

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CECIL C. JOHNSON, JR.,)
)
 Plaintiff,)
)
 v.) **Civil Action No. _____**
)
 PHIL BREDESEN, Governor of the)
 State of Tennessee; GEORGE M.)
 LITTLE, Commissioner of the)
 Tennessee Department of Correction;)
 and RICKY BELL, Warden, Riverbend)
 Maximum Security Institution, in their)
 official capacities only,)
)
 Defendants.)

VERIFIED COMPLAINT

This is an action for injunctive relief only under 42 U.S.C. § 1983. Plaintiff is scheduled to be put to death on Wednesday, December 2, 2009, at 1:00 a.m. CST in the execution chamber at Riverbend Maximum Security Institution. He contends that the execution of his death sentence in light of the facts and circumstances detailed below would constitute a violation of the Eighth and Fourteenth Amendments to the United States Constitution and Article I, § 16, of the Tennessee Constitution that this Court should permanently enjoin.

Overview

1. Cecil Johnson has been confined on Tennessee’s Death Row for almost twenty-nine years, constantly under a sentence of death. Apart from the fact that he initiated legitimate legal proceedings in an effort to vindicate his constitutional rights (many of which proceedings were compelled by the “exhaustion of state remedies” requirement of federal habeas law), *no* material part of the delay in this case is attributable to him. In fact, almost eighteen years of

delay is *directly* attributable to the fact that the Davidson County District Attorney's Office suppressed concededly exculpatory evidence until 1992, which necessitated a second post-conviction proceeding in the state courts.

2. By contrast, Cecil Johnson and his counsel have done everything within their power to move the case forward, believing that the merits of his case would ultimately result in a new trial. That obviously did not happen, but he now contends that his execution after a period of twenty-nine years *for which he is blameless* would constitute cruel and unusual punishment. This case appears to be unique in that respect.

Parties, Jurisdiction, and Venue

3. Plaintiff, Cecil C. Johnson, Jr., is a condemned inmate at the Riverbend Maximum Security Institution located in Nashville, Davidson County, Tennessee. By Order of the Tennessee Supreme Court dated July 21, 2009, as implemented by Defendant George Little, Plaintiff is scheduled to be put to death by lethal injection at 1:00 a.m. CST on Wednesday, December 2, 2009, within the execution chamber at Riverbend Maximum Security Institution. Defendant Phil Bredesen, in his official capacity as the Governor of the State of Tennessee, denied Plaintiff's petition for executive clemency on November 25, 2009.

4. Defendant Phil Bredesen is the duly-elected Governor of the State of Tennessee and is vested with its "supreme executive power" under Article III, § 1, of the Tennessee Constitution. Under Article III, § 6, of the Constitution, he has the unfettered power to grant reprieves and pardons, except in cases of impeachment. Finally, under Article III, § 10, he has the duty to faithfully execute the laws of the State.

5. Defendant George Little is the duly-appointed Commissioner of the Department of Correction. As such, he oversees the execution of condemned inmates, among his other duties.

6. Defendant Ricky Bell is the Warden of Riverbend Maximum Security Institution. As such, he is directly responsible for the actual implementation of all judicial executions in this State, and the Tennessee Supreme Court's Order of July 21 specifically directs him or his designee to carry out Plaintiff's execution.

7. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1343(a)(3) because this is an action to address the deprivation, under color of state law, of Plaintiff's rights under the Eighth and Fourteenth Amendments to the Constitution of the United States. The Court has supplemental jurisdiction over Plaintiff's state law claim (Count Two) under 28 U.S.C. § 1367(a).

8. Venue lies in this District under 28 U.S.C. § 1391(b)(1)&(2) because Defendants all reside in this District and a substantial part (indeed, all) of the events giving rise to Plaintiff's claims occurred in this District.

Factual Background

9. On January 19, 1981, a Davidson County jury convicted Plaintiff (then twenty-four years old) on three counts of first-degree murder for three homicides that had occurred at the former Bob Bell's Market in Nashville on July 5, 1980. The Metropolitan Nashville Police Department arrested and charged Plaintiff with these offenses the next day (July 6, 1980). Plaintiff has continuously and consistently maintained his innocence of these crimes ever since.

