

IN THE TENNESSEE SUPREME COURT
AT NASHVILLE

STATE OF TENNESSEE)
)
v.) No. M1999-01334-SC-DPE-PD
)
PHILIP RAY WORKMAN)

RESPONSE TO MOTION TO RESET EXECUTION DATE

Philip Workman currently has ongoing federal proceedings involving as-yet unresolved issues of federal law. Rulings by the federal courts would almost certainly render ineffectual any execution date set by this Court. In his first proceeding which involves a motion for relief from judgment, the Sixth Circuit is considering federal issues which even the United States District Court admits may be meritorious. Workman v. Bell, 6th Cir. No. 06-6451. Those issues are virtually identical to those which Donnie Johnson has before the Sixth Circuit, which recently stayed his execution date set by this Court. Johnson v. Bell, 6th Cir. No. 05-6925. The Sixth Circuit is likewise considering similar issues in the case of Abu-Ali Abdur'Rahman, now on remand from the United States Supreme Court. Abdur'Rahman v. Bell, 6th Cir. Nos. 02-6547, -6548. Further, Workman has a separate habeas proceeding pending in the United States District Court, raising serious issues about his innocence: The prosecution's key witness, Harold Davis, never saw the shooting of Officer Oliver, as he claimed at trial. Workman v. Bell, W.D.Tenn.No. 03-2660.

Given the federal stay in Johnson; the pendency of the federal appeals in Workman, Johnson, and Abdur'Rahman; and Workman's pending habeas petition, the interests of judicial economy weigh against the setting of an execution date at this time. Because federal proceedings would render an execution date ineffectual, this Court should deny the State's motion. Should the Sixth Circuit

rule against Workman on all issues, the State could then file a motion at that time. For now, however, the State's motion should be denied pending the resolution of the federal proceedings

I. PROCEDURAL HISTORY

On September 4, 2003, Mr. Workman filed two separate proceedings in the United States District Court for the Western District of Tennessee. The first asserted that the District Court should grant Mr. Workman relief from the judgment it entered in the original proceeding due to, among other reasons, fraud. (Rule 60(b) Proceeding). The District Court filed Mr. Workman's motion under the original habeas proceeding's case number, 94-2577. Exhibit 1: Docket Sheet, at R. 161. The second proceeding asserted that Mr. Workman was entitled to have the District Court entertain a separate habeas proceeding that presented issues surrounding, among other things, Harold Davis's August 2001 testimony that he did not see Philip Workman, or anybody else, shoot Memphis Police Lieutenant Ronald Oliver. (Habeas Proceeding). The District Court assigned that proceeding a separate case number, 03-2660. Exhibit 2: Docket Sheet, at R. 1.

In both proceedings, Mr. Workman moved for a stay of his then-scheduled September 22, 2004, execution date. Exhibit 1: Docket Sheet, at R. 160; Exhibit 2: Docket Sheet, at R. 7. The District Court granted Mr. Workman's motions and entered stay orders in both the Rule 60(b) Proceeding, Exhibit 1: Docket Sheet, at R. 162, and the Habeas Proceeding. Exhibit 2: Docket Sheet, at R. 9.

On October 17, 2006, the District Court denied Mr. Workman relief in his Rule 60(b) Proceeding. Exhibit 1: Docket Sheet, at R. 177. Mr. Workman filed a motion to alter or amend, Exhibit 1: Docket Sheet, at R. 178, which the District Court denied. Exhibit 1: Docket Sheet, at R. 184. In that denial order, however, the District Court recognized that it was unclear which of two

competing standards controlled the specific claim Mr. Workman asserted in his Rule 60(b) Proceeding, the Sixth Circuit needed to resolve that dilemma, and should it do so in Workman's favor he would be entitled to further process. Exhibit 3, Order, at 7. Mr. Workman filed a Notice of Appeal. Exhibit 1: Docket Sheet, at R. 181.

Mr. Workman's Habeas Proceeding remains pending in the District Court.

II. BECAUSE MR. WORKMAN'S RULE 60(b) PROCEEDING PRESENTS SUBSTANTIAL ISSUES THAT REMAIN UNRESOLVED IN THE SIXTH CIRCUIT, THIS COURT SHOULD DENY THE STATE'S MOTION

A. The Scope Of Equitable Relief Available To A Habeas Petitioner Under Fed.R.Civ.P. 60(b) Remains Unsettled In The Sixth Circuit

Two capital habeas appeals demonstrate that the Sixth Circuit remains unsure about what standards should govern application of Fed.R.Civ.P. 60(b) in habeas corpus proceedings: Abdur'Rahman v. Bell, Sixth Circuit No. 02-6548, and Johnson v. Bell, Sixth Circuit No. 05-6925.

1. Abdur'Rahman

On March 6, 2003, this Court set a June 18, 2003, execution date for Abu-Ali Abdur'Rahman. See Exhibit 4: Docket Sheet, at 3/7/03 Entry. On June 6, 2003, the en banc Sixth Circuit stayed Mr. Abdur'Rahman's execution to consider the extent to which he could rely on Fed.R.Civ.P. 60(b) to obtain further process in the District Court. Exhibit 4: Docket Sheet, at 6/6/03 Entry. The en banc Court subsequently held that Mr. Abdur'Rahman was entitled to invoke Rule 60(b), and it remanded his case to the District Court for further proceedings. Exhibit 4: Docket Sheet, at 12/13/04 Entry. The United States Supreme Court, however, granted the State's certiorari petition and remanded the case to the Sixth Circuit for further consideration in light of Gonzalez v. Crosby, 125 S.Ct. 2641 (2005). Bell v. Abdur'Rahman, 125 S.Ct. 2991 (2005).

On February 24, 2006, the Sixth Circuit ordered the parties to file supplemental briefs. Exhibit 4: Docket Sheet, at 2/24/06 Entry. On March 17, 2006, the parties did so. Exhibit 4: Docket Sheet, at 3/17/06 Entry. As of the date of this Response, the Sixth Circuit has not ruled, indicating that the scope of Rule 60(b) remains an issue of considerable debate in that Court.

2. Donnie Johnson

On August 10, 2004, this Court set a November 16, 2004, execution date for Donnie Johnson. Mr. Johnson filed a Fed.R.Civ.P. 60(b) proceeding in the District Court, and that Court stayed Mr. Johnson's execution. The District Court subsequently denied relief, Mr. Johnson appealed, and on June 20, 2006, this Court set an October 25, 2006 execution date.

On October 19, 2006, the Sixth Circuit stayed Mr. Johnson's execution. Exhibit 5: Docket Sheet, at 10/19/06 Entry. The State subsequently moved that Court to establish an expedited briefing schedule for Mr. Johnson's appeal. Exhibit 5: Docket Sheet, at 10/27/06 Entry. The Sixth Circuit denied the State's motion, allowing Mr. Johnson's appeal to proceed in the normal course. Exhibit 5: Docket Sheet, at 11/15/06 Entry. Mr. Johnson's appeal remains pending, again indicating that Rule 60(b)'s applicability remains a substantial open issue in the Sixth Circuit.

B. The Standard Applicable To The Specific Claim Mr. Workman Asserts In His Rule 60(b) Proceeding Also Remains Unsettled In The Sixth Circuit

Mr. Workman's Rule 60(b) Proceeding presents allegations that fraud taints the judgment denying him habeas relief. As the District Court recognizes, the law in the Sixth Circuit is unclear as to which of two standards governs Mr. Workman's fraud claim. While the District Court applied a standard it denominated as "more stringent" to deny Mr. Workman relief, it candidly acknowledged that should a standard it denominated as "broader" apply, Mr. Workman would be entitled to further

process. Exhibit 3: Order at 4-7. The District Court concluded that “Ultimately, this decision is for the Sixth Circuit.” Exhibit 3: Order, at 7.

C. Because The Law Governing Rule 60(b) And The Standard Applicable To Mr. Workman’s Fraud Claim Remain Unsettled In The Sixth Circuit, And Because The Sixth Circuit Has Halted The Execution Of Similarly-Situated Condemned Inmates To Consider In The Normal Course Of Business Rule 60(b)’s Applicability, This Court Should Not Set An Execution Date

As discussed above, in Abdur’Rahman and Johnson, the Sixth Circuit stayed execution dates this Court set to allow for thoughtful, unhurried, consideration of the extent to which Rule 60(b) applies in those cases. The Sixth Circuit emphasized its desire for such consideration in Mr. Johnson’s case by subsequently denying the State’s request to expedite Mr. Johnson’s appeal. Mr. Workman is in a position virtually identical to Abdur’Rahman and Johnson. This Court should therefore refrain from setting an execution date at this juncture.

In addition, Sixth Circuit law governing the standard applicable to Mr. Workman’s fraud claim remains unsettled in the Sixth Circuit. The District Court recognizes that which of two competing standards controls is a decision that the Sixth Circuit must decide, and if the Sixth Circuit concludes that the District Court applied the wrong standard Mr. Workman would be entitled to additional process. This Court should refrain from setting an execution date to allow for the Sixth Circuit to engage in thoughtful, unhurried, consideration of this issue as well.

III. BECAUSE MR. WORKMAN’S HABEAS PROCEEDING REMAINS PENDING IN THE DISTRICT COURT, AND BECAUSE THAT COURT ENTERED A STAY OF EXECUTION IN THAT PROCEEDING, THIS COURT SHOULD DENY THE STATE’S MOTION

In the Habeas Proceeding pending before the District Court, Mr. Workman asserts issues surrounding the recantation of the State’s key trial witness, Harold Davis. While Davis testified at

trial that he saw Workman coolly and deliberately point a pistol at Police Lieutenant Oliver's chest and pull the trigger, in August 2001 Davis testified to what has now become obvious to all: he wasn't there. The District Court entered an order in the Habeas Proceeding staying Mr. Workman's then-scheduled September 22, 2003, execution. Exhibit 2: Docket Sheet, at R. 9. Because the Habeas Proceeding remains pending in the District Court, and because that Court entered a stay in that case, this Court should refrain from setting an execution date. See 28 U.S.C. § 2251(b).¹

IV. CONCLUSION

For the foregoing reasons this Court should deny the State's motion to set an execution date.

Respectfully Submitted,



Christopher M. Minton
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¹ This Court's current composition also warrants against granting the State's motion. State law provides that the Tennessee Supreme Court sets execution dates in capital cases. Tennessee Supreme Court Rule 12.4(E). Article VI, § 2 of the Tennessee Constitution provides that the Tennessee Supreme Court "shall" consist of five Judges. This Court, however, does not currently have five judges - it consists of only four. As a result, the Tennessee Supreme Court to which Rule 12.4(E) refers does not exist. This Court should therefore decline to set an execution date until a new judge joins its membership thereby making it the Tennessee Supreme Court that State law empowers to set an execution date.

DESIGNATION OF ATTORNEY OF RECORD

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Mr. Minton prefers to be notified via facsimile 615-736-5265.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing and its accompanying Exhibits have been hand-delivered to Joseph Whalen, Office of the Attorney General, 425 5th Avenue North, Nashville, Tennessee 37243 on this 5th day of January, 2007.




EXHIBIT 1

APPEAL, CLOSED

**U.S. District Court
Western District of Tennessee (Memphis)
CIVIL DOCKET FOR CASE #: 2:94-cv-02577-BBD**

Workman, et al v. Dutton, et al
Assigned to: Bernice B. Donald
Demand: \$0
Cause: 28:2254 Ptn for Writ of H/C - Stay of Execution

Date Filed: 07/18/1994
Jury Demand: None
Nature of Suit: 535 Death Penalty -
Habeas Corpus
Jurisdiction: Federal Question

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V.

