

NOTE:

Attached is one copy of State of Tennessee's response to motion of attorneys for James Earl Ray for a new trial. Pursuant to instructions of Mr. D. Robert Owen, no dissemination of reports or documents will be made to Mr. Phil M. Canale, Jr., State Attorney, Shelby County, Memphis, Tennessee, unless specifically advised by the Department.

IN THE CRIMINAL COURTS OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE

I

VS.

I

NO. 16645

JAMES EARL RAY

I

Defendant.

I

MOTION TO STRIKE

Comes now Phil M. Canale, Jr., District Attorney General for the Fifteenth Judicial Circuit of Tennessee, and moves the Court to strike and hold for naught the Motion of the defendant, James Earl Ray, entitled "Amended and Supplemental Motion for a New Trial" and any incorporates therein purporting to be a Motion for a New Trial in this cause and in support thereof would show:

I

For answer to the Motion of the defendant herein, State of Tennessee hereby denies each and every allegation of fact as well as the conclusion of facts and law alleged in the said Motion.

II

State of Tennessee would further show that the defendant, James Earl Ray, pleaded guilty on March 10, 1969, in Division III of the Criminal Courts of Shelby County, Tennessee.

That at the entry of the guilty plea and for some time prior thereto, the defendant, James Earl Ray was represented by his personally selected and retained counsel, Percy Foreman, a copy of the minute entry of November 12, 1968, reflecting the employment of Percy Foreman by the defendant, James Earl Ray, is attached hereto as Exhibit 1.

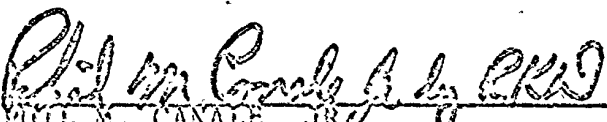
That the defendant, James Earl Ray, in person and through his attorney, filed a Petition for waiver of trial and request for acceptance of plea of guilty, a copy of which is attached hereto as Exhibit 2.

An Order authorizing waiver of trial accepting plea of guilty was entered by Judge W. Preston Battle, the presiding judge on March 10, 1969, a copy of which is attached hereto as Exhibit 3.

The defendant, James Earl Ray, was extensively and comprehensively examined by the Honorable W. Preston Battle, presiding judge, before the entry of the guilty plea, a certified copy of the transcript of the interrogation by Judge Battle is attached hereto as Exhibit 4.

That a jury was empaneled, sworn, evidence of witnesses presented, stipulations, and a plea of guilty was entered in the presence of the jury and the jury verdict approved the guilty plea as to the State's recommendation of ninety-nine (99) years confinement in the State Penitentiary at Nashville, Tennessee, to the offense of Murder First Degree, and the defendant, James Earl Ray, was sentenced by the Presiding Judge W. Preston Battle, a certified copy of the minutes of Division III of the Criminal Courts of Shelby County, Tennessee, so reflecting, is attached hereto as Exhibit 5.

The State of Tennessee moves the Court to strike the defendant's Motion and any incorporates thereto on the grounds that there is no Motion for a New Trial from a guilty plea.


PHIL M. CANALE, JR.
DISTRICT ATTORNEY GENERAL
FIFTEENTH JUDICIAL CIRCUIT
STATE OF TENNESSEE

TUESDAY, NOVEMBER 12, 1968

Thereupon the Hon. W. Preston Battle, Judge, assumes the Bench, whereupon the following proceedings were had to-wit:

STATE OF TENNESSEE
VS B-16645, 16819
JAMES EARL RAY, aka

MURDER FIRST DEGREE & CARRYING A DANGEROUS WEAPON

Comes the Attorney General on the part of the State and the defendant in proper person and by counsels of record, Mr. Arthur Hanes, Sr., & Mr. Arthur Hanes, Jr., whereupon there comes on to be heard the Attorneys' Motion to be allowed to withdraw from the above causes, which Motion having been fully heard and understood by the Court is GRANTED, whereupon it is ordered by the Court that the names of Arthur Hanes, Sr., and Arthur Hanes, Jr., be removed from the Jackets in the above causes, and the name of Mr. Percy Foreman, be substituted in their stead.

