

IN THE CRIMINAL COURT OF HAMILTON COUNTY, CHATTANOOGA TENNESSEE
ELEVENTH JUDICIAL DISTRICT, DIVISION II

EDWARD JEROME HARBISON,)	
)	
Petitioner,)	
)	
VS.)	CASE NO: 154361 & 154362
)	
STATE OF TENNESSEE,)	THE HONORABLE JON KERRY BLACKWOOD
)	
Respondent.)	DEATH PENALTY CASE

MOTION FOR COURT ORDER TO RECONSIDERATION OF TRIAL COURT'S DISMISSAL OF
PRO SE MOTIONS AND RESUSCITATING OF PETITIONER'S PRO SE FILINGS
FILED IN THIS CAUSE

Comes now Edward Jerome Harbison, pro se, petitioner, herein and petition this Honorable Court with this Motion for Reconsideration of summary dismissal of Pro Se Motions and the resuscitating of Petitioner's Pro Se Filings that were filed on August 13, 2007, which were dismissed on August 29, 2007, Filed as Entered on Docket on August 30, 2007. In support of see attached Tennessee Supreme Court Order filed October 9, 2007 and Memorandum.

Respectfully submitted,



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

GIVEN TIDWELL, CLERK
BY _____ D.C.
FILM _____

CERTIFICATE OF SERVICE

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

ELEVENTH JUDICIAL DISTRICT, OFFICE OF THE CLERK
CRIMINAL COURT CLERK: GWEN TIDWELL
102 COURTS BUILDING, 600 MARKET STREET
CHATTANOOGA, TENNESSEE, 37402
PHONE: (423) 209-7500

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

ON THIS, THE 24th DAY OF October 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

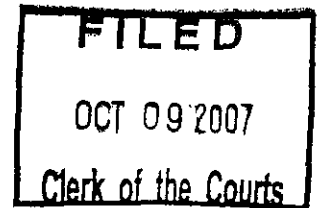
PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO
PENALTY FOR PERJURY

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

Excuted on October 24, 2007
(Date)

Edward Jerome Harbison

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



STATE OF TENNESSEE V. EDWARD JEROME HARBISON

No. M1986-00093-SC-OT-DD - Filed: October 9, 2007

ORDER

On July 17, 2006, this Court appointed the Office of the Post-Conviction Defender (PCD) to represent Edward Jerome Harbison "in the instant case No. M1986-00093-SC-OT-DD." On October 5, 2007, the PCD filed a Motion to Withdraw as Counsel ~~alleging~~ that it had not filed any motion or other pleading in the instant case or any other matter pertaining to Mr. Harbison; that in all pending actions Mr. Harbison is represented by the Federal Defender Services of Eastern Tennessee; and that Mr. Harbison has specifically requested that the PCD withdraw from this case and has petitioned the Criminal Court of Hamilton County to remove the PCD from its appointment by this Court.

Upon due consideration, the Motion is respectfully DENIED. The PCD was appointed solely to represent Mr. Harbison in the execution case and not in any collateral matters. Representation is limited to issues directly concerning the execution case and the execution process. We find that the PCD has failed to show good cause for granting the Motion. The Motion is unsupported by an affidavit of Mr. Harbison seeking withdrawal of the PCD from the appointment in this case, showing that Mr. Harbison is knowingly and intelligently waiving his right to the assistance of counsel in the execution case, and stating that such waiver includes the assistance not only of the PCD but of any other counsel. See State v. Carruthers, 35 S.W.3d 516, 546 (Tenn. 2000) (a criminal defendant does not have the right to appointment of counsel of choice).

IT IS SO ORDERED.

PER CURIAM

IN THE CRIMINAL COURT OF HAMILTON COUNTY, CHATTANOOGA TENNESSEE
ELEVENTH JUDICIAL DISTRICT, DIVISION II

EDWARD JEROME HARBISON,)	
)	
Petitioner,)	
)	
VS.)	CASE NO: 154361 & 154362
)	
STATE OF TENNESSEE,)	THE HONORABLE JON KERRY BLACKWOOD
)	
Respondent.)	DEATH PENALTY CASE

MEMORANDUM IN SUPPORT OF MOTION FOR COURT ORDER TO RECONSIDERATION
OF TRIAL COURT'S DISMISSAL OF PRO SE MOTIONS AND THE
RESUSCITATING OF PETITIONER'S PRO SE FILINGS
FILED IN THIS CAUSE

