

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

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

No. M1999-01313-SC-DPE-PD

FILED

April 3, 2000

**Cecil Crowson, Jr.
Appellate Court Clerk**

ORDER

Robert Glen Coe has filed a “Motion to Modify Execution Date; Motion for Order to Allow Mental Professional Access to Robert Coe,” in which he requests that this Court modify the execution date currently set for April 5, 2000, and enter an order requiring the Warden of the Riverbend Maximum Security Institution to allow counsel to have Coe evaluated by a mental health professional.

In an affidavit attached to the motion, an attorney representing Coe asserts that the Warden informed him that Tennessee Department of Correction Policy will not allow counsel to have Coe evaluated by a mental health professional absent a court order. Coe argues that the refusal to allow a mental health professional access to Coe deprives the prisoner of any redress in the courts to litigate a substantial change in his competency under Ford v. Wainwright, 477 U.S. 399, 106 S. Ct. 2595, 91 L. Ed. 2d 335 (1986), and Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999), and further constitutes a denial of access to the courts under Tennessee Constitution, Article I, Section 17.

Once a prisoner’s competency to be executed has been determined in accordance with the procedures adopted in Van Tran, the prisoner has no constitutional right to assert a subsequent Ford claim. Cf. 6 S.W.3d at 272. In addition, under Van Tran, subsequent Ford claims are disallowed unless they are based upon a substantial change in the prisoner’s mental health since the previous determination of competency was made. Id. Counsel for Coe have not supported the motion with any factual allegation made under oath that would indicate that there has been a substantial change in Coe’s mental health since the previous determination of competency was made. The issue of Coe’s competency to be executed was fully litigated in an evidentiary hearing conducted by the Criminal Court for Shelby County. Upon de novo review, this Court affirmed the trial court’s determination that Coe is competent to be executed. The United States District Court for the Middle District of Tennessee likewise reviewed the competency proceedings and found that Coe had been afforded a full and fair hearing and that there were no constitutional infirmities in the proceedings.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that the motion to modify execution date and the motion to allow a mental health professional access to Coe are DENIED.

E. RILEY ANDERSON,
CHIEF JUSTICE

FRANK F. DROWOTA, III,
JUSTICE

Dissenting--See Separate Order
ADOLPHO A. BIRCH, JR.,
JUSTICE

JANICE M. HOLDER,
JUSTICE

WILLIAM M. BARKER,
JUSTICE