10. On January 20, 1981, the same jury imposed three death sentences on Plaintiff. Plaintiff was immediately transported to Death Row (Unit 6) in the former Tennessee State

Penitentiary in Nashville. In June 1992, Plaintiff was transferred to Death Row (Unit 2) of the then newly-opened Riverbend Maximum Security Institution, where he has remained continuously confined ever since (except for a limited number of court appearances).

11. All told, Plaintiff has been in the custody of the State of Tennessee for over twenty-nine years, i.e., since July 6, 1980, and he has been awaiting execution for almost twenty-nine years, i.e., since January 20, 1981. Plaintiff is now fifty-three years old.

12. Plaintiff was the twentieth inmate to go on Tennessee's Death Row following the 1977 reinstatement of the death penalty. Of those twenty, only two (Donald Wayne Strouth and Michael Coleman) remain on Death Row with Plaintiff. Fourteen others have received relief from their death sentences, while three died of unstated causes other than execution. None of the twenty have been executed to date. In fact, from a broader perspective, of the 112 defendants sentenced to death in this State from 1977 through 1990, only thirty-nine (or just slightly over a third) remained on Death Row as of June 15, 2008 (the date of the source upon which Plaintiff is relying for these statistics).

13. The Tennessee Supreme Court affirmed Plaintiff's convictions and sentences on direct appeal on May 3, 1982, and the United States Supreme Court denied certiorari on October 4, 1982, less than two years after the trial.

14. In November 1982, the undersigned law firm committed to represent Plaintiff going forward in state post-conviction and, if necessary, federal habeas corpus proceedings (all on a pro bono basis). In that connection, and somewhat contrary to what some would view as "conventional wisdom" in the defense of death penalty cases, Plaintiff's counsel made a judgment (with Plaintiff's approval) to *expedite* the proceedings as much as possible. They believed that he had a strong case on the merits, but they also recognized that, in all likelihood,

the United States Court of Appeals for the Sixth Circuit would make the final adjudication on the merits (which turned out to be the case). The Sixth Circuit did not have a death penalty habeas corpus docket at the time, but experience in the other circuits that were deciding death penalty habeas corpus cases back then strongly suggested that it would be better to reach the Court of Appeals sooner rather than later.

15. In keeping with a deadline that the Tennessee Supreme Court had imposed, Plaintiff's counsel filed his first petition for post-conviction relief in the Davidson County Criminal Court on February 9, 1983. Then-Judge A.A. Birch (who had presided over the trial in January 1981) handled the matter expeditiously, and conducted an evidentiary hearing over the course of five days beginning on April 12 and concluding on May 31, 1983. On September 14, 1983, he entered an order denying the petition in all respects.

16. Plaintiff timely appealed to the Tennessee Court of Criminal Appeals ("CCA"). The case was argued in the CCA on December 18, 1984, but then, setting what became something of a recurring pattern, the case remained under advisement for over three years, until January 20, 1988. The CCA did, however, order a new sentencing hearing, but denied any relief as to the guilt phase of Plaintiff's trial. *Johnson v. State*, No. 83-241-III, 1988 Tenn. Crim. App. LEXIS 29.

17. By way of two orders dated August 29 and 30, 1988, respectively, the Tennessee Supreme Court granted each party's application for permission to appeal. On September 4, 1990, the court rendered a decision reversing the CCA on the sentencing phase relief it had ordered, but summarily affirming the lower court's decision in all other respects. *Johnson v. State*, 797 S.W.2d 578 (Tenn. 1990).

18. Having now fully exhausted Plaintiff's available state judicial remedies (as required by federal habeas law), Plaintiff bypassed the opportunity to file a certiorari petition in the U.S. Supreme Court (in keeping with the strategy described above), and proceeded directly to the filing of a habeas corpus petition in this Court. The case was assigned to the Honorable Thomas A. Wiseman, Jr., Case No. 3:91-0119.

19. There then ensued a development that would have a profound impact on the course of future proceedings. Specifically, in the spring of 1992, having been denied access on multiple occasions, Plaintiff's counsel finally obtained access to the Davidson County District Attorney General's file in this case based a new judicial interpretation of the Tennessee Open Records Act. Without getting into the merits of Plaintiff's *Brady* claim, suffice it to state that the file contained multiple police reports containing exculpatory material that the State should have produced before trial, as even the State itself stipulated in subsequent proceedings. Moreover, the materials were responsive to multiple specific requests that had been made at both the trial and post-conviction levels.