Comes now Petitioner, Edward Jerome Harbison, pro se, herein above named, and petition this Court with this Memorandum In Support of Motion for Court's reconsideration of summary dismissal of Pro Se Motions and the resuscitating of Petitioner's Pro Se Filings in this cause as to the following:

On August 13, 2007, Petitioner submitted Pro Se filings to be heard in the Trial Court;

On August 29, 2007, The Trial Court determined: Well being represented by Counsel and acting pro se, as a result, a Trial Court may refuse to consider pro se pleadings filed by a criminal defendant when that defendant is still represented by Counsel; that the pro se filings need not be considered and should be stricken from the Record; dismissed Petitioner's Pro Se filings ruling that all the challenges to Petitioner's conviction and death sentence raised by Mr. Harbison in his pro se filings have already been fully litigated in both State and Federal Post Conviction Proceedings, see (Opinion at p. 5), Enter on August 30, 2007;

1. Petitioner contends it, supports a ("Wrong to a Clear and Convincing Degree" that is Clearly Contrary to or an Unreasonable Application of Constitutional law under both State and Federal Constitutions and Rules of the Tennessee Criminal Procedure"). On April 19, 2007, Petitioner received correspondence from Kenneth O. Fritz, Special Counsel, Representing the City of Chattanooga, TN. Which enclosed therein the letter Dated April 11, 2007, were Certified Copies of the Chattanooga City Court Docket Book for the whole day of February 21, 1983, Petitioner asserts after receiving the Chattanooga City Court Docket Book log from Kenneth O. Fritz, Representing the City of Chattanooga, TN. Which enclosed Certified Copies of the Chattanooga City Court Docket Book for the whole day of February 21, 1983, as to the following:

Court Official AM Docket Date February 21, 1983 page: 9579, Micro File #000067;
Court Official AM Docket Date February 21, 1983 page: 9580, Micro File #000066;
Court Official AM Docket Date February 21, 1983 page: 9581, Micro File #000065;
Court Official AM Docket Date February 21, 1983 page: 9582, Micro File #000064;
Court Official AM Docket Date February 21, 1983 page: 9583, Micro File #000063;
Court Official AM Docket Date February 21, 1983 page: 9584, Micro File #000062;
Court Official AM Docket Date February 21, 1983 page: 9585, Micro File #000061;
Court Official AM Docket Date February 21, 1983 page: 9586, Micro File #000495;
Court Official AM Docket Date February 21, 1983 page: 9588, Micro File #000493;
Court Official AM Docket Date February 21, 1983 page: 9592, Micro File #000489;
Court Official AM Docket Date February 21, 1983 page: 9593, Micro File #000488;
Court Official AM Docket Date February 21, 1983 page: 9595, Micro File #000487;
Court Official AM Docket Date February 21, 1983 page: 9596, Micro File #000486;
Court Official AM Docket Date February 21, 1983 page: 9597, Micro File #000485;
Court Official AM Docket Date February 21, 1983 page: 9598, Micro File #000484;

Petitioner's primary claim in this Collateral Proceeding Sounding on Evidence Discovered through Petitioner's Own Investigation which provided Talley v. State, 345 S.W.2d 867, 868-869 (Tenn. 1961) (Search Warrant was void where there was no compliance with Statute requiring that Warrants bear endorsement showing hour, date, and name of officer to whom Warrant was delivered for execution, and that two copies be made of Warrant, and Search under the Warrant was illegal and Evidence obtained thereby inadmissible) (Statutory provision that person issuing Search Warrant Shall endorse thereon the hour, date, and name of the officer to whom it was delivered for execution was reasonable) (Issuance of Warrant to sheriff or any lawful officer did not substantially comply with Statute requiring person issuing Search Warrant to endorse thereon the hour, date, and name of the Officer to whom it was delivered for execution, Talley v. State, 345 S.W.2d 867, 868-869. In the present case. The none Compliance with the Statute Requirements on February 21, 1983, (it appears the legislative intent was to secure strict compliance with the Requirements of section 1 of the Act; for section 2, provided that failure of such compliance "shall make any search conducted under said Warrant an illegal Search and Seizure," Words could not be plainer, and they are Mandatory, Talley, 345 S.W.2d 867, 869. The State and its Key Witnesses Deliberately Concealed Evidence and Information from the Court, Jury and Defense for all these years, because at Petitioner's Trial the State and Officer Charles E. Foster, claiming to have complied with the Talley, Requirements, see (T.T. at Pp. 603-604). The Court held: We think the Search Warrant was void, the Search illegal, and the Evidence obtained thereby inadmissible, and the Conviction based thereon must be reversed and the case remanded. Those Requirements should also be applied to Petitioner's case. This Action were Deliberately Done to prevent Petitioner from asserting an adequate Defense to the charges brought against Him, by the State and Police Officers that participated in the case.

