has been held by the Supreme Court of Tennessee since the Knowles case that a Petitioner present with attorney entering guilty plea and not objecting to statements made by the District Attorney General through stipulation is estopped from relying on the statute requiring evidence on a guilty plea. Barnes v. Henderson 423 SW2d 497 (1968).

To properly understand the purpose of the statute relied upon, Tennessee Code Annotated 17-117, one must return to the elementals of law. A trial is most commonly defined as a judicial investigation and determination of the issues between the parties to an action. The word is commonly used to designate that step in an action by which issues or questions of fact are decided but often signifies an examination of matters of law as well. 53 Am Jur Trial, Section 2, page 28. To further understand a "trial" the word issue must be defined. An issue is matter presented by a pleading which raises a point of fact or of law, or both, in a pending suit, requiring determination of a judicial tribunal. The production of an issue is the chief object of all pleading, and an issue arises on the pleadings when a fact or conclusion of law is maintained by the pleadings of one party and is controverted by the pleadings of the other. 71 CJS Pleadings, Section 512, page 1068. Issue has been further defined as a disputed point, Vita Graph Company of America v. Swaab 94 A. 126, or matter affirmed on one side and denied on the other. The Tordenskjold 53 F.2d 266. Further, as a point in dispute between parties on which they put their cause to trial. Martin v. Columbus 127 N.W. 411 (Ohio). In Tennessee it has been held when referring to issues raised by the proof that the word issue when thus used means facts put in controversy by the pleadings. Taylor v. State 212 Tenn. 187 at page 191.

To go even further a new trial is defined as a remedy

which is afforded to the litigant consisting of a re-examination of an issue by the trial court with a view to correcting errors which have occurred in the course of a preceding trial. 39 Am Jur New Trial, Section 2, page 33.

It is axiomatic then that Tennessee Code Annotated 17-117 pertains and applies only to a trial that is a contest of disputed issues and a judicial determination thereof. The Petitioner in this cause has never had a trial and of course cannot have a new trial. The Petition should be more properly titled a Motion for a Trial.

The death of Judge Battle can have no affect on the rights, if any, of the Petitioner as the situation is more analagous to the situation contemplated by Tennessee Code Annotated 17-118 rather than 17-117. Judge Battle had accepted the guilty plea, heard evidence, accepted the verdict of the jury thereon, sentenced and executed the verdict and signed the minutes of his actions therein. There was nothing further for Judge Battle to do in this matter. The only relief Judge Battle could have given Petitioner if he were still alive would be under a Writ of Habeas Corpus, a Petition for Postconviction Relief or a Motion to Withdraw his plea of guilty if the proper and required grounds were present. If the required grounds are present, any other court of the proper jurisdiction and standing could grant the same relief. Therefore, it is inescapable that Judge Battle's death has not prejudiced the rights, if any, of the Petitioner and that Tennessee Code Annotated 17-117 is not applicable.

The other ground on which Petitioner relies in his alleged Motion for a New Trial, more properly called a Motion for a Trial, the essence seems to be lack of competent counsel. As cited in the State of Tennessee's previous Memorandum of Authorities, Richmond v. Henderson, March 26, 1969, the Supreme

Court of Tennessee pointed out that the due process test for incompetency of counsel is conduct making the trial a farce, sham or mockery of justice. The case cited by the Petitioner, Swang v. State 42 Tenn. 212, states this test clearly when it says to disregard guilty plea there must appear a total misrepresentation of the prisoner's rights through official (emphasis supplied) misrepresentation, fear or fraud. In that particular case the court stated that a statement of the facts were unprecedented in the judicial history of the State and in effect amounted to common barratry and official oppression. In the two cases cited by Petitioner, State of Tennessee ex rel Owens v. Russell, Unreported Opinion of the Criminal Court of Appeals and Henderson v. State ex rel Lance 419 SW2d 176, the situation is a total misrepresentation of a fact to the defendant on a plea of guilty. In one, the Petitioner's attorney, the court and District Attorney General advised the Petitioner on his plea of guilty that his time would run concurrent with his parole violation and as pointed out as a matter of law, the court could not do this. This then was a total misrepresentation of a fact, and the plea was set aside. In the other case it was alleged that the District Attorney and the Petitioner's defense attorney entered into a conspiracy to trick the defendant into pleading guilty by lying to him as to the amount of time Petitioner would have to serve before being paroled. On the trial court's dismissal of the habeas corpus, the Court of Appeals held that an evidentiary hearing should have been granted and reversed for that purpose.

In the instant situation there is no allegation of official oppression, misrepresentation, or fraud. The only allegation is that certain financial dealings between the Petitioner and his privately retained counsel create a situation in which such counsel "forced" the Petitioner to plead guilty.

Court of Tennessee pointed out that the due process test for incompetency of counsel is conduct making the trial a farce, sham or mockery of justice. The case cited by the Petitioner, Swang v. State 42 Tenn. 212, states this test clearly when it says to disregard guilty plea there must appear a total misrepresentation of the prisoner's rights through official (emphasis supplied) misrepresentation, fear or fraud. In that particular case the court stated that a statement of the facts were unprecedented in the judicial history of the State and in effect amounted to common barratry and official oppression. In the two cases cited by Petitioner, State of Tennessee ex rel Owens v. Russell, Unreported Opinion of the Criminal Court of Appeals and Henderson v. State ex rel Lance 419 SW2d 176, the situation is a total misrepresentation of a fact to the defendant on a plea of guilty. In one, the Petitioner's attorney, the court and District Attorney General advised the Petitioner on his plea of guilty that his time would run concurrent with his parole violation and as pointed out as a matter of law, the court could not do this. This then was a total misrepresentation of a fact, and the plea was set aside. In the other case it was alleged that the District Attorney and the Petitioner's defense attorney entered into a conspiracy to trick the defendant into pleading guilty by lying to him as to the amount of time Petitioner would have to serve before being paroled. On the trial court's dismissal of the habeas corpus, the Court of Appeals held that an evidentiary hearing should have been granted and reversed for that purpose.

