

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, TENNESSEE

PAUL DENNIS REID, JR.,)	
by and through Linda Martiniano,)	Trial Court No. 38887
Kelly Gleason, and Connie Westfall)	
as next friend)	
)	
Petitioner,)	
)	Post-Conviction No. _____
)	Death Penalty Post-Conviction
)	EXECUTION DATE: June 28, 2006
STATE OF TENNESSEE,)	
)	
Respondent.)	

PETITION FOR POST-CONVICTION RELIEF

COME NOW Linda Martiniano, Kelly Gleason, and Connie Westfall as next friends for the Petitioner, Paul Dennis Reid, Jr., pursuant to all rights guaranteed him under Article III of the United States Constitution, the Fourth, Fifth, Sixth, Eighth, Ninth, Tenth and Fourteenth Amendments to the United States Constitution, Article I §§ 1, 6, 7, 8, 9, 10, 16, 17, 19 and 20, Article XI, § 8 of the Tennessee Constitution, Tenn. Code Ann. § 40-30-101 *et seq.*, and all other applicable state and federal laws, and respectfully move this Court to grant post-conviction relief, find that his convictions for first-degree murder and sentences of death are invalid, unconstitutional and void, and order a new trial and sentencing hearing in this matter, upon each and all of the grounds set forth below.¹

¹ Unless otherwise specified, for claims of ineffective assistance of counsel, Petitioner relies upon Amendments 6, 8, and 14 of the U.S. Constitution and Article I, §§ 8, 9, 16, 17 of the Tennessee Constitution; for claims of violations of due process, including claims of prosecutorial misconduct and violations of the right not to incriminate oneself, Petitioner cites Amendments 5 and 14, U.S. Constitution, and Article I §§ 8 and 17, Tennessee Constitution; for claims of violations of equal protection, Petitioner relies upon the 14th Amendment, U.S. Constitution and Article XI § 8, Tennessee Constitution; for claims regarding denial of a fair trial or impartial jury, Petitioner cites Amendments 6, 8, and 14, U.S. Constitution and Article I, §§ 9 and 16, Tennessee Constitution; and for claims of violation of guarantees to be free from cruel and unusual punishment, Petitioner cites Amendments 8 and 14, U.S. Constitution and Article I § 16 of the Tennessee Constitution.

INTRODUCTION

Linda Martiniano, sister of Paul Dennis Reid, Jr., seeks in this Petition and motions filed contemporaneously the following: 1) initiation of this post-conviction action as his next friend, 2) an Order appointing the Office of Post-Conviction Defender, current counsel for Mr. Reid in Davidson County Case No. 97-C-1834, as counsel for Mr. Reid in the present action, 3) an Order permitting petitioner to proceed in forma pauperis due to his indigency, 4) an Order staying Mr. Reid's execution, and 5) an Order granting all the relief requested in this post-conviction petition. *See* Affidavit of Linda Martiniano, Attachment 1.

Kelly Gleason, current counsel of record in Davidson County Case No. 97-C-1834, and Connie Westfall, investigator with the Office of Post-Conviction Defender, also seek to initiate this action as next friend. *See* Affidavit of Kelly Gleason (Attachment 2) and Affidavit of Connie Westfall (Attachment 3). Gleason and Westfall have been in close and continuous contact with Mr. Reid over a lengthy period of time and in their representation of Mr. Reid in the Davidson County post-conviction case have demonstrated that they 1) are dedicated to Reid's best interests and 2) have a significant relationship with him.

The Tennessee Supreme Court recently ruled that a petition for post-conviction relief may be filed by a "next friend" on behalf of an inmate who has not signed or verified the allegations in the petition. *Holton v. State*, ___ S.W.3d ___, 2003 WL 24314330 (Tenn. May 4, 2006) (Attachment 4). Ms. Martiniano seeks to invoke this process on behalf of her brother, Paul Dennis Reid, Jr., and requests all other relief plead herein.

Mr. Reid suffers from a neurological disorder -- left temporal lobe dysfunction. *See* Affidavit of George W. Woods, M.D. (Attachment 5). Dr. George Woods is a licensed physician specializing in neuropsychiatry who has been qualified as an expert in Tennessee, other states,

and in federal courts. *See* Attachment 5, ¶ 1, 5. According to Dr. Woods, the temporal lobe dysfunction “has produced in Mr. Reid a chronic, schizophrenia-like psychosis which has severely impaired his ability to weigh, deliberate, inform and cooperate.” *Id.*, ¶ 8. Dr. Woods describes Paul Reid’s neuropsychiatric presentation as follows:

Mr. Reid’s neuropsychiatric presentation reflects frank paranoia, manifested by a longstanding, relatively well-circumscribed delusion. A delusion is a false belief based on incorrect inference about external reality that is firmly sustained despite what almost everybody else believes and despite what constitutes incontrovertible and obvious proof or evidence to the contrary. Mr. Reid’s delusion, that he has been under the control of a government-directed surveillance and influence, impels, invades, and guides his daily activities as well as decision-making processes.

Id., ¶ 11.

