

IN THE ELEVENTH JUDICIAL DISTRICT, HAMILTON COUNTY, TENNESSEE

EDWARD JEROME HARBISON,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

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Case No. 154361 & 154362

DEATH PENALTY CASE

NOTICE OF FILING

Comes now the Petitioner, Edward Jerome Harbison, hereby gives notice to this Court that, This year, the Tennessee General Assembly took notice that Tennessee's Death Penalty is seriously flawed. The legislature passed Senate Bill 1911 / House Bill 2162 creating a commission to study Tennessee's entire death penalty system and address the myriad fatal flaws it contains. The study provides the first positive step the legislature has taken in recent Tennessee history concerning the death penalty. This study will provide that data to allow legislators to back away from their support of the death penalty as a public policy tool.

Sponsored by Senator Doug Jackson (D-Dickson) and Representative Rob Briley (D-Nashville) the legislation creates a commission, made up of legislators, representatives of the Governor, lawyers on both sides of the issue, mental health advocates, and victims and survivors groups. The commission will spend a year examining the risk of executing an innocent person, the effect on the families of murder victims and death row inmates, and the lack of effective counsel for people accused of capital crimes. The legislation was crafted in cooperation with the ACLU of Tennessee, the Catholic Public Policy Commission,

FILED IN OFFICE
07 AUG 20 2007

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

the Tennessee Justice Project, and the National Alliance on Mental Illness. All these groups lobbied the legislature; activated their memberships, and utilized their expert knowledge and resources to bring about a legislative victory. TCASK worked hard to secure mainstream sponsorship of the study bill. Senator Jackson is actually a supporter of the death penalty, but gave a legitimacy to our legislation that would have been impossible had it been carried by a well-known abolitionist. When Jackson referred the legislation to Representative Briley in the House, the chair of the Judiciary Committee, we had a bill built to move.

The next step was to secure co-sponsorships. On March 27th, TCASK hosted our second annual Justice Day on the Hill. More than 75 dedicated activists from around the state converged on the state capitol in support of our legislation and laid the groundwork for our first ever legislative victory. A large youth contingent from Nashville brought a vital energy to the group, and Dr. Amy Staples, TCASK's board chair, led a massive contingent of MISU students to visit the Rutherford County representatives. Four dedicated TCASK veterans awoke at the crack of dawn to make the long trip from Memphis, and groups of students came from University of the South in Sewanee, Bethel College, and Union University in Jackson. Joyce House, Paul House's mother, and Pam, his sister-in-law, visited a number of legislators to share their story.

Coming out of Justice Day, we secured co-sponsors from both parties, making our bill a bi-partisan enterprise. On the Democratic side, Representatives Ben West, Mike Turner, G.A. Hardaway, and Larry Turner signed on. From the Republican side of the aisle, the bill was co-sponsored by Representatives Bill Burn, Judd Matheny, Chris Crider, and Delores Gresham. Representative Matheny is a member of the House Judiciary Committee, which had jurisdiction over the bill, while Representative Crider is a member of the House Republican Leadership.

The hard work of our lobby partners and many visits, phone calls, and emails

from TCASK activists across the state made the outcome look easy in the end. In the Senate, the bill passed unanimously, and in the House it won by an easy margin of 79-14. When the bill passed the Senate, on the consent calendar designed for non-controversial items no less, Joe Sweat, the ACLU's lobbyist turned to me and said, "Son of a gun! It's hard to believe how far we've come in such a short time in Tennessee!"

Petitioner contend that, He had been pursuing His Rights Diligently, and that some "Extraordinary Circumstances" Stood in His way," Pace v. DiGuglielmo, 125 S.Ct. 1807, 1814, 161 L.Ed.2d 669 (2005). Events over which the Petitioner has no Control. See 110 Fed.Appx. 474, 479 (Objective Factor External).

The death penalty necessitate "special care and deliberation in decisions, that may lead to the imposition of sanction," Thompson v. Oklahoma, 487 U.S. 815, 856, 108 S.Ct. 2987, 101 L.Ed.2d 702 (1988) (O'Connor, J., concurring in judgment); O'Dell v. Netherland, 521 U.S. 151, 171 n.3, 117 S.Ct. 1969, 138 L.Ed.2d 351 (1997) (noting that "the unique character of the death penalty mandates special scrutiny" of trial and sentencing procedures in capital cases) (Stevens, J., joined by Souter, Ginsburg, Breyer, J.J., dissenting); Whitmore v. Arkansas, 493 U.S. 149, 167, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) ("It is by now axiomatic * * * that the unique, irrevocable nature of the death penalty necessitates safeguards not required for other punishments,") (Marshall, J., joined by Brennan, J., dissenting).

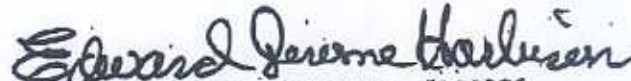
Trial Court has the Authority and may always Consider those Issues not Decided Expressly or Impliedly by an Appellate Court or a previous Trial Court, Burrell v. Henderson, 483 F.Supp.2d 595, 598-99 (Authority cited therein). Of Course, An Issue which will result in the Dismissal of the Prosecution will be considered even though the Issue was not Raised in the Motion for a New Trial,

State v. Draper, 800 S.W.2d 489, 493 (Tenn.Cr.App. 1990) (Authority cited therein); State v. Seagraves, 837 S.W.2d 615, 618 (Tenn.Cr.App. 1992). The question of what Misconduct of a Governmental Official can be attributed to Counsel remains an open and controversial Issue, See 48 Fed.Appx. 491, 499-500 (6th Cir. 2002).

WHEREFORE PREMISES CONSIDERED: Petitioner pray as to the followings:

Request that the Honorable Court review the Merits of the Petitioner's Claim of Fraud Upon The Court due to the "Extraordinary Circumstances" herein;
Request that the Court rule on the Merits of Petitioner's 60(b)(6) Motion.

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 MAIL 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 9 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.

Executed on August 9, 2007
(Date)

Edward Jerome Harbison

is a ["'Fraud Upon The Court.'"]. See Hazel-Atlas Glass Company v. Hartford-Empire Company, 322 U.S. 238, 248-49, 64 S.Ct. 997, 1002-03, 88 L.Ed. 1250 (1944), modified in Stanford Oil Co. v. U.S., 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976) (per curiam), (in which it was held that a Court has inherent power to set aside a Judgment obtained by such a Fraud, even in circumstances where the adverse party might be barred by laches or lack of diligent form obtaining relief); Peck v. Tanner, 181 S.W.3d 262, 265-66 (Tenn. 2005); Danjanjuk v. Petrovsky, 10 F.3d 338, 248 (6th Cir. 1993); (¶¶ 9-22 at Pp. 4-36, herein cited in Memo. in Support). Warrants the relief the Petitioner seeks.

Petitioner requesting the Court to Enter an Order Vacating the Judgment followed by a Order to Dismiss Indictments in the present case is the Relief the Petitioner seeks.

