

**IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION I**

SEDLEY ALLEY)	
Ex rel. Estate of Sedley Alley,)	Death Penalty
Petitioner¹)	Post-Conviction
)	
v.)	Nos. 85-05085
)	85-05086
STATE OF TENNESSEE,)	85-05087
Respondent.)	

ORDER DISMISSING “PETITION FOR POST-CONVICTION DNA ANALYSIS”

This matter came before the Court October 14, 2019, for a hearing on the above-referenced petition, filed April 30, 2019, and followed by additional pleadings by both parties. Having reviewed the pleadings and the relevant case law, and having considered the arguments of counsel, the Court concludes Mr. Alley’s estate does not have standing to file a petition for DNA analysis under the Post-Conviction DNA Analysis Act, and as a result this Court does not have subject matter jurisdiction to consider the petition. Accordingly, the petition is DISMISSED.

This Court’s order should not be treated as a ruling on the merits of the substantive claims raised in the petition for DNA testing. Because the Court has no jurisdiction to consider the petition, the Court cannot consider the substantive claims raised therein.

I. Background

A Shelby County jury convicted Mr. Alley of first degree murder, kidnapping, and

¹ For ease of reference, in this order Mr. Alley’s estate and April Alley, the executor, shall be referenced collectively as “Petitioner.” Sedley Alley will be referenced by his full name or “Mr. Alley.”

aggravated rape, for the 1985 beating, rape, sexual assault, and murder of nineteen-year-old Marine Lance Corporal Suzanne Collins. The jury sentenced Mr. Alley to death, and the trial court imposed lengthy sentences for the other convictions. Mr. Alley's convictions and sentences ultimately withstood the three-tier appellate review process. *See State v. Alley*, 776 S.W.2d 506 (Tenn. 1989) (direct appeal); *Alley v. State*, 958 S.W.2d 138 (Tenn. Crim. App. 1997) (post-conviction);² *Alley v. Bell*, 307 F.3d 380 (6th Cir. 2002), *cert. denied*, 540 U.S. 839 (2003) (federal habeas corpus). Mr. Alley was executed on June 28, 2006.

II. Petitions for Post-Conviction DNA Analysis

A. Prior Petitions

Before his execution, Mr. Alley sought DNA testing of certain items in support of his contention that he did not commit the offenses against LCpl. Collins. On May 4, 2004, Mr. Alley filed a petition for post-conviction DNA testing³ in Shelby County Criminal Court, seeking the testing of eleven different biological samples. After a hearing, the post-conviction court denied the petition in a written order. The Court of Criminal Appeals summarized the post-conviction court's findings as follows:

In denying DNA testing, the post-conviction court found that "the petitioner has failed to demonstrate that a reasonable probability exists that . . . he would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis of the requested samples." The post-conviction court further found that "the petitioner has failed to demonstrate that a reasonable probability exists that analysis of said evidence will produce DNA results which would have rendered the petitioner's verdict or sentence more favorable if the

² The Tennessee Supreme Court denied application for permission to appeal in the post-conviction case on September 29, 1997.

³ The late Judge Otis Higgs presided over proceedings involving the two post-conviction DNA petitions filed before Mr. Alley's execution.

results had been available at the proceeding leading to the judgment of conviction.”

Sedley Alley v. State, No. W2004-01204-CCA-R3-PD, 2004 WL 1196095, at *1 (Tenn. Crim. App. May 26, 2004). On appeal, the Court of Criminal Appeals affirmed the post-conviction court, and the Tennessee Supreme Court denied permission to appeal on October 4, 2004.

On May 19, 2006, Mr. Alley filed another petition for post-conviction DNA analysis. In the second petition, Mr. Alley sought the testing of three items which were not identified in the 2004 petition for testing, including (1) cellular material from a pair of men’s underwear found next to the victim’s body; (2) cellular material from the stick used to violate the victim; and (3) material from underneath the victim’s fingernails. Mr. Alley asserted the DNA results from these and other items could be matched to the victim’s boyfriend or to another person’s DNA stored in a state or federal database. The post-conviction court denied the petition, and the Court of Criminal Appeals affirmed the trial court’s ruling. Of particular note, the Court of Criminal Appeals concluded that the Post-Conviction DNA Analysis Act

created a limited interest of a defendant in establishing his/her innocence and did not create an interest in establishing the guilt of a speculative an unknown third party.

. . . . The results of DNA testing must stand alone and do not encompass a speculative nationwide search for the possibility of a third party perpetrator. Thus, the DNA analysis is limited to showing that the biological specimen did not belong to either the Petitioner or the victim.

Sedley Alley v. State, No. W2006-01179-CCA-R3-PD, 2006 WL 1703820, at *9 (Tenn. Crim. App. June 22, 2006). The Tennessee Supreme Court denied application for permission to appeal on June 27, 2006.

B. Powers

Five years after Mr. Alley's execution, the Tennessee Supreme Court concluded the Post-Conviction DNA Analysis Act "authorizes a comparison between the DNA profile developed from crime scene evidence that does not match the petitioner's profile, which is 'DNA in a human biological specimen,' with 'DNA from another biological specimen.' Our interpretation is that this includes a comparison with other profiles contained in the database." *Powers v. State*, 343 S.W.3d 36, 50 (Tenn. 2011). The Supreme Court's ruling overruled the portion of the 2006 *Alley* opinion which concluded that comparing DNA specimens to third parties was impermissible.

C. Current Petition

On April 30, 2019, attorneys for April Alley, Sedley Alley's daughter, filed another petition for post-conviction DNA testing. The motion was initially filed in Division II of Criminal Court, but the matter was transferred to Division I. The State subsequently filed a response May 31, 2019. At a short hearing held in June 2019, the Court determined the most pressing issue in this case is whether Mr. Alley's estate has standing to pursue this post-conviction matter. The Court ordered counsel for the estate to file a reply to the State's response; the estate did so on August 26, 2019. On September 12, 2019, the State filed a response to the estate's reply.