Dr. George Woods has determined that Mr. Reid’s delusional beliefs substantially preclude him from making a rational choice among his legal options. *Id.*, ¶ 12. Mr. Reid is incompetent to decide whether to pursue a post-conviction petition on his own behalf or abandon that right. *Id.* Mr. Reid also currently has “perceptual and memory impairments which render him unable to reliably relate events of his trial.” *Id.*, ¶ 13. “His delusional beliefs that current counsel are members of the conspiracy against him preclude rational communication regarding his legal options and thus he is unable to perceive and understand his legal right and liabilities in any meaningful sense.” *Id.* Mr. Reid is also unable to manage his personal affairs. *Id.*, ¶ 14.

Dr. Woods finds Mr. Reid to be presently incompetent under the standard enunciated in *Rees v. Peyton*, 384 U.S. 312, 86 S.Ct. 1505, 16 L.Ed.2d 583 (1966), as well the competency standard in *State v. Nix*, 40 S.W.3d 459 (Tenn. 2001). *Id.*, ¶ 16.

Due to petitioner’s severe mental illness, which renders him unable to rationally communicate with counsel, make a knowing, intelligent, and voluntary decision about pursuing further appeals, or manage his personal and legal affairs, Ms. Martiniano is not able to state all

the potential claims for relief which may be raised in support of this petition. Therefore, only limited claims are asserted herein and Ms. Martiniano requests the ability to supplement this petition once counsel are appointed, the case is investigated, and petitioner regains the ability to rationally communicate with counsel and make decisions regarding his legal affairs.

**LINDA MARTINIANO, KELLY GLEASON, AND CONNIE WESTFALL’S
STANDING AS NEXT FRIENDS FOR PAUL DENNIS REID, JR.**

All three individuals seek an Order from the Court designating them as “next friend” and therefore, capable of initiating this action on his behalf. A next friend may initiate a post-conviction proceeding on Mr. Reid’s behalf. *See Holton, supra; Whitmore v. Arkansas*, 495 U.S. 149, 162, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) (A “next friend” may “appear in court on behalf of detained prisoners who are unable, usually because of mental incompetence or inaccessibility, to seek relief themselves.”).

Next friend petitions are available to protect those inmates, capital and non-capital, who suffer from a "mental disease, disorder, or defect that substantially affect[s] [the prisoners'] capacity to make an intelligent decision." *Whitmore v. Arkansas, supra*, 495 U.S. 164-65. The next friend is not “a party to the [post-conviction] action . . . but simply pursues the cause on behalf of the detained person, who remains the real party in interest.” *Id.* at 163. A “next friend” must be “truly dedicated to the best interests of the person on whose behalf he seeks to litigate....and must have some significant relationship with the real party in interest.” *Id.* at 163-64 (citations omitted)

1) Linda Martiniano is Mr. Reid’s sister and is dedicated to his best interests

There should be no question whatsoever that a close relative to Mr. Reid has a significant relationship with him and is dedicated to his best interests. *See, e.g., Franklin v. Francis*, 144 F.3d 429, 432 (6th Cir. 1998) (“there is no dispute that the mother and sister are dedicated to the

best interests of [the inmate]”); *see also Lonchar v. Zant*, 978 F.2d 637, 641 (11th Cir. 1992)(“no-one disputes that Kellogg, as Lonchar's sister, is sufficiently dedicated to the interests of her brother" to be next friend). Linda Martiniano is Paul Reid’s older sister. *See* Attachment 1. She has exhibited concern for his best interests and well being by continuing to maintain a relationship with him, including annual trips from Texas to visit him. *Id.*

Based on her knowledge of her brother, letters she has received from him, and her visits, Ms. Martiniano believes that Mr. Reid is severely mentally ill and unable to act in a rational manner due to his belief in a government conspiracy against him. *Id.* When Mr. Reid has discussed with his sister abandoning appeals and being executed, he attributes this desire to an effort to stop “scientific technology” torture. *Id.* Ms. Martiniano has requested the Office of the Post-Conviction Defender and attorneys in that office to represent her so that she may act in the place of her brother to protect his interests. *Id.*

2) Kelly Gleason and Connie Westfall have a significant relationship with Mr. Reid and are dedicated to his best interests

Kelly Gleason is one of the two attorneys assigned to represent Mr. Reid in Davidson County Case No. 97-C-1834. *See* Attachment 2. The Office of the Post-Conviction Defender is the court-appointed counsel in that case. The Post-Conviction Defender assigned Nick Hare and Kelly Gleason to the case. *Id.* Gleason is the attorney with primary responsibility for maintaining continual communication with Mr. Reid and has been in close contact with Mr. Reid since September 2004. *Id.*

Counsel for Mr. Reid have heightened obligations to maintain contact and monitor the client’s condition due to the nature of the litigation. *See, e.g., American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (2003) (hereinafter “ABA Guidelines”), Guideline 10.5 (“counsel at all stages of the case should

make every appropriate effort to establish a relationship of trust with the client, and should maintain close contact with the client.”); Commentary to Guideline 10.5 (“[Counsel] must not only consult with the client but also monitor the client’s personal condition for potential legal consequences.”). Counsel has met these obligations, despite his mental illness and the Tennessee Department of Correction’s refusal to house Mr. Reid in Nashville on death row, through frequent visitation and phone calls with Mr. Reid. *See* Attachment 2.

