IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS, TENNESSEE
DIVISION III

ROBERT GLEN COE,	)	
Petitioner,	)	**No.: B-73812**
vs.	)	**Death Penalty**
STATE OF TENNESSEE,	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PETITION TO DECLARE ROBERT GLEN COE MENTALLY INCOMPETENT TO BE EXECUTED

This matter comes before this Court on a PETITION TO PROHIBIT EXECUTION UNDER COMMON LAW, Ford v. Wainwright, 477 U.S. 399 (1986) AND THE TENNESSEE CONSTITUTION, filed by Petitioner, Robert Glen Coe. Petitioner cited all applicable law, including common law, the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Ford v. Wainwright, 477 U.S. 399 (1986), and Article I §§ 6, 8, 9, 13, 15, 16, 17, 20 & 32 of the Tennessee Constitution as authority for filing his petition.

BACKGROUND

Petitioner was convicted of first-degree murder, aggravated rape, and aggravated kidnaping in the Criminal Court of Shelby County on February 28, 1981. He was sentenced to death on the murder charge, and to life imprisonment on the remaining charges. The Tennessee Supreme Court affirmed the conviction and sentence, State v. Coe, 655 S.W.2d 903 (Tenn. 1983), and the United States Supreme Court denied certiorari. Coe v. Tennessee, 464 U.S. 1063 (1984).

Petitioner filed three petitions for post-conviction relief, and two petitions for habeas corpus relief. Ultimately, both Petitioner's conviction and sentence were upheld.

On December 15, 1999, the Supreme Court of Tennessee issued an order holding that the

On December 15, 1999, the Supreme Court of Tennessee issued an order holding that the Petitioner had exhausted the standard three-tier appeals process, and set an execution date of March 23, 2000 for the Petitioner. The Court also held that the time was ripe for Petitioner to

challenge his present mental competency to be executed, and remanded the issue to this Court, where the Petitioner was originally tried and sentenced, in accordance with the procedures to determine present mental competency to be executed adopted by the Supreme Court in Van Tran v. State, 6 S.W.3d 257 (1999). See Coe v. State, S.CT.NO. M1999-013130-SC-DPE-PD, Dec. 15, 1999.

The Petitioner filed a Petition to Prohibit Execution Under Common Law, Ford v. Wainwright, 477 U.S. 399 (1986) and the Tennessee Constitution on December 29, 1999. In his Petition, Petitioner alleged that in light of his present mental incompetency it would be unconstitutional to carry out his death sentence. The Petition alleged that over the past 25 years, Petitioner has been found to be insane and incompetent, and listed several of the various diagnoses the Petitioner has been given by numerous mental health professionals. The Petition also alleged that Petitioner has been treated with a plethora of anti-psychotic, anti-seizure, anti-anxiety, and antidepressant medications. The Petition further alleged that Petitioner currently suffers from debilitating mental illness, and that the stress of his upcoming execution date will only serve to exacerbate his mental illness and increase his psychotic symptoms. Attached to the Petition was the affidavit of Dr. William Kenner, M.D.. In his affidavit, Dr. Kenner opined that Petitioner was not competent to be executed.

Finding that Petitioner had met the required threshold showing that his competency to be executed was genuinely in issue, in accordance with Van Tran, this Court issued an order granting in part and denying in part the above referenced petition. In its order, filed January 3, 2000, this Court granted Petitioner's request that this Court hold a hearing to determine the present mental competency of Petitioner to be executed. The evidentiary hearing began on January 24, 2000, and lasted until January 28, 2000.

BASIS FOR RELIEF

Petitioner asks that this Court find him presently mentally incompetent to be executed and in support of this request asserts the following:

Petitioner does not meet the cognitive test set forth in Van Tran v. State, and is therefore incompetent to be executed and in support of this would show that

Petitioner has a history of mental illness, incompetence and insanity, and that at present, Petitioner is exhibiting signs of mental incompetence.

CONCLUSIONS OF LAW

Before Van Tran, Tennessee did not have any statutory or common law procedure for litigating the issue of present competency to be executed. Van Tran, 6 S.W.3d at 260. The procedures governing the determination of whether a prisoner is presently mentally competent to be executed were adopted and set forth by the Tennessee Supreme Court in Van Tran v. State. Under the law of Tennessee, a prisoner is not competent to be executed if the prisoner lacks the mental capacity to understand the fact of the impending execution and the reason for it. This standard is called the "cognitive test." Van Tran, 6 S.W.3d at 266. Petitioner now asks this Court to find that he is presently mentally incompetent to be executed.

At the outset, this Court notes that at the competency hearing, the prisoner is presumed to be competent to be executed. Id., at 270; citing Ford v. Wainwright, 477 U.S. 399, at 426 (1986); State v. Harris, 789 P.2d 60, at 67 (Wash. 1990). To prevail, the prisoner must overcome the presumption of competency by a preponderance of the evidence. Van Tran, 6 S.W.3d at 271. Furthermore, although likely based on expert medical and mental health testimony, the ultimate question as to whether the prisoner is competent to be executed is a question of fact. Id., citing Ford, 477 U.S. at 412. This Court will now discuss the evidence presented to it in Petitioner's

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competency hearing in accordance with the standards delineated in Van Tran.

This Court first heard testimony from Dr. James R. Merikangas, M.D.. Dr. Merikangas was appointed by this Court to evaluate the Petitioner at Petitioner's request. Dr. Merikangas had an extensive and impressive curriculum vitae, and was accepted by this Court as an expert in the fields of neurology, neuropsychiatry, and psychiatry. This Court found him to be both a competent and credible witness.[1]

On direct examination, Dr. Merikangas testified that he had utilized the past mental

[1] The Court notes that Dr. Merikangas' credibility was somewhat diminished by some statements made during cross examination that blatently contradicted those elicited on direct, as well as a showing by Dr. Merikangas of bias and unwillingness to cooperate with State's attorney on cross.

health records of Petitioner in his assessment of Petitioner. In addition, Dr. Merikangas performed a physical examination of Petitioner, had magnetic resonance imaging (MRI) tests as well as positron emission tomogram (a PET scan) run on Petitioner,[2] had talked to Petitioner's sisters, and had given Petitioner an oral interview. From these various physical tests, Dr. Merikangas determined that Petitioner has congenital brain damage, maldevelopment, and probably some acquired brain damage.[3] From his oral interview of Petitioner, Dr. Merikangas opined that Petitioner has delusions and hallucinations, as well as disorders of movement. He further opined that Petitioner's peculiarities of thinking were symptomatic of schizophrenia, and testified that his diagnosis of Petitioner was that he was a chronic paranoid schizophrenic,[4] and that this schizophrenia causes Petitioner to be incompetent to be executed.

In support of his diagnosis of chronic paranoid schizophrenia, Dr. Merikangas testified that the fact that Petitioner has elected to stay in his cell in the jail where he is housed, rather than to be part of the prison population was one factor he considered. Dr. Merikangas testified that he also considered Petitioner's prison records dating from 1981 to the time of the hearing which document "wild episodes where he [Petitioner] will wind up on one medication or another." Some other contributing factors in Dr. Merikangas' diagnosis were Petitioner's nicotine addiction, as well as the amount of coffee he drinks, and his pariphilia, e.g., tendency to

masturbate in public.[5] When questioned as to whether he felt the Petitioner was malingering, Dr. Merikangas indicated that he felt Petitioner was not. Dr. Merikangas further opined that if Petitioner was lucid for a time, or was in a period of remission from his schizophrenia, given the impending stress of an execution, Petitioner would dissociate to such a point that he would be incompetent to he executed under Tennessee law.[6]

When questioned about Petitioner's other expert witness, Dr. William Kenner, and his diagnosis that Petitioner suffers from Dissociative Identity Disorder (DID), Dr. Merikangas

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[2] Dr. Merikangas testified that while the MRI scan showed abnormalities in the structure of Petitioner's brain, Petitioner's PET scan was normal.

