IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION III

PAUL DENNIS REID, JR.	)	
	)	
	)	
	)	**No. 97-C-1834**
vs.	)	**(Captain D's)**
	)	**(Capital Case)**
	)	**(Post-Conviction)**
	)	
STATE OF TENNESSEE	)	

ORDER

I. Introduction

This matter is before the Court pursuant to Tennessee Supreme Court Rule 28, Section 11 following petitioner's pro se requests to withdraw his post-conviction petition in the above-styled case. Following a preliminary inquiry in December 2006, as directed by Rule 28, Section 11(A), the Court determined that a "genuine issue" warranting further evaluation existed as to petitioner's present competency to withdraw his petition.[1] Upon such a determination, and again in accordance with Rule 28, the Court appointed two mental health experts to evaluate petitioner for a Section 11(A) competency hearing.[2] The Court conducted a competency hearing with evidence presented on July 31, 2007 and September 4, 2007 and concluding on September 5, 2007. Having reviewed the extensive

[1] See Order dated December 14, 2006.

[2] See Order dated January 26, 2007.

records in this case and having heard the testimony and argument of counsel, the Court finds that the petitioner's request to withdraw his post-conviction petition is denied.

II. Background

Due to the extensive nature of petitioner's proceedings, the Court will first give a brief general summary of the history of petitioner's case in an attempt to bring the present matters into context. Next, the Court will summarize the relevant proceedings which led up to the Tennessee Supreme Court Rule 28, Section 11 hearing.

A. General Procedural Background[3]

Petitioner was indicted on two counts of first degree murder relating to the deaths of two Captain D's employees in Nashville, Tennessee, which occurred on February 16, 1997. Following a jury trial, the defendant was convicted on both counts of first degree murder and sentenced to death on both counts. These convictions and sentences were upheld on direct appeal by the Tennessee Supreme Court. See State v. Paul Dennis Reid, Jr., 91 S.W.3d 247 (Tenn. 2002).

The Tennessee Department of Correction initiated its deathwatch procedure leading

---

[3] Although not related factually to the instant case, the petitioner was also convicted on two counts of first degree murder in Clarksville, Montgomery County, Tennessee in the killings of two Baskin Robbins' employees. These convictions and sentences were upheld by our supreme court in State v. Paul Dennis Reid, Jr., 164 S.W.3d 286 (Tenn. 2005).

Petitioner was further convicted on three counts of first degree murder in Nashville, Tennessee for killings of three employees of McDonald's restaurant. The petitioner was sentenced to death on each count. These convictions and sentences were also confirmed by the Tennessee Supreme Court. See State v. Paul Dennis Reid, Jr., 213 S.W.3d 792 (Tenn. 2006). This Court also presided over the McDonald's case. Dr. Samuel Craddock and Dr. Rokeya Farooque testified regarding petitioner's competency (including references to the purported delusions) at a competency hearing in the McDonald's case.

up to the scheduled execution on April 29, 2003. Initially, petitioner refused to file a post-conviction petition and wrote a lengthy letter regarding, among other things, his desire not to proceed with post-conviction relief. However, in the eleventh hour on April 28, 2003, petitioner signed a pro se post-conviction petition halting the execution after the Sixth Circuit Court of Appeals granted a stay.

Once the petition was filed, the Court appointed the Post Conviction Defender's Office ("PCDO") to represent petitioner as required by statute. The post-conviction process began with the entry of a scheduling order. As the proceedings moved toward a hearing, petitioner filed a handwritten request to withdraw his post-conviction petition. The Court entered an Order discouraging petitioner's pro se request to withdraw. On May 13, 2004, the petitioner filed a written document requesting to proceed on his post-conviction petition.

Prior to the deadline for filing the amended petition, the PCDO informed the Court that in its belief, the petitioner was incompetent, and therefore, could not sign an amended post-conviction petition. Following a lengthy hearing, the Court developed a procedure to determine competency to proceed in a post-conviction proceeding. This procedure was affirmed, as modified, in Paul Dennis Reid, Jr. vs. State, 197 S.W.3d 694 (Tenn. 2006).

On October 6, 2006, the Court conducted a status conference to discuss future proceedings in light of the Reid opinion. The Court also addressed petitioner's two pro se filings in which he moved withdraw his "post-conviction appeal" in this case. By Order dated October 23, 2006, the Court determined the petitioner's request to withdraw should be addressed prior to any post-conviction proceedings. Accordingly, the Court instructed the parties to prepare for a Tennessee Supreme Court Rule 28, Section 11 inquiry into petitioner's desire and competency to withdraw his post-conviction petition.

B. Supreme Court Rule 28, Section 11 Proceedings

The following summary focuses on the proceedings directly related to Tennessee Supreme Court Rule 28, Section 11. On December 1, 2006, the Court, following the procedure established in Rule 28, Section 11, conducted a preliminary inquiry into petitioner's understanding of the post-conviction process and his understanding, if any, of the consequences of withdrawing his petition. At this preliminary inquiry, the Court heard directly from the petitioner and from Dr. George Woods, who had been retained by the PCDO in matters relating to petitioner's competency to proceed. Both the state and PCDO cross-examined the petitioner and Dr. Woods. Following the hearing, the Court, by Order dated December 14, 2006, determined that "a genuine issue" existed regarding the petitioner's present competency to proceed. In the Order, the Court instructed both petitioner and the state to submit lists (no later than January 11, 2007) of mental health professionals to evaluate petitioner and to determine his present competency.

Petitioner submitted the names of Dr. Xavier Amador and Dr. George Woods. The State submitted the names of Dr. Thomas Schacht and Dr. Margaret Robbins. The Court reviewed these submissions and conducted a status conference on January 17, 2007. The Court discussed the submissions and informed the parties they were not limited to two submission each. The Court further invited both to submit additional names if desired. On January 22, 2007, the State submitted the additional name of Dr. John R. Hutson II. Petitioner declined to submit additional names.

The Court selected Dr. George Woods and Dr. William Bernet to conduct the Rule 28 evaluations.[4] Even though Dr. Bernet was not named by either party, the Court concluded that Dr. Bernet's knowledge of the petitioner and petitioner's mental health background (having testified in the Clarksville, Montgomery County case) would not only expedite the matter but would provide unique insight into petitioner's present mental state, having knowledge of petitioner's past mental state. As noted, Dr. Woods had been evaluating petitioner in the post-conviction setting prior to petitioner's requests to withdraw his petition.

To ensure integrity in the competency evaluation process, the Court appointed an attorney ad litem, Ryan Caldwell, to facilitate the evaluations. This appointment served not only to provide a common conduit for the parties and experts but also insulated the Court from the information flow involved in this process. As instructed by the Court, the parties submitted a master list of documents or other records to be considered by the experts.

Once the examinations were completed, the attorney ad litem informed the Court that the reports had been submitted. The Court scheduled a competency hearing for July 31, 2007, continuing into August 1, 2007.

On July 31, 2007, the Court began the competency hearing. As discussed elsewhere in this Order, Dr. Woods informed the Court that he could not attend due to a family illness. The record contains a summary of the inquiry into Dr. Woods' absence and the Court's attempt to either connect Dr. Woods via teleconference or send him a DVD of

---

[4] See Order dated January 26, 2007 for the appointment of these two experts and attorney ad litem, Ryan Caldwell. The Order also specifically set out the competency standard to be considered by the experts and the process for submissions by counsel of the materials each sought to have reviewed by the experts.

the proceedings in his absence. The Court heard the testimony of Dr. William Bernet on July 31,2007. Due to Dr. Woods' absence, the hearing continued on September 4, 2007.

At the September 4, 2007 continuation of the hearing, the Court heard the testimony of Dr. George Woods. The following day, the Court also heard from Stephen Cantrell, a Department of Correction ("TDOC") unit manager, Dr. Jerry Perlman, of Mental Health Management ("MHM")/TDOC, Dr. Renee Glenn, of MHM, Gail Mines, a TDOC employee, Mike Slaughter, TDOC employee, and Dr. William Bernet (recalled). Petitoner submitted, in writing, a compilation of other testimony for consideration by the Court.

III. COMPETENCY HEARING[5]

As noted above, the Rule 28 competency hearing was held on July 31, 2007 and continued on September 4 through September 5, 2007.

A. July 31, 2007 Proceedings

Dr. William Bernet[6]

Dr. William Bernet, a forensic psychiatrist with Vanderbilt University Medical Center in Nashville, Tennessee, testified that he evaluated the petitioner in accordance with the Court's order appointing him. Dr. Bernet outlined the materials he relied upon in his evaluation and stated that he had interviewed the petitioner on February 13 and February

---

[5] At the beginning of each portion of the Rule 28, Section 11 proceedings, the Court asked petitioner if he persisted in his request to withdraw his post-conviction petition. On each occasion, the petitioner indicated he maintained his desire to withdraw.

[6] The curriculum vitae of Dr. William Bernet was made an exhibit in this hearing and will not be recited in this Order.

27, 2007, at Riverbend Maximum Security Prison in Nashville [hereinafter "Riverbend"].[7] These interviews totaled approximately four hours.

Dr. Bernet recalled having evaluated the petitioner in preparation for the Clarksville, Montgomery County case involving the killings of two employees of Baskin Robbins. Dr. Bernet said this history gave him the ability to see how petitioner had changed over the years, if at all, indicating the "long term view" was important. Dr. Bernet explained that he was called by the prosecution in the Clarksville case to conduct an evaluation and diagnose petitioner's mental condition. Dr. Bernet said at that time (1999) petitioner had a history of delusions with a one-time diagnosis of delusional disorder, which fluctuated as to the severity. He said other diagnoses from other mental health professionals at the time included, but were not limited to, bi-polar disorder, manic depressive, and antisocial personality disorder. In fact, he testified that twelve mental health professionals had found petitioner actively psychotic while sixteen had concluded he was not psychotic at all.

Dr. Bernet testified that he conducted an examination of petitioner in September 1999 to determine his competency to stand trial. During the evaluation, he said petitioner told him about the delusions and confided that he had made up all the delusions. According to Dr. Bernet, petitioner told him he had made up illnesses in the past while in Texas in an attempt to avoid prosecution for charged offenses there. During the February 2007 interviews, petitioner told Dr. Bernet that the delusions are now real. Petitioner detailed to Dr. Bernet his purported delusion that government surveillance was ongoing.

Dr. Bernet indicated petitioner had a history of making things up or fabricating. He

---

[7] As the record reflects, Dr. Bernet testified that he had reviewed the existing MRI and PET scans (1992) of petitioner's brain and had email contact with Dr. Robert Kessler, who had interpreted the scans.

noted that petitioner had no cognizable mental problems when he was not in trouble criminally. However, the delusions resurfaced when new charges surfaced. Dr. Bernet said petitioner told these stories to protect himself from criminal charges, including homicide charges in the instant case. He added that there are moments when a person gets so wrapped up in their delusion that they tend to believe it.