2. Petitioner contend that after a closer look at the Chattanooga City Court Docket Book log for the whole day of February 21, 1983, the AM Docket Book. Wherefore, there could not have been a Warrant Issued for Petitioner or His vehicle as asserted at Petitioner's Trial on December 2, 1983, by General Lanzo, See (T.T. at 603); and by Charles E. Foster, see (T.T. at Pp. 603-604).

This is what was testified to at Petitioner's Trial:

MR. STANLEY J. LANZO:

DIRECT EXAMINATION

OF:

CHARLES EDWARD FOSTER:

TRIAL TRANSCRIPTS (Pp. at 603-604):

Q Now, after you had taken the confession from the defendant, did you get a consent to search - were you armed at that time with a search warrant of his vehicle for trace evidence?

A That's correct, we did have a search warrant for his vehicle. However, it was not for trace evidence. We did later obtain a consent to search from Jerome Harbison and also a search warrant for trace evidence on the search of his vehicle, 1975 Ford Elite. See (Trial Transcripts at Pp. 603-604), see (¶ 1, herein above);

3. Petitioner contend that had the Officers of the Chattanooga City Police Department and other Agents of the State of Tennessee not claimed to have had Authority under a Search Warrant on 2/21/83, See State v. Curtis, 964 S.W.2d 604, 609, 614-16 (Tenn.Crim.App. 1997) (authority cited therein); U.S. v. Nelson, 363 F.Supp.2d 381, 385, 386-87)), prior to Trial, on December 2, 1983, at Trial See (T.T. at Pp. 603-604), and on May 31, 1991, at Post See (P.T. at p. 178). It makes it plain that the False Testimony was at a minimum capable of Influencing the Court and Jury on the Issue of Guilt or Innocence, U.S. v. Guariglia, 962 F.2d 160, 165; U.S. v. Gomez-Vigil, 929 F.2d 254, 258 (6th

Cir. 1991) (in a similar action, noting that "[M]ateriality is an essential Element of an Offense charged under 18 USC 1623(a)," 929 F.2d 254, 258 (quoting U.S. v. Damato, 554 F.2d 1371, 1372 (5th Cir. 1977), the Fifth Circuit held that "[t]he test of Materiality is 'whether the False Testimony was capable of Influencing the Tribunal on the Issue before it," Id. (citations omitted), see (¶¶ 1-2, herein above);

4. Petitioner contend that, both the State and Police Officers "Acted with Reckless Disregard for the Truth and for the Government's obligation to take no steps that prevent and adversary from presenting His case fully and Fairly" when they Deliberately withheld Exculpatory Materials from the Petitioner, Demjanjuk v. Petrovsky, 10 F.3d 338, 354 (6th Cir. 1993) cert. denied, 513 U.S. 914, 115 S.Ct. 295, 130 L.Ed.2d 205 (1994); Rule 8.4(a)(c)(d) Rules of Professional Conduct (RPC); (RPC) Rule 3.8 Comments (1); (RPC) Rule 3.4 (a)(b)(c)(d)(e)(2)(3), see (¶¶ 1-3, herein above);

5. In the present case, its alleged by Petitioner that the Deliberate Presentation of Fabricated False Evidence were done to prevent Petitioner from presenting an adequate defense to the charges and deprived Him of Due Process and a Fair Trial, see (¶ 1-4, herein above);

