

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

ROBERT GLEN COE,

Plaintiff,

v.

No. _____

DON STUNDQUIST, Governor of the State of Tennessee; DONAL CAMPBELL, Commissioner, Tennessee Department of Corrections; RICKY BELL, Warden, Riverland Maximum Security Institution; VIRGINIA LEWIS, Warden, Special Needs Facility; JOHN DOES 1-100, in their official capacity only,

Defendants.

DAVIDSON COUNTY

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff for his complaint respectfully states as follows:

Preliminary Statements

That civil action seeks declaratory relief (pursuant to Sections 101 to 113 of Chapter 14 of Title 29 of the Tennessee Code) and injunctive relief (including a restraining order, temporary preliminary injunction and permanent injunction) for plaintiff against defendants prohibiting his execution by lethal injection in violation of state law.

Parties

1. Plaintiff, Robert Glen Coe, is a citizen and resident of Nashville, Davidson County, Tennessee. He resides at 7475 Cockhill Bend Industrial Drive, Nashville, Tennessee 37209. He is scheduled to be executed by lethal injection at 1:00 AM on April 19, 2000.
2. Defendant, Don Stundquist, is Governor of the State of Tennessee. His business address is: Office of the Governor, State Capitol, Nashville, Davidson County, Tennessee 37243.

where plaintiff resides. His business address is 7475 Cockhill Bend Industrial Drive, Nashville, Davidson County, Tennessee 37209. He is a necessary and indispensable party to these proceedings.

5. Defendant, Virginia Lewis, is the Warden of the Special Needs Facility of the Tennessee Department of Corrections. This is the state-licensed healthcare facility where the lethal substances to be utilized in plaintiff's execution have been procured, are stored, and will be provided. Her business address is 7475 Cockhill Bend Industrial Drive, Nashville, Davidson County, Tennessee 37209. She is a necessary and indispensable party to these proceedings.

John Does 1-100 are natural persons unknown to plaintiff who are agents, employees or independent contractors working with the aforementioned defendants to effectuate plaintiff's execution. Their identities are unknown to plaintiff due to a variety of statutes, rules and regulations, and policies, practices and customs safeguarding their identities. They include, but are not limited to, medical doctors and pharmacists, their assistants, nursing personnel, and their assistants, intravenous technicians, prison guards and others who, working in conjunction or separately, will kill plaintiff by lethal injection. They are necessary and indispensable parties to these proceedings. All defendants are sued in their official capacity only.

Jurisdiction and Venue

7. This Court has jurisdiction over the parties.
8. This Court has jurisdiction over the subject matter of this litigation pursuant to sections 101 to 113 of Chapter 14 of Title 29 of the Tennessee Code; Sections 101 to 105 of Chapter 1 of Title 29 of the Tennessee Code; and Sections 101 to 103 of Chapter 13 of Title 16 of the Tennessee Code.
9. Venue is proper in this Court.

Factual and Legal Projections

10. Plaintiff is to be executed on April 19, 2000, at 1:00 AM, for his conviction for an offense that occurred before January 1, 1990.

the court shall direct that the person be put to death by lethal injection.

(b) For any person who commits an offense on or after January 1, 1999, for which such person is sentenced to the punishment of death, the court shall direct that the person be put to death by lethal injection.

(c) The department of correction is authorized to promulgate necessary rules and regulations to facilitate the implementation of this section.

(d) If the method of execution established by sections (a) and (b) is for any reason determined by a court of competent jurisdiction to be unconstitutional, the law establishing the method of execution as death by electrocution is revived and electrocution shall be the method of execution in this state. All statutory procedures, rules and departmental policy enacted or promulgated to effectuate a sentence of death by electrocution shall also be revived and shall be in full force and effect.

Tennessee Code Annotated §40-23-114 (2000) (A photocopy of this statutory provision with the exacted legislation in which it is amended is attached hereto as collective Exhibit 1).

12. Plaintiff will, therefore, be executed by lethal injection on the date set forth above.

13. The identities of the individuals who will actually perform the lethal injection procedures are shrouded in secrecy. By virtue of statutory and regulatory law and policy and practice and custom, the identities of the so-called executioners is kept secret from plaintiff and the public as a whole. These individuals are, therefore, named herein as "John Does."

14. Notwithstanding this shroud of secrecy, the following is known, upon information and belief, about the lethal injection procedures and the individuals who will effect the same:

A. Plaintiff will be strapped prior to the time for his execution to a gurney in the so-called execution chamber at Riverbend Maximum Security Institution.

B. An intravenous line will be inserted to his circulatory system. If an intravenous line cannot be properly inserted, a physician who

D. Various individuals, upon information and belief, will be used to accomplish the lethal injection procedure, but not limited to, physicians to direct the administration of the substances to plaintiff that will ultimately cause his death, nursing and other support personnel to start the necessary intravenous line and deliver necessary dosages of the substances, pharmacists and their support personnel to provide the required substances in dosages, to achieve the desired effect, the death of the plaintiff.

E. A physician who is present will also examine plaintiff following the lethal injection and declare death.

F. A photocopy of the known protocol - the so-called execution manual - is attached hereto as Exhibit 2.

15. The execution by lethal injection of plaintiff by defendants violates well-entrenched Tennessee statutory and regulatory law for a variety of reasons.

