

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

**IN RE:** )  
 )  
**GREGORY THOMPSON** )

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

**Filed February 2, 2004**

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**RESPONSE OPPOSING MOTION TO SET EXECUTION DATE AND  
REQUEST FOR A CERTIFICATE OF COMMUTATION**

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Michael Passino, BPR #5725  
323 Union Street  
Nashville, TN 37201  
(615) 255-8764

Dana C. Hansen Chavis, BPR# 19098  
Counsel of Record  
Assistant Federal Community Defender  
FEDERAL DEFENDER SERVICES  
OF EASTERN TENNESSEE, INC.  
530 S. Gay St., Suite 900  
Knoxville, TN 37902  
(865) 637-7979

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Comes now Gregory Thompson, through undersigned counsel, pursuant to Tenn. S. Ct. Rule 12.4(A) and opposes the state’s motion to set an execution date and respectfully requests a certificate of commutation.

**Introduction**

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.<sup>1</sup> 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.<sup>2</sup> In fact, the same person -- Attorney General Paul Summers -- who moved this Court to set an execution date, just three years ago, requested another court to appoint a conservator to Gregory Thompson because his

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<sup>1</sup>Exhibit 1 ,partial prison records of Gregory Thompson containing an original Bates number and electronic Bates numbers 1 - 97 located at the bottom center of each page contained in this attached Exhibit #1.

<sup>2</sup>Exhibit 2, affidavit of Dana C. Hansen Chavis ¶5.

mental illness rendered him incompetent.<sup>3</sup>

Attorney General Summers not only sought a conservator for the supposed “protection and assistance” of Gregory Thompson, he sought permission to forcibly medicate Mr. Thompson on the basis that Mr. Thompson “is incapable of making rational decisions.”<sup>4</sup>

The request for a conservator and forced medication basically said that Mr. Thompson is so mentally ill he can’t even decide for himself whether or not he needs to take an aspirin.<sup>5</sup> The state is now seeking to execute Mr. Thompson whom they admit is incompetent and incapable of making rational decisions. This is inhuman, indecent, and uncivilized.<sup>6</sup> The State of Tennessee should not be allowed to execute Mr.

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<sup>3</sup>Exhibit 3, Petition by Attorney General Paul Summers for appointment of conservator; Exhibit 4, 10/16/01 hearing transcript p. 9, Assistant Attorney General Dawn Jordan (stating the Department of Corrections did not want to accept Mr. Thompson’s signed release of medical records to his attorneys because they believed he was incompetent).

<sup>4</sup>Exhibit 3, at p.1.

<sup>5</sup>The State’s request to execute Mr. Thompson confirms what was alleged by him three years ago in fighting to remove the conservatorship: that the state was not seeking a conservator for Thompson’s best interests; instead, they were seeking to insure that Thompson could be forcibly medicated to make him chemically competent to be executed. See Exhibit 5, Reply To Response To Petition For Access to Records, Motion for Protective Order and Motion to Alter or Amend Judgment filed 8/22/02.

<sup>6</sup>In *Atkins v. Virginia*, the United States Supreme Court held the execution of mentally retarded defendants violates the Eighth Amendment’s ban of “excessive” sanctions, *Atkins v. Virginia*, 536 U.S. 304, 311 (2002), and cruel and unusual punishment, *id.* at 314-321. The Court found that “[b]ecause of their disabilities in areas of reasoning, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct. Moreover, their impairments can jeopardize the reliability and fairness of capital proceedings...” *id.* at 306-307. The Court remarked that “[a] moral and civilized society diminishes itself if its system of justice does not afford recognition and

Thompson who is indisputably severely mentally ill.<sup>7</sup>

**I. AN EXECUTION DATE SHOULD NOT BE SET AND NO EXECUTION SHOULD OCCUR**

Pursuant to this Court's own rules, it will consider "any and all legal and/or factual grounds why the execution date should be delayed, why no execution date should be set, or why no execution should occur..."<sup>8</sup> This Court should not permit the State to execute Gregory Thompson because there is no question that Mr. Thompson is severely mentally ill.<sup>9</sup>

**II. A CERTIFICATE OF COMMUTATION SHOULD ISSUE**

The death sentence should be commuted because there is no dispute that Gregory Thompson suffers from a debilitating mental illness. In light of Mr. Thompson's present mental condition he should not further suffer a death sentence.

In *Workman v. State*, 22 S.W.3d 807 (Tenn. 2000), this Court, in an Order authored by Justice Anderson and separate orders authored by Justices Drowota, Barker and Birch, addressed the standards by which a certificate of commutation will be

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consideration of those limitations in a meaningful way." *Id.* at 310 (citation omitted). The disabilities possessed by mentally retarded individuals which render capital punishment excessive, cruel and unusual are also present in Mr. Thompson as a result of his debilitating mental illness.

<sup>7</sup>"The bar against executing a prisoner who has lost his sanity bears impressive historical credentials; the practice consistently has been branded 'savage and inhuman.'" *Ford v. Wainwright*, 477 U.S. 399, 406 (1986)(citation omitted). Accordingly, "no State in the Union permits the execution of the insane." *Id.* at 408.