Dr. Bernet admitted that he initially thought petitioner suffered from delusional disorder back in 1999. However, he retreated from this earlier position and concluded petitioner never suffered from such a disorder. The additional information now available attributed to Dr. Bernet's change in position.

When asked about the Rule 28 competency issue, Dr. Bernet said he had reviewed the standard of competency set out in Rule 28, Section 11 (as quoted in the Court's order from Rule 28 and also known as the Rees v. Peyton standard). He said he specifically asked petitioner questions to assess petitioner's competency under that standard.

Dr. Bernet said petitioner had a long list of reasons why he wanted to withdraw his petition, describing the reasons as coherent. As an example, petitioner told Dr. Bernet he did not like Brushy Mountain Correctional Complex [hereinafter "Brushy Mountain"] where he is presently housed. Petitioner explained to Dr. Bernet the classification system at Riverbend and the opportunity to advance to a new level with more privileges. However, he told Dr. Bernet that at Brushy Mountain he was placed in twenty-four hour lock down with only one hour out of his cell. Dr. Bernet said petitioner indicated he "might" change his mind about withdrawing his petition if the living conditions could be improved. Petitioner also told Dr. Bernet that he is willing to accept what three juries found.

Dr. Bernet explained that petitioner did not have significant impaired memory. He

does, however, pretend to have "deja vu" experience or the belief he has experienced the same thing in the past. Dr. Bernet said petitioner likely picked it up from his twenty-six or more mental health interviews, evaluations or testing.

As to his diagnosis, Dr. Bernet again stated that petitioner is not suffering from delusional disorder. However, he testified that petitioner suffers from some type of mental disease or defect, i.e., depression (for which he has been taking antidepressants) and language disorder (likely resulting from the temporal lobe injury). Notwithstanding these findings, Dr. Bernet concluded that petitioner suffered from pseudologia fantastica, or pathological lying.

Dr. Bernet conceded that pathological lying is not a "diagnosis" under the DSM-IV but indicated it is an accepted term in the profession. He added that the term appears in the DSM-IV, including in the listed criteria for psychopathy. Dr. Bernet said he had only seen approximately ten (10) cases in his career. He contrasted pathological lying with malingering indicating these are not the same. Dr. Bernet explained that malingering is very specific while pathological lying may be used as a defense mechanism and might be used for one reason one day and another reason the next day.

Report of Dr. Bernet

In addition to his testimony, Dr. Bernet submitted a written report as required by Rule 28, Section 11. The overall evaluation included a brief psychological evaluation report prepared by Dr. James S. Walker of Vanderbilt University Medical Center. Dr. Walker performed certain psychological testing as described. The report addressed procedures for the evaluation, interview information, and the test results.

Dr. Bernet discussed briefly the materials he reviewed in preparation for this examination of petitioner. As noted, the attorney ad litem prepared a master list of documents so that both experts would have access to the same materials.

Dr. Bernet interviewed petitioner on February 13 and February 27, 2007 at Riverbend Maximum Security Institution in Nashville, Tennessee. Each interview lasted approximately two hours and both were video and audio recorded. However, the audio portion of the latter part of the second interview did not record.

Initially, Dr. Bernet summarized his previous evaluations of petitioner conducted in 1999 in preparation for petitioner's trial in Clarksville, Tennessee for homicides that had occurred at Baskin-Robbins. In preparation for the trial (penalty phase), Dr. Bernet reviewed a large number of documents and records as cited in the report. In 1999, Dr. Bernet concluded that petitioner suffered from a condition of delusional disorder, persecutory type. At that time, Dr. Bernet found that petitioner's delusions were confined to petitioner's notion that he was under government surveillance and had been for years. Dr. Bernet said the intensity of petitioner's belief in the delusions waxed and waned over the years. Dr. Bernet also noted in the 1999 report that petitioner was probably born with cerebral dysfunction which was possibly aggravated by head injuries suffered in a minibike accident.

According to Dr. Bernet's 1999 report, petitioner was thought by some to suffer from schizophrenia probably due to his bizarre behavior and report of auditory and visual hallucinations and bizarre beliefs. However, petitioner reported that he had actively fabricated some of his previous symptoms, especially the symptoms which served as the basis for the schizophrenia diagnosis. Even though Dr. Bernet believed at the time (1999)

that petitioner suffered from delusional disorder, Dr. Bernet did not believe petitioner was schizophrenic.

In September 1999, Dr. Bernet conducted a second evaluation of petitioner. The focus of this evaluation was petitioner's competence to stand trial in the Baskin-Robbins case. Dr. Bernet said at that time he reviewed the reports of Dr. Pamela Auble and Xavier F. Amador, Ph.D. Following the evaluation, Dr. Bernet opined that petitioner was competent to stand trial. He added that petitioner suffered from antisocial personality disorder and demonstrated a pattern of malingering.

Reviewing his notes from the September 1999 interview, Dr. Bernet recalled that he asked petitioner about the delusions of government surveillance. Petitioner explained that he had been arrested in 1982 and by 1984 two juries had found him incompetent. In April 1984, petitioner pled guilty but felt the conviction was invalid. Once released from prison, petitioner wanted to draw attention to himself. The "roots of the story" originated at some time in 1986 when he was in prison. He later said he may have come up with the idea from a movie in which Russia was about the launch missiles at the United States. Petitioner did not believe his letters to then Texas Governor Ann Richards had anything to do with letters his father had been writing to President Clinton and others.

Petitioner told Dr. Bernet in 1999 that he continued to talk about the government surveillance because he could not separate fantasy and reality having told it so many times. Petitioner insisted he knew for a fact at that time that he had never been under government surveillance. He added that he went into malingering whenever he was apprehended.

Coming back to the present examination, Dr. Bernet summarized the materials he had reviewed in conducting petitioner's examination. In addition, he summarized the

reports of Xavier F. Amador, Ph.D., Pamela Auble, Ph.D. Keith A. Caruso, M.D., Rokeya Farooque, M.D., Samuel N. Craddock, Ph.D., Rebecca Smith (Farooque, Craddock and Smith of the Middle Tennessee Mental Health Institute), Richard T. Hoos, M.D., Robert M. Kessler, M.S., James N. Kyne, Ph.D., Daniel A. Martell, Ph.D., Cynthia Turner-Graham, M.D., and George Woods, M.D.

Dr. Bernet said petitioner was alert and oriented when he conducted the mental status examination in February 2007 at Riverbend. However, he noted that petitioner claimed he had met with Dr. Woods, Dr. Walker and Ms. Dezube on certain recent occasions even though they had not seen him. Bernet said he took these statements to be examples of lying rather than a failure of petitioner's memory. Petitioner related to Dr. Bernet the same unusual history relating to government surveillance and gave Dr. Bernet his reasons for wanting to withdraw his post-conviction appeals.

February 13, 2007 Interview

Specifically during the February 13, 2007 interview, Dr. Bernet said petitioner understood the purpose of the evaluation, i.e., to assess his competency to waive his right to post-conviction appeals of murder convictions in the Captain D's case. He also knew the evaluation resulted when he notified the court that he wanted to discontinue the appeals. Petitioner explained that his direct appeals had run their course and that he was still found guilty and sentenced to death. Once the case entered the post-conviction phase, he was ready to withdraw his appeals. Petitioner understood the purpose of the present evaluation was to determine whether he was competent to "make such a rash decision."

Petitioner explained that he had previously met with Dr. Bernet and Walker in the

room at Riverbend but Dr. Bernet said these assertions were not correct. Dr. Bernet asked petitioner to bring him up to date since the 1999 trial. Petitioner discussed his initial housing at Riverbend on Death Row and his later transfer to Brushy Mountain, which transfer, according to petitioner, was with no proper reasoning behind it. He explained that he was a death row inmate on paper but could not take advantage of the death row inmate program at Brushy Mountain as he could at Riverbend. Petitioner explained the incentive program in great detail. He said without the benefits of the program, he could not earn his way to "A" level to have more exercise time. At Brushy Mountain, he is permitted one hour out of his cell per day. Petitioner said this was the basis of his desire to drop his appeals because he was being treated unfairly.

Dr. Bernet asked petitioner to summarize the current legal status of his murder convictions. Petitioner told Dr. Bernet he had completed the direct appeals process and now wants to drop his appeals in post-conviction. He explained that the McDonalds case (a separate homicide case in Davidson County) had also completed the direct appeals process and that an execution date was set in that case. Petitioner said an execution date was set in the Baskin-Robbins case and he was eventually moved to death watch. Because he thought that execution was going to take place, he had no reason to push the Captain D's case. When the Baskin-Robbins execution was stayed, petitioner moved back to his pursuit to withdraw his post-conviction appeals in the Captain D's case. He added that the Baskin-Robbins case was now at the federal level.

When asked why other people were concerned about his waiver of appeals, petitioner related a history of involvement with psychiatric facilities. He passed part of the blame to an attorney who had represented him in Texas in 1978. His then-attorney

instructed him how to malinger mental illness. Petitioner gave specific examples of how the attorney told him to respond to questions so that he could convince mental health professionals he was not mentally stable. Those charges were dismissed. He again tried to malinger mental illness when arrested again in 1982. He repeatedly used his malingering to escape prosecution.

Petitioner gave an example when he was transferred to a mental health unit and put on lithium. He explained that he would go to the pill window to receive his lithium but would save it in little match boxes. When his monthly blood test was to be performed, he would take the lithium all at one time so as to skew the results.

When asked about his motivation for pretending to have mental illness, petitioner explained that after his 1984 conviction he wanted to file for habeas corpus relief in which he would allege that he was coerced into pleading guilty. Once released from prison in 1990, he saw a psychiatrist, Dr. Patel. Petitioner said he did not pretend to have mental illness with Dr. Patel because he was then a free citizen and did not need to malinger.

Petitioner explained when he began writing letters to Governor Ann Richards and others in Texas. He said it started in 1985 when he was sent to the Ellis II unit. He said because of his physical appearance (well groomed, nice hair) he did not look like the other psychiatric patients. One of the inmates asked him why he was there recognizing that he did not look like the others. Petitioner said he facetiously responded that he was there doing undercover work for the FBI. The inmate reported this to a corrections officer. Petitioner said since that time his every physical movement and word has been recorded.

Petitioner made repeated references to scientific technology indicating this surveillance had been the motivation behind his letters to Governor Richards. He opined

that the more the investigators learned about petitioner's life the more intriguing he became as a surveillance subject. He said when he walked into a supermarket in Fort Worth (population 500,000), everyone in the store would know him. He denied that the letters written by his father were tied to his letter writing.

When reminded about past evaluations conducted by Dr. Auble, Dr. Amador, Dr. Martell, Dr. Caruso and Dr. Woods, petitioner indicated he had also been evaluated Dr. Bernet and Dr. Walker. He also recalled being evaluated by doctors at MTMHI. Petitioner said he did not pretend to have a mental illness during any of these evaluations. He said he has not malingered mental illness since 1985 because he was honest now.

