

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

---

**ROBERT GLEN COE,**  
Movant,

vs.

**STATE OF TENNESSEE,**  
Respondent.

)  
)  
)  
)  
)  
)  
)

**No. B-73812**

**Death Penalty**

---

**FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTION TO QUASH VAN  
TRAN PROCESS AS IMPROPER**

---

This matter is before this Court on a MOTION TO QUASH VAN TRAN PROCESS AS IMPROPER filed by Movant, Robert Glen Coe. Movant cites common law, Article I §§ 8, 9 & 16, Article II § 2 of the Tennessee Constitution, the Fifth, Sixth, Eighth, and Fourteenth Amendments (due process and equal protection clauses) to the United States Constitution, and all other applicable law, including Tenn.Code Ann. § 16-3-101 et seq., as authority for filing this motion.

**FINDINGS OF FACT**

Movant was convicted of first-degree murder, aggravated rape, and aggravated kidnaping in the Criminal Court of Shelby County on February 28, 1991. He was sentenced to death on the murder conviction, 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).

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

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

1

mental competency to be executed, and remanded the issue to this Court, where Movant was originally tried and sentenced, in accordance with the procedures adopted and set forth by the Supreme Court in Van Tran v. State, S.CT.NO. W1998-00175-SC-R11-PD, Nov. 23, 1999. Coe v. State, S.CT.NO. M1999-01313-SC-DPE-PD, Dec. 15, 1999.

On December 29, 1999, Movant filed a Petition to Prohibit Execution Under Common Law, Ford v. Wainwright, 477 U.S. 399 (1986) and the Tennessee Constitution, requesting among other things that this Court grant him a hearing to determine his present mental competency to be executed.

On January 3, 2000, this Court granted in part and denied in part the Petition to Prohibit Execution. In doing so, this Court granted Movant's request for a competency hearing, and set a date of January 24, 2000, at 1:30 p.m. for said hearing.

Movant filed his present motion on January 18, 2000, and moves this Court to Quash the competency hearing proceedings set forth in Van Tran as improper.

### **BASIS FOR RELIEF**

Movant lists the following six allegations as justification for granting his Motion to Quash Van Tran as Improper, filed January 19, 2000.

1. They do not provide for a jury trial, and since this is a trial proceeding, Robert Coe is entitled to a jury trial;
2. The Van Tran procedures set forth a procedure which is a legislative function, in violation of Article II §2 of the Tennessee Constitution;
3. The Van Tran Procedures have not been established within the proper process for making rules under Tennessee law, and fall outside the Tennessee courts' powers under

law;

4. The burden of proof has improperly been placed on the defendant, whereas the burden should be on the state beyond a reasonable doubt, or at least by clear and convincing evidence;

5. The Tennessee Supreme Court has adopted appellate review procedures which are inconsistent with applicable Tennessee law; and

2

6. The Van Tran procedures are dicta.

Each of Movant's allegations will be addressed separately.

### CONCLUSIONS OF LAW

Movant's first allegation in support of his motion is that the procedures used to determine a prisoner's competency to be executed that were adopted and set forth in Van Tran are unconstitutional in that they do not provide for a jury trial. Movant argues that since this is a trial proceeding, he is entitled to a jury trial. Movant cites no law in support of this assertion, other than common law.

This Court notes that even at common law a prisoner had no absolute right to a jury trial on the issue of competency. See Nobles v. Georgia, 168 U.S. 398, at 407 (1897); Jordan v. State, 124 Tenn. 81, at 90-91 (1911). In addition, under existing Tennessee law, a judge, rather than a jury, determines the analogous question of competency to stand trial. State v. Johnson, 673 S.W.2d 877, at 880 (Tenn.Crim.App. 1984). Finally, as stated in this Court's FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTION TO REOPEN POST-CONVICTION PETITION, the Supreme Court of Tennessee has explicitly held that a prisoner is not entitled to

have a jury determines the issue of competency to be executed. Van Tran V. State, S.CT.NO. W1998-00175-SC-R11-PD, Nov. 23, 1999, pg. 20. This Court, once again, refuses to deviate from the explicit holding set forth by the Tennessee Supreme Court. This issue warrants no further discussion and is dismissed as it is completely without merit.

Movant's second allegation is that the Van Tran procedures set forth a procedure which is a legislative function, in violation of Article II § 2 of the Tennessee constitution, and accordingly, the procedures are null and void as they have been established in violation of law. As with his first allegation, Movant fails to cite any law in support of this allegation.

As the Tennessee Supreme Court so aptly stated in Van Tran, it has long been recognized that the Tennessee Supreme Court is the repository of the inherent power of the judiciary in this

3

State. Petition of Burson, 909 S.W.2d 768, at 772 (Tenn. 1995). Indeed, Tenn. Code Ann. §§ 16-3-503 and 504 (1994) broadly confer upon the Supreme Court all discretionary and inherent powers existing at common law at the time of the adoption of the state constitution. Id. It has also been recognized that the Supreme Court had not only the power, but the duty, to consider, adapt, and modify common law rules. State v. Rogers, 992 S.W.2d 393, at 400 (Tenn. 1999); Cary v. Cary, 937 S.W.2d 777, at 781 (Tenn. 1996). Finally, the Tennessee Supreme Court has recently held that in the context of capital cases, Tennessee courts have inherent power to adopt appropriate rules of criminal procedure when an issue arises for which no procedure is otherwise specifically prescribed. State v. Reid, 981 S.W.2d 166, at 170 (Tenn. 1998). Van Tran at pg. 11.