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Respondent

Charles W. Burson

represented by **Brent Owen Horst**
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/18/1994	1	PETITION FOR WRIT OF HABEAS CORPUS (JL) (Entered: 07/18/1994)
07/18/1994	2	MOTION by petitioner Philip R. Workman for appointment of counsel (JL) (Entered: 07/18/1994)
07/18/1994	3	MOTION by petitioner Philip R. Workman to proceed in forma pauperis (JL) (Entered: 07/18/1994)
07/18/1994	4	MOTION by petitioner Philip R. Workman to stay execution (JL) (Entered: 07/18/1994)
07/18/1994	5	MEMORANDUM by petitioner Philip R. Workman in support of motion to stay execution [4-1] (JL) (Entered: 07/18/1994)
07/18/1994	6	ORDER by Chief Judge Julia S. Gibbons granting motion to proceed in forma pauperis [3-1] (cc: all counsel) (JL) (Entered: 07/18/1994)
07/18/1994	7	ORDER by Chief Judge Julia S. Gibbons granting motion to stay execution [4-1] (cc: all counsel) (JL) (Entered: 07/18/1994)
07/18/1994	8	ORDER by Chief Judge Julia S. Gibbons granting motion for appointment of counsel [2-1]; Christopher Minton and Saul Belz appointed to represent Petitioner, Philip Workman. (cc: all counsel) (JL) (Entered: 07/18/1994)
07/18/1994	9	MINUTES: Conference in Chambers. Petition for writ granted. Motion to stay execution granted. Mr. Minton sworn, admitted to practice in Federal Court. Order entered appointing Saul Bilz and Christopher Minton as counsel for petitioner. (JL) (Entered: 07/22/1994)

09/13/1994	10	ORDER DIRECTING RESPONSE by Chief Judge Julia S. Gibbons requiring a response to petition for writ of habeas corpus [1-1] (cc: all counsel) (WBE) (Entered: 09/13/1994)
10/12/1994	11	ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS by respondent Michael Dutton (JL) (Entered: 10/18/1994)
10/12/1994	12	MOTION for attorney Brent Owen Horst to appear pro hac vice to represent Attorney General Charles W. Burson (JL) (Entered: 10/18/1994)
10/12/1994	14	PRO HAC VICE FEE PAID: in the amount of \$ 10.00 receipt # 019197 by Brent Horst (JL) (Entered: 10/18/1994)
10/13/1994	16	NOTICE OF FILING OF DOCUMENTS by respondent Charles W. Burson. ADDENDUM 1 through 29 PLACED IN SEPARATE FOLDERS. (JL) (Entered: 10/21/1994)
10/18/1994	13	ORDER by Chief Judge Julia S. Gibbons granting motion for attorney Brent Owen Horst to appear pro hac vice to represent Attorney General Charles W. Burson [12-1] (cc: all counsel) (JL) (Entered: 10/18/1994)
10/18/1994	17	NOTICE -- SEALED DOCUMENT. (JL) Modified on 10/21/1994 (Entered: 10/21/1994)
10/18/1994	18	NOTICE -- SEALED DOCUMENT. (JL) Modified on 10/21/1994 (Entered: 10/21/1994)
10/18/1994	19	NOTICE -- SEALED DOCUMENT. (JL) (Entered: 10/21/1994)
10/18/1994	20	NOTICE -- SEALED DOCUMENT. (JL) (Entered: 10/21/1994)
10/19/1994	15	SETTING LETTER : status conference set for 10/26/94 at 8:45 (WBE) Modified on 10/21/1994 (Entered: 10/20/1994)
10/26/1994	21	MINUTES: Status conference held 10/26/94 , Judge Gibbons presiding; discovery ddl set 4/30/95; potentially dispositive motion filing ddl set 5/31/95 (JL) (Entered: 10/26/1994)
10/26/1994	22	NOTICE--SEALED DOCUMENT. (JL) (Entered: 10/26/1994)
10/26/1994	23	NOTICE--SEALED DOCUMENT. (JL) (Entered: 10/26/1994)
10/26/1994	24	MOTION by respondent Michael Dutton to file corrected answer ; PROPOSED CORRECTED ANSWER ATTACHED. (JL) (Entered: 10/26/1994)
10/27/1994	25	SCHEDULING ORDER 16(b) Chief Judge Julia S. Gibbons ; discovery deadline set for 4/30/95. ; motion filing deadline set for 5/31/95. Another status conference will be held after motion deadline. (cc: all counsel) (JL) (Entered: 10/28/1994)
10/28/1994	26	ORDER by Chief Judge Julia S. Gibbons granting motion to file corrected answer [24-1] (cc: all counsel) (JL) (Entered: 10/28/1994)
10/28/1994	27	AMENDED ANSWER [11-1] by respondent Michael Dutton (JL)

		(Entered: 10/28/1994)
12/28/1994	28	SETTING LETTER : status conference set for 6/14/95 at 8:45 a.m. (JL) (Entered: 12/29/1994)
02/09/1995	29	MOTION by petitioner Philip R. Workman for leave to conduct discovery (JL) (Entered: 02/10/1995)
02/09/1995	30	MEMORANDUM by petitioner Philip R. Workman in support of motion for leave to conduct discovery [29-1] (JL) (Entered: 02/10/1995)
03/01/1995	31	RESPONSE by respondent Michael Dutton to motion for leave to conduct discovery [29-1] (WBE) (Entered: 03/02/1995)
03/02/1995	32	MOTION by respondent Michael Dutton for leave to conduct discovery (WBE) Modified on 03/08/1995 (Entered: 03/02/1995)
03/02/1995	33	CERTIFICATE OF CONSULTATION by respondent Michael Dutton (WBE) (Entered: 03/02/1995)
03/08/1995	34	ORDER by Chief Judge Julia S. Gibbons granting respondent's motion for leave to conduct discovery [32-1] (cc: all counsel) (WMW) Modified on 03/08/1995 (Entered: 03/08/1995)
03/08/1995	35	ORDER by Chief Judge Julia S. Gibbons denying petitioners motion for leave to conduct discovery [29-1] (cc: all counsel) (WMW) (Entered: 03/08/1995)
03/09/1995	36	MOTION by counsel for petitioner Philip R. Workman for order authorizing interim payment of attorneys' fees with memorandum attached (WBE) (Entered: 03/10/1995)
03/09/1995	37	RESPONSE by petitioner Philip R. Workman to respondent's motion for leave to conduct discovery [32-1] (WBE) (Entered: 03/14/1995)
03/09/1995	38	REPLY by petitioner Philip R. Workman re response to motion for leave to conduct discovery [37-1] (WBE) (Entered: 03/14/1995)
03/14/1995	39	NOTICE (FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO PETITIONER) by respondent Michael Dutton (WMW) (Entered: 03/15/1995)
03/20/1995	40	NOTICE by Atty Christopher M. Minton of change of address (WMW) (Entered: 03/22/1995)
04/25/1995	41	SETTING LETTER : status conference reset for 7/12/95 at 9:00 (WBE) (Entered: 04/26/1995)
04/27/1995	42	MOTION by petitioner Philip R. Workman for discovery deadline (WMW) (Entered: 05/01/1995)
05/01/1995	43	MOTION by respondent Michael Dutton for summary judgment (WMW) (Entered: 05/02/1995)
05/01/1995	44	MOTION by respondent Michael Dutton to exceed page limitation and request for permission not to file additional addenda (WMW) (Entered:

		05/02/1995)
05/01/1995	45	MEMORANDUM by respondent in support of motion for summary judgment [43-1] (WMW) (Entered: 05/02/1995)
05/22/1995	46	MOTION by petitioner Philip R. Workman to allow issuance of subpoena pursuant to rule 6 of the rules governing section 2254 cases (WMW) (Entered: 05/23/1995)
05/31/1995	47	AGREED ORDER by Chief Judge Julia S. Gibbons granting motion to allow issuance of subpoena pursuant to rule 6 of the rules governing section 2254 cases [46-1] (cc: all counsel) (EHG) (Entered: 06/01/1995)
05/31/1995	48	ORDER by Chief Judge Julia S. Gibbons granting motion for discovery deadline [42-1] ...to 6/14/95 (cc: all counsel) (EHG) (Entered: 06/01/1995)
05/31/1995	49	MOTION by petitioner Philip R. Workman to extend discovery deadline and time to respond to first motion for summary judgment (WBE) (Entered: 06/01/1995)
06/01/1995	50	ORDER ON INTERIM PAYMENTS FOR REPRESENTATION OF COUNSEL... by Chief Judge Julia S. Gibbons granting motion for order authorizing interim payment of attorneys' fees [36-1] (cc: all counsel) (EHG) (Entered: 06/01/1995)
06/20/1995	51	MOTION to modify subpoena , and for protective order filed by City of Memphis Police Department (SSH) (Entered: 06/21/1995)
06/26/1995	52	MOTION by petitioner Philip R. Workman for order enforcing compliance with subpoena for production of documents served on non-party (WBE) (Entered: 06/27/1995)
06/28/1995	53	MOTION by petitioner Philip R. Workman to expedite relief (WBE) (Entered: 06/29/1995)
06/28/1995	54	RESPONSE by petitioner Philip R. Workman to motion to modify subpoena [51-1], to motion for protective order [51-2] (WBE) (Entered: 06/29/1995)
06/30/1995	55	MOTION by petitioner Philip R. Workman for order authorizing nunc pro tunc payment (WBE) (Entered: 07/03/1995)
07/03/1995	56	MOTION by petitioner Philip R. Workman to amend motion to modify subpoena and for protective order and response to plaintiff's motion for extended relief (WBE) (Entered: 07/03/1995)
07/07/1995	57	RESPONSE by petitioner Philip R. Workman to motion to modify subpoena [51-1], to motion for protective order [51-2] (WBE) (Entered: 07/11/1995)
07/12/1995	58	ORDER by Chief Judge Julia S. Gibbons granting motion for order authorizing nunc pro tunc payment [55-1] (cc: all counsel) (SSH) (Entered: 07/12/1995)

07/13/1995	59	MINUTES: Status conference held 7/12/95. Court to enter order on deadlines for response to the motion and an order on Police Dept's motion, directing response by 8-14-95. Pltf has until 9-15-95 to file motion for summary judgment (SSH) (Entered: 07/14/1995)
07/17/1995	60	ORDER on Status Conference by Chief Judge Julia S. Gibbons for petitioner to respond to the pending motion for summary judgment by 8/14/95, petitioner will file any supplemental response no later than 9/15/95 and petitioner given until 9/15/95 to file any summary judgment motion (cc: all counsel) (BAG) (Entered: 07/18/1995)
07/17/1995	61	ORDER by Chief Judge Julia S. Gibbons granting motion to modify subpoena [51-1], granting motion for protective order [51-2] the City of Memphis Police Dept. is given until 8/14/95 to comply with the subpoena. No extensions of this deadline will be granted. The Clerk is directed to serve a copy of this order on the City Of Memphis Police Dept. (cc: all counsel) (BAG) (Entered: 07/18/1995)
08/14/1995	62	MOTION by petitioner for leave to allow summary judgment response in excess of twenty pages pursuant to local rule 11 (e) (BAG) (Entered: 08/15/1995)
08/14/1995	63	INITIAL RESPONSE by petitioner to motion for partial summary judgment [43-1] (BAG) Modified on 03/31/1997 (Entered: 08/15/1995)
08/17/1995	64	ORDER by Chief Judge Julia S. Gibbons granting motion for leave to allow summary judgment response in excess of twenty pages pursuant to local rule 11 (e) [62-1]; Petitioner may file initial summary judgment response submitted with his motion. (cc: all counsel) (BAG) (Entered: 08/18/1995)
09/15/1995	65	PETITIONER'S MOTION FOR SUMMARY JUDGMENT by petitioner Philip R. Workman for summary judgment pursuant to FRCP 56; (BAG) (Entered: 09/18/1995)
09/15/1995	66	MEMORANDUM by petitioner Philip R. Workman in support of motion for summary judgment pursuant to FRCP 56; [65-1] (BAG) (Entered: 09/18/1995)
09/15/1995	67	PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT by petitioner Philip R. Workman to motion for summary judgment [43-1]; (exhibits A-M attached) (documents placed in separate folder) (BAG) (Entered: 09/18/1995)
09/19/1995	68	MOTION by petitioner Philip R. Workman for leave to supplement response to respondent's motion for summary judgment; (w/exhibits) (BAG) (Entered: 09/20/1995)
09/19/1995	69	MOTION TO ALLOW SUMMARY JUDGMENT RESPONSE IN EXCESS OF TWENTY PAGES by petitioner Philip R. Workman to exceed page limitation (BAG) (Entered: 09/20/1995)
09/19/1995	70	MOTION by petitioner Philip R. Workman for leave to substitute exhibits A and B of petitioner's 9/15/95 summary judgment exhibits...

		(BAG) (Entered: 09/20/1995)
09/19/1995	71	REQUEST by petitioner Philip R. Workman for oral argument on motions for summary judgment and responses thereto filed by both parties; (BAG) (Entered: 09/20/1995)
09/20/1995	72	ORDER by Chief Judge Julia S. Gibbons granting motion for leave to substitute exhibits A and B of petitioner's 9/15/95 summary judgment exhibits... [70-1], granting motion for leave to supplement response to respondent's motion for summary judgment; (w/exhibits) [68-1] (cc: all counsel) (BAG) (Entered: 09/22/1995)
09/20/1995	73	ORDER by Chief Judge Julia S. Gibbons granting motion for leave to substitute exhibits A and B of petitioner's 9/15/95 summary judgment exhibits... [70-1], upon receipt signed authentications filed with exhibits A & B, and leave to substitute declaration of J. Blum attached to his motion for leave to substitute exhibit H of petitioners 9/15/95 summary judgment exhibits (cc: all counsel) (BAG) (Entered: 09/22/1995)
09/20/1995	74	ORDER by Chief Judge Julia S. Gibbons granting motion to exceed page limitation [69-1], petitioner given leave to file summary judgment response in excess of twenty pages; (cc: all counsel) (BAG) (Entered: 09/22/1995)
10/03/1995	75	NOTICE OF SUBSTITUTION by petitioner Philip R. Workman; w/exhibits attached (documents placed in separate folder) (BAG) Modified on 10/04/1995 (Entered: 10/04/1995)
10/04/1995	76	CONSENT EMERGENCY MOTION TO ALLOW INSPECTION AND PHOTOGRAPHING OF EXHIBITS by parties for order allowing access to visual exam of records; (BAG) (Entered: 10/10/1995)
10/06/1995	77	CONSENT ORDER GRANTING EMERGENCY MOTION TO ALLOW INSPECTION AND PHOTOGRAPHING OF EXHIBITS by Chief Judge Julia S. Gibbons : granting motion for order allowing access to visual exam of records; [76-1] (cc: all counsel) (BAG) (Entered: 10/10/1995)
10/12/1995	78	MOTION TO STRIKE by respondent Michael Dutton to strike exhibits A and B to petitioner's memoranddum in support of motion for summary judgment; (BAG) (Entered: 10/13/1995)
10/12/1995	79	MEMORANDUM by respondent Michael Dutton in support of motion to strike exhibits A and B to petitioner's memorandum in support of motion for summary judgment; [78-1] (BAG) (Entered: 10/13/1995)
10/12/1995	80	RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT by respondent Michael Dutton to motion for summary judgment pursuant to FRCP 56; [65-1] (BAG) (Entered: 10/13/1995)
10/12/1995	81	MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT by respondent Michael Dutton in support of motion response [80-1] (BAG) (Entered: 10/13/1995)