6. Petitioner asserts that where Petitioner establishes that he received the Factual Predicate supporting the claims of Brady and/or Giglio evidence element of withheld evidence; the Deliberately Presenting Fabricated Evidence and Fraud Upon The Court element of the withheld evidence; the Government Misconduct which has been uncovered on April 19, 2007 in an collateral

investigation been conducted by Petitioner, *Malapanis v. Regan*, 340 F.Supp.2d 184, 196 (D.Conn. 2004); *U.S. v. Koubrith*, 435 F.Supp.2d 666, 678 (.E.D.Mich. 2006). See ¶ 1 above. Petitioner's Claims which is premised on Material that has surfaced for the First time during to time that Petitioner has Completed both State and Federal Trial and Collateral Proceedings Review, *Monroe v. Angelone*, 323 F.3d 286, 297-98 (4th Cir. 2003) (authority cited therein); *Sands v. State*, 903 S.W.2d 297, 301-302 Tenn. 1995) (The type of "Later Arising Issues" contemplated by *Burford*, where the Court held: (that Application of the Statute of Limitations in his case violates His Rights to Due Process guaranteed by the U.S. and Tennessee Constitutions), supports Petitioner's position for the relief he seeks, see (¶¶ 1-5, herein above);

7. In *Sands*, our Supreme Court summarized the basic Rule from *Burford* to be: "In certain circumstances, due process prohibits the strict application of the Statute of limitatations to bar a Petitioner's claim when the grounds for Relief, whether Legal or Factual, arise after the "final Action of the Highest State Appellate Court to which an Appeal is taken" - or, when the grounds Arise after the point at which the limitation's period would normally have begun to run. In applying the *Burford* Rule to specific Factual situations, Courts should utilize a Three-Step process: (1) Determine when the limitations period would normally have begun to run; (2) Determine whether the grounds for relief actually arose after the grounds for relief the limitations period would normally have commenced; (3) if the Grounds are "Later Arising," Determine if, under the Facts of the case, a Strict Application of the limitations period would effectively Deny the Petitioner a Reasonable Opportunity to present the claim, *Sands*, 903 S.W.2d at 301, warrants the relief Petitioner seeks;

8. Petitioner contends that, theories of admissibility, the original theory under which Testimonial Evidence were admitted into Evidence of the Trial Record was that the State used "State Witnesses Testimony," i.e., it were simply Representations of what the Witnesses was describing. As an early Missouri Court described it, "diagrams, drawings and photographs are resorted to only because the Witnesses cannot, with language, as clearly convey to the Minds of the Court and Jury the scene as the light printed it on the retina of His Own Eye at the time of which He is Testifying," *Baustian v. Young*, 53 S.W. 921, 922 (Mo. 1899). In the present case, Whether its proper for the Trial Judge to consider his own observations only for the purpose of assessing the weight of the In-Court Evidence, however, in *Lillie v. U.S.*, 953 F.2d 1188, 1192 (CA 10 1992), the Court Ruled that "a view should always be considered Evidence," because any sort of Presentation to a Judge or Jury to help them understand the Evidence is itself Evidence. The *Lillie* Court reversed, finding that it could not Determine from the Record whether an Improper view has an effect on the Court's or Jury's Decision, see Tennessee Rule of Evidence, Rule 616, (citing *Creeping Bear v. State*, 113 Tenn. 322, 87 S.W. 653 (1905) (Bias is an important ground for impeachment), see (¶¶ 1-7, herein above);

9. Petitioner contends that, had the Court and Jury heard all the Conflicting Testimony it is more likely than not that no reasonable Jury or Court would lack reasonable doubt, that is a reasonable probability that the outcome of the proceedings would have been different and Petitioner would not have been Convicted of First Degree Murder and Sentenced to Death, because these actions were Deliberately Done to also Deceive and Defraud the Court, the Jury, and the Defense, see (¶¶ 1-8, herein above);

WITHOUT A WARRANT ISSUED TO OFFICERS ON 2/21/83

10. Petitioner contends, that Officers Entered 918 East Eighth Street, without Judicial Authority to do so, with their guns drawn, kidnaped and carjacked Petitioner against his will, where Petitioner were further subjected to the unreasonable searches and seizures and transported to the Chattanooga Police Service Center, where the Petitioner vehicle were unlawfully towed from the backyard of a private residence on 2/21/83 where Petitioner also resided at, where He was unlawfully detained against his will and without His Consent, prior to 5:46 p.m., where the Petitioner were denied access to Counsel, Family or the use of the Telephone, and as to this date the State has not corrected the Trial Court Record, such also deprived the Petitioner of a Meaningful Opportunity for Appellate Review, see (¶¶ 1-9, herein above);