STATE OF TENNESSEE
VS B-16645, 16819
JAMES EARL RAY, aka

MURDER FIRST DEGREE & CARRYING A DANGEROUS WEAPON

Comes the Attorney General on the part of the State and the defendant in proper person and by counsel of record, Mr. Percy Foreman, whereupon there comes on to be heard the defendant's Motion for First Continuance, which Motion having been heard and fully considered by the Court is GRANTED, whereupon it is ordered by the Court that the causes be reset to March 3, 1969, for trial. (Order to be entered later).

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

W. Preston Battle
JUDGE

EXHIBIT 1

STATE OF TENNESSEE }
Shelby County }

I, J. A. BLACKWELL, Clerk of the Criminal Courts of Shelby County, Tennessee,

do hereby certify that the foregoing ONE (1) pages of writing contain a full,
the first continuance application and changing of attorneys
complete, true and perfect copy of ~~the~~ proceedings in the case of the State of
Tennessee, vs. Docket No. 16645

JAMES EARL RAY

Indictment for MURDER FIRST DEGREE

as the same now appears on file, and of record in my office.

WITNESS my hand and the seal of said Court, at office in Memphis,

this, the 12th day of MAY 19 69

J. A. BLACKWELL, Clerk

SEAL

By: [Signature] D. C.

EXHIBIT 2

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
DIVISION III

STATE OF TENNESSEE

VS.

NO. 16645

JAMES EARL RAY

DEFENDANT

PETITION FOR WAIVER OF TRIAL AND REQUEST FOR
ACCEPTANCE OF PLEA OF GUILTY

That my true full name is JAMES EARL RAY and I assert that all proceedings against me should be had in the name which I hereby declare to be my true name.

My attorney in the cause is PERCY FOREMAN, who was selected and retained by me, who was appointed by the Court ~~xxxxxxx~~, to represent me in this cause. and Hugh Stanton, Sr., Public Defender,

I have received a copy of the indictment before being called upon to plead, and I have read and discussed it with my attorney, and believe and feel that I understand the accusation made against me in this case and in each case listed herein. I hereby waive the formal reading of the indictment.

I have told my attorney the facts and surrounding circumstances as known to me concerning the matters mentioned in the indictments, and believe and feel that my attorney is fully informed as to all such matters. My attorney has informed me as to the nature and cause of each accusation against me, and as to any and all possible defenses I might have in this cause.

My attorney has advised me as to the punishment provided by law for the offenses charged and embraced in the indictment against me. My attorney has further advised that punishment which the law provides for the crime with which I am charged in the indictment is as follows:

death by electrocution or confinement in the State Penitentiary for

life or for some period of time over twenty (20) years

and if accepted by the Court and Jury my sentence on a plea of guilty will be:

confinement in the State Penitentiary for ninety-nine years (99).

It has been fully explained to me and I understand that I may, if I so choose, plead "Not Guilty" to any offense charged against me, and that if I choose to plead "Not Guilty" the Constitution guarantees and this Court will provide me the right to a speedy and public trial by jury; the right to see and hear all witnesses against me; the right to use the power and process of the Court to compell the production of any evidence, including the attendance of any witness, in my favor; and the right to have the assistance of counsel in my defense at all stages of the proceedings.

In the exercise of my own free will and choice and without any threats or pressure of any kind or promises of gain or favor from any source whatsoever, and being fully aware of the action I am taking, I do hereby in open Court request the Court to accept my plea of guilty to the charges outlined herein. I hereby waive any right I may or could have to a Motion for a New Trial, and/or, an appeal.

Witness:

Percy Foreman

Hugh Stanton Sr.
Hugh Stanton Jr.

James Earl Ray
Defendant

STATE OF TENNESSEE }
Shelby County

I, J. A. BLACKWELL, Clerk of the Criminal Courts of Shelby County, Tennessee,

do hereby certify that the foregoing.....ONE (1).....pages of writing contain a full,

Petition for Waiver of Trial and Request for Acceptance of Plea of Guilty
complete, true and perfect copy of ~~photocopy proceedings~~ in the case of the State of

Tennessee, vs.