III. Current Post-Conviction DNA Petition: Standing Issue

A. Estate's Initial Petition

As relevant to the standing issue, the April 30 motion states,

In an order entered February 21, 2019, granting April Alley's petition to probate her father's estate, the probate court in Davidson County explicitly held that April Alley, as personal representative, is granted the authority to exercise any and all rights of her father Sedley Alley as provided in the Post-Conviction DNA Analysis Act of 2001.⁴

The initial petition for DNA testing made no other references to the standing issue.

B. State's Response

The State filed its response to the petition for DNA testing on May 31, 2019. In addition to responding to the Petitioner's substantive claims, the State's initial response raises several arguments related to its claim that the Alley estate lacks standing under both the Post-Conviction DNA Analysis Act of 2001 and the doctrine of justiciability. First, the State argues Mr. Alley's estate is not a "person convicted of and sentenced for first degree murder" within the meaning of Tennessee Code Annotated section 40-30-303. The State asserts an estate does not qualify as a "person" within the meaning of other sections of state law, nor does the estate qualify as a "person" within the meaning of the Post-Conviction Procedure Act. The State asserts the Act contemplates actions filed by a petitioner whose sentence has not been fully executed, not by the estate of a deceased petitioner.

Second, the State argues any rights Mr. Alley may have had to post-conviction DNA testing did not survive his death. Specifically, the State argues the Post-Conviction DNA Procedure Act does not contain a provision authorizing the survivability of such a claim. Other sections of Tennessee law explicitly provide for the survivability of certain actions on behalf of deceased litigants, the State claims, but the right to bring a post-

⁴ The Davidson County Probate Court order was filed as an exhibit to Petitioner's motion for DNA testing.

conviction claim is not so enumerated.

Third, the State asserts the Davidson County Probate Court was without jurisdiction to enter an order allowing April Alley (and the Alley estate) to qualify as a “person” under the post-conviction DNA testing statute. The State argues the only court in which jurisdiction for this case lies is the convicting court; thus, a court in Davidson County has no jurisdiction over a post-conviction matter in Shelby County. The State also argues the Davidson County court has no authority over the evidence collected in Shelby County and entered into the record in Mr. Alley’s Shelby County court proceedings.

Fourth, the State asserts the present petition is not “otherwise justiciable.” In addition to the lack of standing, the State argues the estate has not suffered any injury, nor can this Court provide any redress to the estate given that Mr. Alley has been executed. Furthermore, the State claims Mr. Alley’s execution (and the Court’s inability to provide relief) renders the motion for relief moot, as Mr. Alley’s sentence has expired.

Fifth, the State argues the current motion is untimely. While Tennessee Code Annotated section 40-30-303 allows a motion for post-conviction DNA testing to be filed “at any time,” the State claims the phrase “at any time” does not encompass a period beyond a petitioner’s death or the expiration of his sentence (which in this case are one in the same).

Finally, the State argues the current motion is precluded by the principles of res judicata and collateral estoppel.

C. Estate’s Reply

Following the Court’s June 2019 hearing the estate filed a memorandum of law responding to the State’s assertions. In its response, the estate contends:

1. The authority to which the State cited in arguing that post-conviction matters are not civil in nature actually supports the Petitioner's contention that civil rules of procedure apply to this case. Mr. Alley's right to DNA testing is therefore not abated by his death.
2. The plain language of the post-conviction DNA testing statute does not preclude the estate's right to DNA testing, as the act does not require that the "person" seeking testing be in custody or subject to supervised release, and the act allows the "person" to bring the claim "at any time."
3. The plain language of other statutes, including statutes dealing with exoneration, expunction, compensation, and the like, make clear that the legislature intended such claims to survive a petitioner's death.
4. Ms. Alley did suffer "distinct and palpable injuries" as a result of her father's execution; these injuries are traceable to state action, and these injuries could be redressed by a favorable decision of this Court, which would in turn entitle the estate to compensation. Therefore, the estate does meet the traditional standing requirements.
5. The Davidson County Probate Court, as a court with chancery jurisdiction, properly concluded Mr. Alley's estate could pursue the post-conviction DNA claim presently in this Court.
6. Collateral estoppel, res judicata, and law of the case doctrines do not bar litigation of the current petition.
7. The estate has a constitutional right to DNA testing.

D. Further Response by State

The State filed an additional responsive pleading on September 12, 2019. In the response, the State asserts, among other things: (1) Post-conviction proceedings are not bound by the Tennessee Rules of Civil Procedure or statutes governing survivorship of tort actions; and (2) the estate has no constitutional right to bring a post-conviction action.

IV. Analysis

A. Post-Conviction DNA Testing

As relevant to this case, the Post-Conviction DNA Analysis Act of 2001 permits “a person convicted of and sentenced for the commission of first degree murder” to, at any time, file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence.

Tenn. Code Ann. § 40-30-303. The post-conviction DNA testing statutes establish the circumstances under which such testing is mandatory, *see* Tenn. Code Ann. § 40-30-304, and in which testing is discretionary, *see* Tenn. Code Ann. § 40-30-305.

B. Standing and Subject Matter Jurisdiction

The Tennessee Supreme Court has stated,

Subject matter jurisdiction involves a court’s lawful authority to adjudicate a particular controversy. *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000). Tennessee’s courts derive subject matter jurisdiction from the state constitution or from legislative acts. *See id.*; *Meighan v. U.S. Sprint Communications Co.*, 924 S.W.2d 632, 639 (Tenn. 1996); *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977). Courts may not exercise jurisdictional powers that have not been conferred on them directly or by necessary implication. *See First Am. Trust Co. v. Franklin–Murray Dev. Co.*, 59 S.W.3d 135, 140 (Tenn. Ct. App. 2001); *Dishmon v. Shelby State Cmty. Coll.*, 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999).

Osborn v. Marr, 127 S.W.3d 737, 739 (Tenn. 2004).

