

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

SEDLEY ALLEY)	
)	No. _____
Petitioner-Appellant)	Lower Court No. P-8040
)	(Shelby County)
v.)	CCA No. _____
)	Execution Date: June 3, 2004
STATE OF TENNESSEE)	
)	S.Ct.No. M1991-00019-DPE-DD
Respondent-Appellee)	Filed May 18, 2004

MOTION TO ASSUME JURISDICTION

In this death penalty case, Petitioner-Appellant Sedley Alley respectfully moves this Court to exercise appellate jurisdiction under Tenn. Code Ann. §16-3-201 to decide issues of exceptional importance, including the scope of Tennessee’s Post-Conviction DNA Analysis Act of 2001, as it applies to persons who are under a sentence of death. This is an issue of exceptional importance to the State and to Sedley Alley in particular, because Sedley Alley will be executed if he is denied access to DNA evidence which can prove his innocence. The lower courts are in conflict on the issue, and Sedley Alley has a June 3, 2004 execution date. This Court should therefore promptly exercise jurisdiction, decide the issues involved, hold that, under Tennessee law, the Tennessee Constitution and the United States Constitution, Sedley Alley must be given the DNA evidence he requests, and enter any other further orders as are necessary and appropriate under the circumstances. **This Court should hold that in Tennessee, when a person requests DNA analysis, evidence must be produced to avoid the execution of an innocent person.**

I.
THIS COURT HAS POWER TO ASSUME JURISDICTION
OVER THE PENDING APPEAL IN THIS
DEATH PENALTY CASE

Under Tenn. Code Ann. §16-3-201 (d)(1) and (2), this Court may assume jurisdiction over

any undecided case in which a notice of appeal has been filed for which there is a need for expedited decision. These provisions include cases involving issues of constitutional law. See Id., §16-3-201(d)(2)(C). Further, this Court may on its own motion assume jurisdiction in cases of compelling public interest. Tenn. Code Ann. §16-3-201(d)(3). A notice of appeal has been filed in this case. See Exhibit 1 (Notice of Appeal). As will be shown, these criteria are satisfied here, where Sedley Alley's life hangs in the balance, where he has a June 3 execution date, and where the scope and applicability of Tennessee's Post-Conviction DNA Analysis Act of 2001 and the right to DNA evidence under the Tennessee and United States Constitutions of great import.

II. THIS COURT SHOULD ASSUME JURISDICTION

Under Tenn. Code Ann. §16-3-201, this Court should assume jurisdiction for various reasons: (1) Sedley Alley has a June 3, 2004 execution date, and he requires immediate access to the requested biological specimens to undertake and complete analysis before June 3; (2) Exposition of the scope, in death penalty cases, of the Post-Conviction DNA Analysis Act of 2001 and the right to DNA evidence as a matter of due process under the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Sections 8 and 16 of the Tennessee Constitution is essential to the functioning of the criminal justice system, especially where the Legislature passed the Act to avoid the execution of the innocent and due process and the Eighth Amendment prohibit the execution of the innocent; and (3) The Court of Criminal Appeals has already reached divergent conclusions about the scope and applicability of the Post-Conviction DNA Analysis Act, and this Court thus needs to clarify the standards for providing access to biological evidence under the Act, (*Compare, Jack Jay Shuttle v. State*, No. E2003-00131-CCA-R3-PC, 2004 Tenn. Crim App. Lexis

80, 2004 WL 199826 (February 3, 2004)(attached as Exhibit 3) *with Carl E. Saine v. State*, No. W2002-03006-CCA-R3-PC, 2003 Tenn. Crim. App. Lexis 1135 (December 15, 2003) (Attached as Exhibit 4)).

A.
THE ISSUE IN THIS CASE REQUIRES EXPEDITED DECISION

Sedley Alley has a June 3, 2004 execution date, and he requires immediate production of the requested biological samples in order to undertake and complete DNA analysis before June 3, 2004. See Exhibit 2 (Declaration of DNA Expert Analyst Gary C. Harmor). Under these circumstances, this Court ought not wait a decision of the Court of Criminal Appeals, for to do so risks the execution of an individual who has been denied access to biological specimens necessary to establish innocence and/or the unjustness of his death sentence. Where Sedley Alley has maintained that denial of the evidence violates his rights to be free from cruel and unusual punishment under the Tennessee Constitution (Article I §16) and the United States Constitution (Eighth Amendment), as well as his rights to due process under the Tennessee Constitution and the Fourteenth Amendment, this Court should exercise its power to assume jurisdiction in this case. See Tenn. Code Ann. §16-3-201(d)(1) & (2)(C). This is especially true where this Court can exercise jurisdiction and quickly grant access to the evidence to allow testing and analysis before June 3, 2004. State ex rel. Cohen v. Darnell, 885 S.W.2d 61 (Tenn. 1994)(assuming jurisdiction given issue of exceptional importance and need for expedited decision).

