

IN THE CRIMINAL COURT OF HAMILTON COUNTY, CHATTANOOGA TENNESSEE
ELEVENTH JUDICIAL DISTRICT, DIVISION II

EDWARD JEROME HARBISON,)
)
Petitioner,)
)
VS.) CASE NO: 154361 & 154362
)
) THE HONORABLE BARRY A. STEELMAN
STATE OF TENNESSEE,)
)
Respondent.) DEATH PENALTY CASE

SUPPLEMENTAL TO NOTICE OF FILING

Comes now Petitioner, Edward Jerome Harbison, herein above named, and gives supplemental to notice of filing to this Court pursuant to Public Chapter No. 549, Senate Bill No. 1911, by Jackson, Marrero, Substituted for: House Bill No. 2162, by Briley, Mike Turner, West, Dunn, Gresham, Matheny, Crieer, Larry Turner, Hardaway. The legislature passed June 11, 2007 and approved June 27th, 2007, by Governor Phil Bredesen. See (Petitioner's Exhibit No. 15, at Pp. 1-3, hereto attached is SENATE BILL NO. 1911), is relevant to Petitioner's 60(b)(6) Motion filed on August 13, 2007;

Petitioner asserts that, on February 1, 2007, Governor Phil Bredesen, granted Petitioner a Reprieve. See (Petitioner's Exhibit No. 16, hereto attached is REPRIEVE), is relevant to Petitioner's 60(b)(6) Motion;

Petitioner assert that on August 7, 2007, Dana C. Hansen Chavis, stated in an submitted Affidavit that there is no copy of any Search Warrant dated February 21, 1983, authorizing the Search of Petitioner's vehicle included in the Files received from the State. See (Petitioner's Exhibit No. 17, attached hereto) is relevant to Petitioner's 60(b)(6) Motion;

FILED IN OFFICE

07 SEP -6 11 09 15

1
GWEN TIDWELL, CLERK
BY _____ D.C.
FILM REF: _____

Petitioner contend that, in Demjanjuk v. Petrovsky, 10 F.3d 338 (6th Cir. 1993) cert. denied, 513 U.S. 914, 115 S.Ct. 295, 130 L.Ed.2d 205 (1994), although Demhanjuk involved Misconduct by federal Prosecutors, there's no reason why State Prosecutors should not be held to a similar Standard of integrity, especially in Capital cases. There, on its own Motion, the Sixth Circuit vacated the judgment of the District Court denying the Petitioner's writ of habeas corpus upon finding that the Judgments in the underlying extradition proceedings were wrongly procured as a result of Prosecutorial Misconduct that Constituted Fraud On The Court. As in the Petitioner case, the proceedings were wrongly procured as a result of Prosecutorial Misconduct that also Constitutes Fraud On The Court, Id. at 356. Specifically, the Court found that Attorneys for the Department of Justice Attorneys "Acted with Reckless Disregard for the Truth and for the Government's obligation to take no steps that prevent and adversary from presenting His case fully and Fairly" when they Deliberately withheld Exculpatory Materials for the Petitioner, Demjanjuk v. Petrovsky, 10 F.3d 338, 354; Rule 8.4(a)(c)(d) Rules of Professional Conduct (RPC); (RPC) Rule 3.8 Comments (1); (RPC) Rule 3.4 (a)(b)(c)(d)(e)(2)(3). In the present case, its alleged by Petitioner that the Deliberate Presentation of False Evidence were done to prevent Petitioner from presenting an adequate defense to the charges and deprived Him of Due Process and a Fair Trial. As to the Fraud Upon The Court See, Peck v. Tanner, 181 S.W.3d 262, 265-66, 267 (Tenn. 2005) (the pertinent parts of the Rule are: on Motion and upon such terms as are just, the Court may relieve a Party or the Party's legal Representative from an Final Judgment, Order or Proceeding for the following reason: for Fraud Upon The Court and by An Independent Action), supports the Petitioner's position of the relief

Petitioner seeks.

Petitioner contend that, the Claims which is premised on Material that has surfaced for the First time during Petitioner has Completed both State and Federal Trial and Collateral Proceedings Review, Monroe v. Angelone, 323 F.3d 286, 297-98 (4th Cir. 2003) (authority cited therein), supports Petitioner's position for the relief he seeks.

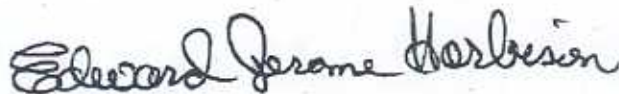
WHEREFORE PREMISES CONSIDERED: Petitioner pray as to the following:

Request that the Honorable Court allow the Supplemental Exhibits filed by Petitioner in the present case;

Request the same relief requested in Petitioner's 60(b)(6) Motion for Fraud Upon The Court due to the "Extraordinary Circumstances" herein;

Request any other relief as the Court deem appropriate and proper.