[3] Transcript of the proceedings, January 24, 2000, Volume I, page 90, lines 9-11.

[4] Id., at page 111, lines 10-23.

[5] Id., at page 115, lines 1-20.

[6] Id., page 124, lines 19-25.

testified that the diagnosis of DID was consistent with his diagnosis of schizophrenia.[7]

Dr. Merikangas was next questioned as to his opinion of the diagnoses of the State's Court appointed experts. Dr. Merikangas expressed contempt for both of the State's experts, and described their methods of evaluating Petitioner[8] along with their findings as invalid, not credible, and as "junk science."[9] Dr. Merikangas also commented several times on the fact that Dr. Martell spent only seven hours with Petitioner, an amount of time he felt insufficient to reach the diagnosis given by State's experts.[10]

When questioned by counsel as to whether Petitioner was competent to be executed in accordance with the Van Tran standard, Dr. Merikangas' answer was somewhat unresponsive. Dr. Merikangas appeared to be playing semantic games with the word understanding. Dr. Merikangas testified that Petitioner is aware that he is going to be executed, that Petitioner claims he is innocent of the crime for which he has been convicted and sentenced to die, and that Petitioner claims he is being killed to conceal the identity of the real killer. However, due to Petitioner's unconventional beliefs about reincarnation.[11] Dr. Merikangas concluded that

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Petitioner does not fully understand the consequences of being executed.[12] Dr. Merikangas went on to explain that because Petitioner maintains he is innocent of the crime, and that he is being killed to conceal the identity of the "real killer", he obviously does not understand the reason he is being executed.[13] Dr. Merikangas further opined that as Petitioner's execution draws near, Petitioner will become even less competent than he is at present.

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[7] Id., at page 123, lines 14-18.

[8] This Court notes, however, that in his report, Dr. Merikangas states he relied upon the neuropsychological testing performed by Dr. James S.Walker, Ph.D to reach his diagnosis, and ironically, the testing done by Dr. Walker is almost identical to the testing done by Dr. Martell.

[9] Id., page 138, lines 14-17.

[10] This Court notes that it found Dr. Merikangas' contempt regarding the amount of time spent with Petitioner by State's experts somewhat surprising, in light of the fact that Dr. Merikangas spent a total of only one and one-half hours with Petitioner, a third of which was comprised of the physical examination of Petitioner.

[11] Petitioner apparently ascribes to the theories of writer/philosopher Edgar Cayce, in that Petitioner believes he will be reincarnated after his execution and return to earth.

[12] This Court disagrees with Dr. Merikangas' opinion that Petitioner's beliefs in reincarnation were delusional. This Court takes judicial notice that reincarnation, while not a Christian belief, is a theory ascribed to by many people besides Petitioner.

[13] Transcript of the proceedings, Volume I, page 162, lines 8-25; page 163, lines 1-8

On cross examination, Dr. Merikangas testified he had seen Petitioner one time for a total of an hour and a half,[14] that the actual notes of his interview composed only one page, and that in fact he generally did not even take notes when interviewing a patient.[15] Regarding his comments about the tests administered to Petitioner by State's experts, specifically that they were not recognized as valid tests to determine malingering, Dr. Merikangas conceded that Dr. Richard Rogers, the foremost expert in the United States on malingering, lists the very tests used by the State's experts as one of the methods to use to determine malingering.[16]

When questioned about Petitioner's unusual belief concerning reincarnation as a basis for his determination that Petitioner was incompetent to be executed, Dr. Merikangas testified that this belief was not determinative of whether he was incompetent, but rather the fact that Petitioner is a chronic paranoid schizophrenic[17] was the reason he found him incompetent .[18]

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Petitioner is a chronic paranoid schizophrenic" was the reason he found him incompetent.[18] Interestingly enough, Dr. Merikangas had previously testified that "you can be schizophrenic and be competent, or you can be schizophrenic and be incompetent."[19]

Upon further questioning by the State, Dr. Merikangas again stated that although Petitioner told him that he did not commit the crime for which he was going to be executed, Petitioner is aware of his impending execution, and that he was sentenced to die for the murder of a young girl. Finally, Dr. Merikangas testified that he agreed with the reports of Dr. Martell, Dr. Matthews, Dr. Auble, Dr. Walker, and Dr. Kenner that Petitioner realizes he was sentenced to die for the murder of a young girl.[20] At this point, the witness became somewhat uncooperative with the State, even refusing to help State's counsel pronounce a medical term when asked for help by State's counsel.[21]

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[14] Transcript of the proceedings, Volume II, page 182, lines 6-8.

[15] Id., page 183, lines 14-23.

[16] Id., page 185, lines 5-25.

[17] This Court notes here that Dr. Merikangas was the only doctor of six who evaluated Petitioner who ultimately concluded he was a paranoid schizophrenic.

[18] Id., page 191, lines 14-20.

[19] Id., page 169, lines 2-4.

[20] Id., page 201, lines 8-25; page 208, lines 1-6.

[21] Id., page 221, lines 12-15.

Petitioner's counsel next examined Dr. William Kenner, M.D.. Dr. Kenner also had an extensive and impressive curriculum vitae, and was accepted by this Court as an expert in psychiatry. Dr. Kenner examined Petitioner on four separate occasions. Dr. Kenner testified that he reviewed Petitioner's old medical records, and utilized the reports of Dr. Matthews, Dr. Martell, and Dr. Merikangas in his evaluation of Petitioner.

Dr. Kenner testified that on his first visit with Petitioner, which took place December 22, 1999, he discovered that Petitioner sometimes "loses time,"and further testified that he found

him to be incompetent after this initial visit and diagnosed him as a schizophrenic.[22]

Dr. Kenner visited Petitioner a second time on January 10, 2000. At the conclusion of this visit, Dr. Kenner testified that Petitioner was no longer manifesting psychotic symptoms, and that he thought him competent to be executed.[23]

Dr. Kenner's third visit took place January 11, 2000. Dr. Kenner testified that on this visit, Petitioner did not remember the previous night's visit, and that he believed this loss of memory to be genuine. In addition to memory loss, the Petitioner gave a history of his childhood to Dr. Kenner wholly inconsistent with any history previously given. Dr. Kenner testified that after he questioned Petitioner about the death penalty, he became agitated and asked to be taken back to his cell. From this third interview, Dr. Kenner began to think that Petitioner suffered from Dissociative Identity Disorder, hereafter referred to as DID, and opined that he was not competent to be executed.

Dr. Kenner's fourth visit took place on January 12, 2000. At this time, Petitioner showed Dr. Kenner a letter he had received from another prisoner, in which Petitioner was threatened with bodily harm. Petitioner told Dr. Kenner that he had received the letter the previous evening before Dr. Kenner had visited him.[24] Dr. Kenner testified that this letter was significant in his finding of DID because the letter represented a threat to Petitioner's physical integrity, causing him a great deal of stress, and accordingly, Dr. Kenner felt the stress stirred by the letter

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[22] Id., page 298, lines 8-11; page 299, lines 3-13.

[23] Id., page 302, lines 1-2.

