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Facsimile Cover Sheet

To:	DON STROTHER
Company:	LEGAL ADVISOR, SHERIFF'S OFFICE
Phone:	
Fax:	576-3310
From:	William R. "Bill" Key
Company:	Criminal Court Clerk
Phone:	(901) 576-5040
Fax:	(901) 576-3680
Date:	5-23-96
Pages including this cover page:	7

Comments:
PER OUR CONVERSATION

CIVIL WARRANT

Court of General Sessions

State of Tennessee, County of Shelby

I, Renfro T. Hays, Plaintiff(s), plaintiff's agent, or Attorney, do hereby make oath that according to the affiant's information and belief the plaintiff, Renfro T. Hays is entitled to the possession of the property proposed to be repossessed, which property is described as follows, to-wit:

1 Remington, 760 Gamemaster Rifle Cal. 30-06 w/scope now in property room of Criminal Justice Center, Memphis, Shelby, TN

VALUE $500.00

Sworn to and subscribed before me this the 14 day of May, 19 96

John Ford, Clerk
General Sessions Court

By _____ Deputy Clerk of Court of General Sessions.

State of Tennessee,
County of Shelby: To Any Lawful Officer to Execute and Return:

Summon A.C. Guiless and Wm. R. Key, both at 201 Poplar, Memphis, Shelby, TN

to appear before the Court of General Sessions of Shelby County, Tennessee, to be held at the Courtrooms of said Court in said County on the 28 day of June, 19 96, at 9:30 A.M., then and there to answer in a civil action brought by Renfro T. Hays

for a possessory hearing to determine rights of the parties to possession of said Remington 760 Gamemaster Rifle AND FOR Judgment for possession

under _____ Dollars.

This 14 day of May, 19 96

John Ford, Clerk
General Sessions Court

By _____ Deputy Clerk

BOND

We, _____ Principal, and _____, Surety, do hereby bind ourselves, our heirs and assigns _____, defendant(s), in the penal sum of _____ Dollars, being the value of the property above described, this obligation to be void, should the plaintiff(pay all costs or damages adjudged against him and shall abide by and perform the judgment of the court.

This _____ day of _____, 19 _____.

_____ Principal

_____ Surety

_____ Surety

IN THE COURT OF CRIMINAL APPEALS
AT JACKSON

FILED
SEP 13 [redacted]
APPELLATE COURT CLERK
JACKSON

JAMES EARL RAY,
Appellee

V. Shelby County

STATE OF TENNESSEE, No. 02C01-9406-CR-00119
Appellant

O R D E R

The appellant, State of Tennessee, has filed an application for extraordinary appeal pursuant to Rule 10(a)(1), T.R.A.P. The State is seeking reversal of the post-conviction court's decision which granted the appellee, James Earl Ray, an evidentiary hearing for the purpose of reviewing Ray's claim of actual innocence.

It is the State's position that the post-conviction court has "so far departed from the accepted and usual course of judicial proceedings as to require immediate review."[1] The appellee, Ray, has currently pending in the Criminal Court of Shelby County original and amended petitions for writ of habeas corpus, or in the alternative post-conviction relief, or in the alternative petition for writ of error coram nobis.

The appellee is currently serving a 99 year sentence for the offense of first degree murder of the Reverend Dr. Martin Luther King, Jr. This sentence was entered on March 10, 1969 in the Criminal Court of Shelby County, Tennessee.[2]

This case has been the subject of extensive appellate review. This is Ray's seventh petition for post-conviction relief in the state courts.[3] In addition, appellee has been

[1]T.R.A.P. 10(a)(1)

[2]Shelby County Indictment no. 16645.

[3]See Ray v. State, No. 101 (Tenn. Crim. App. at Jackson, Oct. 12, 1988); State v. Ray, No. 41 (Tenn. Crim. App. at Jackson, Feb. 5, 1986); State v. Ray, No. 36 (Tenn. Crim. App. at Jackson, June 17, 1980); Ray v. State, 577 S.W.2d 681 (Tenn. Crim. App. 1978), cert denied (Tenn.

denied habeas corpus relief in the federal court.[4]

Appellee's petition as amended alleges two grounds upon which relief is sought; (1) violation of the law sanctioning plea bargaining at the time of appellee's plea of guilty, and (2) newly discovered evidence. Appellee seeks immediate release, or a new trial, or an order from the post-conviction court for the testing of relevant items of evidence and for a hearing for the purpose of affording appellee an opportunity to establish that he has been illegally restrained in violation of his constitutional rights.