B.
THIS CASE INVOLVES A COMPELLING PUBLIC INTEREST
IN ASSURING THAT THE INNOCENT ARE NOT EXECUTED

Throughout the Nation, death-sentenced inmates have sought and received DNA analysis of materials necessary to determine their guilt or innocence. While DNA analysis has not exonerated many, such analysis has led – rightfully – to the release of those unjustly convicted of crimes they did not commit. Tennessee has a vital interest in assuring that no person is executed if he has not

committed the offense for which he has been convicted. DNA analysis assures that the innocent will not be executed. Tennessee has a vital interest in assuring that Sedley Alley is not executed if DNA evidence exonerates him. Sedley Alley has that same interest – his life is on the line, and there is evidence to be tested to prove the issue one way or the other. There is a compelling public interest in ensuring that the death penalty, if it is to be meted out, is not meted out unjustly. This compelling public interest mandates that this Court assume jurisdiction to decide the appeal in this case. Tenn. Code Ann. §16-3-201(d)(3). See e.g., Tennessee Small School Systems v. McWherter, 91 S.W.3d 232 (Tenn. 2002); Tennessee Municipal League v. Thompson, 958 S.W.2d 333 (Tenn. 1997).

C.
THE COURT OF CRIMINAL APPEALS HAS REACHED
DIVERGENT RESULTS WHEN INTERPRETING
THE POST-CONVICTION DNA ANALYSIS ACT OF 2001

In the Criminal Court, Sedley Alley maintained that he was entitled to test the evidence in question under the Court of Criminal Appeals’ ruling in Shuttle v. State, 2004 Tenn.Crim.App.Lexis 80 (Feb. 3, 2004), in which a convicted defendant was granted access to DNA evidence. The Court of Criminal Appeals held:

The Act requires the trial court to assume that the DNA analysis will reveal exculpatory results in the court’s determination as to whether to order DNA testing . . . The Act was created because of the possibility that a person has been wrongfully convicted or sentenced. A person may be wrongly convicted based upon mistaken identity or false testimony.

Shuttle, slip op. at * 13. Thus, in Shuttle, where the petitioner “contend[ed] that he was wrongly convicted at trial where he gave false incriminating testimony,” (Id., slip op. at p. * 14), the Court held that he was entitled to production of the evidence because: “In summary, for purposes of the Act, we must assume that DNA testing will reveal exculpatory evidence.” Id., slip op. p. *15.

In the Criminal Court, the state argued that the evidence should not be produced in light of the Court of Criminal Appeals decision in Saine v. State, 2003 Tenn.Crim.App.Lexis 1135 (Dec. 15, 2003). In Saine, the petitioner was denied access to DNA evidence, but as the Court of Criminal Appeals explained in Shuttle, the petitioner in Saine did not contest that he had assaulted the victim, and the evidence sought to be tested would not have identified the perpetrator. As the Court of Criminal Appeals explained in granting the evidence to Shuttle, Shuttle denied having committed the offense, maintained that the evidence would show his statements to authorities were false, and analysis of the evidence would have shown the identity of the perpetrator. Saine, therefore, “is distinguishable from the case at bar.” Shuttle, slip op. p. *16 & 17.

Shuttle controls here, and entitles Sedley Alley to the evidence he has requested – he has maintained that his statements to the authorities were not true. See Emergency Motion, pp. 9-10, 13-14 (detailing falseness of statements obtained by authorities through custodial interrogation). See e.g., Godschalk v. Montgomery County District Attorney, 177 F.Supp.2d 366 (E.D.Pa. 2001)(ordering production of DNA evidence despite “confession” by defendant; afterwards DNA exonerated defendant, proving that confession was untrue).