In the instant situation there is no allegation of official oppression, misrepresentation, or fraud. The only allegation is that certain financial dealings between the Petitioner and his privately retained counsel create a situation in which such counsel "forced" the Petitioner to plead guilty.

Under Richmond v. Henderson supra the allegation does not raise even the question required by law for the lack of effective or competent counsel or under the requirements set forth in the Swang case cited by the Petitioner. Therefore, assuming for purpose of argument Petitioner's allegations to be true, the court as a matter of law should dismiss Petitioner's alleged Motion for New Trial.

Respectfully submitted,

PHIL M. CANALE, JR.
DISTRICT ATTORNEY GENERAL

NOTICE OF SERVICE

Copy of Reply Brief delivered personally to attorney for defendant, Richard J. Ryan, on May 23, 1969, at _____m.

44-1987-Sub-0-128

SEARCHED
SERIALIZED MB
INDEXED
FILED MB

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
DIVISION II

STATE OF TENNESSEE	I	
VS.	I	NO. 16645
JAMES EARL RAY	I	

MOTION TO STRIKE AMENDMENT
TO MOTION FOR NEW TRIAL

Comes now Phil M. Canale, Jr., District Attorney General for the Fifteenth Judicial Circuit of Tennessee and for the State of Tennessee would show the Court as follows:

That all allegations of fact in conclusion in the Amendment to Motion for New Trial are denied.

State of Tennessee moves the Court to strike the Amendment to Motion for New Trial on the grounds previously cited in the State of Tennessee's Motion to Strike to the Supplemental Motion for New Trial.

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

NOTICE OF SERVICE

Copy of Motion to Strike Amendment to Motion for New Trial delivered personally to attorney for defendant, Richard J. Ryan, on May 23, 1969, at _____m.

44-1987-Sub-D-129

5/23/69

AIRTEL AM

TO: DIRECTOR, FBI (44-38861)

FROM: SAC, MEMPHIS (44-1987) P

MURKIN

Enclosed are two copies each of "Reply Brief" and 'Motion to Strike Amendment to Motion for New Trial" furnished by office of the District Attorney General, Memphis, Tennessee, on this date in captioned matter.

2 BUREAU (Enc. 4)
1 MEMPHIS
RGJ:EM
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SEARCHED
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44-1987-Sub-D-138

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

DIVISION III

STATE OF TENNESSEE,	)	
Plaintiff,	)	NO. 16645 Murder First Degree
Vs.	)	
JAMES EARL RAY, Alias ERIC STARVO GALT, Alias JOHN WILLARD, Alias HARVEY LOWMEYER, Alias HARVEY LOWMYER,	)	NO. 16819 Carrying Dangerous Weapon
Defendant.	)	

Filed
5-23-69
In Court
Roger Nelson, D.C.

REPORT OF AMICI CURIAE

Your committee has researched the question of the status of the contempt hearings involved in the above matters. With regard to the actions against Renfro T. Hayes, Arthur Hanes, Sr., Charles Edmundson and Roy Hamilton, it is your committee's considered opinion that, since Judge W. Preston Battle never sentenced those parties before his death, this Court, as his successor in the handling of these matters, cannot now do so without first granting a new trial to each offender. Your committee does not feel that this Court has the jurisdiction to pass sentence upon another judge's adjudication of guilt. Howard v. State, 217 Tenn. 556, 399 S.W. 2d 738 (1965); McClain v. State, 186 Tenn. 401, 210 S.W. 2d 680 (1948); Jackson v. Mandell, 46 Tenn. App. 234, 327 S.W. 2d 55 (1959).

While there is no question but that this Court has jurisdiction to try the offending parties again, even though the violations involve an order issued by another court [see Mayhew v. Mayhew, 52 Tenn. App. 459, 376 S.W. 2d 324 (1964)], your committee recommends the dismissal of petitions against the above named four parties for these reasons:

1. In a new trial of those accused of having violated the Court's orders regarding pre-trial publicity, it will be

impossible, now that a guilty plea has been entered in the Ray case, to recapture the atmosphere which surrounded that trial prior to the guilty plea. Therefore, the clear and present danger to a fair trial, (so obvious at the time), which made necessary the promulgation of orders regarding pre-trial publicity, now no longer exists. It would be unfair and unwise to test the validity of an order of such import or to try the violators with a record created after the necessity for such orders has been eliminated.