10/12/1995	82	REQUEST/ MOTION TO ALLOW RESPONSE TO PETITIONER'S RESPONSE TO SUMMARY JUDGMENT IN EXCESS OF TWENTY PAGES by respondent Michael Dutton for response in excess of twenty pages pursuant to local rule 11(e)... (BAG) (Entered: 10/13/1995)
10/12/1995	83	RESPONDENT'S REPLY TO PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT by respondent Michael Dutton re [67-1]; w/exhibits attached; (BAG) (Entered: 10/13/1995)
10/16/1995	84	ORDER by Chief Judge Julia S. Gibbons granting request [82-1]; to allow response to petitioner's motion in excess of 20 pages. (cc: all counsel) (BAG) (Entered: 10/17/1995)
10/17/1995	85	MOTION TO SUBSTITUTE EXHIBIT by respondent Michael Dutton for leave to substitute affidavit of Ruth A. Murray (BAG) (Entered: 10/19/1995)
10/17/1995	86	MOTION TO SUBSTITUTE PARTY RESPONDENT for substitute respondent; (Ricky Bell, Warden, as substitute for Michael Dutton) Mr Bell succeeded Mr Dutton as Warden at Riverbend Maximum Security Institution in March 1995. (BAG) (Entered: 10/19/1995)
10/18/1995	87	ORDER by Chief Judge Julia S. Gibbons granting motion for substitute respondent; (Ricky Bell, Warden, as substitute for Michael Dutton) Mr Bell succeeded Mr Dutton as Warden at Riverbend Maximum Security Institution in March 1995. [86-1] dismissing party Michael Dutton as respondent; (cc: all counsel) (BAG) (Entered: 10/19/1995)
10/18/1995	88	ORDER by Chief Judge Julia S. Gibbons granting motion for leave to substitute affidavit of Ruth A. Murray [85-1], affidavit of Ruth Murray is hereby substituted for the copy of the affidavit of Ruth A. Murray filed with exhibit A. (cc: all counsel) (BAG) (Entered: 10/19/1995)
10/23/1995	89	REPLY TO RESPONDENT'S RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT by petitioner Philip R. Workman re [80-1] (BAG) (Entered: 10/24/1995)
10/23/1995	90	RESPONSE TO MOTION TO STRIKE by petitioner Philip R. Workman to motion to strike exhibits A and B to petitioner's memorandum in support of motion for summary judgment; [78-1] (BAG) (Entered: 10/24/1995)
03/13/1996	91	MOTION TO ASCERTAIN STATUS by respondent Ricky Bell for the court to advise him of the status of habeas corpus proceeding and to set a date for status conference if deemed appropriate (BAG) (Entered: 03/13/1996)
04/01/1996	92	ORDER ON RESPONDENT'S MOTION TO ASCERTAIN STATUS by Chief Judge Julia S. Gibbons granting motion for the court to advise him of the status of habeas corpus proceeding and to set a date for status conference if appropriate [91-1]; The court interprets respondent's motion as a thinly-veiled request that the court act on current pending motions

		for summary judgment. The court further notes that entering an order on this motion, while necessitated by approach chosen by respondent's counsel, was an unwelcome distraction from working on this case and others on court's docket. Counsel knows the court is hard at work on many pressing matters and is admonished to examine necessity and motives for such filings before filing such motions in the future. (cc: all counsel) (BAG) (Entered: 04/02/1996)
10/01/1996	93	STIPULATION by petitioner Philip R. Workman re [67-1], re [65-1] (BAG) (Entered: 10/03/1996)
10/28/1996	94	ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT by Chief Judge Julia S. Gibbons denying motion to strike exhibits A and B [78-1]; the court concludes that these documents are properly authenticated and potentially admissible at an evidentiary hearing; denying motion for summary judgment pursuant to FRCP 56; [65-1]; Petitioner is unable to show falsity or knowledge on the part of the prosecution. granting motion for summary judgment [43-1]; Petitioner's allegations of prosecutorial misconduct as they relate to alleged instructions to witnesses are without merit, and the court grants summary judgment in favor of respondent as to these claims. finding the motion to expedite relief [53-1] moot, per status conf. held 7/13/95; (cc: all counsel) (BAG) (Entered: 10/29/1996)
11/05/1996		MAIL Returned [94-1] addressed to miscellaneous Capital Case Resource. "Return to sender, forward time exp" on envelope. CHCM. (Former Emp) (Entered: 11/05/1996)
11/12/1996	95	ORDER LIFTING STAY OF EXECUTION by Chief Judge Julia S. Gibbons vacating [7-1] order; An order granting respondent's motion for summary judgment was entered 10/29/96. Since this matter has been resolved, the stay of execution is lifted. (cc: all counsel) (BAG) (Entered: 11/12/1996)
11/14/1996	96	JUDGMENT IN A CIVIL CASE: by Chief Judge Julia S. Gibbons re [94-1] (cc: all counsel) (EHG) (Entered: 11/14/1996)
11/18/1996		MAIL Returned [94-1] addressed to miscellaneous Capital Case Resource; (CH-CM) (BAG) (Entered: 11/19/1996)
11/21/1996		MAIL Returned [95-1] addressed to miscellaneous Capital Case Resource; (CH-CM) (BAG) (Entered: 11/22/1996)
11/22/1996		MAIL Returned [96-1] addressed to miscellaneous Capital Case Resource; (CH-CM) (BAG) (Entered: 11/25/1996)
11/25/1996	97	REQUEST FOR CERTIFICATE OF PROBABLE CAUSE, by petitioner Philip R. Workman; (BAG) (Entered: 11/26/1996)
11/25/1996	98	NOTICE OF APPEAL by petitioner Philip R. Workman from Dist. Court decision [96-1] (cc: all counsel) (BAG) (Entered: 11/26/1996)
11/25/1996	99	NOTIFICATION form sent to 6th Circuit [98-1]; forwarded [96-1], [95-1], docket sheet and transmission form. (cc: all counsel) (BAG) (Entered: 11/26/1996)

		11/26/1996)
11/26/1996	100	ORDER by Chief Judge Julia S. Gibbons granting request [97-1]; This Court ISSUES to Philip R. Workman a Certificate of Probable Cause to appeal this Court's 11/14/96 judgment. (cc: all counsel) (BAG) (Entered: 11/26/1996)
11/26/1996	101	RECEIVED re [98-1] fee in amount of \$ 105.00 (Receipt # 29305) (BAG) (Entered: 11/26/1996)
12/09/1996	102	MOTION TO AMEND ORDER GRANTING CERTIFICATE OF PROBABLE CAUSE by respondents to amend; w/attachment (BAG) (Entered: 12/10/1996)
12/12/1996	103	RESPONSE to motion to amend certificate of probable cause [102-1] (WBE) (Entered: 12/13/1996)
12/16/1996		REMARK; copy of Order on Cross Motions, doc.# 94, and docket sheet forwarded to Sixth Circuit, COA, via Fed Ex Overnight. (BAG) (Entered: 12/16/1996)
12/23/1996		NOTIFICATION by 6th Circuit Court Number 96-6652; C. Borkowski case mgr (SSH) (Entered: 12/23/1996)
01/10/1997	104	NOTICE OF FILING OF Supplemental Authority by respondent Ricky Bell; filed for consideration of Respondent's Motion to Amend Order Granting Certificate of Probable Cause; w/attachment (BAG) (Entered: 01/13/1997)
01/21/1997	105	ORDER by Chief Judge Julia S. Gibbons denying motion to amend Order Granting Certificate of Probable Cause [102-1]; Since circuit judges have authority to issue certificates of appealability and since this court has already granted a certificate of probable cause, it appears appropriate for the appellate court to consider whether the amendments apply and whether certificate of appealability should issue. Given procedural posture of this case, the court declines to issue a certificate of appealability. (cc: all counsel) (BAG) (Entered: 01/21/1997)
02/20/1997	106	ATTORNEY APPEARANCE (CJA 30) appointing atty Saul C. Belz, for petitioner Philip R. Workman (WMW) (Entered: 02/21/1997)
03/17/1997	107	ORDER Entered: 3/12/97 from 6th Circuit re [98-1] remanding case to the district court for the issuance of a proper certificate of appealability (SSH) (Entered: 03/24/1997)
03/21/1997	108	MINUTES: Phone conference held 3/21/97; Judge Gibbons presiding; Hearing on certificate of appealability set 1:30 3/31/97 ; Counsel to file anything relative to this issue by morning of hearing (10 page limitation); Pla(s) atty: C. Minton; Dft(s) atty: J. Baker; C/R: M. Dodson. (Former Emp) (Entered: 03/25/1997)
03/27/1997	109	MOTION by petitioner Philip R. Workman for certificate of appealability; requesting the court issue a Certificate of Appealability specifying that the issues Workman presents in this habeas proceeding

		are worthy of appeal (BAG) (Entered: 03/27/1997)
03/27/1997	110	MEMORANDUM by petitioner Philip R. Workman in support of motion for certificate of appealability [109-1]; (BAG) (Entered: 03/27/1997)
03/31/1997		ORIGINAL record on appeal transmitted to 6th Circuit [98-1] consisting of 42 vols. pleadings (includes 8 expandable folders); 2 vols. sealed documents; copies of docket sheet and transmission form. cc: copies counsel (SSH) Modified on 03/31/1997 (Entered: 03/31/1997)
03/31/1997	111	RESPONSE by respondents to petitioner's motion for certificate of appealability [109-1]; submitting that issues presented in motion are not worth certification for appeal; (BAG) (Entered: 04/01/1997)
03/31/1997	112	MEMORANDUM by respondents in support of motion response to petitioner's motion for certificate of appealability [111-1]; petitioner's request should be denied; (BAG) (Entered: 04/01/1997)
03/31/1997	113	MINUTES: Hearing/certificate of appealability held 3/31/97 ; Judge Gibbons presiding; Statements made by counsel; Court to make ruling in couple weeks; Pla(s) atty: C. Minton; Dft(s) atty: G. Pruder, J. Baker III; C/R: M. Dodson. (Former Emp) (Entered: 04/02/1997)
04/30/1997	114	ORDER by Chief Judge Julia S. Gibbons granting motion for certificate of appealability [109-1]; The court certifies fir appeal: whether trial court impermissibly equated reasonable doubt with moral doubt; whether jury should have been specifically instructed...; whether there is insufficient evidence to find that "the murder was committed by dft, while dft was in lawful custody...; whether the jury's reliance upon invalid aggravating circumstance..., constituted harmless error; A certificate of appealability is granted as to these 4 issues; (cc: all counsel) (BAG) (Entered: 05/01/1997)
06/09/1997	115	TRANSCRIPT of proceedings for the following date(s): 3/21/97 of Telephone Conf. before Judge Gibbons; Volumes 1; Court Reporter: Mark Dodson; (document placed in separate folder) (BAG) (Entered: 06/11/1997)
06/09/1997	116	TRANSCRIPT of proceedings for the following date(s): 3/31/97 of Proceedings before Judge Gibbons; Volumes 1; Court Reporter: Mark Dodson; (document placed in separate folder) (BAG) (Entered: 06/11/1997)
06/27/1997	117	NOTICE OF FILING: CJA 24, Authorization and Voucher for Payment of Transcript, as to petitioner Philip R. Workman re: telephone conference w/court 3/21/97 & hearing 3/31/97. (EHG) (Entered: 06/27/1997)
07/10/1997	118	SUPPLEMENTAL TRANSMISSION to 6th Circuit re [98-1] consisting of 1 vol. of pleadings, 1 vol. transcript; copies of docket sheet and transmission form. cc: copies to counsel (SSH) (Entered: 07/10/1997)
10/23/1997	119	STIPULATION by (parties) petitioner, respondent re [67-1], pursuant to Fed.R.App.P. 10(e), documents replace pages 409,410 and 442 of R.67,