[24] Transcript of the proceedings, Volume III, page 323, lines 17-18.

produced the period of separate identity exhibited by Petitioner the previous night.[25] In addition to the diagnosis of DID, Dr. Kenner also diagnosed Petitioner as suffering from generalized anxiety disorder, schizoaffective disorder (bipolar type), poly substance abuse, learning disorder, reading disorder, and schizoid personality disorder with antisocial features.

http://www.tncourts.gov/OPINIONS/TSC/CapCases/coerg/competency/competency.htm[11/18/2010 3:03:04 PM]

Dr. Kenner went on to testify that during this fourth visit, Petitioner described several instances of having difficulty with his memory. This Court notes here that even in what Dr. Kenner describes as a dissociative period, Petitioner was still able to talk knowledgeably about his attorney Henry Martin, a federal public defender in Nashville who is working on some of Petitioner's federal appeals, as well as attorneys Robert Hutton and Jim Walker, both of whom represented Petitioner in the competency hearing.[26] When questioned if he felt Petitioner was malingering, Dr. Kenner testified that he did not feel that Petitioner was malingering. Dr. Kenner further stated that the tests administered to the Petitioner by the State's expert Dr. Martell, the MMPI-II in particular, were not effective tools to test malingering in death row inmates.

When questioned about his diagnosis of DID and what effect it might have on Petitioner's ability to understand that he was going to be executed and the reason for it, Dr. Kenner stated that in a dissociated state, Petitioner would not have the mental capacity to understand his upcoming execution.[27] Dr. Kenner further testified that with a reasonable degree of medical certainty, he felt that Petitioner would not be competent to be executed because the upcoming stress of an execution date would cause him to dissociate.[28]

On cross examination, Dr. Kenner admitted that he felt the Petitioner was a manipulative person, so much so that he had advised Dr. Merikangas of the same.[29] Dr. Kenner also testified that he was aware that Petitioner had lied to numerous treating mental health physicians in the past, and had in fact bragged to people that he [Petitioner] could manipulate mental health experts to believe anything he wanted them to believe. However, Dr. Kenner maintained that he

[25] Id., page 327, lines 3-6.

[26] Transcript of the proceedings, Volume II, page 310, lines 8-17.

[27] Transcript of the proceedings, Volume III, page 341, lines 16-19.

[28] Id., page 344, lines 19-25; page 345, lines 1-8.

[29] Id., page 350, lines 18-25.

felt Petitioner's confusion and loss of memory during his interviews with him was genuine.[30] Dr.

felt Petitioner's confusion and loss of memory during the time of

Kenner went on to say that Petitioner has an underlying psychotic process of some kind, which could be paranoid schizophrenia, and that when not under stress, he is competent to be executed.[31] Dr. Kenner admitted that on his fourth visit with Petitioner, he found him competent to be executed in accordance with the Van Tran standard, although he felt he could dissociate in the future, which would render him incompetent.[32]

This Court, while certainly not an expert in the field of mental health disorders, has some question about the diagnosis of DID. On cross examination, Dr. Kenner stated that a person with DID has two identities, a primary and a secondary. The secondary identity is manifested when the first identity is under stress. Of particular interest to this Court was Dr. Kenner's explicit statement that "the secondary identity has no awareness of the primary identity, any of the primary identity's past history, why he is on death row, what is about to happen to him, anything like that."[33] As cited above, during what Dr. Kenner described as a dissociative state for Petitioner, e.g., the overtaking of Petitioner's primary identity by his secondary identity, Petitioner's "secondary identity" was well aware of the names of his "primary identity's" attorneys, both those who represented him in federal court as well as the trial court competency proceedings, and was also aware that he had pending claims in federal court. This Court finds that this is in direct contravention of Dr. Kenner's explanation of DID and how it manifests itself.

At the close of Dr. Kenner's testimony, counsel for the Petitioner rested, and the proceedings were adjourned until the next day, when the State would begin presentation of its case.[34] When the hearing resumed the next morning, the State first called lay witness Sergeant

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[30] Id., page 357, lines 3-22.

[31] Id., page 261, lines 3-19.

[32] Id., page 362, lines 1-4.

[33] Id., page 360, lines 12-20.

[34] This Court notes that before resting its case, Counsel for Petitioner also introduced testimony in the form of two lay witnesses, both spiritual counselors at River Bend Maximum Security Institution. Both lay witnesses testified that Petitioner has exhibited some form of memory loss in their presence. For example, both witnesses testified that Petitioner had told them he had made a cup of coffee, only to find it cold as ice when he started to drink it. This

Court will not discuss their testimony in great detail, as neither was able to render an opinion as to whether Petitioner was competent in accordance with the standard set forth in Van Tran.

James W. Horton. It was at this point that the Petitioner's behavior became of significant interest to this Court. This Court will first discuss Petitioner's behavior before discussing the testimony of the State's lay witnesses.

From the first day of the hearing, Petitioner attempted to disrupt the competency proceedings. Petitioner made insulting and inappropriate statements to the Court. In addition, Petitioner whistled and banged on chairs with his hands, making such noise that the Court was forced to find a chair comprised only of soft, cushy material for the Petitioner. The Petitioner complained about the chair, and when the Court instructed the bailiffs to leave Petitioner in the "soft chair," Petitioner stated to his attorneys, "Make a note of that. When we appeal it. Take his ass off that bench."[35] Petitioner again addressed the Court regarding the change of his chair, stating to the Court, "...I know why he done it. Because I was using it like this. [simultaneously beating on his lawyer's chair, located beside him] How do you like that? Can you hear that, Judge? Just happen to have one here I can beat on. How's that, Judge?"[36]

This disruptive behavior reached a climax on the third day of the hearing. Upon entering the courtroom, the Petitioner turned to the court gallery and stated, "I ain't doing this to disrespect you all,[37] but I ain't staying here no more. You can either send me back or we're just going to have some problems now."[38]

The Court allowed the first witness of the day, Sergeant James W. Horton, a guard at River Bend where Petitioner is housed, to take the stand. At this point, the Petitioner began to scream so loudly that both attorneys for the Petitioner and the State were forced to stand directly in front of the witness at the witness chair in order to question him and to hear his responses. Petitioner's screaming consisted of obscenities and threats directed at the Court, the court clerk, the capital case law clerk, the State's attorneys, the witness, and the court reporter.

The Court makes special note here that although obscene, Petitioner's shouting was

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[35] Transcript of the proceedings, Volume I, page 55, line 20-21.

[36] Id., page 56, lines 5-9.

[37] Proof was later entered into the record in the form of testimony from Charlotte Stout that this statement was directed at the victim's mother, Charlotte Stout. Transcript of the proceedings, Volume V, page 688, lines 14-22.

[38] Transcript of the proceedings, Volume IV, page 479, lines 9-12.

conversational in that Petitioner responded, albeit in an inappropriate and offensive manner, to statements by the Court in both a logical and coherent manner. His comments were completely in context with what was being said in the courtroom. Petitioner was aware of his situation, and of what was going on around him enough so that he was even able to interject his own responses to questions of the witness asked by counsel before the witness was able to answer.

For example, when Sergeant Horton was questioned as to what his job was at River Bend, the Petitioner interjected, shouting, "He wasn't a goddamn thing. He was a whore."[39] The Petitioner then invited the Court to get mad at him for his antics.

