IN THE CRIMINAL COURT FOR KNOX COUNTY, DIVISION I

KNOXVILLE, TENNESSEE

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

ORDER ON ISSUE OF COMPETENCY TO BE EXECUTED

This matter came before the Court for hearing on the issue of the Petitioner Billy Ray Irick's Competency To Be Executed pursuant to the procedures set forth in Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999).

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). 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 (Powell, J. concurring). 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.

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, the United States Supreme Court expounded on its holding in Ford. See Panetti v.

Quarterman, 551 U.S. 930 (2007). 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.

Here, the petitioner presented the testimony of Psychiatrist Dr. Peter Brown and Licensed Clinical Social Worker Nina Lunn, along with various exhibits related to the Petitioner and his life-long history of mental issues. In his testimony and report, Dr. Peter Brown questioned the Petitioner's sanity throughout his life. Dr. Brown described the Petitioner as having the capacity of a child of approximately 7 to 9 years of age and stated that his mental impairments have existed continually from childhood to the present time.

On cross, Dr. Brown admitted that he had not had contact with the Petitioner since early 2010 when he had originally performed an evaluation on him and that when he performed the evaluation that he had not been looking at the question of competency to be executed. He admitted that because he had not been looking at that question in particular that he had not followed the testing procedure or questions suggested by literature for the issue of competency to be executed. He stated that it was his opinion that the evaluation he had performed provided him with sufficient information to formulate an opinion that the Petitioner was not competent to be executed.[1]

Nina Lunn testified to events from the Petitioner's childhood and stated that she had not seen him since 1967.

Dr. Bruce Seidner, a psychologist, testified for the State that he was asked to evaluate the Petitioner solely on the issue of competency to be executed. His report indicates that there is "extensive documentation and objective evaluations that Mr. Irick has long suffered major psychiatric illness and substance dependence." He testified that the Petitioner's prison records

[1]This court also granted funds for Brain Imaging Tests to be done on the Petitioner but counsel represented that these tests were not completed or provided to Dr. Brown.

do not indicate that he has had any significant contact with either medical or mental health services which he has been housed with the Department of Corrections for the last 2 decades. He testified that he had no opinion concerning Dr. Brown's evaluation or opinion.

He indicated that he had met with the Petitioner in a private room at the Knox County Detention Facility on the Saturday and Sunday before this hearing for a total of about 12 ½ hours and had done a general interview of him as well as some testing. He testified that the WAIS-IV test indicated that the Petitioner has a full scale I.Q. of 97 and that he was of average intelligence. Dr. Seidner indicated that the Petitioner had been very cooperative with the testing and that the results of the I.Q. test was consistent with the prior testing done by Dr. Brown. As a result, he stated in his report that "there is no obvious or systematic intellectual deficit which would question or, more importantly, impair his functional capacity relative to his adjudicative competence or competence to be executed."

Dr. Seidner also administered the MMPI-2 (Minnisota Multiphasic Personality Test- 2) to the Petitioner but indicated that the results of the tests were not useful in his assessment.

Dr. Seidner testified that he and the Petitioner discussed extensively his role in this litigation and the issues which were directly related to his competency to be executed. He described the Petitioner as cooperative and as having demonstrated a detailed understanding of his current legal status and situation. He described how the Petitioner in his own words described Dr. Seidner's role in these proceedings. He also indicated to Dr. Seidner that while he viewed this proceeding as a formality because of the lack of results from all of his legal efforts to be exonerated, he was "going to fight this to the end" which he described as what he believed would be his execution on December 7, 2010. He also testified that the Petitioner

understands that if he is executed that this will end his life.

Dr. Seidner testified that the Petitioner was able to understand the difference between this evaluation and evaluations done in the past such as those to determine his competency to stand trial. He stated that the Petitioner had been able to name the victim, identified her relationship to family, explained his relationship with her, and maintained his innocence of the crime. The Petitioner understood the crime for which he was convicted and the sentence he had received and which he continues to fight through the legal system. He described how the Petitioner had knowledge of the course of his litigation, the issues of what the Petitioner viewed as inconsistent outcomes and penalties, and the legal options that the Petitioner has had over the years and that he has now run out of options.

Dr. Seidner testified that the Petitioner indicted that he did not oppose the death penalty and that he in fact believed that "a life for a life" is justified. He stated rather that the Petitioner was critical of how the death penalty is applied. He described the Petitioner as having an entirely rationale appreciation and understanding of the death penalty.

In the final paragraph of his report, Dr. Seidner summarizes that

> At this point in time Mr. Irick continues to resist his execution and expresses confidence that his lawyers are doing everything they can to protect and defend him. But, he describes being realistic and is contemplating his choice of death by lethal injection or electrocution. He appears knowledgeable of the objective facts related to both methods and has full knowledge that this will likely be his last major life decision. He feels it is wrong but he fully appreciates, understands, and accepts that he will likely be put to death on the 7th of December 2010.

As previously stated, the Petitioner is presumed competent and bears the burden of overcoming this presumption by a preponderance of the evidence. After carefully considering all the evidence presented and the applicable standards, this Court finds that the Petitioner has failed to overcome the presumption of competency. In fact, this Court finds that the evidence presented more than sufficiently establishes that the Petitioner has the mental capacity to understand the fact of his impending execution and the reason for it. In addition, this Court finds that the record establishes that the Petitioner has a "rationale understanding" of these facts and issues as discussed in Panetti and Thompson.

Accordingly, this Court finds that Petitioner Billy Ray Irick is competent to be executed.

ENTERED this the 20 day of August, 2010.

Richard Baumgartner
Criminal Court Judge, Div. I