Docket No. 16045

JAMES EARL RAY

Indictment for.....MURDER FIRST DEGREE.....

as the same now appears on file, and of record in my office.

WITNESS my hand and the seal of said Court, at office in Memphis,

this, the 12th day of MAY 19 68

J. A. BLACKWELL, Clerk

SEAL

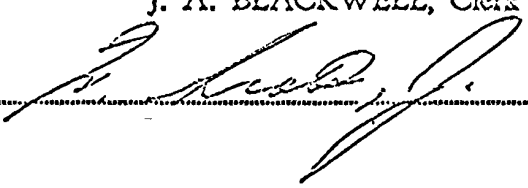
By:  D. C.

EXHIBIT 3

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
DIVISION III

STATE OF TENNESSEE

VS

NO. 16645

JAMES EARL RAY

DEFENDANT

ORDER AUTHORIZING WAIVER OF TRIAL AND ACCEPTING
PLEA OF GUILTY

This cause came on for hearing before the Honorable W. PRESTON BATTLE, Judge of Division III, of the Criminal Court of Shelby County, Tennessee, on the petition of the defendant, JAMES EARL RAY, for Waiver of trial by jury and request for acceptance of a plea of guilty, said petition being attached hereto and incorporated by reference herein; upon statements made in open Court by the defendant herein; his attorney of record; the District Attorney General, the Assistant Attorneys General representing the State of Tennessee; and from questioning by the Court of defendant and his counsel in open Court; and

IT APPEARING TO THE COURT after careful consideration that the defendant herein has been fully advised and understands his right to a trial by jury on the merits of the indictment against him, and that the defendant herein does not elect to have a jury determine his guilt or innocence under a plea of Not Guilty; and has waived the formal reading of the indictment, AND:

IT FURTHER APPEARING TO THE COURT that the defendant intelligently and understandingly waives his right to a trial and of his own free will and choice and without any threats or pressure of any kind or promises, other than the recommendation of the State as to punishment; and does desire to enter a plea of guilty and accept the recommendation of the State as to punishment, waives his right to a Motion for a New Trial and/or an appeal.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the petition filed herein be and the same is hereby granted.

Enter this the 10th day of March, 1969.

W Preston Battle
J U D G E

STATE OF TENNESSEE }
Shelby County

I, J. A. BLACKWELL, Clerk of the Criminal Courts of Shelby County, Tennessee,

do hereby certify that the foregoing.....ONE (1).....pages of writing contain a full,

Order authorizing Waiver of Trial and Accepting Plea of Guilty
complete, true and perfect copy of ~~all other proceedings~~ in the case of the State of

Tennessee, vs.

Docket No. 16645

JAMES EARL RAY

Indictment for MURDER FIRST DEGREE

as the same now appears on file, and of record in my office.

WITNESS my hand and the seal of said Court, at office in Memphis,

this, the 12th day of MAY 19 69

J. A. BLACKWELL, Clerk

SEAL

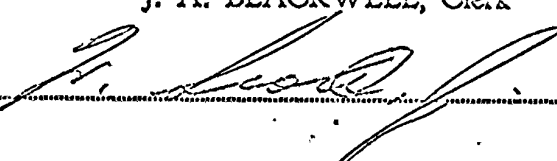
By:  D. C.

EXHIBIT 4

VOIR DIRE OF DEFENDANT ON WAIVER AND ORDER

JUDGE "James Earl Ray, stand."

JUDGE "Have your lawyers explained all your rights to you and do you understand them?"

DEFENDANT "Yes"

JUDGE "Do you know that you have a right to a trial by jury on the charge of Murder in the First Degree against you, the punishment for Murder in the First Degree ranging from Death by Electrocution to any time over twenty years? The burden of proof is on the State of Tennessee to prove you guilty beyond a reasonable doubt and to a moral certainty and the decision of the Jury must be unanimous both as to guilt and punishment?"

In the event of a jury verdict against you, you would have the right to file a Motion for a New Trial addressed to the trial judge? In the event of an adverse ruling against you on your Motion for a New Trial, you would have the right to successive appeals to the Tennessee Court of Criminal Appeals and the Supreme Court of Tennessee and to file a petition for review by the Supreme Court of the United States? Do you understand that you have all these rights?"

