IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JAMES E. RAY,
Plaintiff

vs.

MINERVA J. JOHNICAN,
Defendant.

Civil no. 91-3001 HA

COMPLAINT

This is an action by James E. Ray, acting pro se, a State prisoner alleging violations of his constitutional rights and seeking monetary damages, declaratory judgment and injunctive relief. The plaintiff requests a trial by jury in all issues trialable.

1. JURISDICTION.

This is a civil rights action under 42 U.S.C. §1983. This court has jurisdiction under 28 U.S.C. 1343. The action arose in the U.S. District court for the W.D. of Tennessee, Western division.

2. PARTIES.

Plaintiff James E. Ray is presently incarcerated at the "River-bend maximum security institution" located in Nashville, Tennessee; the Defendant is the clerk of the criminal court for Shelby county, Tennessee with offices at 201 Poplar Avenue, criminal justice complex, Memphis, Tennessee. 38103.

3. That the defendant acted under "color of law" during all times relevant to this complaint. And plaintiff sues defendant in defendant's individual and official capacity.

4. STATEMENT OF FACTS.

That the plaintiff was sentenced on 10 March 1969 to a prison term of 99 years by the Shelby county criminal court in the Rev. Martin Luther King jr. homicide pursuant to an agreement between plaintiff's alleged counsel and the prosecution.

5. That in September 1990 plaintiff filed a post conviction petition in said homicide with the herein defendant.

6. That in October 1990 plaintiff filed a memorandum of "points & authorities" in support of said petition.

7. That under Tennessee statutory law defendant was required, among other procedures, to 'forthwith upon receiving said petition to mail a copy to plaintiff's counsel, which defendant neglected to do.

8. That defendant was also required by law to mail a copy of said petition to the district attorney general forthwith, which defendant failed to do.

9. That as a result of the attorney general not receving a timely copy of said petition that office did not respond to the petition within the thirty (30) day time limit as required by State law.

10. That when the defendant declined to follow procedures governing post conviction processing, the plaintiff in November 1990 filed a writ of mandamus with the Tennessee court of cr. appeals asking the court to compel the lower court to rule on the matter. The appeals court ruled that it did not have jurisdiction in the matter.

11. That the Plaintiff appealed the appeals court ruling in the mandamus action to the Tennesee Supreme court, the latter also ruled that it had no jurisdiction over the trial court.

12. That by an order dated 24 May 1991 the trial court summarily dismissed said post conviction petition on the ground that the Tennessee statutory-of-limitations on post-conviction petitions-habeas corpus (3 years), precluded plaintiff from filing said petition under TCA §40-30-102.

13. That following said dismissal the Plaintiff on 11 June 1991 filed a timely 'notice of appeal.

14. That it has now been in excess of four months and the defendant has not transmitted a record of the post-conviction petition to the court of criminal appeals. Since there was no hearing there is no transcript to record by the court Reporter as a justification for the delay.

15. That the 25 August 1991 edition of the "Jackson Sun", published in jackson, Tennessee, quoated the defendant as stating how long defendant could hold the record of said post-conviction petition before transmitting it to the appeals court.

16. That there is a pattern of conduct exercised by the defendant in said post conviction matter amounting to malice. The intent is to stall in the matter in the hope of delaying State adjudication of the matter.

CLAIMS

17. That the action of the defendant violated and denied Plaintiff due process of law under the 14th amendment to the U.S. constitution.

18. That the action of the defendant violated and denied plaintiff equal access to the court,i.e., equal protection of the law under the 14th amendment to the U.S. constitution in

that the defendant processed and transmitted to the criminal appeals court post conviction petition that had been filed subsequent to the petition plaintiff had filed.

## RELIEF

WHEREFORE, Plaintiff request the court to grant the following relief:

A. Grant compemsatory damages of $15.000 against the defendant.

B. Grant punitive damages of $15.000 against the defendant.

C. Grant other such relief as it may appear the plaintiff is entitled including an order for the defendant to process the post conviction herein at issue.

Respectfully submitted:

James E. Ray

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