The Court in *Osborn* continued, “When a statute creates a cause of action and designates who may bring an action, the issue of standing is interwoven with that of subject matter jurisdiction and becomes a jurisdictional prerequisite.” *Id.* at 740. Thus, when the legislature “specifically designate[s] who may file” a particular action, “a court does not have subject matter jurisdiction to hear such an [action] unless the party filing

the [action] has standing. Standing, therefore, is a necessary prerequisite to the court's exercise of subject matter jurisdiction" in any case. *Id.* (alterations added).

The Tennessee Supreme Court has summarized standing as follows:

Courts employ the doctrine of standing to determine whether a particular litigant is entitled to have a court decide the merits of a dispute or of particular issues. *Warth v. Seldin*, 422 U.S. 490, 498, 95 S. Ct. 2197, 45 L.Ed.2d 343 (1975); *Knierim v. Leatherwood*, 542 S.W.2d 806, 808 (Tenn.1976) (holding that courts use the standing doctrine to decide whether a particular plaintiff is "properly situated to prosecute the action."); *City of Brentwood v. Metropolitan Bd. of Zoning Appeals, et al.*, 149 S.W.3d 49, 55 (Tenn. Ct. App. 2004), *perm. app. denied* (Tenn. Sept. 13, 2004). Grounded upon "concern about the proper—and properly limited—role of the courts in a democratic society," *Warth*, 422 U.S. at 498, the doctrine of standing precludes courts from adjudicating "an action at the instance of one whose rights have not been invaded or infringed." *Mayhew v. Wilder*, 46 S.W.3d 760, 767 (Tenn. Ct. App. 2001), *perm. app. denied* (Tenn. April 30, 2001). The doctrine of standing restricts "[t]he exercise of judicial power, which can so profoundly affect the lives, liberty, and property of those to whom it extends, . . . to litigants who can show 'injury in fact' resulting from the action which they seek to have the court adjudicate." *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.* 454 U.S. 464, 473, 102 S. Ct. 752, 70 L.Ed.2d 700 (1982). Without limitations such as standing and other closely related doctrines⁵ "the courts would be called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights." *Warth*, 422 U.S. at 500; *see also DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, —, 126 S. Ct. 1854, 1856, 164 L.Ed.2d 589 (2006) (explaining that standing enforces the constitutional case-or-controversy requirement that is "crucial in maintaining the 'tripartite allocation of power' set forth in the Constitution").

To establish standing, a plaintiff must show three "indispensable" elements "by the same degree of evidence" as other matters on which the plaintiff bears the burden of proof. *Petty v. Daimler/Chrysler Corp.*, 91 S.W.3d 765, 767 (Tenn. Ct. App. 2002), *perm. app. denied* (Tenn. Sept. 9, 2002). First, a plaintiff must show a distinct and palpable injury: conjectural or hypothetical injuries are not sufficient. *City of Brentwood*, 149 S.W.3d at 55–56; *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L.Ed.2d 351 (1992). Standing also may not be predicated upon an injury to an interest that the

⁵ "The standing question thus bears close affinity to questions of ripeness—whether the harm asserted has matured sufficiently to warrant judicial intervention—and of mootness—whether the occasion for judicial intervention persists." *Warth*, 422 U.S. at 499 n. 10, 95 S. Ct. 2197 (original footnote at 195 S.W.3d at 620 n.7).

plaintiff shares in common with all other citizens. *Mayhew*, 46 S.W.3d at 767. Were such injuries sufficient to confer standing, the State would be required to defend against “a profusion of lawsuits” from taxpayers, and a purpose of the standing doctrine would be frustrated. *See Parks v. Alexander*, 608 S.W.2d 881, 885 (Tenn.Ct.App.1980) (stating that one purpose of standing is to protect the State from a “profusion of lawsuits”).

The second essential element of standing is a causal connection between the claimed injury and the challenged conduct. *Mayhew*, 46 S.W.3d at 767. A plaintiff may satisfy this element by establishing the existence of a “fairly traceable” connection between the alleged injury in fact and the defendant’s challenged conduct. *DaimlerChrysler Corp.*, 547 U.S. at —, 126 S. Ct. at 1861. The third and final element necessary to establish standing is a showing that the alleged injury is capable of being redressed by a favorable decision of the court. *Petty*, 91 S.W.3d at 767; *DaimlerChrysler Corp.*, 547 U.S. at —, 126 S. Ct. at 1861.

American Civil Liberties Union of Tennessee v. Darnell, 195 S.W.3d 612, 619-20 (Tenn. 2006) (hereinafter “*ACLU v. Darnell*”).

C. Application to Current Case

After reviewing the parties’ extensive briefing, the Court concludes Petitioner lacks standing to bring this action and the Court lacks subject matter jurisdiction to consider the estate’s claims. In filing this Order, the Court focuses on five areas which, in the Court’s view, address all concerns raised by the parties.

1. Statutory Interpretation

The Court begins by examining the relevant statutes addressing post-conviction cases generally and post-conviction DNA testing in particular, as well as by examining Tennessee Supreme Court Rule 28. When interpreting statutes, the reviewing court’s duty “is to ascertain and give effect to the intention of the legislature.” *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). “Legislative intent is to be ascertained

whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language.” *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000) (quoting *Hawks v. City of Westmoreland*, 960 S.W.2d 10, 16 (Tenn. 1997)). “When the statutory language is clear and unambiguous, [the reviewing court] must apply its plain meaning in its normal and accepted use, without forced interpretation that would limit or expand the statute’s interpretation.” *Eastman Chem.*, 151 S.W.3d at 507 (alteration added).

In this case, a plain reading of the relevant statutes at issue shows that the estate of a deceased inmate has no standing to bring a post-conviction DNA claim. For instance, the language of the post-conviction DNA statute clearly and unambiguously states “a person convicted of and sentenced for the commission of” certain offenses, including first degree murder, is entitled to file a petition for post-conviction DNA testing; no language in the statute allows anyone to bring a DNA testing action on such a person’s behalf. Additionally, a plain reading of the applicable post-conviction statutes and Tennessee Supreme Court Rule 28 reveals that they (statutes and Rule 28) contain no provisions which would allow someone to file a post-conviction action of any kind on behalf of a deceased person.

