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82

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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INTRODUCTION

The State of Tennessee Executive Order No. 87 (September 17, 2021) hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

The Council requests that applicants use the Microsoft Word form and respond directly on the form using the boxes provided below each question. (The boxes will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit your original hard copy (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts as detailed in the application instructions. Additionally you must submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your original application, or the digital copy may be submitted via email to rachel.harmon@tncourts.gov.

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Assistant District Attorney, 26th Judicial District.
Adjunct professor at the University of Tennessee at Martin Parsons Campus.
Member of the Lexington City School Board

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

2001 #021766

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Tennessee, #021766, October 25, 2001 to present; currently active

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

No

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

Waldrop & Hall, P.A., Jackson, TN – Associate Attorney August 2001 – January 2003
Smith Law Firm, Lexington, TN – Attorney January 2003 – February 2012
County Attorney, Henderson County – July 2003 – January 2017
Law Office of Chadwick R. Wood - Attorney February 2012 – January 2017

Court of Criminal Appeals – Staff Attorney, January 2017 – May 2018
26th District Attorney General’s Office – Assistant District Attorney May 2018 - Present
Lexington, City School Board – Member October 2013 – Present
The University of Tennessee at Martin, Parsons Campus, Adjunct Professor – January 2016 – Present

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not Applicable

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

I prosecute criminal cases in the General Sessions, Juvenile and Circuit Courts of Chester and Henderson Counties. 100% of my time is devoted to criminal practice.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Council needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Council. Please provide detailed information that will allow the Council to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application.

EXPERIENCE AS AN ASSISTANT DISTRICT ATTORNEY

As an assistant district attorney, I am responsible for the prosecution of criminal offenses occurring in the 26th judicial district. Currently, I am assigned to prosecute cases in Divisions I and III in the Circuit Court of Chester County, Division III in the Circuit Court of Henderson County and the General Sessions and Juvenile Courts of Chester County, Tennessee. In addition, I have been called upon to act as a Prosecutor Pro Tem when a conflict has arisen in another judicial district. Pursuant to our office policy, I am engaged in a “vertical prosecution”

model, handling cases from arrest through jury trial if necessary. In addition to my “courtroom” duties, I assist law enforcement with interpretation and application of the law to assist them in their day to day activities. My role requires me to review, interpret and apply the law to criminal matters on a daily basis.

EXPERIENCE AS STAFF ATTORNEY FOR THE COURT OF CRIMINAL APPEALS

Additionally, I have worked as Staff Attorney for the Western Division of the Court of Criminal Appeals. During my time as staff attorney, I worked solely in appellate practice and procedure. I was available and assisted all attorneys and pro se litigants with questions regarding appellate practice and procedure to assist them in the appellate process. I was responsible for reviewing all motions filed in appellate cases in the Western Division and drafting proposed orders regarding the motions. Additionally, my role included reviewing and making recommendations on applications for permission to appeal from trial court orders denying motions to re-open post-conviction proceedings pursuant to Rule 28 of the Rules of the Supreme Court. I also reviewed and drafted proposed orders for motions seeking appellate review of orders granting, denying, setting or altering the conditions of bond release pending trial or appeal pursuant to Rule 8 of the Rules of Appellate Procedure. In addition, it was my duty to draft preliminary opinion recommendations for the Court of Criminal Appeals in cases where the Court felt memorandum opinions were appropriate pursuant to Rule 20 of the Rules of the Court of Criminal Appeals.

Finally, I was responsible for handling all death penalty appeals that came before the Western Division. My duties included drafting bench memoranda to assist the Court in reviewing the matter and drafting proposed opinions in death penalty cases. These actions included both direct appeal and collateral post-conviction appeals of the capital sentences received. As one might expect, the gravity of a capital case required intensive review with intense scrutiny of all aspects of the case and punishment.

EXPERIENCE IN PRIVATE PRACTICE

I have practiced in a courtroom since literally the second day I was employed as an attorney. While that first case involved a debtor’s exam (my second case involved an SUV hitting a pig in the road), my practice since has been wildly varied but primarily spent in litigation. I have practiced and appeared in the General, Sessions, Juvenile, Circuit and Chancery courts of Thirty Counties as well as the Bankruptcy Court and United States District Courts of West Tennessee. I have represented individuals involved in every type of criminal case from C Misdemeanors up to and including charges of first degree murder. The criminal cases I have handled have required an extensive knowledge of the applicable statutory and common law provisions relating to the crimes, procedure and evidentiary questions raised in order to effectively represent and protect the rights of my clients. The most voluminous criminal case I handled involved the representation of an individual charged and indicted on 151 counts of rape of a child. As one might imagine, the defense of that matter required considerable time and investigation. The cases involving “offenses against the person” are obviously more involved than property crimes or crimes against the administration of government in that there is a victim and a personal element on the other side of the equation. By seeing this duality of criminal representation, I feel that I am in a good position to serve as Court of Criminal Appeals Judge to effectively weigh the rights of all parties involved both defendant and victim.