I. Petitioner contending that the present Judgment was procured by Fraud Upon The Court and in further support of Motion see Memorandum In Support shows the following:

(a) Petitioner asserts that, this Court should construe Petitioner's Motion either as An Independent Action, U.S. v. Buck, 281 F.3d 1336, 1342 (10th Cir. 2002), see 12 Moore's § 60.64, at 60-197; 11 Wright & Miller § 2868, at 405, or, because "[t]here are no formal Requirements for asserting a Claim of Fraud On The Court," U.S. v. Buck, 281 F.3d 1336, 1342; 12 Moore's § 60.21[4][f], at 60-60, as a pleading invoking the Court's inherent power to grant relief for Fraud Upon The Court. See (¶¶ 9-22 at Pp. 4-36, herein cited in Memo. in Support). Warrants the relief the Petitioner herein seeks.

(b) Petitioner contend that he is entitled to post judgment relief under the "catch-all provision in Tenn.R.Civ.P. 60.02(3). It is intended to provide

Post-Judgment relief only in the most unique, Exceptional, or Extraordinary Circumstances, Westside Mothers v. Olszewski, 454 F.3d 532, 538 (6th Cir. 2006); Jerkins v. McKinney, 533 S.W.2d 275, 280 (Tenn. 1976); Tyler v. Tyler, 671 S.W.2d 492, 495 (Tenn.Ct.App. 1984); Duncan v. Duncan, 789 S.W.2d 557, 562-63, 564 (Tenn.App. 1990), the Court held: ["Our Courts' interest in making Correct decisions in each case dictates caution in placing Errors beyond Correction, 5A J. Moore, J. Lucas & G. Grotheer, Moore's Federal Practice ¶ 60.02 (2d ed. 1989). Does not preclude Reconsideration of decided Issues if the Court finds "Exceptional Circumstances," Westside Mothers, 454 F.3d 532, 538 (citing Hogover Inc. Co. v. Am. Eng's Co., 105 F.3d 306, 312 (6th Cir. 1997)). "Exceptional Circumstances" include: "1) where substantially different Evidence is raised on subsequent Trial; 2) where a subsequent Contrary view of law is decided by the controlling authority; 3) where a decision is clearly Erroneous and would work a manifest Injustice," id. See (¶¶ 9-48, at Pp. 4-240, therein cited), warrants the relief the Petitioner seeks.

(c) Petitioner contends that, "It is well established that a person's Constitutional Rights are violated when Evidence is Knowingly Fabricated and a reasonable likelihood exists that the False Evidence would have affected the decision of the Jury," Hirvuz v. City of Madison Heights, 469 F.Supp.2d 466, 481 (E.D.Mich. 2007) (authority cited therein). See (¶¶ 9-48, at Pp. 4-240, therein cited), warrants the relief the Petitioner seeks.

II. "Fraud On the Court" consists of conduct: (1) on part of Officer of the Court, (2) that is directed to Judicial Machinery itself, (3) that is Intentionally False, Willfully Blind to the Truth, or is in Reckless Disregard for the Truth, that is positive averment or is Concealment when one is under

Duty to Disclose, that Deceives the Court. Damjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993) The Court has also made plain that the Prosecution cannot escape its Disclosure Obligation by compartmentalizing Information or failing to inform others in the Office of relevant Information, 10 F.3d 338, 353 (6th Cir. 1993). "Any Fraud connected with the Presentation of a case, as in the present case, to a Court is a "Fraud Upon The Court." Hazel-Atlas Glass Company v. Hartford-Empire Company, 322 U.S. 238, 248-49, 64 S.Ct. 997, 1092-03, 88 L.Ed. 1250 (1944), see Petitioner's Memorandum In Support (¶¶ 1, at p. 1; ¶ 2, at p. 2; ¶ 3, at p. 3; ¶ 4, at p. 3; ¶ 5, at p. 3; ¶ 6, at Pp. 3-4; ¶ 7, at p. 4; ¶ 8, at p. 4; ¶ 9, at p. 4; ¶ 10, at Pp. 4-5; ¶ 11, at Pp. 5-6; ¶ 12, at Pp. 6-13; ¶ 13, at Pp. 13-14; ¶ 14, at p. 14; ¶ 15, at Pp. 15-16; ¶ 16, at Pp. 16-18; ¶ 17, at Pp. 18-23; ¶ 18, at p. 24; ¶ 19, at Pp. 24-25; ¶ 20, at Pp. 26-27; ¶ 21, at Pp. 27-30; ¶ 22, at Pp. 30-36 therein), See (¶¶ 23-48, at Pp. 36-240, therein cited), warrants the relief the Petitioner seeks.

III. Petitioner contend there are sufficient grounds for release, that relevant facts are in dispute, and that the Courts did not hold a Full and Fair Evidentiary Hearing, Stanford v. Parker, 266 F.3d 442, 459 (6th Cir. 2001) (citations omitted)). "A Petitioner receives an Opportunity for Full and Fair litigation of a Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment Claims when 1) the Petitioner has Clearly informed the State Court of the Factual basis for these Claims and has Argued those Facts to Constitute Violations of His Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment rights and 2) the State Court has Carefully and Thoroughly Analyzed the Facts and Applied the proper Constitutional case law to the Facts," See 291 F.Supp.2d 777, 780-81. Petitioner has alleged sufficient facts entitling Him to Relief, see Cardwell

v. Greene, 152 F.3d at 331 (citing Townsend v. Sain, 372 U.S. 293, 313, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963) (overruled in part)). Note that ground number 5) was overruled by Keesey Tamayo-Reyes, which instituted a Cause and Prejudice Standard that must be overcome in order to receive relief when material facts were not adequately developed at the state court hearing, 504 U.S. 1, 8, 112, S.Ct. 1715, 118 L.Ed.2d 318 (1992). Keesey applied the Cause and Prejudice Standard used in procedural default case, Id. because there is no evidence the issue was "actually litigated or determined by a valid and final judgment, Gilbert, 413 F.3d at 580; U.S.C.A § 1738 provides petitioner with a full and fair opportunity to litigate the issue in the state proceeding. See also State v. Stephenson, 195 S.W.3d 574, 585-86 (Tenn. 2006) (an issue may be reconsidered despite being decided in a prior appeal if: 1) the evidence offered at the hearing was substantially different from the evidence at the first proceeding; 2) the prior ruling was clearly erroneous and would result in a manifest injustice if allowed to stand; and 3) the prior decision is contrary to a charge in the controlling law occurring between first and second appeal). In the present case, contrary to Monroe v. Angelone, 323 F.3d 286, 297-98 (4th Cir. 2003) (authority cited there in), in that case the court defers to the state court's adjudication of claim on its merits does not apply when a claim made on federal habeas had surfaced for the first time during federal proceedings. In the present case, the evidence petitioner received on April 19, 2007. See (Attachment - April 19, 2007, herein attached to Rule 60(b) Motion), the merits of the factual dispute were not resolved in any state court hearing prior; the court's factual determination is not fairly supported by the record as a whole; the fact-finding procedure employed by the court was not adequate to afford a full and fair hearing; there is a substantial

allegation of Newly Acquired Evidence; the Material Facts were not adequately Developed at the prior State Hearing; for any reason it appears that the State Trier of Fact did not afford the Petitioner a Full and Fair Hearing, State v. Hugueley, 185 S.W.3d 356, 382-83 Tenn. 2006) (Plain Error Doctrine) (Authority Cited therein). "Actual Prejudice" when the Error "worked to Petitioner's Actual and Substantial Disadvantage infecting His entire Trial with Error of Constitutional Dimensions,." Johnson v. U.S., 278 F.3d 839, 844 (8th Cir. 2002) (quoting U.S. v. Frady, 456 U.S. 152, 170, 102 S.Ct. 1584, 71 L.Ed.2d 816 (1981)). See (¶¶ I-III, herein); (¶¶ 9-22, at Pp. 4-36 § at Pp. 36-240, therein cited), warrants the relief the Petitioner seeks.

