IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

PAUL DENNIS REID, JR.,	**)**	
by and through Linda Martiniano,	**)**	**No.: M2001-02753-SC-DDT-DD**
	)	
Petitioner,	**)**	
	)	**Montgomery County Circuit Court**
	)	**Trial Court No. 38887**
STATE OF TENNESSEE,	**)**	
	)	**Death Penalty**
	)	**EXECUTION DATE: June 28, 2006**
Respondent.	**)**	

REPLY TO STATE'S RESPONSE TO MOTION TO REMAND TO MONTGOMERY COUNTY CIRCUIT COURT FOR HEARING ON COMPETENCY TO BE EXECUTED UNDER *FORD v WAINWRIGHT* AND *VAN TRAN v. STATE*

AND

FOR STAY OF EXECUTION

EXPEDITED HEARING REQUESTED

There is no dispute about the following:

1. Mr. Reid's mental illness results in his believing that his life is run by a government program, Scientific Technology, and that he is being executed because he is poised to expose this program and reveal his innocence;

2. An allegation has been made in this Court, supported by an expert's affidavit, that Mr. Reid is not competent under *Ford v. Wainwright*, 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986) and *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999);

3. Given these facts, if this case arose after a full round of state and federal post-conviction review, and after the state sought an execution date, this Court would remand this case to the trial court for a *Ford* determination; but

4. There is no extant procedure for a remand to protect the insane when a case is in the posture of Mr. Reid's case.

Thus, this Court should establish a procedure and remand the case to the trial court to determine whether Mr. Reid's execution would constitute "the barbarity of exacting mindless vengeance." *Ford*, *supra*, 477 U.S. at 410.

The State hopes that the Court will ignore the uncontroverted evidence that Mr. Reid is very seriously mentally ill with all of his current decision making being driven by his delusion. This is the case of a severely mentally ill man who cannot begin the second tier of the process due to delusions that are a product of his mental disease and who believes he is innocent but that the entire process, including all the players therein, the courts, the State, his counsel, is orchestrated by the Scientific Technology that he is about to expose. (Affidavit of George Woods, M.D.)[1]

The only established procedure in Tennessee for raising a claim that a death sentenced inmate is incompetent to be executed under *Ford* is the procedure sent out by this Court in *Van Tran v. State*, 6 S.W.3d at 273-274. A *Ford* claim becomes ripe only after the completion of the three-tier review process after the State Attorney General requests the setting of an execution date. *Id.* at 267, 273. Because in this case the three tier review process has never been completed, and because the State Attorney General has yet to file a motion to set an execution date, Mr. Reid has never been able to avail himself of the procedures that this Court has said "a prisoner must follow in order to assert his or her common law and constitutional rights to challenge competency to be

[1] The Affidavit of George W. Woods, Jr., M.D., is attached to the Motion to Remand to Montgomery County Circuit Court for Hearing on Competency to be Executed Under *Ford v. Wainwright* and *Van Tran v. State* which was filed on June 23, 2006.

executed." *Van* Tran, 6 S.W.3d at 274 (emphasis added). There is no procedure for a claim that Mr. Reid is incompetent to be executed under *Ford* and *Van Tran*.

I. Reply to State's Claim that Neither Martiniano nor PCD Have Standing
(Response of State at 1-2.)

First the State argues that there has been no judicial finding of the necessity for a next friend. The State relies on Judge Gasaway's summary holding that none of the "submissions contain[ed] specific factual allegations that demonstrate that Mr. Reid is either unable to manage his personal affairs or understanding [sic] his legal rights and liabilities." (Response of State at 1-2 (brackets in original).) However, in *Thompson v. State*, 134 S.W.3d 168, 177 (2004), this Court explained that, because the trial court had not held an evidentiary hearing and had not observed the witnesses, its fact findings would be reviewed de novo and were not entitled to a presumption of correctness. Moreover, the trial court did not challenge the credibility of any of the affiants and specifically noted that "[t]he Court recognizes Dr. Woods' impressive credentials and his diagnosis of a neurological disorder." (*Id.* at 11-16.) With the question of whether a petition for post-conviction relief on behalf of Mr. Reid through Ms. Martiniano as next friend should have been permitted now on appeal, with de novo review and no presumption of correctness, *Thompson v. State*, 134 S.W.3d at 177, the State's argument must fail.

The State also questions the role of attorneys from the Office of the Post-Conviction Defender in this action. However, the legislative authorization for the involvement of the post-conviction defender in this motion is clear. Tenn. Code Ann. 206(e) states:

> e) Where the post-conviction defender determines that it is in the interest of justice, the post-conviction defender may represent, without additional compensation, a death sentenced inmate, who, at the completion of both state post-conviction proceedings and federal collateral review, remains under a sentence of death, if such individual is presently represented by the post-conviction defender or if such individual is not currently represented by the post-conviction defender but is unable to secure counsel due to indigency, during clemency proceedings before the Tennessee board of probation and parole and the governor and in proceedings to determine whether the death sentenced inmate is competent to be executed.

(Emphasis added.) Under this statute, the representation of Mr. Reid in this motion is not subject to any authorization other that the determination of the post-conviction defender that the representation is required in the interest of justice. That finding has been made in this case as evidenced by the letter from the Post-Conviction Defender to Chief Justice Barker. (*See* June 23, 2006 Letter to Chief Justice Barker by Post-Conviction Defender Donald E. Dawson, p. 1, ¶ 2 (Attached).)