		exhibit B to petitioner's response to respondent's motion for partial summary judgment; (BAG) (Entered: 10/27/1997)
11/12/1998	120	JUDGMENT AND SLIP opinion from USCA (entered 10/30/98) affirming the decision of the District Court [98-1] (SSH) (Entered: 11/12/1998)
02/04/1999	121	ORIGINAL RECORD on appeal returned from 6th Circuit (SSH) (Entered: 02/05/1999)
05/13/1999	122	NOTICE from the 6th Circuit Court of Appeals: enclosing copies of corrected pages from the decision originally sent; making corrections in publication version on page 8, line 32 thru page 9, line 26. (SSH) (Entered: 05/17/1999)
08/16/1999	123	NOTICE from the Supreme Court of the United States: the petition for a writ of certiorari was filed 8/9/99 and placed on the docket 8/9/99 as No. 99-5644. (SSH) (Entered: 08/16/1999)
10/15/1999	124	ORDER Mandate Issued: 10/12/99 from 6th Circuit pursuant to the court's disposition that was entered 10/30/98. (SSH) (Entered: 10/18/1999)
10/19/1999	125	NOTICE from the Supreme Court of the United States: The petition for a writ of certiorari is denied. (SSH) (Entered: 10/19/1999)
11/22/1999	126	NOTICE from the Supreme Court of the United States: a petition for rehearing was filed on 10/29/99 and is pending the court's consideration and decision. (SSH) (Entered: 11/23/1999)
12/16/1999	127	NOTICE from the Supreme Court of the United States: the petition for rehearing is denied. (SSH) (Entered: 12/21/1999)
04/03/2000	128	ORDER Entered: 3/31/00 from 6th Circuit: It is therefore ordered that each of the motions, requests and applications filed by the petitioner is denied, such denial being without prejudice to petitioners seeking any other relief to which he may be entitled. (SSH) (Entered: 04/04/2000)
05/18/2000		ORIGINAL record on appeal as to Philip R. Workman transmitted to Judge Gilbert Merritt, Nashville, TN consisting of 43 vol(s) pleadings; 2 vol(s) transcripts; 1 vol(s) exhibits; copies of docket sheet and transmission form. (cc: copies to all counsel) (SSH) Modified on 05/19/2000 (Entered: 05/18/2000)
09/08/2000	129	JUDGMENT AND SLIP OPINION from USCA (entered 9/5/00) Upon consideration of the petition for rehearing en banc and the supplemental brief, this case came on to be heard and was argued by counsel. In consideration whereof, it is ordered that the stay of execution heretofore entered is dissolved. (SSH) (Entered: 09/08/2000)
10/13/2000	130	ORDER Mandate Issued: 10/4/00 from 6th Circuit pursuant to the court's disposition that was filed in USDC on 9/8/00. (SSH) (Entered: 10/13/2000)

01/02/2001	131	ORIGINAL RECORD on appeal returned from 6th Circuit (SSH) (Entered: 01/02/2001)
01/08/2001	132	NOTICE for Court of Appeals Sixth Circuit; petition for writ of certiorari was filed 12/22/00 and placed on the docket on 12/22/00 as No. 00-7620. (YDS) (Entered: 01/08/2001)
01/16/2001	133	MINUTES: Attorney Conference (by phone); Court advised counsel she could not take the case if remanded, and that it would be returned to the Clerk for re-assignment; Presiding Judge: Gibbons PLA Atty: Saul Belz/Christopher Minton DFT Atty: Glenn Pruden/Whalen/Smith/Tarkington/Moore C/R: Mark Dodson (YDS) (Entered: 01/31/2001)
02/05/2001	134	ORDER Entered: 1/30/01 from 6th Circuit: Upon consideration of the foregoing a majority of the judges of the court have voted to grant the motion, it is therefore ordered that the motion be and it hereby is, granted; the stay of execution shall remain in place until the final disposition by the Supreme Court of the actions brought before it by the petitioner. (the ordered filed 1/26/01 is unchanged, this order includes the addition of Judge Boggs' dissent.) (SSH) (Entered: 02/06/2001)
02/13/2001	135	NOTICE from the Supreme Court of the United States of 1/30/01 Order: the application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Sixth Circuit on 1/26/01 presented to Justice Stevens and by him referred to the Court, is denied. (SSH) (Entered: 02/13/2001)
03/13/2001	136	NOTICE from the Supreme Court of the United States: the petition for a writ of certiorari is denied. (SSH) (Entered: 03/13/2001)
03/23/2001	137	ORDER Entered: 3/21/01 Mandate Issued: 3/21/01 from 6th Circuit: denying the motion to declare void the execution date entered by the Supreme Court of Tennessee and to enforce this court's 1/26/01, stay of execution. The mandate shall issue forthwith. (SSH) (Entered: 03/23/2001)
03/28/2001	138	MOTION/PETITION by petitioner Philip R. Workman for stay of execution , petition for writ of error coram nobis (setting aside the jmg entered 10/29/96) w/video exhibits placed in separate folder (YDS) (Entered: 03/28/2001)
03/28/2001	139	APPLICATION to Proceed In Forma Pauperis by petitioner Philip R. Workman (YDS) (Entered: 03/28/2001)
03/28/2001	140	APPENDIX filed by petitioner Philip R. Workman re [138-1], re [138-2] [DOCUMENT PLACED IN A SEPARATE FOLDER] (YDS) (Entered: 03/28/2001)
03/28/2001	141	NOTICE from Deputy Clerk Case reassigned to Judge Jon P. McCalla (cc: all counsel) (YDS) (Entered: 03/28/2001)
03/28/2001	142	NOTICE OF VOLUNTARY DISMISSAL by petitioner Philip R. Workman; petitioner gives notice that he voluntarily dismisses the

		"Petition for Writ of Error Corman Nobis; Motion for Stay of Execution" filed w/the Court on 3/28/01. (YDS) (Entered: 03/29/2001)
03/29/2001	143	MOTION/PETITION by petitioner Philip R. Workman for writ of error coram nobis , for stay of execution [filed in open court] (YDS) (Entered: 03/29/2001)
03/29/2001	144	RESPONSE by respondent Ricky Bell in opposition to motion for writ of error coram nobis [143-1], to motion for stay of execution [143-2] (YDS) (Entered: 03/29/2001)
03/29/2001	145	MINUTES: Attorney Requested Conference; is goint to re-file the motion for writ of error coram nobis, motion for stay of execution - the Court received and accepted the motion for filing; Presiding Judge: McCalla PLA Atty: Robert Hutton C/R: Lynn Dudley (YDS) (Entered: 03/30/2001)
03/29/2001	146	APPENDIX filed by petitioner Philip R. Workman re [143-1], re [143-2]; DOCUMENT PLACED IN A SEPARATE FOLDER (YDS) (Entered: 03/30/2001)
03/29/2001	<u>147</u>	ORDER DENYING PETITIONER'S MOTION FOR STAY OF EXECUTION AND DENYING WRIT OF ERROR CORAM NOBIS by Judge Jon P. McCalla denying motion for writ of error coram nobis [143-1], denying motion for stay of execution [143-2]; the Sixth Circuit has decided that this Court may not consider Petitioner's new evidence. In the face of that decision, that Court may not issue a stay of execution or grant a writ of error coram nobis...though labeled as an attempt to correct an error before this Court, actually constitutes a successive petition for habeas corpus relief pursuant to 28 USC 2254 and can only be appropriately addressed to the Court of Appeals...Petitioner's motions for a stay of execution and for a writ of error coram nobis are DENIED. (cc: all counsel) (YDS) (Entered: 03/30/2001)
04/02/2001	148	JUDGMENT AND SLIP opinion from USCA (entered 3/23/01) Because we deny the motion to reopen and to appoint a special master, the second motion to stay the execution is also meritless. (SSH) (Entered: 04/03/2001)
04/02/2001	149	ORDER Entered: 3/29/01 from 6th Circuit: For the reasons set fort in the district court's 3/28/01, order denyuing Workman's motion for a TRO, we affirm the judgment of the district court (MDTN). We also deny the 3/29/01 motions for stay of execution pending final resolution of the appeal and to recall the mandate and stay the execution in case nos. 96-6652, 00-5367 (WDTN). (SSH) (Entered: 04/03/2001)
04/02/2001	150	ORDER Mandate Issued: 3/29/01 from 6th Circuit pursuant to the court's disposition that was entered 4/2/01. (SSH) (Entered: 04/03/2001)
04/02/2001	151	RESPONSE by respondent Ricky Bell to [143-1], to [143-2] (YDS) (Entered: 04/03/2001)
04/05/2001	152	NOTICE from the 6th Circuit COA enclosing the Supreme Court Order

		filed 3/29/01 denying application for stay of execution of sentence of death. The petition for a writ of certiorari is denied. (SSH) (Entered: 04/09/2001)
04/09/2001		MAIL Returned [147-1] addressed to John Baker; return to sender, not at this address (YDS) (Entered: 04/10/2001)
09/03/2003	153	MOTION by petitioner Philip R. Workman for relief from judgment w/attachments (EHG) (Entered: 09/04/2003)
09/03/2003	154	MOTION by petitioner Philip R. Workman to stay of execution (EHG) (Entered: 09/04/2003)
09/04/2003	155	SUPPLEMENT EXHIBIT IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT by petitioner Philip R. Workman re [153-1] (EHG) (Entered: 09/04/2003)
09/15/2003	156	NOTICE OF FILING OF DOCUMENTS (executive order of reprieve from execution of sentence of death in matter of Philip Workman v. State) by Joseph F. Whalen, Assistant Attorney General, counsel for respondent Ricky Bell, Warden (JAE) (Entered: 09/15/2003)
09/15/2003	166	Minute Entry for proceedings held before Judge Bernice B. Donald : Motion Hearing held on 9/15/2003 re [154] Motion for Stay of Execution filed by Philip R. Workman. Granted w/o prejudice. Order to be submitted to the Court. The parties concur that the issuance of the reprieve by the Governor moots the stay motion at this time; the Court will hold the other issues in abeyance. (Plt's atty: P. Bottei, K. Henry, C. Minton; Dft's atty: J. Whalen; Court Reporter L. Dudley.) (ssh,) (Entered: 09/14/2004)
09/23/2003	<u>157</u>	ORDER by Judge Bernice B. Donald ..the motion to withdraw the motion for stay of execution is hereby GRANTED w/o prejudice to renewal should another execution date be set. ..The court shall hold proceedings in abeyance pending the forthcoming decision of the 6th Circuit in Abdur'Rahman v. Bell, 6th Cir. Nos. 02-6547, 02-6548. [154-1], [153-1] (cc: all counsel) (EHG) (Entered: 09/23/2003)
09/29/2003	158	NOTICE by counsel for petitioner, Christopher Minton of change of address (EHG) (Entered: 09/30/2003)
07/23/2004	<u>159</u>	ORDER: The Clerk is hereby directed to reopen the above styled case. ; REOPENING CASE. Signed by Judge Bernice B. Donald. (ehg,) (Entered: 07/23/2004)
08/27/2004	160	MOTION for Stay of Execution w/attachment by Philip R. Workman. (ehg,) (Entered: 08/27/2004)
08/27/2004	161	First Amended MOTION for Equitable Relief in the Exercise of this Court's Inherent Article III Powers, and/or for Relief from Judgment w/attachments by Philip R. Workman. [document placed in separate folder] ; (ehg,) Modified on 8/27/2004 (ehg,). (Entered: 08/27/2004)
09/01/2004	<u>162</u>	ORDER GRANTING STAY OF EXECUTION..granting [160] Motion to

		Stay . Signed by Judge Bernice B. Donald. (ehg,) (Entered: 09/02/2004)
09/02/2004	163	ORDER of USCA (entered 8/31/04) denying Workman permission to file a successive 3354 petition (ssh,) (Entered: 09/02/2004)
09/08/2004	164	NOTICE OF APPEAL as to <u>162</u> Order on Motion to Stay by Ricky Bell, Charles W. Burson, Michael Dutton. Filing fee \$ 255, receipt number M 90435. (jae,) (Entered: 09/10/2004)
09/08/2004		Appeal Filing fee: \$ 255.00, receipt number M 90435 (jae,) (Entered: 09/10/2004)
09/10/2004		Transmission of Notice of Appeal, Docket Sheet and <u>162</u> Order to US Court of Appeals re [164] Notice of Appeal (ssh,) (Entered: 09/10/2004)
09/14/2004	165	Certified and Transmitted Record on Appeal consisting of 1 vol. of pleadings, copies of docket sheet and transmission form to US Court of Appeals re [164] Notice of Appeal (ssh,) (Entered: 09/14/2004)
09/22/2004	167	ORDER of USCA as to [164] Notice of Appeal filed by Charles W. Burson, Michael Dutton..The court DENIES the motion of respondent Ricky Bell to vacate the stay of execution w/o prejudice to renewal of the motion after issuance of the decision of this court in Nos. 02-26547, in re: Abu-Ali Abdur'Rahman, and No. 02-6548, Abu-Ali Abdur'Rahman v. Ricky Bell, Warden. (ehg,) (Entered: 09/27/2004)
12/17/2004	168	MOTION for Hearing/Scheduling Conference by Philip R. Workman. (ehg,) Modified on 11/30/2006 (jml,)term as moot per email. (Entered: 12/20/2004)
12/30/2004	169	RESPONSE to Motion re [168] MOTION for Scheduling Conference filed by Ricky Bell. (jae,) (Entered: 01/03/2005)
02/07/2005	170	SUPPLEMENTAL EVIDENCE IN SUPPORT OF PETITIONER'S FIRST AMENDED MOTION FOR EQUITABLE RELIEF IN THE EXERCISE OF THIS COURT'S INHERENT ARTICLE III POWERS, AND/OR FOR RELIEF FROM JUDGMENT by Philip R. Workman w/attachments. (ehg,) (Entered: 02/07/2005)
07/05/2005	171	MOTION for status conference by Philip R. Workman. (jml,) (Entered: 07/06/2005)
07/05/2005	<u>172</u>	ENDORSED ORDER granting [171] Motion For Status Conference . Signed by Judge Bernice B. Donald. (jae,) (Entered: 07/11/2005)
07/11/2005	173	RESPONSE in Opposition to re [171]Petitioner's MOTION for status conference filed by Ricky Bell. (jml,) (Entered: 07/12/2005)
07/11/2005	174	RESPONSE in Opposition to re [161] Petitioner's MOTION for relief from judgment filed by Ricky Bell. (jml,) (Entered: 07/12/2005)
10/18/2005	175	Supplement to Motion for Relief Judgment,.. by Philip R. Workman. (jml,) (Entered: 10/19/2005)
03/07/2006	<u>176</u>	Appeal Record Returned by USCA re[164] Notice of Appeal (cas)