IV. The Assistant District Attorney Generals and Police Officers of the Chattanooga Tennessee Department that participated in this case Willfully presented False and Perjured Testimony and Fabricate Evidence and withheld Exculpatory Evidence and Favorable Information for Petitioner and lied to the Court, Jury and Defense to get Petitioner convicted, sentenced and executed and, unabated, has perpetuated that lie to this day. refuse to correct the Record, U.S. v. O'Keefe, 128 F.3d 885, 893 (5th Cir. 1997) (authority cited therein); U.S. v. Kelly, 929 F.3d 933-34, 935-36 (4th Cir. 1994) (authority therein); Malle v. Scully, 826 F.2d 1192, 1195 (2d Cir. 1987) (authority therein). Fraud Upon The Court in Damjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993), is satisfied by Proof of Actual Intent to Defraud, or Willful Blindness to the Truth, or of a Reckless Disregard for the Truth," Alley v. Bell, 405 F.3d 371, 372 (6th Cir. 2005) (Cole, J., concurring) (where Attorneys for Party have Acted "Willfully" or Recklessly" in Concealing Truth, Fraud has occurred). Under Damjanjuk, therefore, for there to be "Fraud Upon The

Court," Proof of Actual Intent to Defraud is not required. See Abrahamson v. Trans-State Express, Inc., 92 F.3d 425, 428 (6th Cir. 1996) (False Testimony and Withholding of Exculpatory Evidence); Cruthirds v. Cruthirds, 738 S.W.2d 197, 189-99 (Tenn.App. 1987) (Relief from a Judgment may be obtained under Rule 60, Tenn.R.Civ.P., the pertinent parts of the Rule are: or (5) any other reason justifying relief from the operation of Judgment); Peck v. Tanner, 181 S.W.3d 262, 265-66, 267 (Tenn. 2005) (Rule 60.02 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). See (¶ III, at Pp. 4-6, herein above), See (Memo. in Sup. ¶¶ 9-48, at Pp. 4-240, therein cited), warrants the relief the Petitioner seeks.

(1) Petitioner contend that had it not been for the Governor's Executive Order on February 1, 2007, for Ninety Days: the Petitioner would not have been hear today. I have been through all the Courts but without the Evidence, Testimony, Documents, and Information Petitioner needed to protect His Rights under the Constitution of both the U.S. and State of Tennessee. Petitioner contend that had He received the Brady Material and Giglio Information as I properly requested on (4/13/83; 10/21/83; and 11/28/83), and the Trial Court granted the Petitioner's requests on (4/20/83; and 11/4/83), see, s.g., Flowers, 209 S.W.3d 602, 611-14 (Authority cited therein, for Willful Disobedience for failure to Comply with the Trial Court's Orders); Posr v. Roadarmel, 466 F.Supp.2d 527, 531-32 (S.D.N.Y. 2006) (Dismissal For Failure To Comply with Court Orders); Honor Plastic Indus. Co. LTD v. Lollicup USA, 466 F.Supp.2d 1217, 1220-21 (E.D.Cal. 2006) (Authority cited therein) (whether Contempt is Civil or Criminal depends on the intended effect of the penalty imposed; if

the intent is remedial, or if the penalty is Conditional in that it is meant to Compel the Defendant to Act, the Contempt is Civil, but if the intent is punitive and the penalty is Unconditional, the Contempt is Criminal, 18 U.S.C.A. § 401, 466 F.Supp.2d 1217, 1220); Mercer v. Vanderbilt university, Inc., 134 S.W.3d 121, 137-38 (Tenn. 2004) (Authority cited therein) (Although the Tennessee Rules of Civil Procedure do not provided a Sanction for abuse of the Discovery Process, Trial Courts have Inherent Authority to take Corrective Action to Remedy Discovery Abuse). Petitioner contends that, in all Due Respect to the Trial Court's Authority to the Unconstitutional Actions of these Deliberate Actions of Concealing Favorable Evidence from Petitioner had the results of preventing Petitioner from Fully and Fairly presenting His Case in a Reasonably time in a Reasonable manner, because in light of the Favorable Information, Testimony and Documents, the Court and Jury conclusions would have been different, in the present case, and Petitioner would not have been convicted of First Degree Murder. The State has no legitimate interest in buying or the Presentation of False Evidence from outsiders - it has even less than none in lying to the Court itself. See Petitioner's (Attachment - April 19, 2007, attached to 60(b) Motion, herein), See (¶¶ I-III, at Pp. 2-6, herein); (Memo. in Sup. ¶¶ 9-48, at Pp. 4-240, therein cited), warrants the relief the Petitioner seeks.

(2) Petitioner contend that Fraud (whether hereto before denominated Intrinsic or Extrinsic), Misrepresentation, or other Misconduct or an Adverse Party; or (6) any other reason justifying relief from the operation of the Judgment.... The Saving Clause is an "Independent Action" in Equity and a proceeding for "Fraud Upon The Court" are two distinct remedies. Rule 60(b) reserves the Rights of Aggrieved Party to bring two different types of actions:

Independent Actions to relieve a Party from a Judgment, Order, or Proceeding; and (2) An Independent Action to relieve a Party for Fraud On The Court." Tibbetts v. President and Fellows of Yale College, 2005 U.S. Dist. LEXIS 919, *14 (D.Conn. 2005). Where there are allegations of Fraud as in the present case Misrepresentations or Misconduct a Court may grant relief using any of three different remedies (1) Rule 60(b)(3); (2) The Independent Action in Equity; and (3) An Action for "Fraud On The Court." See e.g., U.S. v. Buck, 281 F.3d 1336 (10th Cir. 2002) (acknowledging three separate vehicles for seeking relief from judgment where Fraud is involved). See Petitioner's (Attachment - April 19, 2007, attached to 60(b) Motion herein). On April 19, 2007, Petitioner receive correspondence from Keane O. Fritz, Special Counsel, Representing the City of Chattanooga, Tennessee. Enclosed within the letter Dated April 11, 2007, were Certified Copies of the Chattanooga City Court Docket Book for the whole day of February 21, 1983, see (Attachment - April 19, 2007, attached to 60(b) Motion hereto), also you will find attached thereto are a February 6, 2007, correspondence that Petitioner received for Kenneth O. Fritz, Special Counsel, Representing the City of Chattanooga, Tennessee, wherein which Petitioner received City Court Docket pages of City Court of Chattanooga, Tennessee, Court Official a.m. Docket Date February 22, 1983 page: 9603, Micro File #000056; Court Official a.m. Docket Date March 4, 1983 page: 9780, Micro File #001315; Court Official a.m. Docket Date March 11, 1983 page: 9881, Micro File #001252, see (Attachment - February 6, 2007, herein). After having carefully reviewing the Court Dockets Petitioner received from Kenneth O. Fritz, Special Counsel, Representing the City of Chattanooga, Tennessee, it appears that Petitioner's name was not on the City Court Dockets of Chattanooga, Tennessee on the Date of February 21, 1983. See Petitioner's (Memorandum In

Support Pp. 30-36, therein); (¶¶ I-III, at Pp. 2-6, herein); (Memo. in Sup. ¶¶ 9-48, at Pp. 4-240, therein cited), warrants the relief the Petitioner seeks.

