

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: GREGORY THOMPSON) COFFEE COUNTY
) ORIGINAL APPEAL NO.
) M1987-00067-SC-DPE-DD

Filed September 19, 2005

MOTION TO RE-SET EXECUTION DATE

On February 25, 2004, pursuant to Rule 12.4(A), Rules of the Supreme Court of Tennessee, this Court set an execution date for Gregory Thompson.¹ In addition, finding that Thompson had raised the issue of present competency in his response to the State’s Motion to Set Execution Date, the Court remanded the case to the Coffee County Circuit Court for proceedings to determine Thompson’s competency in accordance with the procedures established in *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 2000). On remand, the post-conviction court concluded that Thompson failed to make a threshold showing sufficient to warrant a hearing on his competence for execution and that Thompson “presently is aware both of the fact that he has been sentenced to death for the murder of Brenda Lane and of the fact of his impending execution.” On May 12, 2004, following *de novo* review of Thompson’s competency petition and evidentiary submissions, this Court affirmed the judgment of the trial court. *Thompson v. State*, 134 S.W.3d 168 (Tenn. 2004).

¹Rule 12.4(A) provides: “After a death-row prisoner has pursued at least one unsuccessful challenge to the prisoner’s conviction and sentence through direct appeal, state post-conviction, and federal habeas corpus proceedings, the State Attorney General shall file a motion requesting that the Court set an execution date.” Rule 12.4(E) provides that the date of execution shall be set “no less than thirty (30) days from the date of the order granting the State’s motion.” In its February 25th order, this Court set Thompson’s execution for August 19, 2004.

On June 14, 2004, Thompson filed a federal habeas corpus petition in the United States District Court for the Eastern District of Tennessee, alleging that he is incompetent to be executed and requesting an evidentiary hearing. On June 21, 2004, the district court granted a stay of execution in order to consider Thompson's petition and the State's response. The district court lifted its stay of execution on September 16, 2005.² There being no further legal impediments to the execution of Thompson's lawful death sentence, the State of Tennessee requests that the Court set a new execution date forthwith. *See* Rule 12.4(E) ("Any new date of execution shall be no less than seven (7) days from the date of the order setting the new execution date.").³

²A copy of the district court's order has been filed with the Clerk of this Court in accordance with Rule 12.4(E).

³Although the district court's order suggests that Thompson will be allowed to "raise the issue of his present mental competency to be executed in his response to the State's motion to [re-set] an execution date," that contention is contrary to Tennessee law. This Court has already found Thompson to be competent for execution. *Thompson*, 134 S.W.3d at 184-85 ("Thompson failed to establish a genuine issue regarding his competency"). Therefore, "subsequent *Ford* claims will be disallowed unless the prisoner, *by way of a motion for stay*, provides this Court with an affidavit from a mental health professional showing that there has been a *substantial change in the prisoner's mental health since the previous determination of competency* was made and the showing is sufficient to raise a substantial question about the prisoner's competency to be executed." *Van Tran*, 6 S.W.3d at 272 (emphasis added).

For the reasons stated, the State of Tennessee requests that the Court set a new execution date for Gregory Thompson.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion has been forwarded via Facsimile and First-Class U.S. mail, postage prepaid on this the _____ day of September 2005 to:

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The undersigned attorney of record prefers to be notified of any orders or opinions of the Court by Facsimile at (615) 532-1971.

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