An attorney with a history of demonstrating dedication to an inmate’s best interests is appropriately situated to act as next friend. *See In re Cockrum*, 867 F.Supp. 494, 495 (E.D.Texas 1994) (recognizing that prisoner's former attorney had a significant relationship with the prisoner for purposes of next friend standing because attorney had acted on behalf of the prisoner in prior legal proceedings); *Schornhorst v. Anderson*, 77 F.Supp.2d 944 (S.D.Ind. 1999) (former attorneys recognized as appropriate parties to litigate competency as next friend where they had a substantial relationship with him); *Padilla v. Rumsfeld*, 352 F.3d 695 (2nd Cir. 2003) (attorney properly could act as inmate's "next friend" and file federal habeas petition), *reversed on other grounds sub nom., Rumsfeld v. Padilla*, 124 S.Ct. 271 (2004); *Ford v. Haley*, 195 F.3d 603, 624 (11th Cir. 1999) (attorney with history of representing client has next friend standing if client is found to be incompetent); *Lenhard v. Wolff*, 443 U.S. 1306, 1310 (1979) (Rehnquist, Circuit Justice) ("it strikes me that from a purely technical standpoint a public defender may appear as 'next friend' with as much justification as the mother of [the defendant]"); *Dennis v. Budge*, 378 F.3d 880, 887 (9th Cir. 2004) (federal district court found former attorney who filed “next friend” petition for death-row volunteer “is dedicated to Dennis’ best interests and has a significant relationship with him”).

Similarly, Connie Westfall, who is the investigator at the Office of the Post-Conviction Defender assigned to this case since May 2003, has a substantial relationship with Mr. Reid and has demonstrated through her actions that she is dedicated to his best interests. Ms. Westfall was asked, in addition to her other responsibilities, to monitor Mr. Reid's mental state and attempt to maintain a relationship of communication and trust to the extent possible. *See* Attachment 3. She was asked to monitor his living conditions and to interface with prison officials. *Id.* In addition, Ms. Westfall has developed and maintained a relationship with the family, to facilitate family visits and to encourage regular contacts between them in an effort to strengthen the family's ties to our client. *Id.* In her three years of efforts on Mr. Reid's behalf, she has demonstrated a dogged commitment to making his life as tolerable as possible under the circumstances and to facilitate his relationship with attorneys and family to the extent possible, given his severe mental illness.

PRIMA FACIE SHOWING OF PRESENT INCOMPETENCE

As there should be no legitimate dispute that Linda Martiniano, Kelly Gleason, and Connie Westfall are dedicated to Paul Reid's best interests, they must be allowed to proceed as "next friend" if Mr. Reid suffers from a mental disease, disorder, or defect which may substantially affect his capacity to make an intelligent decision to pursue or abandon his legal remedies. *See Holton, supra; Whitmore, supra*, 495 U.S. at 166; *Rees v. Peyton*, 384 U.S. 312, 314 (1966); *In re Cockrum*, 867 F.Supp. 484, 485 (E.D. TX 1994); *Franklin v Francis*, 144 F.3d 429, 433 (6th Cir. 1998).

The attached affidavit of Dr. Woods alone establishes a prima facie showing of present incompetence. Dr. Woods is a well-trained, experienced neuropsychiatrist who has been qualified as an expert witness in the state of Tennessee, other states, and federal courts. He has examined Mr. Reid on two occasions thus far, reviewed multiple records and previous mental

health reports, and diagnosed Mr. Reid with a neurological illness – left temporal lobe dysfunction – which “has produced in Mr. Reid a chronic, schizophrenia-like psychosis which has severely impaired his ability to weigh, deliberate, inform and cooperate.” *See* Attachment 5, ¶ 8.

Dr. Woods describes how this disorder and resulting psychosis affect Mr. Reid’s ability to making knowing, intelligent, voluntary, and competent decisions about his legal affairs. Further, Dr. Woods describes how Mr. Reid’s ability to manage his personal affairs is compromised by his illness. Dr. Woods has found Mr. Reid to be presently incompetent under the standards enunciated in *Rees, supra*, as well as *Nix, supra*.

Further, the affidavits of Linda Martiniano, Kelly Gleason, and Connie Westfall also independently establish a prima facie case of incompetence by describing in great detail the factual basis for their belief that Mr. Reid is incompetent. Ms. Gleason’s affidavit is approximately 40 pages of details regarding her observations of and interaction with Mr. Reid in support of this summarized description of how Mr. Reid’s illness currently affects his thinking and behavior:

It is my opinion, based upon my observations of and interactions with Mr. Reid, that he is not currently competent in that Mr. Reid suffers from a severe mental and/or neurological illness which substantially affects his capacity to make knowing, intelligent, and voluntary decisions about his legal situation. I have known Paul Reid for more than a year and during that entire time, his delusional beliefs have been persistent and have pervaded his thinking about all aspects of his life. His delusional beliefs have caused him to either refuse to discuss legal issues with me, as he believes it is futile, or to discuss only the specific delusional beliefs he holds about his trial attorneys, the trial judges, the jurors, witnesses, courtroom personnel, state and federal appellate courts, the media, the Governor, the President, Congress, Department of Correction personnel – literally everyone.

Attachment 2, ¶ 2.

Similarly, Connie Westfall's affidavit describes her three years of working with Mr. Reid, providing specific dates, events, and observations of Mr. Reid over that time period. Although Linda Martiniano has less direct contact with her brother, given her residency in Texas, she also provides specific reasons for believing her brother is presently incompetent.

