

FILED

MAR 29 2001

Clerk of the Court
Filed By _____

IN THE TENNESSEE COURT OF CRIMINAL APPEALS

PHILLIP R. WORKMAN,

Petitioner,

vs.

Cause No.:

Trial Court Numbers B81209, P3908

STATE OF TENNESSEE,

EXECUTION DATE 1:00 A.M. FRIDAY MARCH 30

Respondent.

BRIEF OF THE APPELLANT

ON APPEAL AS OF RIGHT FROM THE CRIMINAL COURT OF SHELBY
COUNTY, THE HONORABLE JOHN COLTON PRESIDING

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TELEPHONE CONFERENCE ORAL
ARGUMENT REQUESTED

IN THE TENNESSEE COURT OF CRIMINAL APPEALS

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Comes now your Appellant Philip R. Workman, through his undersigned counsel of record, and files this Emergency Brief of the Appellant.

I.

PROCEEDINGS BELOW

On Wednesday March 28, Philip Workman filed his (1) "Petition for Writ of Error Coram Nobis, Supplement to Original Petition for Post Conviction Relief, Petition for Declaratory Judgment, Motion for Stay of Execution"; (2) "Motion to Reopen Post Conviction Petition, Motion for Stay of Execution" and (3) "Memorandum in Support of Motion to Reopen Post Conviction Petition." Oral argument was heard on these motions on Thursday March 29 at 8:00 a.m. At approximately 4:00 p.m. Judge Colton issued his "Amended Findings of Fact and Conclusions of Law on Petition for a Writ of Error Coram Nobis, Motion to Reopen Post Conviction Petition, and Motion for a Stay of Execution." In said Order, Judge Colton denied the relief requested by Mr. Workman. A Notice of Appeal to the Tennessee Court of Criminal

Appeals was filed at 4:34 p.m.

**II.
INCORPORATION BY REFERENCE OF TRIAL
COURT PLEADINGS AND TRANSCRIPT**

In light of the shortness of time until Mr. Workman's scheduled execution, Appellant incorporates herein by reference all of the arguments for relief raised in the aforesaid pleadings in the Criminal Court, a copy of which have previously been sent via facsimile to the court. Counsel also relies upon the transcript of the oral argument in front of Judge Colton which has been sent electronically as well to the Court.

**III.
THIS COURT SHOULD ADDRESS WORKMAN'S ARGUMENT THAT
IT VIOLATES THE TENNESSEE AND UNITED STATES CONSTITUTIONS
TO EXECUTE MR. WORKMAN IN LIGHT OF HIS CREDIBLE
SHOWING OF A CLAIM OF ACTUAL INNOCENCE**

Mr. Workman has raised serious questions concerning whether recently discovered evidence may show that he did not kill Memphis Police Officer Ronald Oliver. To date no court has allowed Mr. Workman an opportunity to press his claims at an evidentiary hearing as to his factual innocence of murder notwithstanding the fact that Harold Davis, the only eye witness supporting the State's position that Workman shot Oliver, committed perjury. No court has allowed an evidentiary hearing to weigh newly discovered ballistics evidence demonstrating that Mr. Workman's bullet did not kill Ronnie Oliver. No court has heard Mr. Steven Craig testify that in fact police officers were firing their weapons even though they denied so doing at Mr. Workman's trial. Furthermore and perhaps most egregiously the State failed to comply with subpoenas and provide a postmortem x-ray of Mr. Oliver to defense counsel which critically supported Mr. Workman's claims that he did not kill Officer Oliver. Five jurors have submitted

Affidavits to this court that had they known the aforesaid evidence, they would not have sentenced Mr. Workman to death.

Mr. Workman raised a claim before the trial court that it violates the Tennessee Constitution Article I sections 8, 16, and 32 to fail to afford an evidentiary hearing to a person who claims actual innocence in light of proof of fraudulent concealment of exculpatory evidence by state officials. Furthermore, Mr. Workman raised the issue of whether the law of the land provision of the Tennessee Constitution, Article I, Sections 8, 16 and 32 prohibit execution of a man who presents substantial evidence that he is factually innocent of capital murder. See "Petition for Writ of Error Coram Nobis, Supplement to Original Petition for Post Conviction Relief, Petition for Declaratory Judgment, Motion for Stay of Execution," pp. 8-11; "Memorandum in Support of Motion to Reopen Post-Conviction Petition," pp. 6-11.

Judge Colton in his opinion did not even address state constitutional issues or the companion issues as to whether failure to afford an evidentiary hearing or relief violated the United States Constitution. Notwithstanding the fact that this issue was fully briefed and the focus of counsel's oral argument, Judge Colton did not rule on this important aspect of Tennessee and Federal constitutional law.

For all the reasons raised in the brief, counsel prays that this court grant a stay of execution and consider whether or not due process as guaranteed by the Tennessee Constitution will tolerate executing a man who has made a factual showing of innocence, particularly when fraud by state officials has frustrated Mr. Workman's ability to put forward proof on this point before any court. Due to the seriousness of these issues, Workman prays that this court grant

emergency oral argument via telephone conference, or, alternatively, this court grant a stay of execution and let this issue be briefed fully with the attention it deserves.

IV.
**WORKMAN PRAYS THIS COURT CONSIDER
ALL OTHER ISSUES RAISED BELOW**

Mr. Workman further prays that this Court reverse Judge Colton and grant a stay of execution for all the reasons set forth in the afore-referenced pleadings and transcript filed in the trial court.

Respectfully Submitted,

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