

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

GREGORY THOMPSON)	
)	
)	No. 1987-00067-SC-DDE-DD
v.)	Coffee County Circuit Court
)	No. 20,014
)	DEATH PENALTY CASE
STATE OF TENNESSEE)	

**NOTICE OF INCOMPETENCY TO BE EXECUTED CLAIM UNDER
FORD V. WAINWRIGHT, 477 U.S. 399 (1986) AND *VAN TRAN V.
STATE*, 6 S.W.3D 257 (Tenn. 1999): A HEARING TO DETERMINE
MR. THOMPSON'S COMPETENCY SHOULD TAKE PLACE
BEFORE THE STATE IS PERMITTED TO EXECUTE HIM**

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_____ *“Don’t worry. God told me yesterday I’m not going to die.”*

_____ *Question: “What is going to happen?”*

“I’m either going to Hawaii or I’m going back home.”

--- Gregory Thompson’s response after being told the State is seeking permission to execute him.¹

I. INTRODUCTION

With the seminal decision of *Ford v. Wainwright*, 477 U. S. 399, 409 (1986), the United States Supreme Court concluded that the Eighth Amendment prohibits a state from carrying out a sentence of death upon a prisoner who is insane. The Court found that “[w]hether its aim be to protect the condemned from fear and pain without comfort of understanding, or to protect the dignity of society itself from the barbarity of exacting mindless vengeance, the restriction finds enforcement in the Eighth Amendment.” *Id.*

¹Exhibit 1, affidavit of Dana C. Hansen Chavis at ¶6.

at 410.

In *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999), this Court adopted the “cognitive test” for determining whether a prisoner is competent to be executed under Tennessee law. Under this test, a prisoner “is not competent to be executed if the prisoner lacks the mental capacity to understand the fact of the impending execution and the reason for it.” *Id.* at 266. The basis for this ruling was Justice Powell’s opinion in *Ford* which concurred in the *Ford* judgment (comprised of four other justices) on more narrow grounds. *Id.*, see also *Coe v. Bell*, 209 F.3d 815, 818 (6th Cir. 2000), *rh’g* and *rh’g en banc denied* (explaining that Justice Powell’s concurring opinion in *Ford* was on grounds more narrow than the position taken by the plurality opinion).

Of note, Justice Powell’s concurrence in *Ford* explained the reasoning behind the “cognitive test”:

It is true today as when Coke lived that most men and women value the opportunity to prepare, mentally and spiritually, for their death. Moreover, today as at common law, one of the death penalty’s critical justifications, its retributive force, depends on the defendant’s awareness of the penalty’s existence and purpose.

...

If the defendant perceives the connection between his crime and his punishment, the retributive goal of the criminal law is satisfied. And only if the defendant is aware that his death is approaching can he prepare himself for his passing.

Ford, 477 U.S. at 421, 422.

This Court, in *Van Tran*, set forth the procedures necessary to initiate a competency proceeding. “[A] prisoner should raise the issue of competency to be executed in the first instance in this Court when filing a written response to the motion

[to set an execution date] of the State Attorney General.” *Van Tran*, 6 S.W.3d at 267. If this Court sets an execution date, this Court will remand the issue of competency to be executed to the trial court where the prisoner was originally tried and sentenced, *id.*, which, in this case, is the Coffee County Circuit Court.

II. GREGORY THOMPSON HAS BEEN CRIPPLED WITH MENTAL ILLNESS

While it is understood that this Court will not make a determination of the issue of competency as a result of this pleading, *Van Tran*, 6 S.W.3d at 267, this brief, incontrovertible recount of Mr. Thompson’s history of mental illness is provided to the Court as a basis for an Order of Remand to the Coffee County Circuit Court for a competency hearing.

A. Prison Records Conclusively Establish Mr. Thompson’s Long History Of Serious Mental Illness.

There is no dispute that Gregory Thompson is severely mentally ill. Since his incarceration on death row, prison doctors have treated Mr. Thompson for his severe mental illness.² They have prescribed him anti-psychotic, mood stabilizing and anti-depressant medication. Mr. Thompson’s prison file consists of over four thousand pages documenting his illness.³

Gregory Thompson was convicted and sentenced to death on August 22, 1985. He was twenty-three (23) years old.

On September 11, 1985, an emergency room care report indicates Mr.

²Exhibit 2, partial prison records of Gregory Thompson containing an original Bates number and electronic Bates numbers 1 - 93 located at the bottom center of each page contained in this attached Exhibit #2.

³Exhibit 1 ¶5.

Thompson complained there was a “bug in [his] ear.” There was no object in his ear. He was diagnosed with “depression regarding a sister”.⁴

On September 18, 1985 a prison psychological examiner completed an initial classification psychological summary on Mr. Thompson. The examiner noted “some disorganization or stress” and attributed it “to his present sentence of death by electrocution, which is scheduled for January the 1, 1986. Close observation by institutional staff is recommended.”⁵

Another emergency room care report on April 11, 1986, indicates Mr. Thompson “swallowed some Genaspor powder ‘accidentally.’”⁶ The poison control center was contacted and staff were informed this was non-fatal.

On June 6, 1986, an emergency room care report states Mr. Thompson had “several superficial cuts on inside of (R) arm.” The form indicates Mr. Thompson would receive follow-up care from a psychiatrist.⁷

On June 10, 1986, Mr. Thompson attempted three times within one hour to kill himself. A prison incident report documents self-mutilation where Mr. Thompson cut his wrist and neck, requiring hospitalization.⁸

A September 19, 1986 report from International Clinical Laboratories, Inc.