		(Entered: 03/07/2006)
10/17/2006	<u>177</u>	ORDER denying [161] Motion for Relief from Judgment Signed by Judge Bernice B. Donald on 10/17/2006. (Donald, Bernice) (Entered: 10/17/2006)
10/31/2006	<u>178</u>	MOTION to Amend/Correct <u>177</u> Order on Motion for Miscellaneous Relief by Philip R. Workman. (Minton, Christopher) (Entered: 10/31/2006)
11/08/2006	<u>179</u>	RESPONSE in Opposition re <u>178</u> MOTION to Amend/Correct <u>177</u> Order on Motion for Miscellaneous Relief filed by Ricky Bell. (Whalen, Joseph) (Entered: 11/08/2006)
11/09/2006	180	COURTESY NOTICE: Pursuant to Rule 5 of the Federal Rules of Civil Procedure, document <u>179</u> Response in Opposition to Motion filed by Ricky Bell, has been filed. For future reference, please note per our conversation the title should reflect 'response in opposition'.. Filer is not required to resubmit document. (jml,) (Entered: 11/09/2006)
11/14/2006	<u>181</u>	NOTICE OF APPEAL as to <u>177</u> Order on Motion for Miscellaneous Relief by Philip R. Workman. (Minton, Christopher) (Entered: 11/14/2006)
11/17/2006	182	USCA Case Number 06-6451 for <u>181</u> Notice of Appeal filed by Philip R. Workman., Kathryn Kasner will be case mgr. (jml,) (Entered: 11/17/2006)
11/30/2006	<u>183</u>	ORDER Denying as Moot Motion for Scheduling Order. Signed by Judge Bernice B. Donald on 11/30/2006. (Donald, Bernice) (Entered: 11/30/2006)
12/12/2006	<u>184</u>	ORDER denying <u>178</u> Motion to Alter or Amend. Signed by Judge Bernice B. Donald on 12/12/2006. (Donald, Bernice) (Entered: 12/12/2006)
12/15/2006	<u>185</u>	ORDER Administratively Closing Case. Signed by Judge Bernice B. Donald on 12/15/2006. (Donald, Bernice) (Entered: 12/15/2006)
12/19/2006	<u>186</u>	MOTION to Stay <i>Pending Appeal</i> by Philip R. Workman. (Attachments: # <u>1</u> Exhibit 1-Sixth Circuit Order# <u>2</u> Exhibit 2-Johnson v. Bell Order# <u>3</u> Exhibit 3-Mitchell v. Rees Order)(Minton, Christopher) (Entered: 12/19/2006)
12/21/2006	<u>187</u>	RESPONSE in Opposition re <u>186</u> MOTION to Stay <i>Pending Appeal</i> filed by Ricky Bell. (Whalen, Joseph) (Entered: 12/21/2006)
12/27/2006	<u>188</u>	ORDER REOPENING ADMINISTRATIVELY CLOSED CASE, ORDER DENYING <u>186</u> MOTION FOR STAY PENDING APPEAL, SECOND ORDER ADMINISTRATIVELY CLOSING CASE. Signed by Judge Bernice B. Donald on 12/27/2006. (Donald, Bernice) (Entered: 12/28/2006)

EXHIBIT 2

51RA/N, HABEAS, STAY

U.S. District Court
Western District of Tennessee (Memphis)
CIVIL DOCKET FOR CASE #: 2:03-cv-02660-BBD-sta

Workman v. Bell
Assigned to: Bernice B. Donald
Referred to: S. Thomas Anderson
Demand: \$0
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 09/03/2003
Jury Demand: None
Nature of Suit: 535 Death Penalty -
Habeas Corpus
Jurisdiction: Federal Question

Miscellaneous**James H. Allen***TERMINATED: 08/27/2004***Petitioner****Philip Ray Workman**

represented by **Christopher M. Minton**
ASSISTANT FEDERAL PUBLIC
DEFENDER
810 Broadway
Ste. 200
Nashville, TN 37243
615-736-5047
Email: chris_minton@fd.org
ATTORNEY TO BE NOTICED

Kelley J. Henry
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615-736-5047
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ATTORNEY TO BE NOTICED

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615-736-5047
Email: paul_bottei@fd.org
ATTORNEY TO BE NOTICED

V.

Respondent**Ricky Bell***Warden, Riverbend Maximum Security
Institution*

represented by **Joseph F. Whalen, III**
 OFFICE OF THE ATTORNEY
 GENERAL
 P.O. Box 20207
 Nashville, TN 37202-0207
 615-741-3499
 Fax: 615-741-2009
 Email: joe.whelen@state.tn.us
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/03/2003	1	PETITION FOR WRIT OF HABEAS CORPUS (TLH) (Entered: 09/03/2003)
09/03/2003	2	APPLICATION to proceed in forma pauperis by petitioner Philip Ray Workman with supporting documentation; (BAG) (Entered: 09/04/2003)
09/03/2003	3	MOTION by petitioner Philip Ray Workman for stay of execution (BAG) (Entered: 09/04/2003)
09/08/2003	4	SETTING LETTER : Hearing on MOTION FOR STAY OF EXECUTION set for 9/15/03 at 1:30 re [3-1] before Judge Donald in courtroom 3, 9th floor (JAE) (Entered: 09/08/2003)
09/15/2003	5	MINUTES: re [3-1] Stay of Execution (03-2660 & 94-2577) ; Motion hearing held 9/15/03 ; oral motion to withdraw motions to stay in both cases granted w/out prejudice - order to be submitted; the parties concer that the issuance of the reprove by the Govenor moots the stay motions at this time; Court will hold the other issues in abeyance Type of hearing held: Motion Hearing; Presiding Judge: Donald; PLA Atty: P. Bottei, K. Henry, C. Minton; DFT Atty: J. Whalen; C/R: L. Dudley (JAE) Modified on 02/11/2004 (Entered: 09/16/2003)
09/15/2003	6	MINUTES: Motion hearing held 9/15/03 on plaintiff's motion for stay of execution [3-1]; Oral motion to w/draw motions to stay in both cases granted w/o prejudice; Order to be submitted to the Court; The parties concer that issuance of reprove by Govenor moots the stay motions at this time; The Court will hold the other issues in abeyance; finding the motion for stay of execution [3-1] moot. Presiding Judge: Bernice B. Donald; PLA Atty: Paul Bottei, Kelley Henry, C. Minton; DFT Atty: Joseph Whalen, Asst. Atty Gen; C/R: Lynn Dudley; (BAG) (Entered: 09/16/2003)
08/27/2004	7	MOTION For Stay Of Execution pursuant to 28 USC 2251 by Philip Ray Workman. (bag,) (Entered: 08/27/2004)
08/27/2004	8	FIRST AMENDED PETITION for Writ of Habeas Corpus filed by Philip Ray Workman. (Death Penalty Case Execution Date 9/22/04 @

		1:00am)(bag,) (Entered: 08/27/2004)
09/02/2004	<u>9</u>	ORDER granting [7] Motion For Stay of Execution. Signed by Judge Bernice B. Donald. (jae,) (Entered: 09/02/2004)
09/08/2004	10	NOTICE OF APPEAL as to <u>9</u> Order on Motion to Stay by Ricky Bell. Filing fee \$ 255, receipt number M9043. (bag,) (Entered: 09/09/2004)
09/08/2004	11	USCA Appeal Fees received \$ 255 receipt number M9043 re [10] Notice of Appeal filed by Ricky Bell (bag,) (Entered: 09/09/2004)
09/09/2004		Transmission of Notice of Appeal, Docket Sheet and <u>9</u> Order to US Court of Appeals re [10] Notice of Appeal (ssh,) (Entered: 09/09/2004)
09/14/2004	12	Certified and Transmitted Record on Appeal consisting of 1 vol. pleadings, copies of docket sheet and transmission form to US Court of Appeals re [10] Notice of Appeal (ssh,) (Entered: 09/14/2004)
09/22/2004	13	ORDER of USCA (denying motion to vacate stay of execution) issued 9/20/04 as to [10] Notice of Appeal filed by Ricky Bell (jae,) (Entered: 09/24/2004)
04/20/2005	14	ORDER (information copy - filed 4/18/05) of USCA as to [10] Notice of Appeal filed by Ricky Bell denying motion to vacate the stay of execution (jae,) (Entered: 04/20/2005)
01/27/2006	<u>15</u>	ORDER of USCA entered 1/24/2006 as to [10] Notice of Appeal filed by Ricky Bell. Order states that upon the consideration of the Defendants MOTION TO VOLUNTARILY DISMISS, the Order is GRANTED and the Appeal is DISMISSED. (cas) (Entered: 01/27/2006)
03/06/2006	<u>16</u>	Appeal Record Returned re[10] Notice of Appeal (cas) (Entered: 03/07/2006)

EXHIBIT 3

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

PHILIP RAY WORKMAN,)	
)	
Petitioner,)	
)	
V.)	Nos. 94-2577-D
)	
RICKY BELL, Warden,)	
RIVERBEND MAXIMUM SECURITY)	
INSTITUTION,)	
)	
Respondent.)	

ORDER DENYING MOTION TO ALTER OR AMEND

Petitioner has filed a Fed. R. Civ. P. 59 Motion to Alter or Amend the Court's order and judgment denying his fraud upon the court claim as set forth in his First Amended Motion for Equitable Relief. In short, Petitioner contends that the Court has erred in its application of the "more stringent standard," as explicated in Buell v. Anderson, 48 Fed. Appx. 491 (6th Cir. 2002) (unpublished decision), to his fraud upon the court claim. For the reasons stated below, Petitioner's motion is DENIED.

I. STANDARDS APPLICABLE TO A MOTION TO ALTER OR AMEND

A motion pursuant to Rule 59 is not an opportunity to re-litigate a case. Sault Ste. Marie Tribe of Chippewa Indians v. Engler, 146 F.3d 367, 374 (6th Cir. 1998). Thus, a Rule 59 motion is not the proper forum for arguments that could, and should, have been raised prior to the subject judgment. Id. (quoting FDIC v.

World Univ. Inc., 978 F.2d 10, 16 (1st Cir. 1992)). Rather, a motion to alter or amend judgment should be granted only if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent a manifest injustice. GenCorp, Inc. v. American Intern. Underwriters, 178 F.3d 804, 834 (6th Cir. 1999) (citations omitted).

II. PETITIONER'S ALLEGATION OF ERROR

In order to frame the issue raised by the instant motion, the Court will briefly revisit its previous order. In his First Amended Motion for Relief, Petitioner presumably intended to articulate a fraud upon the habeas court claim. In essence, he charged that the Court's judgment denying on the merits his claims in Petition ¶ 117 (d) & (f) was procured through the fraudulent conduct of state "actors" and "officials." To the extent the Court was able to discern concrete allegations of fraudulent conduct on the part of such state "actors" and "officials," they were concerned with alleged misconduct occurring at Petitioner's trial. While those allegations seemed to reach the prosecutors who tried Petitioner's case, they did not appear to reach Respondent's attorneys and their conduct before this Court. In other words, Petitioner did not proffer any explicit and substantiated allegation of fraudulent conduct on the part of an officer of the federal habeas court. Thus, in the Court's view, Petitioner's fraud upon the court claim fell within a grey area of Circuit law concerned with "[t]he question of what misconduct of a governmental official can be attributed to [habeas] counsel" in a fraud upon the

habeas court claim. See Buell, 48 Fed. Appx. at 499. Though, in Buell, the Sixth Circuit deemed this issue "open and controversial," it has nevertheless declined to resolve it in at least three separate instances. Because the Court viewed Petitioner's fraud upon the court claim as once again raising the issue, the Court attempted to resolve it in accord with the Court's view of judicial policy and persuasive authority from the Fifth Circuit Court of Appeals. Thus, the Court applied what Chief Circuit Judge Boggs coined, in Buell, the "more stringent standard." Pursuant to the "more stringent standard," Petitioner's allegation of fraud failed because he did not allege fraudulent conduct on the part of Respondent's counsel during prior proceedings.

Petitioner now alleges error in the Court's application of the "more stringent standard." He contends that the Court mistakenly relied upon guidance from the Fifth Circuit's decision in Fierro v. Johnson, 197 F.3d 147 (5th Cir. 1999), which applied the equivalent of the "more stringent standard" and was cited in Buell, because a Sixth Circuit case, Demjanjuk v. Petrovsky, 10 F.3d 338 (6th Cir. 1993), also cited in Buell, purportedly controls this matter, conflicts with Fierro, and ultimately demonstrates Petitioner's entitlement to an evidentiary hearing on his fraud upon the Court claim.

