

IN THE CIRCUIT COURT FOR HARDEMAN COUNTY, TENNESSEE
AT BOLIVAR

STATE OF TENNESSEE)
)
)
v.) NO. 6665
)
) DEATH PENALTY CASE
)
STEPHEN HUGUELEY,)
Defendant.)

PRO SE PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

Mailing Address of Petitioner Stephen Lynn Hugueley, #112195, Brushy Mountain Correctional Complex/HSA, P. O. Box 1000, Petros, TN 37845

Place of Confinement Brushy Mountain Correctional Complex

Department of Correction Number #112195

NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY THE ACCOMPANYING INSTRUCTIONS.

1. Name and location (city and county) of court which entered the judgment of conviction or sentence challenged Circuit Court of Hardeman County
2. Date of judgment of conviction September 16, 2003
3. Case number NO. 6665
4. Length of sentence Death
5. Offense convicted of First Degree Premeditated Murder

6. What was your plea? (Check One)
 - (a) Guilty
 - (b) Not Guilty X
 - (c) Not Guilty by reason of mental disease or defect
 - (d) Not Guilty and Not Guilty by reason of mental disease or defect
 - (e) Nolo contendere
 - (f) None

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, specify:

- (a) Guilty plea counts: N/A
(b) Not guilty plea counts: N/A

7. Kind of trial: (Check One)

- (a) Jury X
(b) Judge only

8. Did you testify at the trial

Yes X No

9. Did you appeal from the judgment of conviction?

Yes X No

10. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court Tennessee Court of Criminal Appeals at Nashville, No. W2004-00057-CCA-R3-CD

(2) Result Conviction and sentence affirmed

(3) Date of result March 17, 2005

(4) Grounds raised on appeal (1) whether the trial court erred in denying the defendant an individual and sequestered voir dire; (2) whether the trial court erred in denying the defendant's objection to the State's use of peremptory challenges based upon race and gender; (3) whether the trial court erred in denying the defendant's motion to excuse a potential juror for cause; (4) whether the indictment failed to charge a capital offense; and (5) whether the trial court failed to apply meaningful standards to ensure constitutionally adequate proportionality review.

(Attach additional sheets if necessary)

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court Tennessee Supreme Court, *State v. Hugueley*, 85 S.W.3d 356 (Tenn. 2006).

(2) Result Conviction and sentence affirmed

(3) Date of result March 15, 2006

(4) Grounds raised on appeal Same grounds as raised in the Court of Criminal Appeals. In addition, petitioner alleged that the instruction which omitted an element of

aggravating circumstance, at sentencing, that victim was corrections employee engaged in official duties violated the constitution.

(Attach additional sheets if necessary)

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

- (1) Name of court
 - (2) Result
 - (3) Date of result
 - (4) Grounds raised on appeal
- (Attach additional sheets if necessary)

11. If more than one (1) year has passed since the date of final action on your direct appeal by the state appellate courts, state why the one (1) year statute of limitations should not bar your claim.

N/A

12. Other than a direct appeal from the judgment(s) of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to the judgment(s) in any state or federal court?

Yes No

13. If your answer to Question 12 was Yes, then give the following information in regard to the first such petition, application, or motion you filed:

- (a)
 - (1) Name of court
 - (2) Nature of proceeding
 - (3) Grounds raised

(Attach additional sheets if necessary)

 - (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No
 - (5) Result
 - (6) Date of result

(b) As to any second petition, application, or motion, give same information:

- (1) Name of court
 - (2) Nature of proceeding
 - (3) Grounds raised
- (Attach additional sheets if necessary)
- (4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ___ No ___

(5) Result

(6) Date of result

(c) Did you appeal the result of the action taken on any petition, application, or motion identified above to any appellate court:

(1) First petition, etc. Yes ___ No ___

(2) Second petition, etc. Yes ___ No ___

(d) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not appeal:

14. If you did not raise the grounds you raise here in your original prosecution and on your appeal from that prosecution, explain why your claim in this case has not been waived for failure to raise it on appeal. If the claim was raised, explain why your claim is not previously determined.

