

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

IN RE:	* KNOX COUNTY
	*
BILLY RAY IRICK	* SUPREME COURT NO. 180
	*
	* DEATH PENALTY

**MOTION TO VACATE EXECUTION DATE GIVEN IMMINENT REOPENING OF  
FEDERAL *HABEAS* PROCEEDINGS AND MOTION TO VACATE  
FORD PROCEEDINGS WITHOUT PREJUDICE TO RENEWAL FOLLOWING  
CONCLUSION OF *HABEAS* PROCEEDINGS**

**INTRODUCTION**

The day after this court set an execution date of December 7, 2010, the United States Sixth Circuit Court of Appeals issued an order remanding Irick's 60(b) motion for relief from the judgment dismissing his federal *habeas* petition back to the United States District Court for a determination on the merits. (See, Order, Exhibit 1). Given this intervening order and the Sixth Circuit's controlling decision in Thompson v. Bell, 580 F.3d 423 (6th Cir. 2009), discussed below, the district court will be reopening Irick's initial *habeas* proceedings, the effect of which is that Irick is still in the process of pursuing his first federal *habeas* challenge to his death sentence. In other words, he has not "pursued at least one unsuccessful challenge to the...conviction and death sentence." Tenn.S.Ct.R. 12.4(a).

Given these ongoing *habeas* proceedings to be conducted in the United States District Court, this court should vacate the execution just set, pending the conclusion of Irick's reopened first *habeas* proceedings. The court should also vacate its order of remand for Ford proceedings, without prejudice to further Ford proceedings (as necessary) should *habeas* relief ultimately be denied and a new execution set.

## BRIEF HISTORY OF PROCEEDINGS

On March 20, 2001, the federal district court entered a memorandum and order dismissing Irick's petition and amended petition for *habeas corpus* relief. Subsequently, on June 28, 2001, this court promulgated Supreme Court Rule 39. Given the retroactive effect of Rule 39, Irick filed a motion and supporting memorandum for relief from judgment pursuant to Fed.R.Civ.P. 60(b). (See Exhibits 2 and 3). Within those pleadings, Irick identified those claims within his *habeas* proceedings most likely affected by Tennessee Supreme Court Rule 39. These included Irick's claim regarding aggravating circumstances/felony murder, flight instruction, prejudice or sympathy instruction, ineffective assistance of counsel-failure of trial counsel to investigate and present evidence, and failure of trial counsel to present mental health defense. In addition, it also appears that portions of Irick's Brady claim found in his amended petitioner, paragraphs (l) and (m) should be subject to the Sixth Circuit's order since the basis for their dismissal was an alleged procedural default for failure to raise these claims "to the highest Tennessee court..." Irick v. Bell, E.D. Tenn. No. 3:98-cv-666, R. 146 (Mar. 30, 2001), p. 44.

On January 25, 2002, the federal district court transferred Irick's motion for relief to the Sixth Circuit Court of Appeals finding Irick's request to be a second or successive petition subject to 28 U.S.C. §2244. Irick v. Bell, E.D. Tenn. No. 3:98-cv-666, R. 163. Then, finally, on July 20, 2010, the Sixth Circuit Court of Appeals issued the order in question finding that the district court's transfer of the motion was unnecessary and remanding it to the district court for a decision.

## DISCUSSION

### I.

**Under this court's Rule 12.4, an execution date is warranted only if a Death-Row inmate has been unsuccessful in obtaining relief in his first federal *habeas corpus* proceeding.**

According to the caption of this court's Rule 12.4, this court may properly set an execution date "[A]t [The] Conclusion of Standard Three-Tier Appeal Process." As the text of the rule explains, a death-sentenced inmate only reaches the conclusion of the standard three-tier appeal process:

after a death-row prisoner has pursued at least *one unsuccessful challenge to the prisoner's conviction and sentence through direct appeal, post-conviction, and federal habeas proceedings.*

Rule 12.4(A)(emphasis supplied).

In other words, Rule 12.4(A) requires that the inmate have been "unsuccessful" in his first *habeas corpus* proceeding before a date is to be set. This only makes sense, as an inmate who can secure relief in his first *habeas* proceeding ought not be executed. This court has thus recognized by its rule that a death-row inmate must be allowed his first *habeas* challenge, and no execution date shall be set unless and until that challenge is unsuccessful.