DEFENDANT "Yes"

JUDGE "You are entering a plea of Guilty to Murder in the First Degree as charged in the Indictment and are compromising and settling your case on agreed punishment of ninety-nine years in the State Penitentiary. Is this what you want to do?"

DEFENDANT "Yes"

JUDGE "Do you understand that you are waiving, which means "giving up", a formal trial by your Plea of Guilty although the laws of this State require the prosecution to present certain evidence to a jury in all cases of Pleas of Guilty to Murder in the First Degree?"

By your plea of guilty you are also waiving your rights to (1) Motion for a New Trial; (2) Successive Appeals to the Tennessee Court of Criminal Appeals and the Supreme Court of Tennessee; (3) Petition for Review by the Supreme Court of the United States.

By your plea of guilty you are also abandoning and waiving your objections and exceptions to all the Motions and Petitions in which the Court has heretofore ruled against you in whole or in part, among them being:

1. Motion to withdraw plea and quash indictment
2. Motion to inspect evidence
3. Motion to remove lights and cameras from jail
4. Motion for private consultation with attorney
5. Petition to authorize defendant to take depositions
6. Motion to permit conference with Huie
7. Motion to permit photographs
8. Motion to designate court reporters
9. Motion to stipulate testimony
10. Suggestion of proper name"

DEFENDANT "Yes"

JUDGE "Has anything besides this sentence of ninety-nine years in the penitentiary been promised to you to get you to plead guilty? Has anything else been promised you by anyone?"

DEFENDANT "No"

JUDGE "Has any pressure of any kind, by anyone in any way been used on you to get you to plead guilty?"

DEFENDANT "No"

JUDGE "Are you pleading guilty to Murder in the First Degree in this case because you killed Dr. Martin Luther King under such circumstances that would make you legally guilty of Murder in the First Degree under the law as explained to you by your lawyers?"

DEFENDANT "Yes"

Page 3
Voir Dire of Defendant on Waiver and Order

JUDGE "Is this Plea of Guilty to Murder in the First Degree with agreed punishment of ninety-nine years in the State Penitentiary, freely, voluntarily and understandingly made and entered by you?"

DEFENDANT "Yes"

JUDGE "Is this Plea of Guilty on your part the free act of your free will, made with your full knowledge and understanding of its meaning and consequences?"

DEFENDANT "Yes"

JUDGE "You may be seated."

James Earl Ray

Perry Foreman

STATE OF TENNESSEE }
Shelby County }

I, J. A. BLACKWELL, Clerk of the Criminal Courts of Shelby County, Tennessee,
do hereby certify that the foregoing THREE (3) pages of writing contain a full,
complete, true and perfect copy of Interrogation of defendant by Judge Battle
which proceedings took place in the case of the State of
Tennessee, vs. Docket No. 16645

JAMES EARL RAY

Indictment for MURDER FIRST DEGREE

as the same now appears on file, and of record in my office.

WITNESS my hand and the seal of said Court, at office in Memphis,

this, the 12th day of MAY, 1969

J. A. BLACKWELL, Clerk

SEAL

By: [Signature] D. C.

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
DIVISION II

STATE OF TENNESSEE

X

VS.

X

NO. 16645

JAMES EARL RAY

X

MEMORANDUM OF AUTHORITIES ON MOTION TO
STRIKE DEFENDANT'S MOTION FOR A NEW TRIAL

The defendant, James Earl Ray, having entered into a compromise settlement of the First Degree Murder Indictment pending against him and agreed and stipulated to the recommended punishment of confinement for ninety-nine years in the State Penitentiary and having submitted on a Plea of Guilty to verdict, sentence and judgment as agreed, now seeks review and reversal of said judgment by Motion for New Trial and/or Appeal.

The State feels that no such review is available to the defendant under the law.