Before Van Tran, Tennessee had no procedure in effect by which a prisoner could assert his or her common law and constitutional right to challenge competency to be executed. As discussed above, there is no question that the Supreme Court had the power, if not the duty, to adopt and set forth such a procedure. Accordingly, Movant's allegation is without merit, and is hereby dismissed.

Movant's third allegation in support of his motion is that the Van Tran procedures have not been established within the proper process for making rules under Tennessee law, and fall

outside the Tennessee courts' powers under law.

For the same reasons discussed above, this Court has no reservation in holding that Tennessee Supreme Court acted within its inherent supervisory authority to adopt a procedure to govern claims of incompetency to be executed. Reid, 981 S.W.2d, at 170; Van Tran, at pg. 12. The Van Tran procedures were established within the proper process under Tennessee law. Accordingly, this allegation is without merit, and is hereby dismissed.

Movant's fourth allegation in support of his motion is that the burden of proof has improperly been placed on the defendant. Movant asserts that the burden should be on the state beyond a reasonable doubt, or at least by clear and convincing evidence, and cites the dissenting opinion of Justice Birch in Van Tran as authority for this proposition.

This Court reminds Movant that dissenting opinions are not proper authority to support propositions of law. Furthermore, after a lengthy discussion and explanation of its reasoning, the Court in Van Tran specifically held that a prisoner is presumed to be competent to be executed,

4

citing Ford v. Wainwright, 477 U.S. 399, at 426 (1986), and that to prevail in a competency hearing, the prisoner must overcome the presumption of competency by a preponderance of the evidence. Van Tran, at pg. 21, citing Billiot v. State, 655 So.2d 1, at 12 (Miss. 1995). This Court refuses to deviate from the holding of the Tennessee Supreme Court on the issue of the burden of proof at a competency hearing. Therefore, this allegation warrants no further discussion as it is without merit, and it is hereby dismissed.

Movant's fifth allegation in support of his motion is that the Tennessee Supreme Court has adopted appellate review procedures which are inconsistent with applicable Tennessee law. Movant does not state which appellate review procedures are inconsistent with applicable Tennessee law, nor does he offer any explanation as to why such procedures are inconsistent. Additionally, Movant has failed to cite to any authority in support of this conclusory allegation, and this Court is unconvinced that the Tennessee Supreme Court has adopted appellate review procedures which are inconsistent with applicable Tennessee law. Therefore, this allegation is without merit, and is hereby dismissed.

wholly without merit, and is hereby dismissed.

Movant's final allegation in support of his motion is that the Van Tran Procedures are dicta. Once again, Movant offers no authority to support this allegation. Additionally, this Court has already ruled on this issue. However, this Court will once again set forth its reasoning for the dismissal of this final claim.

Dicta is defined by Black's Law Dictionary as follows:

Opinions of a judge which do not embody the resolution or determination of the court. Expressions in a court's opinion which go beyond the facts before the court and therefore are individual views of author of opinion and not binding in subsequent cases.

Black's Law Dictionary, 408 (5<sup>th</sup> ed. 1979).

In contrast to Movant's assertion that the Van Tran procedures are dicta, the Tennessee Supreme Court in Van Tran specifically adopted and set forth the procedure that a prisoner sentenced to death must follow in order to assert his or her right to challenge competency to be executed. See Van Tran, pg. 15-20.

The Court designated that a hearing was to be held if competency to be executed is found to be in issue, and held that the "cognitive test" was the standard to be used at such hearings to determine the competency of a prisoner to be executed. The Court also set a very specific time

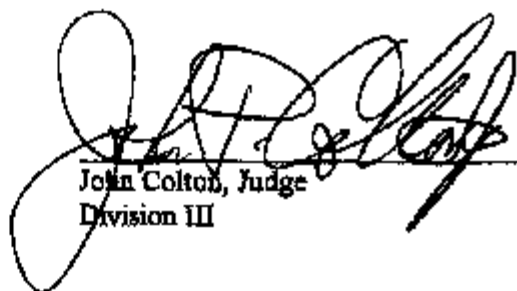
frame to guide the trial courts through this newly adopted procedure. The Court further held that it is the duty of the trial judge alone to determine whether the prisoner in question is competent to be executed. This Court strongly reiterates that the procedures governing a competency hearing adopted and set forth by the Tennessee Supreme Court under its inherent authority to do so are in no way, shape or form mere dicta. This allegation is completely without merit, and is hereby dismissed.

### CONCLUSION

This Court has considered the MOTION TO QUASH VAN TRAN PROCESS AS IMPROPER, and finds that the allegations contained therein are entirely without merit and must be dismissed.

It is therefore ORDERED, ADJUDGED, and DECREED that the Motion to Quash Van Tran Process as Improper is DENIED.

Entered this 21<sup>st</sup> day of January, 2000.

  
John Colton, Judge  
Division III

FILED 1-21-00  
WILLIAM R. REY, CLERK  
BY [Signature] D.C.