FILED
JUN 25 1969
BESSIE BUFFALOE, Clerk

FILED
JUL - 1 1969
JOHN A. PARKER, Clerk
By_____

IN THE CRIMINAL COURT OF APPEALS WESTERN DIVISION
OF THE STATE OF TENNESSEE

STATE OF TENNESSEE

VS

JAMES EARL RAY

DEFENDANT'S BRIEF

RICHARD J. RYAN,
523 FALLS BUILDING
MEMPHIS, TENNESSEE
527-4715

TO THE HONORABLE CRIMINAL COURT OF APPEALS WESTERN DIVISION OF THE STATE OF TENNESSEE, SITTING AT JACKSON, TENNESSEE, OR TO ANY OF THE JUDGES THEREOF:

STATE OF TENNESSEE	FROM THE CRIMINAL COURT
VS	OF
JAMES EARL RAY	SHELBY COUNTY, TENNESSEE

STATEMENT OF CASE AND MEMORANDUM OF AUTHORITIES RELIED UPON IN SUPPORT OF PETITION FOR CERTIORARI

Statement of Facts:

On March 10, 1969, in Division III of the Criminal Court of Shelby County, Tennessee, before the Honorable Judge Preston W. Battle the defendant, James Earl Ray, entered a Plea of Guilty to the charge of Murder in the First Degree of one Dr. Martin Luther King and was sentenced to the term of ninety-nine (99) years to be served in the State Penitentiary in Nashville, Tennessee. Three (3) days later on March 13, 1969, the defendant wrote to Judge Preston Battle of his intention to file in the near future a post conviction hearing. See Exhibit marked No. 1 attached hereto.

On the 26tn day of March, 1969, at the request of the defendant, James Earl Ray, his attorney, Richard J. Ryan, along with co-counsel, Jr B. Stoner and Robert W. Hill,Jr., attempted to gain entrance in the State Penitentiary in order to confer with the defendant, James Earl Ray, but were refused;

that a document was prepared entitled "Motion for a New Trial" (See Exhibit No. 3). This document was given to the Warden who made a copy of the same and later presented it to James Earl Ray, the defendant; that he refused to sign the same without advice of counsel; that same day James Earl Ray wrote another letter to the Honorable Preseton W. Battle (See Exhibit No. 2), and this time stated that he wanted to go the thirty day appeal route.

On March 31, 1969, Judge Battle returned to Memphis from a short vacation period and was met at 9 A.M. of that day by one of the attorneys for James Earl Ray, the defendant herein. On that day Judge Battle exhibited the two letters he had received from James Earl Ray. Shortly thereafter in mid-afternoon of March 31, 1969, Judge Battle died of a heart attack. Shortly thereafter an Amended and Supplemental Motion was filed on behalf of James Earl Ray setting out the death of Judge Battle, and among other things, that the Plea of Guilty extended to Judge Battle was not one of a voluntary nature.

Subsequent to this the State of Tennessee filed a Motion to Strike the Motion for New Trial of the defendant-petitioner. On May 26, 1969, upon a hearing of this cause before the Honorable Arthur C. Faquin, Judge of Division II of the Criminal Court of Shelby County, Tennessee, the Honorable Judge Arthur C. Faquin found for the State of Tennessee and sustained their Motion to Strike.

Subsequent to this defendant-petitioner filed a Prayer for Appeal asking for permission and leave to file his appeal from this ruling, and this was denied by the Honorable Judge Arthur C. Faquin on June 16, 1969.

MEMORANDUM OF AUTHORITIES:

Defendant would allege that at the time the letters of record were written (heretofore exhibited) there was in effect in the State of Tennessee a statute, namely:

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Jackson vs Handel

Defendant would state that the demise of the trial judge was within the contemplation of the above statute and cites further, "Decisions long acquiesced in upon which important rights are based, should not be disturbed, in the absences of cogent reasons to the contrary, as it is of the utmost importance that our organic and statute law be of certain meaning and fixed interpretation, Jackson vs Handel 327 SW2d 55, citing Pitts vs Nashville Baseball Club 127 Tenn. 292 and Monday vs Millsaps 197 Tenn. 295, and 46 C.J.286 cited in Life & Casualty Ins. Co. vs Bradley 178 Tenn. Page 530.

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Defendant also cites, "It seems to be well established as a general rule that, where a party has lost the benefit of his exceptions from causes beyond his control, a new trial is properly awarded. That rule has been recognized and applied more frequently perhaps in cases where the loss of

the exceptions has occurred through death or illness of the judge, whereby the perfection of a bill of exceptions has been prevented", Dennis vs State, 137 Tenn. 554.

That the Plea of Guilty of itself does not forfeit the Motion for a New Trial, and he cites, "By the Constitution of the State (Article I, Sec. 9), the accused, in all cases, has a right to a "speedy public trial by an impartial jury of the county or district in which the crime shall have been committed', and this right cannot be defeated by any deceit or device whatever. The courts would be slow to disregard the solemn admissions of guilt of the accused made in open court, by plea, or otherwise; but when it appears they were made under a total misapprehension of the prisoner's rights, through official misrepresentation, fear or fraud, it is the duty of the Court to allow the plea of guilty, and the submission, to be withdrawn, and to grant to the prisoner a fair trial, by an impartial jury", Swang vs. State, 42 Tenn.212.