Because Mr. Reid is indigent, he has no right to access money for experts to assess his current mental condition in this case until a court accepts a post-conviction petition filed on his behalf. Dr. Woods was available to evaluate Mr. Reid only because Mr. Reid already has a pending post-conviction in Davidson County, and counsel were only able to obtain his assistance after a great deal of time and effort. If a court were to require a proffer of more information than submitted herein in order to make a prima facie case of incompetence, it would nullify the ability of a next friend to file a post-conviction petition.

TENNESSEE SUPREME COURT RULE 28, APPENDIX A, FORM INFORMATION

Mailing Address of Petitioner Paul Dennis Reid, Jr., TDOC #303893, Riverbend Maximum Security Institution, Unit 1, 7475 Cockrill Bend Blvd, Nashville, TN 37209

Place of Confinement Riverbend Maximum Security Institution

Department of Correction Number 303893

NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY THE ACCOMPANYING INSTRUCTIONS.

1. Name and location (city and county) of court which entered the judgment of conviction or sentence challenged Circuit Court of Montgomery County, Tennessee, Clarksville, TN
2. Date of judgment of conviction November 10, 1999 (two counts of premeditated murder, two counts of felony murder, two counts of especially aggravated kidnaping, and one count of especially aggravated robbery)
3. Case number Montgomery County Circuit Court No. 40550
4. Length of sentence (1) Death on Two counts of First Degree Murder; (2) twenty-five years on two counts of especially aggravated kidnaping; (3) and twenty-five years on a count of especially aggravated robbery

5. Offense convicted of (1) First Degree Murder (premeditated and felony murder charges were merged), two counts
(2) Especially Aggravated Kidnapping, two counts
(3) Especially Aggravated Robbery

6. What was your plea? (Check One)
- (a) Guilty
 - (b) Not Guilty X
 - (c) Not Guilty by reason of mental disease or defect
 - (d) Not Guilty and Not Guilty by reason of mental disease or defect
 - (e) Nolo contendere
 - (f) None

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, specify:

- (a) Guilty plea counts: N/A
- (b) Not guilty plea counts: N/A

7. Kind of trial: (Check One)

- (a) Jury X
- (b) Judge only

8. Did you testify at the trial

Yes No X

9. Did you appeal from the judgment of conviction?

Yes X No

10. If you did appeal, answer the following:

- (a) As to the state court to which you first appealed, give the following information:

- (1) Name of court Tennessee Court of Criminal Appeals at Nashville, No. M2001-02753-CCA-R3-DD
- (2) Result Convictions and sentences affirmed
- (3) Date of result Dec. 29, 2003
- (4) Grounds raised on appeal (1) the trial court erred in denying the motion to suppress evidence seized pursuant to search warrants; 2) the trial court erred in denying defendant's motion to exclude the crime scene video showing the bodies of the victims lying in the water or in the wooden area; 3) the trial court erred in denying defendant's motion for the state's rough notes of grand jury testimony; 4) the trial court erred in denying defendant's motion for a limited jury questionnaire; 5) the trial court erred in denying defendant's motion for state's

information as to past performance of prospective jurors; 6) the trial court erred in denying defendant's motion to have tenn. code ann. § 22-1-102 declared unconstitutional; 7) the trial court erred in denying defendant's motion to prevent exclusion of prospective jurors because of their religion; 8) the trial court erred in denying defendant's motion to refrain from excluding jurors who are not "death-qualified" under Witherspoon and Wainwright; 9) the trial court erred in denying defendant's motion to have one jury determine his guilt or innocence and a separate jury to determine his sentence; 10) the trial court erred by denying defendant's motion to have Tenn. Code Ann. § 39-13-204(h) declared unconstitutional; 11) the trial court erred by denying defendant's motion to have the death penalty declared cruel and inhuman punishment under the Eighth Amendment; 12) the trial court erred in denying defendant's motion to have Tenn. Code Ann. § 39-13-204 and -206 declared unconstitutional; 13) the trial court erred in denying defendant's motion to dismiss the indictment pursuant to Article I, section 19 of the Tennessee Constitution; 14) the trial court erred in denying defendant's motion to dismiss the indictment because the grand jury never found probable cause as to the statutory aggravating circumstances relied upon by the state; 15) the trial court erred by denying defendant's motion to be allowed to address the jury last; 16) the trial court erred in denying defendant's motion to require the state to establish the reliability of the DNA testing performed in this case prior to its being presented to the jury; 17) the trial court erred in denying defendant's motion to exclude all victim impact evidence; 18) the trial court erred in allowing the state to amend the indictment; 19) the trial court erred in denying defendant's motion to consolidate this case with his two Davidson County cases; 20) the trial court erred in finding that defendant was competent to stand trial; 21) the trial court erred in failing to allow Reverend Joe Ingle and Mary Ann Hea, a social worker, to testify at the competency hearing; 22) the trial court erred in failing to limit the state's potential cross-examination of investigator Ron Lax, which failure effectively precluded him from testifying; 23) the trial court erred in forcing Dr. Xavier Amador to testify without first giving him sufficient time to review the report prepared by Dr. Turner-Graham and Dr. Bernet's interview with defendant; 24) the trial court erred in employing Dr. Turner-Graham as an independent expert because she may have known one of the victims in the case, a fact not disclosed to the defense until after the competency hearing; 25) the trial court erred by not sua sponte granting a mistrial when the state, without a factual basis, attempted to insinuate through the testimony of Elfrieda Lane that defendant had been to the Baskin Robbins; 26) the trial court erred in failing to strike the testimony of Loretta Diorio and Stephen Diorio after it became clear that Stephen Diorio had been exposed to his mother's testimony via the news media; 27) the trial court erred in not removing Angela Holmes' bra (exhibit 19) as an exhibit, as the prejudicial effect of this item greatly outweighed its probative value; 28) the trial court erred in not permitting exhibit 69 to be admitted into evidence; 29) the trial court erred in permitting Jeffrey Potter to testify as to a conversation he had with defendant; 30) the trial court erred in allowing Dr. Harlan to use styrofoam heads to demonstrate the victims' injuries, as the use of those heads was unduly prejudicial; 31) the trial court erred in sustaining the

