

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ROBERT GLEN COE,

Petitioner,

v.

RICKY BELL, Warden,

Respondent.

Case No. 3:00-0239

Judge Tranger

MEMORANDUM AND ORDER

This Petition for Writ of Habeas Corpus was filed on March 16, 2000. It was assigned to this court on March 17, 2000. On March 18, 2000, this court held that it lacked jurisdiction over the case and transferred it to the Sixth Circuit Court of Appeals for a determination as to whether this court could review what appeared to be Coe's second federal petition for writ of habeas corpus. In the late afternoon of March 21, 2000, the Sixth Circuit Court of Appeals held that this court does have jurisdiction to review the instant petition on the merits.

On March 22, 2000 at 8:30 a.m., Coe filed a request for a stay of his execution, currently set for March 23, 2000 at 1:00 p.m. The court finds that some sixteen hours is not sufficient time within which to review five inches of briefs and other papers filed by the parties, two feet of trial transcript and four videotapes. Furthermore, in reviewing Coe's petition, the court must undertake the first review of the Tennessee Supreme Court's decision in Van Tran¹ to determine whether the standards set forth therein comport with the United States Supreme Court's decision in Ford v. Wainwright, 477 U.S. 399 (1986). A brief stay of execution is necessary to enable the

¹Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999).

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court to fairly decide the petition on the merits.

28 U.S.C. §2251 provides that "[a] justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding."

The court recognizes that a stay "frustrate[s] both the state's sovereign power to punish offenders and their good faith effort to honor constitutional rights." McCleskey v. Zant, 499 U.S. 467, 491, 111 S. Ct. 1454, 1468-69, 113 L.Ed.2d 517 (1991). However, the Supreme Court has made it clear that a district court must enter a stay of execution if it "cannot dismiss the petition on the merits before the scheduled execution" in order to "to prevent the case from becoming moot." Lonchar v. Thomas, — U.S. —, 116 S. Ct. 1293, 134 L.Ed.2d 440 (1996) 116 S. Ct. at 1297. Furthermore, the motivation of the petitioner in filing a petition at the eleventh hour is "irrelevant" to the court's decision whether to issue a stay. Id. at 1302.

The Sixth Circuit has stated that, even when a stay has been granted, "it should not be unlimited, or of a duration controlled by the prisoner." In re Parker, 49 F.3d 204, 208 (6th Cir. 1995). Mr. Coe was convicted and sentenced to death in 1981 and a prompt review is necessary. The court intends to give this case its first priority and will decide it promptly. "In a capital case the grant of a stay of execution directed to a state by a federal court imposes on that court the concomitant duty to take all steps necessary to ensure a prompt resolution of the matter, consistent with its duty to give full and fair consideration to all of the issues presented in the case." In re Blodgett, 502 U.S. 236, 240, 112 S. Ct. 674, 676, 116 L.Ed.2d 669 (1992).

For the foregoing reasons, this court grants a brief stay of Coe's execution that shall expire automatically upon the issuance of an order by this court denying Coe's petition but that shall remain in place upon the issuance of an order by this court granting Coe's writ of habeas corpus.

It is so Ordered.

Entered this 22th day of March, 2000.


ALITA A. TRAUGER
United States District Judge