11. This Court has the Authority and may always Consider those Issues not Decided Expressly or Impliedly by an Appellate Court or a previous Trial Court, See, Rurrell v. Henderson, 483 F.Supp.2d 595, 598-99 (Authority cited therein). Further 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, 48 Fed.Appx. 491, 499-500 (6th Cir. 2002), but the law is Clear, the State may not Deliberately used the Presentation of Fabricated Evidence to ensure an Conviction and Sentence of Death on the Petitioner, as was Willfully Done here, see (¶¶ 1-8, herein above);

TENNESSEE RULES OF CRIMINAL PROCEDURE, RULE 26.2(e)

12. Petitioner contents that, if the other party elects not to comply with an order to deliver a statement to the moving party, the Court shall order that the Testimony of the Witness be stricken from the Record and that the Trial proceed, or, if it is the attorney for the State who elects not to comply, shall declare a mistrial if required by the interest of justice, Petitioner contend that not only were the Tennessee Rules of Criminal Procedure Willfully violated, but the State and Police Officers Deliberately violated 4th, 5th, 6th, 8th, and 14th Amendment Rights, see (¶¶ 1-11, herein above);

13. Petitioner contend relief herein requested is "Extraordinary in Nature" Roach v. Woltmann, C.D.Cal., 879 F.Supp. 1039, 1042; 105 F P D 4th-313 (1998); Underwood v. Zurich Ins. Co., 854 S.W.2d 94, 96-97 (Tenn. 1993) (Extraordinary Circumstances or Extreme Hardship); Duncan v. Duncan, 789 S.W.2d 557, 563, 564 (Authority cited therein at p. 564) (Extraordinary Circumstances) and Davis by Davis v. Jellico Community Hosp. Inc., 912 F.2d 129, 136 (C.A.6 (Tenn.)); 105 F P D 4th-313 (1998); Bradshaw v. Daniel, Tenn., 854 S.W.2d 865, 869; AARP v. F.E.O.C, 390 F.Supp.2d 437, 443. Petitioner Motion is timely, Exceptional Circumstances justify granting Extraordinary Relief, and Vacating the Judgment will not cause unfair prejudice to the opposing Party, that granting the Motion will not be an "Empty Exercise" because the underlying Claim for Relief is likely to succeed on the Merits of this case, Caisse DuBois, 346 F.3d 213, 215 (1st Cir. 2003) (citations omitted). The Court has broad discretion in resolving Rule 60(b) Motions, Id. at 215-16 (citing Karak v. Bursaw Oil Corp., 288 F.3d 15, 19 (1st Cir. 2002)). See (¶¶ therein cited), warrants the relief the Petitioner seeks;

THE CONSTITUTIONALITY OF THE INITIATAL 2/21/83 WARRANT

14. Petitioner contend that, this issue should be addressed by the State so as not to prejudice the State or could be addressed now by the Court itself, see (¶¶ 1-13, herein above); See (Attached Appendix);

15. Petitioner asserted that, in *Watkins v. State*, 903 S.W.2d 302, 305 (Tenn. 1995), the Tennessee Supreme Court stated that: "the post-conviction proceedings is procedurally separate and apart from the original criminal prosecution," *Williams v. State*, 44 S.W.3d 464, 474 (Tenn. 2001);

WHEREFORE PREMISES CONSIDERED: Petitioner pray as to the followings:

Request that this Honorable Court rule on the Merits of Petitioner's Motion For Fraud Upon The Court;

Request the Court to Address the Merits of Petitioner being Deliberately Convicted using Fabricated Evidence;

Request the Court to Enter an Order finding the that Fraud Upon The Court was perpetrated by a Officer of the Court;

Request that the Court Enter an Order Vacating the Convictions and Sentence of Death, followed by an Order to Dismiss the Indictments in the present case.

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:

ELEVENTH JUDICIAL DISTRICT, OFFICE OF THE CLERK
CRIMINAL COURT CLERK: GWEN TIDWELL
102 COURTS BUILDING, 600 MARKET STREET
CHATTANOOGA, TENNESSEE, 37402
PHONE: (423) 209-7500

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

ON THIS, THE 24th DAY OF October 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.

Excuted on October 24, 2007
(Date)

Edward Jerome Harbison