

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

SEDLEY ALLEY,	)	
	)	
Appellant,	)	
	)	SHELBY CRIMINAL
vs.	)	No. W2006-01179-CCA-R3-PD
	)	
STATE OF TENNESSEE,	)	
	)	
Appellee.	)	

ON APPLICATION FOR PERMISSION TO APPEAL  
FROM THE JUDGMENT OF THE COURT OF CRIMINAL APPEALS

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ANSWER IN OPPOSITION TO THE APPLICATION  
FOR PERMISSION TO APPEAL

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## REASONS FOR DENYING THE APPLICATION

The State of Tennessee submits this response in opposition to the application for permission to appeal filed by appellant, Sedley Alley. On June 22, 2006, the Court of Criminal Appeals filed an opinion affirming the judgment of the Shelby County Criminal Court dismissing Alley's petition for post-conviction DNA testing under Tenn. Code Ann. § 40-30-301 *et seq.* (Copy attached). No petition for rehearing was filed.

Alley urges this Court to review the decision of the Court of Criminal Appeals contending that the intermediate appellate court misinterpreted the legislative intent behind the post-conviction DNA statute and, in affirming the trial court's dismissal of the petition, unduly restricted the scope of evidence that a trial judge should consider in determining whether testing is appropriate. In fact, it is Alley who seeks to expand the post-conviction DNA statute far beyond its current reach. Because the opinion of the Court of Criminal Appeals was consistent in all respects with both the terms of the Post-Conviction DNA statute and all appellate decisions addressing the scope of the statute, this case meets none of the criteria for granting review by this Court pursuant to T.R.A.P. 11(a).

The Post-Conviction DNA Analysis Act states a procedure by which a person convicted of certain enumerated offenses, including first degree murder, may petition the post-conviction court for DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory or court, that is related to the

investigation and prosecution that resulted in the judgment of conviction and that may contain biological evidence. Tenn. Code Ann. § 40-30-303. The Act provides for both mandatory and discretionary testing depending upon the relative materiality of the evidence in relation to the prosecution and conviction of the petitioner. To qualify for mandatory testing under either standard, the petitioner must satisfy the four criteria set forth in Tenn. Code Ann. § 40-30-304 and/or -305 (2003).

DNA analysis is discretionary and may be ordered if the trial court finds that the petitioner has met parts (2), (3), and (4) above and shows: “A reasonable probability exists that analysis of the evidence will produce DNA results which would have rendered the *petitioner’s verdict or sentence more favorable* if the results had been available at the proceeding leading to the judgment of conviction.” Tenn. Code Ann. § 40-30-205(1) (emphasis added).

The Post-Conviction DNA Analysis Act allows for “forensic DNA analysis” of evidence related to a judgment of conviction. Tenn. Code Ann. § 40-30-303. Decisions interpreting the reach of the DNA Act have, without exception, limited the materiality analysis under Tenn. Code Ann. § 40-30-304(1) and -305(1) to the performance of a DNA analysis which compares the *petitioner’s* DNA to samples taken from biological specimens gathered at the time of the offense. *Crawford v. State*, No. E2002-02334-CCA-R3-PC, 2003 WL 21782328, \*3 (Tenn. Crim. App. Aug. 4, 2003) (app. denied Dec. 22, 2003). Indeed, as the Court of Criminal Appeals correctly observed, the Act “does not

authorize the trial court to order the victim to submit new DNA samples years after the offense, nor does the statute open the door to any other comparisons the petitioner may envision.” *Id.* In short, if exclusion of the petitioner as the source of DNA does not, in and of itself, exculpate him, the inquiry ceases. The Act does not permit a petitioner to speculate about the potential of a database comparison, third party comparison, or even a comparison among individual test results in order to meet his burden under sub-part (1). *Sedley Alley v. State*, No. W2006-1179-CCA-R3-PD, slip op. at 11 (Tenn. Crim. App. June 22, 2006). “The results of the DNA testing must stand alone and do not encompass a speculative nationwide search for the possibility of a third party perpetrator.” *Id.*

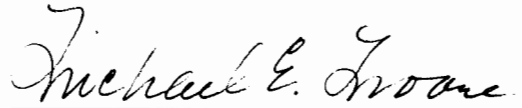
Moreover, Tennessee courts have consistently interpreted the Act to allow for summary dismissal if a petitioner fails to meet any of the qualifying criteria. *See, e.g., Buford v. State*, No. M2002-02180-CCA-R3-PC, 2003 WL 1937110, \*6 (Tenn. Crim. App. Apr. 24, 2003). Here, the post-conviction court ruled that Alley failed as to two. The Court of Criminal Appeals affirmed, finding “substantial evidence as it exists in the procedural history of this case” supports that conclusion. *Alley, supra*, slip op. at 28-29.

## CONCLUSION

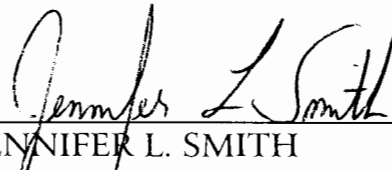
For these reasons and for the reasons set forth in the attached Brief of the State of Tennessee and opinion of the Tennessee Court of Criminal Appeals, the application for permission to appeal should be denied.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded via email and overnight delivery to:

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Kelley J. Henry  
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on the 26<sup>th</sup> day of June, 2006.

  
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