

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

**FILED**

March 6, 2000

**Cecil Crowson, Jr.  
Appellate Court Clerk**

ROBERT GLEN COE, )  
 ) FOR PUBLICATION  
Petitioner/Appellant, )  
 )  
v. ) FILED: March 6, 2000  
 )  
STATE OF TENNESSEE, )  
 ) NO. M1999-01313-SC-DPE-PD  
Respondent/Appellee. )

DISSENTING OPINION

In Heck van Tran v. State,<sup>1</sup> a majority of this Court established the protocol that an inmate sentenced to death must follow to assert a common law and constitutional challenge to his or her competence to be executed. In the context of a Separate Concurring and Dissenting Opinion, I identified three components of the protocol which, when implemented, would each produce an unconstitutional result. Two are most significant: (1) use of the protocol would permit the execution of inmates who are, due to mental defect or disease, unable to consult with and assist their counsel; and (2) use of the protocol would deprive inmates of the right to have the ultimate issue--competence to be executed--determined by a jury of their peers.

Additionally, I provided what I deemed to be substantial and cogent support for concluding that these flaws in the protocol not only violate the Fourteenth Amendment and public standards of decency and propriety, but also compromise the integrity of the ultimate determination of competence. I adhere to those views.

---

<sup>1</sup>6 S.W.3d 257, 274-77 (Tenn. 1999).

Under different circumstances, I would concur with the majority opinion insofar as several relatively minor procedural issues are concerned. But such a concurrence is rendered meaningless in view of my already expressed disagreement with the methodology within which the procedural issues have arisen and upon which the validity of the trial court's (as well as the majority's) determinations of competence depend.

Thus, I am unwilling to approve of results reached through the use of a procedure with which I cannot agree. Accordingly, I would grant the stay of execution.

---

ADOLPHO A. BIRCH, JR., Justice