⁴Exhibit 2, original Bates #375, electronic Bates #1

⁵*Id.* original Bates #0000295, electronic Bates #2

⁶*Id.* original Bates #362, electronic Bates #3

⁷*Id.* original Bates #360, electronic Bates #4

⁸*Id.* original Bates #0001143-1144, electronic Bates #5-6

shows Mr. Thompson's Lithium level at 0.7, indicating Lithium had previously been administered to him.⁹

Physician Orders and a Medication Administration Record for June 1988 indicates Mr. Thompson was prescribed Lithium.¹⁰ On June 7, 1988, Mr. Thompson told prison mental health staff "that he has begun to have severe mood swings again and that this is causing several problems..." He was assessed as suffering "Bipolar disorder."¹¹

On July 22, 1988, a psychiatric consultation record states Mr. Thompson had a "history of intermittent, fluctuating mood with periods of depression and hyperactivity.... His thought content was positive for paranoid/persecutory thinking." The report further states, "patient may well have bipolar disorder and presently be manic, however I am concerned that he may have a low-grade thought disorder."¹²

On September 26, 1988, Mr. Thompson complained of a "snake bite on finger and chest" but staff found "no wounds apparent."¹³ A subsequent psychiatrist's note states:

Inmate seen. Very difficult to interview as patient makes frequent statements which are disconnected and uses only fragments of sentences. States he stopped taking Lithium because he was afraid it would lessen "his powers." Reports thinking he might be God.

⁹*Id.* original Bates #108, electronic Bates #7.

¹⁰*Id.* original Bates #267, 266, electronic Bates #8,9.

¹¹*Id.* original Bates #174, electronic Bates #10.

¹²*Id.* original Bates #171, electronic Bates #11.

¹³*Id.* original Bates #166, electronic Bates #12.

Wondered whether I could hear him thinking. Also, admitted to “hearing lots of voices.” MSE [mental status exam] positive for grandiosity, thought broadcasting, delusional thinking and probably auditory hallucinations. More pronounced, however, is his thought blocking and bland/flat affect. He remains non-compliant with medication and while I have encouraged it, he is not in immediate danger and therefore I have not insisted. He looks more schizophrenic today (rather than manic). We may need to suggest antipsychotic meds.¹⁴

In 1989 the first mental health treatment plan is documented. It reflects a diagnosis of Schizophrenia, paranoid type. Mr. Thompson presented with problems of auditory hallucinations and delusional ideation.¹⁵ The rationale for treatment continuation was that Mr. Thompson suffered “continued symptoms.”¹⁶

An accident/incident/traumatic injury report dated January 21, 1989 states Mr. Thompson “complained of hearing voices, heart hurting, inside and out and bruises, old ones” but staff wrote “no bruises noted” and his pulse was “reg. strong and steady.”¹⁷

Problem oriented - progress reports dated in 1989 record further disturbing behavior by Mr. Thompson. A prison nurse reported:

Mr. Thompson was acting very “strange.” I went over to Mr. Thompson’s house door and he was standing in the dark with all the things in his room packed up in a garbage bag. He stated he was waiting for me and had written me a 5 page letter which he slid under the door. He then began talking very flighty and changing subjects rapidly. He was not agitated nor did he talk sexually or disrespectful. His mood appeared

¹⁴*Id.*

¹⁵*Id.* original Bates #0000221, electronic Bates #13.

¹⁶*Id.* original Bates #0000222, electronic Bates #14.

¹⁷*Id.* original Bates #343, electronic Bates #15.

very morbid and withdrawn.¹⁸

A prison social worker reported an interview with Mr. Thompson where “[e]ssentially his thinking is goal-directed, though he displays loose, grandiose associations at points. He reports that he became agitated this AM because ‘I’m a songwriter and am not supposed to be here.’”¹⁹

In September 1989, a prison nurse reported Mr. Thompson “set fire to his cell and burned himself. Noted 2nd degree burns - blisters formed - on rt. hand, fingers and wrist. Hair on head and facial hair all singed - no burns noted.”²⁰

Prison psychiatric notes from late 1989 note Mr. Thompson was “displaying active evidence of psychosis and mania with marked grandiosity and delusional thought content.” The psychiatrist opined, “he most likely has a bipolar affective disorder and continues to be very grandiose and hypomanic.”²¹

In January 1990, Mr. Thompson was seen by the prison social worker in the Unit 2 [death row] triage room. “He refers again to the songs he has written and says he has not been paid.”²²

Weeks later Mr. Thompson told prison mental staff “I could be president or an admiral.” He was “positive for audio hallucinations which ‘tell me to do things – but I

¹⁸ *Id.* original Bates #133, electronic Bates #16.

¹⁹ *Id.* original Bates #132, electronic Bates #17.

²⁰ *Id.* original Bates #141, 140, electronic Bates #18,19.

²¹ *Id.* original Bates #074, electronic Bates #20.

²² *Id.* original Bates #129, electronic Bates #21.

can keep them away now if I don't close my eyes."²³

Later, Mr. Thompson reported to a prison nurse "that he was hearing voices, beating sounds and scratching noises. He also stated that his nerves were shot."²⁴ The prison psychiatrist was called and, upon interviewing Mr. Thompson, reported he "is able to communicate in a moderately coherent manner for a period of about 5 minutes but then, as normal, shows signs of loosening of association and grandiose delusions ('I built the space shuttle')." The impression of the prison psychiatrist was "probable bipolar disorder or schizophrenia, paranoid type (I favor the later diagnosis as the most likely)."²⁵

In 1990-1991, Mr. Thompson's "major medical conditions/problems" were listed as "psychotic - BAD [bipolar affective disorder], type 1."²⁶

A mental health treatment plan dated October 4, 1990, summarized Mr. Thompson's presenting problems as "disorganized thought, paranoia, psychotic symptoms."²⁷

The mental health treatment plan dated May 13, 1991 lists the short term treatment goal as "reduce psychotic symptoms". The long term goal sought to

²³*Id.* original Bates #128, electronic Bates #22.

²⁴*Id.* original Bates #127, electronic Bates #23.

²⁵*Id.* original Bates #126, electronic Bates #24.

