IN THE CRIMINAL COURT OF TENNESSEE
FIFTEENTH JUDICIAL CIRCUIT
AT MEMPHIS

DIVISION III

JAMES EARL RAY,	X	
Petitioner	X	
vs.	X	P-3623
STATE OF TENNESSEE,	X	FILED 8-24-84
Respondent	X	J. A. BLACKWELL, CLERK BY C. Carroll D. C.

RESPONSE OF THE STATE OF TENNESSEE
TO PETITION FOR POST-CONVICTION RELIEF;
MOTION TO DISMISS

Comes now the State of Tennessee, by and through the District Attorney General for the Fifteenth Judicial Circuit and his duly appointed Assistant, and, in response to the Petition for Post-Conviction Relief heretofore filed by James Earl Ray, says:

1. Petitioner Ray has filed a series of motions to produce which do not reach constitutional nor statutory proportions, or have been waived.

(a) The first motion requests materials, if pertinent, that have been available to him in all of his Habeas Corpus and Post-Conviction Relief petitions filed and determined by courts of competent jurisdiction.

(b) The second motion requests transcript of the appointment of the Public Defender's Office of Shelby County, Tennessee. No issues of violations of constitutional or statutory rights. All factors of petitioner's plea and verdict were determined by a court of competent jurisdiction. Petitioner is not entitled to transcripts for the mere purpose of screening.

(c) The third motion touches simply upon status of the Public Defender's Office of Shelby County, Tennessee. Such issues have previously been determined by a court of competent jurisdiction and raise no issues not otherwise determined by a court of competent jurisdiction.

(d) The fourth and fifth motions raise the same or similar questions of conflict of interest of the Public Defender's Office of Shelby County, Tennessee, each of which has been determined by a court of competent jurisdiction or has been waived.

(e) The sixth motion is without substance. The record is clear that petitioner had voluntarily and knowingly pleaded guilty to the murder of Martin Luther King and petitioner, upon the plea, knew that he would receive ninety-nine (99) year sentence and that all other formalities were waived; that the court record shows the judgment pronounced by the presiding judge was binding, after approval of the agreement made and entered by the judge. The motion is without merit based upon the court records.

2. State of Tennessee denies that petitioner is entitled to relief, "newly discovered evidence" claim. The so-called "memorandum" of the District Attorney General, Phil M. Canale, Jr., was merely a chronology of the events that claimed his attention during the course of the case and were not subject to discovery, even in the broadest sense of discovery, and were notes prepared by counsel representing his client, State of Tennessee. No issue of constitutional or statutory proportions is raised.

3. State of Tennessee denies that petitioner's counsel were ineffective. Petitioner, at all times, was represented by retained counsel; first, by Arthur Hanes, Sr. and Arthur Hanes, Jr. of the Alabama Bar. Petitioner fired both Hanes on November 10, 1968, - two days before scheduled trial on November 12, 1968. Thereafter,

he employed Percy Foreman of the Texas Bar, causing a postponement of the trial to March 3, 1969. The record reveals the presiding judge appointed the Shelby County, Tennessee Public Defender's Office solely for the purpose of going forward with cause 16645 in the event petitioner attempted to discharge privately retained counsel for delay tactics. The record does not reflect petitioner's conclusory statements. Compentency of all trial counsel has been determined by a court of competent jurisdiction.

4. State of Tennessee denies a conflict of interest in the representation of petitioner. No prejudice is alleged or demonstrated in the allegation rising to constitutional or statutory proportions, and such issues have been determined by a court of competent jurisdiction.

5. State of Tennessee denies the allegation of "ineffective assistance of counsel at sentencing stage." Petitioner pleaded guilty to murder in the first degree. It has been found by a court of competent jurisdiction that such plea of guilty was knowingly and intelligently made, that a jury approved the stipulation of facts and the ninety-nine (99) year sentence to which petitioner agreed, and the presiding judge pronounced judgment on the verdict; thereby, such action operated as a waiver of all nonjurisdictional and constitutional defects. Tennessee law did not provide a bifurcated hearing.

6. State of Tennessee denies the fifth ground. Petitioner was represented by retained counsel at all stages of the criminal proceedings against him and at no time was Hugh W. Stanton, Jr., a staff attorney for the Shelby County, Tennessee Public Defender's Office, involved in petitioner's criminal proceeding; but, to the contrary, Percy Foreman was chief counsel of record for petitioner. A court of competent jurisdiction has determined that petitioner James Earl Ray was represented by competent counsel. The allegation does not raise a question rising to constitutional proportions.

7. State of Tennessee denies that petitioner has a right to claim subsequent law. Petitioner knowingly and intelligently entered his plea of guilty under the law of the case. Subsequent acts by the legislature would have no constitutional application. The law then existing is applicable.

8. State of Tennessee denies the seventh ground for relief. Petitioner pleaded guilty to murder in the first degree and agreed to accept a sentence of ninety-nine (99) years. The allegation has previously been determined by a court of competent jurisdiction.

9. State of Tennessee denies petitioner's conclusory allegation that the jury did not fix the sentence. Petitioner knowingly and intelligently, with advice of competent counsel, entered his voluntary plea of guilty to murder in the first degree of Martin Luther King and the sentence was fixed by agreement of petitioner, the State of Tennessee, and the jury, for ninety-nine (99) years. This issue has been determined by a court of competent jurisdiction, thereby is not a constitutional issue for rehearing.

10. State of Tennessee avers that petitioner, James Earl Ray, has filed numerous petitions, writs of habeas corpus, and other paper writings, since his guilty plea to the murder of Martin Luther King and his agreed sentence of ninety-nine (99) years; that all of the paper writings, by whatever name Ray has called them, have been substantially the same subject matter, attempts to re-hash the same issues by use of different language and matters not reaching constitutional proportions; that both the United States Federal Judiciary and the State of Tennessee Judiciary have been extremely tolerant; however, litigation involving the same subject matter and "issues" must end in a structured government; therefore, the State of Tennessee respectfully states, from the record of stare decisis and Constitutions of the United States of America and State of Tennessee, that no issue has been raised in the captioned petition on which relief can be granted.

Any part of the paper writing filed by James Earl Ray on May 11, 1984, in the Criminal Court of Shelby County, Tennessee not admitted or specifically answered, including words, phrases, clauses of sentences, or otherwise, is denied as if fully set out.

State of Tennessee further denies that Writ of Error Coram Nobis is available to petitioner in the premises.

Now, having fully answered, State of Tennessee prays the Court to dismiss the petition of James Earl Ray without an evidential hearing.

Respectfully submitted,

/s/ Robert H. Gay

ROBERT H. GAY
Assistant District Attorney General