20. Based on the evidence discovered in the District Attorney General's file, Plaintiff's counsel filed a motion in this Court to add a *Brady* claim to Plaintiff's pending habeas petition, which Judge Wiseman granted on January 25, 1993.

21. On September 8, 1993, Glenn R. Pruden, the Assistant Attorney General then assigned to this case, sent a letter to one of Plaintiff's counsel on which he copied Judge Wiseman. In substance, the letter conveyed that there had been an extremely attenuated employment relationship between Judge Wiseman and Bob Bell (a critical witness in this case and the father of one of the homicide victims) when Judge Wiseman had been State Treasurer over twenty years before. In what can only be interpreted as a response to the letter, Judge

Wiseman entered a one-sentence Order recusing himself from the case on September 16, 1993 (although, in keeping with customary practice, the Order did not articulate any basis for the recusal).

22. The case was reassigned to Judge Robert Echols, which necessarily generated some additional delay. The case did, however, move forward, as evidenced by the fact that Judge Echols conducted a lengthy hearing on motions and cross-motions for partial summary judgment on November 4, 1994, which he took under advisement.

23. In the meantime, a convergence of then-recent Sixth Circuit and Tennessee appellate decisions left Plaintiff with no choice but to go back to state court on a second post-conviction proceeding to exhaust his *Brady* claim, at the risk of being precluded from pursuing it in federal court if he failed to do so. Without going into all the details, the combination of the cases made it clear that the otherwise applicable three-year statute of limitations in the Tennessee Post-Conviction Procedure Act at the time would not be a bar to the *Brady* claim under the circumstances, such that Plaintiff had to initiate a second state post-conviction proceeding to satisfy the exhaustion requirement of federal law. *See O'Guinn v. Dutton*, 88 F.3d 1409 (6th Cir. 1996) (en banc), and *Caldwell v. State*, No. 02C01-9405-CC-00099, 1994 Tenn. Crim. App. LEXIS 851 (Tenn. Crim. App. Dec. 28, 1994), *rev'd on other grounds*, 917 S.W.2d 662 (Tenn. 1996). (The en banc *O'Guinn* decision affirmed the earlier panel's holding that a Tennessee habeas petitioner in a position materially indistinguishable from Plaintiff's had to return to state court to exhaust a newly-discovered *Brady* claim, despite his blamelessness for not raising it in his first state post-conviction proceeding and despite the additional delay that was likely to ensue. It was the convergence of the *O'Guinn* panel decision and the CCA's *Caldwell* decision

in December 1994 that prompted the reluctant decision of Plaintiff's counsel to file a second state post-conviction proceeding on February 28, 1995, a few weeks later.)

24. Plaintiff and his counsel prosecuted the second post-conviction proceeding vigorously, as evidenced by the fact that the trial court (Randall Wyatt, J.) conducted an evidentiary hearing on stipulated facts on October 23, 1995. (By this time, Justice Birch was now serving on the Tennessee Supreme Court.)

25. On April 24, 1996, the United States Congress enacted the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which established new and extremely deferential standards of review in federal habeas corpus cases, at least when the state courts had ruled on the merits of a given issue. At the time, it was unclear whether the statute would be applied retroactively, or prospectively only. (Under prior law, the standard of review was *de novo*, except as to state court findings of historical fact.)

26. On May 6, 1996, the post-conviction court entered its order denying relief on Plaintiff's *Brady* claim, which he timely appealed to the CCA. (As, once again, the federal exhaustion requirement demanded.)

27. On June 23, 1997, the United States Supreme Court rendered its decision in *Lindh v. Murphy*, 521 U.S. 320 (1997), which held that the AEDPA standards of review were inapplicable to habeas cases pending in federal court on the date of the statute's enactment (as was Plaintiff's first petition).

28. On November 3, 1997, and despite the fact that Plaintiff's federal habeas case had remained on this Court's docket since February 28, 1995 (the filing date of his second state post-conviction petition), Assistant Attorney General Pruden filed a motion seeking the dismissal of Plaintiff's federal case without prejudice. In subsequent filings opposing the motion and

presenting the viable alternative of simply holding the federal petition in abeyance pending the exhaustion of state remedies, Plaintiff's counsel repeatedly pointed out that the sole purpose of the State's motion under the circumstances was to make the stricter AEDPA standards applicable to a subsequent federal habeas petition. The State never denied the point, which was not susceptible of any other explanation in any event. The Court, however, ultimately put Plaintiff to the choice of dropping the *Brady* claim or allowing the dismissal of the petition without prejudice. Because dropping the *Brady* claim would have almost certainly meant being precluded from further pursuing it in federal court, as it would have been considered an improper "successive" petition, Plaintiff "elected" the Hobson's choice of dismissal without prejudice.