Additionally, none of the other statutory provisions cited in the Petitioner’s various filings reference post-conviction actions. Those statutory provisions will be addressed elsewhere in this order. In the Court’s view, had the General Assembly—or the Tennessee Supreme Court, in Rule 28—intended for someone to be able to file a motion for post-conviction DNA testing on behalf of a statutorily eligible person who had died, such a provision would have been placed in the appropriate statutes. Because such a provision was not included in the statutes or Rule 28, this Court must presume that the

drafters did not intend to confer such a right, and this Court cannot expand the interpretations of the statutes and Rule 28 beyond the bounds established by their drafters.

2. The Nature of Post-Conviction DNA Proceedings (Criminal vs. Civil)

Petitioner argues that between the fact that the Tennessee Supreme Court has concluded post-conviction proceedings are “civil in nature” for purposes of tolling statutes of limitation and the “law enforcement” and “justice finding” purposes of the DNA Analysis act, motions for post-conviction DNA testing should be considered civil in nature, and therefore the right to bring a cause of action for post-conviction DNA testing survives Mr. Alley’s death. This Court disagrees.

Petitioner correctly states the Tennessee Supreme Court has “held that a post-conviction petition should be considered as civil in nature for the purpose of tolling the statute of limitations.” *Carter v. Bell*, 279 S.W.3d 560, 565 (Tenn. 2009) (citing *Watkins v. State*, 903 S.W.2d 302, 305 (Tenn. 1995)). This Court, however, is unaware of any other precedent concluding specifically that post-conviction cases generally and post-conviction DNA testing proceedings in particular should be considered “civil actions” or “civil in nature.” As the Tennessee Supreme Court has stated, “Post-conviction proceedings are best described as proceedings arising out of a criminal case.” *Carter*, 279 S.W.3d at 565. “Post-conviction proceedings are not considered civil actions for the purpose of the jurisdiction of the Court of Appeals.” *Id.* (citing Tenn. Code Ann. § 16-401-08(a)(1)). Furthermore, Rule 28 specifies, “Neither the Tennessee Rules of Civil Procedure nor the Tennessee Rules of Criminal Procedure apply to post-conviction proceedings except as specifically provided by these rules.” Tenn. Sup. Ct. R. 28, § 3(B).

Thus, whatever the nature of post-conviction proceedings, it is clear that they are not “civil actions” or “actions related to a civil proceeding” unless they are designated as such, in whole or in part, by the Tennessee Supreme Court or the legislature. Thus, statutes, court rules, and case law relevant to civil proceedings are generally inapplicable to post-conviction proceedings.

Nothing in the case law or statutes cited by the Petitioner convinces this Court otherwise. The Tennessee Supreme Court’s opinion in *Powers* and the statutes creating the TBI DNA database do not specifically reference the ability of a post-conviction DNA action to be considered civil in nature or allow a post-conviction DNA claim to be brought by the estate of a deceased inmate. Furthermore, as the State notes in its pleading, while Tennessee statutes provide for the survivability of civil actions by a deceased’s personal representative,⁶ neither the survivability statutes nor other authority interpreting these statutes designates a post-conviction matter as one which falls within the purview of the civil survivability statutes. Finally, the statutes referencing the Governor’s exoneration power and the Board of Claims’ power to compensate wrongfully convicted persons and their heirs do not reference post-conviction claims. Thus, in this Court’s view a cause of action for post-conviction DNA testing cannot be considered a civil claim that survives the death of an inmate who, if living, could otherwise bring the claim.

3. Ability of Davidson County Probate Court to Confer Standing

Generally, a circuit court has no jurisdiction beyond the boundaries of its judicial district:

⁶ See Tenn. Code Ann. §§ 20-5-102 through -106.

[T]he Tennessee Constitution [. . .] provides the General Assembly with power to establish “[t]he jurisdiction of the Circuit, Chancery[,] and other Inferior Courts.” Tenn. Const. art. VI, § 8; see also Tenn. Const. art. VI, § 1. The General Assembly has exercised this constitutional authority by enacting a statute that divides Tennessee “into thirty-one (31) judicial districts” and delineates the county or counties included in each judicial district. Tenn. Code Ann. § 16-2-506 (Supp. 2018). Other statutes provide that circuit court judges are to be elected by the voters of their “respective judicial districts,” Tenn. Code Ann. § 17-1-103(b) (Supp. 2018), and that each circuit court judge must “reside in the judicial district or division for which the judge . . . is elected,” Tenn. Code Ann. § 17-1-102 (2009). Another statute confirms that circuit court judges are judges “for the state at large” and then declares that, “as such, [circuit court judges] may, *upon interchange and upon other lawful ground, exercise the duties of office in any other judicial district in the state.*” Tenn. Code Ann. § 17-1-203 (2009) (emphasis added). Still another separate statute states that “[a]ny judge or chancellor *may exercise by interchange, appointment, or designation the jurisdiction of any trial court other than that to which the judge or chancellor was elected or appointed.*” Tenn. Code Ann. § 16-2-502 (2009) (emphasis added). Read together, the plain language of the foregoing statutes confines the geographical jurisdiction of a circuit court judge to the judge’s statutorily defined and assigned judicial district and authorizes a circuit court judge to exercise “the jurisdiction of any other trial court” only by “interchange, appointment, or designation,” or “other lawful ground.” In the absence of interchange, appointment, designation, or other lawful ground, circuit court judges may neither “exercise the duties of office in any other judicial district” nor exercise “the jurisdiction of any trial court other than that to which the judge . . . was elected or appointed.”

State v. Frazier, 558 S.W.3d 145, 151 (Tenn. 2018) (footnote omitted, some alterations added, emphasis in original).

In this case, however, Petitioner asserts the Davidson County Probate Court, as a court with chancery jurisdiction, had jurisdiction to determine Petitioner was a ‘person’ within the meaning of the post-conviction DNA testing statutes. This Court disagrees.