²⁶*Id.* original Bates #00002225, electronic Bates #25.

²⁷*Id.* original Bates #0000245, electronic Bates #26.

maintain “reduced psychotic symptoms” through pharmaco-therapy.²⁸ A mental health treatment plan dated in August 1991 remained the same.²⁹

In November 1991 the mental health treatment plan for Mr. Thompson lists a diagnosis of “schizoaffective D/O [disorder]” and listed “stabilize symptoms” as the short term goal.³⁰

In June and December of 1992 the mental health treatment plan for Mr. Thompson was again to decrease psychotic symptoms.³¹

In April 1993, the prison psychiatrist reported:

Patient continues to do very well. During this session he recounted his psychotic symptoms that he experienced including feelings that the guards were aliens sent to destroy the earth and that snails and fish were in his cell eating his body. No such delusions remain though he at times wonders what was real.³²

In May and August 1993, the mental health treatment plan lists “paranoid ideation” and “AH”, audio hallucinations, as Mr. Thompson’s presenting problems.³³

Those same presenting problems are noted on the February 1994 mental health treatment plan with the addition of “visual hallucinations”.³⁴ This plan contains a

²⁸ *Id.* original Bates #0000246, electronic Bates #27.

²⁹ *Id.* original Bates #0000247, electronic Bates #28.

³⁰ *Id.* original Bates #0000248, electronic Bates #29.

³¹ *Id.* original Bates #0000249-250, electronic Bates #30-31.

³² *Id.* original Bates #0000058, electronic Bates #32.

³³ *Id.* original Bates #0000224-225, electronic Bates #33-34.

³⁴ *Id.* original Bates #0000227, electronic Bates #36.

diagnosis of Schizophrenia, paranoid type.³⁵ Auditory and visual hallucinations were also the subject of the August 1994 plan.³⁶

In May 1995 prison records reveal a certified mental health emergency.³⁷ Mr. Thompson was described as “agitated, pacing, yelling, expressing paranoid delusions, thought disordered with pressured speech and FOI”, flight of ideas.³⁸ He appeared “to have lost a significant amount of weight.”³⁹ Mr. Thompson was transferred to the Lois DeBerry Special Needs Facility for his first admission to that facility where his diagnosis was “psychotic disorder, N.O.S.”, not otherwise specified.⁴⁰

Upon admission to the special needs acute unit it was reported that Mr. Thompson had not, immediately prior to this incident, been taking medication at Riverbend. Mr. Thompson complained to the special needs staff that

“there’s trouble in my unit.” He said he was having trouble with electricity. Delusional beliefs expressed as patient explained that he had turned his cell at RMSI into a “microwave” by turning on the t.v. or radio and putting an antenna in the doorway. He said it was making him lose “10 pounds per second.” Patient appeared psychotic. Thought processes overconnected and circumstantial. Patient stated he had lost 45 pounds in two months. He said he had not been sleeping well and had excess energy. Patient displayed difficulty maintaining focus of attention.

...

Patient quite paranoid and guarded. He said he didn’t want to be

³⁵ *Id.* original Bates #0000226, electronic Bates #35.

³⁶ *Id.* original Bates #0000229, electronic Bates #38.

³⁷ *Id.* original Bates #0000230, electronic Bates #39.

³⁸ *Id.*

³⁹ *Id.* original Bates #0000231, electronic Bates #40.

⁴⁰ *Id.* original Bates #0000232, electronic Bates #41.

“drugged up.” He stated “I need to get my mind back.” Thinking remained circumstantial. He said the electricity was “wearing off.” He stated “I was walking in a trance.”⁴¹

On June 13, 1995, the Special Needs staff reported some improvement. Mr. Thompson was compliant with his medication: “Speech remained pressured and thinking delusional. However ___ happy and noted joking with the treatment team. He remained manic and Navane dosage increased plus prescribed Lithium.”⁴² On June 20, 1995, Mr. Thompson’s “speech was somewhat pressured. He denied problems with sleep or appetite. He remained compliant with meds. Some grandiosity noted as patient stated he could have been ‘a millionaire.’”⁴³ Mr. Thompson was released from the Special Needs Facility back to death row on June 29, 1995.⁴⁴

In August 1995, Mr. Thompson’s diagnosis was changed from Psychotic Disorder N.O.S. to Bipolar Affective Disorder, Manic Mood.⁴⁵ The presenting problem was listed as “delusional thought pattern” and “paranoid delusional thought content.”⁴⁶

The mental health treatment plan for Mr. Thompson for the treatment period of September 1995 to March 1996 lists problems as “psychotic symptoms: paranoid delusional content, pressured speech, flight of ideas.” He was prescribed Mellaril and

⁴¹ *Id.* see also original Bates #0000109-110, electronic Bates #42-43.

⁴² *Id.* original Bates #0000233, electronic Bates #44.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* original Bates #0000235, electronic Bates #46.

⁴⁶ *Id.*; *id.* original Bates #0000236, electronic Bates #47.

Navane.⁴⁷

During this time period, officers on the unit called mental health staff to report “that Mr. Thompson is hallucinating and asked for the psych to talk to him.” When staff “arrived on the unit the inmate was restless crying holding his head.”⁴⁸ Mr. Thompson “complained of visual hallucinations – sees God and Devil and many demons.”⁴⁹

When seen by the psychiatrist, Mr. Thompson was “expressing multiple grandiose delusions – ‘I’m God’ feels lawyer is grand master of the Ku Klux Klan... ‘feels the earth has been conquered and I’m the only woman left.’”⁵⁰

The mental health treatment plan for the treatment period covering March 1996 to September 1996 was altered from the previous plan to reflect “symptoms of bipolar affective disorder.”⁵¹ This treatment plan was renewed in September 1996 because prison mental health staff noted Mr. Thompson’s “delusional thought pattern” and stated “inmate Thompson continues to benefit from medication therapy.”⁵²

In May 1996, Mr. Thompson reported “seeing ‘devils, demons and God’ hearing people ‘they will dictate my movements ... Greg put your left arm there’....” He said “I could feel my mind slippin’ away.”⁵³

⁴⁷ *Id.* original Bates #0000237, electronic Bates #48.