Along with the criminal part of my practice, I have represented hundreds of clients in various civil matters ranging from simple debt collection to multi-state corporate litigation to divorces with martial assets in excess of one million dollars. As with any attorney who spent his entire practice in litigation I have become familiar with the inner workings of the court room and the entire Justice system. In addition to the trial court practice, I have represented my clients on appeal to the Tennessee Court of Appeals and the Tennessee Court of Criminal Appeals. While I filed applications for Permission to Appeal to the Tennessee Supreme Court I was not successful.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

IN RE: ADISON P., WILLIAM RHEA FAIN v. HON. ROBERT STEVIE BEAL, JUDGE, JUVENILE COURT FOR HENDERSON COUNTY, TENNESSEE W2014-01901-COA-R3-CV

While I was serving as County Attorney, our local Juvenile Court Judge was served with a Complaint for Writ of Mandamus in the local Circuit Court. I had the unique experience of representing a Juvenile Court Judge in front of a Circuit Court Judge in the same county where they both served. At trial I raised what I believed to be valid questions as to the jurisdiction of the Circuit Court to have mandamus authority over a Juvenile Court Judge who essentially shared concurrent jurisdiction over the pending family law question. The Circuit Judge disagreed with my premise and ultimately found that he had jurisdiction. I appealed the matter to the Court of Appeals and presented the admittedly unique question of Mandamus authority over an “equal” trial level judge. The questions revolved around the statute which gave origin to the case overseen by the Juvenile Judge (not the case appealed) to determine the correct method of appeal in the underlying case to determine if the Circuit Court would ever have any appellate jurisdiction over the case in question. Unfortunately, due to circumstances in another pending appellate action, this case was declared moot and no opinion rendered.

SPECIAL RESEARCH PROJECT

As staff attorney for the Court of Criminal Appeals, I became extremely familiar with the innerworkings of the history of the Court of Criminal Appeals in all aspects from both the appellate party standpoint and the appellate judge standpoint. One special assignment of note that I found particularly interesting was a request from an appellate judge in preparation for the 50th anniversary of the creation of the Court of Criminal Appeals. I was tasked with finding the first decision of the Court of Criminal Appeals for the Western Division after its creation in 1967. After a lot of digging in the basement and review of microfilm, I was able to locate the case of Autry v. State of Tennessee, 1 Tenn. Crim. App. 95 (Tenn. Crim App 1967) authored by Judge Mark Walker. Locating this opinion was especially meaningful for a West Tennessee lawyer as the attorneys involved were two historical figures of West Tennessee, Joe Davis of Lexington and D.D. Maddox of Huntingdon. Both were extraordinarily talented trial lawyers with stories about their courtroom activities told and retold in the courtrooms of West Tennessee for years.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

I attended the training to be a listed Rule 31 mediator. However, I have never practiced as a Rule 31 mediator nor sought the continuing education to remain listed.

11. Describe generally any experience you have serving in a fiduciary capacity, such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

In my early years of practice, I served as Guardian Ad Litem in multiple cases for children in Juvenile Court matters of Dependency and Neglect. I consider the role of Guardian Ad Litem to be some of my most important work as an attorney. This role allowed me to help those that could not help themselves and in one notable case I was able to facilitate the placement (and adoption) of two young children with a loving family removing them from a horrible home environment. In so doing, I was often the only advocate in the courtroom fighting for that outcome of the children but they are still thriving today.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Council.

Course attendance and completion:

Handling Capital Cases – The National Judicial College, May 2017

Tennessee Criminal Defense College – Tennessee Association of Criminal Defense Lawyers, April 2013

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Council for Judicial Appointments or any predecessor or similar commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

Court of Criminal Appeals – Western Division; March 8, 2016; I was not submitted to the Governor as a nominee

EDUCATION

14. List each college, law school, and other graduate school that you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

The University of Tennessee at Martin, August 1994 – May 1998, Bachelors of Science in Business Administration, Major – Accounting, Summa Cum Laude
Cecil C. Humphreys School of Law, The University of Memphis, August 1998 – May 2001, Juris Doctor

PERSONAL INFORMATION

15. State your age and date of birth.

46 years old
[REDACTED] 1976

16. How long have you lived continuously in the State of Tennessee?

46 years

17. How long have you lived continuously in the county where you are now living?

14 years

18. State the county in which you are registered to vote.

Henderson

19. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

Not Applicable

20. Have you ever pled guilty or been convicted or placed on diversion for violation of any

law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

No

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No

22. Please identify the number of formal complaints you have responded to that were filed against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint.

I had a formal complaint filed against me with the Tennessee Board of Professional Responsibility by a defendant I was prosecuting in multiple criminal matters. The complaint was dismissed and closed by the board with no action. The relevant details of the complaint are as follows. Prior to closing my practice to assume the role of staff attorney for the Court of Criminal Appeals, I practiced law for 16 years. The complaining defendant was a former client of mine in some juvenile and domestic matters unrelated to his criminal case. At the initial appearance of his criminal case in Circuit Court, the defendant raised the issue of a possible conflict due to my prior representation. Given the civil nature of my prior relationship with the defendant, I did not feel that an ethical conflict existed but agreed with his statements and informed the Court that we would enter an order to transfer his cases to a different division. However, prior to transfer, defendant's counsel contacted me and told me the defendant was waiving any conflict and had no objection to the cases staying in Division III with me prosecuting. An Order advising the Court of the waiver was executed and entered with the Court. After entry of the Order, prosecution continued on his matters and upon the failure to reach a plea agreement and the matter being set for trial, the defendant filed the referenced complaint. The defendant was tried on one of his cases before the Complaint was received and processed by the Board of Professional Responsibility. After dismissal of the complaint by the Board of Professional Responsibility, the trial court considered the prior waiver withdrawn and the remaining two charges were transferred to a different division and prosecutor.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

No

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices that you have held in such organizations.