2. More important, the purpose and goal toward which Judge W. Preston Battle strove by issuing such pre-trial publicity orders has been accomplished. With the exception of those cited for contempt, it is felt that publicity in advance of the trial, prejudicial to the defense or the prosecution, has been effectively limited in accordance with the mandate from the United States Supreme Court requiring that "the courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences". Sheppard v. Maxwell, 384 U.S. 333, 16 L. Ed. 2d 600, 86 S. Ct. 1507 (1966). It is, in fact, a monument to Judge Battle that, despite the overwhelming pressure from the news media and the natural desire of counsel and their associates for both sides to publicize the strong points of their positions, there were relatively few who acted in violation of the orders designed solely to assure a fair and impartial trial to both sides. It is regrettable that some have chosen to read into these orders an effort to censor the news media. While it is doubtful that such critics could be otherwise persuaded, it should be restated that Judge Battle's oral decision, holding four offenders in contempt, makes clear his sole purpose, indeed that toward which he totally dedicated the last few months of his life:

> "This Court must place the interests of justice first. Justice demands a fair trial

by an impartial jury for both the defendant, James Earl Ray, and the State of Tennessee."

If this Court agrees that a dismissal of petitions against Renfro T. Hays, Roy Hamilton, Arthur Hanes, Sr., and Charles Edmundson is appropriate, your committee believes that fairness requires a like dismissal as to William Bradford Huie, James T. Bevel, and George Bonebrake. Others found in probable violation of the Court's orders have been and are stil beyond the jurisdiction of the Court and thus have never been served with process.

Should this Court believe that your committee is in error as to its legal conclusion, or should this Court believe that those cited parties should be retried, your committee is of course available to assist as called upon.

Respectfully submitted,

Lucius E. Burch, Jr.

J. Alan Hanover

Cooper Turner, Jr.

James D. Causey

Leo Bearman, Jr.

Lee A. Hardison

Don G. Owens

44-1987-Sub-D-131

5/24/69

AIRTEL

TO: DIRECTOR, FBI (44-38861)

FROM: SAC, MEMPHIS (44-1987) (P)

SUBJECT: MURKIN

Enclosed for the Bureau are two copies of "Report of Amici Curiae" which has been adopted by Judge ARTHUR FAQUIN thus making it unnecessary for Senior Fingerprint Examiner GEORGE BONEBRAKE to appear to answer the citation for contempt.

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44-1987-Sub-O-132

FD-36 (Rev. 5-22-64)

FBI

Date: 5/26/69

Transmit the following in _____
(Type in plaintext or code)

Via TELETYPE URGENT
(Priority)

TO: DIRECTOR (44-38861)

FROM: MEMPHIS (44-1987) 2P

MURKIN.

RE MEMPHIS AIRTEL TO BUREAU DATED APRIL EIGHT LAST ENCLOSING TWO COPIES OF AN AMENDED AND SUPPLEMENTAL MOTION FOR A NEW TRIAL FILED ON BEHALF OF JAMES EARL RAY AND MEMPHIS RADIOGRAM TO BUREAU DATED APRIL SIXTEEN LAST.

A HEARING IN THIS MATTER WAS HELD ON THIS DATE BY THE HONORABLE ARTHUR C. FAQUIN, SHELBY COUNTY CRIMINAL COURT JUDGE, DIVISION THREE, MEMPHIS, TENN. PRIOR TO HEARING ARGUMENTS ON THE MOTION IN QUESTION AND BASED UPON A MOTION BY THE DEFENSE, JUDGE FAQUIN INSTRUCTED THAT THE PARAGRAPHS COMMENCING WITH ROMAN NUMERAL ONE THROUGH ROMAN NUMERAL EIGHT BE STRICKEN FROM THE PURPORTED "AMENDED AND SUPPLEMENTAL MOTION FOR A NEW TRIAL" WHICH WAS FORWARDED TO THE BUREAU WITH RE AIRTEL. ROBERT K. DWYER, ASSISTANT STATE ~~ATTORNEY~~ GENERAL, MEMPHIS, ADVISED THAT THE ATTORNEYS FOR ~~JAMES EARL~~ RAY REQUESTED THAT THESE PARAGRAPHS BE STRICKEN ~~FROM THE~~ MOTION AS RAY WOULD HAVE BEEN REQUIRED TO TAKE THE

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Approved: _____ Sent Dec. 2:22 P M Per _____
Special Agent in Charge

FD-36 (Rev. 5-22-64)

FBI

Date:

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(Type in plaintext or code)

Via _____ _____
(Priority)

ME 44-1987
PAGE TWO

STAND IN ORDER TO SUBSTANTIATE THE ALLEGATIONS CONTAINED THEREIN.

AT TWELVE FORTY FIVE P.M. CDST ~~CST~~, JUDGE FAQUIN RULED IN FAVOR OF THE STATE OF TENNESSEE AND DENIED RAY'S PURPORTED "AMENDED AND SUPPLEMENTAL MOTION FOR A NEW TRIAL." JUDGE FAQUIN ORDERED THAT RAY BE RETURNED TO THE STATE PRISON AT NASHVILLE, TENN., TO SERVE HIS SENTENCE.

JUDGE FAQUIN POINTED OUT TO THE ATTORNEYS REPRESENTING RAY, NAMELY, ROBERT HILL, RICHARD RYAN AND J. B. STONER, THAT RAY DOES HAVE OTHER LEGAL RECOURSE; HOWEVER, THE MOTIONS FILED TO DATE WERE NOT IN PROPER FORM TO BE CONSIDERED EITHER A WRIT OF HABEAS CORPUS OR A MOTION FOR A NEW TRIAL UNDER THE STATE OF TENNESSEE POST CONVICTION ACT.

BUREAU WILL BE KEPT ADVISED OF ANY ADDITIONAL PERTINENT DEVELOPMENTS IN THIS MATTER. P.

END.