Respectfully submitted,



Edward Jerome Harbison, #108926
Pro se Petitioner
RMSI, Unit 2, D-Pod Cell 109
Riverbend Maximum Security Institution
7475 Cockrill Bend Boulevard
Nashville, Tennessee 37209-1048

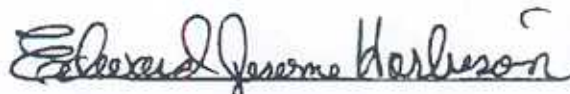
CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND EXACT COPY OF THE FORGOING HAS BEEN SENT
VIA UNITED STATES TO:

ELEVENTH JUDICIAL DISTRICT, OFFICE OF THE CLERK
CRIMINAL COURT CLERK: GWEN TIDWELL
102 COURTS BUILDING, 600 MARKET STREET
CHATTANOOGA, TENNESSEE, 37402
PHONE: (423) 209-7500

BY PLACING A COPY IN THE UNITED STATES MAIL, FIRST-CLASS, POSTAGE PREPAID.

ON THIS, THE 31 DAY OF August 2007

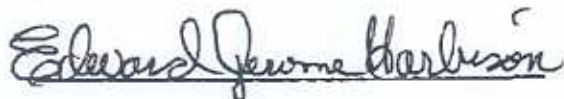


EDWARD JEROME HARBISON, #108926
PRO SE, PETITIONER
RMSI, UNIT TWO, D-POD, CELL 109
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND BOULEVARD
NASHVILLE, TENNESSEE 37209-1048

PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO
PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the forgoing is true and
correct.

Executed on August 31, 2007
(Date)



PETITIONER'S EXHIBIT NO. 15, SENATE BILL NO. 1911

Respectfully submitted,

Edward Jerome Harbison

Edward Jerome Harbison, #108926
Pro se Petitioner
RMSI, Unit 2, D-Pod Cell 109
Riverbend Maximum Security Institution
7475 Cockrill Bend Boulevard
Nashville, Tennessee 37209-1048

FILED IN OFFICE

07 SEP -6 AM 3:10

GWEN TIDWELL, CLERK

BY _____

FILM REF: _____

PUBLIC CHAPTER NO. 549

SENATE BILL NO. 1911

By Jackson, Marrero

Substituted for: House Bill No. 2162

**By Briley, Mike Turner, West, Dunn, Gresham, Matheny, Crider, Larry
Turner, Hardaway**

AN ACT to create a special committee to study the administration of the death penalty.

WHEREAS, the state should exercise the utmost care in matters of life and death; and

WHEREAS, new methods and technologies for determining guilt or innocence have shed new light on the causes of wrongful convictions; and

WHEREAS, the execution of an innocent person by the State of Tennessee would be a grave and irreversible injustice; and

WHEREAS, the state must ensure a criminal justice system that is impartial, equitable, competent, accurate, and meets the needs of victims' family members; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. In order to ensure a system of justice that is impartial, there is created a special committee to study the administration of Tennessee's death penalty system. The committee shall be known as the Committee to Study the Administration of the Death Penalty, herein referred to as "the committee".

SECTION 2. The committee is charged to study capital punishment in the State of Tennessee and to make recommendations designed to make capital punishment in Tennessee uniform in its application and administration so that the capital process is free from bias and error. To that end, the committee shall, among other things, review non-partisan, academic, and/or government inquiries into the administration of capital punishment at the state and national levels.

SECTION 3. The committee is charged to study, receive testimony, deliberate upon and make recommendations for public policy designed to provide fairness and accuracy in the application and administration of capital punishment. The committee's findings and recommendations shall address all stages of the capital process and public policy related to the death penalty in areas including, but not limited to, the following:

(1) The provision of enforced guidelines and standards for the identification, recruitment, appointment, training, financing, investigative assistance, attorney resource assistance, forensic expert assistance, and performance of qualified, effective defense counsel in all stages of litigation in capital cases, using as a benchmark the American Bar Association's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (2003);

(2) The risk of innocent people being executed and the causes that lead to wrongful conviction;

(3) Whether the law provides adequate protection for specific vulnerable populations such as the mentally retarded (in accordance with the United States Supreme Court ruling in *Atkins v. Virginia*) and the mentally ill; whether persons suffering from mental illness constitute a disproportionate number of those on death row, what criteria should be used in judging the level of mental illness involved; and whether or not people with mental illness should be executed; and

(4) What services exist in the State of Tennessee for close family members and loved ones of murder victims and capital defendants; whether these services are sufficient; whether additional services are provided in other states; whether additional services should be provided in the State of Tennessee; and whether victims' rights and services are provided on an equal basis to all surviving family members.