Dr. Bernet asked petitioner about the time (in 1999) petitioner had told him he made up the idea about the surveillance. Petitioner acknowledged that he had previously stated it was a "figment of [his] mind." He said Mr. Engle [trial counsel] would use it against him in an attempt to get a life sentence. Petitioner said "we all know now I did not make it up." He explained that tapes were released to the public and that reporter Jennifer Krause at Channel 5 almost lost her job over it.

Petitioner could not state with certainty whether the government surveillance statements triggered the present mental examination ordered by Judge Blackburn. He said Judge Blackburn was aware of the tapes as two major companies were selling the tapes. Petitioner said the interview was being recorded by this surveillance. When asked if there was any other reason to question his competence, petitioner noted that it was lucrative for Dr. Woods to find him incompetent and to conduct more interviews. He suggested Dr. Woods did not advocate the death penalty.

When asked why his counsel feel he is not competent, petitioner explains that they

do not want him to be executed. He added that Dr. Martell questioned petitioner's competency because Dr. Martell has a sexual interest in petitioner. According to petitioner, Dr. Martell likes the same sex but also did not want to see petitioner die. Issues regarding homosexuality have surfaced at other times throughout petitioner's life and prison service.

Petitioner could not give a definitive response when asked if he would continue with his appeals if the tapes (of government surveillance) could be found. Petitioner said his present attorney and one of his trial attorneys had indicated to him the tapes could not be released because the investigation was ongoing. He added that attorney Gleason had talked to the scientific technology people, alleging that Washington, D.C. lawyers had been hired to negotiate to give petitioner 10 to 12 years at 80% so that he could be released on June 1, 2007. Petitioner became emotional briefly when talking about wanting 22 years of his life back. He later added that he would be afraid to believe that he could get out once the tapes are surrendered. Rather than continue to be tormented, petitioner said he would prefer to get it over and have the execution.

Reflecting on past incidents relating to his delusions, petitioner recalled an incident at Ellis when the inmates stabbed another inmate six or seven times. Petitioner said he saw large amounts of blood and saw the inmate toss the knife. However, the inmates returned later laughing and indicating the entire scene had been staged. Petitioner said he was told the stabbing was a mock demonstration for scientific technology to determine whether petitioner was a coward. He said when he was told about the McDonald's killings and the Captain D's killings he was unsure whether they were really killed or not.

Petitioner said he was told he would be freed on June 1 [2007] and that he would come into a windfall of money. Additionally, the scientific technology would stop.

February 27, 2007 Interview

Dr. Bernet conducted a second interview on February 27, 2007 at Riverbend. As noted in the report, this session was also recorded (video and audio) but the audio is lost during the latter part of this interview.

At the beginning of this second interview, Dr. Bernet asked, and was given permission by petitioner, to speak with Dr. Martell, Dr. Woods, and the other psychiatrists and psychologists who evaluated him. When asked what he remembered from the February 13, 2007 interview, petitioner recalled the meeting accurately. However, petitioner erroneously stated that he had been tested by Dr. Walker on a prior occasion and had met with Dr. Bernet and assistant, Ms. Dezube (Dr. Bernet's assistant, who was present to videotape the session).

When asked about the Structured Interview of Reported Symptoms (SIRS) administered by Dr. Walker, petitioner agreed that he had malingered mental illness in the past but denied that he was presently malingering. He then gave specific examples of when he had malingered mental illness. Dr. Bernet inquired as to why petitioner did not endorse items on the SIRS relating to people reading his mind or people talking about him behind his back. Petitioner said people reading his mind was not a problem for him because attorney Gleason had confirmed it had happened. He similarly added that it was no problem for him that people talked about him behind his back because everything had been recorded since 1985, and he was now living a law-abiding and Christian lifestyle.

Dr. Bernet asked petitioner whether he had ever made any attempts to locate the camera or other monitoring device. Petitioner responded that attorney Gleason told him they did not need a camera because they can monitor him on a computer monitor. When

asked the same question again, petitioner said he looked around the walls, the light fixtures and outside his room. Petitioner also talked about other places he had lived and indicated he had not searched for the technology in those locations either. He opined that the technology could have been similar to that shown in *The Six Million Dollar Man* television show.

When Dr. Bernet told petitioner he thought petitioner had a pattern of pretending or making up things, petitioner agreed again that he lied in the past but stopped the lying altogether when he was released from prison in 1990. Dr. Bernet gave petitioner a specific example of altering a driver's license and/or birth certificate. Petitioner said when he got his license, the clerk erroneously put 1967 instead of 1957. This error would have cost an additional ten dollars to correct so he left it as it was. When he applied for college at Volunteer State College he was asked to provide forms of identification. Because the date did not match from his driver's license to his birth certificate, he changed the dates to match.

Dr. Bernet reminded petitioner that he had told Dr. Bernet in September 1999 that there was no scientific technology watching him and that he had made it up. Petitioner agreed that he also told Dr. Craddock in 2000 the same. Petitioner became defensive when questioned about the timing of his father's letter writing to President Clinton and others. Petitioner said Dr. Bernet's credentials should be questioned for doubting petitioner's statements. Dr. Bernet went on to say he thought petitioner had a habit or compulsion to make wrong statements. Petitioner said "we don't see eye to eye. I am not intentionally misleading anyone."

Dr. Bernet told petitioner he wanted to discuss the advantages and disadvantages

of waiving his appeals. Petitioner responded about the plea agreement with the Washington, D.C. attorneys and his resulting June 1, 2007 release. Petitioner discussed his fiancé, April and their plans to wed in June 2007. He said April as well as his "four lovely sisters" would favor the appeals and attorney Gleason would be relieved. Petitioner added that if he is not released on June 1, 2007 it would not change his mind.

Dr. Bernet asked petitioner to assume there has been no surveillance by scientific technology. Based on that assumption, Dr. Bernet asked petitioner about possible reasons for not continuing his appeals. Petitioner responded as follows:

> It's not fun being incarcerated. Every day is against you. You could be pursuing life. The negatives outweigh the positives. You're confined to a restricted area, your room. You don't have a choice about the food menu. You don't have a choice about when to eat. You don't have any capacity for liberty. You're in a controlled environment. You are confined. You have no choice about the other individuals in your environment. Other inmates are violent. They curse. They spit on each other, which is the nastiest thing I can think of. The negativity is paramount to anything you can think of.

When further asked if there were reasons for waiving his appeals, petitioner responded as follows:

> I was falsely convicted of seven homicides and three robberies. I can't imagine spending the rest of my life incarcerated for something I didn't do. A person who is innocent is more likely to give up the appeals process, because it is impossible for them to recover their lives. A guilty person will talk and tell everyone how innocent they are.

Following these responses, petitioner again made a reference to the scientific technology and accused Connie Westfall and attorney Gleason of the PCDO of being actresses hired to look like attorneys. Nonetheless, petitioner said he would remain focused putting "one

foot in front of the other." Dr. Bernet suggested to petitioner that he could not do so if he is dead and described his stance as a "quitting attitude." Petitioner said he had execution dates in 2003, 2005, and 2006 and had no desire to defend himself.

Petitioner believed the state could execute an inmate who is not competent, if that person could answer a few fundamental questions including "who is the president," etc. Petitioner explained that three chemicals are used in executions.

Following the interviews, Dr. Bernet summarized his diagnosis and conclusions. Recognizing that the petitioner has had long and complicated psychiatric, legal, medical and social histories (having had psychiatric symptoms and diagnoses including serious psychotic disorders – paranoid schizophrenia, delusional disorder and bipolar disorder, antisocial personality disorder and malingering), Dr. Bernet indicates at present the most important consideration is "whether Mr. Reid actually has a serious mental disorder manifested by paranoid delusions or is pretending to have a serious mental disorder." Stating it another way, Dr. Bernet summarizes the crucial inquiry as follows: "EITHER Mr. Reid is a non-psychotic but prevaricating individual who sometimes pretends to be delusional OR he is a severely psychotic, delusional man who sometimes pretends to be totally free of delusions." He opines that if petitioner is truly delusional and out of touch with reality, he is unlikely to be mentally competent. If petitioner is lying, he is mentally competent.

Dr. Bernet recognizes in his report that several factors in petitioner's history and current presentation are consistent with delusional disorder (including government surveillance claims and attempts by the government to turn him into a homosexual). However, he also finds notes "significant aspects" of petitioner's behavior inconsistent with

true delusional disorder. He maintains that delusional individuals who believe they are victims of covert surveillance try to locate the cameras, microphones or other such equipment. Dr. Bernet notes no serious attempt on petitioner's behalf to try to do so. Further, Dr. Bernet said paranoid delusional individuals usually keep their thoughts to themselves, noting petitioner's open announcement of the surveillance including letters to Governor Ann Richards. In day-to-day relationships, petitioner does not act like a delusional individual in that he is outgoing, friendly and loves to talk about himself.

Dr. Bernet explains that bizarre delusions are usually accompanied by other serious psychiatric symptoms including disorganized speech and behavior and "negative symptoms," none of which are exhibited by petitioner. In this analysis, Dr. Bernet also includes petitioner's malingered mental illness while in Texas facing criminal prosecution. Finally, he notes petitioner's statements to various mental health professionals that he made up the delusions.

Dr. Bernet indicates the course of petitioner's "illness" is the most important factor in indicating petitioner has never had an actual psychotic illness. In support of his position, Dr. Bernet reviewed petitioner's history and notes the psychotic symptoms parallel petitioner's involvement in the criminal justice system. He maintains the history shows no psychotic symptoms until petitioner was arrested in 1978 at age 20 and eventually found not guilty by reason of insanity. Once he returned to society, petitioner had no notable psychotic symptoms at all. However, when petitioner was rearrested in 1982 for armed robberies, he had a recurrence of dramatic psychiatric symptoms. He again later used the mental illness claim in an attempt to overturn prior guilty pleas.

Dr. Bernet also considered a second explanation for the government surveillance

statements. According to Dr. Bernet, the statements are "simply a manifestation of antisocial personality disorder and psychopathy" and appear to be an example of a syndrome known as pathological lying. Under this consideration, Dr. Bernet indicates it is important to seriously consider the range of possibilities including actual delusions (delusional disorder caused by temporal lobe injury) and fake delusions (personality disorder and pathological lying). Dr. Bernet insists petitioner fulfilled the criteria (DSM-IV-TR) for antisocial personality disorder.

Dr. Bernet acknowledges that pathological lying (sometimes called pseudologia fantastica) is not a diagnosis but maintains it is a well known symptom or pattern of behavior. He cited to a book authored by Dr. William Healy as well as an important paper by Dr. Charles Dike[8] which he says lend credence to the phenomenon known as pathological lying. Dr. Bernet said pathological lying and malingering are not the same, as pathological lying is a broader concept than malingering. He added that you simply cannot argue petitioner is not malingering in an attempt to negate the pathological lying.