(1) The claims raised are not waived because counsel's failure to previously raise the claims was the result of state action in violation of the federal and state constitutions -- specifically, some of Petitioner's claims have as their basis the allegation that state authorities withheld evidence favorable to Petitioner on the issue of guilt or sentencing as required by the Eighth and Fourteenth Amendments to the United States Constitution; (2) The claims raised are not waived because many of Petitioner's claims assert that trial and/or appellate counsel provided constitutionally inadequate assistance, an allegation that could not have been presented for determination in any prior proceeding; (3) The claims raised are not waived because Petitioner did not personally, with knowledge and understanding, waive those issues; (4) The claims raised are not waived because Tennessee courts have not uniformly applied the waiver provisions of the Post-Conviction Procedure Act and to find the claims waived in Petitioner's case and not others would constitute a violation of Petitioner's right to equal treatment under the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article XI, § 8 of the Tennessee Constitution.

15. If you have previously filed a petition, application, or motion with respect to the judgment(s) in any court, explain why your claim in this case has not been waived for failure to raise it in that prior proceeding. If the claim was raised, explain why your claim is not previously determined.

N/A

Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information or by attaching separate pages.

GROUNDS OF PETITION

Listed below are possible grounds for relief. Consider the ground(s) that apply in your case, and follow the instruction under the ground(s):

(1) Conviction was based on unlawfully induced guilty plea or guilty plea involuntarily entered without understanding of the nature and consequences of the plea.

(2) Conviction was based on use of coerced confession.

(a) Statements alleged to have been made by the petitioner to Don Dunaway, an Internal Affairs Investigator with the Tennessee Department of Correction were improperly admitted at trial in violation of the Fifth, Sixth and Fourteenth Amendments and analogous provisions in the Tennessee Constitution.

(3) Conviction was based on use of evidence gained pursuant to an unconstitutional search and seizure.

(a) Items seized were improperly admitted into evidence in violation of the Fourth and Fourteenth Amendments and analogous provisions of the Tennessee Constitution.

(4) Conviction was based on use of evidence obtained pursuant to an unlawful arrest.

(5) Conviction was based on a violation of the privilege against self incrimination.

(6) Conviction was based on the unconstitutional failure of the prosecution to disclose to defendant evidence favorable to defendant.

(7) Conviction was based on a violation of the protection against double jeopardy.

(8) Conviction was based on action of a grand or petit jury that was unconstitutionally selected and impaneled.

(9) Denial of effective assistance of counsel.

My attorneys were ineffective at trial and on appeal.

The ineffective assistance includes, but is not limited to:

1. Failure to adequately investigate properly;
2. Failure to interview key witnesses and to prepare for trial cross-examination;
3. Failure to develop available and reasonable defenses on my behalf;
4. Failure to object to inadmissible hearsay;

5. Failure to conduct an adequate voir dire, to challenge biased jurors for cause, and to object to the unlawful exclusion of qualified jurors, including several jurors who were improperly struck by the State, in violation of *Batson v. Kentucky*;
6. Failure to file proper and necessary pre-trial motions to suppress inadmissible evidence, specifically, but not limited to, the introduction of unlawfully gained evidence and witness testimony;
7. Failure to properly present my case at both the guilt/innocence and sentencing phases;
8. Failure to engage the services of proper experts able to challenge the State's evidence;
9. Failure to adequately preserve the record to effectuate my right to appeal, including ensuring that jury questionnaires were placed in the record and critical portions of the trial were transcribed;
10. Failure to adequately prepare for and present mitigation in the event of a conviction; and
11. Failure to recognize and raise as plain error issues on appeal.

(10) Newly discovered evidence.

(11) Illegal evidence.

See Claims (2), (3), and (4) above.

(12) Other grounds.

