

ORIGINAL

IN THE TENNESSEE SUPREME COURT AT, NASHVILLE, TENNESSEE

FILED

2007 AUG 14 PM 2:54

EDWARD JEROME HARBISON,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

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APPELLATE COURT CLERK  
NASHVILLE

Case No. ML986-00093-SC-OT-DJ

DEATH PENALTY CASE

NOTICE OF FILING

Comes now the Petitioner, Edward Jerome Harbison, hereby gives notice to this Court that, This year, the Tennessee General Assembly took notice that Tennessee's Death Penalty is seriously flawed. The legislature passed Senate Bill 1911 / House Bill 2162 creating a commission to study Tennessee's entire death penalty system and address the myriad fatal flaws it contains. The study provides the first positive step the legislature has taken in recent Tennessee history concerning the death penalty. This study will provide that data to allow legislators to back away from their support of the death penalty as a public policy tool.

Sponsored by Senator Doug Jackson (D-Dickson) and Representative Rob Briley (D-Nashville) the legislation creates a commission, made up of legislators, representatives of the Governor, lawyers on both sides of the issue, mental health advocates, and victims and survivors groups. The commission will spend a year examining the risk of executing an innocent person, the effect on the families of murder victims and death row inmates, and the lack of effective counsel for people accused of capital crimes. The legislation was crafted in cooperation with the ACLU of Tennessee, the Catholic Public Policy Commission,

the Tennessee Justice Project, and the National Alliance on Mental Illness. All these groups lobbied the legislature, activated their memberships, and utilized their expert knowledge and resources to bring about a legislative victory. TCASK worked hard to secure mainstream sponsorship of the study bill. Senator Jackson is actually a supporter of the death penalty, but gave a legitimacy to our legislation that would have been impossible had it been carried by a well-known abolitionist. When Jackson referred the legislation to Representative Briley in the House, the chair of the Judiciary Committee, we had a bill built to move.

The next step was to secure co-sponsorships. On March 27th, TCASK hosted our second annual Justice Day on the Hill. More than 75 dedicated activists from around the state converged on the state capitol in support of our legislation and laid the groundwork for our first ever legislative victory. A large youth contingent from Nashville brought a vital energy to the group, and Dr. Amy Staples, TCASK's board chair, led a massive contingent of MTSU students to visit the Rutherford County representatives. Four dedicated TCASK veterans awoke at the crack of dawn to make the long trip from Memphis, and groups of students came from University of the South in Sewanee, Bethel College, and Union University in Jackson. Joyce House, Paul House's mother, and Pam, his sister-in-law, visited a number of legislators to share their story.

Coming out of Justice Day, we secured co-sponsors from both parties, making our bill a bi-partisan enterprise. On the Democratic side, Representatives Ben West, Mike Turner, G.A. Hardaway, and Larry Turner signed on. From the Republican side of the aisle, the bill was co-sponsored by Representatives Bill Bunn, Judd Matheny, Chris Crider, and Delores Gresham. Representative Matheny is a member of the House Judiciary Committee, which had jurisdiction over the bill, while Representative Crider is a member of the House Republican Leadership!

The hard work of our lobby partners and many visits, phone calls, and emails

from TCASK activists across the state made the outcome look easy in the end. In the Senate, the bill passed unanimously, and in the House it won by an easy margin of 79-14. When the bill passed the Senate, on the consent calendar designed for non-controversial items no less, Joe Sweat, the ACLU's lobbyist turned to me and said, "Son of a gun! It's hard to believe how far we've come in such a short time in Tennessee!

Petitioner contend that, He had been pursuing His Rights Diligently, and that some "Extraordinary Circumstances" Stood in His way," Pace v. DiGuglielmo, 125 S.Ct. 1807, 1814, 161 L.Ed.2d 669 (2005). Events over which the Petitioner has no Control. See 110 Fed.Appx. 474, 479 (Objective Factor External).

The death penalty necessitate "special care and deliberation in decisions, that may lead to the imposition of sanction," Thompson v. Oklahoma, 487 U.S. 815, 856, 108 S.Ct. 2987, 101 L.Ed.2d 702 (1988) (O'Connor, J., concurring in judgment); O'Dell v. Netherland, 521 U.S. 151, 171 n.3, 117 S.Ct. 1969, 138 L.Ed.2d 351 (1997) (noting that "the unique character of the death penalty mandates special scrutiny" of trial and sentencing procedures in capital cases) (Stevens, J., joined by Souter, Ginsburg, Freyer, J.J., dissenting); Whitmore v. Arkansas, 495 U.S. 149, 167, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) ("It is by now axiomatic \* \* \* that the unique, irrevocable nature of the death penalty necessitates safeguards not required for other punishments,") (Marshall, J., joined by Brennan, J., dissenting).

Trial Court has the Authority and may always Consider those Issues not Decided Expressly or Impliedly by an Appellate Court or a previous Trial Court, Furrell v. Henderson, 483 F.Supp.2d 595, 598-99 (Authority cited therein). Of Course, An Issue which will result in the Dismissal of the Prosecution will be considered even though the Issue was not Raised in the Motion for a New Trial,

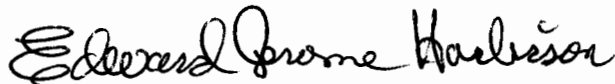
State v. Draper, 800 S.W.2d 489, 493 (Tenn.Cr.App. 1990) (Authority cited therein); State v. Seagraves, 837 S.W.2d 615, 618 (Tenn.Cr.App. 1992). The question of what Misconduct of a Governmental Official can be attributed to Counsel remains an open and controversial Issue, See 48 Fed.Appx. 491, 499-500 (6th Cir. 2002).

WHEREFORE PREMISES CONSIDERED: Petitioner pray as to the followings:

Request that the Honorable Court review the Merits of the Petitioner's Claim of Fraud Upon The Court due to the "Extraordinary Circumstances" herein;

Request that the Court rule on the Merits of Petitioner's 60(b)(6) Motion.

Respectfully submitted,



Edward Jerome Harbison, #108926  
Pro se Petitioner  
RMSI, Unit 2, D-Pod Cell 109  
Riverbend Maximum Security Institution  
7475 Cockrill Bend Boulevard  
Nashville, Tennessee 37209-1048

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND EXACT COPY OF THE FORGOING HAS BEEN SENT VIA UNITED STATES MAIL TO:

TENNESSEE SUPREME COURT OFFICE OF THE CLERK  
CHIEF DEPUTY CLERK: JANICE RAWLS  
401 SEVENTH AVENUE NORTH, ROOM 100  
SUPREME COURT BUILDING  
NASHVILLE, TENNESSEE, 37219-1407  
PHONE: (615) 253-1470

BY PLACING A COPY IN THE UNITED STATES MAIL, FIRST-CLASS, POSTAGE PREPAID.

ON THIS, THE 10<sup>th</sup> DAY OF August 2007

Edward Jerome Harbison

EDWARD JEROME HARBISON, #108926  
PRO, SE PETITIONER  
RMSI, UNIT TWO, D-POD CELL 109  
RIVERBEND MAXIMUM SECURITY INSTITUTION  
7475 COCKRILL BEND BOULEVARD  
NASHVILLE, TENNESSEE 37209-1048

PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO

PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the forgoing is true and correct.

Executed on August 9, 2007  
(Date)

Edward Jerome Harbison