Next, Dr. Bernet highlighted various features of petitioner's psychiatric and legal histories and current condition he believes are consistent with pathological lying. This analysis includes petitioner's admission that he malingered mental illness when facing prosecution in Texas and his current need for the government surveillance statements as a psychological defense mechanism. As a defense mechanism, petitioner's belief that he has been under government surveillance for years protects him from the harsh reality that

---

[8] The citations to these resources, as well as other publications relied upon by Dr. Bernet, are included in a document styled "Bibliography Regarding Pathological Lying, Also Called Pseudologia Phantastica and Pseudologia Fantastica" prepared by Dr. Bernet, which was admitted as part of collective exhibit 21. This collective exhibit includes the text of the article by Dr. Dike as well as excerpts from other publications.

he killed seven men and women. Dr. Bernet states it would probably not be helpful to expect or force petitioner to give up the beliefs and simply permit him to retain this defense mechanism.

Dr. Bernet acknowledges the temporal lobe injury as has been documented in MRI and PET scans. However, he states there is no clear connection between the temporal lobe abnormalities and the pathological lying.

Near the end of his report, Dr. Bernet specifically addresses petitioner's competency under the Rule 28 standard. Dr. Bernet opines that petitioner's most significant mental disorder is antisocial personality disorder with the added feature of pathological lying. These individuals can become so engrossed in their lies that they begin to adopt them as their reality. Dr. Bernet said these individuals live in a fantasy that approaches the intensity of a delusion. However, Dr. Bernet believes petitioner understands his position.

Under the next Rees consideration, Dr. Bernet believes petitioner possesses the present capacity to make a rational choice with respect to continuing or abandoning further litigation. He cites various bullet points in support of his conclusion including petitioner's statements to other mental health professionals that he made up the idea of government surveillance; petitioner's insight into his lying; petitioner's motivation to fabricate the delusions; petitioner's ability to talk about the pros and cons of withdrawing his petition (noting all of the reasons were logical, coherent and were not based on the government surveillance statements); and petitioner's acceptance that three juries have found him guilty and sentenced him to death. Dr. Bernet also found petitioner was making his decision to withdraw the petition in a knowing, intelligent and voluntary manner citing the basis for each finding.

In conclusion, Dr. Bernet added that petitioner might want to continue his appeals if he had a more comfortable life in prison. Citing to petitioner's statements regarding the disadvantages of being at Brushy Mountain versus being housed on death row at Riverbend in Nashville, Dr. Bernet believes petitioner might want to continue the appeals if moved back to Riverbend where he can enter the incentive-based program.

B. September 4 & 5, 2007 Proceedings

Dr. George Woods[9]

On September 4, 2007, the Court continued with the competency hearing. Dr. George Woods, a forensic psychiatrist from California, testified that he was appointed by the Court to evaluate the petitioner's competency in light of the Rule 28 (or Rees v. Peyton) standard.

Dr. Woods recited the materials he relied upon and informed the Court of his diagnosis. Dr. Woods examined the petitioner for Rule 28 purposes on March 29, 2007 and again on April 26, 2007. According to Dr. Woods, petitioner suffers from psychosis secondary to a general medical condition (i.e., left temporal lobe damage) and cognitive disorder not otherwise specified. As a result, Dr. Woods opines that petitioner is not "fit" or competent under the Rees/Rule 28 standard.

When asked specifically by the Court about the elements of the Rees/Rule 28 competency standard, Dr. Woods indicated that petitioner does not have the capacity to appreciate his position. He said petitioner's capacity is impaired in that sometimes

---

[9] The curriculum vitae of Dr. George Woods was made an exhibit in this hearing and will not be recited in this Order.

petitioner says he understands and at other times does not understand. Dr. Woods stated that this confusion is a function of petitioner's delusion and that the capacity to appreciate his position is impaired. Petitioner's understanding is based on the precept of scientific technology, i.e., whether scientific technology will allow him to be executed or not.

Dr. Woods testified that petitioner's inability to understand his position or to make decisions is further exemplified in his lack of understanding as to why he is housed at Brushy Mountain. Dr. Woods said petitioner believes he is at Brushy Mountain because of his counsel's inactions, which Dr. Woods added is clearly not true. Further, Dr. Woods notes petitioner's alleged relationship with a female; however, Dr. Woods expressed his belief that this is fictitious. Dr. Woods said petitioner even believes the surveillance tapes and scientific technology affect petitioner's choices at the commissary.

Next, Dr. Woods gave a PowerPoint™ presentation to highlight what he believes is the basis of petitioner's present condition. Dr. Woods noted petitioner's right skull injury and left temporal lobe damage. Dr. Woods stepped down from the stand and approached Petitioner to physically point out what he perceived to be a left indentation on petitioner's head.

Dr. Woods rejected the proposition that the petitioner is malingering. He said petitioner's psychosis is less encapsulated then in the past resulting in petitioner's inability to keep it "under wraps." Petitioner's delusions control (e.g., scientific technology controls spelling, reading, etc.) and impair his abilities. Dr. Woods said petitioner believes scientific technology can put him under pain and make him uncomfortable in private parts of his body.

Dr. Woods spent a significant amount of time discrediting the testimony and findings

of Dr. Bernet. Dr. Woods said his own diagnosis of petitioner was mainstream and was supported by the DSM-IV. To the contrary, he opined that Dr. Bernet's conclusion that petitioner was a pathological liar was unsupported in the psychiatric community. In support of his stance, Dr. Woods cited to the absence of references in the DSM-IV relating to pathological lying.

Report of Dr. Woods

In addition to Dr. Woods' testimony, he submitted a written report dated May 29, 2007. Citing the Rees/Rule 28 standard, Dr. Woods first addressed whether petitioner suffered from a mental disease or defect. He concludes that petitioner suffers from a neurological defect, i.e., left anterior temporal lobe atrophy. Dr. Woods opined that the deterioration of the temporal lobe began early in petitioner's life and worsened following a minibike accident at age 13. Citing the report of Dr. Kessler, a neuro-radiologist at Vanderbilt University, who performed Magnetic Resonance Imaging (MRI) and Positron Emission Tomography (PET) scans in 1998, Dr. Woods noted Dr. Kessler's findings of such left temporal lobe atrophy.

Dr. Woods indicated that even Dr. Bernet acknowledged the impairment of the frontal and temporal lobe. However, he disagreed with Dr. Bernet's assessment that the impairment was likely a partial version of Gastaut-Geschwind syndrome. Dr. Woods maintained petitioner's deficits have been well-documented by more objective measures than those considerations/symptoms associated with Gastaut-Geschwind syndrome.

Dr. Woods disagreed with an earlier diagnosis of schizophrenia concluding that petitioner's impairment lends weight to petitioner instead suffering from a neurologically-

derived organic psychosis. Although he concedes that many diseases, including temporal lobe syndromes, can manifest with psychotic delusions similar to schizophrenia.

In Dr. Woods' opinion, petitioner is not faking mental illness. He indicates that, consistent with untreated psychosis, the psychometric testing has identified the erosion of petitioner's psychological defenses. He illuminates this erosion by citing to past testing and conclusions of Dr. Pamela Auble and Dr. Dan Martell. Both had examined petitioner in the past during the trial phases of petitioner's cases. Dr. Woods' report indicates that Dr. Auble found at the time that petitioner provided a defensive profile on the MMPI as well as on the Personality Assessment Inventory (PAI). Citing to Dr. Martell, Dr. Woods recites Dr. Martell's finding in 1993 of Delusional Disorder, as well as malingering. However, in 2006, Dr. Martell (in preparation for federal court proceedings in another matter), determined that the delusional disorder had exacerbated. Dr. Martell said in 2006 that petitioner could no longer contain his delusions, including grandiose (petitioner's false belief that he is a person of great importance and known by thousands) and persecutory delusions (petitioner's false belief that a secret government agency has been monitoring him since November 1985).

Citing Dr. Martell's 2006 findings, Dr. Woods quotes Dr. Martell's report in which Dr. Martell said petitioner suffered from essentially the same delusions as he had witnessed back in 1999; however, the delusions were no longer in "substantial remission." Dr. Martell said the delusional system had gotten significantly worse event to the point of encompassing past and present counsel.

Dr. Woods noted Dr. Bernet's concern that petitioner's psychosis did not present until 1978. Dr. Bernet reported that petitioner's psychotic symptoms were "almost

completely related to his involvement with the criminal justice system." Dr. Bernet found no evidence of psychotic symptoms until petitioner was arrested in 1978 at age 20. Dr. Woods disagreed maintaining that petitioner's increasingly disabling behavior is the characteristic pattern of psychotic deterioration.

Next, Dr. Woods discussed the February 2007 psychological evaluation performed by Dr. James Walker, who performed testing in conjunction with Dr. Bernet. Dr. Walker reached the conclusion that the results were well within normal range. However, Dr. Woods challenged these findings stating that it was unwise to make a determination based on a few answers on an instrument. Dr. Woods added that Dr. Walker's findings that petitioner had a high "F" scale (which looks at unusual responses) and on the Subtle-Obvious scale were not explained other than the mention of malingering. Dr. Woods added that an elevated "F" scale could mean "a cry for help" reflecting just how severe the symptoms are. Dr. Woods found no evidence of malingering on these instruments.

Dr. Woods challenged Dr. Bernet's finding or explanation of pathological lying. He argues that petitioner's lying speaks to the memory inaccuracies found in temporal lobe dysfunction. Dr. Woods insists pathological lying is not a diagnosis and is not widely accepted. Instead, Dr. Woods described such an explanation as highly controversial and poorly substantiated.

Dr. Woods further discussed Dr. Bernet's finding that petitioner was lying when petitioner said he had actually seen several of the mental health professionals previously when in fact he had not. Dr. Bernet attributed this inaccuracy to petitioner's lying rather than to a failure of memory resulting from temporal lobe damage. Dr. Woods said confabulation, defined as " a reasonably coherent but false account of some recent event

or experience," is a symptom of temporal lobe dysfunction.

As to this element of the Rees standard, Dr. Woods concluded as follows:

> It is my professional opinion, which I hold to a reasonable degree of medical certainty, that Mr. Reid has a mental defect, left temporal lobe dysfunction, with resultant paranoid ideation and delusions, circumstantiality of both speech and writing, hypergraphia with repetitive themes, and defects of several memory circuits, primarily declarative, with disruptions of contextual and sequential components of memory. Each of these neurologically-derived deficits also, at the time of my last examination, impeded Mr. Reid's capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation.

Dr. Woods discussed petitioner's mental defects and the effect on his capacity to appreciate his position and make a rational choice with respect to his options. He opines that none of the mental defects are more relevant than petitioner's delusional thinking. Dr. Woods insists petitioner's delusions of scientific technology (which now include present counsel) preclude petitioner from being able to work with his attorneys. The delusions of control impair his capacity to appreciate and rationally choose. Again citing Dr. Martell's findings (in the federal court proceeding), Dr. Woods agrees with Dr. Martell that petitioner's delusions are no longer "encapsulated." He said this inability to essentially rein in the delusions is consistent with untreated psychotic illness.