### II.

**Billy Ray Irick's first federal *habeas* proceedings have not concluded and are to be re-opened for further proceedings on the merits of various constitutional challenges to his death sentence.**

In his initial federal *habeas corpus* proceedings, Billy Irick raised numerous claims, including claims that the prosecution withheld material, exculpatory evidence; counsel provided ineffective assistance of counsel; the trial court provided an unconstitutional instruction on flight; the trial court provided an unconstitutional sympathy instruction; his right to double jeopardy was violated; and the Court of Criminal Appeals' harmless-error review of an invalid aggravating circumstance was

unconstitutional. The United States District Court concluded that portions of the Brady and ineffectiveness claims and the rest of the above-cited claims were unreviewable in federal court, because Irick had not appropriately exhausted such claims, notably by failing to present such claims to this court on permission to appeal under Tenn.R.App. 11. Irick v. Bell, E.D.Tenn.No. 3: 98-666, R. 146 (Mar. 30, 2001), pp. 44, 83, 131, 134, 143, 149, 151-152.

In 2001, however, this court promulgated Tenn.S.Ct. Rule 39, which explicitly holds that a Tennessee post-conviction petitioner need not seek permission to appeal in this court to exhaust his state court remedies before pursuing federal *habeas* review. Rule 39 means that the United States District Court's ruling of procedural default on Irick's claims is clearly in error, in violation of both Tennessee and federal law.

Thus, in 2002, Irick filed in the United States District Court a motion for relief from judgment under Fed.R.Civ.P. 60(b), the purpose of which is to reopen proceedings in the district court. Irick v. Bell, E.D.Tenn.No. 3: 98-666, R. 159, 160 (Nov. 20, 2001). In that motion, he argued that, in violation of Rule 39, he had improperly been denied federal *habeas* review of his claims because, in fact, he had properly exhausted his federal claims as required by Tennessee law. Finally, on Tuesday (July 20, 2010), the United States Court of Appeals for the Sixth Circuit issued an order on Irick's Rule 60(b) motion – many years after it was filed. In its order, the Sixth Circuit has remanded Irick's 60(b) motion to the district court for full consideration. *See* Exhibit 1 (Order).

On remand, the district court will, in light of controlling Sixth Circuit precedent of Thompson v. Bell, 580 F.3d 423 (6<sup>th</sup> Cir. 2009), be obligated to reopen Irick's initial *habeas* proceedings and to address on the merits claims that the district court held were defaulted for failure to raise in the Tennessee Supreme Court. In Thompson, the Sixth Circuit held that, under Fed.R.Civ.P. 60(b),

Tennessee Supreme Court Rule 39 constitutes an “extraordinary circumstance” that mandates the reopening of an initial *habeas* petition if such claims had been dismissed because they had not been raised on permission to appeal under Tenn.R.App.P. 11. Thompson, 580 F3d at 4420443. A district court’s dismissal of a claim for lack of presentation under Tenn.R.App.P. 11 directly contradicts Tenn.S.Ct. Rule 39 and thus dis-serves the interests of the federal courts and state courts alike. Thompson, 580 at 443.

Thompson thus holds that a Rule 60(b) motion based upon Tenn.S.Ct. Rule 39 must be granted. In Thompson, the Sixth Circuit thus ordered Thompson’s *habeas* proceedings reopened and ordered that “Thompson should be heard on the merits of his four remaining ineffective assistance claims,” which had previously, but erroneously, been deemed unexhausted. Thompson, 580 F.3d at 444. Accordingly, the Sixth Circuit remanded Thompson’s reopened initial *habeas* petition to the district court for review of his claims on the merits.

The same thing occurred in the case of Abdur’Rahman v. Bell, 2008 U.S.Dist.Lexis 37863 (M.D.Tenn. May 7, 2008). There, the district court concluded that Rule 39 constituted an “extraordinary circumstance” for purposes of Fed.R.Civ.P. 60(b), and thus reopened Abdur’Rahman’s federal petition to consider on the merits claims that had previously been dismissed given Abdur’Rahman’s failure to raise such claims on permission to appeal. After reopening Abdur’Rahman’s initial *habeas* proceedings, the district court then ruled on the merits of the remaining claims from Abdur’Rahman’s first federal *habeas* petition, which still remains pending in the federal courts. Abdur’Rahman v. Bell, 2009 U.S.Dist.Lexis 6042 (M.D.Tenn. Jan. 26, 2009).