First Baptist Church – Lexington, TN
Pine Tree Country Club – Lexington, TN
Constantine Masonic Lodge #64 – Lexington, TN

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.
- If so, list such organizations and describe the basis of the membership limitation.
 - If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

The Fraternity of Freemasonry has all male members as is the case with most if not all fraternities. There is a corresponding Order of the Eastern Star open to female members along with other organizations for children and families under the same “umbrella” organization. I currently hold no office in this organization and am not involved in the day to day activities of the organization. Any continued participation in this organization would be limited to those activities covered in Rule 3.7 of the Tennessee Code of Judicial Conduct.

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices that you have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

Howell Edmunds Jackson Inns of Court – 2017-2021
Tennessee Bar Association, House of Delegates – Tennessee Bar Association 2012-2019
Tennessee Association of Criminal Defense Lawyers – 2012 – 2017
Tennessee County Attorney Association – 2003 - 2017

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school that are directly related to professional accomplishments.

Lexington’s Best Attorney – People’s Choice Award – Lexington Progress Newspaper

30. List the citations of any legal articles or books you have published.

None

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

Political Science 210 – The University of Tennessee at Martin, Parsons Campus each Fall Semester since 2016
Political Science 220 – The University of Tennessee at Martin, Parsons Campus each Spring Semester since 2016

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

I was elected to be a member of the Lexington City School Board in September 2013 to a four-year term. I was re-elected in 2017 and 2021 to four year terms the last of which I still hold.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No

34. Attach to this application at least two examples of legal articles, books, briefs, or other legal writings that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

I have attached two writing samples. The first is an appellate brief filed in the case I referenced in the answer to question #9 and is 100% my work. The second is from my work as Staff Attorney and is an Order from an appeal of a bond issue before the Court. The Order was prepared in a pending matter and eventually entered and published by the Court. The sample is the draft I prepared before any editing or finalizing by the Appellate Court or their clerks.

ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? *(150 words or less)*

Since my entry into the practice of law I have viewed the proper application of the law as the central tenet to the Justice system. While I believe that we have an excellent trial court system, the Court of Criminal Appeals serves as an additional buffer to insure the proper application of the law to the parties in the criminal justice system. While the Court of Criminal Appeal is occasionally called upon to make findings of fact, a large percentage of the job of this Court is to ensure proper application of the law to the case at hand. I feel that my experience in the court room as both a defense lawyer and prosecutor coupled with my time spent working for the Court of Criminal Appeals gives me a unique skill set that will be a great asset to the Court to ensure proper application of the laws of this state.

36. State any achievements or activities in which you have been involved that demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. *(150 words or less)*

In my present role, I am prohibited from private legal representation, so my pro-bono activities are currently limited. However, throughout my career, I have continually volunteered services at no cost to local charitable institutions and youth organizations when paying for legal services was prohibitive. I have defended the local Exchange Club/Carl Perkins Center for the prevention of Child Abuse from overreaching subpoenas to protect their confidential information. I assisted local youth sports league and support organizations with their business corporation and non-profit status issues. I have assisted local churches in real estate transactions and cemetery issues to protect their property for future generations.

I have represented many indigent parties in criminal and juvenile Court actions when they could not afford an attorney. There are times when I have taken on a criminal case when no one would. I handled a case involving 151 counts of child rape when asked to by the local Court system. Obviously, this representation was not popular in the community, but I zealously represented

the interests of my client to protect his rights.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. *(150 words or less)*

I seek appointment to the Tennessee Court of Criminal Appeals. The Court of Criminal Appeals consists of 12 judges with the judges divided with no more than four from each grand division of the state. My selection would impact the court in allowing an attorney who not only has extensive experience in the criminal justice system as a defense attorney and a prosecutor but who also has knowledge of the internal workings of the court to serve on the Tennessee Court of Criminal Appeals. Furthermore, as a resident of rural West Tennessee my appointment would allow for Judge to sit in the Jackson Supreme Court Building as a primary office and to have a Judge present in the Jackson building at all times to handle any exigent issues that may arise.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? *(250 words or less)*

I have been extensively involved in youth sports while raising my children as coach, volunteer, board member and most importantly supportive parent. In addition, I have donated time and money and served as a board member of the local Exchange Club/Carl Perkins Center for the Prevention of Child Abuse. When appointed to this position, I intend to remain true to my public involvement in these issues. I have always been supportive of youth programs and believe that we need to continue to support our youth more especially in the current culture. Not to be clichéd, but our children are the future of this country and will be the parents of our grandchildren. I will continue to do all I can to continue this support.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Council in evaluating and understanding your candidacy for this judicial position. *(250 words or less)*

In my life, order has always been a presiding theme even going back to my childhood. My brother and cousins still make fun of me today for being a “rule follower” when we were younger. I believe that without rules society will crumble. The even and consistent application of these rules is a key to the proper functioning of our society. While I have never personally been a victim of a crime, I have seen the impact that crimes have on our society and the necessity of the system to prevent future occurrences. To ensure that society functions as it should, the people need to know that the laws will be applied fairly and consistently so that they feel that the institutions that are in place are for the benefit of all people. The core of my nature is the proper application of the rules and the rule of law. I will not be persuaded or unduly influenced by the emotional nuances of a certain case but will apply the law fairly and consistently to further uphold the gains in society and function in the history of this State and Country

