

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

**STATE OF TENNESSEE**

**v.**

**EDWARD JEROME HARBISON**

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**Case No.: M1986-00093-SC-OT-DD**

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**MOTION TO WITHDRAW AS COUNSEL**

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The undersigned appointed counsel for Edward Jerome Harbison, for the reasons set forth below and to satisfy the request of Mr. Harbison, moves this Honorable Court to permit the Office of the Post-Conviction Defender to withdraw as counsel.

**MEMORANDUM IN SUPPORT OF MOTION**


By Per Curiam Order on July 17, 2006, this Court appointed the Office of the Post Conviction Defender to represent Edward Jerome Harbison. (July 17, 2006 Order, attached.) The July 17, 2006 order limited the appointment to case No. M198-00093-SC-OT-DD. (*Id.*; see also October 6, 2006 Order in *State v. Johnson*, No. M1987-00072-SC-DPE-DD, attached (noting that “this Court’s Order in *Harbison* specifically limited the appointment of counsel to ‘the instant case No. M1986-00093-SC-OT-DD’”).) The Office of the Post-Conviction Defender has, to date, not filed any motion or other pleading in Case No.: M1986-00093-SC-OT-DD or on any other matter pertaining to Mr. Harbison. In all present actions pending in any court, he is represented by the Federal Defender Services of Eastern Tennessee. The undersigned

has met with Mr. Harbison and he has specifically requested that the Office of the Post-Conviction Defender withdraw from case No. M1986-00093-SC-OT-DD. In addition, he has petitioned the Criminal Court of Hamilton County to remove the Office of the Post-Conviction Defender from its appointment by this Court. Moreover, Mr. Harbison's attorney with Federal Defender Services has recommended that the Office of the Post-Conviction Defender withdraw.

This Court has consistently held that a death sentenced inmate who has not been held to be incompetent has the right to forego numerous constitutional and statutory rights including whether to plead guilty, waive a jury, waive the right to testify, waive post-conviction review, and forego the presentation of mitigating evidence at a capital sentencing hearing. *See Pike v. State*, 164 S.W.3d 257, 262 (Tenn. 2005); *Holton v. State*, 201 S.W.3d 626 (Tenn. 2006). It, therefore, follows that Mr. Harbison, who has never been found to be incompetent, can waive any statutory right to counsel in case No. M1986-00093-SC-OT-DD. He has clearly indicated his desire to exercise that right.

Wherefore, the undersigned requests that this Court enter an order relieving the Office of the Post-Conviction Defender from further representation in Case No. M1986-00093-SC-OT-DD.

Respectfully Submitted,



Donald E. Dawson, BPR #010723  
Post-Conviction Defender  
530 Church Street, Suite 600  
Nashville, TN 37243  
Phone: (615) 741-9385  
Fax: (615) 741-9430

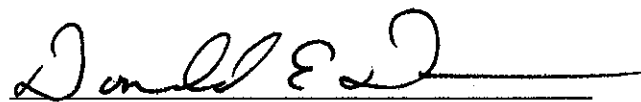
**AFFIDAVIT OF COUNSEL**

STATE OF TENNESSEE    )  
  )  
COUNTY OF DAVIDSON    )

The affiant, Donald E. Dawson, after being duly sworn, states as follows:

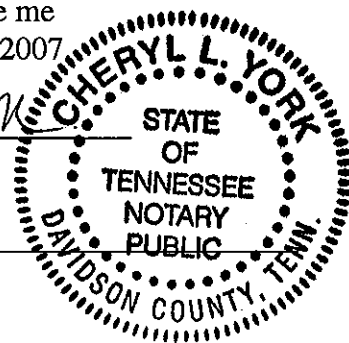
1.     As the Post-Conviction Defender for the State of Tennessee, I have been appointed to represent Mr. Harbison in this matter.
  
2.     All factual information in the above Motion is true to the best of my knowledge and belief.
  
3.     E.J.Harbison has requested that my office withdraw from the appointment be this court to Case No. M1986-00093-SC-OT-DD.

Further the affiant saith not.

  
\_\_\_\_\_  
Donald E. Dawson, Affiant

Sworn to and subscribed before me  
on this the 5th day of October, 2007

  
\_\_\_\_\_  
NOTARY PUBLIC



My commission expires: \_\_\_\_\_

My Commission Expires JULY 25, 2009

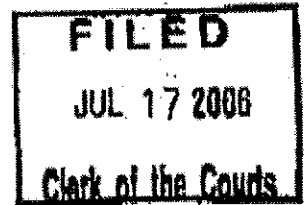
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent via U.S. Mail, First Class postage prepaid, to Robert E. Cooper, Jr., Attorney General and Reporter, Office of the Attorney General, P.O. Box 20207, Nashville, TN 37202-0207, and Dana Hansen Chavez, Federal Defender Services of Eastern Tennessee, 800 S. Gay Street, Suite 2400, Knoxville, TN 37929, on this the 5<sup>th</sup> day of October, 2007.