As the Sergeant testified, Petitioner threatened him, even calling him by name at times. For example, the Petitioner stated, "Just remember you got to be back at River Bend whore. You won't have all these goddamn people protecting your ass up there, bitch."[40] Petitioner also stated, "Oh, you're a lying dick sucking bitch, Horton. And you remember, bitch, I'm going to be back over there [at River Bend]. Don't be trying to hide, you punk.."[41] Several other threatening statements were made to Sergeant Horton over the course of his testimony by the Petitioner in addition to the two statements cited above.

When the Court directed that the proceedings would continue in light of Petitioner's antics, Petitioner elevated his disruptive behavior, shouting to the courtroom, "Can you all hear me, bitch?"[42], then telling the Court, "You'll regret bringing me down here you goddamn Judge Judy want to be."[43]

At this point in the proceedings, Petitioner, calling Attorney General Glen Pruden by name and addressing Mr. Pruden's status as an attorney for the State, began spitting on Mr. Pruden, and Mr. Eric Dabbs, another attorney for the State. Due to the spitting, the State

http://www.tncourts.gov/OPINIONS/TSC/CapCases/coerg/competency/competency.htm[11/18/2010 3:03:04 PM]

suggested, and the Court so ordered, that the Petitioner be gagged, in accordance with the United

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[39] Id., page 485, lines 2-10.

[40] Id., page 490, lines 17-20.

[41] Id., page 581, lines 2-5. The Court notes that these are but two of a plethora of statements and threats made to Sergeant Horton by the Petitioner.

[42] Id., page 492, lines 21-22.

[43] Id., page 493, lines 9-10.

States Supreme Court case of Illinois v. Allen, 90 S.Ct. 1057 (1970).[44] Because the Court felt that the Petitioner should be present in the courtroom for his competency proceedings, the Court felt that gag restraints would be an appropriate measure, given the Petitioner's behavior.

While making its ruling regarding the gag restraint, Petitioner interrupted the Court shouting, "Gag coming up."[45] The Petitioner further informed the Court that he would continue to "holler" until the Court ordered the gag,[46] and that the gag would not stop him from making noise; that he would just hum real loud once gagged.[47]

Indeed, the Petitioner lived up to his promise. After being gagged with gauze, the Petitioner found and made evident to the Court that he was still able and would continue to shout and disrupt the hearing, stating, "Fuck you, bitch. You hear that whore. I can still holler, bitch,"[48]and, "Think you can shut me up. Fuck you, bitch."[49]

Shortly after they were applied, Petitioner was able to remove his gauze restraints, and new gag restraints in the form of medical tape were applied across the Petitioner's mouth. These too proved to be of little value in keeping the Petitioner quiet. It became obvious to the Court that the Petitioner would not calm his antics, as he had disrupted the proceedings for over three hours. At this point, the Court determined that Petitioner had waived his right to be present in the courtroom. A discussion was held side bar where the Court indicated to all attorneys that because Petitioner's behavior was so disruptive of the proceedings, a separate room with a closed circuit television would be provided to Petitioner after the lunch break in which he could view

http://www.tncourts.gov/OPINIONS/TSC/CapCases/coerg/competency/competency.htm[11/18/2010 3:03:04 PM]

the remainder of the competency proceedings, and it was so ordered.[50] Petitioner addressed the

[44] The Court notes that Petitioner's attorneys objected to gag restraints because they felt it to be both a health risk, and a determination by this Court that Petitioner's behavior was willful. The Court further notes that a paramedic applied the restraints, and was present in the courtroom at the request of the Court, no more than five feet from the Petitioner, in the event that Petitioner required medical attention.

[45] Id., page 511, line 10.

[46] Id., page 513, lines 19-20.

[47] Id., page 518, lines 7-9.

[48] Id., page 531, lines 16-17.

[49] Id., page 545, lines 24-25.

[50] The Court notes here that Larry Nance, one of Petitioner's attorneys, was required by this Court to be present with Petitioner at all times in the room where Petitioner viewed the proceedings through closed circuit television. In addition, this Court allowed Petitioner's

Court and its ruling, stating, "...I won. You're going to send me out of here, bitch. You're a weak mother fucker..."[51]

Before he was sent out of the courtroom, however, Petitioner made several statements in addition to those cited above that were of particular interest to this Court, in that they suggest Petitioner was cognizant of his situation and his surroundings, what the purpose of the competency hearing was, who the State's attorneys were, and their role in the hearing. Petitioner also illustrated that he was familiar with the court process, the appeals process, and even some rules of evidence.

For example, addressing the Court, Petitioner stated, "You better send me back to River Bend...I didn't ask to come here in the first place...You want to know if I'm crazy, you should have asked me...,"[52] and, "You know goddamn well you're going to tell them ain't nothing wrong with me so what the ... you waiting for?"[53] Petitioner also stated, "Old Judge Nixon is going to fuck your ass up punk. Everything you say and do is going to get overturned. This is a waste of...time and money here...You just wanted to be on TV."[54] Again referring to Judge Nixon, Petitioner stated, "...You just going to let that federal judge overrule your...ass. That's all you're doing,"[55] and, "Hey, don't worry about it. Judge Nixon is going to overturn anything that punk

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says. And he knows it, too."[56] Finally, again in reference to the appeals process, Petitioner stated, "Fuck you, Judge Colton...you know the federal court's going to over turn your ass...no matter what you rule..."[57] Petitioner then made reference to the trial court judge who initially

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attorneys Jim Walker and Robert Hutton to go back to the "closed circuit viewing room" to confer with Mr. Nance and Petitioner after each witness.

[51] Id., page 565, lines 23-25.

[52] Id., page 586, lines 13-17.

[53] Id., page 587, lines 1-3.

[54] Id., page 568, lines 5-9. The Court notes that Petitioner was referring to Judge John T. Nixon, Federal Judge, who has had much contact with Petitioner's federal claims, and who issued an opinion ten days prior to the beginning of Petitioner's competency hearing, holding that Petitioner could pursue a "Ford"claim, challenging both his competency to be executed and the adequacy of state procedures used to determine his competency to be executed, in a separate habeas corpus petition in the United States District Court for the Middle District of Tennessee.

[55] Id., page 577, lines 14-16.

[56] Id., page 588, lines 19-21.

[57] Id., page 598, lines 14-19.

tried his case, Judge WilliamWilliams, calling him by name.[58] Also of interest to this Court, when Sergeant Horton was questioned about when and how medication is distributed to inmates at River Bend, Petitioner shouted, "...He can't testify about what somebody else saw. Do your goddamn job, you fucking shit son of a bitch lawyer..."[59]

Again, although obscene, and certainly inappropriate in a courtroom setting, what became obvious to this Court was that Petitioner's behavior was a deliberate attempt to disrupt the competency proceedings. Petitioner did not want to be in the courtroom, and made concerted efforts to have himself removed.

Petitioner's attorneys assert that this behavior was not willful, but rather an involuntary result of his mental defects. This Court can not agree with this assertion. This Court realizes that Petitioner certainly may have some personality disorder, as attested to by several of the mental health experts. However, there was also testimony from the doctors that a person could have a personality disorder, a mental disease, or even brain damage, and still be competent, or aware of

http://www.tncourts.gov/OPINIONS/TSC/CapCases/coerg/competency/competency.htm[11/18/2010 3:03:04 PM]

personality disorder, a mental disease, or even brain damage, and still be competent, or aware of his actions.

