

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**FILED**

**March 31, 2000**

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

ROBERT GLEN COE, )

Appellant )

v. )

STATE OF TENNESSEE )

Appellee )

No. M1999-01313-SC-DPE-PD

MOTION TO RESCIND ORDER SETTING EXECUTION DATE;  
OR IN THE ALTERNATIVE FOR STAY OF EXECUTION

\_\_\_\_\_ This Court's *sua sponte* order setting Petitioner's execution five days hence while Coe is still actively pursuing a legitimate federal constitutional claim in federal habeas corpus proceedings on a first petition is unprecedented. Accordingly, petitioner Robert Glen Coe moves this court to rescind its *sua sponte* order of March 30, 2000, setting an execution date of April 5, 2000. In the alternative, Petitioner requests this Court to grant a stay of execution so that he may obtain meaningful federal court review of his federal constitutional claims. In support of his motion, Robert Coe states the following:

Robert Coe has followed the procedures for the litigation of his *Ford* claim as set out by this court in *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999). After exhausting his claim in state court, as he is required to do, Robert Coe sought review of his claim in federal court. Robert Coe has litigated his claim as expeditiously as possible. Even though the district court has denied relief on this first habeas petition, that does not end the matter. Robert Coe still has the right to appeal the federal district court's decision to the Sixth Circuit Court of Appeals and the United States Supreme Court.

The execution date set by this Court interferes with the federal courts' ability to consider Petitioner's claim in an orderly and judicious manner. Under *Van Tran*, the state court appellate process lasts a minimum of twenty days following a ruling by the lower court. Yet, by its *sua sponte* Order, this Court seeks to limit the federal courts' appellate review in this most serious of cases to five days. This is inappropriate and unfair.

Moreover, by setting the execution date on its own motion, this Court has violated its own procedures. In *Van Tran*, the Court clearly signaled that the proper procedure for the setting of an execution is on motion from the attorney general. In addition, the Petitioner is to be given ten days to respond. This Court's departure from its own recently announced procedure is puzzling.

Therefore, this Court should rescind its *sua sponte* order of March 30, 2000, setting an execution date of April 5, 2000. In the alternative, this Court should grant a stay of execution so that the federal courts will have sufficient time to fully and meaningfully consider his appeal.

Respectfully submitted,

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Certificate of service

I verify that a copy of the foregoing motion was served upon the Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243.

Date: \_\_\_\_\_

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