

IN THE SUPREME COURT OF TENNESSEE AT NASHVILLE

IN RE:

BILLY RAY IRICK

* KNOX COUNTY

*

* SUPREME COURT NO. 180

*

* DEATH PENALTY

**MOTION FOR ADDITIONAL TIME TO PREPARE AND PRESENT
EVIDENTIARY HEARING AS TO INCOMPETENCE TO BE EXECUTED**

Comes the petitioner, and respectfully moves pursuant to Tennessee Supreme Court Rule 12.4 for a new scheduling order and/or additional time in which to present evidence of his incompetency to be executed.¹ As grounds therefore, petitioner would state that the present scheduling order as set out by this court in its order of July 19, 2010 and furthermore as delineated in Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999), violates due process and further violates petitioner's rights under the Eighth and Fourteenth Amendments to the United States Constitution, as well as Article I, §§8, 9, 16 and 17 of the Tennessee Constitution, in that his execution may proceed without sufficient time or resources to determine his competency.

The United States Supreme Court has held that once a prisoner has made "a substantial threshold showing of insanity," the prisoner must be accorded an "opportunity to be heard" as to the issue of his competency. Ford v. Wainwright, 477 U.S. 399, 426 (1986). The United States Supreme Court in Panetti v. Quarterman, 551 U.S. 930 (2007) also made clear that it is an "impermissible" error under the United States Constitution for a state to fail to provide petitioner with an adequate opportunity to submit expert evidence in a competency proceeding once the threshold showing has been made. Id. at 952.

¹Petitioner is also filing a motion to vacate this court's order of July 19, 2010 setting an execution date and the Ford hearing.

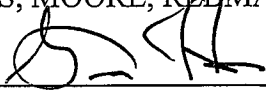
Under Van Tran and the present order of this court, petitioner will be denied a constitutionally acceptable procedure in which to present his arguments of incompetency. Respectfully, it is submitted that the time limits set out in Van Tran and this court's order fail to provide sufficient time for a petitioner who, to date, has been denied appointment of any psychological experts (since 1990 and his state post-conviction proceedings), who has obtained only a limited scope of services from experts paid from *habeas* counsel's own finances, and who has an extensive psychological history that has been presented to this court in his response to motion to set execution date.

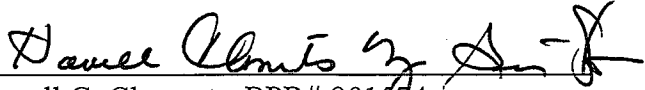
In order to obtain a reliable competency evaluation, petitioner submits that it is necessary that sufficient time be provided for the appointment of experts to conduct the necessary tests, examinations and analyses, and for the trial court to examine the extensive medical record, scientific/psychological reports, and to reach a decision which has the level of confidence necessary in a death penalty case. The current time limits will not be sufficient for the above to be conducted in a thorough and reliable way.

CONCLUSION AND REQUEST FOR RELIEF

For these reasons, petitioner respectfully requests: (1) that this court enter a new scheduling order allowing thirty (30) days in which to amend his petition previously filed in the Knox County Criminal Court regarding competency; (2) that petitioner be given at least sixty (60) days from the date of a new scheduling order in which to obtain experts, complete testing and analysis, and submit to the trial court their reports; and (3) that the court be allocated at least sixty (60) days from the submission of psychological reports in which to set the case for hearing, hear testimony, and render a decision.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause via facsimile or U.S. Mail addressed as follows:

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This 2nd day of July, 2010

SPEARS, MOORE, REBMAN & WILLIAMS

By: 