### III.

**Under Thompson, Irick's initial *habeas* proceedings must be re-opened and, of necessity, he will not have completed his first round of *habeas* proceedings and cannot be deemed to have made "one unsuccessful challenge" to his death sentence in *habeas* proceedings.**

It thus clearly appears that Irick's federal *habeas* proceedings are not final. Because Thompson mandates the United States District Court to reopen Irick's *habeas* proceedings on his erroneously-defaulted claims, he cannot (as yet) be deemed to have made "one unsuccessful challenge" to his death sentence in federal *habeas corpus* under Rule 12.4(A).

It is clear that the effect of the imminent granting of his 60(b) motion is to vacate the denial of *habeas* relief and to reinstate Irick's initial *habeas* proceedings as an ongoing proceeding. "When a district court grants a 60(b) motion, it must necessarily vacate the underlying judgment and reopen the record." Fobian v. Storage Tech. Corp., 164 F.3d 887, 890 (4<sup>th</sup> Cir. 1999). As the United States Court of Appeals for the Seventh Circuit has explained, the granting of Irick's 60(b) motion will, of necessity, place Irick in the same position he was when initially pursuing *habeas corpus* relief in the federal district court:

When a district court grants a Rule 60(b) motion, the effect is to vacate the previous judgment in the case. *See* Fed. R. Civ. P. 60(b); Boyko v. Anderson, 185 F.3d 672, 673-74 (7<sup>th</sup> Cir. 1999). Consequently, ***the previously filed case is reinstated and goes forward from that point.*** *See* McCormick v. City of Chicago, 230 F.3d 319, 326-27 (7<sup>th</sup> Cir. 2000)(treating motion to reinstate case as motion under Rule 60(b)); *see also* Rodriguez v. Mitchell, 252 F.3d 191, 198 (2<sup>d</sup> Cir. 2001) (noting that the grant of a Rule 60(b) motion in habeas corpus case 'would merely reinstate the previously dismissed petition for habeas [corpus], opening the way for further proceedings'); *see also* 12 James Wm. Moore, et al., *Moore's Federal Practice* § 60.61 at 60-194 (3<sup>d</sup> ed. 2004)('A Rule 60(b) motion is considered a continuation of the original proceeding.').

Bronisz v. Ashcroft, 378 F.3d 632, 637 (7<sup>th</sup> Cir. 2004)(emphasis supplied).

This means that Irick does not meet Rule 12.4(A)'s requirement that he has been "unsuccessful" in his first *habeas* proceedings. In fact, given the imminent reopening of his first *habeas* petition, Irick may indeed secure federal *habeas corpus* relief from his death sentence, which is the reason why Rule 12.4(A) does not allow an execution date under these circumstances. Irick shall therefore not meet this court's requirements for an execution date to be set.

#### IV.

#### **This court should vacate irick's execution date pending conclusion of Irick's re-opened initial federal *habeas corpus* proceedings**


Because Irick has not yet reached an unsuccessful conclusion to his federal *habeas corpus* challenge to his conviction and death sentence (which is to be reopened), this court is constrained by the express language and purpose of Rule 12.4(A) (and as a matter of due process under the Fourteenth Amendment) to vacate Irick's current execution date. This is also prudent, given this court's recent order remanding the case for a Ford hearing. To the extent that Irick does not meet the requirements of Rule 12.4(A) and an execution date must not be set, the pending Ford proceedings are also unnecessary. It would not make sense for this court to require Ford hearings which will ultimately be for naught, because Irick would only be subject to an execution date upon the conclusion of his reopened *habeas* proceedings, at which point (if necessary) a new Ford hearing would be required (if Irick were ultimately denied relief on his reopened *habeas* petition). It is a waste of judicial resources to conduct Ford proceedings which would have to be repeated at a later date.

