IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT GLEN COE Petitioner-Appellant	)	Nos.
v.	)	
RICKY BELL, Warden Respondent-Appellee	)	EXECUTION DATE: MARCH 23, 2000 1:00 AM

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

MOTION TO CONSOLIDATE APPEALS AND STAY RULINGS[1]:/ MOTION FOR STAY OF EXECUTION

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[1] 1) DISTRICT COURT No. 3:92-0180 (CFC & Stay Granted In District Court)(2) COURT OF APPEALS STAY MOTION ON TRANSFER OF HABEAS PETITION IN DISTRICT COURT NO. 3:00-0239 (Motion For Stay Pending)(3) COURT OF APPEALS STAY MOTION ON APPEAL OFDISTRICT COURT NO. 3:00-0239 (Motion For Stay Pending)(4) MOTION FOR STAY ON PETITIONER'S MOTION TO DECLARE 28 U.S.C. 2244 INAPPLICABLE TO PETITION(Motion For Stay Pending).

The numerous appeals and stay issues before this court revolve around a core issue of first impression in this circuit: Whether a capital habeas petitioner has a federal forum for his claim that he is incompetent to be executed under *Ford* subsequent to the passage of the AEDPA. If the answer is yes (as it must be) then this court must decide the procedure for adjudicating that right.

I.
REASONS FOR CONSOLIDATING THE CASES

Robert Coe has tried to raise this claim in every conceivable way. His efforts have spawned numerous appeals, including two appeals from the District Court, a motion to declare Section 2244 inapplicable, and consideration whether a habeas petition filed in the District Court is a request to file a second or successive petition. If this court does not act, Robert Coe will be killed without ever receiving *federal* review of his real and substantial *federal* constitutional claims.

Two United States District Court judges have indicated that Robert Coe is *no different* from the petitioners raising incompetency to be executed claims in Ford v. Wainwright, 477 U.S. 399, 106 S.Ct. 2595 (1986) and Stewart v. Martinez-Villareal, 523 U.S. 637, 118 S.Ct. 1618 (1998). Judge Trauger has recognized the lack of any "true distinction" between Robert Coe and Mr. Martinez-Villareal. See *Coe v. Bell*, No. 3:00-0239 (M.D. Tenn. Mar. 18, 2000), p. 13 n.18. Judge Nixon has ruled in a certificate of probable cause that, given the Supreme Court's decisions in Ford

and Martinez-Villareal, "There is a reasonable likelihood [of success] on the merits of [Robert Coe's] appeal." See *Coe v. Bell*, No. 3:92-0180 (M.D.Tenn. March 20, 2000) p.1.

Thus, at issue before the court are the questions as to the method for raising a *Ford* claim: (1) whether the claim should be heard as an amendment to the initial 2254 habeas petition when the claim becomes ripe; (2) whether the claim should be raised via a second-in-time 2254 petition in the district court; (3) whether the claim should be raised via a request for filing a second petition in the court of appeals; (4) whether the claim should be raised via a 2241 petition in the district court;(5) whether failure to establish a procedure for presentation of a newly ripe *Ford* claim in a second in time petition would constitute a violation of due process or a suspension of the writ of habeas corpus in violation of Article 1 § 9 of the United States Constitution. These issues are inextricably intertwined.

II.

REASONS FOR GRANTING STAY

The courthouse doors as yet remain closed to Robert Coe. He is scheduled to die on March 23. The consolidated appeals raise substantial non-frivolous issues discussed above. This court cannot engage in the thoughtful and deliberative analysis that is required to consider these weighty issues in two days. His claim on

appeal is "a question of some substance," (Barefoot v. Estelle, 463 U.S. 880, 893 n. 4, 103 S.Ct. 3383, 3394 n. 4 (1983)). With *Ford*, *Martinez-Villareal*, and *Poland* having received the opportunity to have their claims heard in federal court, unlike Robert Coe (given the denial of amendment), his claims are clearly "debatable among jurists of reason; . . . a court *could* resolve the issues [in his favor]; [and] the questions are 'adequate to deserve encouragement to proceed further.'" Barefoot v. Estelle, 463 U.S. at 893 n.4, 103 S.Ct. at 3394 n. 4.

Moreover, the risk of harm to the state is *de minimus*. Indeed, the state will benefit from a thoughtful and comprehensive consideration of these important issues. At bottom, the state simply has no legitimate reason to execute one who is insane. See Ford v. Wainwright, 477 U.S. 399, 410-411 (1986)

The law cannot be that the only forum for the adjudication of a *federal* claim is in *state* court. This court should consolidate these appeals, stay the execution and decide these important issues of first impression after full briefing, argument, and thoughtful consideration.