

IN SUPREME COURT OF TENNESSEE
AT JACKSON

ROBERT GLEN COE)	
)	
Petitioner-Appellant)	S.Ct. No. <u>02501-9910-CR-00099</u>
)	CCA No. <u>02C01-9606-CR-00200</u>
v.)	
)	
STATE OF TENNESSEE,)	
)	
Respondent-Appellee)	

PETITIONER'S REPLY TO STATE'S RESPONSE TO
PETITIONER'S MOTION FOR STAY OR RESCISSION
OF OCTOBER 19, 1999 EXECUTION DATE

Petitioner Robert Glen Coe respectfully replies to the State's response to rescind the pending October 19 execution date in this matter. Petitioner respectfully notes:

1. The State faults Petitioner for not delineating, immediately upon the denial of certiorari, reasons rehearing should be granted by the United States Supreme Court. Rehearing petitions are generally limited to events occurring after the filing of the certiorari pleadings, or after the denial of certiorari. U.S.S.Ct.R. 44. The reason the United States Supreme Court provides 25 days for its process is to enable the petitioner to rely upon events which may occur up to 25 days after the initial denial of a petition. Every litigant has this right. Yet Robert Coe is being denied that right because the current execution date would leave him with only 15 days within which to file a petition. This hardly seems equitable, especially since Robert Coe's life is at stake.

2. In any event, 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 fully consideration of mitigating evidence at sentencing. See Petition for Writ of Certiorari, p. I, Issue Presented #2.

3. In this capital case, permitting Robert Coe the opportunity to exercise his rights in the United States Supreme Court will ensure that any available grounds for rehearing can be properly and timely asserted, as can be done by any other litigant. This is the proper course of action, especially in a capital case.

4. In addition, during the afternoon of October 4, 1999, counsel for Petitioner telephoned the Board of Pardons and Paroles in an effort to speak with Donna Drake in order to obtain any and all necessary materials concerning any application for executive clemency. Ms. Drake was not available, and counsel spoke with Ms. Vernice Thompson, inquiring about the status of revised materials needed for the application process. Ms. Thompson informed that the application was not yet complete, because it had to be submitted to the Governor's Office for final approval, which was expected soon. Counsel made an oral request that any materials be provided once they were finalized.

5. Through contact with counsel for Philip Workman, undersigned counsel learned on the afternoon of October 8, 1999, that Workman's counsel had finally received the updated materials. To ensure receipt of the materials on Robert Coe's behalf, counsel on the afternoon of October 8 has made another request (a written request) for the materials, which he has delivered to the Board. See Exhibit 1.

6. In any event, there has not been an execution in Tennessee in 39 years. As the United States Supreme Court has recognized, the process of executive clemency is critical to any system of capital punishment. See Hererra v. Collins, 506 U.S. 390 (1993). 11 days for counsel to review clemency

materials, to prepare a petition in conformity with the rules, to have the Board consider the petition, and to have the Governor consider the petition will not provide the time necessary for the deliberate consideration of the substantial issues in this case.

7. When this Court set the October 19 date, it was apparently not aware that new clemency rules and applications would not be ready until less than two weeks before October 19.

8. For all these reasons, the October 19 date should be stayed, as Petitioner has requested.

Respectfully Submitted,

Henry A. Martin
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810 Broadway, Suite 200
Nashville, Tennessee 37203

(615) 736-5047

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded by first-class mail, postage prepaid to Gordon W. Smith, Associate Solicitor General, 425 Fifth Avenue North, Nashville, Tennessee 37243 on this 8th day of October, 1999.

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ROBERT GLEN COE)	
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Petitioner-Appellant)	S.Ct. No. _____
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v.)	
)	
STATE OF TENNESSEE,)	
)	
Respondent-Appellee)	

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