This court, therefore, should vacate Irick's execution date pending the conclusion of Irick's Rule 60(b) and re-opened *habeas* proceedings. This court should also vacate its remand to the Knox County Criminal Court for Ford proceedings, without prejudice to a future remand upon any ultimate "unsuccessful challenge" (Rule 12.4(A)) to the death sentence in *habeas* proceedings.

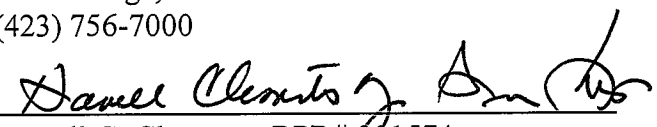
**CONCLUSION**

Under Rule 12.4(A), Tennessee's constitutional command that Irick be given protections of the law of the land (Article I, §8), and the due process clause of the Fourteenth Amendment, this court should vacate the execution date given the requirements of Rule 12.4(A) and vacate the order requiring a Ford hearing, without prejudice to a new Ford hearing upon the conclusion of any unsuccessful challenge to the death sentence in the reopened *habeas* proceedings.

SPEARS, MOORE, REBMAN & WILLIAMS

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Attorneys for Petitioner



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause via facsimile or U.S. Mail addressed as follows:

(615/532-7791)  
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Knoxville, TN 37901-1468

This 22<sup>nd</sup> day of July, 2010

SPEARS, MOORE, REBMAN & WILLIAMS

By: m. Diller

# **EXHIBIT**

**1**



02-5105, *In re Billy Ray Irick*

was also decided. No. 02-6547/6548 (6th Cir. filed Jan. 18, 2008). With those two obstacles removed, we can now rouse this motion from its long slumber and decide it.

Because *McQueen* is no longer applicable, see *Gonzales v. Crosby*, 545 U.S. 524 (2005), the district court is no longer required to transfer the Rule 60(b) motion to this court and may proceed to rule on that motion in the first instance.

Therefore, the motion for leave to file a second or successive habeas corpus petition is removed from abeyance, the motion is denied as unnecessary, and this case is remanded to the district court to rule on Irick's Rule 60(b) motion.

**ENTERED BY ORDER OF THE COURT**



Leonard Green, Clerk

# **EXHIBIT**

**2**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

FILED

2001 NOV 20 P 3:14

BILLY R. IRICK )  
 )  
Petitioner )  
 )  
vs. ) Case No. 3:98-cv-666  
 ) Judge Collier/Powers BY \_\_\_\_\_ DEP. CLERK  
 )  
RICKY BELL, WARDEN, Riverbend )  
Maximum Security Institution )  
 )  
Respondent )

U.S. DISTRICT COURT  
EASTERN DIST. TENN.

PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT

Comes the Petitioner, by his attorneys, and respectfully moves this Court pursuant to Rule 60(b) of the Federal Rules of Civil Procedure for relief from this Court's Memorandum and Order filed on March 30, 2001 and the Order filed on April 23, 2001. As grounds therefore, Petitioner would state that Tennessee law regarding exhaustion of remedies and procedural default has been amended retroactively in Tennessee Supreme Court Rule 39 and that the adoption of Rule 39 has a direct impact on portions of this Court's orders referenced above, including claims concerning the (1) felony murder aggravating circumstance; (2) flight instruction; (3) prejudice or sympathy instructions; (4) failure of trial counsel to investigate and present evidence; and (5) failure of trial counsel to present mental health defense.

Rule 39 of the Rules of the Supreme Court of the State of Tennessee adopted June 28, 2001 provides that when a claim has been presented to the Court of Criminal Appeals or the Supreme Court and the relief has been denied, the litigant is deemed to have exhausted all available state remedies for that claim. This rule

was made retroactive to all criminal convictions or post-conviction relief matters from and after July 1, 1967. In several instances, this Court relied upon what had been previous Tennessee law to hold that several claims were procedurally defaulted for having not been raised on the Court of Appeals or the Tennessee Supreme Court level. Based on Supreme Court Rule 39, Petitioner now seeks relief from those orders. In support of said motion, Petitioner is filing a Memorandum of Law.