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

6/6/69

AIRTEL AM

TO: DIRECTOR, FBI (44-38861)

FROM: SAC, MEMPHIS (44-1987) P

MURKIN

For the information of the Bureau, there are enclosed one copy each of "Motion to Dismiss 'Amended Petition' on Behalf of the Defendants PERCY FOREMAN and WILLIAM BRADFORD HUIE," and "Motion to Dismiss Amended Petition" filed in U. S. District Court, Nashville, Tennessee.

2 BUREAU (Enc. 2)(AM)
1 MEMPHIS
RGJ:BN
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O 44-1987-Sub-O-134

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U N I T E D S T A T E S D I S T R I C T C O U R T

F O R T H E

MIDDLE DISTRICT OF TENNESSEE - NASHVILLE DIVISION

FILED

JUN 5 - 1969

BRANDON LEWIS, Clerk
By [signature] D.C.

JAMES EARL RAY
Resident of Tennessee

Plaintiff

Vs

ARTHUR J. HANES, PERCY FOREMAN and WILLIAM BRADFORD HUIE

Defendants

CIVIL ACTION FILE NO. 5 3 8 0

MOTION TO DISMISS AMENDED PETITION

Defendant, Arthur J. Hanes, respectfully refiles to the amended Petition last filed in this cause the Motion to Dismiss heretofore filed to the original and first Petitions in this cause and as additional grounds therefor, sets down and assigns the following separately and severally:

3. The original Petition, the amendments thereto, and the exhibits filed by Plaintiff affirmatively show on their face that Plaintiff did release and discharge HANES from any and all claims, demands, actions and causes of action which (he)..., but for this release, might now have or hereafter might have against HANES under or pursuant to said basic agreement, the assignment agreement or any other agreements or contracts, written or oral, heretofore entered into between said parties or any of them with respect to the subject matter of said basic agreement.

[signature]

ARTHUR J. HANES, JR.
ATTORNEY FOR DEFENDANT, ARTHUR J. HANES
617 Frank Nelson Building
Birmingham, Alabama 35203

C E R T I F I C A T E O F S E R V I C E

I hereby certify that I have this day mailed, postage prepaid, a copy of the foregoing Motion to Dismiss Amended Petition to Honorable Robert W. Hill, Jr., 418 Pioneer Building, Chattanooga, Tennessee, 37402, and Honorable J. B. Stoner, Savannah, Tennessee, 38372, Attorneys for Plaintiff.

This is the 2 day of June, 1969.

Arthur J. Hanes, Jr.

ARTHUR J. HANES, JR.
ATTORNEY FOR DEFENDANT, ARTHUR J. HANES
617 Frank Nelson Building
Birmingham, Alabama 35203

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES EARL RAY)
)
)
vs.) Civil No. 5380 ~~5389~~
)
)
PERCY FOREMAN,)
WILLIAM BRADFORD HUIE,)
and ARTHUR J. HANES)

MOTION TO DISMISS "AMENDED PETITION" ON BEHALF OF THE DEFENDANTS PERCY FOREMAN AND WILLIAM BRADFORD HUIE

The defendants move the Court as follows:

(1) To dismiss the amended petition because it fails to state a claim against these defendants upon which relief can be granted.

(2) To dismiss the amended petition and this action on the ground that it is filed in the wrong district, because the plaintiff is not a resident of the Middle District of Tennessee and the Middle District of Tennessee is not the judicial district in which the claim arose.

(3) To dismiss the action on the ground that the amended petition shows that the plaintiff's legal residence or domicile is in Illinois; the defendant Percy Foreman is a resident of Texas; the defendant William Bradford Huie is a resident of Alabama; and the defendant Arthur J. Hanes is a resident of Alabama. Therefore, it appears that neither the plaintiff nor the defendants

reside in the Middle District of Tennessee nor that the Middle District of Tennessee is the judicial district in which the claim arose, as required by 28 U.S.C. 1391.

HOOKER, KEEBLE, DODSON & HARRIS

By _____
Attorneys for defendants Percy Foreman
and William Bradford Huie,
900 Nashville Bank & Trust Building
Nashville, Tennessee 37201

CERTIFICATE OF SERVICE

I, John J. Hooker, hereby certify that the foregoing motion has been served on the attorneys for the plaintiff by mailing copies thereof, by first class mail, to the Honorable Robert W. Hill, Jr., 418 Pioneer Building, Chattanooga, Tennessee 37402, and the Honorable J. B. Stoner, Savannah, Georgia; and to the Honorable Arthur J. Hanes, Jr., attorney for the defendant, Arthur J. Hanes, 617 Frank Nelson Building, Birmingham, Alabama 35203, this 2nd day of June, 1969.

_____
John J. Hooker

6-16-69

AIRTEL AM

TO: DIRECTOR, FBI (44-38861)

FROM: SAC, MEMPHIS (44-1987) P

MURKIN

Submitted herewith for the completion of the Bureau's file are two Xerox copies of a "Prayer for Appeal" which was heard before Judge ARTHUR C. FAQUIN, JR. at Memphis, 6-16-69. Judge FAQUIN denied the "Prayer for Appeal." J. B. STONER and RICHARD J. RYAN both appeared before Judge FAQUIN this date. Judge FAQUIN advised Attorneys STONER and RYAN that they had 60 additional days in which to file a "Wayside Bill of Exceptions," in order to protect the record and give them other avenues of legal appeal.

This matter will be followed and the Bureau will be kept advised.

2 BUREAU (Enc. 2)(AM)
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44-1987-Sub-D-135

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE

VS

JAMES EARL RAY,

Defendant

NO. 16645

FILED 6/16/69
J. A. BLACKWELL, CLERK
BY [illegible] D. C.