This Court finds that Petitioner's behavior was willful, and that he behaved in such a fashion for no other purpose than to disrupt the competency proceedings. Furthermore, although not dispositive of the issue of Petitioner's present mental competency to be executed, Petitioner's behavior served as a strong indicator to this Court that Petitioner was cognizant of the reason he was in court and what the purpose of the proceedings was, and that he was aware of the various people in the courtroom and the role each served in the proceedings. Again, while Petitioner's antics were unpleasant, vile and disruptive, they did not appear to be involuntary reactions. The Petitioner did not engage in incoherent rambling. To the contrary, the Petitioner made pointed and responsive remarks. The fact that this behavior was not beyond the Petitioner's control was further made evident to this Court when subsequent to his removal from the courtroom, the behavior immediately ceased. This includes his removal to the holding cell directly adjacent to the courtroom where his gag restraints were applied, as well as the separate viewing room. Indeed, once the Petitioner was removed to his separate viewing room, no further

[58] Id., page 569, lines 9-14.

[59] Id., page 572 lined 13-16.

outbursts from Petitioner were reported

Once the proceedings resumed, the State called three more guards from River Bend to testify. As with the Petitioner's lay witnesses, the testimony of the State's lay witnesses will not be discussed in great detail. The gist of the lay witness testimony was that Petitioner was not a behavior problem in jail. In fact one guard stated he wished he had a hundred prisoners just like him. Each of the guard witnesses testified that they had never seen Petitioner in a dissociated state. To the contrary, the witnesses testified that Petitioner was friendly most of the time, and was responsive when greeted, sometimes calling the guards by name. However, as with

http://www.tncourts.gov/OPINIONS/TSC/CapCases/coerg/competency/competency.htm[11/18/2010 3:03:04 PM]

Petitioner's lay witnesses, none of the State's lay witnesses could render an opinion as to whether Petitioner was competent in accordance with the Van Tran standard.

The next expert to be called was State's expert Dr. Daryl B. Matthews, M.D., Ph.D..[60] As with the previous experts, Dr. Matthews had an extensive and impressive curriculum vitae, and was accepted by this Court as an expert in forensic psychiatry. This Court found him to be a competent and credible witness.

On direct examination, Dr. Matthews testified that the components of his psychiatric evaluation of Petitioner consisted of a detailed psychiatric history, which included inquiries about many different life areas, and a mental status examination, which included an assessment of Petitioner's current mental functioning. In addition, Dr. Matthews testified that he had questioned Petitioner extensively about his knowledge of his impending execution and the reason he was to be executed. Dr. Matthews stated that he had spent a total of five hours with Petitioner.[61]

Dr. Matthews testified during his examination, he learned a great deal about Petitioner, and went into extensive detail with this Court about his findings. Dr. Matthews testified that Petitioner gave him a personal history consistent with that given to other mental health professionals. Dr. Matthews testified that he noted the constant tremor Petitioner exhibited, and

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[60] Before calling Dr. Matthews, the State called Mrs. Charlotte Stout to the stand and Mrs. Stout read a letter purportedly written to her by the Petitioner. This Court found that there was circumstantial evidence that the letter was written by Petitioner. However, this Court felt that the letter had little relevance to Petitioner's competency, and the letter was not considered in this Court's determination of Petitioner's competency to be executed.

[61] Transcript of the proceedings, Volume V, page 710, lines 11-24.

he pointed this out to Petitioner. Petitioner told Dr. Matthews that he has always had the tremors, that he does not like sitting still, and that he feels better when moving.[62]

Dr. Matthews testified that Petitioner told him he remains in his cell most of the time and chooses not to take exercise because he fears the other inmates.[63] Dr. Matthews testified that he

talked with Petitioner a bit about this fear, and that Petitioner explained that his fear of inmates was due in large part to Petitioner's awareness of the repugnance in which his offense is held by other inmates. Dr. Matthews also testified that Petitioner told him he is unhappy with his lawyers' attempts to prove him crazy rather than trying to prove him innocent.[64]

Dr. Matthews testified that when questioned about his understanding of death, Petitioner understood what the death of the body is. Petitioner told Dr. Matthews that he believes that there is a soul and that it goes somewhere. Dr. Matthews further testified that Petitioner expressed his belief in reincarnation to him in extensive detail, and stated that his views on reincarnation are those of Edgar Cayce.[65] Petitioner stated to Dr. Matthews that he did not "get" these views from Cayce, but that Cayce essentially echoed his views.[66]

In further reference to his understanding of death, Dr. Matthews testified that Petitioner related that he had expressed an interest in organ donation, specifically, his eyeballs, but that the warden would not allow him to do so. Dr. Matthews testified that Petitioner stated to him that he thought that once you die, you die, and the body was no longer of any use, so he was curious as to why the warden would not allow his eyes to be used.[67]

Dr. Matthews testified that when he questioned Petitioner about his execution, Petitioner told him that he does believe he will be executed. Dr. Matthews also testified that Petitioner told him that he was given a paper in which he was asked to choose his method of execution, and that he had chosen "the needle." Petitioner further informed Dr. Matthews that his lawyers were

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[62] Id., page 717, lines 6-16.

[63] Id., page 727, lines 3-6.

[64] Id., page 730, lines 15-20.

[65] Id., page 732, lines 5-25.

[66] Id., page 733, lines 1-9. Dr. Matthews explained that Edgar Cayce is a famous American prophet and fake healer who died in the nineteen forties, and who has written scores of books and sold millions of copies of said books.

[67] Id., page 734, lines 17-22.

angry at him when he chose a method, and that they [his lawyers] told him not to sign any papers.

http://www.tncourts.gov/OPINIONS/TSC/CapCases/coerg/competency/competency.htm[11/18/2010 3:03:04 PM]

Dr. Matthews testified that Petitioner was irritated by his lawyers' instructions, and stated that he was a grown man and could sign anything he wanted to.[68]

Dr. Matthews testified that when he questioned Petitioner about his competency hearing, Petitioner stated that he understood that a hearing was going to be held on the issue of his competency, and that he did not want to go.[69]

Dr. Matthews testified that Petitioner is aware that he is alleged to have killed a girl, but that Petitioner minimized the seriousness of the offense and stated that people get murdered all the time. Dr. Matthews testified that when he asked Petitioner if he was convicted or found guilty of that murder, he said he was not, because in order to be found guilty, one must in fact be guilty, and he is innocent. Dr. Matthews testified that he questioned him further on this issue, and asked him if the judge said he was guilty. Petitioner told Dr. Matthews that the judge said he was guilty and that he was going to die, and that the reason was the murder.[70]

Dr. Matthews testified that Petitioner further expressed his innocence of the crime, stating that the crime was actually committed by a man named Donald Gant, and that both he [Petitioner] and the government have proof that he did not commit the crime.[71] Dr. Matthews testified that Petitioner told him that the witnesses against him changed their stories on the witness stand, that Donald Gant had claw marks on his face, and that Donald Gant had been arrested before for "messing around with kids." Petitioner further stated to Dr. Matthews that his confession was coerced.[72]

Dr. Matthews testified that when he questioned Petitioner about what the effect of a finding of incompetence would be, Petitioner told him that they give you drugs to make you well, and then they kill you.[73]

When Dr. Matthews finished testifying about the information he had received through his

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[68] Id., page 735, lines 9-21.

[69] Id., page 735, lines 22-25.

[70] Id., page 736, lines 2-19.

[71] Id., page 736, lines 20-24.

[72] Id., page 737, lines 2-19

http://www.tncourts.gov/OPINIONS/TSC/CapCases/coerg/competency/competency.htm[11/18/2010 3:03:04 PM]

Id., page 737, lines 2-19.