SECTION 4. The committee shall consist of sixteen (16) members, as follows: two (2) members of the Senate, including at least one (1) member of the Senate Judiciary Committee, appointed by the Speaker of the Senate; two (2) members of the House of Representatives, including at least one (1) member of the House Judiciary Committee, appointed by the Speaker of the House; two (2) persons appointed by the governor; a representative appointed by the attorney general; a representative appointed by the Tennessee Bar Association; a representative appointed by the Tennessee Association of Criminal Defense Lawyers; a representative appointed by the District Attorneys General Conference; a representative appointed by the District Public Defenders Conference; a representative appointed by the Office of the Post-Conviction Defender; a representative appointed by the Tennessee Justice Project; a representative appointed by the National Alliance on Mental Illness, Tennessee; a representative appointed by Murder Victims' Families for Human Rights; and a representative appointed by You Have the Power.

SECTION 5. The committee shall be convened by the legislative member with the most years of continuous service in the general assembly and, at its organizational meeting, shall elect from among its legislative membership, a chair, vice chair, and such other officers the committee may deem necessary.

SECTION 6. Members of the committee shall serve without compensation. All legislative members of the special joint committee who are duly elected members of the general assembly shall remain members of such

committee until the committee reports its findings and recommendations to the general assembly.

SECTION 7. The committee shall report its findings and recommendations to the governor and the general assembly within one (1) year of the date on which all members of the committee have been appointed, at which time the committee shall cease to exist.

SECTION 8. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: June 11, 2007


RON RAMSEY
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 27th day of June 2007


PHIL BREDESEN, GOVERNOR

PETITIONER'S EXHIBIT NO. 16, GOVERNOR BREDESEN'S REPRIEVE

Respectfully submitted,

Edward Jerome Harbison

Edward Jerome Harbison, #108926
Pro se Petitioner
RMSI, Unit 2, D-Pod Cell 109
Riverview Maximum Security Institution
7475 Cockrill Bend Boulevard
Nashville, Tennessee 37209-1048

ESTATE



TENNESSEE
EXECUTIVE CHAMBER

REPRIEVE

Pursuant to the authority vested in me by Article III, Section 6 of the Constitution of the State of Tennessee, I, Phil Bredesen, Governor of the State of Tennessee, do hereby grant to Edward Jerome Harbison a reprieve from execution of the sentence of death imposed upon him by the Criminal Court of Hamilton County on December 2, 1983, and scheduled to be carried out on February 22, 2007. (*State v. Harbison*, No. M1986-00053-SC-OJ-DD (Tenn. August 15, 2006)). This reprieve shall continue in effect until May 2, 2007.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State to be affixed at Nashville on this, the 1st day of February, 2007.

Phil Bredesen

Governor

Raley Darvall

Secretary of State



PETITIONER'S EXHIBIT NO. 17, AFFIDAVIT OF DANA C. HANSEN CHAVIS

Respectfully submitted,

Edward Jerome Harbison

Edward Jerome Harbison, #108926
Pro se Petitioner
RMSI, Unit 2, D-Pod Cell 109
Riverbend Maximum Security Institution
7475 Cockrill Bend Boulevard
Nashville, Tennessee 37209-1048

AFFIDAVIT OF DANA C. HANSEN CHAVIS, ESQ.

STATE OF TENNESSEE)
)
COUNTY OF KNOX)

Comes now Dana C. Hansen Chavis, after being duly sworn according to law, and says as follows:

1. I am a duly licensed attorney in the State of Tennessee, Board of Professional Responsibility No. 19098.
2. I am employed by Federal Defender Services of Eastern Tennessee, Inc. (FDSET). FDSET was appointed to represent Edward Jerome Harbison for his federal habeas corpus action in February 1997, along with co-counsel, Rosemarie Bryan.
3. In all FDSET's files, including files received from Mr. Harbison's trial counsel and post-conviction counsel, as well as the Chattanooga Police Department records, there is no copy of any search warrant dated February 21, 1983, authorizing a search of Mr. Harbison's vehicle.

FURTHER AFFIANT SAYETH NOT.

Dana C Hansen Chavis
DANA C. HANSEN CHAVIS

STATE OF TENNESSEE)
COUNTY OF KNOX)

Sworn to and subscribed before me this 7 day of August, 2007.