Petitioner correctly states the Davidson County Probate Court—more specifically, Division 7 of the Davidson County Circuit Court—has “concurrent jurisdiction with chancery court and exclusive jurisdiction over the probate of wills and the administration of estates, including the estates of decedents under guardianships and conservatorships.” Tenn. Code Ann. § 16-2-506. Petitioner argues a court of equity’s rights under Tennessee

Code Annotated section 29-14-102⁷ and other sections permitted the Davidson County Probate Court to issue a declaratory judgment stating that Petitioner has the right to file a post-conviction DNA action in this case. However, this Court notes that the Tennessee appellate courts have stated that courts of equity generally do not have jurisdiction in criminal cases.

This Court finds the Court of Appeals' analysis in *John E. Carter v. Herbert H. Slatery, III*, instructive. *Carter v. Slatery* involved a defendant convicted of first degree murder under the pre-1982 statute who sought a declaratory judgment declaring he had a due process right to have his conviction overturned following a change in the language of the first degree murder statute in the 1989 criminal code. The chancery court concluded it had subject matter jurisdiction but dismissed the petition on the basis of collateral estoppel. The Court of Appeals concluded the Chancery Court had no jurisdiction, stating:

As noted above, Tennessee Code Annotated section 16-10-102 provides that "[t]he circuit court has exclusive original jurisdiction of all crimes and misdemeanors, either at common law or by statute, unless otherwise expressly provided by statute or this code." Tennessee Code Annotated section 40-1-108 further provides that "[t]he circuit and criminal courts have original jurisdiction of all criminal matters not exclusively conferred by law on some other tribunal." Consequently, "the Tennessee General Assembly has vested exclusive and original jurisdiction of all criminal matters in the circuit and criminal courts of

⁷ As cited in Petitioner's August 2019 reply to the State's response, the statute provides,

(a) Courts of record within their respective jurisdictions have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

(b) No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for.

(c) The declaration may be either affirmative or negative in form and effect; and such declaration shall have the force and effect of a final judgment or decree.

this state.” *Tennessee Downs, Inc.*, 15 S.W.3d at 848 (citing Tenn. Code Ann. §§ 16–10–102, 40–1–107 to 108). Over a century ago, the Tennessee Supreme Court recognized that “[c]ourts of equity are not constituted to deal with crime and criminal proceedings.” *J.W. Kelly & Co. v. Conner*, 123 S.W. 622, 635 (Tenn. 1909). The court explained:

The rule which prevents a court of chancery from interfering with the administration of the criminal laws of this state is a wise one, founded upon sound principles of public policy, and, if we had the power to do so, we fear that changing it would result in much confusion and embarrassment in preserving peace and order, and enforcing the police power of the state generally, which would outweigh the good that would follow an immediate decision of this case upon the merits. The injury to the general public, which would ultimately result from the exercise of this jurisdiction, would be greater than that to individuals when left to their remedies in courts of law.

Id. at 637.

More recently, in *Clinton Books, Inc. v. City of Memphis*, 197 S.W.3d 749 (Tenn.2006), the Tennessee Supreme Court considered whether a court of equity had subject matter jurisdiction to issue a temporary injunction barring enforcement of a criminal statute. The court concluded that a court of equity did not possess such jurisdiction:

The long-standing rule in Tennessee is that state courts of equity lack jurisdiction to enjoin the enforcement of a criminal statute that is alleged to be unconstitutional. *See, e.g., Alexander v. Elkins*, 132 Tenn. 663, 179 S.W. 310, 311 (1915); *J.W. Kelly & Co. v. Conner*, 122 Tenn. 339, 123 S.W. 622, 637 (1909). A lawsuit seeking injunctive relief due to an allegedly invalid criminal statute asks the chancery court, rather than the court that will enforce the criminal law, to enjoin the officers of the state from prosecuting persons who are conducting a business made unlawful by a criminal statute until the chancery court can determine the statute’s validity. *J.W. Kelly & Co.*, 123 S.W. at 631. Permitting a court of equity to interfere with the administration of this state’s criminal laws, which that court is without jurisdiction to enforce, would cause confusion in the preservation of peace and order and the enforcement of the State’s general police power. *Id.* at 637.

Clinton Books, 197 S.W.3d at 752. The supreme court noted that a court of equity *may* enjoin the enforcement of a criminal statute that *the supreme court* has adjudged unconstitutional. *Id.* at 753. In that situation, the court explained, a person is not subject to criminal prosecution for acts committed in violation of the

statute, no controversies are required to be settled by the criminal court, “and the equity court is not invading the criminal court’s jurisdiction by issuing an injunction.” *Id.* The general rule, however, is that courts of equity lack jurisdiction to enjoin the enforcement of a criminal statute. *Id.* at 754.

The plaintiffs in *Clinton Books* argued that some recent decisions from the Tennessee Supreme Court suggested that courts of equity do have subject matter jurisdiction to enjoin enforcement of a criminal statute. For example, in *Davis–Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 523 (Tenn.1993), the plaintiffs sought injunctive and declaratory relief in chancery court when challenging the constitutionality of statutes that provided for criminal penalties. On appeal, the supreme court considered the constitutionality of the statutes without addressing whether the chancery court had subject matter jurisdiction to grant injunctive relief. In *Clinton Books*, however, the supreme court rejected the argument that these cases altered the law regarding subject matter jurisdiction of courts of equity. *Clinton Books*, 197 S.W.3d at 752. The supreme court explained that stare decisis only applies to decisions directly on the point in controversy. *Id.* at 753. “Accordingly,” the court continued, “the omission of any discussion of the trial court’s [subject matter] jurisdiction in [] *Davis–Kidd* should not be interpreted as altering the general rule prohibiting state equity courts from enjoining enforcement of a criminal statute.” *Id.*

In sum, according to *Clinton Books*, the “general rule” is that “a court of equity may not enjoin enforcement of a criminal statute.” *Id.* at 754. The question that remains is whether the chancery court can issue a declaratory judgment regarding the enforcement of a criminal statute or judgment, even in the absence of authority to issue injunctive relief.