⁴⁸ *Id.* original Bates #0000130, electronic Bates #49.

⁴⁹ *Id.* original Bates #0000131, electronic Bates #50.

⁵⁰ *Id.* original Bates #0000133, electronic Bates #51.

⁵¹ *Id.* original Bates #0000238, electronic Bates #52.

⁵² *Id.* original Bates #0000239, electronic Bates #53.

⁵³ *Id.* original Bates #0000143, electronic Bates #54.

The mental health treatment plans covering March 1997 - March 1998 renewed the 1996 plan.⁵⁴

In June 1997, Mr. Thompson reported seeing eyeballs. “They could be God, they could be dinosaurs, they could be people.” He “complained of [his] bed becoming electrified and feeling he was being raped when this happened, reports he continues to kill people by throwing them into others mouths.” Mr. Thompson said, “don’t enjoy life anymore, its hurting.”⁵⁵

In February 1998, Mr. Thompson was put on suicide watch. He was “crying, pacing, agitated” and suffered “recent auditory hallucinations”. He said he “feel[s] like the medication doesn’t work for me anymore.”⁵⁶

In April 1998, Mr. Thompson’s mental health treatment plan reflects “auditory hallucinations; mood instability; history of delusional thought.” The diagnosis, however, was deferred by a new treating psychiatrist.⁵⁷ On August 28, 1998, that psychiatrist noted “inmate continues to benefit from medication therapy” and extended the treatment plan through February 1999.⁵⁸

On September 24, 1998 the new psychiatrist interviewed Mr. Thompson. She noted he was then “36 years old. He worked from 1993-1994. He said he writes

⁵⁴ *Id.* original Bates #0000242, 244, electronic Bates #57, 58.

⁵⁵ *Id.* original Bates #0000176, electronic Bates #59.

⁵⁶ *Id.* original Bates #0000264, electronic Bates #60.

⁵⁷ *Id.* original Bates #0001529-1530, electronic Bates #61-62.

⁵⁸ *Id.* original Bates #0001531-1532, electronic Bates #63-64.

songs and wrote a song for Arrested Development called Tennessee.” She took a brief history from Mr. Thompson and learned he had seen a psychiatrist while in the Navy. Mr. Thompson told the doctor “the psychiatrist he saw in the military should have done more tests and he would not have ended up on death row.” The new psychiatrist noted that Mr. Thompson “said he first heard voices as a kid. He said he saw an orangish, pink cow with flies around it as a kid.” The psychiatrist’s treatment recommendations state “symptomology reported by inmate which has been documented over the years has been inconsistent. His main concerns regarding medications are how it will affect him sexually and sleep.” She decided to “taper off” the Mellaril Mr. Thompson had been prescribed. She reduced the Benadryl he was taking to assist in sleep and instead gave Mr. Thompson a “sleep log” to complete. She recommended Mr. Thompson “sign up for individual therapy to address being on death row.”⁵⁹

A unit review panel hearing sheet dated January 1, 1999, reports Thompson’s behavior has been inappropriate since 12/11/98 – he reported several mental health concerns – seeing things, hearing voices, felt as if something was eating at his flesh, could not sleep and at times could not move his limbs. He reported being afraid someone may have to hurt him or he would have to hurt others due to his fear and paranoia of others. He admitted his judgment was irrational and he was losing control.⁶⁰

⁵⁹*Id.* original Bates #0001533-1534, electronic Bates #65-66.

⁶⁰*Id.* original Bates #0002825, electronic Bates #67.

On January 20, 1999, a prison nurse initiated an institutional mental health services referral. She stated:

Inmate is becoming more delusional and psychotic. He had a wire almost embedded in his right wrist and said that it was a wedding symbol. He did allow officers to remove it, but insisted that it be flushed down the toilet because it was a wedding ritual. He is giving a lot of religious ideation, his affect has changed over the last few weeks. He can be an extremely violent person. I feel he needs to be evaluated immediately.⁶¹

A prison psychologist examined Mr. Thompson the following day and reported:

Counseled with patient and did mental status examination. Has had episodes of self mutilation (trying to cut off his hand) but said he no longer wants to hurt self. Was very psychotic. Showed me pictures with talented art work and narrative about blood, cannibalism, etc. Talked about eating feces. Says God has put him in control of the cell block. Dressed inappropriately in only a mesh garment. Recommend psychiatric medical review. Says he likes Trilafon because it "helps him sexually" but that Mellaril depresses him sexually. Auditory hallucination. Wants an enema to flush out "feces he ate years ago."⁶²

On February 15, 1999, the prison psychologist reported:

I saw Mr. Thompson today after receiving his request to see the "psych". He rambled about being in charge of the world and the world becoming alive and turning against him. Said he was feeling better and eating okay. Made many paranoid like statements and abruptly terminated our conversation when I told him I had no power to release him.⁶³

Mr. Thompson's mental health treatment plan covering the period of February 1999 through August 1999 reports a "history of auditory hallucinations, mood instability and delusional thought" to be treated with Trilafon and Benadryl.⁶⁴

⁶¹ *Id.* original Bates #0001667, electronic Bates #68.

⁶² *Id.* original Bates #0001667, electronic Bates #68.

⁶³ *Id.* original Bates #0001672, electronic Bates #69.

⁶⁴ *Id.* original Bates #0001671, electronic Bates #70.