[73] Id., page 738, lines 1-4.

interview with Petitioner, he was asked by the State if he had reached any conclusions regarding a diagnosis of Petitioner. Dr. Matthews testified that he diagnosed Petitioner as suffering from pariphilia, not otherwise specified, e.g. exhibitionism, poly-substance dependance in a controlled environment, adjustment disorder with mixed anxiety and depressed mood, nicotine dependance, malingering, possible neuroleptic induced Parkinsonism, noncompliance with medical treatment, antisocial personality disorder, borderline personality disorder, and schizotypal personality disorder.[74]

Dr. Matthews then testified as to how he had reached these various diagnoses. Dr. Matthews stated that the pariphilia was well documented throughout his medical records, and indeed, the Petitioner had also expressed his tendency to masturbate constantly.

Dr. Matthews stated that the adjustment disorder with mixed anxiety could be attributed to Petitioner's living conditions and the fact that he is facing execution.[75]

In regard to the diagnosis that the Petitioner was malingering, Dr. Matthews testified that the diagnosis was based on the assessment of malingering made by countless other professionals in the past, on Petitioner's own admission to Dr. Matthews that he had lied to mental health experts in the past, on Petitioner's performance on the various psychological tests administered by Dr. Martell and Dr. Walker, and on the fact that there has been a highly variable and inconsistent pattern of symptom presentation by Petitioner through the years. Dr. Matthews also stated that malingering is associated with anti-social personality disorder, another diagnosis given Petitioner by Dr. Matthews.[76]

In regard to his diagnosis of anti-social personality disorder, Dr. Matthews testified that some of the factors that contributed to this diagnosis were Petitioner's failure to conform to social norms with respect to lawful behaviors, his deceitfulness as indicated by repeated lying, his impulsivity or failure to plan ahead, his irritability and aggressiveness as documented in his hospital records, his consistent irresponsibility before he was incarcerated, his lack of remorse as

[74] Id., page 740, lines 6-25; page 741, lines 1-25; page 742, lines 1-23.

[75] Id., page 747, lines 8-25.

[76] Id., page 750, lines 1-25; page 751, lines 1-25; page 752, lines 1-25; page 753, lines 1-25; page 754, lines 1-12.

indicated by being indifferent to having hurt or mistreated another,[77] and the fact that Petitioner has a long history of being diagnosed with anti-social personality disorder.[78]

Dr. Matthews testified that he also diagnosed Petitioner with borderline personality disorder. He also testified that the symptoms of borderline personality disorder and anti-social personality disorder often overlap. Dr. Matthews further testified that Petitioner's disruptive behavior discussed by this Court above was fairly classic borderline behavior.[79] Dr. Matthews stated that some of the other factors that contributed to this diagnosis were a marked and persistent unstable self-image, which is often confused with multiple personality disorder, impulsivity, recurrent suicidal behavior, affective instability due to a marked reactivity of mood, irritability or anxiety, inappropriate intense anger or difficulty controlling anger, and transient stress related paranoid ideation or severe dissociative symptoms.[80]

When asked to comment on the Petitioner's outburst of the previous day, Dr. Matthews testified that he felt Petitioner was completely in control of his behavior, evidenced by the fact that Petitioner was able to walk into the courtroom quietly, behave with respect toward Mrs. Stout, then sit down and become phenomenally loud and abusive. Dr. Matthews further testified that he found this behavior remarkable because of the extent to which it was accompanied by a complete cognitive awareness of what was going on, evidenced by the fact that Petitioner was able to identify all the participants of his hearing, including people he had not seen in years. Dr. Matthews testified that this cognitive awareness was further evidenced by Petitioner's understanding of the appeals process.[81] Dr. Matthews commented that despite his intense display of emotion, it was obvious to him that Petitioner retained a command of the material and understood what was going on, and that this behavior was obviously motivated behavior in that

http://www.tncourts.gov/OPINIONS/TSC/CapCases/coerg/competency/competency.htm[11/18/2010 3:03:04 PM]

Petitioner did not want to be at the hearing so he made it known.[82]

When questioned about Dr. Merikangas' diagnosis of paranoid schizophrenia, Dr.

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[77] Id., page 755, lines 1-18.

[78] Transcript of the proceedings, Volume VI, page 762, lines 19-20.

[79] Id., page 769, lines 4-17.

[80] Id., page 772, lines 4-25; page 773, lines 1-23; page 774, lines 1-22.

[81] Id., page 780, lines 1-23.

[82] Id., page 781, lines 1-4.

Matthews testified that he thought it unlikely that Petitioner suffered from schizophrenia.[83] Dr. Matthews testified that he reached this conclusion in part due to the lack of documentation of delusional thoughts by defendant, as well as the fact that Dr. Herbert Meltzer, a foremost expert in the United States in the area of schizophrenia, did not find evidence of schizophrenia in the Petitioner.[84]

When questioned about his opinion of Dr. Kenner's diagnosis of DID for Petitioner, Dr. Matthews stated that he felt it to be the remotest and tiniest possibility he could imagine.[85]

Finally, when questioned as to Petitioner's competency to be executed, Dr. Matthews stated that he believed that Petitioner understands he is going to be executed and that he believed Petitioner understands the reason for it, and that he was therefore competent to be executed in accordance with the standard set forth in Van Tran.[86]

On cross examination, Dr. Matthews testified that his practice was a forensic practice, not a general practice, that the last time he had treated a schizophrenic patient was 1990, and that he had never treated anyone with DID.[87] It was further elicited from Dr. Matthews that he was a skeptic about the condition of DID in general.[88] Dr. Matthews also testified that he had not personally verified Petitioner's account of his personal history detailing the abuse he suffered at the hands of his father. Dr. Matthews explained that he did not do this because the account Petitioner gave him was consistent with what was reported in his medical history.[89]

When questioned about his interview with Petitioner, Dr. Matthews testified that

Petitioner downplayed his mental illness, but that this was consistent with malingering. Dr. Matthews further testified that he did not feel that anything Petitioner had done was inconsistent with malingering.[90]

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[83] Id., page 786, lines 20-24.

[84] Id., page 790, lines 1-17.

[85] Id., page 792, lines 18-21.

[86] Id., page 799, lines 1-2.

[87] Id., page 804, lines 18-23.

[88] Id., page 805, lines 21-22.

[89] Id., page 810, lines 1-8.

[90] Id., page 816, lines 23-25; page 817, lines 1-18.

Dr. Matthews testified that he agreed with the proposition that if someone is malingering, this does not preclude the existence of physical, psychiatric symptoms or brain damage.[91]

When questioned about the possibility that Petitioner could become psychotic in the future, Dr. Matthews stated that he did not foreclose that possibility, and that if it happened, it could be the result of the devolution of his borderline personality disorder, the result of substance abuse, or the result of faking.[92]

When questioned by Petitioner's counsel about Dr. Merikangas' diagnosis of schizophrenia, and why Dr. Matthews had not commented of any of the neurological signs that Dr. Merikangas said were consistent with schizophrenia, Dr. Matthews stated that he did not comment because there are almost no neurological signs inconsistent with the diagnosis of schizophrenia. Dr. Matthews further stated that schizophrenia is not diagnosed neurologically, and a schizophrenic could have almost any neurological picture.[93]

Dr. Matthews was not questioned on cross examination as to whether he felt that Petitioner was competent to be executed.

The Court next heard testimony from Dr. Daniel A. Martell, Ph.D. Dr. Martell also had an impressive curriculum vitae, and was accepted by this Court as an expert in

http://www.tncourts.gov/OPINIONS/TSC/CapCases/coerg/competency/competency.htm[11/18/2010 3:03:04 PM]

psychology.

