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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PHILIP R. WORKMAN,)	
Petitioner-Appellant,)	
v.)	No. 96-6656
RICKY BELL, Warden,)	
Respondent-Appellee.)	
)	
In re: PHILIP R. WORKMAN,)	
Movant.)	No. 00-5367

MOTION THAT PANEL AND EN BANC COURT CONSIDER
SECOND DECLARATION FROM DR. KRIS SPERRY

EXECUTION DATE: 4/6/2000 AT 1.A.M.

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Counsel for Philip Ray Workman

INTRODUCTION

In its March 31, 2000, Order denying Philip Ray Workman's previously filed motions, the panel stated that

1. Mr. Workman "has not made such showing as would entitle him to the relief he seeks"; and
2. the denial of the motions was "without prejudice to petitioner's seeking any other relief to which he may be entitled."

These statements appear to indicate that the panel has discerned a way that Workman could present claims to a federal court and have them heard on the merits - the problem is that counsel has not yet figured out how.

Counsel ponders whether Dr. Kris Sperry's lie out of the first sentence of paragraph 3 of his March 4, 2000, Declaration, rendered that Declaration insufficient to make a showing that (1) the Oliver X-Ray establishes that the bullet that killed Oliver did not fragment; and (2) the panel therefore recognizes that the fatal bullet could not have come from Workman's gun. If that is so, counsel requests that this Court

1. Consider the attached Sperry Declaration which unequivocally states that (a) the Oliver X-Ray establishes that the fatal bullet did not fragment; (b) the Oliver X-Ray establishes that the fatal bullet emerged from Oliver's body intact; and (c) as a result, Dr. Sperry believes to a reasonable degree of medical certainty that the fatal bullet could not have been a .45 caliber Silver-Tip hollow-point bullet, the type of bullets that were in Workman's gun;

Given that Workman's execution is just days away, Workman files a Sperry Declaration that Dr. Sperry faxed to Workman the night of April 1, 2000. Workman will file

2. Thereafter reopen this case for the reasons expressed in Workman's Motion To Reopen, Second Motion To Reopen, and Petition For Rehearing And Suggestion For Rehearing En Banc in No. 96-6652;

3. Thereafter authorize Workman to file a second habeas corpus application for the reasons expressed in Workman's Motion For Leave To File Second Habeas Corpus Petition and Second Motion For Leave To File Second Habeas Corpus Petition; and

4. Thereafter declare 28 U.S.C. § 2244 inapplicable for the reasons expressed in Workman's Motion For Declaration That 28 U.S.C. § 2244 Does Not Apply To Specified Claims and Petition For Rehearing And Suggestion For Rehearing En Banc in No. 00-5367.

Counsel for Workman acknowledges that he may be reading too much into the panel's March 31, 2000, Order. Given that Mr. Workman's life is in the balance, however, counsel feels compelled to pursue what may be an avenue of relief open to Mr. Workman. If such an avenue exists, but counsel still has not figured it out, counsel requests that this Court *sponte* grant Mr. Workman the relief to which it believes he is entitled. Mr. Workman should not be killed simply because counsel is not smart enough to appropriately plead for Mr. Workman's life.

Respectfully submitted,

Christopher M. Mitten

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CERTIFICATE OF SERVICE

I certify that on April 3, 2000, I hand-delivered a copy of the foregoing to:

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