(3) Petitioner Asserts after receiving City Court Docket in correspondence from Kenneth O. Fritz, Special Counsel, Representing the City of Chattanooga, Tennessee. Which Enclosed Certified Copies of the Chattanooga City Court Docket Book for the whole day of February 21, 1983, as to the followings:

Court Official AM Docket Date February 21, 1983 page: 9579, Micro File #000067;

Court Official AM Docket Date February 21, 1983 page: 9580, Micro File #000066;

Court Official AM Docket Date February 21, 1983 page: 9581, Micro File #000065;

Court Official AM Docket Date February 21, 1983 page: 9582, Micro File #000064;

Court Official AM Docket Date February 21, 1983 page: 9583, Micro File #000063;

Court Official AM Docket Date February 21, 1983 page: 9584, Micro File #000062;

Court Official AM Docket Date February 21, 1983 page: 9585, Micro File #000061;

Court Official AM Docket Date February 21, 1983 page: 9586, Micro File #000495;

Court Official AM Docket Date February 21, 1983 page: 9588, Micro File #000493,

Court Official AM Docket Date February 21, 1983 page: 9592, Micro File #000489;

Court Official AM Docket Date February 21, 1983 page: 9593, Micro File #000488;

Court Official AM Docket Date February 21, 1983 page: 9595, Micro File #000487;

Court Official AM Docket Date February 21, 1983 page: 9596, Micro File #000486;

Court Official AM Docket Date February 21, 1983 page: 9597, Micro File #000485;

Court Official AM Docket Date February 21, 1983 page: 9598, Micro File #000484;

See (Attachment - April 19, 2007, attached to 60(b) Motion herein). Petitioner

contend with a closer look at the City Court Document the Petitioner's name

was not on the City Court Docket of Chattanooga, Tennessee on the Date of

February 21, 1983. Wherefore, there could not have been a Warrant Issued for

Petitioner vehicle as asserted at Petitioner's Trial on December 2, 1983, by

Charles E. Foster, see (T.T. at Pp. 603-604); by General Lanzo, on December 2, 1983, see (T.T. at p. 393). Its shows Contempt for the Rule of Discovery and violate the Trust placed in Counsel to obey the Fundamental Rule of Court. In doing so, Counsel prevented the Petitioner from Fully and Fairly presented His case. Should the Court also find that Petitioner has presented a valid basis for obtaining Relief from Judgment under Rule 60(b). After the Petitioner receive correspondence from Special Counsel, now Petitioner can support His Claims with proof of Deliberate Misconduct on behalf of the State and its Key Witnesses. Charles E. Foster and James M. Davis. Extrinsic Fraud renders a Judgment, Decree, Order or agreement void and therefore subject to collateral attack, Govers v. Witherspoon, 379 F.Supp. 52, 59-60; New York Life Insurance Company v. Nashville Trust Company, 200 Tenn. 513, 292 S.W.2d 749, 754 (Tenn. 1956), It is said that Fraud Upon The Court, or Fraud which induces an adversary to withdraw his defense or prevents him from presenting an available defense, is the type which equity will relieve, Nashville Trust Company, supra, at p. 519, 292 S.W.2d 749. Additionally, a Court may set aside a judgment where it appears that such is manifestly unconscionable. There is no time limit for such proceedings, nor does the doctrine of laches apply. See U.S. v. Buck, 281 F.3d 1336, 1341-42 (10th Cir. 2002); Bulloch v. U.S., 763 F.2d 1115, 1121 (10th Cir. 1985) (en banc); 11 Wright & Miller § 2870, at 412; 12 Moore's § 60.21[4][g)). See (Memo. in Sup. ¶¶ 9-48, at Pp. 4-240, therein cited), warrants the relief the Petitioner seeks.

(4) Trial by the Record, A Trial in which on Party insists that a Record Exists to Support its Claim and the opposing Party denies the Existence of such a Record. If the Record can be produces, the Court will consider it in Reaching a verdict - otherwise, it will Rule for the opponent, Black Law

was an indigent and the State Court, in deprivation of His Constitutional right, failed to Appoint Counsel to represent him in the State Court Proceeding; 6) that the Applicant did not receive a Full, Fair, and adequate Hearing in the State Court proceeding; or 7) that the Applicant was otherwise denied Due Process of law in the State Court proceeding; 8) or unless that part of the Record of the State Court Proceeding in which the Determination of such Factual issue was made, pertinent to a Determination of the Sufficiency of the Evidence to Support such Factual Determination, produced as provided hereinafter, and the Federal Court on a consideration of such part of the Record as a whole concludes that such Factual Determination is not Fairly Supported by the Record." Satcher v. Netherland, 944 F.Supp. 1222, 1268 n. 37 (E.D.Va. 1996). (Memo. in Sup. ¶¶ 9-48, at Pp. 4-240, therein cited), warrants the relief the Petitioner seeks.

(5) Upon consideration of the Entire Record in this cause, the Court should be of an opinion that the Record is not inadequate to determine the merits of Petitioner's Claims of Fraud of the Court, Weston v. State, 60 S.W.3d 57, 59 (Tenn. 2001). Petitioner asserts that the repeatedly assertions by Officers of the Chattanooga City Police Department and the State claims that on February 21, 1983 to have obtained Judicial Authority pursuant to an Search Warrant for Petitioner's automobile, which were parked in the backyard of a private residence 918 East Eight Street, Chattanooga, Tennessee 37403, a place where both the Officers and State knew that Petitioner also resided there. This were done to deprive Petitioner of his Due Process rights and a Fair Trial. Because such assertions impeded upon Petitioner's defense to the charges brought against Him by the same Officers of the Chattanooga City Police Department and other agents of the State of Tennessee, that participated in the

investigation presentation and prosecution of the case. Petitioner contend that had the Officers of the Chattanooga City Police Department and other Agents of the State of Tennessee not claimed to have had Authority under a Search Warrant on 2/21/83, prior to Trial, on December 2, 1983 at Trial See (T.T. at Pp. 603-604), and on May 31, 1991 on Post see (P.T. at p. 178). It makes it plain that the False Testimony was at a minimum capable of Influencing the Court and Jury on the Issue of guilt or Innocence, U.S. v. Guariglia, 962 F.2d 160, 165; U.S. v. Gomez-Vigil, 929 F.2d 254, 258 (6th Cir. 1991) (in a similar action, noting that "[M]ateriality is an essential Element of an Offense charged under 18 USC 1623(a)," 929 F.2d 254, 258 (quoting U.S. v. Damato, 554 F.2d 1371, 1372 (5th Cir. 1977), the Fifth Circuit held that "[t]he test of Materiality is 'whether the False Testimony was capable of Influencing the Tribunal on the Issue before it,'" Id. (citations omitted). IN fact, "[t]he Statements need not be Material to any particular Issue, but may be Material to Collateral Matters that might Influence the Court or the Jury in the decision of the question before the Tribunal," Id. at 1373 (citations omitted). As in the present case, the Court should conclude that the Officers Statements were "Material Declaration[s]" as required by 18 U.S.C.A. 1623, at Trial under Oath to the Truthfulness of Their Statements in their December 2, 1983 "Declaration in Support," they nevertheless chose to make the Statements "Under the Penalty of Perjury, governs the lawfulness of the Prosecution's Key Witnesses Officers James M. Davis and Charles E. Foster, December 2, 1983 Statements. That Petitioner would have filed proper and appropriate pre-Trial Motions and Petitioner's case would have been properly investigated and Petitioner's Constitutional Rights properly asserted and preserved for Appellate Review. Petitioner hereby "incorporate the Issue concerning "Fraud

Upon the Court," See (Memo. in Sup. ¶¶ 9-48, at Pp. 4-240, therein cited), warrants the relief the Petitioner seeks.