Dr. Woods said the delusions cause petitioner to believe that all the judges have video and audio tapes of his life since 1985 and that his "real" lawyers are "Washington lawyers" who are working for his release. Petitioner's capacity, Dr. Woods adds, is "filtered by an irrational lens" through which he views the participants as actors. Dr. Woods said petitioner is paranoid.

Dr. Woods describes his examinations of petitioner conducted at Riverbend. Early in the interviews Dr. Woods began to question petitioner about the delusions. According to Dr. Woods, petitioner told him that if scientific technology were not a part of his life, petitioner believed he could continue his appeals.

In summary, Dr. Woods concludes petitioner is delusional due to a frontal lobe injury, which substantially affects his capacity to appreciate his legal position and make a rational choice with respect to continuing or abandoning further litigation. He adds that petitioner believes scientific technology controls every aspect of his life. Dr. Woods insists petitioner's decision to withdraw his appeals is an impairment of judgment based on the "torture, hopelessness, and paranoid ideation of a psychotic delusion." The pervasive quality and content of the delusion substantially affect petitioner's ability to rationally understand his legal position and make rational choices.

Stephen Cantrell

Stephen Cantrell testified that he was employed by the Tennessee Department of Correction for 19 ½ years as Unit Manager. The last three years were spent at Brushy Mountain in Petros, Tennessee. Cantrell explained his rise to Unit Manager and the duties of the manager. He said he first met petitioner while serving as a counselor at Brushy Mountain. He described petitioner as "always pleasant" and indicated petitioner never gave the staff a problem. Cantrell said he observed petitioner sometimes exercising in his cell, reading or writing letters. He could only recall a single "light bulb" incident during which petitioner became angry.

Cantrell said he remembered another inmate had made accusations of scientific technology but that petitioner had never mentioned it. Cantrell said petitioner told him he was not going to pursue his appeals, but Petitioner acknowledged to Cantrell a newspaper article indicating his sister was filing an appeal. Cantrell said the two had laughed about technology, including petitioner's reference to "little green men." Cantrell said he inquired into it only to the extent that it pertained to the safety of his staff.

On cross-examination, Cantrell conceded that he had no degree in psychology or psychiatry. He further stated that while he had administered the MMPI (as proctor) he had never interpreted the results.

Dr. Jerry Perlman[10]

Dr. Jerry Perlman testified that he was employed by Mental Health Management ("MHM") as a psychologist and had done contract work for TDOC. Dr. Perlman said he met with petitioner over a period of years (noting the policy to see clients every 90 days) with each visit lasting approximately 5 to 15 minutes. He recalled seeing petitioner at Brushy Mountain.

Dr. Perlman described petitioner as very polite, cooperative, and articulate and noted no significant distress. According to Dr. Perlman, petitioner never talked about government technology or being under surveillance. Had he exhibited delusions, Dr. Perlman would have referred petitioner to the psychiatric staff. He noted that he had never made such observations with petitioner.

---

[10] The issue of privilege was raised prior to the testimony of this witness. Petitioner waived the privilege in open court.

On cross-examination, Dr. Perlman conceded that he never provided treatment for petitioner, never made a competency finding, and never gave a diagnosis. He also admitted that he had no contact with petitioner other than the minimal sessions previously described. Dr. Perlman also discussed a notation in the file indicating invalid results on an MMPI. He explained that the results can sometimes be invalid due to the person's attempt to try and score a certain way. Within this discussion, Perlman described the terms "fake good" and fake bad" as they relate to the testing.

Dr. Renee Glenn[11]

Dr. Renee Glenn testified that she was employed by MHM (who had a contract with TDOC) as a psychiatrist and now works at DeBerry at Riverbend. She explained that she first saw petitioner in 2006. During her meeting with him, she gathered history and conducted a mental status exam. Even though she was able to take some history, Dr. Glenn said she had no access to the majority of the medical files. She evaluated petitioner for treatment but not for competency.

In her findings, she noted petitioner as alert, oriented, engaging, and polite. She said he suffered from no hallucinations and was very pleasant. According to her notes, the petitioner indicated he had stopped appealing his convictions. Dr. Glenn's further questioning revealed that petitioner had stopped his appeals because it was a "waste of time" to appeal. Petitioner told her he would eventually be put to death and that appealing would just delay the inevitable.

---

[11] The issue of privilege was raised prior to the testimony of this witness. Petitioner waived the privilege in open court.

While he did not discuss scientific technology, petitioner mentioned that the Texas Department of Correction was monitoring him. Dr. Glenn witnessed no other evidence of delusions. Had she so observed, she would have treated petitioner and looked deeper into his history. Similarly, had petitioner been acting out, she would have looked at information regarding past conduct. At that time, Dr. Glenn did not prescribe medicine or additional care.

Dr. Glenn said she saw petitioner approximately two months later when the staff thought petitioner's mental status had changed due to his comments about feeling depressed and crying. Petitioner admitted to Dr. Glenn that he had those thoughts but again made no mention of delusions.

She noted an adjustment disorder and prescribed Elavil. She testified that had she thought he was delusional, she would not have prescribed the Elavil. The second visit was less than 30 minutes with no delusions exhibited at all.

On cross-examination, Dr. Glenn said she had not done a competency evaluation. During her contact assignment to Riverbend she was responsible for over 100 patients there and another 400 at another facility. She did not review any MRIs. She said her first visit was a "warden referral."

She recalled that petitioner reported to her a motorcycle accident in 1970 in which petitioner suffered a fracture and concussion and was in the hospital for 6 days.

Gail Mines

Gail Mines testified that she was a TDOC employee for 17 years and was assigned to Riverbend - Unit 1.[12] She explained that Unit 1 was maximum security and housed inmates for punitive segregation (behavior problems) or for protective custody. Petitioner was housed in Unit 1 when he was transferred from Brushy Mountain for court.

She recalled seeing petitioner in Unit 1 describing him as polite and never complaining. Petitioner never indicated to her that he needed mental health and never referenced military technology. Her last visit with petitioner was on August 8 or 9, 2007. On cross-examination, Ms. Mines said she spent less than 30 minutes with petitioner.

Mike Slaughter

Mike Slaughter testified he had been employed with TDOC since 1972, where he worked his way up to Unit Manager in Unit 1 and Unit 2 (death row). Slaughter said he never heard petitioner mention military surveillance. His file contained two requests made by petitioner – one relating to shoes and another to a photo taken during a search of petitioner's cell. Slaughter said petitioner used the request forms appropriately. On cross-examination, Slaughter said the inmates have no access to the internet but that they did pass items one to another.

When the Court inquired into the behavior level system on death row, Slaughter explained that the system was incentive driven. First, he noted the four pods – A, B, C and D. He described C pod as the entry level which covers the inmates first 18 months. In "C"

[12] Unit 2 is known as "Death Row."

pod, the inmate is locked in his cell for 23 hours with one hour for recreation/shower, etc. The "C" pod inmate is not entitled to a job. In 30 to 32 months an inmate can move to "B" pod. In B pod, the inmate can have contact visitation (those from designated list) and more telephone use but no job. Finally, the inmate can move to the top level or "A" pod. "A" pod inmates can hold a job if qualified and can receive additional recreation hours.

Slaughter said conduct such as behavioral problems, disciplinary infraction, attitude toward authority, etc. can influence a move to another level. He added that when petitioner returns to Riverbend from Brushy Mountain for court-related purposes, petitioner is placed in Unit 1 rather than Unit 2 and does not receive any of the amenities afforded those under the incentive-driven system.

Dr. William Bernet

Dr. William Bernet was recalled to again discuss his diagnosis of pseudologia fantastica in light of Dr. Woods' comments. Dr. Bernet said the concept is referred to on numerous occasions and the term is found in the textbook of psychiatry. He said the term is also found in the dictionary.

Dr. Bernet explained that pseudologia fantastica is observed in people with factitious disorder. He also cited an article in the *Journal of Child Psychiatry* (which had been peer reviewed) which discussed it.

Dr. Bernet said you must look at the long term course. In this case, he maintains his position that petitioner's conduct is more consistent with lying than delusions. He summarized the reasons he concluded petitioner can understand his position including: petitioner understands that dropping his appeals will result in the death penalty; petitioner

has persisted in his request to drop his appeals; petitioner can remove the delusions or set them aside to have a rational discussion; and petitioner discusses in a calm way his position.

Dr. Bernet said pathological liars can understand. Just as a person's mental state waxes and wanes so can pathological lying.

Dr. George Woods (re-called)

Dr. Woods was re-called to the stand to refute observations made by Dr. Perlman and what he termed as petitioner's invalid profile on a previous MMPI. Though he acknowledged he had not seen the profile, Dr. Woods disagreed with Dr. Perlman's assessment and opined that an elevated "F" scale did not necessarily invalidate the profile.

Following the hearing, petitioner and state submitted some agreed materials to be considered. Further, petitioner submitted additional reports, etc. for consideration by the Court.[13]

---

[13] During the hearing, petitioner noted several additional mental health witnesses (including Ruben Gur, PhD., Xavier Amador, PhD. and Robert Kessler, M.D.) who he planned to call at the hearing. The Court directed them to submit the reports in writing for consideration by the Court. Within this discussion, the Court learned during the proceedings that MRI scans taken in late 2006 had been given to petitioner's experts for review. These scans were apparently taken for use in petitioner's un-related Federal court proceedings. Apparently, the experts relied upon these new scans in reaching their respective opinions. The Court indicated that because these scans were known and not provided to all experts, they would not be submitted. Furthermore, to the extent the proposed experts relied upon these scans (not provided to all experts) such testimony would be given little weight in the final analysis. Notwithstanding this restriction, the Court has reviewed the materials submitted by petitioner.

IV. DISCUSSION

First, the Court acknowledges that Rule 28, Section 11 has had only scant development or interpretation in the courts. The rule was crafted by our supreme court after another death row inmate, Christa Pike, asked to withdraw her post-conviction petition.

In the instant case, this Court closely followed the mandates of Rule 28, Section 11. However, as with any relatively new or essentially untested procedure, practical application of such a rule many times unearths perceived "gaps" or "omissions" or illuminates additional considerations not specifically addressed in the rule. Therefore, even though the Court's aim is to adhere to the requisites of Rule 28, Section 11, the Court necessarily must address these additional considerations brought to light during implementation of this procedure.

A. Rule 28, Section 11(A) (*December 1, 2006 Preliminary Inquiry*)

When the petitioner filed his pro se requests to withdraw his post-conviction petition, the Court asked petitioner in open court whether it was his desire to persist in this withdrawal. Petitioner indicated that he indeed wanted to forego any further appeal in the instant case. The Court informed the parties that a Rule 28, Section 11(A) inquiry would be conducted to determine whether petitioner was knowingly, intelligently and voluntarily waiving his post-conviction review and whether petitioner was competent to do so.