Furthermore, Ms. Gleason and Mr. Hare have an ethical duty to attempt to prevent their severely mentally ill client in the Davidson County case, from being executed in the Montgomery County case. Rule of Conduct 1.14 requires lawyers to take protective action of behalf of a client when "the lawyer reasonably believes that the client cannot adequately act in the client's own interest." Tenn. Sup. Ct. R. 8, RPC 1.14. Further, a lawyer should take legal action to protect a disabled person "to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm." *Id.* at Comment 6. No one can suggest that imminent execution is not "irreparable harm."

II. Reply to State's Claim that "Neither the *Ford* Motion nor the Affidavit of Dr. Woods Contain any New Allegations …." (Response of State at 2-4.)

First, there has never been a hearing on the issue of whether Mr. Reid is incompetent for execution under *Ford* and *Van Tran.* Thus, all of the present and prior information is new as to this issue. Second, Dr. Woods' affidavit and other proffered evidence reflects a serious deterioration in Mr. Reid's mental status from the past, deterioration which is uniquely important to the claim that Mr. Reid is incompetent for execution under *Ford* and *Van Tran Ford* and *Van Tran.* Third, under the exclusive procedures established by this Court in *Van Tran* for initiating a claim of incompetence to be executed, this Court's role is not to evaluate whether a prima facie case has been made but rather to remand the case to the trial court for that determination. *See*, *Van Tran v. State*, 6 S.W.3d at 273-274. Therefore, at this phase of the litigation on this claim, there is no provision for this Court to evaluate the claim, especially when the State does not contest the evidence that Mr. Reid suffers from and is driven by a delusion that is the result of a mental disease or defect. The question here is the extent of the effect of the mental disease or defect upon Mr. Reid's incompetence to be executed under *Ford* and *Van Tran*. That is a question that must be answered in the first instance by the trial court under the procedures that this Court mandated in *Van Tran*. 6 S.W.3d at 273-274.

Nevertheless, Dr. Woods' affidavit that was attached to the motion to remand for a hearing on incompetence to be executed describes Mr. Reid as suffering from "a neurological disorder – left temporal lobe dysfunction" which has "produced in Mr. Reid a chronic, schizophrenia-like psychosis." (Woods' affidavit at ¶ 8.) Dr. Woods also reports that "Mr. Reid has impairment in his ability to sequence his memories, often developing delusional precepts in order to explain his misperceptions." (*Id*.) Dr. Woods

further elaborates on Mr. Reid's memory impairments explaining that his memory impairments cause him to be convinced that events happening the present, including information or actions of his legal representatives are simply repeating things that have done before that Scientific Technology is forcing them to repeat. (*Id.* at ¶¶ 18-22.) Dr. Woods has also opined due to Mr. Reid's mental illness he is unable to understand the reason for his death and therefore is not competent for execution under *Ford.* (*Id.* at ¶ 26.)

III. Reply to State's Claim that Motion Comes Too Late

As stated above, the present procedural posture of this case does not fall within any existing Tennessee procedure or rule for claiming that an inmate is currently incompetent to be executed. The State's argument that it was known that the execution was imminent since May 4, 2006, the date this Court released its opinion in *Holton v. State* and *Reid v. State*. ___S.W.3d ___, Tenn. Sup. Ct. No. M2005-01870-SC-S10-PD and No. M2005-02398-SC-S10-PR (May 4, 2006), suggests that counsel would know that this Court would not resolve the ambiguity of *Holton/Reid* in favor of clarifying that the proper standard for waiving initiation of proceedings for post-conviction relief was the well-settled standard of *Rees v. Peyton*, 384 U .S. 312, 314, 86 S.Ct. 1505, 1506, 16 L.Ed. 583 (1966) rather than the constitutionally insufficient standard of *Nix v. State*, 40 S.W.3d 459 (Tenn. 2001). This Court denied rehearing on June 22, without resolving the ambiguity in the standard. Further, counsel had no reason to believe that Judge Gasaway would either find that the *Nix* standard applied to a next friend post-conviction relief petition that was filed within the one year statute of limitations rather than the constitutionally required *Rees* standard. (*See* Motion for Stay of Execution filed June 22,

2006.) Moreover, counsel had reason to believe based upon the substantial affidavits filed and the opinion of a highly qualified neuropsyhciatrist that Mr. Reid was incompetent under both *Rees* and *Nix* that the trial court would find they had not shown a prima facie case. (See *Id.* at 11-23 setting out in detail a summary of the information that had been presented to the trail court.) Finally, given the State's agreement that Mr. Reid suffers from a delusional system that controls his life and is a product of a mental disease or defect, the various issues of first impression raised in this case, and the low threshold for a prima facie case, counsel should not be required to assume that no court of this state would grant a stay.

CONCLUSION

For the reasons set forth above and in the Motion to Remand to Montgomery County Circuit Court for Hearing on Competency To Be Executed Under *Ford v. Wainwright* and *Van Tran v. State*, this Court should stay Mr. Reid's June 28, 2006, execution and remand this matter to the trial court for a determination as to whether Mr. Reid is incompetent to be executed under *Ford* and *Van Tran.*

Respectfully submitted,

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Kelly A. Gleason
Assistant Post-Conviction Defender

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Nicholas D. Hare
Assistant Post-Conviction Defender

530 Church Street, Suite 600
Nashville, Tennessee 37243
(615) 741-9331
FAX (615) 741-9430

C**ERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of this Motion was hand delivered to Jennifer L. Smith, Associate Deputy Attorney General, Criminal Justice Division, P.O. Box 20207, Nashville, TN 37202-0207 on this the _____ day of June, 2006.

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Kelly A. Gleason