III. ANALYSIS

Putting aside the issue of whether or not the allegation of error lodged in Petitioner's Rule 59 motion should even be considered by the Court,¹ it lacks merit. The short answer to Petitioner's contention that Demjanjuk requires application of the "broader" standard articulated in Buell is that, were Demjanjuk controlling, Chief Circuit Judge Boggs, who was well aware of Demjanjuk given his citation to that case, surely would have said as much in Buell rather than proceeding to opine on the contours of an issue which he viewed as "open and controversial" despite any perceived relevance of Demjanjuk. Furthermore, as noted in Buell, the division over whether the "broader" or "more stringent" standard applies appears to have originated in Workman v. Bell, 227 F.3d 331 (6th Cir. 2000), a case which also was fully cognizant of

¹ As noted above, a Rule 59 motion is not the proper forum for arguments that could, or should, have been raised prior to judgment. Petitioner's allegation of fraud upon the court was, at best, imprecisely pled in his First Amended Motion for Relief. Nowhere did Petitioner set forth the well-established elements of a fraud upon the court claim as discussed in Demjanjuk and reiterated by the Sixth Circuit in its prior disposition of a fraud upon the court claim by Petitioner. See Workman v. Bell, 227 F.3d 331, 336 (6th Cir. 2000). Given the history of this litigation, the instant Petitioner, perhaps more so than any other habeas petitioner, should be well acquainted with the elements of a fraud upon the court claim. That Petitioner nevertheless purported to allege a fraud on this Court without supplying the standards of such a claim and applying them to his case is telling. Perhaps such imprecise and incomplete pleading benefits a habeas petitioner by forcing the Court to adjudicate a vaguely articulated claim for relief in a vacuum where the Court is left to divine the intent and substance of a claim as well as its legal framework and ultimate viability, thus providing potentially fertile grounds for appeal in the event of an adverse decision. See, e.g., Johnson v. Bell, no. 97-3052, Order Denying Motion for Stay Pending Appeal, doc. no. 144 at 4 n.1 (noting that Johnson had failed to specifically plead his motion for relief pursuant to the standards governing any of the three vehicles for relief which, on appeal, he faulted the Court for either failing to apply or improperly applying). However, whatever its benefits, such imprecise and incomplete pleading should be disfavored, especially in matters as serious as capital habeas litigation. If, on the other hand, Petitioner's omission of the relevant standards governing his fraud upon the court claim was not tactical, it would seem to evince a lack of conviction in the strength of the fraud claim. In any event, Petitioner's contention that Demjanjuk establishes that the "broader standard" is the law of this Circuit arguably should have been submitted prior to the instant motion.

the reach and import of Demjanjuk, yet failed to resolve the instant issue despite the relevance Petitioner assigns to Demjanjuk. Thus, Petitioner's claim that Demjanjuk is controlling of this issue is not supported by the holdings of relevant Circuit precedent.

Petitioner's assertion that Demjanjuk is dispositive of this matter simply begs the question. In Demjanjuk, the Sixth Circuit succinctly summarized the circumstances under which it issued its fraud upon the court ruling as follows:

Acting pursuant to Fed. R. Civ. P. 60(b)(6) and the All Writs Act, 28 U.S.C. § 1651, we reopened the habeas corpus case in which we denied relief from the extradition order to determine whether that proceeding had been tainted by fraud on the court or prosecutorial misconduct that required our intervention.

10 F.3d at 356. Thus, in Demjanjuk the Sixth Circuit reopened a habeas corpus appeal on the basis of fraud committed during the underlying extradition proceedings which continued through the habeas proceedings. Petitioner asserts that this Court is similarly empowered to grant relief from an adverse habeas judgment on the basis of fraud which, according to his own allegations, occurred at his underlying state court trial. Petitioner contends that Demjanjuk is controlling because he alleges fraud in a global sense against the government of Tennessee, thereby implicating apparently all Tennessee government attorneys in the alleged state court fraud whether those attorneys appeared at his trial or in habeas proceedings. Petitioner's contention in this regard does no more than reemphasize the Sixth Circuit split that originated in

prior litigation of this matter and was discussed in Buell. The fraud Petitioner complains of appears to be a fraud on the state court, not the federal habeas court. In Petitioner's prior attempt to reopen his habeas proceedings, the half of the en banc Sixth Circuit which disfavored reopening the appeal stated as follows:

If there was any fraud on the court with regard to the testimony of Davis [or, likewise, testimony concerning the bullet at issue in Petition ¶ 117(f)], that would have been a fraud upon the state court, and should be presented to that court, not to our court. At argument, counsel for the petitioner admitted that if there was a fraud involving the testimony of Davis, it would have been a fraud on the state court only. However, he emphasized that it should be considered as a corroboration of fraud upon the federal court by the failure to produce the X-ray. Nevertheless, there is no fraud upon our court under the criteria set out in Demjanjuk which would authorize this extraordinary relief requested.

Workman, 227 F.3d at 341. Given this finding by half of the en banc Sixth Circuit, it is clear that there is no consensus that Demjanjuk controls the inquiry before the Court by virtue of Petitioner's First Amended Motion for Relief.

Petitioner's motion essentially asked the Court to grant relief from a habeas judgment under the precise circumstances under which the Sixth Circuit has already evenly divided over the propriety of granting relief due to some alleged fraud at Petitioner's trial. This Court is convicted that Petitioner's "privity of government attorneys" argument is not a legally sufficient basis upon which to attribute fraud to Respondent's attorneys appearing before this Court. Thus, this Court has applied the "more stringent standard" contemplated by half of the

Sixth Circuit. This decision also comports with the only known Circuit-level case to decide the issue. See Fierro, 197 F.3d at 155-56. Presumably, the issue will, once again, squarely confront the Court of Appeals, and this time with the benefit of a record reflecting a lower court's resolution of the Sixth Circuit's dispute. Perhaps Petitioner is correct and Demjanjuk dictates that the "broader standard" is the law of this Circuit, thus entitling him to an evidentiary hearing on whether or not any alleged fraud occurring at his trial may be imputed to Respondent's counsel. Ultimately, that decision is for the Sixth Circuit. What is clear at this point is that the Sixth Circuit has expressly refused to hold Demjanjuk controlling in instances such as this despite multiple opportunities to do so. Thus, Petitioner's present assertion of error is without merit. Accordingly, his Motion to Alter or Amend is DENIED.

IT IS SO ORDERED this 12th day of December, 2006.

s/Bernice Bouie Donald
BERNICE BOUIE DONALD
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT 4

[CA6 Home](#) [New Search](#) [Opinion](#)

General Docket

US Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 02-6548

Filed: 12/23/02

Nsuit: 3535 habeas corpus- death penalty

Abdur'Rahman v. Bell

Appeal from: Middle District of Tennessee at Nashville

Case type information:

- 1) death penalty
- 2) state
- 3) habeas corpus

Lower court information:

District: 0650-3 : 96-00380

Trial Judge: Todd J. Campbell, U.S. District Judge

Court Reporter: Jim Spence

Court Reporter: John Tummel

Date Filed: 4/23/96

Date order/judgment: 12/17/02

Date NOA filed: 12/18/02
-----Fee status: in forma pauperis

Prior cases:

01-6504	EES	AMB	RGC		
Date filed:	12/3/01	Date disposed:	2/11/02	Disposition:	cap dn
01-6487	EES	AMB	RGC		
Date filed:	12/3/01	Date disposed:	2/11/02	Disposition:	dn
98-6569	EES	AMB	RGC		
Date filed:	11/20/98	Date disposed:	9/13/00	Disposition:	rv vac aff
98-6568	EES	AMB	RGC		
Date filed:	11/20/98	Date disposed:	9/13/00	Disposition:	rv vac aff

Current cases:

	Lead	Member	Start	End
Consolidated:				
	02- 6547	02- 6548	3/19/03	
Related:				
	02- 6547	02- 6548	12/23/02	

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02-6548 Abdur'Rahman v. BellABU-ALI ABDUR'RAHMAN
Petitioner - AppellantBradley A. MacLean
FTS 782-2371
615-244-5200

[COR LD NTC cja]
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424 Church Street
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Paul R. Bottei, Asst. F.P.
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William P. Redick, Jr.
FTS 255-7372
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[COR cja]
810 Broadway
Suite 401
Nashville, TN 37203

v.

RICKY BELL, Warden
Respondent - Appellee

Jennifer L. Smith, Asst. Atty.
General
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615-741-3487
[COR LD NTC ret]
Joseph F. Whalen, III, Asst.
Atty. General
FTS 532-7791
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[COR LD NTC ret]
Office of the Attorney General
425 Fifth Avenue, N.
P.O. Box 20207
Nashville, TN 37202-0207

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02-6548 Abdur'Rahman v. Bell

ABU-ALI ABDUR'RAHMAN

Petitioner - Appellant

v.

RICKY BELL, Warden

Respondent - Appellee

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12/23/02 Death Penalty Case Docketed, with certificate of probable cause and/or a certificate of appealability denied in district court 12/19/02. Notice filed by Appellant Abu-Ali Abdur'Rahman. Transcript needed: y ☒ (mcp) [02-6548]

12/23/02 RULING to extend appointment of Bradley A. MacLean & William P. Redick, Jr. as counsel under the Criminal Justice Act for appellant. [02-6548] . (mcp) [02-6548]

12/27/02 APPEARANCE filed by Attorney Bradley A. MacLean for Appellant Abu-Ali Abdur'Rahman [02-6548] (yh) [02-6548]

12/30/02 APPEARANCE filed by Attorney William P. Redick for Appellant Abu-Ali Abdur'Rahman [02-6548] (mcp) [02-6548]

1/3/03 Appellant APPLICATION filed for a certificate of probable cause to appeal and/or for a certificate of appealability. Motion filed by William P. Redick and Bradley A. MacLean for Appellant Abu-Ali Abdur'Rahman. Certificate of service date 1/2/03 [02-6548] (mcp) [02-6548]

1/6/03 APPEARANCE filed by Attorney Jennifer L. Smith for Appellee Ricky Bell [02-6548] (mcp) [02-6548]

1/6/03 Appellant LETTER filed. Letter from William P. Redick for Appellant Abu-Ali Abdur'Rahman. Petitioner did not intend to file and did not file a document identified to be a second or successive petition. Form 6CA-69 requested by this court is not enclosed. Petitioner did intend to file and seek review of the merits of a Rule 60(b) motion and clearly expressed this intent to the district court and now expresses this intent to this Court, 02-6548. Certificate of service date 12/27/02 [02-6548] (mcp) [02-6548]

1/8/03 APPEARANCE filed by Attorney Paul R. Bottei for Appellant Abu-Ali Abdur'Rahman [02-6548] (mcp) [02-6548]

1/15/03 Appellee RESPONSE in opposition filed regarding a motion to grant certificate of appealability [2671131-1] ; previously filed by William P. Redick Jr., Bradley A. MacLean . Response from Jennifer L. Smith for Appellee Ricky Bell. Certificate of service date 1/14/03 [02-6548] (mcp) [02-6548]

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- 3/5/03 ORDER filed denying motion for a certificate of probable cause and/or a certificate of appealability [2671131-1], motion filed by William P. Redick Jr., Bradley A. MacLean in 02-6548. The motion to transfer and the substituted motion to transfer is 02-6547 is denied. [02-6548] Eugene E. Siler, Circuit Judge, Alice M. Batchelder, Circuit Judge, R. G. Cole, Circuit Judge concurring in part, and dissenting in part. (mcp) [02-6548]
- 3/5/03 LETTER SENT TO district court by mcp sending a certified copy of order filed 3/5/03 . [02-6548] (mcp) [02-6548]
- 3/7/03 Supreme Court for the State of Tennessee setting execution date of 6/18/03 unless otherwise ordered by the Court or other appropriate authority. (yh) [02-6548]
- 3/19/03 PETITION for en banc rehearing filed by Bradley A. MacLean for Petitioner Abu-Ali Abdur'Rahman. Certificate of service date 3/18/03. [02-6547, 02-6548] (blh) [02-6547 02-6548]
- 4/3/03 LETTER SENT by blh to Joseph F. Whalen for Respondent Ricky Bell notifying that party is directed to respond to a petition for en banc rehearing [2712088-1] filed by Bradley A. MacLean. Response due by 4/17/03. [02-6547, 02-6548] . (blh) [02-6547 02-6548]
- 4/4/03 ADDITIONAL CITATION in support of the petition for rehearing en banc filed by Bradley A. MacLean for Petitioner Abu-Ali Abdur'Rahman. Certificate of service date 4/3/03 [02-6547, 02-6548] (blh) [02-6547 02-6548]
- 4/11/03 APPEARANCE filed by Attorney Joseph F. Whalen for Respondent Ricky Bell [02-6547, 02-6548] (blh) [02-6547 02-6548]
- 4/11/03 RESPONSE to a petition for en banc rehearing [2712088-1] filed by Bradley A. MacLean. . Response filed by Joseph F. Whalen and Gordon W. Smith for Respondent Ricky Bell, Appellee Ricky Bell. Certificate of service date 4/10/03. [02-6547, 02-6548] (blh) [02-6547 02-6548]
- 4/17/03 Petitioner MOTION filed for leave to file a reply to respondent's response to the petition for rehearing en banc. [2728897-1] Motion filed by William P. Redick and Bradley A. MacLean for Petitioner Abu-Ali Abdur'Rahman. Certificate of service date 4/16/03 . [02-6547, 02-6548] (blh) [02-6547 02-6548]
- 4/17/03 TENDERED : reply to respondent's response to the petition for rehearing en banc from William P. Redick and Bradley A. MacLean for Petitioner Abu-Ali Abdur'Rahman. [02-6547, 02-6548] (blh) [02-6547 02-6548]