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. *(250 words or less)*

Yes, no question. As a prosecutor, we are bound by oath and law to follow the laws of the State of Tennessee including the decisions of the Court of Criminal Appeals and the Supreme Court. There have been decisions by the Court of Criminal Appeals in which I disagree with the application of the law in that decision. However, I still am bound by those decisions, and I pursue cases against the defendants based upon the law as held by the Court of Criminal Appeals and not in the way I interpret the law. As a defense attorney, I was frequently personally abhorred at the facts of the case and the accusations against my clients. In one specific matter, a client was charged with stomach turning crimes and the discovery on the case was equally as reprehensible. However, a careful review of the statutes revealed an exception in the code that resulted in the most serious charges not applying to my client resulting in the maximum penalty against my client to be much lower than that originally charged and that which would appear to apply based upon the facts of the case. While I realize that my job in that situation was to completely parse and review the applicable code sections, the interpretation I presented and argued was not popular in the courtroom but ultimately, I had to do what was right.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Council or someone on its behalf may contact these persons regarding your application.

A. Jeff Wall, Madison County Commissioner	[REDACTED]
B. Kurt Holbert, Business Owner,	[REDACTED]
C. Robert "Tas" Gardner, District Public Defender 24 th Judicial District,	[REDACTED] [REDACTED]
D. Melanie Totty Cagle, District Public Defender 32 nd Judicial District,	[REDACTED] [REDACTED]
E. Bradley Owens, General Sessions Judge, Gibson County,	[REDACTED] [REDACTED]

AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Court of Criminal Appeals of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended application with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this application shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: October 19, 2022.



Signature

When completed, return this application to Rachel Harmon at the Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.



**THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS
ADMINISTRATIVE OFFICE OF THE COURTS**

511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
TENNESSEE BOARD OF JUDICIAL CONDUCT
AND OTHER LICENSING BOARDS**

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Governor's Council for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Council for Judicial Appointments and to the Office of the Governor.

Chadwick R. Wood
Type or Print Name


Signature

10/19/2022
Date

021766
BPR #

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

Sample 1

**IN THE COURT OF APPEALS OF TENNESSEE
WESTERN DIVISION AT JACKSON**

IN RE: ADISON P.

**WILLIAM RHEA FAIN
PLAINTIFF/APPELLEE**

v.

**Case Number:
W2014-01901-COA-R3-CV**

**Hon. ROBERT STEVIE BEAL
JUDGE, JUVENILE COURT
FOR HENDERSON COUNTY,
TENNESSEE
DEFENDANT/APPELLANT**

**APPEAL FROM THE FINAL JUDGMENT OF THE
CIRCUIT COURT OF HENDERSON COUNTY, TENNESSEE
HON. ROY B. MORGAN, PRESIDING**

BRIEF OF APPELLANT, HON. ROBERT STEVIE BEAL

ORAL ARGUMENT REQUESTED

**CHADWICK R. WOOD (#021766)
Attorney for HON. ROBERT STEVIE BEAL
27 N. Broad St.
Lexington, TN 38351
(731) 602-5190
chad.wood@chadwoodlaw.com**

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES..... ii

STATEMENT TO THE COURT 1

ISSUES PRESENTED ON APPEAL..... 2

I. STATEMENT OF THE CASE 3

II. STATEMENT OF THE FACTS 4

III. ARGUMENT ON THE ISSUES PRESENTED ON APPEAL 5

IV. Conclusion..... 11

APPENDIX 12

TABLE OF AUTHORITIES

Cases

<u>Ex Parte Fahcy</u> , 332 U.S. 258, (1947)	6
<u>In re Adoption of E.N.R.</u> , 42 S.W.3d 26, 31–32 (Tenn.2001).....	8
<u>In re D.Y.H.</u> , 226 S.W.3d 327, 329 (Tenn. 2007).....	6
<u>Kendrick v. Shoemake</u> , 90 S.W.3d 566, 569–70 (Tenn.2002)	8
<u>Marlow v. Parkinson</u> , 236 S.W.3d 744, 748 (Tenn.Ct.App.2007)	8
<u>State Dep't of Children's Servs. v. Owens</u> , 129 S.W.3d 50, 56 (Tenn. 2004).....	8
<u>Williams v. Saunders</u> , 45 Tenn. 60, 81 (1867)	10

Statutes

Tenn. Code Ann. §16-10-112	5, 7
Tenn. Code Ann. §37-1-104	5, 7
Tenn. Code Ann. §37-1-159	6

Other Authorities

Tenn. Op. Att'y Gen. No. 83-81 (Feb. 18, 1983).....	7
---	---

Rules

Tenn. R. App. P. 13.....	8
--------------------------	---

**IN THE COURT OF APPEALS OF THE STATE OF TENNESSEE
WESTERN DIVISION AT JACKSON**

IN RE: ADISON P.

**WILLIAM RHEA FAIN
Plaintiffs/Appellee,**

v.