<sup>8</sup>Tennessee Supreme Court Rule 12.4 (emphasis added).

<sup>9</sup>Filed simultaneously with this response and request is Mr. Thompson's notice of *Ford* claim and request for a hearing on Mr. Thompson's competency to be executed.

reviewed. TENN. CODE ANN. § 40-27-106 provides that the governor may commute the punishment from death to life imprisonment upon a certificate of this Court, “that in its opinion, there are extenuating circumstances attending the case, and that the punishment ought to be commuted.”

Despite disagreement about the role of the Court in recommending commutation as set forth in the separate orders, all members of the Court agreed on a basic precept in considering the issue of recommending commutation: the Court should consider only facts contained in the record, or facts which are uncontroverted. *Workman*, 22 S.W.3d at 808. The “extenuating circumstances attending the case” can be based upon facts in the record or a combination of record facts and new evidence that is uncontroverted. *Id.* (citations omitted).

One of the grounds for commutation raised by Mr. Thompson is the uncontroverted evidence of his long-standing severe mental illness. Strong doubts now exist over the accuracy of the pre-trial findings regarding Mr. Thompson’s mental state. (See Section II(B)(1)-(3), *infra*). No reasonable doubt can exist over Mr. Thompson’s current mental state. This Court, in *Green v. State*, 14 S.W. 489 (Tenn. 1890), recommended commutation from a death sentence to imprisonment for life in a similar situation. In *Green*, the defendant raised an insanity defense to a charge of first-degree murder. *Id.* The trial court, jury and Tennessee Supreme Court were of the opinion that the defendant was sane when the murder was committed. *Id.* After the crime, but prior to the trial, the defendant shot himself in the head several times causing chronic dementia. *Id.* In view of the “present mental condition” of the defendant, commutation

to a life sentence was recommended by this Court. *Id.*

Unquestionably, the *Green* decision substantially predates changes made to the state court appellate process and the United States Supreme Court's decision in *Ford v. Wainwright*, 477 U.S. 399 (1986).<sup>10</sup> It does stand, however, as an example of this Court's exercise of its power to recommend commutation to the governor in circumstances similar to the present case.

**A. The Record Facts In The Recent Conservatorship Action Regarding Mr. Thompson Establish The Severity Of Mr. Thompson's Mental Illness.**

In a recent action entitled State of Tennessee Department of Correction v. In The Matter of Greg Thompson, #108406, Chancery Court for the State of Tennessee 20<sup>th</sup> Judicial District, Davidson County, No. 01-1040 II, the State filed a petition for the appointment of a conservator over the person of Mr. Thompson.<sup>11</sup> In that action, Attorney General Paul Summers argued and presented proof that Mr. Thompson was disabled.<sup>12</sup> The affidavit of Casey C. Arney, M.D. was filed with Attorney General

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<sup>10</sup>It is, however, clear that *Green* remains controlling authority as later revealed in *Ford*: "if a man in his sound memory commits a capital offence, and before arraignment for it, he becomes mad, he ought not be arraigned for it ... [a]nd if, after he has pleaded, the prisoner becomes mad, he shall not be tried ... [i]f after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if, after judgment, he becomes of nonsane memory, execution shall be stayed..." *Ford*, 477 U.S. at 406-407 *quoting* 4 W. Blackstone, Commentaries \*24-\*25 (1769)(emphasis added).

<sup>11</sup>Exhibit 3, petition by Attorney General Paul Summers for appointment of conservator.

<sup>12</sup>The term "disabled person" is defined as "any person eighteen (18) years of age or older determined by the court to be in need of partial or full supervision, protection and assistance by reason of mental illness, physical illness or injury, developmental disability or other mental or physical incapacity." TENN. CODE ANN. § 34-

Summers' petition. Dr. Arney reported, in relevant part:

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. ...

Mr. Thompson's illness is chronic and fluctuating in nature, therefore extended periods of marked improvement are not expected.

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."<sup>13</sup> The conservatorship action was later transferred to the Probate Division of the Circuit Court of Davidson County, Tennessee, No. 01P-1394.

Thereafter, a petition to terminate conservatorship and a second petition to terminate conservatorship were filed on behalf of Mr. Thompson which raised the 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 the anti-psychotic medications when they were properly administered to him.<sup>14</sup>

Following several hearings on the second petition to terminate the conservatorship, on October 15, 2003, the Probate Division of Circuit Court for Davidson County, Tennessee entered an Order terminating the conservatorship of Mr.

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1-101(7).

<sup>13</sup>Exhibit 6, Case No. 01P-1041-II, order appointing conservator.

<sup>14</sup>Exhibit 7, second petition to terminate conservatorship filed 11/6/02.