Nevertheless, despite the fact that Shuttle entitles Sedley Alley to the evidence, the Criminal Court denied access to the evidence. This was an unjust result, as it undermines the very purpose of the DNA Act. The Act was passed to avoid miscarriages of justice, yet if a petitioner like Alley cannot get access to necessary evidence which would prove innocence, the DNA Act is meaningless. It cannot stop miscarriages of justice if courts allow withholding of evidence despite the Act. This is certainly not what the Legislature intended. Rather, the express intent of the Legislature was to allow petitioners such as Sedley Alley – who had no right to DNA analysis of the evidence until the

Act was passed in 2001 – to exercise the right to be free from unjust incarceration or execution. The Criminal Court, however, refused to implement the policy of the Legislature in a case where there is significant doubt whether Alley committed the offense.

In its opinion, the criminal court found that under either *Shuttle* or *Saine* Petitioner had failed to show that he would not have been prosecuted, found guilty or sentenced to death if the evidence requested had been tested before trial. To reach this conclusion, the court impermissibly used the Petitioner’s confession and the State’s theory as accurate. Petitioner submits that this violates the core of the reasoning in *Shuttle*. Under the reasoning of *Shuttle*, where, as here, the evidence that the Petitioner seeks to have tested may provide a definitive answer that demonstrates the error in the former evidence or in the State’s theory derived from that former evidence, the post-conviction DNA court must assume that the results will in fact exculpate the petitioner. Therefore, this Court should exercise its jurisdiction and hold that the statute’s requirement that “the trial court assume that the DNA analysis will reveal exculpatory results” requires setting aside the current notions of the manner in which the crime occurred based upon what Petitioner claims is false testimony or flawed evidence.

The need for this Court to take jurisdiction is further demanded in this death penalty case in the interest of justice and to ensure that Sedley Alley will not be executed despite his request for DNA evidence.

III.

SEDLEY ALLEY IS ENTITLED TO THE EVIDENCE HE HAS REQUESTED

Sedley Alley has requested the production of the eleven (11) biological samples, which

include fluid samples from the victim, semen samples found on the victim, and hairs found on the victim and the victim's clothing. See Emergency Motion For Production Of Evidence, pp. 1-3. He has likewise made a showing that his conviction and death sentence may be unjust, given evidence that he did not commit the offense of first-degree murder. Id., pp. 5-14.

Indeed, should the DNA testing show that Sedley Alley is not the person who left semen on or inside the victim, and not the person who left a hair inside the victim, and not the person who left body and pubic hairs on her body or clothing, a reasonable jury would acquit him and certainly not impose the death sentence. Thus, Sedley Alley is therefore entitled to the evidence under Tenn. Code Ann. §40-30-304, because he would not have been convicted. He is also entitled to the evidence under Tenn. Code Ann. §40-30-305, because there is a reasonable probability that the jury would have rendered a "sentence more favorable," i.e., a life sentence, had they known that Sedley Alley did not abduct, rape and kill the victim. See Tenn. Code Ann. §40-30-305(1). This is especially true because residual doubt is a mitigating factor which jurors must consider when deciding whether to impose the death sentence. See State v. Hartman, 42 S.W.3d 44 (Tenn. 2001). Sedley Alley is therefore entitled to the evidence as a matter of due process and given his right to be free from cruel and unusual punishment. Herrera v. Collins, 506 U.S. 390 (1993).

CONCLUSION

This case presents an issue of exceptional importance to Sedley Alley and to the State of Tennessee: Can a person who requests DNA evidence to prove innocence be denied that evidence and executed? The Legislature says that the answer is a resounding "No." Fundamental fairness says "No" as well. See e.g., Harvey v. Horan, 285 F.3d 298, 306, 312-321 (4th Cir. 2002)(Luttig, J., concurring in denial of rehearing)(under settled principles of fairness contained in rights to

procedural and substantive due process, defendants entitled to access to DNA evidence to prove their innocence). This Court should assume jurisdiction and agree: No person in Tennessee should be executed where DNA evidence would exonerate him. This motion should be granted. The Court should assume jurisdiction and enter all appropriate orders in the exercise of its jurisdiction.

Respectfully Submitted,

Donald E. Dawson
Post-Conviction Defender
530 Church Street
Suite 600
Nashville, Tennessee 37243
(615) 741-9331

AFFIDAVIT OF COUNSEL

I affirm that all the information contained in this “Motion To Assume Jurisdiction” is true and correct to the best of my knowledge.

Donald E. Dawson

Subscribed and sworn before me this ____ day of May, 2004

Notary Public, State of Tennessee

My Commission Expires:

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion has been served this day upon the District Attorney General for the 30th Judicial District and the Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243.

Date: _____

Donald E. Dawson

EXHIBIT 1

EXHIBIT 2

EXHIBIT 3

EXHIBIT 4