

IN THE CRIMINAL COURT FOR KNOX COUNTY, DIVISION I

KNOXVILLE, TENNESSEE

FILED
BY JOY R. MCCROSKEY
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KNOX COUNTY CRIMINAL COURT
KNOXVILLE, TN

STATE OF TENNESSEE) No. 24527
)
v.) Supreme Court No.
) M1987-00131-SC-DPE-D
BILLY RAY IRICK) DEATH PENALTY

ORDER GRANTING HEARING ON ISSUE OF COMPETENCY TO BE EXECUTED

This matter is presently before the Court on the "Petition To Determine Competency To Be Executed Under Ford v. Wainwright, 477 U.S. 399 (1986); Panetti v. Quarterman, 551 U.S. 930 (2007); Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999); The Tennessee Constitution; And The Common Law", the State's response in opposition to the Petition, and the Petitioner's Motion For Brain Imaging Tests.

The Eighth Amendment to the United States Constitution precludes the execution of a prisoner who is incompetent. Ford v. Wainwright, 477 U.S. 399 (1986).

The issue of competency to be executed generally is not ripe for determination until execution is imminent. Van Tran, at 267.

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 and [the Tennessee Supreme Court] has set an execution date upon motion of the State Attorney General.

Id. As the parties have done here, the issue of competency to be executed in Tennessee is required to be raised for the first time when filing a response to the State's motion to set an execution date. The issue then is ripe for review only upon the granting of the State's motion and the setting of an execution date at which time the Tennessee Supreme Court remands the issue of competency to be executed to the trial court where the prisoner was originally tried and sentenced.

The order setting the execution date in this matter was entered by the Tennessee Supreme Court on July 19, 2010, and in that order the Tennessee Supreme Court remanded the issue of competency to be executed to this court. Upon remand the petitioner, within the required 3 days, filed the instant petition on July 22, 2010. The District Attorney General then filed his response to the petition within the required 3 days as well on Monday, July 26, 2010.

Pursuant to Van Tran, within four days of the filing of the State's response, this court must decide if a hearing is warranted based upon a determination of whether the petitioner has made a threshold showing that his competency is genuinely at issue. In addition, in Van Tran the court stated that

Issues may, and no doubt will, arise in competency proceedings which have not been addressed in this opinion. Such issues can and will be resolved on a case-by-case basis.

Id. at 274.

Petitioner is presumed competent to be executed and bears the burden of overcoming this presumption by a preponderance of the evidence Ford, 477 U.S. at 426, 106 S.Ct. at 2610 (Powell, J. concurring). Petitioner may demonstrate that there is a genuine issue as to his present competency through the submission of affidavits, depositions, medical reports or other

credible evidence. Id. However, the proof submitted must relate to present competency. Thus, at least some of the evidence must be the result of recent mental evaluations or observations of the petitioner. Id. Ordinarily unsupported assertions by family members, the petitioner or his attorney(s) will be insufficient to satisfy the required threshold showing. Id. Likewise, assertions that a petitioner may become incompetent in the future will not be sufficient to meet the threshold showing. See Coe v. State, 17 S.W.3d 193, 221 n.5 (Tenn. 2000).

Tennessee has adopted a cognitive test for determining competency to be executed. Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999). In Van Tran, the court held that a prisoner is not competent to be executed if the prisoner lacks the mental capacity to understand the fact of the impending execution and the reason for it. Id.

Subsequent to our state court rulings in Van Tran, however, the United States Supreme Court expounded on its holding in Ford. See Panetti v. Quarterman, 551 U.S. 930 (2007). The Panetti decision appears to be broader than the current standard applied in Tennessee. While the Panetti Court's decision does not appear to affect the procedure established by Tennessee courts to determine competency to be executed, it does appear to broaden the definition of "incompetence" with regard to competency to be executed and it appears to expand the evidence which this trial court should consider in determining this issue. See Thompson v. Bell, 580 F.3d 423 (6th Cir. 2009)(Holding that the Tennessee Supreme Court unreasonably applied Ford when it (1) determined that Thompson's "severe delusions" were "irrelevant" to a Ford competency analysis and (2) determined that Thompson's documented history of mental illness was equally "irrelevant" to the question of present competency). No longer is it sufficient for trial courts such as this one to merely examine whether a prisoner has identified

the link between his crime and the punishment to be inflicted. Rather, in applying the Ford standard, adopted by the Tennessee Supreme Court in Van Tran, this court must now consider whether petitioner suffers from such a severe mental disorder that puts the awareness of the link between crime and punishment “in a context so far removed from reality that the punishment can serve no proper purpose.” Id. 168 L.Ed. 2d at 687. The Court in Panetti held that

The potential for a prisoner’s recognition of the severity of the offense and the objective vindication are called in question ... if the prisoner’s mental state is so distorted by a mental illness that his awareness of the crime and punishment has little or no relation to the understanding of these concepts shared by the community as a whole....

... A prisoner’s awareness of the State’s rationale for an execution is not the same as a rational understanding of it.

Id. at 686.

With these broad standards in mind, this Court must consider whether the Petitioner should receive a hearing on the issue of his competency to be executed. The State has submitted that the Petitioner has not met the threshold showing of a genuine issue regarding his competency to be executed required for a hearing on the issue.

Here, the petition contains affidavits, medical reports, mental health records and other credible evidence which documents Mr. Irick’s life-long history of mental issues. In the most recent report from Dr. Peter Brown, the Petitioner’s sanity, throughout his life, is questioned. Dr. Brown described the Petitioner as having the capacity of a child of approximately 7 to 9 years of age and states that his mental impairments have existed continually from childhood to the present time.

The Petition, as provided, admittedly does not contain lengthy present mental health information¹ but, after careful consideration of the documentation of his mental health history throughout his life along with the information from Dr. Brown's report, this Court finds that the Petition raises a genuine issue concerning the Petitioner's competency throughout his life, including now.

Accordingly, and pursuant to the procedures set forth in Van Tran, Dr. Clifford Tennison and Dr. Peter Brown are hereby appointed to evaluate the Petitioner to determine his competency to be executed. Drs. Tennison and Brown shall file their written evaluations with this Court within ten (10) days of this order appointing them.

The last matter still pending is the Petitioner's Motion for Brain Imaging Tests. This Motion is hereby GRANTED with the provision that all tests must be completed and incorporated into the ordered evaluations which are due 10 days from entry of this order.

ENTERED this the 30th day of July, 2010.


Richard Baumgartner
Criminal Court Judge, Div. I

¹This lack of present information is explained in part through the Petitioner's motion with the Tennessee Supreme Court seeking additional time to supplement the petition with recent prison mental health records and other materials. Another reason cited for this lack of additional recent information is the Petitioner's indigency and the fact that he has not been provided with funds for any type of a recent mental health evaluation. The recent limited work done by Drs. Spica and Brown have been done at the personal expense of counsel and counsel has indicated that funds are needed in order for more information to be provided to the Court.