**Hon. ROBERT STEVIE BEAL
JUDGE, JUVENILE COURT
FOR HENDERSON COUNTY,
TENNESSEE**

Defendant/Appellant

**Case Number
W2014-01901-COA-R3-CV
HENDERSON COUNTY CIRCUIT**

**Trial Court No. 14-088-1
Honorable Roy Morgan**

STATEMENT TO THE COURT

MAY IT PLEASE THE COURT:

For the sake of convenience, the Appellant, Hon. Robert Stevie Beal, shall be referred to as "Appellant". The Appellee, William Rhea Fain, shall be referred to as "Appellee." The technical record of the case will be referred to as "Vol. 1", the transcript of the Motion to Dismiss on July 10, 2014 will be referred to as "Vol. 2" and the transcript of the hearing of July 28, 2014 will be referred to as " Vol. 3."

ISSUES PRESENTED ON APPEAL

Whether the Trial Court lacked the requisite jurisdictional authority to hear or rule on this matter.

Whether the trial court erred in not granting Appellants Motion to Dismiss at the close of the proof of this case in that the evidence presented was not sufficient to support the ruling given in that the appellant called no witnesses and did not present any proof at trial upon which a decision could be made.

Whether the trial court erred in its ruling by making legal findings in the underlying case that are not allowed in a mandamus action.

I. STATEMENT OF THE CASE

During the pendency of a paternity, visitation and support matter in the Juvenile Court of Henderson County, Tennessee the Appellee filed a Complaint for Mandamus Relief in the Circuit Court of Henderson County, Tennessee. (Vol. 1 pp. 1-50). In response, the Appellant filed a Motion to Dismiss pursuant to Rule 12.02 of the Tennessee Rules of Civil Procedure. (Vol. 1 pp 51-58). A hearing was held on the Motion to Dismiss on July 10, 2014 at which time said motion was denied. (Vol. 2 and Vol. 1 pp. 85-87) The appellant then filed an Answer to the complaint for mandamus. (Vol. 1 pp. 78-84) After hearing on the Complaint for Mandamus Relief, a Writ of Mandamus was granted by the Circuit Court and the same was entered on August 27, 2014. (Vol. 1 pp. 88-91). Counsel for Appellant timely filed a Notice of Appeal and this matter is currently before the Court. (Vol. 1 pp. 92-93).

II. STATEMENT OF THE FACTS

The Appellee was involved with the mother of his child in an ongoing custody battle in the Juvenile Court of Henderson County, Tennessee. The underlying Juvenile Court matter arose out of a paternity and custody action initially filed in the Juvenile Court of Henderson County, Tennessee in 2003. (Vol. 1 p. 2 Complaint ¶10). Apparently a dispute has arisen over parenting time and enforcement of the prior Orders of the Juvenile Court resulting in the filing of the Complaint for Mandamus Relief at question in this appeal. (Vol. 1. Complaint). At trial in this matter, the Appellee offered no witnesses to testify and presented no testimony in support of his complaint. (Vol. 3 pp. 1-29). During the final hearing on this matter counsel for the Appellee stated to the Court "(W)e won't be attempting to present any proof today." (Vol. 3 p.6 lines 1-2). As such, there was no proof presented to the Court upon which a factual ruling could be made. While counsel and the Court did reference the juvenile Court record at the hearing, the same was never made an exhibit at trial and not tendered to the Court for evidence leaving the court with no basis other than arguments of counsel upon which to make its decision. However, the trial Court did make certain findings as set out in the Writ of Mandamus entered by the Court. (Vol. 3 pp. 92-95).

III. ARGUMENT ON THE ISSUES PRESENTED ON APPEAL

I. **The Trial Court did not have the requisite jurisdictional authority to hear or rule on this matter.**

As was raised in pre-trial motion and again at hearing in this matter, it is the position of the Appellant that the Circuit Court of Henderson County, Tennessee did not have mandamus jurisdiction over the Juvenile Court judge presiding over a paternity and custody matter. The underlying litigation this cause was a Complaint for Mandamus Relief against the Juvenile Court Judge of Henderson County, Tennessee. The Appellee alleged as a basis for his complaint his reliance upon Tenn. Code Ann. §16-10-112 which allows the Circuit Court appellate jurisdiction over suits and actions “instituted before any inferior jurisdiction.” The “inferiority” or lack thereof of the Juvenile Court in paternity and custody actions is addressed by Tennessee Code Annotated §37-1-104(f) which states

(f) Notwithstanding any provision of law to the contrary, the juvenile court has **concurrent jurisdiction with the circuit and chancery court of proceedings to establish the paternity of children born out of lawful wedlock and to determine any custody, visitation, support,** education or other issues regarding the care and control of children born out of wedlock. The court further has the power to enforce its orders. Nothing in this subsection (f) shall be construed as vesting the circuit and chancery court with jurisdiction over matters that are in the exclusive jurisdiction of the juvenile court under § 37-1-103.
Tenn. Code Ann. §37-1-104 (West) (emphasis added)

Based upon the application of this statute, when deciding matters arising out of a paternity action including custody, visitation and support, the Juvenile Court is not inferior to the Circuit Court but shares concurrent jurisdiction with the Circuit and Chancery Courts. Furthermore, Tennessee Code Annotated §37-1-159 governs the appeal and review of matters from Juvenile court directing the appeal of *juvenile delinquent, unruly and dependent and neglect* matters to the

Circuit Court. Tenn. Code Ann. §37-1-159 (a)(2014 West). However the circuit court appellate jurisdiction from Juvenile Court is limited only to those three listed areas as set out in the statute. The limited inclusive effect of subpart (a) is reinforced by the later text of subpart (g) of the same statute which states:

(g) Appeals in all other civil matters heard by the juvenile court shall be governed by the Tennessee Rules of Appellate Procedure.