Thompson.<sup>15</sup> That Court specifically found Mr. Thompson was “mentally ill” and “he could go into a manic phase at any point.”<sup>16</sup> 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.<sup>17</sup>

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

**B. Mr. Thompson’s Jury Sentenced Him To Death After Hearing The Opinion Of A State Expert That Mr. Thompson Was Malingering, Or Pretending Schizophrenia; Prison Medical Records From Shortly After The Crime Substantiate His Serious Mental Illness And Show The Falsity Of That Evidence.**

**1. The State’s expert at trial**

The jurors at Mr. Thompson’s trial were presented with the deposition testimony of Dr. Robert Glen Watson, a clinical psychologist. Dr. Watson testified that Mr. Thompson was evaluated before trial at Middle Tennessee Mental Health Institute (MTMHI) and that he appeared to malingering schizophrenia.<sup>18</sup> In 1989, this Court found that “[t]he State was entitled to impeach Mr. Thompson’s expert’s opinion by showing he had pretended a mental illness.”<sup>19</sup>

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<sup>15</sup>Exhibit 8, case no. 01P-1394, order terminating conservatorship.

<sup>16</sup>Exhibit 9, 9/9/03 hearing transcript at pp. 172-173.

<sup>17</sup>*Id.* at p. 172. This inquiry was mandated by TENN. CODE ANN. § 34-1-127.

<sup>18</sup>*State v. Thompson*, 768 S.W.2d 239, 244 (Tenn. 1989).

<sup>19</sup>*Id.*

## 2. Mr. Thompson's expert at trial

Mr. Thompson's own expert at trial was an industrial psychologist.<sup>20</sup> Trial counsel had secured funding to hire a mental health expert "because they questioned the reliability of the forensic team at MTMHI;" because "Thompson told counsel about his head injuries;" and, because "Thompson's mental status was in issue after he was charged in this case, he was going to be on trial for his life, and the state was going to present evidence of his future dangerousness."<sup>21</sup> Inexplicably, trial counsel did not ask the expert to investigate Mr. Thompson's mental health for mitigation purposes or to conduct an evaluation for purposes of rebutting the findings of the MTMHI team. Instead, trial counsel requested an opinion solely regarding Mr. Thompson's ability to contribute to prison life. Accordingly, the industrial psychologist's examination focused on "what things he [Mr. Thompson] might be capable of doing in a prison situation."<sup>22</sup>

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<sup>20</sup>Dr. Copple is licensed as a "clinical psychologist" (Exhibit 10 Testimony of Dr. Copple, Trial Transcript, v.19, p.34), but the majority of his work consists of industrial psychology - mainly psychological evaluations of Social Security applicants who allege "that they have problems that would prevent them from working" and "vocational evaluations" - *i.e.*, "helping people reach their vocational goals or choosing vocational goals" (*id.* Trial Transcript v.18, p.116). He also referred to himself as a "vocational advisor" (*id.* at 130). It had been some years since he had testified in a criminal case, and he had never testified in a capital case (*id.* Trial Transcript v.19, p.35). In their Response Brief to the Tennessee Supreme Court, Mr. Thompson's trial/appellate attorneys admitted that this particular psychologist - whom they had selected and hired with court-approved funds - "was not an expert in criminal behavior" (Exhibit 11 Response to the Reply Brief of the State of Tennessee, p. 40).

<sup>21</sup>*Thompson v. Bell*, 315 F.3d 566, 572-573 (6<sup>th</sup> Cir. 2003)(lead opinion), *id.* at 599 (dissent).

<sup>22</sup>Exhibit 10 Testimony of Dr. Copple, Trial Transcript, v.18, p.121.

### 3. Evidence, that was available but, not presented at trial

Unbeknownst to the jurors who convicted Mr. Thompson and sentenced him to death, prison records indisputably prove that Mr. Thompson suffers from serious mental illness. Prison doctors have variously diagnosed Mr. Thompson's illness as bipolar affective disorder, schizo-affective disorder or schizophrenia.<sup>23</sup>

Even Mr. Thompson's records from MTMHI show clear indications of the onset of mental illness despite the conclusions reached by the MTMHI treatment team.<sup>24</sup> Mr. Thompson was evaluated at MTMHI from April 18, 1985 through May 27, 1985.<sup>25</sup> An Axis II diagnosis of Antisocial Behavior was placed on Mr. Thompson on his date of admission.<sup>26</sup>

While present at MTMHI, Mr. Thompson indicated he had been running from the KKK who had been ordered to kill him and his female companion at the time of the murder.<sup>27</sup> At various points throughout his stay at MTMHI, Mr. Thompson exhibited agitated and inappropriate behavior toward staff members and other patients including cursing loudly.<sup>28</sup> He was placed in seclusion twice for such behavior.<sup>29</sup> Mr. Thompson

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<sup>23</sup>Exhibit 12, Testimony of Dr. Gillian Blair, Post-conviction Transcript, v. II, p. 209.

<sup>24</sup>Exhibit 13, portions of Gregory Thompson records from MTMHI containing an original Bates number and an electronic Bates number 1 -11 located at the bottom center of the pages of this attached Exhibit #13.

<sup>25</sup>Exhibit 13, MTMHI Records, original Bates #297, electronic Bates #1.