PRAYER FOR APPEAL

Comes now the defendant, James Earl Ray, by and through his attorney of record, Richard J. Ryan, having heretofore respectfully excepted to Your Honor's ruling upon his Motion for a New Trial, now moves this Honorable Court for permission and leave to file his Appeal from this Court to the Court of Criminal Appeals for the Western District of Tennessee.

Richard J. Ryan

RICHARD J. RYAN,
ATTORNEY FOR DEFENDANT

Prem copies [illegible]

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

DIVISION THREE

STATE OF TENNESSEE	I	
	I	
VS	I	NO. 16645
	I	
JAMES EARL RAY, Alias ERIC STARVO GALT, Alias JOHN WILLARD, Alias HARVEY LOWMEYER, Alias HARVEY LOWMYER	I	

MEMORANDUM FINDING OF FACTS AND CONCLUSIONS OF LAW

Indictment No. B-16645 charges the Defendant, James Earl Ray with the offense of Murder in the First Degree in the murder of Dr. Martin Luther King. On March 10, 1969, the defendant, James Earl Ray, while represented by an Attorney of his own choosing, Mr. Percy Foreman, and by Court appointed Attorneys, Messrs. Hugh Stanton Sr. and Jr., came into Division III of this Court and before the Honorable W. Preston Battle, then Judge of this Court, entered a Plea of Guilty to Murder in the First Degree as charged in this Indictment. A Jury was empanelled, sworn, evidence of witnesses presented, stipulations heard, and a plea of Guilty to Murder in the First Degree was entered in the presence of this Jury. The Jury approved the Guilty Plea and accepted and approved the agreed upon State's recommendation of Ninety-Nine (99) Years Confinement in the State Penitentiary, at Nashville, Tennessee. The Defendant, James Earl Ray was sentenced by Judge Battle, and, at that time, he waived any right to a Motion for a New Trial and Appeal as shown by the minutes of this Court for that day. Judge Battle signed these minutes which are marke exhibits two (2) and three (3) to today's hearing.

On March 31, 1969, Judge Battle died.

On April 1, 1969, two letters purporting to be from the defendant, James Earl Ray and dated March 13, 1969, and March 26, 1969, respectively, were filed with the Clerk of this Court.

On April 7, 1969, a Petition entitled "Amended and Supplemental Motion for a New Trial" and incorporating therein by reference "letters asking for a new trial, especially that communication addressed to Judge W. Preston Battle, dated March 26, 1969," and "he hereby amends and supplements said letters to the effect that he moves this Honorable Court to set aside his Waiver, his Plea of Guilty, and his Conviction and grant him a New Trial pursuant to and in accordance with Section 17-117 of the Tennessee Code Annotated." Seven Exhibits were attached to this amended and supplemental motion, which exhibits were withdrawn this morning before the hearing. This motion was further amended on May 19, 1969.

It is obvious from the wording of the Petition, that the defendant and his privately employed attorneys, Mr. Richard J. Ryan, Mr. J. B. Stoner and Mr. Robert W. Hill, Jr., intended for this Petition to be a Motion for a New Trial. Such was their statement in open Court today.

Tennessee Code Annotated, Section 17-117 reads as follows:

> "New Trial after death, or insanity.- Whenever a vacancy in the office of trial Judge shall exist by reason of the death of the incumbent thereof, or permanent insanity, evidenced by adjudication, after verdict but prior to the hearing of the Motion for a New Trial, a new trial shall be granted the losing party if motion therefor shall have been filed within the time provided by the rule of the Court and be undisposed of at the time of such death or adjudication."

No rule of Court has been introduced into evidence in this case.

On May 13, 1969, the District Attorney General for the Fifteenth Judicial Circuit for the State of Tennessee, filed a Motion to Strike 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." Five exhibits were attached.

The "Motion to Strike" as shown on its face and attached exhibits, as well as the accompanying "Memorandum of Authorities", is based on the theories:

(1) that there is no Motion for a New Trial from a Guilty Plea; and

(2) that the defendant waived any right he had to a Motion for a New Trial and an Appeal.

The State filed on May 23, 1969, a Motion to Strike the "Amendment to Motion for a New Trial," based on the same grounds as cited in the original Motion to Strike.

Each party has filed a Memorandum of Authorities. The Motion to Strike has come on to be heard on this the 26th day of May, 1969. The State is represented at this hearing by Executive Assistant Attorney General, Robert K. Dwyer, Administrative Assistant, Lloyd A. Rhodes, and Assistant Attorney General, Clyde Mason. The defendant is represented by Mr. Richard J. Ryan, Attorney-at-law of the Memphis Bar, Mr. J. B. Stoner, Attorney-at-law from Georgia, and Mr. Robert W. Hill, Jr., Attorney-at-law of the Chattanooga Bar. All are privately retained counsel of the defendant's own choosing.

The statement has been made that I, as successor Judge, cannot hear this Motion or Petition of the Defendant, which purports to be a Motion for a New Trial, and not being able to hear a Motion for a New Trial in a case disposed of by another Judge, I cannot approve and sign a Bill of Exceptions in the case.

The further contention of the defendant, James Earl Ray is, that without the approved and signed bill of exceptions, he is denied his constitutional right of Appellate Review, without fault of his own.