Tenn. Code Ann. §37-1-159(g)(2014 West)

Given the broad expanse of the language of paragraph (g) compared to the limiting language of paragraph (a) the application of this statute would confirm the appellate jurisdiction for cases involving paternity and custody (such as that involving the parties and child in this case) to be in the Tennessee Court of Appeals. The Tennessee Supreme Court in the case of In re: D.Y.H. confirmed this position in its ruling when it stated

It is clear from the statute that appeals from a juvenile court's final order or judgment in a unruly child or dependency and neglect proceeding are to be made to circuit court. Tenn.Code Ann. § 37-1-159(a). ***Appeals in all other civil matters heard by a juvenile court are governed by the Tennessee Rules of Appellate Procedure, which provide that civil appeals are to be made to the Court of Appeals.*** Tenn. R.App. P. 3; *see, e.g., Tenn. Dep't of Children's Servs. v. T.M.B.K.*, 197 S.W.3d 282, 289 (Tenn.Ct.App.2006) (providing that appeals in termination cases are appealed directly to the Court of Appeals). In re D.Y.H., 226 S.W.3d 327, 329 (Tenn. 2007) (emphasis added)

Even notwithstanding the later findings and machinations of the litigation, the original jurisdiction and appellate jurisdiction are not changed once the case has been originated. Id.

While mandamus actions against judges are “drastic and extraordinary remedies” such mandamus authority does exist. Ex Parte Fahey, 332 U.S. 258, (1947). Mandamus authority over the “inferior” courts arises out of the inherent appellate authority of the higher courts as a “check” on the lower courts. When asked to opine on the authority of mandamus over a Court of

Record, the Tennessee Attorney General referenced the mandamus authority to that of an exercise of its appellate authority to Order the entry of an appealable order. Tenn. Op. Att'y Gen. No. 83-81 (Feb. 18, 1983)(copy attached). As such, based upon the stated reliance of the Appellee on Tenn. Code Ann. §16-10-112 (Circuit Court appellate authority over certain Juvenile Court actions) the Circuit Court would not have the Jurisdiction or authority to entertain or issue a writ of Mandamus against a Juvenile Court acting as a Court of record over which it has no appellate jurisdiction. The Tennessee Attorney General cited 52 Am.Jur.2d, Mandamus §304 in rendering the opinion on this issue quoting, "It seems clear ... that mandamus will not issue from one court to another of equal dignity or jurisdiction." Id.

It is the position of the Appellant that the jurisdiction exercised by the Juvenile Court in the underlying action arose from Tenn. Code Ann. §37-1-104(f) regarding a Paternity action and the subsequent custody and support rulings that naturally follow a paternity action. As has been set out above, the appellate jurisdiction of such a matter would not lie with the Circuit court but with the Tennessee Court of Appeals. In his opinion, the Tennessee Attorney General stated:

"Thus, it would seem that a chancery judge is without power to issue a writ of mandamus against a circuit court judge, or vice versa." Id.

Giving the status of the Juvenile Court of as a court of record in the underlying case with an appeal as of right to the Tennessee Court of Appeals, the Circuit court would not have the authority to order a Writ of Mandamus against the Juvenile Court Judge in this matter anymore than it could order a writ of mandamus against the Chancery Court Judge of the same district. Therefore, with the lack of authority and jurisdiction, the decision by the trial court in this matter should be reversed and the case dismissed.

II. The trial court erred in not granting Appellants Motion to Dismiss and Motion for Directed Verdict at the close of the proof of this case in that the evidence presented was not sufficient to support the ruling given in that the appellant called no witnesses and did not present any proof at trial upon which a decision could be made.

At the close of proof in the trial Court, the Appellant moved the Court to dismiss the complaint of the Appellee in that no evidence had been presented in support of the Complaint for Mandamus. (Vol. 3. p. 18 lines 16-22, p. 20 lines 3-4). As was reflected in the oral ruling, the Court denied said motions and continued to render a decision in this cause. It is the position of the Appellant that the rulings by the court to Deny the Motion to Dismiss and for Directed Verdict were in error due to their being no facts in evidence to support the claims of the Appellee.

In Appellate review of the factual findings of the lower court the review by the Court of Appeals is a de novo review with a presumption of correctness given to the factual findings of the trial court unless the preponderance of the evidence is otherwise and the appellate courts are to rely upon the record which sets for the facts established as evidence. Tenn. R. App. P. 13. Kendrick v. Shoemaker, 90 S.W.3d 566, 569-70 (Tenn.2002); Marlow v. Parkinson, 236 S.W.3d 744, 748 (Tenn.Ct.App.2007). The Appellate Court “ ‘is a court of appeals and errors, and we are limited in authority to the adjudication of issues that are *presented and decided* in the trial courts, and a record thereof preserved as prescribed in the statutes and Rules of this Court.’ ” In re Adoption of E.N.R., 42 S.W.3d 26, 31-32 (Tenn.2001) (quoting Dorrier v. Dark, 537 S.W.2d 888, 890 (Tenn.1976)) (emphasis added). State Dep't of Children's Servs. v. Owens, 129 S.W.3d 50, 56 (Tenn. 2004).

