

APPENDIX C

96-6652

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

MAY 10 1999

LEONARD GREEN, Cle

PHILIP R. WORKMAN,
Petitioner-Appellant,

STATE OF TENN.
ATTORNEY GENERAL
MAY 12 1999
CRIMINAL JUSTICE DIV.

v.

RICKY BELL, WARDEN,
Respondent-Appellee.

ORDER

BEFORE: NELSON, RYAN, and SILER, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly the petition is denied. However, the panel has decided to delete the carryover paragraph (including the indented quotation) beginning on page 8 of the slip opinion and the full paragraph on page 9 thereof.

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The reason for this is that there is apparently some dispute about the ballistic information which was discussed in the original opinion, but it had no dispositive effect upon the decision of this court. The court also did not consider the new affidavit dated November 9, 1998, from Dr. Kris Sperry, inasmuch as the district court did not have that exhibit before it.

In all other respects, the petition for rehearing will be denied.

Although this court expresses no view as to whether Workman is actually innocent, if that is the situation, "the traditional remedy for claims of innocence based on new evidence, discovered too late in the day to file a new trial motion, has been executive clemency." *Herrera v. Collins*, 506 U.S. 390, 417 (1993). Under Tennessee law, the governor may grant clemency, see Tenn. Code Ann. § 40-27-101, so Workman may present evidence to the governor that the fatal shot must have come from someone else's gun. We express no opinion as to what federal remedies might be available to Workman if a petition for executive clemency should be denied.

ENTERED BY ORDER OF THE COURT



Leonard Green, Clerk