Respectfully submitted,

SPEARS, MOORE, REBMAN & WILLIAMS

By: Howell G. Clements

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Carl E. Shiles, Jr., BPR#011678

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this pleading has been served on counsel for all parties at interest in this cause by depositing a copy of same in the United States Mail with sufficient postage thereon to carry same to its destination, addressed as follows:

Glen R. Pruden  
State of Tennessee  
Criminal Justice Division  
Cordell Hull Building, 2nd Floor  
426 Fifth Avenue North  
Nashville, TN 37243

This 20 day of November, 2001.

SPEARS, MOORE, REBMAN & WILLIAMS

By: Cindy Larkin

# **EXHIBIT**

**3**



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

FILED

2001 NOV 20 P 3:14

BILLY R. IRICK )  
 )  
Petitioner )  
 )  
vs. ) Case No. 3:98-cv-666  
 ) Judge Collier/Powers  
 )  
RICKY BELL, WARDEN, Riverbend )  
Maximum Security Institution )  
 )  
Respondent )

U.S. DISTRICT COURT  
EASTERN DIST. TENN.  
DEP. CLERK

MEMORANDUM OF LAW IN SUPPORT OF  
PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT

Rule 60(b) of the Federal Rules of Civil Procedure provides that a movant may obtain relief from a judgment or order based on one of six criteria. Petitioner asserts that two or more of these criteria found in (b) are applicable to this motion. In particular, criteria five and six provide strong justification for this Court to relieve the Petitioner from the previous orders dismissing his petition and amended petition for habeas corpus. These criteria provide as follow:

- 5. The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- 6. Any other reason justifying relief from the operation of the judgment.

This Court dismissed several claims or portions of claims based on findings that the Petitioner had procedurally defaulted these claims by failing to raise them before the Tennessee Supreme Court or Court of Appeals in earlier state proceedings. However, on June 28, 2001 some three months following this Court's

Memorandum and Order, the Tennessee Supreme Court adopted Rule 39.

The rule provides as follows:

In all appeals from criminal convictions or post-conviction relief matters from and after July 1, 1967, a litigant shall not be required to petition for rehearing or to file an application for permission to appeal to the Supreme Court of Tennessee following an adverse decision of the Court of Criminal Appeals in order to be deemed to have exhausted all available state remedies respecting a claim of error. Rather, when the claim has been presented to the Court of Criminal Appeals or the Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies available for that claim. On automatic review of capital cases by the Supreme Court pursuant to Tennessee Code Annotated §39-13-206, a claim presented to the Court of Criminal Appeals shall be considered exhausted even when such claim is not renewed in the Supreme Court on automatic review. [adopted June 28, 2001.]

Based on new Supreme Court Rule 39, Petitioner respectfully submits that the prior law upon which this Court based its orders has been reversed or superceded requiring this Court to modify its orders as to those claims. Relief is proper in this case in that Petitioner's Rule 60 motion is timely - having been filed well within one year of the Court's order of April 23, 2001, as well as June 28, 2001 - the adoption date of Rule 39. The motion is also properly before this Court though Petitioner's Application For Certificate of Appealability is still before the 6th Circuit Court of Appeals. See First National Bank of Salem, Ohio v. Hirsch, 535 F.2d 343, 346 (6th Cir. 1976) and Flynt v. Brownfield, 726 F. Supp. 1106 (S.D. Ohio 1989). Petitioner will briefly discuss those claims which he believes are effected by the new Tennessee Supreme Court Rule.

### Aggravating Circumstances - Felony Murder

In his petition and amended petition, Petitioner asserts that the Tennessee Court of Appeals incorrectly found that the use of the underlying felony of rape as an aggravating circumstance was harmless error. However, this Court dismissed the claim on the basis that Petitioner failed to challenge the harmless error analysis on federal constitutional grounds when he pled his claim before the Supreme Court in his post-conviction appeal. (See page 83 of Memorandum and Order.) However, on page 20 of Petitioner's appellate brief, Petitioner clearly states his reliance on the Supreme Court opinions of Zant v. Stephens, 462 U.S. 862 (1983) and Godfrey v. Georgia, 446 U.S. 420 (1980). Given the new Supreme Court Rule 39, Petitioner's reliance on U.S. Supreme Court precedent in his direct appeal satisfied the exhaustion requirement, and there was no requirement to reiterate the federal constitutional basis on the Supreme Court level. (However, the Court stated other bases for dismissing the claim - see pages 83 and 84 of Memorandum and Opinion.) Therefore, Petitioner respectfully requests that this Court amend its orders and grant his petition for habeas corpus.

