

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

STATE OF TENNESSEE)	COFFEE COUNTY
)	
v.)	ORIGINAL APPEAL NO.
)	M1987-00067-SC-DPE-DD
GREGORY THOMPSON)	Filed: December 6, 2005

**REPLY TO THE STATE OF TENNESSEE’S RESPONSE TO MOTION FOR
PROTECTIVE ORDER AND ORDER REQUIRING RECIPROCAL DISCOVERY**

Mr. Thompson submits the following in reply to the State of Tennessee’s response to his motion for a protective order and order requiring reciprocal discovery:

1. The illegal subpoena used by the State of Tennessee to gain unfettered access to Thompson’s confidential records has never been subject to judicial review. In its response, the State does not dispute that it relied upon a blind, extra-judicial subpoena. Nor does the State sufficiently explain why it can disregard the state statutes, state case law, TDOC policies and procedures, federal statutes, federal regulations and federal case law cited in Thompson’s motion and with which the State failed to comply.
2. The State fails to explain why it can also disregard state and federal law requiring it disclose Thompson’s statements.
3. The State of Tennessee asserts that the only materials referenced in Mr. Thompson’s motion that he seeks but does not possess are recordings of his telephone conversations. State’s response, p. 4. In an October 17, 2005, letter to Assistant Attorney General Smith, Thompson’s counsel sought the following:

- (1) copies of Mr. Thompson's visitor log;
- (2) copies of recordings of Mr. Thompson's telephone calls;
- (3) to the extent that any of those telephone calls have been transcribed, copies of the transcriptions of such calls;
- (4) copies of Mr. Thompson's institutional disciplinary records since January 1999;
- (5) copies of Mr. Thompson's institutional educational records since January 1995;
- (6) copies of Mr. Thompson's institutional records related to medical treatment, and psychological/psychiatric complaints and/or treatment since coming into custody of the Tennessee Department of Correction;
- (7) to the extent not included in the above, any other records, written communications, recordings and transcripts of recordings you have received from the Department of Correction regarding Mr. Thompson since January 2004;
- (8) the names and employer of the persons whose initials appear on the almost daily monitoring logs;
- (9) any written instructions, directions or standards relating to the purpose of the monitoring, the manner of the monitoring and/or, indeed, any aspect of the monitoring of Mr. Thompson; and
- (10) any written instructions, directions, standards or descriptions relating to any aspect of the medications Mr. Thompson is taking, the effects of those medications on him, or his willingness to take such medications.

Mr. Thompson's request was tethered to the documents that the State had requested from TDOC, Mr. Thompson's custodian and the entity responsible for providing him treatment and monitoring his condition. Despite this, in a letter of October 19, 2005, to counsel, the state provided only a handful of documents, including visitor logs and telephone logs, encouraging counsel to make a request to RMSI.

Counsel for Mr. Thompson seeks all of the withheld information to adequately investigate his *Ford* claim and to ensure that Mr. Thompson has access to the same records in the possession, custody and control of counsel for his custodian – who indisputably has superior access to such information. All of this information is sought as part of Thompson’s motion for reciprocal discovery.

3. The State of Tennessee asserts that Mr. Thompson is not entitled to discovery until after he makes the threshold showing of incompetency. This assertion violates the spirit if not the letter of *Van Tran v. State*, 6 S.W.3d 257, 269 n. 14 (Tenn. 1999). Moreover, it violates federal due process, the Eighth Amendment’s prohibition against cruel and unusual punishment, and *Ford v. Wainwright*, 477 U.S. 399 (1986), to require Mr. Thompson to make a showing of incompetency without allowing him access to evidence that may help him make that showing.
4. The State of Tennessee asserts that this Court’s previous competency determination must stand. State’s response, p. 5. However, in making its previous determination, this Court had incomplete information, as it appears the State has been accumulating but not disclosing relevant information before the prior competency proceedings were conducted.

Respectfully submitted,

Michael J. Passino, BPR#5725
323 Union Street, 3rd Floor
Nashville, TN 37201
(615) 255-8764

Counsel for Gregory Thompson

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was forwarded by U. S.

Mail, postage prepaid, to

Jennifer Smith, Esquire
Office of Attorney General and Reporter
P. O. Box 20207
Nashville, TN 37202-0207

C. Michael Layne, Esquire
District Attorney General
P. O. Box 147
Manchester, TN 37349-0147

this ____ day of December, 2005.

The undersigned attorney prefers to be notified of any orders or opinions of the Court by email to passino@mpassino.com.

Michael J. Passino