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Defendant would further cite Jake Knowles vs. The State, 155 Tenn. Page 181, in which the Court states as follows:

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> The bill of exceptions shows that when the case was first called for trial on the 22nd of September, a continuance was had upon the agreement that unless settlement should be made before October 2nd following a plea of guilty would be entered. It appears that both the presiding judge and Attorneey General understood it to be agreed also that a sentence of from five to twenty years would be accepted, but

upon the calling of the case on October 2nd, counsel for the defendant disclaimed having so understood the agreement and insisted that the determination of the punishment should be submitted to the jury. Thereupon the plea of guilty was entered and counsel for the State and the defendant addressed and the judge charged the jury. Some discussion was had before the jury of the disagreement as to the term of punishment, but the judge properly charged that they were to disregard this matter.

However, as before stated, no evidence was introduced. The jury after hearing the charge returned their verdict assessing the punishment.

Shannon's Code, Section 7174, is as follows:

'Plea of guilty.--Upon the plea of guilty, when the punishment is confinement in the penitentiary, a jury shall be impaneled to hear the evidence and fix the time of confinement, unless otherwise expressly provided by this Code.'

We have no reported case deciding the question thus presented, but the provision that upon a plea of guilty a jury shall be impaneled to hear the evidence and fix the time of confinement in felony cases seems clearly to indicate a purpose to vest in the jury the power to exercise a sound discretion impossible of intelligent exercise without a hearing of at least such of the evidence as might reasonably affect the judgment of the jury as to the proper degree and extent of the punishment. And especially is this true under the maximum (1923) sentence law applicable to this case.

While loathe to reverse and remand in a case of such obvious and admitted guilt, we find it necessary to do so for the reasons indicated. It becomes unnecessary to consider other assignments of error."

Defendant denies that he waived a right that was available to him, and cites:

"Waiver - Existence of Right - To constitute a waiver, the right or privilege alleged to have been waived must have been in existence at the time of the alleged waiver", 56 Am.Jr.13,Page 113. "Thus, one accepting dividends declared by a receiver in bankruptcy without demanding interest on the amount due does not waive his right to interest, where no right to demand interest at the time of dividend payment existed", 56 Am.Jr.13,Page 114, citing State ex rel, McConnell v.Park Bank & T.Co. 151 Tenn.195.

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"Without in any way criticizing the content and use of these forms for preserving a formal record of guilty pleas of defendants, we hold that execution of these forms by the petitioner and his attorneys, and the trial court's acceptance of the petitioner's plea of guilty upon that basis, does not and cannot forever preclude the petitioner from raising any question about the voluntariness of his guilty plea. Surely it cannot be said that

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such a procedure permanently forecloses the issue of voluntariness and prevents the accused from ever asserting that his guilty plea was induced by promises of lenient treatment or threats or misrepresentation or fraud, if such was the fact.

"This is true for the plain and simple reason that a conviction based upon an involuntary plea of guilty is void, and, therefore, the question of the voluntariness of a plea of guilty is never foreclosed while any part of the resulting sentence remains unexecuted. The law is no longer open to debate or question that a guilty plea is involuntary nad void if induced by promises of preferential treatment or threats or intimidation or total misapprehension of his rights, through official misrepresentation, fear or fraud. Henderson v. State ex rel. Lance, 419 S.W.2d 176: Machibroda v.United States, 368 U.S.487, 82 S.Ct.510, 7 L.Ed2d 473; Olive v. united States, 327 F2d 646 (6th Cir., 1964), cert den., 377 U.S. 971, 84 S.Ct. 1653,12LEd2d 740; Scott v. United States 349 F2d 641 (6th Cir.1965)." Said opinion was concurred in by the Honorable Mark A. Walker and was written by W. Wayne Oliver, Judge of the Criminal Court of Appeals. Honorable Judge Galbreath did not participate in this cause.

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Respectfully submitted,

ATTORNEYS FOR THE DEFENDANT:

Richard J. Ryan
RICHARD J. RYAN

J. B. Stoner by R.J. Ryan
J. B. STONER

RAY: Your Honor, I would like to say something. I don't want to change anything that I have said, but I just want to enter one other thing. The only thing that I have to say is that I can't agree with Mr. Clark.

MR. FOREMAN: Ramsey Clark.

THE COURT: Mr. Who?

RAY: Mr. J. Edgar Hoover, I agree with all these stipulations, and I am not trying to change anything.

THE COURT: You don't agree with whose theories?

RAY: Mr. Canale's, Mr. Clark's, and Mr. J. Edgar Hoover's about the conspiracy. I don't want to add something on that I haven't agreed to in the past.

MR. FOREMAN: I think, that what he said is that he doesn't agree that Ramsey Clark is right, or that J. Edgar Hoover is right. I didn't argue that as evidence in this case, I simply stated that under riding the statement of General Canale that they had made the same statement. You are not required to agree with it all.

THE COURT: You still, your answers to these questions that I asked you, would still be the same? Is that correct? There is nothing in these questions that I have asked you and your answers to them, you change none of them at all. In other words, you are pleading guilty to, and taking ninety nine years, I think the main question that I want to ask you is this; are you pleading guilty to Murder in the First Degree in this case because you killed Dr. Martin Luther King under such circumstances that it would make you legally guilty of Murder in the First Degree under the law as explained to you by your lawyer. Your answer is still yes? All right sir, that is all, you may swear the jury.

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