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- 5/16/03 Appellant LETTER filed regarding citation in respondent's response to the petition for rehearing en banc. Letter from Bradley A. MacLean for Appellant Abu-Ali Abdur'Rahman. Certificate of service date 5/15/03 [02-6547, 02-6548] (blh) [02-6547 02-6548]
- 5/21/03 Petitioner LETTER filed regarding citation in respondent's response to the petition for rehearing en banc. Letter from William P. Redick for Petitioner Abu-Ali Abdur'Rahman. Certificate of service date 5/20/03 [02-6547, 02-6548] (blh) [02-6547 02-6548]
- 5/21/03 ORDER filed denying motion for leave to file a reply to respondent's response to the petition for rehearing en banc [2728897-1] filed by William P. Redick Jr. and Bradley A. MacLean [02-6547, 02-6548]. Entered by order of the court. (blh) [02-6547 02-6548]
- 5/30/03 BRIEFING LETTER SENT requesting letter briefs by close of business on 6/4/03. [02-6547, 02-6548] (mcp) [02-6547 02-6548]
- 6/4/03 LETTER BRIEF filed by Joseph F. Whalen for Respondent Ricky Bell. Certificate of service date 6/4/03. Number of Pages: 4. [02-6547, 02-6548] (mcp) [02-6547 02-6548]
- 6/4/03 LETTER BRIEF filed by Bradley A. MacLean for Petitioner Abu-Ali Abdur'Rahman. Certificate of service date 6/4/03. Number of Pages: 7. [02-6547, 02-6548] (mcp) [02-6547 02-6548]
- 6/6/03 ORDER filed granting petition for en banc rehearing [2712088-1] filed by Bradley A. MacLean to reinstate appeal. The previous decision and judgment of this court is vacated, the mandate is stayed. It is further ordered that the execution of sentence is stayed pending further order of this Court. [02-6548, 02-6547] Boyce F. Martin, Chief Circuit Judge; Danny J. Boggs, Alice M. Batchelder, Martha C. Daughtrey, Karen N. Moore, R. G. Cole, Eric L. Clay, Ronald L. Gilman, Julia S. Gibbons, John M. Rogers, Jeffrey S. Sutton, Deborah L. Cook, Circuit Judges. (blh) [02-6547 02-6548]
- 8/1/03 BRIEFING LETTER SENT setting briefing schedule: petitioner supplemental brief due 9/5/03; respondent brief due 10/8/03. The parties are asked to submit 25 copies of their briefs. (blh) [02-6547 02-6548]
- 9/8/03 Supplemental brief filed by Bradley A. MacLean , William P. Redick for Petitioner Abu-Ali Abdur'Rahman . Copies: 26. Certificate of service date 9/5/03 . Number of Pages: 69. [02-6547, 02-6548] (lak) [02-6547 02-6548]

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9/17/03 CJA Travel Authorization issued to Bradley A. MacLean in 02-6548 for oral argument on 12/3/03. Relating to ; Voucher Number: 026548 [02-6548] (cf) [02-6548]

9/17/03 CJA Travel Authorization issued to William P. Redick in 02-6548 for oral argument on 12/3/03. Relating to ; Voucher Number: 026548 [02-6548] (cf) [02-6548]

9/22/03 Oral argument date set for December 3, 2003 in court room 403. Notice of argument sent to counsel. [02-6547, 02-6548] (pjm) [02-6547 02-6548]

10/9/03 Substitute appellee brief filed by Joseph F. Whalen . Copies: 25. Certificate of Service date 10/8/03 [02-6547, 02-6548] (lak) [02-6547 02-6548]

10/31/03 Petitioner MOTION filed to file a reply to respondent's supplemental brief. Motion filed by William P. Redick and Bradley A. MacLean for Petitioner Abu-Ali Abdur'Rahman. Certificate of service date 10/30/03 . [02-6547, 02-6548] (blh) [02-6547 02-6548]

11/3/03 ORDER filed granting motion to file a reply to respondent's supplemental brief [2844357-1] filed by William P. Redick Jr., and Bradley A. MacLean [02-6547, 02-6548]. Entered by order of the court. (blh) [02-6547 02-6548]

11/3/03 REPLY BRIEF to respondent's supplemental brief filed by William P. Redick and Bradley A. MacLean. Copies: 25. Certificate of service date 10/30/03 [02-6547, 02-6548] (blh) [02-6547 02-6548]

12/3/03 CAUSE ARGUED on 12/3/03 by Bradley A. MacLean for Petitioner Abu-Ali Abdur'Rahman and Joseph F. Whalen for Respondent Ricky Bell before Judges Boggs, Martin, Siler, Batchelder, Daughtrey, Moore, Cole, Clay, Gilman, Gibbons, Rogers, Sutton, Cook. [02-6547, 02-6548] (me) [02-6547 02-6548]

1/14/04 CJA-21 Travel sent to the Administrative Office. [02-6548] Payment made to American Express for voucher of William P. Redick in 02-6548 in the amount of 540.75, relating to argument on 12/3/03. (cf) [02-6548]

2/6/04 INTERIM VOUCHER issued. Voucher issued to William P. Redick for Petitioner Abu-Ali Abdur'Rahman in 02-6547 Reason: Interim #1 (cf) [02-6547 02-6548]

2/6/04 INTERIM VOUCHER issued. Voucher issued to Bradley A. MacLean for Petitioner Abu-Ali Abdur'Rahman in 02-6547 Reason: Interim #1 (cf) [02-6547 02-6548]

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5/3/04 ADDITIONAL CITATION filed by Joseph F. Whalen for Respondent Ricky Bell in 02-6547, for Appellee Ricky Bell in 02-6548 . Certificate of service date 4/29/04 [02-6547, 02-6548] (mcp) [02-6547 02-6548]

5/7/04 ADDITIONAL CITATION in support of the petition for rehearing en banc filed by Bradley A. MacLean for Petitioner Abu-Ali Abdur'Rahman. Certificate of service date 5/6/04 [02-6547, 02-6548] (blh) [02-6547 02-6548]

5/7/04 ADDITIONAL CITATION in support of the petition for rehearing en banc filed by Bradley A. MacLean for Petitioner Abu-Ali Abdur'Rahman. Certificate of service date 5/6/04 [02-6547, 02-6548] (blh) [02-6547 02-6548]

6/1/04 ADDITIONAL CITATION in support of the petition for rehearing en banc filed by Bradley A. MacLean for Petitioner Abu-Ali Abdur'Rahman, Appellant Abu-Ali Abdur'Rahman. Certificate of service date 5/28/04 [02-6547, 02-6548] (blh) [02-6547 02-6548]

6/4/04 Appellee RESPONSE filed to appellant's additional citation previously filed by Bradley MacLean. Response from Joseph F. Whalen for Appellee Ricky Bell. Certificate of service date 6/3/04 [02-6548] (mcp) [02-6548]

7/9/04 ADDITIONAL CITATION filed by William P. Redick for Petitioner Abu-Ali Abdur'Rahman. Certificate of service date 7/6/04 [02-6547, 02-6548] (blh) [02-6547 02-6548]

8/27/04 ADDITIONAL CITATION filed by William P. Redick for Petitioner Abu-Ali Abdur'Rahman in 02-6547, Appellant Abu-Ali Abdur'Rahman in 02-6548 . Certificate of service date 8/26/04 [02-6547, 02-6548] (mcp) [02-6547 02-6548]

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12/13/04 OPINION filed : The district court erroneously treated petitioner's motion as a second or successive habeas petition. Because Abdur'Rahman's motion is properly characterized as a motion pursuant to Rule 60(b)(6), we REVERSE and REMAND the case to the district court to consider whether the motion should be granted, based on the potential merit of Abdur'Rahman's prosecutorial misconduct claims previously found to have been procedurally defaulted, decision for publication pursuant to local rule 206. Danny J. Boggs, Chief Judge, Boyce F. Martin, Circuit Judge, Eugene E. Siler, Circuit Judge, M. Batchelder, Circuit Judge, Martha C. Daughtrey, Circuit Judge, Karen N. Moore, Circuit Judge, R. G. Cole, Authoring Judge, Eric L. Clay, Circuit Judge, Ronald L. Gilman, Circuit Judge, Julia S. Gibbons, Circuit Judge, John M. Rogers, Circuit Judge, Jeffrey S. Sutton, Circuit Judge, Deborah L. Cook, Circuit

Judge. [02-6547, 02-6548] Cole, J., delivered the opinion of the court, in which Martin, Daughtrey, Moore, Clay, Gilman, and Gibbons, JJ., joined. Siler, J. (pp. 11-16), delivered a separate dissenting opinion, in which Boggs, C.J., Batchelder, Rogers, Sutton, and Cook, JJ., joined. (mcp) [02-6547 02-6548]

- 12/13/04 JUDGMENT : The judgment of the district court is REVERSED and the case is REMANDED for further proceedings consistent with the opinion of this court (mcp) [02-6547 02-6548]
- 12/15/04 Appellee MOTION filed to stay mandate. Motion filed by Joseph F. Whalen for Appellee Ricky Bell. Certificate of service date 12/14/04 . [02-6548] (mcp) [02-6548]
- 1/6/05 ORDER filed granting motion to stay mandate [3075281-1] [3075285-1] filed by Joseph F. Whalen III. If the petition for writ of certiorari is not filed within 90 days from the date of this court's final judgment, the mandate shall promptly issue. [02-6547, 02-6548] Danny J. Boggs, Chief Judge, Boyce F. Martin, Circuit Judge, Eugene E. Siler, Circuit Judge, Alice M. Batchelder, Circuit Judge, Martha C. Daughtrey, Circuit Judge, Karen N. Moore, Circuit Judge, R. G. Cole, Circuit Judge, Eric L. Clay, Circuit Judge, Ronald L. Gilman, Circuit Judge, Julia S. Gibbons, Circuit Judge, John M. Rogers, Circuit Judge, Jeffrey S. Sutton, Circuit Judge, Deborah L. Cook, Circuit Judge. (mcp) [02-6547 02-6548]
- 3/23/05 U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Respondent Ricky Bell in 02-6547, Appellee Ricky Bell in 02-6548 . Filed in the Supreme Court on 03-11-05 , Supreme Ct. case number: 04-1247 . [02-6547, 02-6548] (swh) [02-6547 02-6548]
- 4/12/05 INTERIM VOUCHER filed making claim for reimbursement. Document [2897293-1] cja voucher of, Bradley A. MacLean [02-6547, 02-6548] (cf) [02-6547 02-6548]

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- 4/12/05 INTERIM VOUCHER sent to Judge Cole Document [2897293-1] cja voucher of, Bradley A. MacLean [02-6547, 02-6548] (cf) [02-6547 02-6548]
- 4/12/05 INTERIM VOUCHER filed making claim for reimbursement. Document [2897291-1] cja voucher of, William P. Redick Jr. [02-6547, 02-6548] (cf) [02-6547 02-6548]
- 4/12/05 INTERIM VOUCHER sent to Judge Cole Document [2897291-1] cja voucher of, William P. Redick Jr [02-6547, 02-6548] (cf) [02-6547 02-6548]
- 5/31/05 INTERIM VOUCHER sent to the Administrative Office.