On December 1, 2006, the Court conducted the initial inquiry into the four (4) considerations set out in Section 11(A) under the heading "Determination of Trial Court."

Specifically, Rule 28, Section 11(A) states as follows:

> Before allowing a petitioner under sentence of death to withdraw the petitioner's post-conviction petitioner, the trial court shall address the petitioner personally in open court and ascertain that the petitioner
> (1) does not desire to proceed with any post-conviction proceedings; (2) understands the significance and consequences of withdrawing the post-conviction petition; and (3) is knowingly, intelligently, and voluntarily, without coercion, withdrawing the petition; and (4) is competent to decide whether to withdraw the post-conviction petition.

Tenn. Sup. Ct. R. 28, § 11(A).

The record contains the colloquy between the Court and petitioner (and subsequent examination by counsel) as well as the testimony of Dr. George Woods, who had been earlier retained by PCDO as an expert in the ongoing (pre-withdrawal) post-conviction proceedings. The Court specifically inquired into petitioner's desire to proceed with his post-conviction petition.

Petitioner remained unequivocal in his desire to withdraw his post-conviction petition. Next, the Court questioned petitioner about the significance and consequences of withdrawing the post-conviction petition. The petitioner's responses to the Court supported a finding that petitioner knew the withdrawal would end his appeals and result in his execution. Under the third requirement of Rule 28, Section 11(A), the trial court must determine whether the withdrawal is being made knowingly, intelligently and voluntarily. While petitioner understood the status of his case (as well as the status of his other cases), he expressed his dissatisfaction with the conditions of confinement as Brushy Mountain. He informed the Court that the Brushy Mountain institution lacks the incentive-driven

program established at Riverbend Maximum Security Prison.

At Brushy Mountain, petitioner explained that he was locked down 23 hours per day with only one hour of recreation time. During examination by the Court, the petitioner seemed to understand the purpose of a post-conviction petition and the process of withdrawing his request for relief. However, examination by counsel caused the Court concern when petitioner began describing his thoughts relating to government surveillance. The petitioner gave details as to the surveillance, including how long the surveillance had been going on and the effects of the surveillance on him. When asked by the Court whether petitioner would change his mind about withdrawing his petition if the "technology" could be stopped, petitioner hesitated and indicated such termination "might" cause him to change his mind.

The Court also heard from Dr. George Woods who indicated petitioner suffered from a mental disease or defect that essentially prevented petitioner from knowingly or intelligently withdrawing his appeal and that rendered him incompetent to withdraw his appeals. Following this preliminary inquiry, The Court issued an Order detailing the Court's preliminary finding that a "genuine issue" existed as to petitioner's competency[14] as required by the rule. This Order is part of the record (for the purposes of the entire Rule 28, Section 11 proceedings) and is incorporated by reference into this Order as if fully set out herein.

---

[14] See Order dated December 14, 2006.

B. Rule 28, Section 11(B) (Competency Determination)[15]

1. Evaluation Procedure

Supreme Court Rule 28, Section 11(B) sets out the considerations to be employed in determining petitioner's competency to withdraw a post-conviction petition. Of course these provisions are triggered when the Court conducts the hearing contemplated by Section 11(A) and addresses the fourth prong [Section 11(A)(4)] or fourth consideration mandated by Section A (competency prong).

Initially, section B indicates "[a] petitioner is presumed competent to withdraw a post-conviction petition and waive post-conviction relief." Tenn. Sup. Ct. R. 28, § 11(B)(2). However, if during the Section 11(A) hearing [here conducted on December 1, 2006], a "genuine issue" arises as to petitioner's competency, the Court must follow the procedure set out in Section B. As discussed above, this Court determined in its preliminary finding that a "genuine issue" exists as to petitioner's present competency to withdraw his post-conviction petitioner.

Next, Rule 28, section (B)(2) provides that:

> the trial court shall enter an order appointing at least one, but no more than two, mental health professionals from lists submitted by the State and counsel for the petitioner. The order shall direct that the petitioner be evaluated by the appointed mental health professionals to determine the

---

[15] The Court notes that Supreme Court Rule 28, Section 11 fails to mention who has the burden of proving competency and to what degree (e.g. clear and convincing, preponderance of the evidence, etc.). The PCDO argues no burden was intended due to this absence or in the alternative that the state should have the burden. The State argues the petitioner should have the burden of proof. The Pike case references burden of proof but merely indicates the burden would not shift to the State. For the reasons set out below, the Court finds it unnecessary to reach that issue. However, should the matter return to this Court for any reason or if further proceedings are necessary pursuant to Rule 28, the burden of proof issue should be resolved by our appellate courts.

> petitioner's competency and that the appointed mental health professionals file written evaluations with the trial court within ten days of the appointment unless good cause is shown for later filing. Upon filing, the trial court clerk shall forward a copy of the written evaluations to counsel for the petitioner and to the State.

Tenn. Sup. Ct. R. 28, § 11(B)(2). Here, the Court entered an Order[16] requiring counsel for petitioner and for the State to submit names of mental health professionals to conduct the mental evaluation of petitioner. As noted, the Court selected Dr. George Woods and Dr. William Bernet and appointed an attorney ad litem to facilitate the evaluations. Upon completion of the evaluations, both experts filed written reports with the Court.[17] These reports were provided to the parties and, with the parties knowledge and consent, eventually to the Court.

Once these reports are filed with the court clerk, Section B(3) provides that "the trial court shall hold a separate hearing on the record . . . to determine the petitioner's competency" if "a genuine issue existed regarding the petitioner's present competency after the filing of evaluations . . ." Tenn. Sup. Ct. R. 28, §11(B)(3). The Court conducted a bifurcated hearing beginning on July 31, 2007 and continuing on September 4 and 5, 2007.[18] Accordingly, the Court followed the strict mandates of Rule 28.

---

[16] See Order dated December 14, 2006.

[17] Tennessee Supreme Court Rule 28, Section 11(B)(2) provides that these reports are due to be filed with the court within ten (10) days of the appointment "unless good cause is shown for later filing." Tenn. Sup. Ct. R. 28, § 11(B)(2). Here, the Court recognized the voluminous record in this case and large number of pleadings, etc. submitted for consideration by the experts. Based on the nature of this specific case, the Court found good cause to extend the ten-day deadline.

[18] The record contains the Court's orders scheduling the matter for hearing on July 31, 2007 and August 1, 2007. However, on the eve of the hearing, Dr. Woods contacted the Court to advise that due to the illness of his mother-in-law, he would be unable to prepare or attend the scheduled hearing. The Court heard testimony regarding Dr. Woods' absence at the start of the July 31, 2007 proceedings. Proof began on July 31, 2007 with attempts made by the Court to provide teleconferencing of the hearing to Dr.

2. Competency Standard

Having conducted the hearing, the Court must now determine whether petitioner is competent to withdraw his post-conviction petition. Rule 28, Section 11(B)(1) provides the following standard for determining competency of a petitioner to withdraw a post-conviction petition:

> whether the petitioner possesses the present capacity to appreciate the petitioner's position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether the petitioner is suffering from a mental disease, disorder, or defect which may substantially affect the petitioner's capacity.

Tenn. Sup. Ct. R. 28, §11(B)(1). This standard was first enumerated by the federal courts in Rees v. Peyton, 384 U.S. 312 (1966). In Rumbaugh v. Procunier, 753 F.2d 395 (5th Cir. 1985)[19], the Fifth Circuit summarized the inquiry as follows:

> (1) Is the person suffering from a mental disease or defect? (2) If the person is suffering from a mental disease or defect, does that disease prevent him from understanding his legal position and the options available to him? (3) If the person is suffering from a mental disease or defect which does not prevent him from understanding his legal position and the options available to him, does that disease or defect, nevertheless, prevent him from making a rational choice among his options?
>
> If the answer to question (1) is no, the court need go no further, the person is competent. If both the first and second questions are answered in the affirmative, the person is incompetent and the third question need not be addressed. If the first question is answered yes and the second is answered no, the third

---

Woods or other assistance. Coordinating with Dr. Woods' schedule, the Court continued the hearing on September 4 and 5, 2007. The hearing concluded on September 5, 2007.

[19] Rumbaugh v. Procunier is cited by our appellate courts in the Christa Pike cases in relation to the Rees v. Peyton standard.

> question is determinative; if yes, the person is incompetent, if no, the person is competent.

Id. Because the Rumbaugh case was cited by our supreme court and its breakdown of the Rees elements is useful in the competency analysis, the Court will employ the Rumbaugh analysis in the instant case.

(a) Is Petitioner Suffering From A Mental Disease or Defect?

Under the first consideration, the Court must determine whether the petitioner is suffering from a mental disease, disorder or defect. Of the three prongs, this initial consideration is the least difficult to conclude in this case. Both Dr. Bernet and Dr. Woods acknowledge that petitioner suffers from a temporal lobe injury – a mental defect. Even though the experts disagree as to the origin of petitioner's injury (whether congenital or due to a later minibike accident), both recognize its existence. This agreement dispenses with the need for an in-depth analysis. Therefore, the Court finds this first prong is answered in the affirmative.

(b) If Petitioner is Suffering from a Mental Disease or Defect, Does That Disease or Defect Prevent Him from Understanding His Legal Position.

Having found in the affirmative on the first consideration, the Court must next consider whether this mental defect prevents petitioner from understanding his legal position. In this inquiry, the Court will review the petitioner's testimony at the December 1, 2006 hearing [Rule 28, Section 11(A) hearing] along with the testimony of Dr. Woods and

Dr. Bernet and other hearing evidence.

At the December 1, 2006 hearing, the Court questioned the petitioner about his desire to withdraw his post-conviction petition. During the colloquy, petitioner indicated he understood the precise case at issue, explaining that it was "the Captain D's case." Petitioner acknowledged that he had filed a post-conviction petition in this case. He recalled that the petitioner had been filed on the eve of his scheduled execution. Petitioner asked to elaborate and explained the specific events that occurred on the night of his execution. He remembered that he signed the petition after the Sixth Circuit Court of Appeals granted a stay of execution. Petitioner said that at that time he wanted to proceed with his post-conviction relief.

Petitioner first explained that he decided not to appeal because it had been three years since he filed his post-conviction petition and that his attorneys had not effectively represented him. However, the court inquired into petitioner's understanding of the effect of withdrawing his post-conviction petitioner. The following colloquy occurred:

THE COURT:	Okay, Well, that – it may be one thing to not like your attorneys, but what happens if you withdraw this? That's what I want to know is do you understand what happens when you withdraw this petition?
MR. REID:	The chances are greater that I possibly will be executed by lethal injection.

