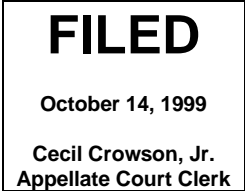


IN SUPREME COURT OF TENNESSEE  
AT JACKSON

ROBERT GLEN COE )  
 )  
Petitioner-Appellant ) S.Ct. No. \_\_\_\_\_  
 ) CCA No. 02COI-9606-CR-OO200  
v. )  
 )  
STATE OF TENNESSEE, )  
 )  
Respondent~Appellee )



PETITIONER'S RESPONSE TO  
STATE'S MOTION TO RECONSIDER AND VACATE ORDER  
GRANTING STAY OF EXECUTION

On October 11, 1999) this Court vacated a previously entered execution date of October 19,1999. The Court vacated the date based upon Robert Coe's entitlement to seek rehearing in the United States Supreme Court. The Court mentioned but did not resolve Robert Coe's additional contention that additional time was needed to participate in clemency in a meaningful way, because necessary materials for any clemency application became available only days before. This Court granted the motion. The State asks this Court to reconsider the vacation of the October 19,1999 date of execution. Respondent's motion is not well-taken for numerous reasons:

1 The State has provided no new arguments to warrant reconsideration. The arguments now presented by the State were carefully considered by this Court, and taken into account when the Court ordered the October 19 date vacated. Reconsideration is therefore not warranted.

2. Importantly, the State falsely contends that "Coe does not even aver that he believe he has grounds to seek rehearing from the United States Supreme Court, let alone disclose what those grounds might be." State's Motion p.1. The record indicates otherwise. In his Reply to the

State's Response, Robert Coe identified one such issue which provides a basis for rehearing under the United States Supreme Court Rules. He stated:

Petitioner respectfully notes that one ground for the granting of rehearing in the United States Supreme Court is the Court's recent grant of certiorari in *Weeks v. Angelone*, U.S. No. 99-5746, cert. granted 527 U.S. \_\_\_\_ (Sept. 1, 1999), which would appear to satisfy the standards of Rule 44. *Weeks* directly implicates the proper application of the standard of *Boyd v. California*, 494 U.S. 370, 380 (1990) to sentencing instructions which may preclude the jury's consideration of mitigating evidence. This is directly at issue in Robert Coe's petition for writ of certiorari, in which he has alleged that sentencing instructions concerning unanimity precluded the full consideration of mitigating evidence at sentencing. See Petition for Writ of Certiorari, p. i. Issue Presented #2.

Petitioner's Reply pp.1-2.

3. In addition, because the 25 days for filing rehearing have not passed, Robert Coe cannot fully identify all of the potential intervening events which would counsel rehearing. This is but one reason why, in the interests of fairness, this Court's order vacating the October 19 date was proper.

4. Also, the State does not -- and cannot -- contest the fact that necessary clemency materials were not available until last week, and that the October 19 date would have interfered with the preparation, and deliberate consideration of any application for clemency.

5. Finally, this Court should deny the motion to reconsider to avoid the "off~again, on-again" type of actions in capital cases which increase the "ordeals of the condemned" and which "afflict the conscience of enlightened government and give the civilized heart no rest." *State v. Dicks*, 615 S.W.2d 126, 137 (Tenn. 1981)(Brock, C.J., dissenting).

## CONCLUSION

The State's motion for reconsideration is not well-taken and should be denied.

Respectfully Submitted,

Henry A. Martin  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been forwarded by 1st-class mail, postage prepaid to Gordon W. Smith, Associate Solicitor General, 425 Fifth Avenue North, Nashville, Tennessee 37243 on this 14<sup>th</sup> day of October, 1999.

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ST A TE OF TENNESSEE, )  
 )  
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CERTIFICATE OF COUNSEL

I hereby certify that all statements contained in this motion are true and correct to the best of my knowledge.

Counsel for Petitioner-Appellant