29. On November 25, 1997, the CCA rendered its decision affirming the post-conviction court. Still compelled to do so by the federal exhaustion requirement, Plaintiff filed an application for permission to appeal to the Tennessee Supreme Court, which was denied on October 5, 1998.

30. The suppressed exculpatory evidence referred to above should have been produced before trial, as the State itself subsequently stipulated. Because it was not produced from January 20, 1981 (the date of Plaintiff's death sentences) until the spring of 1992, and because the second state post-conviction proceeding that it necessitated did not conclude until the Tennessee Supreme Court denied review on October 5, 1998, the concealment of the evidence, by itself, had the effect of delaying the proceedings in this case for almost eighteen years.

31. Once again bypassing the opportunity to petition the U.S. Supreme Court for a writ of certiorari, Plaintiff promptly filed his second habeas corpus petition in this Court on January 18, 1999, Case No. 3:99-0047. In August of that year, both sides filed motions for

summary judgment, which Judge Echols held under advisement until September 30, 2002 (over three years later). At that time, he granted the State's motion, denied Plaintiff's, and dismissed the petition with prejudice. As had been anticipated, the Court applied the deferential AEDPA standard of review to almost all of Plaintiff's claims (including the *Brady* claim), rejecting his argument to the effect that the State's gamesmanship made this fundamentally unfair, particularly in view of the fact that it actually allowed the State to benefit from its own chicanery in not disclosing the exculpatory material (despite numerous requests for it) until 1992. The State was, in effect, rewarded for deceit in a matter of life and death.

32. On October 15, 2002, for the purpose of clarifying the record and ensuring the proper preservation of certain issues for appeal, Plaintiff's counsel filed a motion to alter or amend the Court's September 30 decision. On February 25, 2004 (over sixteen months later), the Court granted the motion in part and denied it in part.

33. Under AEDPA, Plaintiff could not appeal this Court's ruling as a matter of right, but had to obtain a "Certificate of Appealability" ("COA") from either this Court or the Court of Appeals itself. On March 25, 2004, Judge Echols sua sponte entered an Order denying a COA as to any issue, which would have precluded Plaintiff from appealing anything, absent relief from the Court of Appeals.

34. Accordingly, on May 10, 2004, and although there was no particular deadline for doing so, Plaintiff's counsel promptly filed an application for a COA in the Sixth Circuit.

35. On February 16, 2006 (almost two years later), a Sixth Circuit panel entered an Order granting a COA on six issues. The case was then argued on March 15, 2007, and on April 29, 2008, the Sixth Circuit panel issued a bitterly-divided two-to-one decision affirming this Court (having kept the case under advisement for over a year). Like this Court, the Court of

Appeals applied the deferential AEDPA standard of review to almost all of Plaintiff's claims (except for a few that the state courts had indisputably failed to reach on the merits).

36. Plaintiff filed a petition for rehearing and a suggestion for rehearing en banc, which the Court of Appeals denied on July 17, 2008. Thereafter, a group of U.S. Supreme Court practitioners in the firm of Sidley Austin LLP volunteered to take on Plaintiff's case in the Supreme Court as a pro bono matter, based on their conclusion that justice had not been served in this case.

37. The Sidley lawyers and undersigned counsel timely filed a certiorari petition in the U.S. Supreme Court on November 5, 2008, which the Court denied on March 30 this year. A subsequent petition for rehearing was denied on May 18.

38. In keeping with Rule 12.4 of the Tennessee Supreme Court, the State then filed a Motion to Set Execution Date on May 27. Plaintiff filed a response raising substantive objections to his execution on June 8, but the Tennessee Supreme Court granted the State's Motion on July 21, setting Plaintiff's execution date for December 2. It summarily rejected Plaintiff's arguments in a one-page order.

39. Plaintiff's counsel then submitted a Petition for Executive Clemency to the Office of the Governor on August 27, which they supplemented on September 30. Governor Bredesen denied the Petition on November 25, thereby leaving Plaintiff with very little time to pursue any judicial remedies that might still be available.