On November 8, 2000, Mr. Thompson was admitted to the Lois DeBerry Special Needs Facility for the second time. He was manic and when initially speaking to staff “had a loose association that was pertaining the ‘different colored veins in his arms.’”⁶⁵

On November 13, 2000, the prison psychiatrist noted:

Patient seen. Discussed with staff. Today he exhibits expansive mood, pressured speech, racing thought, circumstantiality. Moderate level of disorganization of thought. He is also irritable and hostile, not cooperative to interview. He is noted to sleep little to none at night.⁶⁶

Four days later, the prison psychiatrist noted Mr. Thompson continued to suffer the same symptoms:

Patient seen at door. Remains agitated, banging, yelling and threatening throughout day today. Sleeping very little. His behavior appears to be due to psychosis rather than manipulation.⁶⁷

On November 20, 2000, Mr. Thompson “remain[ed] very psychotically disorganized, paranoid, easily agitated, hostile.” A decision was made to forcibly medicate Mr. Thompson.⁶⁸

Five days later, Mr. Thompson told a prison nurse “I can get you a new car sent to your house from Hawaii.” The nurse noted Mr. Thompson was alert and oriented to person only. Continues to talk to self and continues to have audio and visual

⁶⁵*Id.* problem oriented - progress records 11/8/00 @ 1700 (no original Bates #, electronic Bates #71).

⁶⁶*Id.* problem oriented - progress records 11/13/00 @ 0920 (no original Bates #, electronic Bates #72).

⁶⁷*Id.* problem oriented - progress records 11/17/00 @ 1530 (no original Bates #, electronic Bates #73).

⁶⁸*Id.* problem oriented - progress records 11/20/00 @ 1020 (no original Bates #, electronic Bates #74).

hallucinations exhibited by talking to walls and calling people's names as if they were in cell with him.⁶⁹

The prison psychiatrist reported:

patient remains manic with severe flight of ideas, is psychotically disorganized, agitated at times. Sleep very limited. Staff and I have observed for signs of malingering and do not see it at this time.⁷⁰

Nearly a month after Mr. Thompson's emergency admission to the Special Needs Unit the prison psychiatrist continued to report that Mr. Thompson

remains somewhat easily agitated, animated, pressured speech with flight of ideas, ____, tangential. States Mr. Litsey, myself and Dr. Sebron are "Bert, Ernie and Oscar" the grouch. States he will be released from prison soon "because Big Bird is on my side."⁷¹

On the next reported visit with Mr. Thompson the prison psychiatrist wrote:

He questioned if I was his father, claimed he was born with red hair and fair skin, present dark skin is a tatoo. Though less agitated, he remains psychotic. No acute risk to self seen.⁷²

On December 22, 2000, Mr. Thompson reported to prison mental health staff that "there's a dragon in my cell on the ceiling." He "described a colorful non-threatening dragon." Staff noted Mr. Thompson "not threatened by hallucinations/

⁶⁹*Id.* problem oriented - progress records 11/25/00 @ 0800 (no original Bates #, electronic Bates #75).

⁷⁰*Id.* problem oriented - progress records 11/27/00 @ 0955 (no original Bates #, electronic Bates #76).

⁷¹*Id.* problem oriented - progress records 12/4/00 @ 1035 (no original Bates #, electronic Bates #77).

⁷²*Id.* problem oriented - progress records 12/18/00 @ 0915 (no original Bates #, electronic Bates #78).

recognizes he is hallucinating and is okay.”⁷³

On January 1, 2001, Mr. Thompson asked staff to “feel his legs now that they are healed. Inmate states he had a disease in his legs and God sent someone down here who healed them.”⁷⁴

On January 20, 2001, Mr. Thompson frantically called for the nurse. “I need to talk to you nurse! Please! Its important!” The nurse reported:

Inmate at cell door, mildly agitated. Called writer to cell two times today for some reason. Inmate relates his belief that an officer here at facility is actually a woman he is suppose to have murdered. That she is that person, right age, right build, right hair “not many people have black-red hair.” Inmate relates that since she is alive and working here he could not have murdered her and he should not be on death row for something he didn’t do. Demanded officer come to talk to him, which did not take place. Became more agitated as he attempted to convince writer. He became agitated with attempts to reality check and was adamant.⁷⁵

Mr. Thompson was discharged from the Special Needs Facility on January 31, 2001, and transferred back to death row.⁷⁶

On May 16, 2001, Mr. Thompson was transferred back to the Special Needs Facility.⁷⁷

⁷³*Id.* problem oriented - progress records 12/22/00 @ 1300 (no original Bates #, electronic Bates #79).

⁷⁴*Id.* problem oriented - progress records 1/1/01 @ 1345 (no original Bates #, electronic Bates #80).

⁷⁵*Id.* problem oriented - progress records 1/20/01 @ 1700 (2 pages)(no original Bates #, electronic Bates #81-82).

⁷⁶*Id.* problem oriented - progress records 1/31/01 @ 1000 (no original Bates #, electronic Bates #83).

⁷⁷*Id.* original Bates #0001578, electronic Bates #84.

In June and July 2001, a physician's order form indicates Mr. Thompson was prescribed Prolixin Decanoate (75 mg.), Lithium (1500 mg.), Cogentin (2 mg.) and Nortriptyline (50 mg.)⁷⁸. Despite receiving this medication, Mr. Thompson was admitted to the infirmary on July 20, 2001 for suicide watch.⁷⁹

On February 25, 2002, the death row unit manager filed an institutional mental health services referral because Mr. Thompson "stuffed items down his commode and stopped up all drains in pod. He told maintenance he was 'sorry.' This is early sign that his medication may not be working."⁸⁰

In March 2002, a different prison psychiatrist noted Mr. Thompson "complains of anxiety" and "will continue to occasionally hear the same female auditory hallucination 'from across the street.'"⁸¹

In May 2002, the prison psychiatrist reports Mr. Thompson saying, "'I've been seeing some good things.' 'Fangs.' 'Scary but cute.'"⁸²

On September 6, 2002, Mr. Thompson said to the prison psychiatrist, "'I'd like to know when I'm getting out of here.'" The psychiatrist asked, "how long is your sentence Greg?" He answered, "'death.'" The psychiatrist "explained then we really don't know

⁷⁸*Id.* Physician's Orders dated June 5, 2001 & July 11, 2001 (no original Bates #, electronic Bates #85).