<sup>26</sup>*Id.* original Bates #334, electronic Bates #4.

<sup>27</sup>*Id.* original Bates #346, electronic Bates #5.

<sup>28</sup>*See, e.g., id.* Bates #351, 354, 375, 377, electronic Bates #6, 7, 10, 11.

<sup>29</sup>*Id.* original Bates # 351, 354, electronic Bates #6, 7.

also exhibited unnecessary laughing during this stay at MTMHI.<sup>30</sup> Progress notes further indicate that Mr. Thompson reported hearing voices telling him to “Kill, Kill.”<sup>31</sup> These symptoms noted by MTMHI staff are included within the symptoms that would be documented throughout his subsequent incarceration.

Despite these indications of mental illness, however, the MTMHI treatment team found that “clinical observations revealed no evidence of a thought disorder” and discounted an elevated Schizophrenia score on a Minnesota Multiphasic Personality Inventory (MMPI) in determining that Mr. Thompson was malingering mental illness.<sup>32</sup> His discharge diagnosis was Adult Antisocial Behavior.<sup>33</sup>

Had trial counsel discharged their duty to thoroughly investigate Mr. Thompson’s mental state this information could have been presented to the jury at trial.<sup>34</sup> In reviewing trial counsel’s failure to investigate and present mitigating evidence, Judge Clay of the Sixth Circuit stated:

Indeed, by accounting for the marked change in Thompson’s behavior after he joined the Navy, expert psychiatric testimony supporting the notion that Thompson suffered from mental illness or an adverse mental condition would have provided a plausible explanation for Thompson’s “positive qualities” in contradistinction to his subsequent violent behavior. However, by not being able to offer the jury any plausible psychiatric

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<sup>30</sup>*Id.* original Bates #360, electronic Bates #8.

<sup>31</sup>*Id.* original Bates #362, electronic Bates #9.

<sup>32</sup>*Id.* original Bates #303, electronic Bates #3.

<sup>33</sup>*Id.* original Bates #300, electronic Bates #2.

<sup>34</sup>See Guideline 10.7 - Investigation & Guideline 10.11 - The Defense Case Concerning Penalty, ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (Rev.Ed. Feb. 2003)

explanation regarding the significance of Thompson's change in behavior as witnessed by Cajulao and others, his trial counsel essentially abdicated their roles as meaningful advocates on behalf of their client. This is because defense counsel had nothing with which to rebut the state's proofs after opening the door to the issue of whether Thompson was a "good person."

*Thompson v. Bell*, 315 F.3d 566, 606-607 (6<sup>th</sup> Cir. 2003)(Clay, J., dissenting).<sup>35</sup>

#### **4. Post-conviction proceeding**

Three psychiatrists who treated Mr. Thompson from his incarceration in 1985 to 1990 reached a very different conclusion from the MTMHI treatment team on the issue of whether Mr. Thompson was malingering, or faking, his illness. Dr. Gillian Blair, a psychologist who testified at the state post-conviction hearing, noted that the prison psychiatrists treating Mr. Thompson

had diagnosed him as either having a bipolar disorder or a schizo affective disorder or schizophrenia. They described his agitated behavior. They described his hostility. They described his inappropriate affect, his experience of auditory hallucinations, his delusions, his paranoia, his thoughts of persecution. He had attempted suicide on a couple of occasions. He had set fire to his cell burning both his hands and his face. They had certainly – two of those psychiatrists and maybe all three of them had considered the possibility that he was malingering, that he was faking mental illness and throughout their Riverbend records, it was clear

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<sup>35</sup>When assessing whether clemency should be granted in a capital case, executives often consider whether the jurists who have reviewed the case were unanimous in their conclusion that the judgment was proper. As the Supreme Court reminds us, "[i]t is an unalterable fact that our judicial system, like the human beings who administer it, is fallible." *Hererra v. Collins*, 506 U.S. 390, 415 (1993). The existence of divergent views among judges about the propriety of the death sentence in a particular case can point to a problem in the judicial process that warrants granting clemency. In Mr. Thompson's case the Sixth Circuit Court of Appeals issued a fractured opinion in which each judge issued a separate opinion. *Thompson v. Bell*, 315 F.3d 566, 569 (6<sup>th</sup> Cir. 2003)(Suhreinrich, J., delivered the opinion of the court; Moore, J. delivered a separate opinion concurring in the result; Clay, J., delivered a separate dissenting opinion). Because the death sentence has not been unanimously affirmed, this Court should certify commutation to Governor Bredesen.

that those psychiatrists had discounted the possibility of malingering because they didn't feel that it accounted for all of the psychotic symptoms they saw in him.<sup>36</sup>

Prior to the post-conviction evidentiary hearing, the prosecutor went to Riverbend to talk to staff about Mr. Thompson's behavior and to review the files.<sup>37</sup> Clearly, the State knew that Mr. Thompson was mentally ill, although the prosecutor argued to the contrary.