40. A "Chronology of Proceedings in Cecil Johnson Case" is attached as Exhibit A hereto. Among other things, it also reflects (in color-coding) the motions for extensions filed by both sides over the course of the proceedings (excluding requested extensions of a week or less). It plainly reflects that the State's requests (all granted) far outweighed Plaintiff's.

41. Plaintiff has consistently maintained his mental competence and does not claim to be suffering from any form of mental illness. In fact, he has been a model inmate for over twenty years and a productive member of the Unit 2 community, most recently having served as the Unit's chief cook for a number of years. Nevertheless, he has suffered the mental anguish of living under a death sentence for almost twenty-nine years.

Count One
(Violation of the Eighth and Fourteenth Amendments)

42. The allegations contained in paragraphs 1-41 are hereby incorporated by reference in full.

43. The Eighth Amendment to the United States Constitution prohibits "cruel and unusual punishments." The relevant clause of that Amendment has been made applicable to the States through its "incorporation" into the due process clause of the Fourteenth Amendment.

44. In view of the unique set of facts and circumstances detailed above, the carrying out of Plaintiff's death sentence at this late date would constitute cruel and unusual punishment. In the absence of any fault fairly attributable to Plaintiff, the delays engendered by the State and the courts have created a situation in which Plaintiff's execution now would be wanton and freakish, and would not serve any legitimate societal interest. To borrow a familiar phrase, it would be cruel and unusual in the same way that being struck by lightning is cruel and unusual.

Count Two
(Violation of Article I, § 16 of the Tennessee Constitution)

45. The allegations contained in paragraphs 1-44 are hereby incorporated by reference in full.

46. Article I, § 16 of the Tennessee Constitution likewise prohibits cruel and unusual punishments. However, the Tennessee Supreme Court has applied the State constitutional

provision more broadly than its federal counterpart. Accordingly, even if the Court were to find that Plaintiff's execution would not violate the Eighth Amendment, it could predict that as a matter of State law, the Tennessee courts would hold that the facts and circumstances of this case give rise to a violation of section 16 of Article I. (It should be noted, however, that Plaintiff raised this issue, among others, in his Response to the State's Motion to Set Execution Date in the Tennessee Supreme Court. In its one-page Order granting the State's Motion, the court summarily stated that Plaintiff had presented "no legal basis" for denying the State's Motion. It is at best unclear whether this constituted an actual adjudication on the merits.)

Prayer for Relief

WHEREFORE, Cecil C. Johnson, Jr., requests relief as follows:

1. That the Court immediately issue a Temporary Restraining Order staying his scheduled execution;
2. That, upon a hearing, the Court issue a preliminary and permanent injunction forever prohibiting Plaintiff's execution; and
3. That the Court grant Plaintiff such other and further relief as the Court may deem just and proper.

Respectfully submitted,

NEAL & HARWELL, PLC

By: s/James G. Thomas

James F. Sanders

James G. Thomas

Elizabeth S. Tipping

150 Fourth Avenue North, Suite 2000

Nashville, Tennessee 37219

(615) 244-1713

jsanders@nealharwell.com

jthomas@nealharwell.com

etipping@nealharwell.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by email and hand-delivery upon Jennifer L. Smith, Esq., Associate Deputy Attorney General, 425 Fifth Avenue North, Second Floor, Nashville, TN 37202, this the 25th day of November, 2009.

s/James G. Thomas

CHRONOLOGY OF PROCEEDINGS IN CECIL JOHNSON CASE

State's requests for extensions in red; Cecil Johnson's in blue. Does not include extensions of a week or less.