The Court inquired further into why petitioner suddenly wanted to withdraw his petition. Petitioner said he was not satisfied with his attorneys and was simply exhausted. He said he "made the conscious decision, ma'am, to withdraw my appeal." The Court went

on as follows:

THE COURT: Okay, Well, I'm trying to find out why you're doing that and if you really understand what's going to happen if – if you do it and the Court says you can do it.

MR. REID: Yes, Ma'am.

THE COURT: What's going to happen?

MR. REID: I believe I'll be – I'll receive an execution date. And possibly 120 days from now, if it were set today, I would be escorted to death watch seventy-two hours prior to an execution.

THE COURT: But if – I guess what I'm trying to understand is: If you originally wanted to fight this and you said to show your innocence, you would still do that if you had attorneys you could work with? Is that what you're trying to tell me?

MR. REID: No, ma'am. I'm exhausted working with the attorneys.

THE COURT: Okay. Any attorney?

MR. REID: Any attorney, yes, ma'am.

THE COURT: Okay. So its' not that you don't want to go forward with this, its just that you're tired of dealing with attorneys?

MR. REID: Yes, ma'am, correct.

THE COURT: Okay. So what would it take for you to continue on with your appeal process?

MR. REID: Well, I've pondered all the avenues, and I don't believe there's anything that could entertain me to continue forward.

THE COURT: Okay. Why not?

MR. REID: I'm just totally exhausted over this.

THE COURT: You're exhausted. I mean, do you want to die? I mean, that's the bottom line here.

MR. REID: Well, I'm a Christian, and I believe I'll go to heaven by my spiritual beliefs.

Petitioner goes on to speak about a prior pro se request to withdraw which he subsequently withdrew. Petitioner recalled the previous withdrawal request and explained his basis for withdrawing on that occasion.

THE COURT: And then you changed your mind and said you did [decided to pursue post-conviction relief]. What changed there that made you change your mind to then keep going with the post conviction?

MR. REID: I was informed that there would be a soon coming execution date on the Baskin-Robbins case, and I felt that I could just go ahead and wait and be patient for that execution date to arrive as opposed to trying to have the Captain D's case post-conviction appeal removed. And I felt that I had erred signing the appeal paper for the Captain D's case. And then I was trying to -- as you stated, ma'am, in 2004 I drafted several letters to you, lengthy letters, wishing to remove the Captain D's post-conviction appeal.

THE COURT: But then you changed your mind.

MR. REID: Yes, ma'am, I did change my mind. And I felt it would be wiser to go ahead and wait on the Baskin-Robbins conviction or execution date as opposed to petitioning the Court any further under the Captain D's. I felt the Court may see it frivolous, or they may believe that I'm not being serious or what have you. Much like we're conversing today.

Petitioner's understanding of his position is further exemplified in the following:

THE COURT: . . . If I were to say or you were to change your mind

about going forward with this, what happens? What's the next process we'll go through?

MR. REID: I believe to the best of my knowledge that the Tennessee Supreme Court will render a decision setting an execution date.

THE COURT: Okay. Well, isn't there a few steps we have to get to before we get there?

MR. REID: This court would have to make a determination if I'm competent to proceed forward, and you would have to enter a decision if I have the right to withdraw my post-conviction appeal.

The Court's questioning illustrates petitioner's knowledge of his present position. He is very clear on the status of his three homicide cases. As pointed out in the transcript portions cited above, petitioner knew the purpose of his post-conviction petition and the consequences of withdrawing it. The government surveillance alleged delusion was rarely mentioned by petitioner during the court's inquiry. Only during examination by the PCDO did petitioner delve into his lengthy testimony about the delusions. Once the delusion questioning began, petitioner spoke at length about government surveillance and its effects on him.

Dr. Bernet reached the conclusion that the petitioner suffers from antisocial personality disorder with the feature of pathological lying. Having interviewed the petitioner on two occasions in February 2007 for this Rule 28 competency determination, Dr. Bernet believes petitioner now understands his position clearly. In his report, Dr. Bernet recalled petitioner's understanding that three juries found him guilty and sentenced him to death. Petitioner told Dr. Bernet that he accepted their decisions and punishments. Because the case had been through the direct appeal process (which petitioner said was a mandatory

review), petitioner desired to stop the post-conviction appeals. Petitioner also discussed in depth his thoughts on prison life and his dissatisfaction with being housed at Brushy Mountain where he has no opportunity to earn privileges as he could at Riverbend.

On the other hand, Dr. Woods opines that petitioner has no concept of his current position. According to Dr. Woods, petitioner's mental disease or defect, resulting in whole or part from the frontal lobe injury, prevents petitioner from understanding the procedural posture or position at all. Dr. Woods concludes that with petitioner's particular disease or defect, petitioner can give responses he believes the listener wants to hear but does not really understand he is doing so.

In attempting to reconcile the diverging opinions, the Court recognizes the underlying purported pervasive government surveillance delusion. The delusion was referenced in the pretrial hearings and trial of this matter. It surfaced again during examination by counsel at the December 1, 2006 hearing.

However, the core inquiry under this element is whether petitioner understands his present position. The Court finds petitioner does have an understanding of his position. As the colloquy illustrates, petitioner knew the purpose of filing a post-conviction petition and further understood the consequences of withdrawing it. He said he would be executed but believes because he is a Christian that he will go to heaven. The petitioner gave great detail as to the execution process and his thought that he would choose to purposefully forego filing for post-conviction relief in the Baskin-Robbins case (and proceed with the imminent execution) so that the Captain D's case would become moot.

Almost every expert agrees that the mental status has diminished to some degree since the trial of this cause (during which petitioner was deemed competent). The Court

is not ignoring these factors. The Court does find disingenuous Dr. Woods' position that the petitioner has absolutely no understanding of his position or that the intelligent responses given by petitioner were a product of the disease or defect. Such a circular argument could never resolve itself and is not supported by the record. Dr. Woods testimony is not credible on this point.

For the purposes of this prong, the Court concludes that even though petitioner suffers from a mental defect, he nonetheless understands his position.

(c) If petitioner is suffering from a mental disease or defect which does not prevent him from understanding his legal position and the options available to him, does that disease or defect, nevertheless, prevent him from making a rational choice among his options?

This third and final prong of the Rees standard (as summarized in Rumbaugh) is without question the most difficult part of the present analysis. This consideration contemplates a petitioner who suffers from a mental disease or defect but understands his position; however, whose mental disorder and defect prevents him from making a rational choice among his options. In the instant case, this analysis is made more complex by the divergent diagnoses of antisocial personality disorder with the feature of pathological lying versus a delusional disorder.

This conundrum is summarized by Dr. Bernet in his report to the Court. Dr. Bernet surmised (after studying the lengthy history of petitioner's case and after interviewing petitioner on two occasions in February 2007) the following:

At present, the most important diagnostic consideration is

> whether Mr. Reid actually has a serious mental disorder manifested by paranoid delusions or is pretending to have a serious mental disorder. Or put another way, EITHER Mr. Reid is a nonpsychotic but prevaricating individual who sometimes pretends to be delusional OR he is a severely psychotic, delusional man who sometimes presents to be totally free of delusions. . . . if Mr. Reid truly is delusional and out of touch with reality, he is unlikely to be mentally competent. On the other hand, if he is pretending, lying, or malingering and is not psychotic, he is likely to be mentally competent.

To narrow the focus even further, the court must specifically determine here whether the petitioner's delusional system is fake or real, i.e. whether petitioner is lying about the delusions (as Dr. Bernet opines) or whether petitioner truly suffers from a delusional disorder (as maintained by Dr. Woods). Regardless of such a determination, the Court must further determine whether the delusional beliefs (whether the result of pathological lying or psychosis) affect petitioner's ability to make a rational choice as to his options at this post-conviction level. The following analysis illustrates the difficulty in making such a determination.

Initially, the Court notes that these claims of delusional thoughts or a delusional system are not new. These same "government surveillance" or "scientific technology" delusions now espoused by petitioner are the same delusional claims he made during the pretrial proceedings and trial of this case. Of course, petitioner had three homicide cases pending at or near the same time.

As Dr. Bernet testified, reviewing the present evaluations in light of the extensive history of this case results in a clearer picture of the petitioner's mental status. Therefore, for the purposes of establishing a backdrop for our current analysis, it is useful to review the nature of the delusional claims historically up through the present time.

As petitioner's cases proceeded to trial, the issue of competency to stand trial surfaced in the Baskin-Robbins and McDonald's cases in part due to the allegations of delusions of "scientific technology" and surveillance. This earlier record contained the testimony of various mental health professionals, who examined petitioner under the Dusky standard for competency to stand trial. Dr. Sam Craddock of Middle Tennessee Middle Health Institute ("MTMHI"), who examined petitioner for those purposes in the McDonald's case, testified at length about the delusional claims. Dr. Craddock also testified about the evidence of petitioner's malingering and the difficulty in determining when petitioner is being truthful or is lying. Dr. Rokeya Farooque of MTMHI noted similar findings but found little or no evidence of the delusional system in her evaluation. Without summarizing that past testimony, the Court simply cites to it as an illustration of the long history of these delusional claims and of the noted difficulty in determining petitioner's truthfulness relating to these delusional claims.

At the time of the McDonald's trial the experts concluded that the stated delusions, whether real or fake, did not affect petitioner's competency to stand trial under the Dusky standard. In fact, this Court again addressed that competency determination in its ruling on the motion for new trial in that case. The Court noted that the evidence supported the earlier finding that petitioner was competent to stand trial under that standard, noting that it was unnecessary under the given standard to address the effect, if any, the purported delusions had on petitioner or whether they were either fake or real.

Moving forward to the present case, the petitioner holds to his claim of delusional beliefs of "government surveillance" recited throughout the history of his cases. At the December 2006 hearing, petitioner testified about the continuing "government surveillance"

and/or "scientific technology." Even though he testified he believed the surveillance was waning as of the December 1, 2006 hearing, he nonetheless maintained that the surveillance continued. Both Dr. Bernet and Dr. Woods noted, in their reports and in their testimony, petitioner's continuing references to these surveillance-type delusional thoughts.

For the purposes of the instant proceedings, Dr. Bernet testified that because he is now armed with much more information about petitioner, he concludes that petitioner is a pathological liar with an antisocial personality disorder.[20] Therefore, his ability to make rational choices among his options is not affected. Throughout his report, Dr. Bernet lists specific bases for these findings, addressing each prong of the Rule 28 competency standard.

On the other hand, Dr. Woods drew the conclusion that petitioner's delusional system is real to petitioner and is a part of his diagnosis of psychosis due to petitioner's left temporal lobe injury. As noted above, Dr. Woods opined that this mental defect prevents petitioner from understanding his position and further effects petitioner's ability to make a rational choice among his options under the Rees standard.

In essence, this diverging testimony places the burden on the Court to determine whether the petitioner is being truthful or untruthful about these purported delusions even when mental health experts cannot reconcile when petitioner is or is not being truthful. Credible evidence exists in the record to support either proposition.

