

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

GARY WAYNE SUTTON	)	
	)	
<i>Petitioner,</i>	)	
v.	)	No.: 3:06-cv-388
	)	(VARLAN/SHIRLEY)
RICKY BELL, WARDEN,	)	
	)	DEATH PENALTY
<i>Respondent.</i>	)	

**ORDER**

For the reasons expressed in the Court's memorandum filed herewith, it is hereby **ORDERED** an evidentiary hearing on the claims pertaining to Dr. Harlan will be held in Knoxville on **Monday, February 1, 2010, at 10:00 a.m.** and the Court will **RESERVE RULING** on Petitioner's cumulative error claim pending resolution of the Dr. Harlan claims. In addition, Sutton's claim that he cannot be executed because he is incompetent is **DISMISSED WITHOUT PREJUDICE**. As to all other claims, Respondent's motion for summary judgment is **GRANTED** [Doc. 30]. The Court will **RESERVE RULING** on a Certificate of Appealability as to the dismissed claims pending the conclusion of the evidentiary hearing.

**IT IS SO ORDERED.**

s/ Thomas A. Varlan  
UNITED STATES DISTRICT JUDGE