The Supreme Court of the State of Tennessee in Mainturff v. State 207T102; 338 SW2 561, held as follows: "Now we think it is axiomatic that the defendant, having confessed judgment for fine and costs, had no right of appeal, nor did the Court have the power to grant such an appeal, because no one can appeal either in a criminal or a civil case from a verdict on a plea of guilty or a judgment based upon confession of liability. Therefore, the attempted appeal was a complete nullity..."

Along these same lines it is stated in 4 Am Jur 2 (Appeal and Errors) at paragraph 271: "A judgment in a criminal case which has been properly entered on a plea of guilty is, in effect, a judgment by confession, and ordinarily cannot be reviewed by appeal or error proceedings." It has been held that when a guilty plea is accepted and entered upon the

records, it is a conviction of the highest order. State v. Hamilton 337 Mo. 460, 85 SW2d 35.

In Kercheval v. United States reported at 274 U.S. 220, the Supreme Court of the United States stated as follows: "Out of just consideration for persons accused of crime, courts are careful that a Plea of Guilty shall not be accepted unless made voluntarily after proper advice and with full understanding of the consequences. When one so pleads he may be held bound."

The State further contends that in an over abundance of caution the defendant was fully and completely advised and did expressly waive any right he might have had to a Motion for a New Trial and/or Appeal.

In considering the questions of waiver the Tennessee Supreme Court in State ex rel Barnes vs. Henderson 423 SW2 497 noted at page 502: "As a general rule, subject to certain exceptions, any constitutional or statutory right may be waived if such waiver is not against public policy. In fact the trend of modern authority is in favor of the doctrine that a party in a criminal case may waive irregularities and rights whether constitutional or statutory, very much as in a civil case."

Quoting further from 21 Am Jur 2 Criminal Law, paragraph 219, the Supreme Court noted: "Where a constitutional right accorded the accused is treated as waivable, it may be waived by express consent, by failure to assert it in apt time, as by conduct inconsistent with a purpose to insist upon it."

In a very comprehensive opinion concerning Waivers, the Supreme Court of Tennessee in State ex rel Lea v. Brown 166 T 669 at page 691 defined Waiver as: "the voluntary relinquishment of a known right. It is a voluntary act and implies an election to dispense with something of value, or to forego some advantage which he might at his option have demanded

and insisted upon." Citing from a leading case, In re Cooner 95 N.Y. 512, the court further quoted: "It is very well settled that a party may waive a statutory and even a constitutional provision made for his benefit, and that having once done so he cannot afterward ask for its protection." Speaking further on that subject the Court held "The appellant is in this position. He participated as an actor in procuring the order which he now seeks to set aside, and took his chance... To that end there was not only acquiescence on his part but intelligent and efficient dealing with the matter and consent to the order. By this consent he must be deemed to have made his election and should be held to it."

The State feels that the defendant, James Earl Ray, made his choice to waive Motion for New Trial and/or Appeal, and the State of Tennessee having accepted his waiver proceeded at his request to dispose of his murder indictment under an agreed and stipulated compromise settlement, did call and present witnesses and did disclose by stipulated facts its entire evidentiary case; therefore, such election and estoppel strengthens the waiver by which defendant, Ray, should be bound.

In holding a defendant to be bound by his waiver of Motion for a New Trial and conventional Appeal, the Missouri Supreme Court in State vs. Pence 428 SW2 503 commented on the fact that the decision to waive motion for new trial was made by the defendant while represented by counsel and the record of the inquiry by the Court and Counsel showed the defendant was aware that his choice not to file a motion for a new trial would preclude a conventional appeal.

In Bradford v. State 184 Tenn. 694, the Tennessee Supreme Court in sustaining the trial Courts dismissal of a motion for a new trial where the defendant failed to appear held: "We are, accordingly, of the opinion that the defendant by his own act has waived the right to have his motion for a

new trial considered and determined. His conduct was in legal effect an abandonment of the prosecution of his motion."

It would certainly appear from a review of cases decided by the Supreme Court of Tennessee as well as the United States Supreme Court that the right of waiver in criminal cases is acknowledged. Several such opinions in addition to those heretofore referred to are: State v. Simmons 199 T 479; Adams v. United States ex rel McCann 317 U.S. 269; Patton vs. United States 281 U.S. 276.

