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

ROBERT GLEN COE,	}	
)	
Petitioner,)	
)	Case No. 3:92-0180
▼.)	Senier Judge Nixon
)	
AICKY BELL, Warden,)	
)	
Respondent.	3	

RESPONSE TO PETITIONER'S MOTION TO ALTER OR AMEND

Petitioner has asked this Court, by way of Fed.R.Civ.P. 59(e) motion, to reverse its decision about the scope of its jurisdiction over the instant federal habeas corpus proceeding. He presents no new authority to support his motion, simply referring to his previously rejected arguments in his Statement of Petitioner In Support of this Court's Jurisdiction Over Petitioner's Initial Habeas Petition and his Supplemental Memorandum In Support of Further Proceedings on Initial Habeas Petition.

Motions to alter or amend a judgment may be granted if there is a clear error of law, newly discovered evidence, an intervening change in controlling law or, to prevent manifest injustice. GENCORP, Inc. v. American International Underwriters, 178 F.3d 804, 834 (6th Circuit 1999). None of the arguments advanced by petitioner, including his most recent attempt to repackage his claim concerning the constitutionality of electrocution, satisfy these criteria.

This Court's refusal to allow amendment of the original habeas petition at this point in the proceedings was, and remains, correct in every respect. At the time this Court refused to allow petitioner to amend his habeas corpus petition to add a claim challenging the constitutionality of electrocution, describing it as frivolous, United States Supreme Court precedent, as well as existing United States Circuit Court precedent throughout the nation, were uniform in upholding the constitutionality of electrocution as a method of execution. That situation has not changed, notwithstanding the recent developments in Bryan v. Moore, 2000 WL 63707 (U.S. (Fla.)) and In Re Tarver, 2000 WL 126907 (U.S.). There is simply no authority for this Court to engage in the sort of the "tea leaf reading" petitioner requests. Absent a decision by the United States Supreme Court finding electrocution unconstitutional and requiring such a decision to be applied retroactively, there is no basis for petitioner to seek, much less be granted, relief. See 28 U.S.C. §2244(b)(2)(A); Teague v. Lane, 489 U.S. 288, 308, 109 S.Ct. 1060, 1074, 103 L.Ed.2d 334 (1989). Consequently, petitioner's lament that "he may find himself. . without a forum in which to litigate this claim," rings bollow."

^{&#}x27;Respondent would again remind this Court that petitioner elected, on 28 September 1999, lathal injection as the method for his execution. See Tenn. Code Ann. 540-23-114(c).

Based upon the foregoing, petitioner's motion to alter and amend this Court's 14 January 2000 order should be denied.

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Respectfully submitted,

MICHAEL E. MOORE Solicitor General

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded, via first-class U.S. Mail, postage pre-paid, to Henry A. Martin and Paul Bottei, Federal Public Defender's Office, 810 Broadway, Suite 200, Nashville, Tennessee 37230 and James Holt Walker, Esquire, 601 Woodland Street, Nashville, Tennessee 37206 on this the $\underline{9^{++}}$ day of February, 2000.

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GLENN R. PRUDEN Senior Counsel