

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

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

MOTION TO RECONSIDER WAITING FOR RESPONSE  
FROM PETITIONER TO MOTION TO RELEASE EXHIBIT  
TO THE SHELBY COUNTY CRIMINAL COURT

On 14 January 2000, Respondent filed a motion requesting that this Court release State's Exhibit 64, taped confession by petitioner, to the Shelby County Criminal Court. Said exhibit was part of the original trial record which this Court ordered transferred from the custody of the Shelby County Criminal Court to its custody for use in this habeas corpus proceeding. By way of affidavit attached to the 14 January 2000 motion, undersigned counsel informed this Court that transfer of State's Exhibit 64 to Nick Owens, evidence custodian for the Shelby County Criminal Court, on Tuesday 18 January 2000, was necessary in order to ensure the exhibit's availability at petitioner's competency hearing before that Court on 24 January 2000.

Due to the above time constraints, a copy of Respondent's 14

January 2000 motion was promptly delivered to this Court's Courtroom Deputy, Mary Conner, by the Court Clerk's Office. Ms. Conner subsequently informed respondent that petitioner's counsel stated that he intended to file a response to the motion.

Within three hours of respondent filing his motion to release State's Exhibit 64 on 14 January 2000, this Court entered its memorandum and order concluding that its jurisdiction over this habeas corpus proceeding "is limited to executing the appellate mandate."<sup>1</sup> Nevertheless, on 18 January 2000, when Mr. Owens attempted receive custody of State's Exhibit 64 he was informed that respondent's motion to release said exhibit had not been ruled upon by the Court. Upon checking with the Clerk's Office, respondent was informed that no order releasing State's Exhibit 64 would be forthcoming because of the 10-day response time allowed, but not mandated to be observed by the Court, under M.D.Tenn. L.R. 8(b)(3).

As respondent has consistently held and this Court's 14 January order confirms, this Court's remaining jurisdiction is purely ministerial in nature. Respondent's motion requesting release of State's Exhibit 64 asks this Court to do nothing more than perform a proper ministerial act. It is beyond comprehension how this request can be seen as adversarial in regard to the now-concluded habeas corpus proceeding, requiring a response

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<sup>1</sup>This Court's memorandum and order also addressed other issues which are not germane to the requested release of State's exhibit 64.

(presumably in opposition) from petitioner. It is impossible to see how petitioner would suffer any harm, much less irreparable harm, from the Court promptly ordering the release of State's Exhibit 64. However, it cannot be said with absolute certainty that respondent will not.

M.D.Tenn. L.R. 8(b)(3) allows the Court to act on a motion prior to expiration of the 10-day response period. Such action in the instant case would certainly not be an abuse of this Court's discretion, in light of the pending competency for execution hearing set for 24 January 2000 in Shelby County Criminal Court. Waiting the permitted 10-days for a response would preclude critical evidence from being available for the state trial court's consideration within the timeframe mandated by the Tennessee Supreme Court. Moreover, respondent would note that, under M.D.Tenn. L.R. 7(g)(5), even the Clerk is permitted to sign such an order as is contemplated by respondent's motion and that M.D.Tenn. L.R. 14 requires the destruction of evidence not withdrawn within 30 days of final judgment.

Based upon the foregoing, respondent asks this Court to reconsider its decision not to release State's Exhibit 64 to the custody of the Shelby County Criminal Court pending the filing of a response by petitioner and order said exhibit's immediate release as requested in respondent's 14 January 2000 motion. Respondent.

asks that release of State's Exhibit 64 be so ordered on or before  
3:00 p.m., C.S.T., 19 January 2000.

Respectfully submitted,

MICHAEL E. MOORE  
Solicitor General



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CERTIFICATE OF SERVICE

I hereby certify that true and exact copies of the  
foregoing have been forwarded by hand-delivery, to Henry A. Martin,  
Federal Public Defender's Office, 810 Broadway, Suite 200,  
Nashville, TN 37203 and to James Holt Walker, Esq., 601 Woodland  
Street, Nashville, Tennessee 37206 on this the 18<sup>th</sup> day of  
January, 2000.



GLENN R. PRUDEN  
Assistant Attorney General