⁷⁹*Id.* Physician's Orders dated 7/20/01 (no original Bates #, electronic Bates #86).

⁸⁰*Id.* original Bates #0000025, electronic Bates #87.

⁸¹*Id.* original Bates #0000028, electronic Bates #88.

⁸²*Id.* original Bates #0000035, electronic Bates #89.

when you'll get out."⁸³

Mental health treatment plans for 2002 and 2003 indicate a "history of mood disorder – depression and suicidal gestures, denies current suicidal ideation." Mr. Thompson's diagnosis reflects "bipolar disorder, most recent [episode] depressed with psychotic features."⁸⁴

In April 2003, Mr. Thompson admitted to the prison psychiatrist that he was thinking "'the Warden can have me killed if he wants to.' 'He just sends in guards with special orders.' Also discussed 'flower children' and did I 'think blacks could be flower children?'"⁸⁵

B. Uncontroverted Record Facts Of The Conservatorship Proceedings Conclusively Prove The Severity Of Mr. Thompson's Mental Illness.

Just three years ago, State Attorney General and Reporter, Paul Summers, requested that a court appoint a conservator to Gregory Thompson in order to forcibly medicate him because he "is incapable of making rational decisions."⁸⁶ Attorney General Summers asserted that Mr. Thompson "is in need of protection and assistance by reason of the illness rendering him presently disabled..."⁸⁷ Supporting the State Attorney General's request was a competency evaluation by Dr. Casey C.

⁸³*Id.* original Bates #0000044, electronic Bates #90.

⁸⁴*Id.* original Bates #000046, 72, electronic Bates #91, 92

⁸⁵*Id.* original Bates #0000071, electronic Bates #93.

⁸⁶Exhibit 3, Petition by Attorney General and Reporter Paul G. Summers For Appointment of Conservator at p.1.

⁸⁷*Id.*

Arney, a treating mental health professional at the Special Needs Facility of the Tennessee Department of Corrections. Dr. Arney reported:

...Mr. Thompson is a 38 year old gentleman with a long history of Bipolar Disorder and psychotic symptoms. He has severe symptoms of mania with racing tangential thoughts, pressured speech, in delusional grandiosity. He becomes severely agitated and hostile at times. He has assaulted staff in the recent past which appears to be related to his mental illness. It has been recommended by the treatment review committee to be treated with involuntarily medication [sic] and have a conservator assigned to him.

It is my opinion that Mr. Thompson lacks the insight into his illness to make decisions regarding mental health and medical treatment at this time. I believe that a conservator is necessary to make appropriate decisions regarding his care and without such conservatorship, harm is likely to come to Mr. Thompson or others as a result of his mental illness. Mr. Thompson's illness is chronic and fluctuating in nature, therefore extended periods of marked improvement are not expected.

Attorney General Summers urged the state court find Mr. Thompson "incapable of managing his person ... based upon his present mental condition"⁸⁸ and "in view of the seriousness of the Respondent's [Mr. Thompson's] condition the Court immediately appoint a Guardian ad Litem and expedite these proceedings."⁸⁹

By Order of May 10, 2001, the court agreed with Attorney General Summers' assessment that Mr. Thompson was "disabled" under the law and "incapable of managing his own affairs."⁹⁰

Thereafter, a petition to terminate conservatorship and a second petition to terminate conservatorship were filed on behalf of Mr. Thompson which raised the

⁸⁸ *Id.* at p. 2.

⁸⁹ *Id.* at p. 3.

⁹⁰ Exhibit 4, Case No. 01P-1394, Order appointing conservator.

grounds 1) that the State had not notified Mr. Thompson's legal counsel of the conservatorship action, 2) the Court was not fully informed of the circumstances preceding the State's filing of the action, and 3) Mr. Thompson was compliant with medications when they were properly administered to him.⁹¹

Following a hearing on the second petition to terminate the conservatorship, on October 15, 2003, the Probate Court for Davidson County, Tennessee entered an Order terminating the conservatorship of Mr. Thompson.⁹² That Court found "[t]he evidence is not controverted that he is mentally ill. Clearly, Gregory Thompson is mentally ill. The definition and extents and diagnoses may vary. But he's clearly mentally ill."⁹³ Specifically, the Court found Mr. Thompson "could go into a manic phase at any point."⁹⁴ In dissolving the conservatorship, the Court did not overturn the prior ruling that Mr. Thompson was "disabled," but determined there were least restrictive alternatives available to adequately protect Mr. Thompson.⁹⁵

The Probate Court's findings were not appealed by the State.

III. GREGORY THOMPSON IS INCOMPETENT TO BE EXECUTED

A. Medical history

Gregory Thompson is insane, as contemplated in *Ford v. Wainwright*, 477 U.S.

⁹¹Exhibit, 5 second petition to terminate conservatorship.

⁹²Exhibit 6 case no.01-1041-II order terminating conservatorship.

⁹³Exhibit 7, 9/9/03 Hearing Transcript at p. 172.

⁹⁴*Id.* at pp. 172-173.

⁹⁵*Id.* at p. 172. This inquiry was mandated by TENN. CODE ANN. § 34-1-127.

at 405. There is at least an eighteen (18)-year-long paper trail setting forth in excruciating detail Mr. Thompson's debilitating mental illness. And despite the fact that Mr. Thompson has been actively treated by mental health personnel and medicated throughout these eighteen years at least one aspect of his mental illness has never abated; his disorganized and delusional thought process.