A handwritten signature in black ink, appearing to read "Donald E. Dawson", followed by a horizontal line extending to the right.

Donald E. Dawson

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE



**STATE OF TENNESSEE V. EDWARD JEROME HARBISON**

No. M1986-00093-SC-OT-DD - Filed: July 17, 2006

**ORDER**

On June 13, 2006, the State of Tennessee filed a Motion to Set Execution Date in the case of Edward Jerome Harbison. The State alleged that Harbison had completed the standard three-tier appeals process and that this Court should therefore set an execution date. See Tenn.S.Ct.Rule 12.4(A). On June 22, 2006, a Response to Motion to Set Execution Date was filed on behalf of Harbison. The Response contended that an execution date should not be set because Harbison's federal habeas corpus proceedings were not complete. The Response also requested that this Court exercise its authority under Tenn. Code Ann. § 40-27-106 to issue a certificate of commutation to the governor. In support of the request for a certificate of commutation, the Response alleged that police files contained exculpatory information indicating that someone else committed the murder for which Harbison had been convicted. In addition, it was contended that a certificate of commutation should issue because the jury did not hear evidence of Harbison's horrendous childhood and his psychological and mental impairments and because the murder was not sufficiently aggravated to warrant the sentence of death, which allegedly had resulted from a "series of unacceptable errors" by the police, counsel and the courts. The Response, which was filed by the Office of the Assistant Federal Community Defender in Knoxville, Tennessee, also asked that this Court appoint counsel to represent Harbison in this case.

Upon due consideration of the State's Motion to Set Execution Date and the Response to the Motion, the State's Motion is GRANTED. It is hereby ORDERED, ADJUDGED and DECREED by this Court that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute the sentence of death as provided by law on the eleventh day of October, 2006, unless otherwise ordered by this Court or other appropriate authority.

It is further ORDERED that the request for appointment of counsel to represent Edward Jerome Harbison is GRANTED. The Court hereby appoints the Office of the Post-Conviction Defender, 530 Church Street, Suite 600, Nashville, Tennessee 37243, to represent Harbison in the instant case No. M1986-00093-SC-OT-DD.

Counsel for Edward Jerome Harbison shall provide a copy of any order staying execution of this order to the Office of the Clerk of the Appellate Court in Nashville. The Clerk shall expeditiously furnish a copy of any order of stay to the Warden of the Riverbend Maximum Security Institution.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

STATE OF TENNESSEE V. DONNIE JOHNSON

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No. M1987-00072-SC-DPE-DD - Filed: October 6, 2006

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ORDER

On June 20, 2006, the Court set an execution date of October 25, 2006, for Donnie E. Johnson. On October 3, 2006, on Johnson's behalf, the Post-Conviction Defender filed in this Court a "Motion to Appoint Clemency Counsel and Reset Execution Date." The Motion alleged that, because of a conflict of interest and the appearance of impropriety created by former Attorney General Paul Summers in joining the law firm currently representing Johnson, the firm will not represent Johnson at any clemency proceedings. The Motion requested that the Court appoint the Office of the Post-Conviction Defender to represent Johnson in the clemency process and that the Court reset the date of Johnson's execution to afford the Office of the Post-Conviction Defender time to provide adequate representation .

On October 5, 2006, the State of Tennessee filed a Response to the Motion. The State asserted that there is no constitutional or statutory right to court-appointed counsel in executive clemency proceedings. The State also argued that while Tennessee Code Annotated section 40-30-206, the Post-Conviction Defender's enabling statute, grants the Post-Conviction Defender the discretion to represent death-sentenced inmates during clemency proceedings, the statute does not provide for judicial appointment of counsel for the purpose of such proceedings. In addition, the State argues that since clemency proceedings are conducted entirely by the executive branch of government and are not part of the judicial process, the appointment of counsel by the Court would improperly interject the judicial branch of government into the operations of the executive branch and that Johnson and/or his counsel should request a reprieve from the Governor if additional time is needed to prepare for a clemency hearing.

On October 5, 2006, the Post-Conviction Defender filed a Reply to the State's Response asserting that the Court's Order appointing counsel in State v. Edward Jerome Harbison, No. M1986-00093-SC-OT-DD (Tenn., August 15, 2006), and Tennessee Code Annotated section 40-30-206 support the instant Motion for appointment of clemency counsel.

Upon due consideration of the applicable law and of the Motion, the Response, and the Reply to the Response, it appears to the Court that no statute, rule of court, or constitutional provision authorizes this Court to appoint the Office of the Post-Conviction Defender to represent Donnie Johnson at clemency proceedings. Furthermore, this Court's Order in Harbison specifically limited the appointment of counsel to "the instant case No. M1986-00093-SC-OT-DD" and did not extend

the appointment of counsel to clemency proceedings. Finally, should additional time be needed to pursue clemency, a reprieve may be sought from the Governor under Article III, section 6 of the Tennessee Constitution and Tennessee Code Annotated section 40-27-101. It is therefore ORDERED that the "Motion to Appoint Clemency Counsel and Reset Execution Date" is DENIED.

PER CURIAM