There are certain allegations of fact in defendant's Motion which are denied by the State which lend themselves to postconviction relief rather than as grounds for a Motion for New Trial. The allegations and conclusions, even if true, would not be grounds for relief in a postconviction relief. See Richmond vs. Henderson, Tennessee Supreme Court, March 26, 1969. However, as the defendant is attempting to pursue an alleged Appellate remedy, that is, a Motion for a New Trial under Tennessee Code Annotated, Section 17-117, he must exhaust those remedies before proceeding under postconviction relief as provided in Tennessee Code Annotated 40-3802. The defendant has further failed to comply with Tennessee Code Annotated 40-3804 of the postconviction procedures.

On the above grounds it is therefore respectfully submitted that the defendant's Motion entitled "Amended and Supplemental Motion for New Trial and incorporates thereto" be dismissed as a matter of law.

Respectfully submitted,

PHIL M. CANALE, JR.
DISTRICT ATTORNEY GENERAL

NOTICE OF SERVICE

Copies of Petition to Strike and Memorandum of Authorities delivered personally to attorney for defendant, Richard J. Ryan, on May 13, 1969, at _____ p.m.

MONDAY, MARCH 10, 1969

Court met pursuant to adjournment, the Hon. W. Preston Battle, Judge, presiding; whereupon the following proceedings were had to-wit:

STATE OF TENNESSEE
VS B-16645
JAMES EARL RAY,
alias, ERIC STARVO GALT
alias, JOHN WILLARD
alias, HARVEY LOWMEYER
alias, HARVEY LOWMYER

MURDER IN THE FIRST DEGREE

Comes the Attorney General on the part of the State and the defendant in proper person and by counsel of record, Mr. Percy Foreman and Mr. Hugh Stanton, Sr. When to try the above cause there comes a jury of good and lawful men to-wit: AMOS G. BLACK, JR., JOHN W. BLACKWELL, JAMES N. ABRAHAM, ROBERT S. ST. PIERRE, MILLER WILLIAMSON, J. PAUL HOWARD, RICHARD LEE COUNSELLOR, JOE STOVALL, JR., JAMES R. PATE, JOHNNY SHAW, GUS CARIOTA, AND JAMES W. BALLARD, who were sworn well and truly to try the issue of traverse herein joined, a true deliverance make and a true verdict render according to the law and evidence. Thereupon the defendant on being arraigned at the bar of the Court and charged on the bill of indictment plead GUILTY to same, and for his trial put himself upon the Country and the Attorney General doth the like. Thereupon the Court proceeds with the hearing of testimony in the above cause, and after completion of testimony of five witnesses, and a lengthy stipulated statement by Assistant Attorney General James Beasley, the Jury upon their oath do say: WE THE JURY FIND THE DEFENDANT JAMES EARL RAY GUILTY OF MURDER IN THE FIRST DEGREE AS CHARGED IN THE INDICTMENT AND FIX HIS PUNISHMENT AT CONFINEMENT FOR NINETY-NINE (99) YEARS IN THE STATE PENITENTIARY AT NASHVILLE.

Thereupon the Court proceeds to pass sentence which is that he be taken by the Sheriff and remanded to Jail, and at the earliest convenience delivered to the WARDEN OF THE STATE PENITENTIARY, therein to be confined at hard labor for a period of NINETY NINE YEARS, and that he pay the cost of this prosecution for which let mittimus and execution issue. O/C 234 days Jail Credit.

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

W. Preston Battle
JUDGE

EXHIBIT 5

STATE OF TENNESSEE }
Shelby County }

I, J. A. BLACKWELL, Clerk of the Criminal Courts of Shelby County, Tennessee,
do hereby certify that the foregoing ONE (1) pages of writing contain a full,
complete, true and perfect copy of Guilty Plea ~~the proceedings~~ had in the case of the State of
Tennessee, vs. Docket No. 16645

JAMES EARL RAY

Indictment for MURDER FIRST DEGREE

as the same now appears on file, and of record in my office.

WITNESS my hand and the seal of said Court, at office in Memphis,

this, the 12th day of MAY 19 69

J. A. BLACKWELL, Clerk

SEAL

By: [Signature] D. C.