

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

ROBERT GLEN COE)	
)	
Petitioner)	No. 3:92-0180
)	Judge Nixon
v.)	
)	
RICKY BELL, Warden)	
)	
Respondent)	

MOTION TO ALTER OR AMEND

Comes the Petitioner, Robert Glen Coe, and respectfully moves this Court, pursuant to Fed.R.Civ.P. 59, to alter or amend its January 19, 2000 order dismissing his petition for writ of habeas corpus. In support of this motion, Petitioner states:

1. By order entered January 19, 2000, this Court dismissed Robert Coe's petition for writ of habeas corpus. R. 461. The court dismissed the petition relying on this Court's January 14, 2000 memorandum, and the order of the Sixth Circuit, dated October 12, 1999.

2. Petitioner respectfully submits that the Court should not have dismissed the petition, for all the reasons stated in the "Statement of Petitioner In Support Of This Court's Jurisdiction Over Petitioner's Initial Habeas Petition," his "Supplemental Memorandum In Support Of Further Proceedings On Initial Habeas Petition." In particular, as Petitioner has noted earlier, this Court may act in any manner consistent with the mandate of the Sixth Circuit.

3. On the issue of electrocution, the Sixth Circuit only held that this Court had not abused its discretion in denying amendment. With this Court having the power to entertain amendment of a petition following appellate proceedings, this Court may properly allow that amendment at this time. Earlier, Petitioner noted that the issue was not frivolous, because the United

States Supreme Court had granted certiorari in *Bryan v. Moore*, U.S. No. 99-6723 cert. granted 528 U.S. ____ (Oct. 26, 1999), thereby confirming the validity of Petitioner's claim. On January 24, 2000, however, the United States Supreme Court dismissed the petition in *Bryan* as improvidently granted.

4. As a result, given that the United States Supreme Court may not imminently be resolving the constitutionality of electrocution, if Robert Coe is not allowed to amend his petition at this time, he may find himself in the future without a forum in which to litigate this claim - despite the fact that he has sought to raise it in his first petition, and has, to this point been denied that opportunity through an erroneous conclusion that his claim is frivolous. The proper course is to allow the amendment, to ensure that Robert Coe will not be denied his right to litigate this claim before the federal courts.

5. The court should therefore alter or amend its order dismissing the petition for all the reasons previously raised by Petitioner, and the Court should instead order further proceedings, as Petitioner has previously requested.

CONCLUSION

The motion should be granted.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded by first-class mail, postage prepaid to Glenn R. Pruden, Assistant Attorney General, 425 5th Avenue North, Nashville, Tennessee 37243, on this 1 day of February, 2000

Paul R. Bottai
Paul R. Bottai