During Mr. Thompson's post-conviction proceedings defense counsel attempted to prove the claim of ineffective assistance of counsel based on a failure by trial counsel to adequately investigate Mr. Thompson's mental health. The State argued that Mr. Thompson was not mentally ill, was competent at the time of trial, was presently competent, and was competent to be executed, despite ten years of records to the contrary.<sup>38</sup>

Mr. Thompson's mental health treatment plan contemporary to the post-conviction hearing reveals a diagnosis of schizophrenia with presenting problems of auditory and visual hallucinations and paranoid ideation.<sup>39</sup> The treatment plan called for pharmacotherapy and psychotherapy.<sup>40</sup> Institutional records clearly illustrated Mr.

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<sup>36</sup>Exhibit 12, Testimony of Dr. Blair, Post-conviction Transcript, v.2, pp.209-10.

<sup>37</sup>Exhibit 1, original Bates #0000800, electronic Bates #1 .

<sup>38</sup>Exhibit 14, Post-Conviction Transcript, v.2 pp. 222-226, 232-247, 252-256, 260-264.

<sup>39</sup>Exhibit 1, original Bates #0000228, electronic Bates #2 .

<sup>40</sup>*Id.* original Bates #0000229, electronic Bates #3.

Thompson's "significant history of psychosis requiring multiple medications."<sup>41</sup>

## **5. Eighteen years of documented mental illness**

Mr. Thompson has a well-documented history of hallucinations and delusional thinking, such as: believing the guards are devils; seeing and hearing devils, god and women in his cell; hearing voices; believing his cell is contaminated by radioactive electricity; believing the guards are aliens from outer space; believing his treating doctors were Bert, Ernie, and Oscar the Grouch; believing he was going to be release from prison because Big Bird is on his side; displaying bitter feelings that his idea for the space shuttle was stolen from him; believing the guards were people from his childhood and feeling confused that they could not remember while he could; believing that he wrote songs for Elvis and Michael Jackson; requesting oil to treat his dry stomach and esophagus; reporting that he had fought a war between good and evil and had won, making everybody happy; refusing to bathe and splattering feces and urine over his cell; eating feces; feeling distressed about his health because he had eaten feces; engaging in self-mutilation; and attempting suicide.

An abbreviated account of Mr. Thompson's mental illness follows:

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. Thompson complained there was a "bug in [his] ear." There was no object in his ear.

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<sup>41</sup> *Id.* original Bates #0000094, electronic Bates #4.

He was diagnosed with “depression regarding a sister”.<sup>42</sup>

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.”<sup>43</sup>

Another emergency room care report on April 11, 1986, indicates Mr. Thompson “swallowed some Genaspor powder ‘accidentally.’”<sup>44</sup> 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.<sup>45</sup>

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.<sup>46</sup>

A September 19, 1986, report from International Clinical Laboratories, Inc. shows Mr. Thompson’s Lithium level at 0.7, indicating Lithium had previously been

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<sup>42</sup> *Id.* original Bates #375, electronic Bates #5

<sup>43</sup> *Id.* original Bates #0000295, electronic Bates #6

<sup>44</sup> *Id.* original Bates #362, electronic Bates #7

<sup>45</sup> *Id.* original Bates #360, electronic Bates #8

<sup>46</sup> *Id.* original Bates #0001143-1144, electronic Bates #9-10



administered to him.<sup>47</sup>

Physician Orders and a Medication Administration Record for June 1988 indicates Mr. Thompson was prescribed Lithium.<sup>48</sup> 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.”<sup>49</sup>

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.”<sup>50</sup>

On September 26, 1988, Mr. Thompson complained of a “snake bite on finger and chest” but staff found “no wounds apparent.”<sup>51</sup> 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. Wondered whether I could hear him thinking. Also, admitted to “hearing lots of voices.” MSE [mental status exam] positive for grandiosity, thought

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<sup>47</sup> *Id.* original Bates #108, electronic Bates #11.

<sup>48</sup> *Id.* original Bates #267, 266, electronic Bates #12, 13.

<sup>49</sup> *Id.* original Bates #174, electronic Bates #14.

<sup>50</sup> *Id.* original Bates #171, electronic Bates #15.

<sup>51</sup> *Id.* original Bates #166, electronic Bates #16.

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.<sup>52</sup>

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.<sup>53</sup> The rationale for treatment continuation was that Mr. Thompson suffered “continued symptoms.”<sup>54</sup>

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.”<sup>55</sup>

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 very morbid and withdrawn.<sup>56</sup>

A prison social worker reported an interview with Mr. Thompson where

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.* original Bates #0000221, electronic Bates #17.

<sup>54</sup> *Id.* original Bates #0000222, electronic Bates #18.

<sup>55</sup> *Id.* original Bates #343, electronic Bates #19.

<sup>56</sup> *Id.* original Bates #133, electronic Bates #20.

“[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.’”<sup>57</sup>

In September 1989, a prison nurse reported Mr. Thompson “set fire to his cell and burned himself. Noted 2<sup>nd</sup> degree burns - blisters formed - on rt. hand, fingers and wrist. Hair on head and facial hair all singed - no burns noted.”<sup>58</sup>

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.”<sup>59</sup>

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.”<sup>60</sup>

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 can keep them away now if I don’t close my eyes.’”<sup>61</sup>

Later, Mr. Thompson reported to a prison nurse “that he was hearing voices,

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<sup>57</sup> *Id.* original Bates #132, electronic Bates #21.