Dr. Martell testified that he had observed, interviewed and tested the Petitioner for approximately nine and one-half hours, seven hours on January 8, 2000, and an additional two and one-half hours on January 9, 2000. Five hours of this was spent observing Dr. Matthews' forensic psychiatric interview of Petitioner. In addition to examining Petitioner, Dr. Martell testified that he had reviewed many documents pertaining to Petitioner, which included the reports of the Petitioner's experts, reports from mental health doctors who had treated Petitioner in the past, records of Petitioner's personal history, and the transcripts from Petitioner's 1996 habeas corpus proceeding.

On direct examination, Dr. Martell testified that he had administered a battery of

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[91] Id., page 817, lines 19-25.

[92] Id., page 820, lines 16-25; page 821, line 1.

[93] Id., page 830, lines 6-16.

personality tests to petitioner, as well as conducted an oral interview. Dr. Martell stated that the results of several of the personality tests were invalid and could not be interpreted. Dr. Martell reported that upon his examination of Petitioner, Petitioner was oriented to the world around him, that he knew who he was, where he was, and knew the correct month and year, although he was unsure of the exact day of the month. Dr. Martell reported that Petitioner was "superficially cooperative" throughout both days of the examination, although he later found him to be malingering mental illness.

Dr. Martell reported that Petitioner was a poor personal historian, claiming to Dr. Martell to have a poor memory for significant facts and events in his life, including his criminal case. For example, Petitioner stated that he had his name tattooed on his arm because he could not remember it, and he also claimed to have difficulty remembering his own birth date.

On the other hand, Dr. Martell reported that Petitioner was able to report in great detail other areas of his history, which included his abuse and that of his sisters at the hands of his

http://www.tncourts.gov/OPINIONS/TSC/CapCases/coerg/competency/competency.htm[11/18/2010 3:03:04 PM]

father, his extensive history of drug abuse, and various details of his criminal case that he believes show him to be innocent.

Dr. Martell noted the same constant rhythmic tremors in Petitioner's feet, legs and fingers that the other doctors had noted.

Dr. Martell reported that Petitioner's thoughts were expressed in a coherent, goal-directed and logical fashion, although his thought content did appear paranoid at times. Dr. Martell reported that Petitioner had denied visual hallucinations to him, but had stated that he did sometimes experience both auditory and olfactory hallucinations.

In regard to his test results, Dr. Martell said the results indicated to him that Petitioner was malingering mental illness. Petitioner's cross examination of Dr. Martell in large part concentrated on the validity of the tests administered by Dr. Martell. In fact, Petitioner's counsel read out loud to the Court several of the questions from the various tests, and commented on their absurdity as far as their relevance to a man in Petitioner's situation. Dr. Martell did admit on cross examination that some of the questions designed to detect malingering on the various tests were inappropriate for a death row inmate, but maintained that the tests were valid tools generally accepted in the field of psychology to test for malingering. Dr. Martell also maintained that the Petitioner was exaggerating his symptoms or malingering.

This Court notes that much ado was made over the validity of the tests administered by Dr. Martell. Although far from dispositive as to Petitioner's competence to be executed, this Court found that the results did have some relevance in the proceedings. Furthermore, the Petitioner's own Court appointed expert, Dr. James Walker, had administered almost the exact same tests to Petitioner as had Dr. Martell, and Dr. Walker and Dr. Martell both testified that these tests are widely used and generally accepted as valid methods of testing in the psychological field. Therefore, this Court allowed the results to be entered into evidence in accordance with State v. Van Tran, McDaniel v. CSX Transp., Inc., 955 S.W.2d 257 (Tenn. 1997), and Tennessee Rules of Evidence 401 and 402. Additionally, as Dr. Martell stated in his

report, the ultimate determination of Petitioner's competency for execution is a legal issue, not a mental health issue, and the ultimate question before this Court is not whether Petitioner is malingering mental illness, but rather, does Petitioner have the mental capacity to understand the fact of his impending execution and the reason for it.

In regard to Petitioner's capacity to understand the fact of his impending execution, Dr. Martell reported that Petitioner did understand that "they are going to kill me." Dr. Martell reported that Petitioner had informed him that the warden of River Bend had approached him and asked him to choose the method of his execution, and that he had chosen lethal injection. Petitioner further related to Dr. Martell that he had been offered Valium to sedate him prior to his execution, but that he had refused or planned to refuse. In regard to the refusal of Valium, Dr. Martell reported that Petitioner told him, "I think there might be a God, and I've got enough to deal with with him, without being drunk on Valium."

In regard to the reason for his impending execution, Dr. Martell reported that Petitioner was able to state that he had been sentenced to die for the murder of a young girl, although he couldn't remember her name, and stated he was not guilty of her murder. Dr. Martell further reported that Petitioner stated he had been arrested for murder, but claimed he had given a false confession, and attributed the crime to a man named Donald Gant. Petitioner further cited several pieces of evidence to Dr. Martell that he felt proved his innocence. Dr. Martell also referenced the fact that Petitioner is somewhat displeased with his lawyer's efforts to prove him crazy, rather than innocent.

Dr. Martell's final evaluation of Petitioner was that he is a manipulative and psychopathic

individual, but that there was no evidence that he was psychotic at the time of his evaluation. Dr. Martell further opined that Petitioner was competent to be executed in accordance with the Van Tran standard.

At the conclusion of Dr. Martell's testimony, the state rested its case. In rebuttal, Petitioner called Dr. John Pruett, M.D., who was an attending physician at River Bend from 1994 to 1997. This Court found Dr. Pruett to be a competent and credible witness.

Dr. Pruett testified that in his time at River Bend, he had occasion to see Petitioner once every two to three months. On direct examination, Dr. Pruett testified, that DID was a legitimately recognized mental disorder, but that he had only seen one case of it. He further testified that the change in Petitioner's behavior witnessed by Dr. Kenner could be consistent with DID. However, when questioned about the many diagnoses given Petitioner, Dr. Pruett stated that while Petitioner's symptoms were consistent with the plethora of diagnoses, Petitioner's symptoms were also consistent with malingering.

On cross examination, Dr. Pruett testified that schizophrenia could not be diagnosed by the observation of brain structure alone, and that he most likely would not diagnose Petitioner with DID. Dr. Pruett did not render an opinion as to Petitioner's present mental competency to be executed.

Petitioner next called Dr. James Walker, whose report of his examination with Petitioner was referred to several times during the testimony of the other doctors. Dr. Walker is a licensed neuropsychologist, and this Court also found him to be a competent and credible witness.

Dr. Walker testified that he examined the Petitioner on December 23 and 24 of 1999. Dr. Walker stated that during his examination of Petitioner, he administered almost the exact battery of tests to Petitioner that Dr. Martell administered, as well as conducted a two to three hour interview.

Dr. Walker reported that Petitioner had given him an account of his childhood and the abuse he suffered at the hands of his father consistent to that given to other mental health professionals. Petitioner also reported his history of drug abuse to Dr. Walker. Dr. Walker reported that Petitioner's mental health records since 1996 reflect no clear indications of psychotic thinking or behavior, although the records do indicate consistent complaints of insomnia, anxiety, and urges to masturbate constantly. Dr. Walker reported that Petitioner has

been written up innumerable times for public masturbation. In addition, Dr. Walker reported that Petitioner's prison records reflect an increase in complaints of anxiety and insomnia in the two weeks prior to his planned execution date of October 1999, although mental health workers

at the prison noted that Petitioner continued to exhibit logical and coherent thought and clear speech.