At times, Mr. Thompson believes he is God and in control of the world. He has believed the victim in this case is alive and working at the Lois DeBerry Special Needs Facility. He believes, despite his death sentence, that he will be released from prison either because Big Bird or God is on his side or because he is a wealthy songwriter or simply because that is what is going to happen.

Under any definition, the indisputable proof of Mr. Thompson's long standing serious mental illness demonstrates that he lacks the mental capacity to be executed.

B. Expert opinion

_____ In a report dated January 28, 2004, Dr. John S. Rabun, M.D., opines that Gregory Thompson lacks the mental capacity to understand the fact of the impending execution and the reason for it.⁹⁶ Dr. Rabun's report lists eight factors which demonstrate that Mr. Thompson lacks the capacity to be executed:

- i. During both interviews, Mr. Thompson discussed his delusional belief that he buried "one million dollars, two gold bars, one Grammy Award, and two stock certificates from Quaker State and Apple Computers" near a church in Georgia. According to Mr. Thompson, the investigator for the Federal Defender Services and his attorneys should be trying to retrieve these items to use as a "mitigator." He discussed with the examiner that

⁹⁶Exhibit 8, Report of Dr. John S. Rabun, M.D. at p.14. Exhibit 9 is Dr. Rabun's curriculum vitae.

by “mitigator” he meant that these items “prove” that he can “take care of myself, and I don’t need any help.” He related that the money he has buried will “prove” to the court that he can take care of himself because “I won’t need to steal like a criminal.” He contended that if his attorneys present this “mitigator” to the court, he will be a “free man.” Mr. Thompson’s grandiose delusions about his buried money in Georgia and how it can be used as a “mitigator” suggests that he lacks the capacity to appreciate why he is being punished.

- ii. During both interviews, Mr. Thompson reported his delusional belief that he is actually a “lieutenant” in the navy. He discussed his delusional beliefs about the navy in the first interview, but did not fully connect those beliefs with his execution until the second interview. He related in the second interview that being a “lieutenant” in the navy means that he should have another trial because he did not have the correct “jury” in his first trial. Mr. Thompson told the examiner that his attorneys should seek his military records, which prove that he was actually a lieutenant. He indicated that his attorneys can then present this information to the court, and he will have to have another trial. He said that because he is a “lieutenant,” his jury must be made up of “professionals,” and not “ditch dwellers, no housewives, no store clerks.” He informed the examiner several times that he was not provided with the correct jury, so the original trial is invalid. Mr. Thompson’s delusional statements about his naval career and how it is connected to his trial suggests that he lacks the capacity to appreciate why a jury of his peers sentenced him to death.
- iii. The examiner asked Mr. Thompson what his attorneys should be doing in his case at the present time. Mr. Thompson replied, “They should be getting in touch with a navy recruiter, and he should get in touch with the Secretary of the Navy, and all this evidence should be thrown his way, because he has the right to judge.” Mr. Thompson then turned and asked the attorney who was present in the second interview, “isn’t there an advocate general?” The examiner countered by asking Mr. Thompson what he meant by “evidence.” Mr. Thompson again reported that his “evidence” was “the money, and the two check stubs that I wanted checked out, and this should give him (the Secretary of the Navy) the knowledge of why he should help.” Mr. Thompson explained that by “help,” he meant, “help me” with “mitigation at my trial.” Mr. Thompson’s delusional discussions about how the navy should be involved in his case, and how obvious delusional evidence could aid him, suggested that he perceives that he can receive another trial for the instant matter. In fact, his discussions suggested that he holds magical, near child-like reasoning about possible avenues of appeal in the present case.

- iv. Although Mr. Thompson can state that he was sentenced to death, he holds the delusional perception that he will not be executed. When the examiner asked Mr. Thompson if the State of Tennessee can execute him, he replied, "I don't think they can, all the mitigation, the songs, the money, we know who did the crime, me, but they can't execute me because of the Secretary of the Navy, only he handles all the officers, and there is a million dollars in my clothes in Thomaston, Georgia, on East Walker Street near a Baptist church." Mr. Thompson's statement to the examiner suggests that although he knows his sentence is death, he does not appreciate that the State of Tennessee can legally execute him. Instead, he believes for delusional reasons that he will not be executed. He therefore lacks the capacity to understand that his legal execution is approaching. Further, Mr. Thompson's delusional statement suggests that he lacks the capacity to prepare himself for his death with a rational frame of mind.
- v. In the first interview, while discussing how executions are carried out in Tennessee, Mr. Thompson told the examiner that he wanted "the electric chair" because, "I am used to being shocked, every time I touch my TV, I get shocked, or when I went to a chiropractor in 1982, he twisted my neck, and it felt like a shock." Mr. Thompson's statement suggests that, due to his mental disease, he lacks the capacity to appreciate the finality of the execution process. Instead, he compares lethal electrocution to common static electricity or a chiropractic procedure.
- vi. Mr. Thompson told the examiner that he believed it was realistic to assume that he will be "discharged" and can return to live in "Hawaii." His statement about his "discharge" from prison is not merely wishful thinking, or an attempt to avoid thinking about the inevitable. Instead, his conclusion that he will be "discharged" from prison flows from his grandiose delusion that he has a million dollars and is a lieutenant in the navy, and this information can be used as a "mitigator." Therefore, Mr. Thompson's statement that he will be "discharged" from prison suggests that his mental disease has caused him to be unaware of the punishment he is scheduled to suffer.
- vii. Mr. Thompson was questioned about what would happen to his soul after his execution. Mr. Thompson replied that he believes he is a "Klinton." He then told the examiner, "I drink blood wine, and howl at the moon," adding that his soul will go to "Valhalla." Subsequently, in a loose and tangential manner, Mr. Thompson suddenly said, "the Muslims are hairy people, I will have to fight them too." Mr. Thompson then told the examiner that he "made up the Klinton so that young people would have a strong black person on TV." Importantly, Mr. Thompson's statement about being a "Klinton" and going to "Valhalla" are a product

of his mental disease and suggests that he lacks the capacity to rationally prepare himself for his own death.