Sharlott A Swanger
Notary Public



My Commission Expires:

My Commission Expires January 3, 2011

Harbison/Administration/Affhansen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND EXACT COPY OF THE FORGOING HAS BEEN SENT VIA UNITED STATES MAIL TO:

ELEVENTH JUDICIAL DISTRICT, OFFICE OF THE CLERK
CRIMINAL COURT CLERK: GWEN TIDWELL
102 COURTS BUILDING, 600 MARKET STREET
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PHONE: (423) 209-7500

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ON THIS, THE 31 DAY OF August 2007

Edward Jerome Harbison

EDWARD JEROME HARBISON, #108926
PRO, SE PETITIONER
RMSI, UNIT TWO, D-POD CELL 109
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND BOULEVARD
NASHVILLE, TENNESSEE 37209-1048

PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO
PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the forgoing is true and correct.

Excuted on August 31, 2007
(Date)

Edward Jerome Harbison

the relief Petitioner seeks.

Petitioner contend that, under Rule 60(b)(6) requires that Petitioner show "Extraordinary Circumstances" Gonzalez at *20-21, 22-23, 24-26 (authority cited therein), support Petitioner's position for the relief sought;

Petitioner contend that, to toll time period for seeking remedy during time between a State Court's decision, see Carey v. Saffold, 122 S.Ct. 2134, 2137-2141 (2002), in the present case, on April 19, 2007, Petitioner received correspondence from an Chattanooga City Court Clerk, and filed within the time under State law and Federal law one year, and as in "Extraordinary Cases" see Carey v. Saffold, 122 S.Ct. 2134, 2140-41;

Petitioner contend that pursuant to Public Chapter No. 549, Senate Bill No. 1911, by Jackson, Marrero, Substituted for: House Bill No. 2162, by Briley, Mike Turner, West, Dunn, Gresham, Matheny, Crieer, Larry Turner, Hardaway. The legislature passed June 11, 2007 and approved June 27th, 2007, by Governor Phil Bredesen. See (Petitioner's Exhibit No. 15, at Pp. 1-3, hereto attached is SENATE BILL NO. 1911), is relevant to Petitioner's 60(b)(6) Motion filed on August 13, 2007;

Petitioner asserts that, on February 1, 2007, Governor Phil Bredesen, granted Petitioner a Reprieve. See (Petitioner's Exhibit No. 16, herein enclosed is REPRIEVE), is relevant to Petitioner's 60(b)(6) Motion;

Petitioner assert that on August 7, 2007, Dana C. Hansen Chavis, stated in an submitted Affidavit that there is no copy of any Search Warrant dated February 21, 1983, authorizing the Search of Petitioner's vehicle included in the Files received from the State. See (Petitioner's Exhibit No. 17, enclosed herein) is relevant to Petitioner's 60(b)(6) Motion;

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Cir. 1993) cert. denied, 513 U.S. 914, 115 S.Ct. 295, 130 L.Ed.2d 205 (1994), although Demhanjuk involved Misconduct by federal Prosecutors, there's no reason why State Prosecutors should not be held to a similar Standard of integrity, especially in Capital cases. There, on its own Motion, the Sixth Circuit vacated the judgment of the District Court denying the Petitioner's writ of habeas corpus upon finding that the Judgments in the underlying extradition proceedings were wrongly procured as a result of Prosecutorial Misconduct that Constituted Fraud On The Court. As in the Petitioner case, the proceedings were wrongly procured as a result of Prosecutorial Misconduct that also Constitutes Fraud On The Court, Id. at 356. Specifically, the Court found that Attorneys for the Department of Justice Attorneys "Acted with Reckless Disregard for the Truth and for the Government's obligation to take no steps that prevent and adversary from presenting His case fully and Fairly" when they Deliberately withheld Exculpatory Materials for the Petitioner, Demjanjuk v. Petrovsky, 10 F.3d 338, 354; Rule 8.4(a)(c)(d) Rules of Professional Conduct (RPC); (RPC) Rule 3.8 Comments (1); (RPC) Rule 3.4 (a)(b)(c)(d)(e)(2)(3). In the present case, its alleged by Petitioner that the Deliberate Presentation of False Evidence were done to prevent Petitioner from presenting an adequate defense to the charges and deprived Him of Due Process and a Fair Trial;

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WHEREFORE PREMISES CONSIDERED: Petitioner pray as to the following:

Request that the Honorable Court allow the Stay the proceeding filed by Petitioner in the present case;

Request the stay of the proceeding and allow the relief requested in Petitioner's 60(b)(6) Motion for Fraud Upon The Court due to the "Extraordinary Circumstances" herein;

Request any other relief as the Court deem appropriate and proper.

Respectfully submitted,

Edward Jerome Harbison

Edward Jerome Harbison, #108926
Pro se Petitioner
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Edward Jerome Harbison

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PRO, SE PETITIONER
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7475 COCKRILL BEND BOULEVARD
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Executed on August 31, 2007
(Date)

Edward Jerome Harbison