In general, chancery courts have subject matter jurisdiction to adjudicate declaratory judgment actions. *Estate of Brown*, 402 S.W.3d 193, 199 (Tenn.2013) (citing Tenn. Code Ann. § 29–14–102). Tennessee’s Declaratory Judgment Act “conveys the power to construe or determine the validity of any written instrument, statute, ordinance, contract, or franchise, *provided that the case is within the court’s jurisdiction.*” *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 837 (Tenn.2008) (citing Tenn. Code Ann. § 29–14–103) (emphasis added). However, “[t]he Declaratory Judgment Act does not grant the power to courts to declare and enforce rights outside their scope of jurisdiction.” *Morgan v. Norris*, No. 88–70–II, 1988 WL 133479, at *2 (Tenn. Ct. App. Dec. 16, 1988) (citing *Zirkle v. City of Kingston*, 217 Tenn. 210, 396 S.W.2d 356 (1976); *Hill v. Beeler*, 199 Tenn. 325, 286 S.W.2d 868 (1956); *Nicholson v. Cummings*, 188 Tenn. 201, 217 S.W.2d 942 (1949)); *see also* Tenn. Code Ann. § 29–14–102(a) (“Courts of record *within their respective jurisdictions* have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”) (emphasis added).

As noted in 26 C.J.S. *Declaratory Judgments* § 124:

The declaratory-judgment statutes give to courts of record the power to declare rights, status and other legal relations within their respective jurisdictions, but do not confer subject matter jurisdiction. A declaratory judgment act is not an express independent source of subject matter jurisdiction, and ordinarily does not by itself grant or otherwise create jurisdiction. In order that a court have jurisdiction to render a declaratory judgment over any subject matter, jurisdiction must exist independent of the declaratory judgment statute....

A litigant's request for declaratory relief does not alter a suit's underlying nature. Declaratory judgment actions are subject to the same limitations inherent in the underlying cause of action from which the controversy arose. Statutory authority to award a declaratory judgment does not permit litigants to raise such claims, by their own "bootstraps," if jurisdiction is otherwise lacking.

Statutes authorizing declaratory judgments merely extend the power of the courts to grant relief in cases that are already within their jurisdiction. Such statutes, therefore, do not confer any additional jurisdiction on the courts, or modify its jurisdictional reach over the parties or the subject matter.

For example, "[t]he Federal Declaratory Judgment Act does not confer independent jurisdiction but merely provides additional remedies where jurisdiction already exists. The plaintiff must establish an independent source of subject matter jurisdiction in order to proceed to pursue declaratory relief in a federal court." 22A Am.Jur.2d *Declaratory Judgments* § 188.

Likewise, in Tennessee, our supreme court has held that "the Declaratory Judgment Act has not given the courts jurisdiction over any controversy that would not be within their jurisdiction if affirmative relief were being sought." *Hill*, 286 S.W.2d at 871. Simply put, "the Declaratory Judgment Act does not confer an independent basis for jurisdiction." *Batts v. Lack*, No. 86-147-II, 1986 WL 13040, at *3 (Tenn. Ct. App. Nov. 21, 1986) (citing *Hill*, 286 S.W.2d at 871). Consequently, the Tennessee Supreme Court has held that "[a] declaratory judgment is proper in chancery, but only if chancery originally could have entertained a suit of the same subject matter." *Zirkle*, 396 S.W.2d at 363 (citing *Gibson, Suits in Chancery* § 36, n.62 (5th ed.1955)). In *Zirkle*, for instance, the supreme court concluded that the chancery court did not have jurisdiction over any of the theories alleged in the complainants' suit, and therefore, it could not "take jurisdiction to enter a declaratory judgment." *Id.*

In the case before us, the chancery court relied on *Blackwell v. Haslam*, No. M2011-00588-00A-R3-CV, 2012 WL 113655 (Tenn. Ct. App. Jan. 11, 2012), *perm. app. denied* (Tenn. Apr. 11, 2012), as recognizing chancery court jurisdiction over a petition for declaratory judgment regarding the

constitutionality of a criminal statute. Specifically, in *Blackwell*, the Middle Section of this Court held that a chancery court had subject matter jurisdiction over a complaint for declaratory relief regarding the constitutionality of a statute imposing criminal penalties even though the chancery court lacked jurisdiction to enjoin the enforcement of the same statute. *Id.* at *6. The *Blackwell* court recognized that chancery courts of Tennessee do not have original jurisdiction over criminal cases. *Id.* at *3. The court then acknowledged but declined to follow the Tennessee Supreme Court’s holding in *Zirkle* that “[a] declaratory judgment is proper in chancery, but only if chancery originally could have entertained a suit of the same subject matter.” *Id.* at *5. The *Blackwell* court conceded that the supreme court had not explicitly overruled *Zirkle*, but, nevertheless, it concluded that the supreme court had “clearly departed from the unequivocal declaration” in *Zirkle* in two subsequent cases: *Davis–Kidd Booksellers*, 866 S.W.2d at 520, and *Clinton Books*, 197 S.W.3d at 749. *Blackwell*, 2012 WL 113655 at *5. The Middle Section emphasized that those two cases involved requests for declaratory relief regarding statutes that assessed criminal penalties, “and in none of these cases did the court find that the chancery court lacked subject matter jurisdiction.” *Id.* at *5.