<sup>58</sup> *Id.* original Bates #141, 140, electronic Bates 22, 23.

<sup>59</sup> *Id.* original Bates #074, electronic Bates #24.

<sup>60</sup> *Id.* original Bates #129, electronic Bates #25.

<sup>61</sup> *Id.* original Bates #128, electronic Bates #26.

beating sounds and scratching noises. He also stated that his nerves were shot.”<sup>62</sup>

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).”<sup>63</sup>

In 1990-1991, Mr. Thompson’s “major medical conditions/problems” were listed as “psychotic - BAD [bipolar affective disorder], type 1.”<sup>64</sup>

A mental health treatment plan dated October 4, 1990, summarized Mr. Thompson’s presenting problems as “disorganized thought, paranoia, psychotic symptoms.”<sup>65</sup>

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 maintain “reduced psychotic symptoms” through pharmaco-therapy.<sup>66</sup> A mental health treatment plan dated in August 1991 remained the same.<sup>67</sup>

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<sup>62</sup>*Id.* original Bates #127, electronic Bates #27.

<sup>63</sup>*Id.* original Bates #126, electronic Bates #28.

<sup>64</sup>*Id.* original Bates #00002225, electronic Bates #29.

<sup>65</sup>*Id.* original Bates #0000245, electronic Bates #30.

<sup>66</sup>*Id.* original Bates #0000246, electronic Bates #31.

<sup>67</sup>*Id.* original Bates #0000247, electronic Bates #32.

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.<sup>68</sup>

In June and December of 1992 the mental health treatment plan for Mr. Thompson was again to decrease psychotic symptoms.<sup>69</sup>

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.<sup>70</sup>

In May and August 1993, the mental health treatment plan lists “paranoid ideation” and “AH”, audio hallucinations, as Mr. Thompson’s presenting problems.<sup>71</sup>

Those same presenting problems are noted on the February 1994 mental health treatment plan with the addition of “visual hallucinations”.<sup>72</sup> This plan contains a diagnosis of Schizophrenia, paranoid type.<sup>73</sup> Auditory and visual hallucinations were also the subject of the August 1994 plan.<sup>74</sup>

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<sup>68</sup>*Id.* original Bates #0000248, electronic Bates #33.

<sup>69</sup>*Id.* original Bates #0000249-250, electronic Bates #34-35.

<sup>70</sup>*Id.* original Bates #0000058, electronic Bates #36.

<sup>71</sup>*Id.* original Bates #0000224-225, electronic Bates #37-38.

<sup>72</sup>*Id.* original Bates #0000227, electronic Bates #40.

<sup>73</sup>*Id.* original Bates #0000226, electronic Bates #39.

<sup>74</sup>*Id.* original Bates #0000229, electronic Bates #42.

In May 1995 prison records reveal a certified mental health emergency.<sup>75</sup> Mr. Thompson was described as “agitated, pacing, yelling, expressing paranoid delusions, thought disordered with pressured speech and FOI”, flight of ideas.<sup>76</sup> He appeared “to have lost a significant amount of weight.”<sup>77</sup> 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.<sup>78</sup>

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 “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.”<sup>79</sup>

On June 13, 1995, the Special Needs staff reported some improvement. Mr.

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<sup>75</sup>*Id.* original Bates #0000230, electronic Bates #43.

<sup>76</sup>*Id.*

<sup>77</sup>*Id.* original Bates #0000231, electronic Bates #44.

<sup>78</sup>*Id.* original Bates #0000232, electronic Bates #45.

<sup>79</sup>*Id.* see *also* original Bates #0000109-110, electronic Bates #46-47

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.”<sup>80</sup> 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.’”<sup>81</sup> Mr. Thompson was release from the Special Needs Facility back to death row on June 29, 1995.<sup>82</sup>

In August 1995, Mr. Thompson’s diagnosis was changed from Psychotic Disorder N.O.S. to Bipolar Affective Disorder, Manic Mood.<sup>83</sup> The presenting problem was listed as “delusional thought pattern” and “paranoid delusional thought content.”<sup>84</sup>

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 Navane.<sup>85</sup>

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

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<sup>80</sup>*Id.* original Bates #0000233, electronic Bates #48.

<sup>81</sup>*Id.*

<sup>82</sup>*Id.*

<sup>83</sup>*Id.* original Bates #0000235, electronic Bates #50.

<sup>84</sup>*Id.*; *id.* original Bates #0000236, electronic Bates #51.

<sup>85</sup>*Id.* original Bates #0000237, electronic Bates #52.

