

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

ROBERT GLEN COE,)	
)	
Petitioner/Appellant,)	
)	
v.)	SHELBY COUNTY
)	C.C.A. No.
)	02C01-9606-CR-00200
STATE OF TENNESSEE,)	
)	
Respondent/Appellee.)	

**Response to Petitioner's Motion for Stay
or Rescission of October 19, 1999 Execution Date**

Petitioner Coe has asked this Court to stay his October 19, 1999, execution because (1) he intends to file a petition for rehearing in the United States Supreme Court regarding the October 4, 1999, denial of his petition for writ of certiorari, and, (2) he intends to seek executive clemency.

A. Petition for Rehearing in the United States Supreme Court.

While U. S. Sup. Ct. R. 44.2 provides that any petition for rehearing of an order denying certiorari shall be filed within 25 days after the date of the order, U. S. Sup. Ct. R. 16.3 specifically provides that the order of denial will not be suspended pending disposition of a petition for rehearing, except by order of the Court or of a Justice of that Court. Although Coe avers he will file such a petition, no such petition has been filed, and he does not even aver that he has sufficient grounds to file such a petition for

rehearing. Under U. S. S. Ct. R. 44.2, the grounds for filing a petition for rehearing of a denial of certiorari are restricted to intervening circumstances of a substantial or controlling effect, or to other substantial grounds not previously presented, and must be presented in good faith and not for delay. Accordingly, with the entry of the order denying certiorari, proceedings should be regarded as concluded in the United States Supreme Court. If Coe believes he has grounds for a rehearing that would warrant further delay of the execution of his sentence, he should address them to that court.

B. Clemency.

Coe also asserts that he has yet to seek clemency and that this Court should postpone his execution date so that the clemency process will not be “truncated.” A request to stay execution of a lawful order of this Court based on a desire to seek clemency is not appropriately addressed to the judicial branch but is rather a matter committed to the discretion of the Governor. Article III, §6 of the Tennessee Constitution and Tenn. Code Ann. §40-27-101 grant the Governor the authority to issue a reprieve of the execution. If the Executive Branch needs additional time to consider a clemency request, a reprieve of the execution from the Governor is the appropriate remedy. Coe does not aver that he has requested a reprieve from the Governor. It is not for Coe to dictate how much time the Executive Branch may require to consider an application for clemency, if he ever files one.

Finally, Coe claims that the Governor has issued new rules governing clemency

and that the rules, regulations, and forms were not finalized as of October 7, 1999. This is false. As set out in the attached affidavits, the guidelines governing applications for clemency in capital cases were finalized on September 13, 1999, and the form was finalized on or before October 5, 1999. Further, Coe has not yet even requested a copy of the application from the Board.

C. Conclusion

For the reasons stated, petitioner Coe's motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been provided via facsimile and first-class U.S. Mail, postage pre-paid, to Henry A. Martin, Federal Public Defender and Paul R. Bottei, Assistant Federal Public Defender , 810 Broadway, Suite 200, Nashville, Tennessee 37203 on this the _____ day of October, 1999.

GLENN R. PRUDEN
Assistant Attorney General