

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

Robert Glen Coe v. State of Tennessee

No. M1999-01313-SC-DPE-PD

FILED

April 3, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

DISSENT

I would grant the stay of execution to permit mental health professionals access to the defendant. The majority, having established in Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999), the protocol for making a threshold showing of incompetence, would deprive the defendant of the means of making it by effectively adding an extra layer. The defendant's counsel seeks merely to adduce evidence of incompetence by the method the majority ordained in Van Tran -- an affidavit of a mental health professional showing a substantial change in the prisoner's mental health since the previous determination of competence sufficient to raise a substantial question about the prisoner's competence to be executed. The majority concludes that the affidavit offered by defense counsel in support of the present motion does not, under the standard adopted in Van Tran, make the substantial showing required by Van Tran. While this conclusion is correct, it is completely irrelevant to the disposition of the present motion. By the present motion, counsel is not asserting a subsequent Ford claim. Counsel is simply attempting to obtain the opportunity to make the showing required by Van Tran. By denying the defendant's request, the majority is both precluding

the defendant from asserting this Eighth Amendment right and denying the defendant access to the courts as is guaranteed by Article I, Section 17 of the Tennessee Constitution.

ADOLPHO A. BIRCH, JR., Justice