state's objection to exhibit numbers 138 and 139; 32) the evidence is legally insufficient to support defendant's convictions; 33) defendant's convictions must be reversed because of numerous acts of prosecutorial misconduct that occurred in the guilt phase; 34) the trial court erred in permitting the state to introduce "life" photographs as part of its victim impact evidence; 35) the trial court erred in admitting the photographs of the victims at the crime scene; 36) the trial court erred in allowing certain victim impact testimony given by Tobaris Holmes; 37) the trial court erred in limiting the testimony of Patricia Allen; 38) the trial court erred in failing to charge the jury as to the (j)(6) mitigator; 39) the trial court erred in failing to charge the non-statutory mitigators in the same affirmative manner as the statutory mitigators; 40) the trial court erred in failing to include the (j)(9) "catch-all" mitigator in the jury instructions; 41) the trial court erred by encouraging the jury to focus on the state's proof during its comments to the jury during the penalty phase; 42) the death sentence must be reversed because of prosecutorial misconduct during the penalty phase; 43) the evidence is insufficient to support the jury's finding of the heinous, atrocious or cruel aggravator; 44) the evidence is insufficient to support the jury's finding that the aggravating circumstances outweighed the mitigating circumstances beyond a reasonable doubt; 45) the sentence in the instant case is disproportionate to the crime.

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

- (1) Name of court Tennessee Supreme Court, 164 S.W.3d 286 (Tenn. 2005)
- (2) Result Convictions and sentences affirmed
- (3) Date of result May 24, 2005
- (4) Grounds raised on appeal 1) the lower courts erred in failing to suppress the evidence seized pursuant to search warrants 145 and 146; 2) the court of criminal appeals erred in affirming the trial court's denial of defendant's motion to exclude the crime scene video; 3) the Court of Criminal Appeals erred in affirming the trial court's denial of defendant's motion to prevent exclusion of prospective jurors because of their religion; 4) the Court of Criminal Appeals erred in affirming the trial court denial of defendant's motion to refrain from excluding jurors who are not "death-qualified" under Witherspoon and Wainwright; 5) the Court of Criminal Appeals erred in affirming the trial court's denial of defendant's motion to have one jury determine his guilt or innocence and a separate jury to determine his sentence; 6) the Court of Criminal Appeals erred in affirming the trial court's denial of defendant's motion to have Tenn. Code Ann. § 39-13-204(h) declared unconstitutional; 7) the Court of Criminal Appeals erred by affirming the trial court's denial of defendant's motion to declare the death penalty cruel and inhuman punishment under the Eighth Amendment; 8) the trial court erred in denying defendant's motion to dismiss the indictment pursuant to Article I, section 19 of the Tennessee Constitution; 9) the Court of Criminal Appeals erred in affirming the trial court's denial of defendant's motion to dismiss the indictment because the grand jury never found probable cause as to the statutory aggravating circumstances relied upon by the

state; 10) the Court of Criminal Appeals erred in affirming the trial court's denial of defendant's motion to declare Tenn. Code Ann. § 39-13-204(c) unconstitutional; 11) the Court of Criminal Appeals erred by affirming the trial court's denial of defendant's motion to be allowed to address the jury last; 12) the Court of Criminal Appeals erred in affirming the trial court's decision to charge the jury on victim impact evidence in accordance with State v. Nesbit, 978 S.W.2d 872 (Tenn. 1998); 13) the Court of Criminal Appeals erred in affirming the trial court's decision to allow the state to amend the indictment; 14) the Court of Criminal Appeals erred in affirming the trial court's decision that defendant was competent to stand trial; 15) the Court of Criminal Appeals erred in affirming the trial court's decision to exclude Reverend Joe Ingle and Mary Ann Hea, a social worker, from testifying at the competency hearing; 16) the Court of Criminal Appeals erred in affirming the trial court's failure to grant a new competency hearing based upon the bias of Dr. Turner-Graham, the trial court's independent expert; 17) the Court of Criminal Appeals erred in affirming the trial court's decision to exclude exhibit numbers 138 and 139; 18) the evidence is legally insufficient to support defendant's convictions; 19) defendant's convictions must be reversed because of numerous acts of prosecutorial misconduct that occurred in the guilt phase; 20) the Court of Criminal Appeals erred in affirming the trial court's decision to admit the photographs of the victims at the crime scene; 21) the Court of Criminal Appeals erred in affirming the trial court's refusal to charge the jury as to the (j)(6) mitigator; 22) the Court of Criminal Appeals erred in affirming the trial court's decision to charge the non-statutory mitigators in the same affirmative manner as the statutory mitigators; 23) the trial court erred in failing to include the (j)(9) "catch-all" mitigator in the jury instructions; 24) the death sentence must be reversed because of prosecutorial misconduct during the penalty phase; 25) the Court of Criminal Appeals erred in concluding that the evidence is sufficient to support the jury's finding of the heinous, atrocious or cruel aggravator; 26) the Court of Criminal Appeals erred in finding that the evidence is sufficient to support the jury's finding that the aggravating circumstances outweighed the mitigating circumstances beyond a reasonable doubt; 27) the sentence in the instant case is disproportionate to the crime.