“arrived on the unit the inmate was restless crying holding his head.”<sup>86</sup> Mr. Thompson “complained of visual hallucinations – sees God and Devil and many demons.”<sup>87</sup>

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.’”<sup>88</sup>

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.”<sup>89</sup> 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.”<sup>90</sup>

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.”<sup>91</sup>

The mental health treatment plans covering March 1997 - March 1998 renewed the 1996 plan.<sup>92</sup>

In June 1997, Mr. Thompson reported seeing eyeballs. “They could be God,

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<sup>86</sup> *Id.* original Bates #0000130, electronic Bates #53.

<sup>87</sup> *Id.* original Bates #0000131, electronic Bates #54.

<sup>88</sup> *Id.* original Bates #0000133, electronic Bates #55.

<sup>89</sup> *Id.* original Bates #0000238, electronic Bates #56.

<sup>90</sup> *Id.* original Bates #0000239, electronic Bates #57.

<sup>91</sup> *Id.* original Bates #0000143, electronic Bates #58.

<sup>92</sup> *Id.* original Bates #0000242, 244, electronic Bates #61, 62.



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.”<sup>93</sup>

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.”<sup>94</sup>

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.<sup>95</sup> On August 28, 1998, that psychiatrist noted “inmate continues to benefit from medication therapy” and extended the treatment plan through February 1999.<sup>96</sup>

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 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

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<sup>93</sup> *Id.* original Bates #0000176, electronic Bates #63.

<sup>94</sup> *Id.* original Bates #0000264, electronic Bates #64.

<sup>95</sup> *Id.* original Bates #0001529-1530, electronic Bates #65-66.

<sup>96</sup> *Id.* original Bates #0001531-1532, electronic Bates #67-68.

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.”<sup>97</sup>

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.<sup>98</sup>

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

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<sup>97</sup> *Id.* original Bates #0001533-1534, electronic Bates #669-70.

<sup>98</sup> *Id.* original Bates #0002825, electronic Bates #71.

violent person. I feel he needs to be evaluated immediately.<sup>99</sup>

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 flesh out "feces he ate years ago."<sup>100</sup>

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.<sup>101</sup>

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.<sup>102</sup>

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.'"<sup>103</sup>

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<sup>99</sup>*Id.* original Bates #0001667, electronic Bates #72.

<sup>100</sup>*Id.* original Bates #0001667, electronic Bates #72.

<sup>101</sup>*Id.* original Bates #0001672, electronic Bates #73.

<sup>102</sup>*Id.* original Bates #0001671, electronic Bates #74.

<sup>103</sup>*Id.* problem oriented - progress records 11/8/00 @ 1700 (no original Bates #, electronic Bates #75).

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.<sup>104</sup>

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.<sup>105</sup>

On November 20, 2000, Mr. Thompson “remain[ed] very psychotically disorganized, paranoid, easily agitated, hostile.” A decision was made to forcibly medicate Mr. Thompson.<sup>106</sup>

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 hallucinations exhibited by talking to walls and calling people’s names as if they were in cell with him.<sup>107</sup>

The prison psychiatrist reported:

patient remains manic with severe flight of ideas, is psychotically

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<sup>104</sup>*Id.* problem oriented - progress records 11/13/00 @ 0920 (no original Bates #, electronic Bates #76).

<sup>105</sup>*Id.* problem oriented - progress records 11/17/00 @ 1530 (no original Bates #, electronic Bates #77).

<sup>106</sup>*Id.* problem oriented - progress records 11/20/00 @ 1020 (no original Bates #, electronic Bates #78).

<sup>107</sup>*Id.* problem oriented - progress records 11/25/00 @ 0800 (no original Bates #, electronic Bates #79).

disorganized, agitated at times. Sleep very limited. Staff and I have observed for signs of malingering and do not see it at this time.<sup>108</sup>

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. Sefron are "Bert, Ernie and Oscar" the grouch. States he will be released from prison soon "because Big Bird is on my side."<sup>109</sup>

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 tattoo. Though less agitated, he remains psychotic. No acute risk to self seen.<sup>110</sup>

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/ recognizes he is hallucinating and is okay."<sup>111</sup>

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

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<sup>108</sup>*Id.* problem oriented - progress records 11/27/00 @ 0955 (no original Bates #, electronic Bates #80).

<sup>109</sup>*Id.* problem oriented - progress records 12/4/00 @ 1035 (no original Bates #, electronic Bates #81).

<sup>110</sup>*Id.* problem oriented - progress records 12/18/00 @ 0915 (no original Bates #, electronic Bates #82).

<sup>111</sup>*Id.* problem oriented - progress records 12/22/00 @ 1300 (no original Bates #, electronic Bates #83).

here who healed them.”<sup>112</sup>

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.<sup>113</sup>

Mr. Thompson was discharged from the Special Needs Facility on January 31, 2001, and transferred back to death row.<sup>114</sup>

On May 16, 2001, Mr. Thompson was transferred back to the Special Needs Facility.<sup>115</sup>

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.)<sup>116</sup>. Despite receiving this medication, Mr. Thompson was

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<sup>112</sup>*Id.* problem oriented - progress records 1/1/01 @ 1345 (no original Bates #, electronic Bates #84).

