

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: GREGORY THOMPSON)
)
) COFFEE COUNTY
 ORIGINAL APPEAL NO.
 M1987-00067-SC-DPE-DD
 Filed October 17, 2005

RESPONSE TO MOTION TO STRIKE

Comes now, Gregory Thompson, through undersigned counsel and in response to Respondent's motion to strike the October 11, 2005, affidavit of Faye Sultan, Ph.D., requests the motion be denied for the following reasons:

1. The motion to strike should be denied because the current proceedings are controlled by *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999). While, to be sure, the Tennessee Rules of Appellate Procedure govern all proceedings before this Court, they do not purport to govern proceedings under *Van Tran* and, in fact, do not conflict with the Court's procedures. While *Van Tran* does not clearly outline procedure governing a returning *Ford* petitioner, there is nothing in the case to indicate that the Court would not consider additional and further evidence in support of a motion to stay. Indeed, imposing an artificial deadline upon the presentation of facts supporting insanity directly conflicts with the letter and spirit of *Van Tran*. Under *Van Tran*, defendants have the right, if not duty, to bring forth facts of incompetency when the state seeks an execution date, when an execution date has been scheduled and up to the moment of execution. *Id.* at 267, 268, 272. Accordingly, the affidavit of Dr. Sultan was properly presented to this Court.

2. The motion to strike should be denied because the affidavit of Dr. Sultan presents this Court with facts material to this Court's inquiry. *Van Tran*, 6 S.W.3d at 268 (calling for affidavits of psychiatrist, psychologists, or other mental health professionals. *Van Tran* requires this Court to review facts indicating insanity and a substantial change in mental health and determine whether to remand the case for further proceedings. *Id.* at 272. Dr. Sultan's affidavit clarifies and supplements her first affidavit which was presented to this Court under the time constraints of TENN.S.C.T.R. 12.4(a). Furthermore, Dr. Sultan's affidavit provides this Court with a mental health professional's opinion on Mr. Thompson's mental state and how it has substantially changed. It does rebut the unsupported factual allegations contained in Respondent's responsive pleading and should assist this Court in ascertaining the truth about Mr. Thompson's insanity. This Court should have a sufficient amount of information for undertaking its important inquiry, including a mental health expert's opinion and the expert's response to a lay person's interpretation of that opinion. When making such an important decision, this Court should reject Respondent's attempt to restrict the information that can be considered, and instead welcome all information that is relevant and material to its inquiry.

3. The motion to strike should be denied because while Respondent attempts to limit this Court's consideration of relevant facts, he has been surreptitiously gathering from Riverbend Maximum Security Institution and secreting a multitude of historical and current information about Mr. Thompson's mental state. Respondent has been obtaining on a weekly basis, without knowledge of or disclosure to Mr. Thompson's counsel or the courts, copies of Mr. Thompson's visitor log since December 1, 2003,

recordings of his telephone calls, copies of his institutional disciplinary records from January 1999, copies of his institutional educational records from 1995 and records of Mr. Thompson's "medical treatment, and psychological/ psychiatric complaints and/or treatment since coming into custody of the Tennessee Department of Correction." See Attachment A, memoranda. Although *Van Tran* calls for free disclosure of information between the state and the defendant, 6 S.W.3d at 270 n.14., Respondent has not disclosed or shared any of this information with Mr. Thompson's counsel. Respondent has gathered information on Mr. Thompson from 1995 and 1999 and medical information from 1986 although he has argued to this Court that such information is too dated to be included in this Court's inquiry. It is clear that Respondent deems this information relevant to the case yet sought to preclude this Court from considering it. Now Respondent seeks to preclude consideration of an expert's current opinion of Mr. Thompson's mental state. The goal of this proceeding is to provide "the last avenue of reprieve available to an inmate sentenced to death." *Van Tran*, 6 S.W.3d at 270 n.14. As stated above, there should be no arbitrary deadline imposed on submissions to the Court while it is conducting its inquiry. Likewise, a party should not be permitted to conceal, restrict or strike from the record relevant information.

WHEREFORE, based on the above stated reasons, the motion to strike should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

Mail, postage prepaid, to

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this ____ day of October, 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