Dr. Walker reported the following observations about Petitioner's behavior during his examination of him: He was alert and oriented to self, year, season, month, weekday, location and situation, but not date. He was markedly anxious, and psychomotor agitation was evident. Speech was fluent, and speech content reflected no delusions or obsessions. He did report unusual ideas, such as a belief in reincarnation. He used every opportunity during the interview to state his innocence of the crime for which he had been convicted, and to describe how he had been unfairly treated by the justice system.

Regarding the results of his testing of Petitioner, although Dr. Walker's results were similar to Dr. Martell's results, Dr. Walker testified that he did not feel that Petitioner was malingering, as malingering required some purpose or goal, and he could not detect any motivation of Petitioner to escape execution. Dr. Walker further stated that he did not believe Petitioner to be malingering because Petitioner denied any psychosis, took every opportunity to build himself up, and he felt Petitioner's behavior to be consistent with all mental health professionals.

When questioned about the various diagnoses given to Petitioner by the mental health experts in the present hearing, Dr. Walker stated that all of the diagnoses were reasonable, although he would not diagnose him as having DID. Dr. Walker testified that the Petitioner is not psychotic, but that schizotypal, antisocial, and narcissistic personality features were present. Dr. Walker further testified that Petitioner's tendency to lie could best be explained by a diagnosis of pseudologica fantastica, a condition that goes along with Borderline Personality Disorder, but which is not found in schizophrenics.

When questioned as to whether he felt Petitioner was competent to be executed in accordance with the Van Tran standard, Dr. Walker stated that he could not reach a conclusion on this, as competency to be executed was not his area of expertise. However, on cross examination, Dr. Walker did admit that in his report he states that Petitioner is aware that his

http://www.tncourts.gov/OPINIONS/TSC/CapCases/coerg/competency/competency.htm[11/18/2010 3:03:04 PM]

execution is pending. Dr. Walker further reported that Petitioner demonstrated a working knowledge of the legal system, including the roles of the judge, his attorneys, "and so forth." In addition, Dr. Walker reported that Petitioner retains memories of his trial and legal proceedings since his trial, and can explain many or most of the issues involved. Further, Petitioner is aware that he has been accused of a crime, and that the death penalty has been imposed for that crime. In sum, according to Dr. Walker's report, Petitioner has a basic understanding of his current situation and the capacity to act in his best interests if he chooses to do so.

When questioned about Dr. Kenner's assertion that Petitioner's mental state would deteriorate as his execution date approaches, Dr. Walker testified that he had questioned Petitioner closely about the future, going into unpleasant detail about his impending execution in an effort to test Petitioner's tolerance for imagining the details of his execution. Dr. Walker testified that he could elicit no concern on Petitioner's part that he might deteriorate, nor could Dr. Walker observe any deterioration in response to his questions. Finally, Dr. Walker testified that a psychotic deterioration is not likely, but that it could not be definitively ruled out.

Although he did not testify in court, Dr. Herbert Meltzer submitted to this Court a report of his evaluation of Petitioner, conducted on December 23, 1999. Dr. Meltzer is a psychiatrist at the Psychiatric Hospital at Vanderbilt, whose studies center around schizophrenia. Dr. Meltzer was referred to several times throughout the course of the hearing, and all the medical experts spoke of Dr. Meltzer with great respect.

In Dr. Meltzer's report, he indicated that he utilized the mental health records of Petitioner dated 1975-1981, verbal communication with Dr. Walker, as well as Dr. Walker's written report, and the results of his oral interview with Petitioner. Dr. Meltzer did not take notes during his interview.

Dr. Meltzer reported that Petitioner's chief complaint to him was, "I know you are here to find out if I'm crazy so they can execute me. I am not crazy."

Dr. Meltzer reported that he observed the same constant tremors as had the other doctors, but that Petitioner was able to listen to his questions and make responsive comments, some of which were inappropriate, but most of which were to the point. He further reported that Petitioner exhibited no disorganization of speech, nor any bizarre delusions. To the contrary, Dr. Meltzer reported that considering the Petitioner's level of education and intelligence, he was

http://www.tncourts.gov/OPINIONS/TSC/CapCases/coerg/competency/competency.htm[11/18/2010 3:03:04 PM]

remarkably lucid about his inner feelings and preferences.

Dr. Meltzer reported that Petitioner is aware that he is facing imminent execution for the crime of which he was convicted. He further reported that Petitioner does understand the nature of the crimes for which he was convicted, does not admit to guilt, believes he cannot obtain clemency or a new trial, and prefers to die rather than to live as he currently lives.

Dr. Meltzer reported that Petitioner did not currently meet the criteria for schizophrenia, and instead diagnosed Petitioner as suffering from generalized anxiety disorder, mild dementia or unknown etiology, compulsive masturbation, and possibly borderline personality disorder.

CONCLUSION

It appears to this Court that Petitioner is suffering from some sort of personality disorder, as attested to by the majority of the mental health examiners. However, the ultimate question of whether the Petitioner is competent to be executed is a question of fact. Van Tran, 6 S.W.3d at 271; citing Ford, 477 U.S. at 412 ("the ultimate decision will turn on the finding of a single fact..."). It appears to this Court that the single fact most relevant to the determination of Petitioner's competency to be executed is the answer to the question of whether Petitioner lacks the mental capacity to understand the fact of his impending execution and the reason for it.

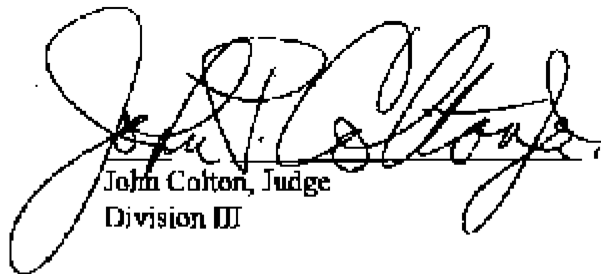
As noted in Van Tran, the burden of proof is on the Petitioner to prove his incompetence to be executed by a preponderance of the evidence. This Court finds that Petitioner has failed to overcome the presumption of competency by a preponderance of the evidence. In reaching its decision regarding Petitioner's present mental competency to be executed, this Court has taken into consideration the testimony of the court appointed experts for both the Petitioner and the State, the lay witness testimony, the behavior of the Petitioner during these proceedings, and the reports of the mental health experts submitted to this Court who did not testify.

Throughout all the testimony given, one fact has been constant; that Petitioner realizes he is facing execution, and that he knows it is because he has been convicted of murdering a little girl. Although he maintains his innocence, it has been made quite clear to this Court that Petitioner understands that he was found guilty of the murder and was sentenced to die. Furthermore, even in light of the myriad of mental health diagnoses given Petitioner, the fact that

Petitioner knows he is facing execution for the murder of a young girl was reported by each and every mental health expert. In light of this fact, this Court has no choice but to find that Petitioner is competent to be executed, in accordance with the standard set forth in Van Tran.

Accordingly, this Court hereby finds that Petitioner is presently mentally competent to be executed. It is therefore **ORDERED, ADJUDGED AND DECREED** that Petitioner's PETITION TO PROHIBIT EXECUTION UNDER COMMON LAW, FORD V. WAINWRIGHT, 477 U.S. 399 (1986) AND THE TENNESSEE CONSTITUTION is hereby **DENIED.**

Entered this 2nd day of February, 2000.



John Colton, Judge
Division III

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