In answer to these questions, I find that:

(1) I do not, as a successor Judge, have the right to hear a Motion for a New Trial or approve and sign the Bill of Exceptions. Allison vs State, 189 Tenn 67; Darden vs Williams, 100 Tenn 414; Dennis vs State, 137 Tenn 543; O'Quinn vs Baptist Memorial Hospital, 182 Tenn 558; and McLain vs State, 186 Tenn 401.

(2) The defendant had a constitutional and statutory right to have his case reviewed in the Appellate Courts and relief would be awarded if he was deprived of such right without fault of his own. Dennis vs State, supra; State ex rel Terry vs Yarnell, 156 Tenn 327; Tenn Central Railway Co. vs Tedder, 170 Tenn 639.

I emphasize the phrase "Without fault of his own."

Since I, as successor Judge, cannot hear a Motion for a New Trial in this case, do I then have the power to hear and rule on a Motion to Strike a Petition that purports to be, and the defendant insists is, a Motion for a New Trial?

The defendant says that I do not.

I am of the opinion that I do have that power just as I would have the power to hear a Petition for Writ of Habeas Corpus or a Petition filed under the Post Conviction Act in this case; provided the defendant did not have a right to file a Motion for a New Trial, or, if the defendant's Motion for a New Trial had already been disposed of by Judge Battle by Defendant's Waiver of such right.

> "It is well established in this State, that a Motion for a New Trial is nothing but a pleading, and cannot be looked to as establishing facts that it alleges." Monts vs State, 214 Tenn 171.

> "A Plea may be stricken on motion on the ground that the pleading is not authorized by the procedure of the forum, or that the issue to be raised has already been determined conclusively of record." Wharton's Criminal Procedure, Sec. 1907, Page 775, Vol. IV.

This is a unique case because, to test TCA Sec. 17-117, it appears that, the defendant would have to file what he would allege to be a Motion for a New Trial. If this Court did not act upon such a Motion, possibly a Writ of Mandamus could issue, or a Petition for Writ of Habeas Corpus, or a Petition under the Post Conviction Act could be filed and heard, citing this statute. I feel, however, that the proper procedure is for me to act upon the Motion to Strike the Petition that purports to be a Motion for a New Trial, and if the Motion to Strike is granted, then a Petition for a Writ of Habeas Corpus or a Petition under the Post Conviction Act could be filed. The Motions and Petitions filed so far by the Defendant, do not contain the necessary elements required by statute, to allow the Court to act upon them as either a Petition for Writ of Habeas Corpus or a Petition under the Post Conviction Act; especially since the defendant has made it clear that they are to be treated as a Motion for a New Trial.

Two main questions present themselves to be decided today. The first question is: whether the defendant, Ray, had a right to a Motion for a New Trial in a case disposed of on a Guilty Plea based upon an agreed upon settlement and submission. I have been unable to find that this precise question has been decided before in Tennessee.

The second question is two-fold: (1) Can a defendant expressly waive his right to a Motion for a New Trial in Tennessee; (2) if he can, did the defendant, Ray, effectively waive that right in this case?

If the defendant, Ray, did not have a right to a Motion for a New Trial, in his case, because it was disposed of on an effective guilty plea based upon an agreed uponssettlement and submission, or, if he could expressly waive his right to a Motion for a New Trial, and, in fact, did effectively waive that right, then, in either event, TCA 17-117 could not apply since the Motion for a New Trial had already been disposed of. Consequently, the State's Motion to strike would have to be granted.

I

I will now discuss the first question, and dispose of it.

Tennessee Code Annotated, Section 40-3401, gives either party to a criminal proceeding, except the State upon a judgment of Acquittal, the right to pray an appeal in the Nature of a Writ of Error as in civil cases.

On Page 901 of Caruther's History of a Lawsuit (Eighth Edition) under the section heading of "Motions for New Trial and in Arrest of Judgment" is found the following statement:

> "If the Defendant is acquitted, the State cannot obtain a New Trial. But if he is convicted, he is entitled to a New Trial upon all the grounds heretofore stated as sufficient in a civil suit. A Motion for a New Trial is not a prosecution by the State, but a proceeding in error brought by the accused to reverse a judgment rendered against him by the Trial Court."

The purposes of a Motion for a New Trial are stated in Adams vs Patterson, 201 Tenn 655, as follows:

> "Motions for New Trial serve two purposes to-wit:
>
> (a) to suspend the judgment so that the trial judge may have time to correct his errors by the grant of a new trial; and
>
> (b) to set out the error as a ground and as prerequisite to an Appellate review where such error depends upon a bill of exceptions. Memphis Street Railway Co vs Johnson, 114 Tenn 632, 88 S.W. 169."

In Tennessee, there are various proceedings for the correction of errors. They are enumerated in Tennessee Code Annotated, Section 27-101.

> TCA 27-101. "Methods of correcting error.- Errors not embraced by the provisions of this Code, in regard to amendments, may be corrected in one or more of the following modes: (1) By Writ of Error Coram Nobis; (2) By Re-hearing, Review, or New Trial; (3) By Certiorari; (4) By Appeal; (5) By Appeal in the Nature of a Writ of Error; (6) By Writ of Error."

The next Section of the Code provides that certain actions release errors.

> TCA 27-102. "Release of Error by Confession or Injunction. - A Judgment by confession, or the suing out of an injunction against a defendant at law, is a release of errors."

It has been held that a judgment properly entered on a guilty plea is, in effect, a judgment by confession.

