

claim concerning the constitutionality of electrocution, satisfy these criteria.

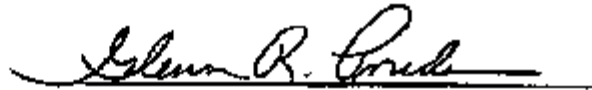
This Court's refusal to allow amendment of the original habeas petition at this point in the proceedings was, and remains, correct in every respect. At the time this Court refused to allow petitioner to amend his habeas corpus petition to add a claim challenging the constitutionality of electrocution, 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 hollow.¹

¹Respondent would again remind this Court that petitioner elected, on 28 September 1999, lethal 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.

Respectfully submitted,

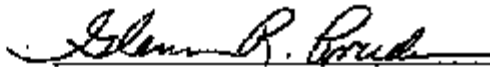
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CERTIFICATE OF SERVICE

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 9th day of February, 2000.



GLENN R. PRUDEN
Senior Counsel