THE LIST ABOVE DOES NOT INCLUDE ALL CONSTITUTIONAL VIOLATIONS. YOU MAY ADD ANY OTHERS YOU DEEM APPROPRIATE. ATTACH A SEPARATE SHEET OF PAPER LISTING EACH CONSTITUTIONAL VIOLATION THAT YOU CLAIM, WHETHER OR NOT IT IS LISTED ABOVE. UNDER EACH CLAIMED VIOLATION, LIST EACH AND EVERY FACT YOU FEEL SUPPORTS THIS GROUND. EXPLAIN IN DETAIL HOW YOU ARE PREJUDICED BY THE VIOLATION AND WHY YOU ARE ENTITLED TO RELIEF. BE SPECIFIC.

IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS: TENN. CODE ANN. § 40-30-102(c) LIMITS YOU TO ONLY ONE PETITION. TENN. CODE ANN. § 40-30-102(c) PROVIDES:

This chapter contemplates the filing of only one (1) petition for post-conviction relief. In no event may more than one (1) petition for post-conviction relief be filed attacking a single judgment. If a

prior petition has been filed which was resolved on the merits by a court of competent jurisdiction, any second or subsequent petition shall be summarily dismissed.

17. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes No

18. Give the name and address, if known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

- (a) At preliminary hearing _____
- (b) At arraignment and plea _____
- (c) At trial Michie Gibson and T.J. Jones, Kittrell, Gibson & Jones, 404 James Robertson Parkway, Nashville, Tennessee 37219
- (d) At sentencing Gibson and Jones, same as above
- (e) On appeal same as above
- (f) In any post-conviction proceeding N/A
- (g) On appeal from adverse ruling in a post-conviction proceeding N/A

19. Are you currently represented by counsel?

Yes No

(a) If Yes, give name and address, if known, of the attorney representing you.

(b) If No, do you wish to have an attorney appointed?

Yes No

(c) Has any attorney assisted in drafting or given advice regarding petition for post-conviction relief?

Yes No

If Yes, give name and address of attorney(s).

Staff attorney Kelly A. Gleason, Office of the Post-Conviction Defender, 530 Church Street, Suite 600, Nashville, TN 37243

20. In the judgment you are attacking, were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ___ No X

21. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes X No ___

(a) If so, give name and location of court which imposed sentence to be served in the future:

(1) First degree murder with a sentence of life imposed on August 19, 1986, in Dyer County Circuit Court, case number 13344.

(2) First degree murder with a sentence of life imposed on February 13, 1992, in Lauderdale County Circuit Court, case number 5564.

(3) Attempt to commit first degree murder with a sentence of twenty-five years imposed on May 21, 1998, in Lauderdale County Circuit Court, case number 8448.

(b) Give date and length of sentence to be served in the future:
See above.

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ___ No X

22. What date is this petition being given to prison authorities for mailing?

I am giving this Petition to agent of the federal public defender to file

Wherefore, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

I am filing this petition with the express understanding that the Office of the Post-Conviction Defender has agreed to assist me, or find an attorney to assist me, if the Tennessee Department of Correction violates my rights to equal protection, due process, and freedom from cruel and unusual punishment under the State and U.S. Constitutions by retaliating against me for exercising my legal rights herein, as per previous history, by adversely changing my conditions my conditions of confinement or in any way altering my visitation rights.

PETITIONER'S VERIFICATION UNDER OATH
SUBJECT TO PENALTY FOR PERJURY

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

Executed on 7/20/06


Signature of Petitioner

Appendix B. Affidavit of Indigency.

I, Stephen Huguley do solemnly swear (or affirm) that because of my poverty, I am not able to bear the expenses of the action which I am about to commence. I further swear (or affirm) that, to the best of my knowledge, I am justly entitled to the relief sought.


Petitioner

SWORN TO AND SUBSCRIBED before me this
the 20th day of July, 2006.


Notary Public

My commission expires:

3/21/09