The State filed motions to dismiss appellee's original and amended petition upon the following grounds:

(1) That the petition for post-conviction relief was barred by the statute of limitations;

(2) That the claim of ineffective assistance of counsel and invalid guilty plea had been previously determined or waived;

(3) That petitioner had not presented a valid claim for post-conviction relief;

(4) That "actual innocence" was not a valid claim for post-conviction relief;

(5) That the petition for writ of error coram nobis was barred by the statute of limitation;

(6) That the Tennessee post-conviction relief act does not contain a discovery provision; and

(7) That the petition for writ of habeas corpus failed to establish that the judgment is void.

On April 15, 1994, the post-conviction court held a hearing upon the State's motion to dismiss.

The post-conviction court on several occasions indicated its concern for the historical significance of this case and the uniqueness of the legal issues raised. The court then stated: "The Court is not persuaded that the law, as it presently exists,

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1986); Ray v. State, 480 S.W.2d 919 (Tenn. Crim. App. 1972).

[4]See Ray v. Rose, 535 F.2d 966 (6th Cir. 1976), cert. denied, 429 U.S. 1026, 97 S. Ct. 648 (1976).

would grant Mr. Ray any relief, however, the Court is disposed to allow them to make a proffer in the record for purpose of appellate review."

Three days after oral arguments were presented to this Court upon the state's application for a T.R.A.P. 10 appeal, the post-conviction court entered an interlocutory order granting the appellee Ray an evidentiary hearing on all of the claims raised in both the original and amended petitions including appellee's claim of actual innocence. Additionally, that court affirmed its prior order permitting Ray's counsel to "test fire the alleged murder weapon under conditions imposed by this court" and permitted analysis on the bullets now in evidence. On August 23, 1994, the post-conviction court entered an additional order prohibiting inspection, handling or contacting of any physical evidence or materials in the matters of James Earl Ray without the express permission or orders of this court or an appellate court.

In its interlocutory order entered August 19, 1994, the post-conviction court opined as follows:

> This Court initially decided that if the State of Tennessee's position is the correct one, it would deny Petitioner relief under any of the three statutes but, before entering a final order, and with the understanding that the petitioner might request a reconsideration of this court's ruling, it would permit Petitioner's counsel to make a proffer of proof as to his claims of actual innocence, thereby permitting counsel to subpoena witnesses that could provide testimony demonstrating or tending to show Petitioner's actual innocence. The court would also permit Petitioner's counsel to provide documentary evidence that would tend to show petitioner's actual innocence including expert testimony on new evidence obtained from the firing of the alleged murder weapon that allegedly killed Reverend Dr. Martin Luther King, Jr., as well as appropriate tests of the bullets in evidence through neuton activation and/or spectrographic analysis.

In view of the interlocutory nature of the order and the issues raised on appeal, we are unable to make a determination on the merits of the appeal until a final order has been entered by the post-conviction court.

Tennessee Code Annotated § 40-30-118(b) requires the post-conviction court to enter a final order including written

findings of fact and conclusions of law, upon the final disposition of every petition for post-conviction relief.

Therefore, upon either the granting of the state's motion to dismiss the petition or upon a final adjudication of the petition by the post-conviction court an appeal will lie as of right under T.R.A.P. 3.

Although we are unable to reach the merits of the T.R.A.P. 10 extraordinary appeal, we conclude that the post-conviction court has so far departed from the accepted and usual course of judicial proceedings as to require that the application be granted. We also conclude that a stay of further evidentiary proceedings for the purpose of reviewing appellee's claim of actual innocence within the post-conviction court is necessary.

IT IS THEREFORE ORDERED that State's application for extraordinary appeal is hereby granted.

IT IS FURTHER ORDERED that the post-conviction court is hereby stayed from the granting of any orders for inspection and testing of physical evidence and from conducting any hearing for the purpose of receiving appellee's claim of actual innocence, pending further order of this Court.

This cause is remanded to the post-conviction court for a final determination of the remaining issues pending before it in this cause in a manner not inconsistent with this opinion.

Judge David G. Hayes

CONCUR:

Judge Joe B. Jones

(See Dissenting Opinion)
Judge Paul G. Summers