A review of the record of the trial Court hearing shows that there was no lawful evidence presented to the Court upon which the Court could make its ruling. Counsel for the Appellee stated as much in his opening statement when he said "(W)e won't be attempting to present any proof today." (Vol. 3 p.6 lines 1-2). At the final hearing on this matter, there was no witness testimony offered nor any witnesses sworn. The appellee referenced the trial record of the Juvenile Court but offered no sworn testimony in support of his position to explain why a writ of mandamus was necessary. It is the position of the appellant there was no evidence before the Trial Court upon which a ruling could be made. Although the presumption of correctness does apply, the presumption is just that, a presumption. The factual ruling of the Trial Court cannot withstand the necessary review when weighed against the lack of evidence presented.

In short, there was no legal evidence presented to the Court upon which the decision given in this case could be based. There was no testimony or evidence presented to the Court only arguments from counsel. As there was no factual basis for the ruling of the Court, the decision of the trial court should be reversed and a dismissal ordered.

III. The trial court erred in its ruling by making legal findings in the underlying case that are not allowed in a mandamus action.

Even if the trial court does have the jurisdiction to issue a Writ of Mandamus to the Juvenile court, the trial court exceeded its authority in ruling on the case sub judice. In the writ of Mandamus granted by the Court the court made the following findings (among others)

9. With regard to Mr. Fain's Motion for Entry of Show Cause Order, the record in the Underlying Action reflects that Mr. Fain, acting through counsel, made proper service upon Ms. Parker by serving upon Ms. Karnes a copy of the motion by electronic mail to LanisKarnes@KarnesLegal.com on April 8, 2014 at 2:46 p.m. (CDT) followed by a "Petitioner's Notice of Service of Pursuant

to Tenn. R. Civ. Pro. 5.02” sent by facsimile to Ms. Karnes’ office on April 8, 2014 at 2:54 p.m. (CDT), pursuant to Tenn. R. Civ. Pro. 5.02.

10. Because Mr. Fain’s Motion for Entry of Show Cause Order was properly served upon Ms. Parker through her attorney of record pursuant to Tenn. R. Civ. Pro. 5.02, service of process is unnecessary and he is entitled to have his motion heard.

(Vol. 1 pp. 93-94 Writ of Mandamus pp. 9-10). In making the findings and rulings as set out above, the Trial Court exceeded the authority granted to it in a mandamus action by directing the lower Court on how to rule in regards to service on one of the parties.

In discussing the rare occurrence of mandamus against a sitting Judge the Tennessee Supreme Court stated:

But the law makes a distinction between ministerial and judicial duties. In the former case, the particular duty imposed may be compelled; while in the latter, a judicial officer, when he fails or refuses to act, can be compelled to proceed and render some judgment in the case before him. ***But the Court issuing the writ will not direct him how to proceed, or what judgment to render--***that is left to his own high sense of duty as a judicial officer. He will be compelled to act--to discharge his duty, otherwise there would be a failure of justice.

Williams v. Saunders, 45 Tenn. 60, 81 (1867)(emphasis added). The trial court, in making the findings and rulings of paragraphs 9 and 10, exceeded the bounds of the authority of mandamus as contemplated in the Williams decision. The Trial Court made legal findings in the Juvenile Court case below in regards of service of process and in so doing essentially ordered the Juvenile Court to find that proper service had been made on one of the parties and to issue a ruling limited by the findings of the Trial Court that service had been made. As such, those rulings and findings exceed any scope of mandamus that may exist and are in error and should be reversed.

IV. Conclusion

Hon. Robert Stevie Beal respectfully requests this Honorable Court to reverse ruling of the Trial Court and dismiss the Complaint for Writ of Mandamus. Based upon the application of the law, the Circuit Court did not have mandamus authority over the Juvenile Court in this matter. Furthermore, It is clearly shown through the record that no legal evidence was offered in support of the Complaint. For all the reasons stated above, the decision of the Trial Court should be reversed and the Complaint of the Plaintiff dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I served a copy of the foregoing pleading via hand delivery or first class mail upon: Brian Schuette, Attorney at Law, 719 A Dishman Ln., Bowling Green, KY 42104

Sample 2

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

STATE OF TENNESSEE v. [REDACTED]

Criminal Court for Shelby County
[REDACTED]

No. [REDACTED]

ORDER

The Appellant has moved this Court pursuant to Rule 8 of the Tennessee Rules of Appellate Procedure to review the trial court's decision to revoke his appearance bond prior to trial. The Appellant sought permission to file transcripts of certain hearings and said permission was granted by the Court. A review of the pleadings filed indicates that the Appellant was initially arrested and charged with misdemeanor assault, evading arrest and theft under \$500 at which time he was released on a \$2,500 bond. Later, the Appellant was charged with disorderly conduct and resisting arrest and was released on a \$100 bond. Additionally, Appellant was charged with burglary of a building and possession of burglary tools and was released on a \$2,000 bond. Finally, the Appellant was charged with aggravated robbery and ultimately released on a \$100,000 bond.