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

- (1) Name of court
- (2) Result
- (3) Date of result
- (4) Grounds raised on appeal

(Attach additional sheets if necessary)

11. If more than one (1) year has passed since the date of final action on your direct appeal by the state appellate courts, state why the one (1) year statute of limitations should not bar your claim.

N/A

12. Other than a direct appeal from the judgment(s) of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to the judgment(s) in any state or federal court?

Yes No

13. If your answer to Question 12 was Yes, then give the following information in regard to the first such petition, application, or motion you filed:

- (a) (1) Name of court
(2) Nature of proceeding
(3) Grounds raised
(Attach additional sheets if necessary)
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No
(5) Result
(6) Date of result

(b) As to any second petition, application, or motion, give same information:

- (1) Name of court
(2) Nature of proceeding
(3) Grounds raised
(Attach additional sheets if necessary)
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No
(5) Result
(6) Date of result

(c) Did you appeal the result of the action taken on any petition, application, or motion identified above to any appellate court:

- (1) First petition, etc. Yes No
(2) Second petition, etc. Yes No

(d) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did into appeal:

14. If you did not raise the grounds you raise here in your original prosecution and on your appeal from that prosecution, explain why your claim in this case has not been waived for failure to raise it on appeal. If the claim was raised, explain why your claim is not previously determined.

(1) The claims raised are not waived because counsel's failure to previously raise the claims was the result of state action in violation of the federal and state constitutions -- specifically, some of Petitioner's claims have as their basis the allegation that state authorities withheld evidence favorable to Petitioner on the issue of guilt or sentencing as required by the Eighth and Fourteenth Amendments to the United States Constitution; (2) The claims raised are not waived because many of Petitioner's claims assert that trial and/or appellate counsel provided constitutionally inadequate assistance, an allegation that could not have been presented for determination in any prior proceeding; (3) The claims raised are not waived because Petitioner did not personally, with knowledge and understanding, waive those issues; (4) The claims raised are not waived because Tennessee courts have not uniformly applied the waiver provisions of the Post-Conviction Procedure Act and to find the claims waived in Petitioner's case and not others would constitute a violation of Petitioner's right to equal treatment under the law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article XI, § 8 of the Tennessee Constitution.

15. If you have previously filed a petition, application, or motion with respect to the judgment(s) in any court, explain why your claim in this case has not been waived for failure to raise it in that prior proceeding. If the claim was raised, explain why your claim is not previously determined.

N/A

16. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information or by attaching separate pages.

GROUND(S) OF PETITION

Listed below are possible grounds for relief. Consider the ground(s) that apply in your case, and follow the instruction under the ground(s):

(1) Conviction was based on unlawfully induced guilty plea or guilty plea involuntarily entered without understanding of the nature and consequences of the plea.

(2) Conviction was based on use of coerced confession.

(a) Statements alleged to have been made by the petitioner to police detectives were improperly admitted at trial in violation of the Fifth, Sixth and Fourteenth Amendments and analogous provisions in the Tennessee Constitution.

(3) Conviction was based on use of evidence gained pursuant to an unconstitutional search and seizure.

X(4) Conviction was based on use of evidence obtained pursuant to an unlawful arrest.

X(5) Conviction was based on a violation of the privilege against self incrimination.

X(6) Conviction was based on the unconstitutional failure of the prosecution to disclose to defendant evidence favorable to defendant.

 (7) Conviction was based on a violation of the protection against double jeopardy.

 (8) Conviction was based on action of a grand or petit jury that was unconstitutionally selected and impaneled.

X(9) Denial of effective assistance of counsel.

The attorneys were ineffective at trial and on appeal.

 (10) Newly discovered evidence.

X(11) Illegal evidence.

See Claims (2), (4), and (5) above.

X(12) Other grounds.

Petitioner was incompetent during the trial of this case and is currently incompetent.

THE LIST ABOVE DOES NOT INCLUDE ALL CONSTITUTIONAL VIOLATIONS. YOU MAY ADD ANY OTHERS YOU DEEM APPROPRIATE. ATTACH A SEPARATE SHEET OF PAPER LISTING EACH CONSTITUTIONAL VIOLATION THAT YOU CLAIM, WHETHER OR NOT IT IS LISTED ABOVE. UNDER EACH CLAIMED VIOLATION, LIST EACH AND EVERY FACT YOU FEEL SUPPORTS THIS GROUND. EXPLAIN IN DETAIL HOW YOU ARE PREJUDICED BY THE VIOLATION AND WHY YOU ARE ENTITLED TO RELIEF. BE SPECIFIC.

IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS: TENN. CODE ANN. § 40-30-102(c) LIMITS YOU TO ONLY ONE PETITION. TENN. CODE ANN. § 40-30-102(c) PROVIDES:

This chapter contemplates the filing of only one (1) petition for post-conviction relief. In no event may more than one (1) petition for post-conviction relief be filed attacking a single judgment. If a prior petition has been filed which was resolved on the merits by a court of competent jurisdiction, any second or subsequent petition shall be summarily dismissed.

17. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes No

18. Give the name and address, if known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

- (a) At preliminary hearing Hon. Michael R. Jones, Circuit Court Judge, 19th Judicial District, Part 2, Two Millenium Plaza, Suite 460, Clarksville, TN 37040; Joseph Michael Engle, Tennessee Justice Center, 301 Charlotte Ave., Nashville, TN 37201; R. David Baker, Asst. Federal Public Defender, Federal Public Defender Office, Middle District, 810 Broadway, Suite 200, Nashville, TN 37203-3861
- (b) At arraignment and plea see (a) above
- (c) At trial see (a) above
- (d) At sentencing see (a) above
- (e) On appeal Thomas F. Bloom, 911 Marengo Lane, Nashville, TN 37204; James Andrew Simmons, 1208 17th Ave S, Nashville, TN 37212
- (f) In any post-conviction proceeding N/A
- (g) On appeal from adverse ruling in a post-conviction proceeding N/A

19. Are you currently represented by counsel?

Yes No

(a) If Yes, give name and address, if known, of the attorney representing you.

(b) If No, do you wish to have an attorney appointed?

Yes No

(c) Has any attorney assisted in drafting or given advice regarding petition for post-conviction relief?

Yes No

If Yes, give name and address of attorney(s).

Staff attorneys Kelly A. Gleason and Nick D. Hare, Office of the Post-Conviction Defender, 530 Church Street, Suite 600, Nashville, TN 37243

20. In the judgment you are attacking, were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes X No

21. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes X No

(a) If so, give name and location of court which imposed sentence to be served in the future: Criminal Court of Davidson County, Division III, Nashville, Tennessee

(b) Give date and length of sentence to be served in the future:
April 20, 1999, death sentence (Case No. 97-C-1834)
May 27, 2000, death sentence (Case No. 97-C-1836)

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes X No

22. What date is this petition being given to prison authorities for mailing?

N/A.

**ADDITIONAL AND MORE DETAILED CLAIMS IN SUPPORT OF
THIS PETITION FOR POST-CONVICTION RELIEF**

As a threshold issue, Petitioner, through counsel, moves the Court to find Mr. Reid currently incompetent to proceed in his post-conviction case. Petitioner moves for a stay of proceedings on the merits of this Petition until Mr. Reid can retain competence to consult in a rational manner with his appointed counsel.

The filing of this Petition is in no way meant to represent that all claims on behalf of Mr. Reid have been investigated and alleged. This Petition is filed by next friend in order to preserve Mr. Reid's right to post-conviction review until he regains competency.

Mr. Reid does not waive any claims for relief not yet raised or presented fully herein and reserves the right to amend this petition by submitting additional claims and/or facts in support

of his claims once he regains the ability to communicate rationally with counsel and counsel are provided sufficient resources to conduct an investigation into all issues relevant to Mr. Reid's conviction and sentence.

Although undersigned counsel have agreed to file this petition and accompanying motions at the request of Linda Martiniano, we do not believe we can proceed with litigation of the merits of the claims herein because our client is incompetent and unable to communicate with us and proceeding may result in waiving claims of fundamental constitutional error, which itself is a violation of multiple constitutional guarantees.

Mr. Reid's knowledge of the events of his trial, his communications with his attorneys at the time, and the evidence against him are all severely impaired by his delusional disorder. He cannot currently reliably relate what happened, what information was presented, and what people said or did at the time of the trial because his perceptions and memory are significantly impaired by his mental illness. Further, his psychotic disorder renders him unable to have a rational understanding of the role of current counsel and the nature of his current legal proceeding. Indeed, his delusions affect every aspect of his life, including normal daily activities such as sleep, his expectations of interactions with others, and health care decisions.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, by and through his next friends, prays that this Honorable Court:

- A. Appoint the Office of the Post-Conviction Defender to represent him;
- B. Find Mr. Reid to be presently incompetent and stay proceedings on the merits until he regains competence;
- C. If the Court does not stay proceedings, Direct Respondent to answer this

Post-Conviction Petition;

D. Permit the next friend and/or counsel to amend, supplement and/or modify this Post-Conviction Petition, including in pleadings submitted following the hearing in this matter, to assert such other grounds or present such other evidence or facts as may become known to counsel after the date hereof;

E. Afford Petitioner an evidentiary hearing on the merits of his claims;

F. Stay the date of his execution until the issues raised herein can be resolved by this Court and reviewed on appeal, including certiorari to the United States Supreme Court;

G. Grant the within Post-Conviction Petition, vacate the convictions and sentence of death imposed upon him in this cause, and/or order a retrial and/or resentencing in this matter; and

H. Grant such other relief as may be warranted as a matter of law and justice.

STATEMENT REQUIRED BY TENN. CODE ANN. § 40-30-104(e)

As to any ground for relief for which authority for raising said ground is not contained contemporaneously with the above enumerated allegations supporting the ground, petitioner, by and through his next friends, asserts the following allegations of fact explaining why each ground for relief raised in this Petition was not previously presented in any earlier proceedings.