(6) That in cases where the Prosecution Knew or should have Known of Perjury, "Reversal is virtually automatic," U.S. v. Gallego, 191 F.3d 156, 162 (2d Cir. 1999). Granting relief where Prosecution present False Testimony of Crucial Witness, Su v. Fillion, 335 F.3d 119, 129 (2d Cir. 2003). Where withheld Evidence "would certainly have undermined the credibility of Prosecution Key Witnesses. Where the Prosecution presents False Testimony, relief is mandated "if there is any likelihood that the False Testimony could have affected the Judgment of the Jury," Agurs, 427 U.S. at 103, 96 S.Ct. at 2397; See U.S. v. Wong, 78 F.3d 73, 81 (2d Cir. 1996) (where Prosecution knew or should have known of perjury, new trial mandated if any reasonable likelihood False Testimony affected Jury Verdict), Quoting Agurs, supra; U.S. v. Wallach, 935 F.2d 445, 456 (2d Cir. 1991) (Where "the Prosecution knew or should have known of the perjury, the conviction must be set aside if there is any reasonable likelihood that the False Testimony could have affected the Judgment of the Jury."), citing Agurs supra and Perkins v. LeFevre, 691 F.2d 616, 619 (2d Cir. 1982). See Beckett v. Haviland, 76 Fed.Appx. 726 (6th Cir. 2003) (per curiam) (granting habeas corpus relief under AEDPA where " Witness who provided Key Evidence for the Prosecution" Testified Falsely). Cases involving Perjury demands this "Strict Standard of Materiality, not just because they involve Prosecutorial Misconduct, but more importantly because the involve a Corruption of the Truthseeking Function of the Trial Process," Agurs 427 U.S. at 104, 96 S.Ct. at 2397. See (Memo. in Sup. ¶¶ 9-48, at Pp. 4-240, therein cited), warrants the relief the Petitioner seeks.

(7) The Act or an instance of a Person's Deliberately making Material

False or Misleading Statements while under Oath. In Criminal law, the Willful Assertion as to a Matter of Fact, Opinion, Belief, or Knowledge, made by a Witness in a Judicial Proceeding as part of His Evidence, either Upon Oath or in any form allowed by law to be Substituted for an Oath, whether such Evidence is given in Open Court, or in a Affidavit, or other wise, such Assertion being Material to the Issue, or Point of inquiry and Known to such Witness to be False. Perjury is a crime committed when a lawful Oath is administered, in some Judicial Proceeding, to a Person Who Swears Willfully, Absolutely, and Falsely, in a Matter Material to the Issue or Point in Question, Gatewood v. State, 15 MD.App. 314, 290 A.2d 551, 553. A Person is guilty of Perjury if in any Official Proceeding he Makes a False Statement Under Oath or Equivalent Affirmation, or Swears or Affirms the Truth of a Statement previously made, when the Statement is Material and he does not believe it to be True, Model Penal Code, § 241.1. See also 18 USCA § 1621. The essential Elements of "False Swearing" consist in Willfully, Knowingly, Absolutely and Falsely Swearing Under Oath or Affirmation on a Matter Concerning Which a Party could legally be Sworn and on Oath Administered by one legally Authorized to Administer it, Smith v. State, 66 Ga.App. 669, 19 S.E.2d 168, 169. it must appear that Matter Sworn to was Judicially pending or was being Investigated by Grand Jury, or Was a Subject on Which Accused could legally have been Sworn, or on which He was required to be Sworn, Capps c. Commonwealth, 294 Ky. 743, 172 S.W.2d 610, 611. See (¶¶ I-III, at Pp. 2-6, herein above); (Memo. in Sup. ¶¶ 9-48, at Pp. 4-240, therein cited), warrants the relief the Petitioner seeks.

V. Petitioner contend, in the initial proceedings, the State and Police Officers had engaged in Fraud, Misrepresentations, Misconduct by Deliberately

presenting the Fraudulently Assertions of receiving Judicial Authority under an Search Warrant on February 21, 1983, see (P.T. at 178); (T.T. at 603-604), Fraud Upon The Court in Demianjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993), is satisfied by proof of actual intent to Defraud, of Willful Blindness to the Truth, or of a Reckless Disregard for the Truth," Alley v. Bell, 405 F.3d 371, 372 (6th Cir. 2005) (Cole, J., concurring) (where Attorneys for Party have acted "Willfully" or "Recklessly" in concealing Truth, Fraud has occurred). Under Demhanjuk, therefore, for there to be "Fraud Upon The Court," proof of actual Intent to Defraud is not required. See (Memo. in Sup. ¶¶ 9-48, at Pp. 4-240, therein cited), warrants the relief the Petitioner seeks.

(a) Petitioner contend that, the said Misrepresentations and Deceptions that prevented Petitioner from knowing about, or asserting certain Rights or a Meritorious defense and contends that Petitioner was denied the Opportunity to Fully litigate His Case, Schultz v. Butcher, 24 F.3d 626, 630-31 (4th Cir. 1994). The Court acknowledge the important consideration of finality of judgments, but the fairness and integrity of the fact finding process is of greater concern and a party's failure to produce a requested Document so Favorable to an Adversary Impedes that Process and requires redress in the form of a new trial, Id. at 631. The Court held that an adverse party's failure, either inadvertently or intentional, to produce such obviously pertinent requested discovery Material in its possession is Misconduct under the meaning of Rule 60(b)(3) citing case law, Id. at 630. The Document was in her attorney's possession at the time of the request, and the failure to produce such an important Report which contained Information helpful to an adversary's position is not easily excused, Id. at 630. See (¶¶ I-IV, at Pp. 2-16, herein above); (Memo. in Sup. ¶¶ 9-48, at Pp. 4-240, therein cited),

warrants the relief the Petitioner seeks. See Tenn.R.Civ.P. 60.02, and Showe the Court it has a Meritorious Defense to the Suit, Tenn.R.Civ.P. 55.02; Turner v. Turner, 739 S.W.2d 779, 780 (Tenn.Ct.App. 1986); Patterson v. Rockwell Int'l, 665 S.W.2d 96, 100 (Tenn. 1984); In Re Stone, 588 F.2d 1316, 1319-22 (10th Cir. 1978). Where it can be Demonstrate, clearly and convincingly, that a Party had sentiently set in motion some Unconscionable Scheme Calculated to interfere with the Judicial system's ability impartially to adjudicated a matter by improperly Influencing the trier or unfairly hampering the Presentation of the opposing Party's claim or Defense." See Aoude v. Mobile Oil Co. Corp., 892 F.2d 1115, 1118 (1st Cir. 1989). See also Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978) (quoting England v. Doyle, 281 F.2d 304, 310 (9th Cir. 1960) ("[I]t is necessary to show an Unconscionable Plan or Scheme which is designed to improperly Influence the Court in its decision."). Corruption of Judicial Process, Lockwood v. Bowles, 46 F.R.D. 625, 632 (D.C.D.C. 1969). See particular (¶¶ 23-52, at Pp. 36-262, herein cited), warrants the relief the Petitioner seeks.