Claiming compensation: Attorney time: 34050.00 Expenses: 271.55 Total: 34321.55 Document [2897291-1] cja voucher of, William P. Redick Jr. [02-6547, 02-6548] (cf) [02-6547 02-6548]

5/31/05 INTERIM VOUCHER sent to the Administrative Office. Claiming compensation: Attorney time: 42912.50 Expenses: 19278.88 Total: 62191.38 Document [2897293-1] cja voucher of, Bradley A. MacLean [02-6547, 02-6548] (cf) [02-6547 02-6548]

7/5/05 U.S. Supreme Court letter filed granting petition for writ of certiorari [3129728-1] filed by Ricky Bell, Ricky Bell Supreme Court No. 04-1247 [02-6547, 02-6548] in 02-6547, 02-6548 . Filed in the Supreme Court on 06-28-05 . (swh) [02-6547 02-6548]

7/5/05 U.S. Supreme Court opinion filed: VACATED and remanded for further consideration in light of Gonazalez v. Crosby 545 U.S.____(2005) [02-6547, 02-6548] . Filed in the Supreme Court on 06-28-05 . . (swh) [02-6547 02-6548]

7/12/05 Petitioner MOTION filed to remand these cases to the district court. Motion filed by William P. Redick and Bradley A. MacLean for Petitioner Abu-Ali Abdur'Rahman. Certificate of service date 7/11/05. [02-6547, 02-6548] (blh) [02-6547 02-6548]

7/22/05 Respondent RESPONSE in opposition to petitioner's motion to remand these cases to the district court. [3197564-1] filed by William P. Redick Jr. and Bradley A. MacLean. Response from Joseph F. Whalen for Respondent Ricky Bell. Certificate of service date 7/21/05 [02-6547, 02-6548] (blh) [02-6547 02-6548]

7/28/05 Petitioner's REPLY to respondent's response in opposition to petitioner's motion to remand these cases to the district court. Reply from William P. Redick and Bradley A. MacLean for Petitioner Abu-Ali Abdur'Rahman. Certificate of service date 7/27/05 [02-6547, 02-6548] (blh)

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[02-6547 02-6548]

8/1/05 U.S. Supreme Court judgment filed: VACATED with costs and remanded in light of U.S. v. Booker. Costs to be recovered by petitioner Ricky Bell, Warden in the amount of \$300.00. Supreme Court 04-1247 [02-6547, 02-6548] . Filed in the Supreme Court on 07-29-05 . (swh) [02-6547 02-6548]

10/7/05 ORDER filed. The case is hereby returned to the panel to which it was originally submitted for as directed by the Supreme Court, decision for publication pursuant to local

rule 206 [02-6547, 02-6548] . Danny J. Boggs, Circuit Judge, Boyce F. Martin, Circuit Judge delivering a separate dissent, Eugene Siler, Circuit Judge, Alice M. Batchelder, Circuit Judge, Martha C. Daughtrey, Circuit Karen N. Moore, Circuit Judge, R. G. Cole, Circuit Judge, Eric L. Clay, Circuit Judge, Ronald L. Gilman, Circuit Judge, Julia S. Gibbons, Circuit Judge, John M. Rogers, Circuit Judge, Jeffrey S. Sutton, Circuit Judge, Deborah L. Cook, Circuit Judge, David W. McKeague, Circuit Judge, Richard A. Griffin, Circuit Judge. (mcp) [02-6547 02-6548]

- 10/21/05 Appellant MOTION filed to remand or for briefing schedule and argument. Motion filed by Bradley A. MacLean and William P. Redick for Appellant Abu-Ali Abdur'Rahman in 02-6548 . Certificate of service date 10/20/05 [02-6548] (mcp) [02-6548]
- 11/1/05 Respondent RESPONSE in opposition to a motion filed by petitioner to remand or for briefing and argument [3255301-1] ; previously filed by Bradley A. MacLean, William P. Redick Jr. in 02-6547, 6548 . Response from Certificate of service date 10/31/05 [02-6547, 02-6548] (cb) [02-6547 02-6548]
- 2/24/06 ORDER filed directing the parties to file supplemental briefs addressing anything which they wish to bring to the attention of the court. The briefs are to be filed simultaneously and must be received by the clerk's office no later than 4 p.m. on Friday, March 17, 2006. There will be no responses permitted. [02-6547, 02-6548] . Entered by order of the court. (yh) [02-6547 02-6548]
- 3/17/06 Supplemental brief filed by Bradley A. MacLean and William P. Redick for Petitioner/Appellant Abu-Ali Abdur'Rahman. Copies: 7. Certificate of service date 3/17/06 . Number of Pages: 29. [02-6547, 02-6548] (mcp) [02-6547 02-6548]
- 3/17/06 Supplemental brief filed by Joseph F. Whalen for Respondent/Appellee Ricky Bell. Copies: 7. Certificate of service date 3/16/06 . Number of Pages: 16. [02-6547, 02-6548] (mcp) [02-6547 02-6548]

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- 3/21/06 Appellant MOTION filed requesting oral argument . Motion filed by Bradley A. MacLean for Appellant Abu-Ali Abdur'Rahman in 02-6548 . Certificate of service date 3/20/06 [02-6548] (mcp) [02-6548]
- 3/23/06 Respondent's RESPONSE to petitioner's motion to require oral argument previously filed by Bradley A. MacLean. Response from Joseph F. Whalen for Respondent Ricky Bell. Certificate of service date 3/22/06 [02-6547, 02-6548] (pje) [02-6547 02-6548]

3/30/06

ORDER filed denying motion to require oral argument
[3342254-1,2, 3342246-1] filed by Bradley A. MacLean filed
by Bradley A. MacLean [02-6547, 02-6548] Entered by order
of the court. (mcp) [02-6547 02-6548]

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EXHIBIT 5

CA6 Home New Search Opinion

General Docket

US Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 05-6925

Filed: 12/19/05

Nsuit: 3535 habeas corpus- death penalty

Johnson v. Bell

Appeal from: Western District of Tennessee at Memphis

Case type information:

- 1) death penalty
- 2) state
- 3) habeas corpus

Lower court information:

District: 0651-2 : 97-03052
 Trial Judge: Bernice B. Donald, US District Judge
 Date Filed: 11/14/97
 Date order/judgment: 12/1/05
 Date NOA filed: 12/14/05

Fee status: in forma pauperis

Prior cases:

04-6361
 Date filed: 11/12/04 Date disposed: 11/24/04 Disposition: 42(b)
 01-5451
 Date filed: **/**/** Date disposed: **/**/** Disposition:

Current cases:

	Lead	Member	Start	End
Related:				
	05- 6925	06- 6330	10/18/06	

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DONNIE E. JOHNSON
Petitioner - Appellant

C. Mark Pickrell
 FTS 244-6804
 615-850-8913
 [COR cja]
 Waller, Lansden, Dortch & Davis
 511 Union Street
 Suite 2700 Nashville City
 Center
 Nashville, TN 37219-8966
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 FTS 244-6804

Paul R. Bottei, Asst. F.P.
Defender
FTS 736-5265
615-736-5047
[COR fpd]
Christopher M. Minton, Fed.
Public Defender
FTS 736-5265
615-736-5047
[COR LD NTC fpd]
Federal Public Defender's
Office
810 Broadway
Suite 200
Nashville, TN 37203

v.

RICKY BELL
Respondent - Appellee

Alice B. Lustre, Asst. Atty.
General
FTS 532-7791
615-741-4349
[COR LD NTC ret]
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Nashville, TN 37202-0207

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05-6925 Johnson v. Bell

DONNIE E. JOHNSON

Petitioner - Appellant

v.

RICKY BELL

Respondent - Appellee

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12/19/05 Death Penalty Case Docketed, with CAP unnecessary . Notice filed by Appellant Donnie E. Johnson. Transcript needed: n ❖ (ac)

12/19/05 4a4 Notice filed. Case held in abeyance. Status report due 1/18/06 . (ac)

12/19/05 RULING to extend appointment of C. Mark Pickrell as counsel under the Criminal Justice Act for appellant. [05-6925] (ac)

12/19/05 Electronic case filing. District court record can be downloaded electronically. [05-6925] (ac)

1/20/06 STATUS REPORT: Motion to alter or amend still pending. Next report due 3/27/06 [05-6925] (ac)

2/1/06 BRIEFING LETTER SENT setting death penalty case briefing schedule: appellant brief due 4/4/06; appellee brief due 6/7/06; reply brief due 6/26/06; appendix due 6/28/06; final briefs due 7/19/06. [05-6925] 7/19/06 ; . (ac)

3/20/06 Appellant MOTION filed to hold briefing in abeyance pending a ruling from the district court on appellant's motion for relief from judgment. [05-6925] Motion filed by C. Mark Pickrell for Appellant Donnie E. Johnson. Certificate of service date 3/17/06 [05-6925] (ac)

3/29/06 STATUS REPORT: motion for reconsideration still pending. Next report due 4/28/06 [05-6925] (ac)

4/4/06 LETTER SENT by ac granting motion to hold briefing in abeyance [3341740-1] filed by C. Mark Pickrell [05-6925] (ac)

5/3/06 STATUS REPORT: motion to alter or amend still pending. Next report due 6/2/06 [05-6925] (ac)

5/3/06 Copy of District Court Order filed directing petitioner to file a copy of his response to respondent's first motion for partial summary judgment. Due within 10 days of the date of this order. [05-6925] (ac)

5/15/06 4A4 ORDER from district court filed. Order Filed: denying

motion to alter or amend judgment. [05-6925] ☒ (ac)

6/6/06 APPEARANCE filed by Attorney C. Mark Pickrell for Appellant Donnie E. Johnson [05-6925] (ac)

6/9/06 AMENDED NOTICE OF APPEAL filed by C. Mark Pickrell for Appellant Donnie E. Johnson ☒ (ac)

6/22/06 BRIEFING LETTER SENT setting death penalty case briefing schedule: appellant brief due 8/24/06; appellee brief due 11/2/06; reply brief due 11/20/06; appendix due 11/27/06; final briefs due 12/18/06. [05-6925] (ac)

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9/1/06 Appellant MOTION filed to extend time to 9/8 to file brief. Motion filed by C. Mark Pickrell for Appellant Donnie E. Johnson. Certificate of service date [05-6925] (ac)

9/11/06 Appellant's 2nd MOTION filed to extend time to 9/15/06 to file brief . Motion filed by C. Mark Pickrell for Appellant Donnie E. Johnson. Certificate of service date 9/8/06 [05-6925] (ac)

9/18/06 PROOF BRIEF filed by C. Mark Pickrell for Appellant Donnie E. Johnson. Certificate of service date 9/15/06 . [05-6925] ☐ (ac)

9/18/06 Request to require oral argument filed by C. Mark Pickrell for Appellant Donnie E. Johnson [05-6925] (ac)

9/20/06 LETTER SENT by ac granting motion to extend briefing filed by C. Marck Pickrell, [3443027-1] [05-6925] resetting death penalty case briefing schedule: appellee brief now due 11/20/06; reply brief now due 12/4/06; appendix now due 12/11/07; final briefs now due 1/2/07. (ac)

10/12/06 APPEARANCE filed by Attorney Alice B. Lustre for Appellee Ricky Bell [05-6925] (ac)

10/16/06 PROOF BRIEF filed by Michael E. Moore and Alice B. Lustre for Appellee Ricky Bell. Certificate of service date 10/13/06. [05-6925] ☐ (ac)

10/16/06 Request to waive oral argument and submit case on the briefs, (waiver on page: vi), filed by Michael E. Moore and Alice B. Lustre for Appellee Ricky Bell [05-6925] (ac)

10/17/06 APPEARANCE filed by Attorney Christopher M. Minton for Appellant Donnie E. Johnson [05-6925] (ac)

10/17/06 APPEARANCE filed by Attorney Paul R. Bottei for Appellant Donnie E. Johnson [05-6925] (ac)

10/17/06 Appellant MOTION filed to stay execution date currently scheduled for Wednesday, October 25 (1 a.m./2 a.m.) Motion filed by Paul R. Bottei for Appellant Donnie E. Johnson. Certificate of service date 10/17/06 [05-6925] (ac)

10/17/06 APPEARANCE filed by Attorney Michael E. Moore for Appellee Ricky Bell [05-6925] (ac)

10/18/06 Supplement to appellant's motion for stay of execution set for 10/25/06. [05-6925] . (ac)

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10/19/06 ORDER filed granting petitioner's motion for stay and the execution is stayed until further order of this court. [3463160-1] Danny J. Boggs, Chief Judge, Alan E. Norris, Eric L. Clay, Circuit Judges. (ac)

10/19/06 APPEARANCE filed by Attorney Jennifer L. Smith for Appellee Ricky Bell [05-6925] (ac)

10/20/06 RESPONSE in opposition filed regarding a motion to stay execution date. [3463160-1] Response from Jennifer L. Smith for Appellee Ricky Bell. Certificate of service date 10/19/06. [05-6925] (ac)

10/27/06 Appellee MOTION filed to expedite appeal. Motion filed by Jennifer L. Smith, Michael E. Moore and Alice B. Lustre for Appellee Ricky Bell. Certificate of service date 10/26/06 . [05-6925] (ac)

11/3/06 Appellant RESPONSE in opposition filed regarding a motion to expedite appeal. [3470544-1] Response from Christopher M. Minton for Appellant Donnie E. Johnson . Certificate of service date 11/2/06 . [05-6925] (ac)

11/15/06 ORDER filed denying motion to expedite the appeal filed by Jennifer L. Smith, Michael E. Moore, Alice B. Lustre. [3470544-1] Entered by order of the court. (ac)

12/6/06 PROOF REPLY BRIEF filed by Christopher M. Minton and Paul R. Bottei for Appellant Donnie E. Johnson. Certificate of service date 12/4/06 [05-6925] (ac)

12/12/06 APPENDIX filed by Christopher M. Minton for parties. Copies: 5. (Vols. I & II) Certificate of service date 12/11/06 [05-6925] (ac)

12/20/06 Joint MOTION filed to file supplemental appendix. . Motion filed by Alice B. Lustre for Appellee Ricky Bell, Christopher M. Minton for Appellant Donnie E. Johnson. [05-6925] (ac)

1/3/07 FINAL BRIEF filed by Michael E. Moore and Alice B. Lustre

for Appellee Ricky Bell. Copies: 7. Certificate of service
date 1/2/07. [05-6925] (ac)

1/3/07

Request to waive oral argument and submit case on the
briefs, (waiver on page: vi), filed by Michael E. Moore and
Alice B. Lustre for Appellee Ricky Bell [05-6925] (ac)

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