibited from filing *pro se* motions on his own behalf, *State v. Burkhart*, 541 S.W.2d 365, 371 (Tenn. 1976), then surely a retained expert may not “reply” to a pleading in the place of appointed counsel.

Aside from the procedural deficiencies, the expanded Sultan affidavit changes nothing. Although Dr. Sultan emphasizes by repetition her opinion that Thompson is presently incompetent to be executed, the factual underpinnings of her opinion remain the same — Thompson “acknowledge[s] that there is an execution date scheduled” and “his involvement in the murder of Brenda Lane.” (Supp. Affidavit, p. 4) Thompson's alleged delusional beliefs that Ms. Lane is still alive are nothing new — he previously reported that he had seen her alive and working in the prison.

Yet this Court found him competent for execution despite that belief. Thompson's delusions concerning the likelihood of his being executed have also previously been rejected as a basis for a finding of incompetence. *Thompson v. State*, 134 S.W.3d 168, 183 (Tenn. 2004). Moreover, Dr. Sultan's concern that her previous report was "misinterpreted" by the State is mistaken. The State did not purport to "interpret" Dr. Sultan's report but merely quoted from it and argued that the factual allegations, even taken as true, were insufficient as a matter of law to meet the required showing under *Van Tran*.

Thompson's "reply" adds nothing to alter the State's previous conclusion. In layman's terms, the supplemental affidavit, while somewhat more expansive than the first, dictates no different result — the motion for stay of execution should be denied.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing Response has been forwarded via  
Facsimile and First-Class U.S. mail, postage prepaid, on the \_\_\_\_ day of October, 2005, to:

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