1. The ineffective assistance of counsel claims could not have been presented for determination in any prior proceeding and are not waived. First, these claims assert a challenge to the effectiveness of the attorneys who were representing Mr. Reid in the only proceedings that preceded the present action. It would have been impossible for these attorneys to allege their own ineffectiveness due to an inherent conflict of interest. Second, while claims of ineffective

assistance of counsel may be raised on direct appeal, Tennessee courts discourage that practice as one “fraught with peril.” *Thompson v. State*, 958 S.W.2d 156, (Tenn. Crim. App. 1997) (citing *State v. Sluder*, No. 1236, slip op. at 16 (Tenn. Crim. App., March 14, 1990)). An appellant “runs the risk of having the issue resolved ‘without an evidentiary hearing which, if held, might be the only way that harm could be shown – a prerequisite for relief in ineffective trial counsel claims.’” *Id.* (quoting *Jimmy Wayne Wilson v. State*, No. 909, slip op. at 10 (Tenn. Crim. App., May 29, 1991)). The Tennessee Court of Criminal Appeals has surmised that the Tennessee Supreme Court may refuse to consider, as premature, ineffective assistance of counsel claims raised on direct appeal. *Id.* For these reasons, claims of ineffective assistance of counsel are not waived. Tenn. Code Ann. § 40-30-206(g).

2. To the extent that this Court concludes that any issue raised in this petition was not presented at a prior proceeding where that issue could have been presented, Mr. Reid did not personally, with knowledge and understanding, waive those issues. Contrary to the ruling of the Tennessee Supreme Court in *House v. State*, 911 S.W.2d 705 (Tenn. 1995), the absence of a personal, knowing and understanding waiver on the part of Mr. Reid precludes waiver of the claims raised in this petition.

(a) Amendments VIII and XIV to the United States Constitution and Article I, §§ 8 and 16 of the Tennessee Constitution preclude application of the *House* waiver standard to claims involving fundamental rights, as do all the issues raised in this petition. Amendments VIII and XIV to the United States Constitution and Article I, §§ 8 and 16 of the Tennessee Constitution preclude a court from reaching a conclusion with respect to the waiver of claims from a silent record. For a waiver of fundamental rights to be effective, the record must affirmatively demonstrate a knowing and understanding waiver of such rights. The record

contains no such demonstration, and therefore, Amendments VIII and XIV to the United States Constitution and Article I, §§ 8 and 16 of the Tennessee Constitution preclude the Court from concluding that Mr. Reid waived the above claims.

(b) Ineffective assistance of counsel excuses the failure of Mr. Reid's counsel to raise claims at trial and on direct appeal. Mr. Reid had a constitutionally protected right to effective assistance of counsel at his trials and on his direct appeals. Counsel provides ineffective assistance by failing to raise claims that have a reasonable probability that had they been raised, the result of a petitioner's trial would have been different. For the reasons in the enumerated paragraphs of this petition, Mr. Reid's counsel's failure to raise these claims constitutes a deficient performance. Because Mr. Reid received ineffective assistance of counsel in violation of Amendment VI to the United States Constitution and Article I, § 9 of the Tennessee Constitution, he is excused from any failure to present the above claims at his trials or on direct appeal.

3. This Court cannot apply the waiver statute to avoid addressing the merits of any claims raised in this petition. In prior cases, Tennessee courts have routinely addressed the merits of claims that were subject to the waiver defense. To address the merits of waived claims in those cases but not address the merits of potentially waived claims in this case would constitute a violation of Mr. Reid's right to equal treatment under the law as guaranteed by Amendment XIV to the United States Constitution and Article XI, § 8 of the Tennessee Constitution.

4. Certain grounds raised in this petition, involve the constitutionality of the death penalty in this case. This is an area in which the law is constantly changing and thus many of the subparts are subject to new law exceptions to waiver.

PETITIONER'S VERIFICATION

Petitioner was not asked to sign this Petition as required by Tenn. Code Ann. § 40-30-104(d) and Tenn. Sup. Ct. R. 28 § 5(E)(2) since this is a proceeding filed by next friend since the Petitioner is currently incompetent. Undersigned counsel are filing this Petition, at the request of Mr. Reid's sister Linda Martiniano, in good faith and upon a good faith belief that Mr. Reid is incompetent to verify this document and otherwise proceed with the post-conviction proceeding. In Tennessee, a next friend may pursue a post-conviction petition on behalf of another without verification. *See Holton v. State, supra.*

Respectfully submitted,

Kelly A. Gleason
Assistant Post-Conviction Defender

Nicholas D. Hare
Assistant Post-Conviction Defender

530 Church Street, Suite 600
Nashville, Tennessee 37243
(615) 741-9331
FAX (615) 741-9430

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Petition was delivered to Art F. Bieber, Assistant District Attorney General, 19th Judicial District, 101 N 3rd Street, Clarksville, TN 37040-3401 by placing a copy in the District Attorney's box at the clerk's office on this the _____ day of May, 2006.

Kelly A. Gleason