

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

FILED
December 13, 1999
Cecil Crowson, Jr.
Appellate Court Clerk

ROBERT GLEN COE,)
)
 Respondent)
)
 v.)
)
 STATE OF TENNESSEE)
)
 Movant)

No. M1999-01313-SC-DPE-PD

MOTION TO RECONSIDER DECEMBER 10, 1999 ORDER
REQUIRING SUPPLEMENTAL RESPONSE AND/OR
SUPPLEMENTAL RESPONSE TO MOTION TO SET EXECUTION DATE

Petitioner Robert Glen Coe has respectfully moved this Court to deny the State’s motion to set execution date, because both the Tennessee and federal courts are presently considering claims relating to the constitutionality of Robert Coe’s conviction and sentence. By order dated December 10, 1999, this Court has ordered that Robert Coe supplement his response by today in order to raise any such competency claim or else face waiver of the claim. Robert Coe respectfully moves this Court to reconsider its December 10, 1999 order. Alternatively, he supplements his response as requested by this Court’s December 10, 1999 order.

I.
THIS SHOULD RECONSIDER ITS DECEMBER 10, 1999 ORDER,
AND SHOULD DENY THE STATE’S MOTION

In his response to the motion to set execution date, Robert Coe respectfully noted that an execution date was premature, because he has pending claims before the state and federal courts. He

likewise noted that any claim of competency under Van Tran was not ripe for that same reason, viz., because of his pending claims for relief. In making that representation, Robert Coe relied upon the explicit language of Van Tran which provides:

In Tennessee, execution is imminent *only* when a prisoner sentenced to death has unsuccessfully pursued all state and federal remedies for testing the validity and correctness of the prisoner's conviction and sentence . . ." (Westlaw slip op. at *7)(emphasis supplied); and

[A] proceeding to determine competency may be initiated *only* after all other available federal and state remedies have been exhausted." (Westlaw slip op. at *10 n. 14)(emphasis supplied).

In its December 10 order, this Court stated that Robert Coe had erroneously interpreted Van Tran.

Robert Coe respectfully requests that this Court reconsider its Court's December 10 order in light of the above-quoted language of Van Tran. He respectfully requests that this Court reconsider that order and hold that a competency claim need not be raised at this time because it is, as he has noted, still premature. And the motion to set an execution date should therefore be denied for the reasons stated in his initial response: he has pending state and federal court proceedings.¹

II.

ALTERNATIVELY, A CLAIM OF COMPETENCY IS RAISED,
AND RESOLUTION OF THAT ISSUE SHOULD BE DEFERRED
UNTIL CONCLUSION OF NOW-PENDING COURT PROCEEDINGS

A.

ROBERT COE IS MENTALLY ILL

The motion to set execution date should also be denied because Robert Coe is mentally ill and has suffered a long history of mental illness.

¹ As noted *infra*, to the extent that this Court would still require the competency issue to be raised at this juncture, under Van Tran, resolution of that issue would still need to be deferred until the completion of now-pending state and federal claims. In fact, on December 8, 1999, the United States District Court directed the parties to file additional briefs by December 23, 1999, and any responses to such briefs by January 3, 2000.

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 Coe demonstrated vague paranoia, a lack of logical thought process, and inappropriate affect. Tr. 1849-1853. Dr. Wald concluded that he was “[a] seriously disturbed young man . . . who certainly manifests aspects of a schizo id 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 Mr. Coe in 1975, and found that even though he 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 Coe was insane, incompetent to stand trial, and in need of psychiatric treatment. Tr. 1854-1856. Dr. Lombillo reported that he 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 him and again found him to be mentally ill. Tr. 1866-1871. Dr. Lombillo diagnosed Robert Coe 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 he had been placed in the Florida State Hospital),² Dr. Lombillo again concluded that Robert Coe 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 Coe, finding that he was unable to tolerate mild to moderate stresses in his

² Mr. Coe had been evaluated at the Florida State Hospital by C.O. Onate, M.D., who diagnosed him with a differential diagnosis of chronic schizophrenia. He was medicated twice a day with Thorazine and Artane.

