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

ROBERT GLEN COE

V.

Case No. 3:92-0180 Judge Nixon

RICKY BELL

ORDER

Pending before the Court is Petitioner's Statement in Support of This Court's Jurisdiction Over Petitioner's Initial Habeas Petition, (Docs. No. 434, 442), in which Petitioner argues that the Court has jurisdiction to (i) reconsider its ruling denying Petitioner's request to amend his Original Petition for Habeas Corpus, as amended by this Court, to add a claim that electrocution is unconstitutional; (ii) allow Petitioner to amend his Original Petition to add a claim of incompetency to be executed pursuant to Ford v. Wainwright. 477 U.S. 399 (1986); and (iii) revisit two issues he claims were left unresolved by the Court's December 8, 1996 Order and Memorandum Decision, (Docs. No. 403, 404), (the "1996 Opinion"). The government has responded to Petitioner's claims. (Doc. No. 438). Argument was heard on these matters on November 30, 1999.

Upon review of the record, relevant case law, and the Parties' arguments, the Court has determined that the Parties have not sufficiently briefed the issues and thus additional briefing is required. Accordingly, the Parties are ORDERED to brief the following issues for the Court:

Assuming that the Court finds that its 1996 Opinion is a final judgment as defined

pursuant to Federal Rule of Civil Procedure 54, does the Court have jurisdiction to This document was antared an the dockstin compliance with Rule 58 and rot Rule 79 (a).

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grant Petitioner leave to amend his Original Habeas Petition, in light of the fact that Petitioner has exhausted the federal appellate review process, including receiving a review on the merits of his petition by the Sixth Circuit in <u>Coe v. Bell</u>. 161 F.3d 320 (6th Cir. 1998), and having sought and been denied *certiorari* twice by the Supreme Court? The Parties should answer this question with respect to:

- A) the issue of electrocution
- B) Petitioner's Ford claim
- 2) Is reconsideration of the electrocution claim barred by the prohibitions against "second or successive" petitions set forth in 28 U.S.C. § 2244(b)(1)?
- 3) Is Petitioner's <u>Ford</u> claim barred by the prohibitions against "second or successive" petitions set forth in 28 U.S.C. § 2244(b)(2)?
- Is Petitioner's Ford claim properly brought pursuant to 28 U.S.C. § 2241 or § 2254?

The Parties shall file their briefs on these issues no later than Thursday, December 23, 1999. Should either Party feel it necessary to file a response, responsive briefs shall be filed by

Monday, January 3 : 2000. It is so ORDERED. CALLAR 1e Entered this the JOHN'S NIXC UNITED STATES DISTRICT COURT