### Flight Instruction

In his petition and amended petition, Petitioner claims that the flight instruction given at his trial unconstitutionally shifted the burden of proof to himself. Petitioner further claims that there was no factual basis for using the instruction since there was no evidence of flight. On page 131 of its Memorandum and

Order, the Court dismissed this claim on the basis that the Petitioner failed to present the claim to the Supreme Court in the appeal of his post-conviction proceedings and that therefore the claim was procedurally defaulted. Based on Rule 39, Petitioner now respectfully submits that he has not defaulted on this claim and that he should prevail on its merits. (However, the Court stated on page 132 of its Order that it would nevertheless dismiss this claim.) Petitioner respectfully requests that the Court amend its order and grant his petition for habeas corpus.

Prejudice or Sympathy Instruction

In his petition and amended petition, the Petitioner challenges the state trial court's guilt phase instruction directing the jury not to have prejudice or sympathy, the state trial court's instruction regarding when the sentence should be death, as well as the state trial court's failure to instruct the members of the jury that they were the sole judges of the facts and law. On page 134 of the Memorandum and Order, the Court dismissed this claim on the basis that Petitioner had failed to present the claim to the Supreme Court. Based on the new Supreme Court Rule 39, Petitioner respectfully moves this Court to amend its orders and grant his petition for habeas corpus.

Ineffective Assistant of Counsel - Failure of Trial  
Counsel To Investigate and Present Evidence

In his petition and amended petition, Petitioner vigorously asserts that trial counsel failed to fully investigate his case and present all the evidence to defend his case properly.

However, this Court found on page 149 of its Memorandum and Order that Petitioner skipped the intermediate level of state court review thus resulting in a procedural default of this claim. However, the new Supreme Court Rule 39 would nevertheless result in an exhaustion of Petitioner's remedies since presentation to either the Court of Appeals or Supreme Court exhausts the claim. Therefore, Petitioner respectfully moves this Court to amend its orders and grant his petition for habeas corpus.

#### Failure of Trial Counsel to Present Mental Health Defense

In his petition and amended petition, Petitioner asserts that his trial counsel failed to present a cogent theory of defense/mitigation based on his background and mental infirmity. As in the previous section, Petitioner also argues that his trial counsel failed to fully investigate his personal history which would have revealed a severely disturbing home environment, as well as compelling evidence of longstanding mental disease. However, on page 151, the Court found that the Petitioner had procedurally defaulted this claim because he failed to submit the claim to the Criminal Court of Appeals. Based on the new Supreme Court Rule 39, Petitioner respectfully moves this Court to amend its orders and grant his petition for habeas corpus.

#### Conclusion

Based on the new Supreme Court Rule 39 adopted on June 28, 2001 and subsequent to this Court's Memorandum Opinion and Order and order of April 23, 2001, the Petitioner respectfully moves this Court to grant him relief from those portions of its

orders which held that the Petitioner had procedurally defaulted for failing to raise a claim before the Court of Appeals or Tennessee Supreme Court. Rule 39 has been made retroactive to July 1, 1967 bringing this case well within its scope. Furthermore, the basis of this Court's dismissal regarding these claims has now been clearly and unequivocally reversed or modified necessitating relief. Petitioner therefore requests that the Court amend its orders to reflect that said claims have not been procedurally defaulted and to grant the relief requested by the Petitioner in his Petition for Habeas Corpus and/or to grant an evidentiary hearing if necessary.

Respectfully submitted,

SPEARS, MOORE, REBMAN & WILLIAMS

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By: *Howell G. Clements*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this pleading has been served on counsel for all parties at interest in this cause by depositing a copy of same in the United States Mail with sufficient postage thereon to carry same to its destination, addressed as follows:

Glen R. Pruden  
State of Tennessee  
Criminal Justice Division  
Cordell Hull Building, 2nd Floor  
426 Fifth Avenue North  
Nashville, TN 37243

This 20 day of November, 2001.

SPEARS, MOORE, REEBMAN & WILLIAMS

By: Cindy Jarkin

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