(b) Petitioner contends, as a result of, Fraud Upon The Court, by State Assistant District Attorney Generals at Petitioner's Trial on December 2, 1983, see (T.T. at p. 603) (concerning having Search Warrant for Petitioner's car on February 21, 1983), and Officers of the Chattanooga Police Department Charles E. Foster at Petitioner's Trial on December 2, 1983, see (T.T. at Pp. 603-604) (making assertions under Oath pursuant to the Penalty of Perjury concerning having Search Warrant for Petitioner's car on February 21, 1983), and other Officers James M. Davis, on December 2, 1983, which participated in the investigation, presentation and prosecution of the case; all Conspired with

one another in a Willful, Knowingly presenting False and Perjured Testimony and Fabricated Evidence to achieved Petitioner's conviction and sentence of death. Petitioner emphasize herein, as the Record reflects, the assessment by the Trial Court did not have the Full Facts before it before it addressed any of the Facts and Circumstances of the case, Due to the State's Assistant Generals and Police Officers Willfully and Deliberately Presentation of False and Perjured Testimony and the Fabrication of Evidence, therefore the Court could not Constitutional on the Merits of the Facts and Circumstances before it reach a proper conclusion in this case. The Cardinal Issue presented in these Proceedings One or Some which has not been previously addressed by the Trial Court upon competent Facts and Circumstances and Evidence at it were Deliberately Fraudulently presented to Defraud and Deceive the Court. Were Deliberately done by Officers of the Court and State Police Officers that participated in the Initiating Presentation and Prosecution of the this case. By the Conscious Deliberate use of Intentionally Fraud and Perjured Testimony by Key State Witnesses, Officers Charles E. Foster and James M. Davis, on December 2, 1983, at Petitioner's Trial concerning receiving Judicial Authority on February 21, 1983, by Deliberately Presenting False and Fabricated Evidence Upon The Court so that Petitioner would go to Trial in this Death Penalty Case, that resulted in an Conviction and Sentence obtained as of the result of a Deliberately Planned and Carefully Executed Scheme to Defraud and Deceive not only the Court but the Jury and Defense. Proof of the Scheme is of its Complete Success up to this Date, Hazel-Atlas, supra, 322 U.S. at 245-46, 64 S.Ct. at 1001. These Actions were also designed to Influence Corruptly the Proceedings and to inhibit the ability of an Adverse Party to Fully present His case or Defense, which has the effect of foreclosing to Petitioner the Opportunity

to have a Full, a Fair and a Complete Trial which deprives Petitioner of Due Process of law. Suell v. Anderson, 48 Fed.Appx. 491, 499-500 (6th Cir. 2002) (Authority cited therein); Peck v. Tanner, 181 S.W.3d 262, 266-67 (Tenn. 2005) (Authority cited therein). Under the confined Standards of the Independent Action to set aside a Judgment for Fraud Upon The Court provided for by the "Saving Clause" of Rule 60(b)(6). The Elements of a Fraud Upon The Court are 1) conduct by an Officer of the Court 2) directed towards the Judicial Machinery itself that is 3) Intentionally False, Willfully Blind to the Truth or is in Reckless Disregard for the Truth and 4) a positive averment or Concealment, when One is under a Duty to Disclose, and that 5) Deceives the Court, Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993). "'Fraud upon The Court' has been defined to embrace: Only that species of Fraud which does or attempts to, defile the Court itself, or is a Fraud perpetrated by a Officers of the Court so the Judicial Machinery can not perform in the usual manner its impartial task of adjudging cases. It generally involves a Deliberately Planned and Carefully Executed Scheme designed to subvert the integrity of the Judicial Process. However, Intentional Fraudulent Non-disclosure during Discovery can form the basis of a claim of Fraud Upon The Court. See (¶¶ 9-52, at Pp. 4-262, therein cited), warrants the relief Petitioner seeks.

(c) Petitioner contend that, State Assistant District Attorney Generals and the Police Officers of the Chattanooga Tennessee Department that participated in the investigation, presentation and prosecution of the case, did a Knowingly Misrepresentation of the truth and Concealment of a Material Fact to induce another to act to his or her detriment, a Misrepresentation made Recklessly without belief in its Truth to induce another person to act.

Tschira v. Willingham, 135 F.3d 1077, 1087-88 (6th Cir. 1998) (Authority cited therein); City State Bank v. Dean Witter Reynolds, 948 S.W.2d 729, 738 (Tenn.App. 1996) (citing Metro Gov't of Nashville & Davidson County v. McKenney, 852 S.W.2d 233, 237 (Tenn.App. 1992)); Parks v. Financial Federal Saving Bank, 345 F.Supp.2d 889, 895 (W.D.Tenn. 2004); Lopez v. Taylor, 195 S.W.3d 627, 633-634 (Tenn.Ct.App. 2005) (Authority cited therein). It is well-settled that Fraud can be an Intentional Misrepresentation of a Known, Material Fact or it can be the Concealment or Nondisclosure of a Known Fact when there is Duty to Disclose, Justice v. Anderson County, 955 S.W.2d 613, 616-17 (Tenn.App. 1997) (Authority cited therein)). A False Statement as to Material Fact, made with Intent that another rely thereon, which is believed by other Party and on which He relied and by which He is Induced to Act and does Act to His injury, and with utter disregard of its Truth or Falsity, Osborne v. Simmons, Mo.App., 23 S.W.2d 1102, 1104; see Petitioner's Memorandum In Support (¶¶ 1, at p. 1; ¶ 2, at p. 2; ¶ 3, at p. 3; ¶ 4, at p. 3; ¶ 5, at p. 3; ¶ 6, at Pp. 3-4; ¶ 7, at p. 4; ¶ 8, at p. 4; ¶ 9, at p. 4; ¶ 10, at Pp. 4-5; ¶ 11, at Pp. 5-6; ¶ 12, at Pp. 6-13; ¶ 13, at Pp. 13-14; ¶ 14, at p. 14; ¶ 15, at Pp. 15-16; ¶ 16, at Pp. 16-18; ¶ 17, at Pp. 18-23; ¶ 18, at p. 24; ¶ 19, at Pp. 24-25; ¶ 20, at Pp. 26-27; ¶ 21, at Pp. 27-30; ¶ 22, at Pp. 30-36; ¶¶ 23-52, at Pp. 36-262, therein cited), warrants the relief the Petitioner seeks.

(d) Petitioner contend that, the Assistant District Attorney Generals and Officer of the Chattanooga Tennessee Police Department that participated in the investigation, presentation and prosecution of the case, repeatedly Concealed and Failed to Disclose Exculpatory Evidence Material and Favorable Information to the Petitioner under Brady v. Maryland which as of result, have

prejudiced Petitioner's defense because of District Assistant Attorney Generals and Officers of the Chattanooga Tennessee Police Department that participated in the investigation, presentation and prosecution of the case has failed to provide Petitioner with an adequate remedy to exhaust or present Petitioner's Civil and Constitutional Right in the present proceeding left Petitioner in the Absence of any adequate Remedy of law, Barrett v. Secretary of Health & Human Services, 840 F.2d 1259, 1263 (6th Cir. 1987). See (Memo. in Sup. ¶¶ 9-52, at Pp. 4-262, therein cited), warrants the relief the Petitioner seeks.