The Appellant remained free upon the aforementioned appearance bonds until the same were revoked by the trial court on September 14, 2016. On that date, the Appellant came before the trial court for an appearance on his motion to dismiss the indictment. The basis for the motion to dismiss was the untimeliness of the trial in the underlying matter whereby the Appellant was arguing that his rights to a speedy trial were being violated. The trial court ruled the motion to dismiss improper but stated that a trial date would be given. In setting the matter for trial, the trial court sua sponte called the Appellant to testify to "go over what your offer is" in an apparent attempt to ensure that the Appellant was aware of the plea offer and his possible exposure if he continued to trial. Counsel for the Appellant requested additional time to address the request for a trial date and was denied by the trial court. The court began questioning the Appellant as to the plea offer he had received on his outstanding charges. In reviewing the pending charges of the Appellant, the court informed him that "somebody shouldn't have made your bonds. You've been in a whole lot of trouble, Mr. [REDACTED]. It's ridiculous." The

court requested more information in regards to a matter involving the Appellant that had been dismissed at the general sessions level but was being presented to a future grand jury. After some delay, information related to the dismissed charge was located and the affidavit reviewed by the court. Upon confirmation that the charge in question was an aggravated assault the court revoked the bond of the Appellant. There were no other witnesses or testimony presented other than that of the Appellant.

The right to pretrial bail is explicitly afforded by the Tennessee Constitution, and though no right to bail is provided under the United States Constitution, bail revocation implicates substantial liberty interests protected under the Fourteenth Amendment. *State v. Burgins*, 464 S.W.3d 298, 307 (Tenn. 2015) (citing *Cf. Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)). When the government seeks to deprive an individual of constitutionally protected liberty, due process concerns are implicated. *Id.* citing *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-578.

Tennessee Code Annotated section 40-11-141(b) provides:

If after the defendant is released upon personal recognizance, an unsecured personal appearance bond, or any other bond approved by the court, the defendant violates a condition of release, is charged with an offense committed during the defendant's release, or engages in conduct which results in the obstruction of the orderly and expeditious progress of the trial or other proceedings, then the court may revoke and terminate the defendant's bond and order the defendant held without bail pending trial or without release during trial.

The revocation statute sets out the grounds for bail revocation but does not set forth the procedure for the revocation of bail by the courts. Our Supreme Court addressed this issue in *Burgins*, holding that a pretrial bail revocation proceeding under Tennessee Code Annotated §40-11-141(b) may be initiated by the trial judge, *sua sponte*, or by the State filing a written motion setting forth at least one statutory ground for revocation. *Id.* at 310. Upon the initiation of this process, the defendant who is subject to a pretrial bail revocation proceeding is entitled to

- 1) written notice of the alleged grounds for revocation and the date, place, and time of the hearing, 2) disclosure of the evidence against him or her, 3) the meaningful opportunity to be heard and to present evidence, 4) the right to confront and cross-examine witnesses, and 5) the right to make arguments in his or her defense.

Id. During an evidentiary hearing, the State bears the burden of proving by a preponderance of the evidence sufficient grounds under section 40-11-141(b) to support a

revocation. *Id.* The requirements for the revocation proceeding shall be somewhat flexible in that the trial court shall be able to consider factual testimony and documentary proof supporting the grounds for revocation of pretrial bail. *Id.* In addition to documentary proof, the *State must also present testimony from a corroborating witness or witnesses* as to facts supporting the allegations contained in the documents. *Id.* (emphasis added).

From the evidence presented to this Court in the form of the transcript of the September 14, 2016, it is apparent that the procedure for revocation as adopted by our Supreme Court in *Burgins* was not followed. The Appellant appeared before the trial court only on his motion to dismiss the indictment and as a result ended up with his bond revoked. There is no indication in the record, and the State did not argue in its response, that the Appellant had any prior notice of the alleged grounds for the revocation or notice of the date, place and time of the hearing for revocation. As stated earlier, the only reason the Appellant was in court was in furtherance of a motion filed on his behalf. Furthermore, with the Appellant not having prior notice of the hearing there is no manner in which he could have had the evidence to be used against him disclosed to him to allow him a *meaningful* opportunity to be heard and present evidence. The State called no witnesses in furtherance of the bond revocation and the only witness was the Appellant who was called to the stand by the court without providing him notice of his rights to remain silent or against self-incrimination.

The State argues that the requirements of the hearing were met in the later motions of the Appellant seeking relief and modification of revocation of the bonds by the trial court. However, the later hearings were conducted after the revocation and by their nature the Appellant would have been the moving party bearing the burden of proof to challenge the prior ruling of the court. As such, those proceedings are not curative of the defects in the prior proceeding where the Supreme Court has held that the state bears the burden of proof to prove the grounds in Tennessee Code Annotated §40-11-141(b) by a preponderance of the evidence. In addition, the State argues that the Appellant waived any presentation of an argument for the violation of his due process rights before this Court by failing to preserve them at the time of trial. A review of the record indicates that the Appellant had no chance to present any argument that would allow an opportunity to raise due process issues at the time of trial. While the Appellant was testifying at the order of the trial court, the court revoked the bonds of the Appellant and proceeded to other issues giving no opportunity for argument or objection.

The process undertaken to revoke the bonds of the Appellant was unconstitutional in light of Article I Section 8 of the Tennessee Constitution and the 5th and 14th Amendments of the United States Constitution as set out in *Burgins* for the reasons set forth above. Accordingly, this matter is hereby remanded to the trial court. The trial court shall immediately reinstate the bonds of the Appellant and release him from custody. Nothing in his ruling prevents an appropriate motion or revocation proceeding

conditioned upon the following of the established lawful procedures. The Clerk is directed to forward a copy of this order to the trial court by email or fax. Costs associated with this order are taxed to the state.