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 Coe, Dr. Allen Battle concluded that he had psychotic tendencies. Tr. 1727. He also emphasized that his childhood was “chaos” and “grossly” abnormal, marked by his father’s sexual abuse of Robert’s sisters in front of him. Tr. 1728-1729.

Similarly, David Cook, M.D., concluded that Robert Coe was hallucinatory, with a diagnosis of schizophrenia. Tr. 1786-1787. Dr. Cook described Mr. Coe’s horrendous childhood: “The word catastrophic . . . would be a gross understatement.” Tr. 1787. At age eight (8), he started having sex forced upon him by his father. Tr. 1788. Robert Coe actions during his interview with Dr. Cook confirmed the existence of psychotic thinking. Tr. 1791-1792. Dr. Cook concluded that Robert Coe was a paranoid schizophrenic. Tr. 1794.

In addition, during Robert Coe’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 (1990, 1996), Klonopin (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), Atarax (1983), Ativan, Diazepam.

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

More recently, in 1999, Dr. John Griffin, M.D., has noted that Robert Coe’s actions “are the product of his severe psychiatric problems, including extreme levels of anxiety.” Exhibit 1, p. 2. As Dr. Griffin states: “[T]his man has a serious psychiatric illness of psychotic proportions.” *Id.* He is in need of treatment: “Mr. Coe suffers from a severe mental illness. Symptoms include overwhelming anxiety, distortion of reality, and psychosis. He needs long-term, most likely life-long, institutional protection and treatment.” *Id.* at pp. 2-3.

B.
ROBERT COE WILL BECOME INCOMPETENT
TO BE EXECUTED

Alternatively, Robert Coe raises a competency to be executed claim in this response. He does so without conceding that a claim is even ripe, as there is no pending execution date. In complying with this Court’s requirement that the issue be raised now, Robert Coe does so.

He respectfully incorporates all arguments and statements contained in Section II of this Supplemental Response in support of such a claim. That evidence indicates that Robert Coe has a

lengthy history of mental illness, has been declared incompetent and insane, and when subjected to stressors, is prone to schizophrenic or psychotic behavior. All this indicates that when faced with an imminent execution date, his mental stability will deteriorate rendering him incompetent to be executed. As of now, there is no such pending date, and thus, his present competency is not part of the relevant inquiry; his competency at a future date will be the issue.

However, because there remain pending state and federal court proceedings, the competency issue -- though required to be raised now -- should properly be deferred until the completion of those pending proceedings. As this Court indicated in Van Tran, the issue is the last issue to be resolved, following the resolution of all other legal claims in the state and federal courts.

Robert Coe is indigent. He has most recently been in federal court by Henry Martin and Paul Bottei of the Office of the Federal Public Defender, and by James H. Walker, who has been appointed by the United States District Court. Messrs. Martin and Bottei, by virtue of their employment, are limited in their ability to engage in extended litigation in state court. Thus, if the issue of competency to be executed is to be litigated, this Court should appoint counsel James H. Walker, Esq., who has voluntarily represented Robert Coe in this Court, to represent him in any future state court proceedings relating to this claim. This Court should also provide him sufficient funding and time to secure expert assistance, in order that he may undertake a necessary evaluation to establish any *prima facie* showing of incompetency required under Van Tran.³

CONCLUSION

The motion to set execution date should be denied. Alternatively, it should be deferred

³ Petitioner submits that \$2500 is the amount of initial funding which he will require for testing and/or evaluation necessary for any such preliminary showing.

pending final resolution of now-pending claims in the state and federal courts.

Respectfully Submitted,

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VERIFICATION

I verify that the assertions made in the foregoing are true and correct to the best of my knowledge.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded by first-class mail, postage prepaid, to Glenn R. Pruden, Assistant Attorney General, 425 5th Avenue, North, Nashville, TN 37243, on this the _____ day of December, 1999.