This Court disagreed with the *Blackwell* decision in *Memphis Bonding Co., Inc. v. Criminal Court of Tennessee 30th Dist.*, No. W2015–00562–COA–R10–CV, 2015 WL 7575093, at *7 (Tenn. Ct. App. Nov. 25, 2015). We noted that neither *Davis–Kidd* nor *Clinton Books* contained any discussion regarding a chancery court’s subject matter jurisdiction over a request for declaratory relief. In *Clinton Books*, the supreme court remanded a request for declaratory relief due to a procedural issue but did not discuss the issue of subject matter jurisdiction as it pertained to declaratory relief. Moreover, as previously noted in this opinion, the *Clinton Books* court acknowledged the lack of any discussion of subject matter jurisdiction in *Davis–Kidd* and specifically cautioned that “the omission of any discussion of the trial court’s jurisdiction in [] *Davis–Kidd* should not be interpreted as altering the general rule prohibiting state equity courts from enjoining enforcement of a criminal statute.” *Clinton Books*, 197 S.W.3d at 753. In other words, we should not assume that subject matter jurisdiction existed based on the fact that the issue was not addressed in the opinion. This seems to be the same approach the court of appeals used in *Blackwell*. We respectfully disagree with its conclusion that the supreme court “clearly departed from the unequivocal declaration” in *Zirkle* by its silence on the issue in *Davis–Kidd* and *Clinton Books*. We consider the supreme court’s unequivocal statements in *Zirkle* and *Hill* to be controlling.

According to *Hill*, “the Declaratory Judgment Act has not given the courts jurisdiction over any controversy that would not be within their jurisdiction if affirmative relief were being sought.” *Hill*, 286 S.W.2d at 871. *Zirkle* specifically holds that “[a] declaratory judgment is proper in chancery [] only if chancery originally could have entertained a suit of the same subject matter.” *Zirkle* 396 S.W.2d at 363. As a result, we conclude that the chancery court lacked subject

matter jurisdiction to enter a declaratory judgment regarding the legality or constitutionality of the criminal judgments entered against Carter.

John E. Carter v. Herbert H. Slatery, III, No. M2015-00554-COA-R3-CV, 2016 WL 1268110, at **4-7 (Tenn. Ct. App. Feb. 19, 2016), *perm. app. denied*, (Tenn. Aug. 18, 2016).

The Court also finds a Court of Appeals decision addressing a declaratory judgment action brought by an inmate whose case originated in this judicial district instructive. After Pervis Payne was convicted of first degree murder and sentenced to death, he brought several actions in the Shelby County Criminal Court alleging he was intellectually disabled and ineligible for the death penalty. They all proved unsuccessful. He then sought a declaratory judgment in the Davidson County Chancery Court declaring him intellectually disabled and ineligible for the death penalty. The chancery court rejected Mr. Payne's claims; the Court of Appeals affirmed. In addition to concluding the claim was barred on sovereign immunity grounds, the appellate court concluded the chancery court had no jurisdiction to determine intellectual disability matters:

Tenn. Code Ann. § 16-11-101 grants chancery courts "all the powers, privileges and jurisdiction properly and rightfully incident to a court of equity"; Tenn. Code Ann. § 16-11-102 adds subject matter jurisdiction, concurrent with the circuit courts, over all civil cases with certain exceptions. Exclusive original subject matter jurisdiction over all crimes and misdemeanors is vested in circuit courts pursuant to Tenn. Code Ann. § 16-10-102 "unless otherwise expressly provided by statute."

Criminal offenses are codified in Title 39 of the Tennessee Code; part 2 of chapter 13 governs criminal homicide. Tenn. Code Ann. § 39-13-201 defines criminal homicide and § 39-13-202 defines and prescribes the punishment for first degree murder, including death, life imprisonment without the possibility of parole, and life imprisonment. Tenn. Code Ann. § 39-13-203 prohibits defendants with an intellectual disability at the time first degree murder was committed from being sentenced to death, with "[t]he determination of whether the defendant had an intellectual disability. . . [to] be made by the court." Tenn. Code Ann. § 39-13-204 provides that sentencing for first degree murder is to be fixed by the jury in a

separate sentencing hearing, and sets forth the procedures to be used in the hearing and the requirement that the judge instruct the jury orally and in writing to weigh and consider the statutory aggravating and mitigating circumstances in fixing punishment. Criminal procedure is codified in Title 40, chapter 1, which governs jurisdiction and venue. Under Tenn. Code Ann. § 40-1-108 circuit and criminal courts “have original jurisdiction over all matters not exclusively conferred by law on some other tribunal.”

In addition to the absence of any statute vesting subject matter jurisdiction in the chancery courts to adjudicate any aspect of Tenn. Code Ann. § 39-13-203, the determination of whether the defendant had an intellectual disability at the time of the offense is a part of the prosecution and sentencing processes; the statute directs that the determination is to be made by “the court.” We do not agree with Mr. Payne that Tenn. Code Ann. § 39-13-203 limits the criminal court’s exclusive subject matter jurisdiction to the point where “the prosecution has concluded.” Construed together, the relevant statutes operate as a further limitation on the chancery court’s exercise of subject matter jurisdiction over this case. *In any event, Tenn. Code Ann. §§ 16-10-102 and 40-1-108 require that the grant of subject matter jurisdiction to the chancery court be express; there is no such express grant in the intellectual disability statute.*

Pervis Payne v. Wayne Carpenter, et al., No. M2014-00688-COA-R3-CV, 2016 WL 4142485, at *4 (Tenn. Ct. App. Aug. 2, 2016) (emphasis added, footnote omitted), *perm. app. denied*, (Tenn. Nov. 16, 2016).

As explained earlier in this order, post-conviction matters are not traditional “criminal cases.” And in this case Petitioner is not arguing a chancery court would have the jurisdiction to decide the ultimate issue in this case (i.e., whether post-conviction DNA testing is appropriate). However, the Court still finds the Court of Appeals’ reasoning in *Carter* and *Payne* helpful. There is no authority, statutory or otherwise, specifically granting a court of equity jurisdiction in post-conviction cases. Petitioner is not suggesting the post-conviction DNA testing statute is unconstitutional, so it would appear the Davidson County Probate Court had no authority to enter a declaratory judgment regarding the statute’s application. A post-conviction DNA proceeding would not be within a chancery court’s jurisdiction as an original cause of action, so it appears

the chancery court cannot issue a declaratory judgment in a post-conviction action either. The reasoning on these points does not only prohibit a chancery court from resolving the ultimate issue in this case, but it also prevents a chancery court from ruling on any component of a post-conviction proceeding, including a determination as to who qualifies as a “person” under the statute.