- viii. Mr. Thompson reported that he should receive a “mistrial.” His statement is not merely wishful thinking or that of a rational individual arguing a legal point. Rather, when examined further, Mr. Thompson reveals that because his military record with the “Secretary of the Navy” proves he is a “lieutenant,” this will allow for a “mistrial.” He explained to the examiner in a delusional, convoluted manner that even though the murder happened within the State of Tennessee, he is “Federal property” due to his “officer” status. He informed the examiner that “the State can’t hold Federal property.” The examiner inquired as to why the State of Tennessee has been able to hold him for 19 years if he is correct, but Mr. Thompson replied, “Because I haven’t been doing anything to release myself.” He then asserted that he would not be executed because of his connection with the navy. Mr. Thompson’s discussion about why the State of Tennessee cannot execute him suggests that due to his mental disease, he lacks the capacity to rationally perceive the connection between his crime and the punishment imposed by the State.⁹⁷

On balance, Dr. Rabun opines with reasonable medical certainty that Gregory Thompson lacks the mental capacity to understand the fact of the impending execution and the reason for it.

C. Attorney opinion⁹⁸

On January 22, 2004, undersigned counsel of record spoke with Mr. Thompson by telephone. Mr. Thompson was informed the State had filed a motion to set his execution date. He giggled and said, “Don’t worry. God told me yesterday I’m not going to die.” When Mr. Thompson was asked what he believed was going to happen,

⁹⁷*Id.* at pp. 12-14.

⁹⁸An expressed doubt by a lawyer in close contact with her client concerning the competency of her client is unquestionably a factor to be considered by a court making a competency inquiry. *Drope v. Missouri*, 420 U.S. 162, 177 (1975).

he replied, “I’m either going to Hawaii or I’m going back home.”⁹⁹ It is the opinion of Mr. Thompson’s current lawyer, based upon close contact and interaction with Gregory Thompson, that he is incompetent to be executed.¹⁰⁰

IV. AS THE RELEVANT INQUIRY IS MR. THOMPSON’S MENTAL STATE AT OR NEAR THE DATE AND TIME OF A SCHEDULED EXECUTION, HE SHOULD BE AFFORDED A COMPETENCY HEARING NEAR THE TIME OF ANY EXECUTION DATE

The procedures set forth in *Van Tran* dictate that Mr. Thompson initiate competency proceedings at this time. Mr. Thompson asserts that he is not presently competent to be executed under Tennessee or United States Constitutional law and he has not been for a substantial period of time. However, even if a Court were to determine that Mr. Thompson is presently competent to be executed, the severity of his illness, which is treated to the extent that it can be with at least four separate medications, coupled with the circumstances surrounding an impending execution date, creates a strong likelihood that his mental condition will further deteriorate as the execution date nears.

A. The Relevant Inquiry Is Mr. Thompson’s Mental State At Or Near the Date and Time of His Scheduled Execution.

The precise question before the Court in *Ford v. Wainwright*, 477 U.S. 399 (1986) was whether it is unconstitutional to execute a person who is incompetent at the time of the execution. The main opinion in *Ford* acknowledged that the question before it was “the question of executing the insane” and the State’s “power to take the

⁹⁹Exhibit 1 ¶6.

¹⁰⁰*Id.* at ¶7.

life of an insane prisoner.” *Ford*, 477 U.S. at 405.

The Court resolved the question presented by determining it was “compelled to conclude that the Eighth Amendment prohibits a state from carrying out a sentence of death upon a prisoner who is insane.” *Id.* at 410.

Justice Powell also recognized that the question before the court was the constitutionality of the “execution of the insane.” *Id.* at 421 (Powell, J., concurring). Similarly, as Justices O’Connor and White noted, the question before the Court was whether the Eighth Amendment creates a right “not to be executed while insane.” *Id.* at 427 (O’Connor, J., concurring and dissenting)(*emphasis added*). Thus, it is clear from *Ford* that the question of competency under federal constitutional law involves competency at the time of the scheduled execution, and not at a point in time removed from that date and hour.

B. The *Van Tran* Procedure Creates A Situation Where A Prisoner Who Is Incompetent On The Scheduled Date Of An Execution Could Be Executed.

The *Van Tran* procedure requires that a petition must be filed in the trial court within three days of the entry of an Order of Remand. *Van Tran*, 6 S.W.3d at 267. Within approximately seven days thereafter, the trial court “shall decide if a hearing is warranted.” *Id.* at 268. Following this determination, a hearing will be held, and an order entered, in a matter of weeks. This process could conclude months before the date and hour of a scheduled execution.

As previously discussed, *Ford*, and the common law on which it is based, affirmatively demand a determination of competency at the time of a scheduled

execution. To the extent that the procedure envisioned in *Van Tran* might not otherwise afford Mr. Thompson this right, he could be denied his procedural right to have his competence assessed at times relevant to a scheduled execution.

IV. CONCLUSION

Gregory Thompson is severely mentally ill. He is insane. He does not understand the fact of an impending execution date and the reason for it. He does not perceive the connection between his crime and his punishment. He is not aware that his death is approaching and cannot prepare for his passing. Given these circumstances, Gregory Thompson should not be executed.

WHEREFORE Mr. Thompson requests that this Court issue a certificate of commutation as explained in the Response in Opposition to Motion to Set Execution Date and Request for Certificate of Commutation filed simultaneously with this Notice. Otherwise, Mr. Thompson's case should be remanded to the Coffee County Circuit Court for a competency proceeding. Further, Mr. Thompson should be afforded access to the courts for a competency determination at times relevant to a scheduled execution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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this _____ day of _____, 2004.

DANA C. HANSEN CHAVIS

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

IN RE:)
)
GREGORY THOMPSON)

No. M 1987-00067-SC-DPE-DD

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