(e) Petitioner contend, to allow Petitioner's judgment of convictions and sentence of death to stand in this case that were procured by Fraud would be a grave Miscarriage of Justice under the circumstances of the this case; see Petitioner's Memorandum In Support (¶¶ 1, at p. 1; ¶ 2, at p. 2; ¶ 3, at p. 3; ¶ 4, at p. 3; ¶ 5, at p. 3; ¶ 6, at Pp. 3-4; ¶ 7, at p. 4; ¶ 8, at p. 4; ¶ 9, at p. 4; ¶ 10, at Pp. 4-5; ¶ 11, at Pp. 5-6; ¶ 12, at Pp. 6-13; ¶ 13, at Pp. 13-14; ¶ 14, at p. 14; ¶ 15, at Pp. 15-16; ¶ 16, at Pp. 16-18; ¶ 17, at Pp. 18-23; ¶ 18, at p. 24; ¶ 19, at Pp. 24-25; ¶ 20, at Pp. 26-27; ¶ 21, at Pp. 27-30; ¶ 22, at Pp. 30-36; ¶¶ 37-52, at Pp. 36-262, therein cited), warrants the relief Petitioner seeks.

VI. Petitioner contend that, the Assistant District Attorney Generals has Deliberately refused to Correct the False and Perjured Testimony and Fabricated Evidence that appears in Petitioner Record. As of the results of the Action taken against Petitioner by the Police Officers and Assistant District Attorney Generals that participated in investigation, presentation and prosecution of the case Deliberately Deprived Petitioner of his Rights

to a Fair Trial, to be free from Unreasonable Searches and Seizures, to a Jury Trial, to Reasonable Effective Counsel, to Due Process of law and to the Equal Protection of the law. The Trial Record is devoid an any properly asserted or preserved Civil or Constitutional Rights, See Motion To Suppress (at pages 1-67); Trial (at pages 424-828); Sentencing (at pages 831-870), and Motion For New Trial (at 872-975), as of results, which are clearly in violation of the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment rights to the United States Constitution and the corresponding Articles and Sections of the Tennessee Constitution, as well as the Tennessee Rules of Criminal Procedure, Rules 3, 4, 9, and 41. (Memo. in Sup. ¶ 11, at Pp. 5-6; ¶¶ 12-22, at Pp. 6-36; ¶¶ 23-52, at Pp. 36-262, therein cited), warrants the relief the Petitioner seeks.

1. Petitioner contend that, He has been "Fought Tooth And Nail" by the State its Assistant District Attorney Generals and Officers of the Chattanooga City Police Department that participated in the Investigation, Presentation and Prosecution of the case. This Trial Court has the Authority and may always Consider those Issues not Decided Expressly or Impliedly by an Appellate Court or a previous Trial Court, Burrell v. Henderson, 483 F.Supp.2d 595, 598-99. (Authority cited therein). Further of Course, an Issue which will result in the Dismissal of the Prosecution will be considered even though the Issue was not Raised in the Motion for a New Trial, State v. Draper, 800 S.W.2d 489, 493 (Tenn.Cr.App. 1990) (Authority cited therein); State v. Seagraves, 837 S.W.2d 615, 618 (Tenn.Cr.App. 1992). The question of what Misconduct of a Governmental Official can be attributed to Counsel remains an open and controversial Issue, 48 Fed.Appx. 491, 499-500 (6th Cir. 2002). See (Memo. in Sup. ¶¶ 9-52, at Pp. 4-262, therein cited), warrants the relief

the Petitioner seeks.

2. Petitioner contend relief under Rule 60(b) is "Extraordinary in Nature" Roach v. Woltmann, C.D.Cal., 879 F.Supp. 1039, 1042; 105 F P D 4th-313 (1998); Underwood v. Zurich Ins. Co., 854 S.W.2d 94, 96-97 (Tenn. 1993) (Extraordinary Circumstances or Extreme Hardship); Duncan v. Duncan, 789 S.W.2d 557, 563, 564 (Authority cited therein at p. 564) (Extraordinary Circumstances) and Davis by Davis v. Jellico Community Hosp. Inc., 912 F.2d 129, 136 (C.A.6 (Tenn.)); 105 F P D 4th-313 (1998); Bradshaw v. Daniel, Tenn., 854 S.W.2d 865, 869; AARP v. E.E.O.C., 390 F.Supp.2d 437, 443. Petitioner Motion is timely, Exceptional Circumstances justify granting Extraordinary Relief, and Vacating the Judgment will not cause unfair prejudice to the opposing Party, that granting the Motion will not be an "Empty Exercise" because the underlying Claim for Relief is likely to succeed on the Merits of this case, Caisse DuBois, 346 F.3d 213, 215 (1st Cir. 2003) (citations omitted). The Court has broad discretion in resolving Rule 60(b) Motions, Id. at 215-16 (citing Karak v. Bursaw Oil Corp., 288 F.3d 15, 19 (1st Cir. 2002)). See (Memo. in Sup. ¶¶ 9-52, at Pp. 4-262, therein cited), warrants the relief the Petitioner seeks.

WHEREFORE PREMISES CONSIDERED: Petitioner pray as to the followings:

Request that the Honorable Court review the Merits of the Petitioner's Claim of Fraud Upon The Court;

Request the Court to Enter an Order finding the that Fraud Upon The Court was perpetrated by a Officer of the Court;

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, OFFICER 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 6 DAY OF August 2007

Edward Jerome Harbison

EDWARD JEROME HARBISON, #108926
PRO, SE PETITIONER
RMSI, UNIT TWO, D-POD ROOM 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 July 31, 2007
(Date)

Edward Jerome Harbison

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

EDWARD JEROME HARBISON,

Petitioner,

VS.

STATE OF TENNESSEE,
Respondent.

CASE NO: 154361 & 154362

DEATH PENALTY CASE

MOTION PURSUANT TO RULE 24
OF THE TENNESSEE RULES OF APPELLANT PROCEDURE

Comes now the Petitioner, Edward Jerome Harbison, in his own proper person, pro se, and petitions this Honorable Court for relief pursuant to the provisions of Rule 24(a)-(h) for an Order to Supplement the Trial Record with the Eleventh Judicial District, City Court ["Docket Book"] for the Entire Day of February 21, 1983". The reason why Petitioner need the complete day of February 21, 1983, is because Petitioner will be seeking appellate review of an Issue in the Supreme Court, and it is the Duty of the Petitioner to prepare a RECORD which conveys a fair, accurate and complete account of what transpired with respect to the Issues which form the basis of the Appeal, See, Rules App.Proc., Rule 24(a)-(h) and for further support see as to the reasons follows:

Petitioner contends that, it would be appropriate for this Court to Order that the Trial Record be Supplemented with the "City Court Docket Book" for the entire day of February 21, 1983. It would convey to this Court a Fair Accurate and Complete account of the Issues presented in this case, it provides a sufficient amount of Admissible Information to aid this Court in determining the Issues before it, State v. Taylor, 992 S.W.2d 941, 944 (Tenn. 1999). Petitioner contends that it is necessary to convey a fair,

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

EDWARD JEROME HARBISON,

VS

STATE OF TENNESSEE.