---

[20] The Court recognizes that the petitioner challenged the admission of this evidence based on McDaniel v. CSX Transportation, Inc., 955 S.W.2d 257 (Tenn. 1997). The Court has conducted an analysis under the factors enumerated in McDaniel (and its progeny) in its gatekeeping role. Even though the diagnosis noted by Dr. Bernet was not set out in the DSM-IV, the concept and underlying scientific articles (and resulting testimony of Dr. Bernet) constituted the sufficiently trustworthy and reliable expert opinion testimony contemplated in McDaniel. Therefore, the Court admitted Dr. Bernet's testimony relating to pathological lying as evidence in this case.

The record is replete with instances in which petitioner lied about the existence or non-existence of the surveillance delusions. In some cases, he merely denied the existence of the delusions. At other times, petitioner explained the origin of his fictitious delusions and his attempts to fake mental illness when facing criminal prosecution. Dr. Bernet, who examined petitioner at the time of trial in the Montgomery County case and again for these Rule 28 purposes (and who has spoken at length with petitioner about the delusions), nonetheless reached the conclusion that the petitioner is lying about the delusions. The Court finds the record supports Dr. Bernet's conclusions.

However, the Court also has before it credible evidence that mental health experts differ on whether the delusions are true or completely false; whether the delusions are recurring or whether the effect of the delusion (if true) depends on the intensity of the delusion at any given time. As referenced above, Dr. Craddock, in his examination under the Dusky standard in the McDonald's case, clearly found petitioner competent to stand trial but wrestled with the complexities of claims involving delusions. Dr. Craddock's analysis and explanation paints an accurate picture of the issue now before this Court.

Where these mental health experts reasonably disagree as to the truth or falsity of the delusional beliefs, the Court's task becomes more daunting. If the Court presumes for a moment that the delusions are completely false and that petitioner is perpetuating a lie, the Court must still determine the effect of the pathological lying, if any, on his ability to make rational choices under the Rees/Rule 28 standard. Dr. Bernet explained that pathological liars can become so engrossed in their lies that they are no longer able to distinguish the truth from a lie or to separate fantasy from reality. It is possible then in the

instant case that petitioner is a pathological liar so entrenched in the "government surveillance" fabrications that he is unable to remove himself from them; and therefore, unable to make rational choices. From the record, it appears that his present confinement perhaps plays a role in the deeper entrenchment. The record further illustrates a frustrated petitioner who would rather be executed than to be housed at Brushy Mountain.

It is also equally possible, as illustrated by other evidence in the record, that the petitioner's mental defect is causing the delusions. It is undisputed that petitioner suffers from left temporal lobe injury. Even though the origin of the damage or injury is in question and experts disagree as to whether it is congenital or the result of a minibike injury, all agree that the frontal lobe atrophy is a reality. Dr. Woods concludes that the temporal lobe injury is consistent with petitioner's symptoms and resulting diagnosis of psychosis. Dr. Bernet acknowledges the temporal lobe atrophy but finds no correlation between this damage and the resulting symptoms (including the delusional beliefs).

The Court gleans from these diverging findings the following three possible scenarios:

(1) the delusional system is false because petitioner is a pathological liar and the lying has no effect on his ability to make rational choices among his options;

(2) petitioner's delusions are real due to a delusional order and he is therefore unable to make rational choices among his options; or

(3) the delusional system is false because the petitioner is a pathological liar but the lies have become so ingrained that he is now unable to remove himself from the lies and therefore cannot make rational choices among his options.

The evidence before the Court might arguably support one scenario over another; however, other considerations factor into the final result. First, the Court's illustration of the complexity of determining petitioner's mental health status, illuminates the need to be mindful that this is a capital case. Facing the ultimate punishment of death, the petitioner is entitled to a heightened scrutiny in all matters relating to his case.[21] The Court finds it unreasonable, at this juncture, to draw an imaginary line between the truth and a lie (as to the delusions) or in essence to flip a coin as to whether the petitioner should be permitted to withdraw his petition. It is simply too close to call whether the lies or delusional disorder affect petitioner's ability to make rational choices (under Rees/Rule 28 standard) to permit a withdrawal under the present facts.

However, it is not just this narrow line which warrants this finding. Other factors present here tip the proverbial scale in favor of protecting the petitioner's rights. When the Montgomery County case proceeded to federal court, the issue of competency to waive appellate rights was raised in that court. Obviously, the facts of that case are different than those now before us. Furthermore, the hearings conducted in federal court were not "on all fours" with the proceedings conducted by this Court. Although it appears there was some overlap, including the testimony of Dr. Woods in both the federal and the instant proceedings, the federal court heard testimony or accepted evidence not before this Court. To that extent, the federal proceedings lend little assistance to this Court in making the present determination as to whether petitioner can make rational choices among his

---

[21] It is well recognized that capital cases demand heightened due process requirements. See, e.g., Woodson v. North Carolina, 428 U.S. 280, 305, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976).

options.

However, the most significant occurrence in the federal court proceedings was not found in the evidence presented to the Court (whether Dr. Woods, Dr. Amador or others). Instead, the federal proceedings were overshadowed by an action taken by the State of Tennessee as represented by the Attorney General's Office. As reflected in the federal court pleadings, which were made a part of the instant record, when the State was faced with challenging the petitioner's competency to proceed and the necessity of a next friend under the same standard (Rees) as adopted in Rule 28, the State announced withdrawal of its opposition to the appointment of Linda Martiniano as next friend. This withdrawal was based in whole or at least in large part on the report of Dr. Martell, who had been retained by the State to examine petitioner for federal court purposes. Although Dr. Martell's report speaks for itself, he concluded that petitioner's delusions (as he had observed some years earlier when examining petitioner for trial purposes) were no longer encapsulated and that petitioner was not competent (at that time) to proceed under the federal Rees v. Peyton standard.

What is most significant about the State's concession in federal court is the basis of the concession. The State representative from the Attorney General's Office informed the Court that the State would no longer oppose the appointment of Ms. Martiniano as next friend. The August 24, 2006 transcript of the federal court proceedings contained the following recitation of the State:

> We requested a status conference today, Your Honor, in this matter to advise the Court that the State wishes to withdraw its objection to the standing of the petitioner, Linda Martiniano, to file a petition for writ of habeas corpus as next friend on behalf of Paul Dennis Reid, Junior. We are doing so on the basis of

> a psychological examination that was conducted by our retained expert on August 16th and 17th [2006]. Just last week, pursuant to Court-ordered discovery in this matter which resulted in a finding by our expert a conclusion that Mr. Reid is presently incompetent to make a rational decision to waive his capital appeals in accordance with the standards set forth in Reese (sic) versus Payton (sic). Based on that particular opinion and our continued assessment of additional facts known to us in the matter, we have determined to withdraw our opposition. And we urge the Court at this time to deem as properly filed the next friend petition by Ms. Martiniano on behalf of Paul Dennis Reid.[22]

Not only did the State concede petitioner's competence at that time based on the report of Dr. Martell, the concession specifically referenced the Rees standard now before us in the Rule 28 proceedings. Although this Court denied a motion for summary judgment (said motion being based on the federal court concession) under the belief that facts should be developed at a Rule 28 proceeding, the Court acknowledged at an October 2006 hearing that the concession in federal court could likely have some effect on the instant matter.

However, prior to a Rule 28 hearing, the Court had no ability to determine whether the State would eventually concede for Rule 28 purposes or would attempt to draw a distinction between the federal court concession in light of its perceived differences in the posture of the instant case. Now having heard the evidence in extensive Rule 28 proceedings, nothing was presented by the State to support a claim that the concession

---

[22] In the federal court transcript, the Assistant Attorney General (AAG) recognized the different competency standards at the various stages of a capital case proceeding. AAG Smith noted the Rees v. Peyton standard applicable in the federal proceedings but noted a distinction between the Rees standard and the State v. Nix standard. This Court's findings, as set out in the instant order, relate solely to the Rees v. Peyton/Rule 28 competency standard. The considerations applicable to the other competency standards (Nix, Holton/Reid and Reid) are not before the Court at this time. Therefore, the result might be different under one or more of these standards.

in federal court was fact- or time- specific and therefore should have no bearing here.

Near the end of the Rule 28 proceedings, the State tendered a letter from Dr. Martell (based on a joint agreement with counsel for petitioner) indicating that his earlier report, that had served as the basis of the state's concession in federal court, had a "use-by" date and that petitioner's condition waxed and waned. Dr. Martell suggested that it was possible for the petitioner to be mentally sound at any given time depending on medication or conditions of his incarceration. However, Dr. Martell's letter offered nothing but suggestions and did not include additional evidence to negate the effect of the state's concession in federal court. Because no proof was presented in the Rule 28 proceedings that the concession under the same competency standard (Rees) can be differentiated from the instant proceedings (also under the Rees standard), the Court finds the earlier concession to be significant.

Viewing the record as a whole, the Court finds it problematic to permit petitioner to withdraw his post-conviction petition in the instant case. In such a close case with a constant ebb and flow in mental status (termed "wax and wane" by Dr. Martell), it is unreasonable to permit a defendant to terminate an entire tier of review of his capital case. While a court may consistently monitor competency in determining competency to stand trial (as this Court did in the McDonald's case), the Court has no such mechanism in a post-conviction proceeding. If petitioner's request is granted, the petitioner has no ability to turn back should his competency change after the thirty-day window set out in Pike. Therefore, it would be difficult (under our facts) to determine under a precise formula whether petitioner is competent today to waive his post-conviction petition or incompetent tomorrow having done so.

Therefore, fundamental fairness dictates that the petitioner's request to withdraw his "post-conviction appeals" is hereby denied. This result stems not only from the Court's recognition of the greater scrutiny necessary in a capital case but is undergirded by the principles of fundamental fairness.[23] Although the concession by the State was merely a factor in the overall equation, it was certainly a significant one.

V. CONCLUSION

For the reasons cited above, the petitioner's pro se request to withdraw his petition for post-conviction relief is hereby DENIED. By separate Order the Court will schedule a status conference to determine how the post-conviction matter will proceed.

ENTERED this the 28 day of December, 2007.

Cheryl Blackburn

Cheryl Blackburn,
Judge

cc:

The Honorable Tom Thurman,
The Honorable Roger Moore, and
The Honorable Kathy Morante
Office of the District Attorney General
Washington Square, Suite 500
222 Second Avenue North
Nashville, Tennessee 37201

Mr. Nick Hare and
Ms. Kelly Gleason,
Assistant Post-Conviction Defenders
Post-Conviction Defender's Office
530 Church Street, Suite 600
Nashville, Tennessee 37243

---

[23] The "fundamental fairness doctrine" is defined as "[t]he rule that applies the principles of due process to a judicial proceeding. The term is commonly considered synonymous with due process." BLACK'S LAW DICTIONARY (7 Ed. Rev.1999) 683.