Date	Event
7/5/80	Bob Bell's Market robbery and murders.
7/6/80	Cecil Johnson arrested.
7/8/80	Initial interview of Victor Davis by investigators for Public Defender's Office (then representing Cecil Johnson). Davis exculpates Johnson.
7/17/80	Victor Davis gives tape-recorded statement (27 pages) to State investigators, which likewise exculpates Cecil Johnson.
8/6/80	Cecil Johnson indicted by Davidson County grand jury.
1/10/81	Victor Davis changes story under questioning by Assistant Attorney General Sterling Gray, who threatens Davis with his own capital prosecution for the Bob Bell's Market crimes if he testifies for Cecil Johnson. By Gray's own admission (never disputed), his intent was to eliminate Davis as a defense witness.
1/13/81	Trial begins. (N.B. First capital murder trial in Davidson County following 1977 reinstatement of the death penalty in Tennessee.)
1/20/81	Trial concludes. Cecil Johnson becomes twentieth inmate on Tennessee's death row.
5/3/82	Tennessee Supreme Court affirms on direct appeal. <i>State v. Johnson</i> , 632 S.W.2d 542 (Tenn. 1982) (Cooper, J.).
10/4/82	U.S. Supreme Court denies certiorari.
11/82	Neal & Harwell ("N&H") commits to represent Cecil Johnson going forward in post-conviction proceedings on pro bono basis.
2/9/83	N&H files petition for post-conviction relief in state trial court.
4/12/83, 4/27/83, 5/6/83, 5/12/83, 5/31/83	Trial court conducts evidentiary hearing over the course of these five days.
9/14/83	Trial court enters order denying post-conviction petition.

10/11/83	Notice of Appeal filed.
10/15/84	State files motion for 45-day extension of time to file brief (granted).
12/18/84	Case argued in Court of Criminal Appeals.
1/20/88	Court of Criminal Appeals renders decision granting relief on sentencing phase, but denying any relief as to guilt phase. <i>Johnson v. State</i> , No. 83-241-III, 1988 Tenn. Crim. App. LEXIS 29. (N.B. Case was under advisement for over three years.)
2/8/88	Johnson moves for a 30-day extension to file application for permission to appeal to Tennessee Supreme Court (granted).
3/1/88	State moves for 30-day extension of time to file application for permission to appeal (granted).
3/21/88	N&H files application for permission to appeal to Tennessee Supreme Court; State files application on sentencing phase issue.
4/11/88	State moves for 14-day extension to respond to Johnson's application for permission to appeal (granted).
8/29-30/88	Tennessee Supreme Court grants both sides' applications for permission to appeal.
9/7/88	Johnson moves for 60-day extension of time to file initial brief in Tennessee Supreme Court (granted).
9/24/88	State moves for 45-day extension of briefing deadline (granted).
1/5/89	State moves for 30-day extension of briefing deadline (granted).
2/3/89	State moves for additional 31-day extension of briefing deadline (granted).
6/1/89	Johnson moves for postponement of oral argument in light of conflicting federal criminal trial; argument postponed from June 6 to October 2, 1989. (Parties jointly offered to submit case on briefs if postponement unacceptable.)
10/2/89	Case argued in Tennessee Supreme Court.
9/4/90	Tennessee Supreme Court renders decision reversing Court of Criminal Appeals on sentencing relief but summarily affirming in all other respects. <i>Johnson v. State</i> , 797 S.W.2d 578 (Tenn. 1990).

1/14/91	Tennessee Supreme Court denies second petition to rehear.
2/14/91	First habeas corpus petition filed in United States District Court. Case assigned to Judge Thomas Wiseman. (N.B. Bypassed filing cert petition in U.S. Supreme Court, and there was no statute of limitations in effect at the time for filing of federal habeas petition.)
3/11/91	State moves for 30-day extension to respond to petition (granted).
4/9/91	State moves for an additional 30-day extension to respond to petition (granted).
Spring 1992	N&H finally obtains access to the materials underlying what became Johnson's <i>Brady</i> claim in the District Attorney General's file after new court decisions on the Tennessee Open Records Act. (N.B. Trial counsel and, subsequently, post-conviction counsel had made numerous requests to which the evidence was responsive.)
11/12/92	Johnson files motion to add <i>Brady</i> claim to pending habeas petition.
1/25/93	Motion to Amend granted; <i>Brady</i> claim added.
9/16/93	In response to a letter from the Attorney General's Office, Judge Wiseman recuses himself.
11/4/94	District Court (Judge Robert Echols) conducts lengthy hearing on motions and cross-motions for partial summary judgment and takes them under advisement.
2/28/95	In light of then-recent Sixth Circuit and Tennessee decisions making it clear that Johnson had to return to state court to exhaust <i>Brady</i> claim or risk procedurally defaulting it in federal court, Johnson files second petition for post-conviction relief in state court.
10/23/95	Post-conviction court conducts evidentiary hearing on stipulated facts.
4/24/96	Congress enacts Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), establishing extremely deferential standards of review in federal habeas corpus cases.
5/6/96	Post-conviction court enters order denying relief on <i>Brady</i> claim.
6/3/96	Johnson files notice of appeal to Court of Criminal Appeals.
12/18/96	State's motion for 30-day extension to file brief (granted).