A. The procedures for implementing plaintiff's death by lethal injection have not been adopted pursuant to the Tennessee Uniform Administration Procedures Act as required by state law. See Tenn. Code Ann. §4-5-101 to 247 (Supp. 1999); Tenn. Code Ann. §40-23-114 (a) (2000).

B. No physician of any nature, physician's assistant, nurse of any nature or any other licensed health-care provider of any nature whatsoever can provide or administer the substances necessary to cause plaintiff's death. To allow such licensed health-care providers

C. No licensed health-care facility or licensed pharmacist and their assistants can provide or deliver to others the substances necessary to cause plaintiff's death. Upon information and belief, the substances to be used in the lethal-injection death of plaintiff are stored at the Special Needs Facility or some other state-controlled health-care facility under the control of pharmacists working as agents, employees or independent contractors of that institution. To allow such a licensed health-care facility and such licensed pharmacists or any assistant to deliver to others the substances necessary to effect plaintiff's execution violates well-settled Tennessee statutory and regulatory law. See, e.g., Tenn. Code Ann. §§66-11-201 - 250, 63-10-101 to 606 (Supp. 1999); Tenn. Comp. Rules and Regs. R. 1200-8-4.03 (1999); etc. Such conduct by a licensed health care facility, pharmacist or assistant is unethical, criminal and illegal pursuant to well-settled Tennessee law.

D. The use of any out-of-state or other non-state licensed individual to deliver, administer or participate in the delivery or administration of the substances to be used in causing plaintiff's death is clearly criminal and violates well-settled Tennessee law concerning, *inter alia*, the practice of medicine, the practice of nursing, the practice of pharmacology, etc.

16. Plaintiff (along with the general public as a whole) is clearly the intended beneficiary of state laws governing the proper administration of substances into the human body, governing the practice of medicine and other health-related fields, and governing the promulgation of rules and regulations for lethal injection. ~~Plaintiff is clearly the intended beneficiary of state laws governing the proper administration of substances into the human body, governing the practice of medicine and other health-related fields, and governing the promulgation of rules and regulations for lethal injection.~~

Eleven Claims For Relief

17. Plaintiff incorporates by reference herein the contents of paragraphs 1-14 above.

18. Section 102 of Chapter 14 of Title 29 of the Tennessee Code provides:

(A) Courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

(B) No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for.

(C) The declaration may be either affirmative or negative in form and effect, and such declaration shall have the force and effect of a final judgment or decree.

Tenn. Code Ann. §29-14-102 (1980).

19. Section 103 of Chapter 14 of Title 29 of the Tennessee Code provides:

Any person interested under a deed, will, written contract, or other writing purporting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Tenn. Code Ann. §29-14-103 (1980).

20. Section 112 of Chapter 14 of Title 29 of the Tennessee Code provides:

This chapter is declared to be remedial; its purpose is to settle and to speed relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered.

Tenn. Code Ann. §29-14-112 (1980).

21. Plaintiff is entitled to a judicial declaration from this Court that his execution by lethal injection violates well-settled Tennessee law because:

A. The procedures for performing lethal injection have not been adopted in compliance with the Tennessee Uniform Administrative Procedures Act;

B. The use of any licensed health-care facility or

Second Claim for Relief

22. Plaintiff hereby incorporated by reference herein the contents of paragraphs 1-21 above.


23. Plaintiff is entitled to injunctive relief from this Honorable Court (including a restraining order, temporary injunction and permanent injunction) because: (a) his legal rights (namely the right to avoid death by an illegal process) will unarguably be violated in the absence of injunctive relief; (b) he will suffer immediate and the most irreparable of injury absent injunctive relief; and (c) no final judgment granting declaratory relief in the absence of injunctive relief would be effectual of his legal rights.


24. Plaintiff's due to be executed by lethal injection very shortly: April 19, 2000, at 1:00 AM. His execution by lethal injection plainly violates various state laws. There was never a more compelling case for injunctive relief than the case at bar.

WHEREFORE, plaintiff respectfully demands:

- A. That this complaint be filed and served;
- B. That no court bond, or other surety be required because plaintiff is a pauper or, if required, a surety bond of one dollar (\$1.00) be deemed sufficient;
- C. That a restraining order be issued prohibiting defendant from executing plaintiff pursuant to an illegal lethal injection procedure; pending a hearing on plaintiff's application for a preliminary injunction;
- D. That a preliminary injunction be issued prohibiting defendants from executing plaintiff pursuant to an illegal lethal injection procedure pending a hearing on the merits of plaintiff's application for a permanent injunction;
- E. That a judicial declaration be issued prohibiting defendants from executing plaintiff pursuant to an illegal lethal injection procedure;

Respectfully submitted,


George Edward Barron, #2472
Edmund L. Carey, Jr., #12013
Barron, Johnston & Punsley
217 Second Avenue, North
Nashville, TN 37201
(615) 254-2202


William E. Willis, Jr., #21229
Willis & Knight
215 Second Avenue, North
Nashville, TN 37201
(615) 259-8600

Cecil D. Branstetter, #22443
Branstetter, Kilgore, Smith & Jennings
227 Second Avenue, North, Fourth Floor
Nashville, TN 37201
(615) 254-8501


James Earl Walker, #15068
402 Woodland Street
Nashville, TN 37206
(615) 254-0202

Attorneys for Plaintiff Robert Glen Coe