> "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." 4 Am. Jur. (2d), Appeal and Error, paragraph 271.
>
> And, "In a criminal case a party cannot, as a general rule, have a judgment properly entered on a plea of guilty reviewed by appeal or error proceedings, since such judgment is in effect a judgment by confession." Wharton's Criminal Procedure, Volume 5, Section 2247, page 498.

Caruthers History of a Law Suit (Eighth Edition) Page 688, says:

> "A judgment by confession cannot be appealed from, either in a civil or criminal case."

Our Supreme Court said in the case of McInturff vs State, 207 Tenn 102:

> "Now, we think it is axiomatic that the defendant, having confessed judgment for the 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."

Since it appears that the Court in the McInturff case has recognized in Tennessee that a defendant in a Criminal case cannot appeal from a verdict on a plea of guilty, it must next be determined whether a defendant in a criminal case has a right to a Motion for a New Trial from a verdict on a plea of guilty.

In Bradford vs State, 184 Tenn 694, the Court said:

> "An appeal from a conviction in the lower Court is analogous to a motion for a new trial in the lower court to set aside the verdict of the jury in that in both situations the prodeedings are commenced and prosecuted by the defendant in an effort to show cause why his conviction should not be set aside and a new trial granted."

In 24 Corpus Juris Secundum, Criminal Law, Section 1418, Page 3, is found the following paragraph:

> "A new trial can be granted only after a trial, and hence a motion therefor is properly overruled where there has been no trial, as where the original proceedings consisted merely of an arraignment and a plea of guilty. A Motion for a New Trial right after a plea of guilty and trial by Court to determine question of mercy has been held properly overruled."

The Supreme Court of Tennessee in several cases has recognized that there is a difference between a trial and a plea of guilty.

> "Defendant did not go to trial but chose instead to enter a plea of guilty" State ex rel, Hall vs Meadows, 389 S.W. (2d) 256; State ex rel Wood vs Johnson, 393 S.W. (2d) 135.
>
> "It must be remembered also that this man entered a plea of guilty to the charge and received a reduced sentence. There was nothing from which he could logically appeal." State ex rel Reed vs Heer, 403 S.W. (2d) 310.

As cited above in Tennessee Code Annotated, 27-101, Motions for New Trial and Appeals are modes of correcting errors. Since a "Judgment properly entered on a plea of guilty" is, in effect, a judgment by confession, and a judgment by confession is a release of errors (Tennessee Code Annotated 27-102), the need for a Motion for a New Trial is not present.

The question now arises as to what constitutes a judgment properly entered on a plea of guilty.

In discussing the principle that a judgment properly entered on a plea of guilty cannot be reviewed by appeal or error proceedings, Wharton's Criminal Procedure, Section 2247, Volume 5, page 498 says:

> "Before proceeding to make such a plea the foundation of a judgment, however, the Court should see that it is made by a person of competent intelligence, freely and voluntarily, and with a full understanding of its nature and effect, and of the facts on which it is founded."

Judge Oliver, in State ex rel, Lawrence vs Henderson, 433 S.W. (2d) 96 (1968), Certiorari denied by the Supreme Court of Tennessee on November 4, 1968, cited the law concerning the entering of a plea of guilty as follows:

"A guilty plea induced by promises or threats or other coercion is not voluntary and is a nullity, and a conviction based on such an involuntary plea of guilty is void. Machibroda vs U.S., 368 U.S. 487, 82 Supreme Court 510, 7 Lawyer's Edition (2d) 437;" (citing other cases). In State ex rel Barnes vs Henderson, 220 Tenn, 719, 423 S.W. (2d) 497, our Supreme Court recognized this universal rule: 'It is recognized in this State, as in all jurisdictions, that a plea of guilty must be made voluntarily and with full understanding of its consequences.' And in Brooks vs State, 187 Tenn 67, 213 S.W. (2d) 7, the Court said: '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 with full understanding of the consequences.'"

The United States Supreme Court, in McCarthy vs United States, supra said:

"Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts."

In order to determine whether or not a judgment was properly entered on a plea of guilty by Ray in this case, it will be necessary to apply the above rules of law to the facts presented at this hearing. This will be done later in this memorandum.

Therefore, for the reasons cited above in this opinion, I find as a matter of law, that a defendant in a criminal case, cannot have a judgment properly entered on a plea of guilty reviewed by a Motion for a New Trial.

II

The next question to be decided is: Can a defendant expressly waive his right to a Motion for a New Trial in a Criminal Case in Tennessee?

In deciding this question, it is necessary to discuss several principles concerning appeals and waivers.

In Tennessee, a defendant in a Criminal case has a constitutional and statutory right to have his case reviewed in the Appellate Courts and relief would be awarded if he was deprived of such right without fault of his own. Dennis vs State, supra; State ex rel Terry vs Yarnell, supra; and Tennessee Central Railway Co vs Tedder, supra.

Since a defendant does have this right, can he waive it? The Supreme Court of Tennessee has held that he can.

In the case of the State of Tennessee ex rel Doyle vs Henderson, 425 S.W. (2d) 593, (1968), on page 596, the Court held:

> "It seems to us whether or not a defendant, and particularly this Petitioner, has been deprived of his constitutional right to Appellate review depends upon the facts and circumstances of his case. The legal principles as announced in each of the cases cited above merely furnish guidelines in the application of this protected right. As said above no court that we can find has held that a defendant must appeal his case or that a waiver will not be recognized."

And later on the same page, the Court says:

> "We think, after careful consideration, that under a factual situation as here presented, this amounts to an oral waiver of appeal and none of the constitutional rights of this Petitioner has been violated by not granting him a New Trial from which he could perfect an appeal."