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CASE NO: 154361 & 154362

DEATH PENALTY CASE

MOTION FOR TENNESSEE RULES OF CRIMINAL PROCEDURES
RULES 4 and 41

Comes now Edward Jerome Harbison, Pro Se Petitioner, and petitions this Court for an Order pursuant to the Rules of Tennessee Rules of Criminal Procedures, Rule 4 and Rule 41, against the Police Officers that Executed a "Search and Seizure" on 2/21/83 at 819 East Eighth Street, Chattanooga, Tennessee 37403, a private residence where the Petitioner also resided at. Which resulted in the Impoundment of Petitioner's vehicle that were located in the backyard of ~~his~~ residence and the Search, Seizure, Transportation, Incarceration and Detention of Petitioner against the Petitioner's Will and without the Petitioner's Consent. Claiming to have received lawful Authority under a "Warrant". That a determination by Court be made upon Deliberate Actions by the Police Officers. Seeking New Trial followed by an Order to Vacate Indictments in the case.

Respectfully submitted,

Edward Jerome Harbison
Edward Jerome Harbison, Pro Se Petitioner
RMSI No. 108926, Unit 2, Room D109
Riverbend Maximum Security Institution
7475 Cockrill Bend Boulevard
Nashville, Tennessee 37209-1048

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GWEN

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND EXACT COPY OF THIS MOTION 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
CHATTANOOGA, TENNESSEE, 37402** **PHONE: (423) 209-7500**

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

ON THIS, THE 6 DAY OF August 2007.

Edward Jerome Harbison

EDWARD JEROME HARBISON, #108926
PRO, SE PETITIONER
RMSI, UNIT TWO, D-POD ROOM 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 February 1, 2007
(Date)

SWORN TO AND SUBSCRIBED before me this the

1st day of February 2007.

Christi Sorenson
Notary Public



My Commission Expires: _____

My Commission Expires NOV. 22, 2008

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

EDWARD JEROME HARBISON,

VS

STATE OF TENNESSEE.

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CASE NO: 154361 & 154362

DEATH PENALTY CASE

**MOTION FOR FAILURE TO OBEY TRIAL COURT ORDER
FOR DISCLOSURE OF FAVORABLE EXCULPATORY EVIDENCE
AND IMPEACHMENT MATERIAL TO THE DEFENSE**

Comes now Edward Jerome Harbison, Pro Se Petitioner, and petitions this Honorable Court for an Order against the State and its Officers for failing to provide for the Defense favorable exculpatory evidence in this case pursuant to Tennessee Rules of Criminal Procedure, Rule 12 and 16, and pursuant to Prosecutorial Misconduct and Brady v. Maryland, 373, 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), Claims. Seeking an Order for reversal of Convictions followed by an Order to vacate the Indictments in the case, pursuant to Brady Prosecutorial Misconduct Claims.

And Petitioner petitions the Court pursuant to Tennessee Rules of Criminal Procedures, Rules 12 and 16; Prosecutorial Misconduct Impeachment Material and Giglio v. U.S., 405 U.S. 150, 153-55, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972), and seeking an Order for reversal of Convictions followed by an Order to vacate the Indictments in the case for the Giglio Prosecutorial Misconduct Impeachment Claims.

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GWEN THOMAS, CLERK

BY _____ D.C.

CHIEF CLERK

Petitioner asserts pursuant to case law of the Sixth Circuit, *Apanovitch v. Houk*, 466 F.3d 460, 2006 U.S.App. Lexis 25880 *25-36 (6th Cir. 2006)); *Bell v. Bell*, 460 F.3d 739, 758 (6th Cir. 2006) and *Eddleman v. MaKee*, 6th Cir. No. 05-1493 slip op. at 10 (6th Cir. 2006), see attached Memorandum In Support at pages 2-3.

**DIRECT EXAMINATION TRIAL TRANSCRIPT BY STANLEY LANZO:
OF CHARLES E. FOSTER: AT PAGES 603-604: Q: Now, after you had taken the confession from defendant, did you get a consent to search – were you armed at that time with a search warrant of his vehicle for trace evidence? A: That's correct, we did have a search warrant for his vehicle. However, it was not for trace evidence. We did later obtain a consent to search from Jerome Harbison and also a search warrant for trace evidence on the search of his vehicle, 1975 Ford Elite.**

In support of this Motion see attached Memorandum For Motion For Failure To Obey Trial Order For Disclosure of Favorable Exculpatory Evidence and Impeachment Material To The Defense. In support of the relief Petitioner seeking an Order for reversal of Convictions followed by and Order to vacate Indictment in the case by this Honorable Court.

Respectfully submitted,



Edward Jerome Harbison, Pro Se Petitioner
RMSI No. 108926, Unit 2, Room D109
Riverband Maximum Security Institution
7475 Cockrill Bend Boulevard
Nashville, Tennessee 37209-1048

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND EXACT COPY OF THIS MOTION 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
CHATTANOOGA, TENNESSEE , 37402 PHONE: (423) 209-7500**

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

ON THIS, THE 6 DAY OF August 2007.

Edward Jerome Harbison
EDWARD JEROME HARBISON, #108926
PRO, SE PETITIONER
RMSI, UNIT TWO, D-POD ROOM 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 February 1, 2007
(Date)

Edward Jerome Harbison
SWORN TO AND SUBSCRIBED before me this the
1st day of February 2007.

Christi S
Notary Public



My Commission Expires: _____ My Commission Expires NOV. 22, 2008

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

EDWARD JEROME HARBISON

VS

STATE OF TENNESSEE.

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(
(

CASE NO: 154361 & 154362

DEATH PENALTY CASE

NOTICE OF CLAIM OF EXEMPTION FROM GARNISHMENT

1. The Petitioner, Edward Jerome Harbison, hereby gives notice of the exercise of his right, pursuant to T.C.A. 26-2-102, to exempt from seizure or garnishment personal property to the aggregate value of four thousand dollars (\$4,000). In exercising this right, Petitioner gives notice of his selection of the funds in his inmate trust account with the Tennessee Department of Corrections and any personal property maintained in his cell at Riverbend Maximum Security Institution.
2. Petitioner is a bona fide citizen of the State of Tennessee. Cole v. Campbell, 968 S.W.2d 274, 275-77 (Tenn. 1998); Goodwin v. Hendersonville Police Department, 5 S.W.3d 633, 634 (Tenn. 1999). Petitioner permanently resides in Nashville, Davidson County, Tennessee.

AFFIDAVIT

The Affiant, after being duly sworn states as follows:

FILED IN OFFICE

07 AUG 13 PM 4:07

GWEN TIDWELL, CLERK

BY _____ D.C.

FILM REF: _____

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
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PHONE: (423) 209-7500

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

ON THIS, THE 6 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.

Executed on July 31, 2007
(Date)

Edward Jerome Harbison

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, OFFICER OF THE CLERK
CRIMINAL COURT CLERK: GWEN TIDWELL
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ON THIS, THE 6 DAY OF August 2007

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PRO, SE PETITIONER
RMSI, UNIT TWO, D-POD ROOM 109
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND BOULEVARD
NASHVILLE, TENNESSEE 37209-1048

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Edward Jerome Harbison