6/23/97	U.S. Supreme Court decides <i>Lindh v. Murphy</i> , 521 U.S. 320 (1997), holding AEDPA standards of review inapplicable to habeas cases pending in federal court on date of statute's enactment (as was Johnson's first petition).
7/15/97	Case argued in Court of Criminal Appeals.
11/3/97	Despite fact that Johnson's federal habeas case had remained on the District Court's docket since 2/28/95 (filing date of second state post-conviction petition), State now files motion seeking dismissal of Johnson's federal case without prejudice. In subsequent filings opposing motion, Johnson repeatedly points out that sole purpose of State's motion was to make stricter AEDPA standards applicable to a second federal petition, which State never denies.
11/25/97	Court of Criminal Appeals renders decision denying relief.
2/12/98	Johnson files application for permission to appeal to the Tennessee Supreme Court (as required by exhaustion rule in federal court).
3/9/98	In response to State's motion to dismiss, District Court enters Order directing Johnson to either amend petition to remove <i>Brady</i> claim within 30 days, or else petition would be dismissed without prejudice.
4/7/98	In response to District Court's Order, Johnson serves notice that as between choice of amending his petition and losing <i>Brady</i> claim in federal court and dismissal without prejudice, he will acquiesce in the latter (while renewing his objection to the State's strategic ploy).
6/17/98	Receipt of Notice from Appellate Court Clerk advising that there might be a delay in the Tennessee Supreme Court's ruling on the application for permission to appeal. U.S. District Court enters Order dismissing Johnson's federal habeas petition without prejudice.
7/31/98	District Court's Order dismissing federal petition becomes final.
10/5/98	Tennessee Supreme Court denies application for permission to appeal.
1/18/99	Second habeas corpus petition filed in federal court. (N.B. Once again bypassed opportunity to petition U.S. Supreme Court for writ of certiorari.)
8/99	Both sides file motions for summary judgment.
9/30/02	District Court grants State's Motion, denies Johnson's, and dismisses petition with prejudice. (N.B. Under advisement for over three years.)

10/15/02	Johnson files motion to alter or amend for purposes of preserving certain issues for appeal.
10/24/02	Johnson files initial notice of appeal to Sixth Circuit.
2/25/04	District Court grants in part and denies in part the motion to alter or amend. (N.B. Under advisement for over 16 months.)
3/8/04	Johnson files amended notice of appeal to Sixth Circuit.
3/25/04	District Court sua sponte enters Order denying a Certificate of Appealability ("COA") (jurisdictional requirement under AEDPA for appealing adverse decision on habeas petition).
5/10/04	Johnson files application for a COA in the Sixth Circuit. (N.B. There was no particular time limitation in effect, so this was quite expeditious.)
5/12/04	State files motion for 30-day extension of deadline for filing response to application for COA (granted).
2/16/06	Sixth Circuit enters Order granting a COA on six issues. (N.B. Application was under advisement for almost two years.)
6/21/06	State files motion for 14-day extension of briefing deadline (granted).
3/15/07	Case argued in Sixth Circuit.
4/29/08	Sixth Circuit issues 2-1 decision affirming District Court. (N.B. Under advisement for over a year.)
7/17/08	Sixth Circuit denies rehearing and rehearing en banc.
11/5/08	Cert petition filed in U.S. Supreme Court.
3/30/09	Cert denied.
4/24/09	Petition for rehearing filed in U.S. Supreme Court.
5/18/09	Rehearing petition denied.
5/27/09	State files Motion to Set Execution Date.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Cecil C. Johnson, Jr.

DEFENDANTS

Phil Bredesen, George M. Little, Ricky J. Bell

(b) County of Residence of First Listed Plaintiff Davidson
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

James G. Thomas, Neal & Harwell, PLC, 150 4th Avenue North, Suite 2000, Nashville, TN 37219 (615) 244-1713

Attorneys (If Known)

Jennifer L. Smith, Associate Deputy AG, Office of TN AG, 425 5th Avenue North, Nashville, TN 37202 (615) 741-3487

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input checked="" type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 1983

Brief description of cause:
Action to enjoin Plaintiff's execution

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 0.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

11/25/09

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____