

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

ROBERT GLEN COE,

Petitioner,

v.

RICKY BELL, Warden,

Respondent.

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Case No. 3:00-0239
Judge Tranger

MEMORANDUM and ORDER

Petitioner Robert Glen Coe has filed a Motion to Alter or Amend (Docket No. 41) this Court's Memorandum and Order denying Petitioner's Petition for Writ of Habeas Corpus (Docket Nos. 36-37). In addition, Petitioner has filed a Motion for Stay of Execution pending this court's disposition of Petitioner's Motion to Alter or Amend (Docket No. 44). Both motions will be denied.

DISCUSSION

Petitioner has raised numerous objections to this Court's Memorandum opinion and Order denying him habeas relief. The court finds that Petitioner's objections do not warrant altering or amending the court's previous ruling.

As to Petitioner's first objection, this court did not take Petitioner's assertion that the "issue of competency was a mixed question of law and fact" to mean that Petitioner conceded that the AEDPA applied to this case. Regardless of Petitioner's position on the applicability of the AEDPA, this court found that the AEDPA does apply to this petition, which was filed after the effective date of the AEDPA. Furthermore, this court determined that the state trial courts

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resolved the issue properly before it — whether Petitioner is competent to be executed.

As to Petitioner's second objection that, if the AEDPA does apply to his second petition, the "contrary to" standard of 28 U.S.C. §2254(d)(1) would be applicable, the court finds this objection without merit. The Memorandum opinion contains this court's analysis of the appropriate legal precedent, and Petitioner's objections do not persuade the court that its reasoning is in error. Insofar as Petitioner is arguing that he was entitled to relief because the state courts did not apply the correct legal standard of competency to be executed under *Ford*, this court has ruled that the standard used by the state courts was reasonable and did not violate due process.

Petitioner next complains that the court made "inaccurate factual" assertions which misapprehend the facts" concerning Dr. Kenner's testimony. (Docket No. 41 at 2) Basically, Petitioner reargues the validity of Dr. Kenner's prediction that Coe is not competent to be executed because he will "disassociate" as the execution gets closer to a reality. The trial court, and the Tennessee Supreme Court reviewing the evidence *de novo*, either rejected Dr. Kenner's conclusion or did not find it controlling in the face of the other evidence.

This court reviewed the evidence and found the determination made by the state courts that Coe is competent to be executed not "so offensive to existing precedent, so devoid of record support, or so arbitrary, as to indicate that it is outside the universe of plausible, credible outcomes." *Never v. Kilinger*, 109 F.3d 352, 362 (6th Cir. 1999). Even if this court's observations about Dr. Kenner's predictions concerning Mr. Coe are inaccurate, they cannot be a basis for altering or amending the decision reached.

Petitioner next objects that this court "incorrectly stated that Robert Coe's counsel during

the state court proceedings did nothing to try to control Robert Coe during his outburst in the state court proceedings." (Docket No. 41 at 4) The observation complained of, made in a footnote and based upon the incomplete videotapes submitted, was not intended to intimate that Coe's behavior was contrived by his counsel. In any event, this observation played no role in the court's decision and cannot be a ground for altering its ruling.

Petitioner next objects to this court's conclusion that the petitioner's due process rights were not violated by the disclosure of the expert reports. As stated in this court's previous ruling, the trial court properly sought to receive all evidence relevant to the determination of the petitioner's competency to be executed. (Docket No. 36 at 27-28) Indeed, in Van Tran, the Tennessee Supreme Court clearly held that "the prisoner and the State should freely disclose to each other all information relating to the prisoner's competency as this proceeding may be, in a very real sense, the last avenue of redress available to an inmate sentenced to death." Van Tran, 6 S.W.3d at 270 n.14. The court finds this objection to be without merit.

Finally, the petitioner argues that this court should have granted his request for a hearing and discovery on his claim that Judge John P. Colton, Jr. had been subjected to death threats. This argument was part of Petitioner's assertion that Judge Colton was not an "impartial arbiter."

This court ruled that the records clearly reflected that Judge Colton conducted the hearing in an impartial manner that did not deprive Petitioner of due process and that his finding that Coe is competent to be executed was not "so offensive to existing precedent, so devoid of record support, or so arbitrary, as to indicate that it is outside the universe of plausible, credible outcomes." Nevers, 169 F.3d at 362. That judgment was based upon this court's own review of the evidence at the hearing and would not be altered, even if Judge Colton had received death

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threats.

Moreover, and more importantly, the Tennessee Supreme Court reviewed the trial court proceedings *de novo* and found that "the evidence fully supports . . . the trial court's finding that the appellant is presently competent to be executed." Coe v. State, 2000 WL 246425, at *25 (Tenn. Mar. 6, 2000). The petitioner has not alleged that the Tennessee Supreme Court received death threats, yet based upon the same evidence Judge Colton heard, that court made its own independent judgment that Coe is competent to be executed.

This claim is without merit.

In conclusion, the court finds that Petitioner has not presented any basis for amending or altering the March 29, 2000 Memorandum opinion and Order. Thus, Petitioner's Motion to Alter or Amend (Docket No. 41) is DENIED and Petitioner's Motion for Stay (Docket No. 44) is DENIED.

It is so Ordered.

Entered this 31st day of March, 2000.


ALITA A. TRAUGER
United States District Judge