Accordingly, the Court concludes the Davidson County Probate Court was without jurisdiction to enter a declaratory judgment or other order stating Petitioner constituted a “person” for purposes of the post-conviction DNA testing statute.

4. Applying Standing-Related Case Law

As stated above, a party must show three indispensable elements to establish standing:

1. A “distinct and palpable injury” rather than a conjectural or hypothetical one;
2. A causal connection between the claimed injury and the challenged conduct; and
3. A showing that the alleged injury is capable of being redressed by a favorable decision of the court.

See ACLU v. Darnell, supra, 195 S.W.3d at 620.

In reviewing the three-part test for standing outlined in *ACLU v. Darnell* and the cases cited therein, it appears to this Court that Petitioner does not have standing to bring this case, nor would Sedley Alley have a surviving right even if such a claim could be said to survive. While Mr. Alley can be said to have suffered a distinct and palpable injury in fact for standing purposes, Petitioner has not. April Alley and Mr. Alley’s other family members have not been convicted for or incarcerated for first degree murder—

Sedley Alley was. Ms. Alley's assertion her father was wrongfully convicted of and executed for murdering Lcpl. Collins is certainly important to the Alley estate, but Petitioner has not pointed this Court to any authority stating that the execution of a family member is an "injury in fact" for standing purposes. Because Petitioner has not suffered "injury" for standing purposes, the second prong of the standing test—a relationship between the injury and the challenged conduct of the opposing party—must also fail.

Third, this Court is incapable of providing a remedy that would redress any potential injury in this case. Mr. Alley's sentence has been carried out—he has been executed. Thus, even if this Court were to order DNA testing, such testing, even if favorable to the Alley estate, would not redress the effects of Mr. Alley's conviction and sentence. Mr. Alley is deceased, and therefore he is unable to benefit from a favorable ruling of this Court. Thus, the third prong of the standing test must fail as to Mr. Alley.

Petitioner claims the estate is entitled to "exoneration" due to newly discovered evidence, per Tennessee Code Annotated section 40-27-109. However, the statutes do not appear to confer the right of exoneration to deceased persons or their estates; that right—a right which is purely a creation of statute—belongs to the inmate, not his heirs. Because exoneration does not appear to be a remedy which this Court could bestow upon Petitioner, the third prong must fail as to Petitioner.

Accordingly, the Court concludes traditional standing principles do not entitle Mr. Alley's estate to bring this post-conviction DNA claim.

5. Due Process Concerns

Finally, Petitioner argues due process concerns, both in the form of property rights and in the form of a liberty interest in proving innocence, entitle the estate to bring this

claim for post-conviction DNA testing. This Court disagrees.

Regarding Petitioner's liberty interest claim, as the State points out, the United States Supreme Court has rejected a still-living inmate's claim that he had a substantive due process right of access to evidence held by the state of Alaska so the inmate could prove his innocence through DNA testing. *See Dist. Atty's Ofc. for 3d. Jud. Dist. v. Osborne*, 557 U.S. 52, 72-75 (2009). Petitioner has not pointed this Court to any authority which states specifically that a Petitioner has a property-based due process right to exoneration or exoneration-based compensation. If anything, certain federal courts have ruled there is no right to exoneration. *See, e.g., United States v. Quinones*, 313 F.3d 49, 62 (2d Cir. 2002) ("the continued opportunity to exonerate oneself throughout the natural course of one's life is not a right 'so rooted in the traditions and conscience of our people as to be ranked as fundamental'" (quoting *Rochin v. California*, 342 U.S. 165, 171-72 (1952))); *Robert C. Butler v. Bill Haslam et al.*, No. 3:19-cv-00416, 2019 WL 2327523, at *8 (M.D. Tenn. May 30, 2019) ("No constitutional right to exoneration exists, and, under the procedure established by state statute and regulation, the governor owes no particular process to an individual who seeks exoneration").

Instead, due process concerns relative to post-conviction procedures require a person to be given the opportunity to raise a claim at a meaningful time and in a meaningful manner. *Whitehead v. State*, 402 S.W.3d 615, 623 (Tenn. 2013). Mr. Alley was given that opportunity, as he made two separate attempts to raise post-conviction DNA claims before his execution. Petitioner's due process-based claim is without merit.

6. Other Claims

The Court has reviewed all standing-based claims raised by Petitioner. To any

extent Petitioner has raised claims which are not addressed explicitly above, those standing-based claims should be considered to have been reviewed by the Court and found to be without merit.

The Court's conclusion that Petitioner is without standing to bring this post-conviction DNA claim—and that the Court is without subject matter jurisdiction to consider it—renders the State's assertions regarding the untimeliness of the petition and res judicata moot. And because the Court concludes it is without jurisdiction to consider Petitioner's claims, the substantive issues raised by Petitioner (including the issue of whether an order for DNA testing is proper in this case) are rendered moot as well.

V. Conclusion

This Court does not wish to minimize the Alley family's sincerely-held belief that Sedley Alley is innocent of the rape and murder of LCpl. Collins. However, this Court concludes the post-conviction DNA testing statutes, the post-conviction statutes, Supreme Court Rule 28, and relevant case law do not permit the estate of a deceased inmate to file a petition seeking post-conviction DNA testing on the inmate's behalf. The Alley estate's arguments are best addressed to the General Assembly and the Tennessee Supreme Court (under its authority to amend Rule 28).

The estate of Sedley Alley does not have standing to bring the post-conviction DNA claim presently before the Court. Because Petitioner has no standing, the Court does not have subject matter jurisdiction to consider the petition. Accordingly, the petition for DNA testing brought by the estate of Sedley Alley is DISMISSED. Costs of these proceedings are taxed to the estate.

IT IS SO ORDERED this the 18 day of November, 2019.

Paula Skahan

Paula Skahan, Judge
Criminal Court, Division I.
30th Judicial District, at Memphis

Filed 11-18-19
Heidi Kuhn, Clerk
BY A. C. [Signature] D.C.