<sup>113</sup>*Id.* problem oriented - progress records 1/20/01 @ 1700 (2 pages)(no original Bates #, electronic Bates #85-86).

<sup>114</sup>*Id.* problem oriented - progress records 1/31/01 @ 1000 (no original Bates #, electronic Bates #87).

<sup>115</sup>*Id.* original Bates #0001578, electronic Bates #88.

<sup>116</sup>*Id.* Physician’s Orders dated June 5, 2001 & July 11, 2001 (no original Bates #, electronic Bates #89).

admitted to the infirmary on July 20, 2001, for suicide watch.<sup>117</sup>

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.”<sup>118</sup>

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.’”<sup>119</sup>

In May 2002, the prison psychiatrist reports Mr. Thompson saying, “‘I’ve been seeing some good things.’ ‘Fangs.’ ‘Scary but cute.’”<sup>120</sup>

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 when you’ll get out.”<sup>121</sup>

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

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<sup>117</sup> *Id.* Physician’s Orders dated 7/20/01 (no original Bates #, electronic Bates #90).

<sup>118</sup> *Id.* original Bates #0000025, electronic Bates #91.

<sup>119</sup> *Id.* original Bates #0000028, electronic Bates #92.

<sup>120</sup> *Id.* original Bates #0000035, electronic Bates #93.

<sup>121</sup> *Id.* original Bates #0000044, electronic Bates #94.

psychotic features.”<sup>122</sup>

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?’”<sup>123</sup>

**6. Doubts about the reliability of the prior legal proceedings and documented, uncontroverted proof of Mr. Thompson’s incompetency favor a certificate of commutation**

The well documented history of mental illness which strongly rebuts the State’s position throughout Mr. Thompson’s case that he is malingering the effects of his mental illness and demonstrates that the execution of Mr. Thompson would constitute excessive, cruel and unusual punishment, presents the sort of extenuating circumstances upon which this Court can recommend commutation to Governor Bredesen.

**Conclusion**

WHEREFORE based upon the above stated reasons, Mr. Thompson respectfully requests this Court to deny the motion to set execution date and grant him a certificate of commutation. Alternatively, should this Court permit the setting of an execution date and decline to issue a certificate of commutation at this juncture, Mr. Thompson respectfully requests the Court to reconsider the instant commutation request when this case returns to the Court following the anticipated *Ford* hearing in the trial court.

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<sup>122</sup>*Id.* original Bates #000046, 72, electronic Bates #95, 96

<sup>123</sup>*Id.* original Bates #0000071, electronic Bates #97.



Respectfully submitted,

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Michael Passino, BPR #5725  
323 Union Street  
Nashville, TN 37201  
615-255-8764

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Dana C. Hansen Chavis, BPR# 19098  
Counsel of Record\*  
Assistant Federal Community Defender  
FEDERAL DEFENDER SERVICES  
OF EASTERN TENNESSEE, INC.  
530 S. Gay St., Suite 900  
Knoxville, TN 37902  
(865) 637-7979

\*The undersigned attorney of record prefers to be notified of any orders or opinions of the Court by Facsimile at (865)-637-7999.

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Dana C. Hansen Chavis

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was forwarded to

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

by Facsimile and U.S. Mail, postage prepaid, this 2<sup>nd</sup> day of February, 2004.

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Dana C. Hansen Chavis





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

**IN RE:** ) **No. M 1987-00067-SC-DPE-DD**  
 )  
**GREGORY THOMPSON** )

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**Affidavit of Dana C. Hansen Chavis**

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STATE OF TENNESSEE )  
 )  
COUNTY OF KNOX )

Comes now Dana C. Hansen Chavis, after being duly sworn according to law, and affirms as follows:

1. My name is Dana C. Hansen Chavis. I am an attorney licensed in the State of Tennessee, Board of Professional Responsibility number 19098.
2. I have represented Gregory Thompson since 1998.
3. During my representation of Mr. Thompson I have conversed with him both in person and by telephone. Mr. Thompson calls my office at least once per day and usually three or four times per day. I have spoken with Mr. Thompson by telephone at least once each week since 1998.
4. My office initially requested and received Mr. Thompson's prison records dating from his incarceration to the time of our appointment to his case. Since then, my office has requested and received Mr. Thompson's records on a periodic basis. The latest installment of records was received on July 7, 2003. Updated records have recently been requested but not received.
5. I am currently in possession of over 4,000 prison records documenting Mr. Thompson's mental illness. These records include notes from doctors, nurses, psychiatric examiners and social workers; medication orders; medication administration charts; problem oriented - progress reports; TOMIS records; monthly assessment notes; suicide watch records; records from Lois DeBerry Special Needs Facility; disciplinary records and reports.
6. On January 22, 2004, I spoke with Mr. Thompson by telephone. I told him 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 I asked him what is going to happen he replied, "I'm either going to Hawaii or I'm going back home."

7. It is my opinion based upon my close contact and interaction with Gregory Thompson, that he is incompetent to be executed.

FURTHER AFFIANT SAITH NOT.

\_\_\_\_\_  
Dana C. Hansen Chavis

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_