Further evidence that he may waive this right is shown in the case of State vs Simmons, 199 Tenn 479 (1956), in which Chief Justice Neil in his concurring opinion, quotes from perhaps the leading case on the subject of waivers in Tennessee, State ex rel Lea vs Brown, 166 Tennessee 669, 692, 693, Certiorari denied 54 Supreme Court Reporter, 717, 292 U.S. Supreme Court Reports 638, 78 Lawyers Edition 1491 as follows:

> On Page 491- "A party may waive any provision of a contract, statute, or constitution intended for his benefit." On Page 492. So, it was said in a leading case, In Re: Cooper, 93 N. Y. (507), 512, '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 afterwards ask for its protection.'

This quoted principle is set out in Wallace vs State, 193 Tenn, on page 186, and in State ex rel Barnes vs Henderson, 423 S.W. (2d) 497 (1968).

In State ex rel Barnes vs Henderson, supra; the Court said:

> "As a general rule, subject to certain exceptions, any constitutional or statutory right may be waived if such waiver is not against public policy."; AND "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, or by conduct inconsistent with a purpose to insist upon it."

It appears then that not only can the right of appeal be waived but any other statutory or constitutional provision, made for his benefit, may likewise be waived, and that once this right or provision has been waived the defendant cannot afterward ask for its protection. This being true, it must then follow that a Motion for a New Trial can likewise be waived.

Further proof that the right to a Motion for a New Trial can be waived is shown by the following quotations and authorities:

In Hall vs State, 110 Tenn 365, the Court said:

> "In his work on General Practice, Judge Elliott (Volume 2, Section 995) says: 'The right to move for a New Trial may be waived by agreement in advance or by inconsistent acts, or by neglecting to take the proper steps. Thus it has been held moving in arrest of Judgment before moving for a new trial is a waiver of the latter motion.'; AND
>
> "The practice in this State is well settled that a Motion in Arrest of Judgment made before a Motion for a New Trial waives the latter motion." This last statement is quoted and cited in Palmer vs State, 121 Tenn. page 489. Almost the identical quote is found in Green vs State, 147 Tenn 299.

In Bradford vs State, supra, where the defendant was not present when his Motion for a New Trial came on to be heard, the Tennessee Supreme Court 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. We think, therefore, that the Court did not commit error in ordering the dismissal of that motion. It's judgment so ordering is affirmed."

The Supreme Court of Missouri in the case of State vs Pence, 428 S.W. (2d) 503 (1968), said:

> "Appellant cites no case in which it has been held that the waiver of the right to file a Motion for a New Trial is, as a matter of law, involuntary when the defendant is not specifically advised of the rights which he will be afforded on appeal. Maness vs Swenson, 8th Circuit, 385, Fed. 2d 943, does hold that the right to appeal must be knowingly and intelligently waived. However, the Court there considered the issue as a factual one to be determined in the light of all of the circumstances."

Since a defendant may waive his right to a Motion for a New Trial and to an Appeal, the next question is: What constitutes a Waiver?

The most cited case appears to be Johnson vs Zerbst, 304 U.S. 464, 58 Supreme Court 1019. It says:

> "It has been pointed out that 'Courts indulge every reasonable presumption against waiver' of fundamental constitutional rights and that we 'do not presume acquiesence in the loss of fundamental rights'. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused."

Part of this last quoted statement is cited in McCarthy vs U.S., 89 Supreme Court 1166 (1969).

A further discussion of waiver is found in State ex rel Lea vs Brown, supra:

> On Page 691- "Waiver is concisely defined as 'the voluntary relinquishment of a known right', 27 Ruling Case Law 904. Waiver is a doctrine of very broad and general application. It concedes a right, but assumes a voluntary and understanding relinquishment of it. '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 on.'"

III

With the above rules in mind for a "judgment properly entered on a plea of guilty" and the elements necessary for a proper "waiver", it is now necessary to discuss the facts presented at this hearing and to apply these rules to the facts.

Most of the evidence presented was by the introduction of certain parts of the Court's minute entries, by Mr. J. A. Blackwell, Clerk of the Criminal Court of Shelby County. The defendant declined to offer any evidence. In considering these minute entries the Court applied the following principles of law:

> "It is well settled in Tennessee that a trial Court speaks only through its minutes. McClain vs State, supra; Jackson vs Handell, 327 S.W. (2d) 55; Howard vs State, 217 Tenn 556.
>
> In the Howard case, the Court said:
>
> "The rule in this State for generations has been, and is, that 'minutes' are indigenous to Courts of record; and when they are signed by a Judge, they become the highest evidence of what has been done in the Court. So far as they are records of judicial proceedings, they import absolute verity, and are conclusive unless attacked for fraud. The rule has been stated otherwise that a 'Court of Record' is a Court where acts and judicial proceedings are enrolled in parchment for perpetual memorial and testimony. These rolls are called the 'record' of the Court and are of such high and transcendent authority that their truth is not to be questioned."

Introduced into evidence at this hearing by Mr. Blackwell, were the following exhibits:

Exhibit #1, is a minute entry of November 12, 1968, signed by Judge Battle, allowing Attorneys, Hanes Sr. and Jr., to withdraw from the case, and allowing Attorney Percy Foreman to substitute as counsel in this case; and further resetting the case to March 3, 1969, upon application of the defendant.

Exhibit #2, is the Petition for Waiver of Trial and acceptance of Plea of Guilty, signed by James Earl Ray and by his Attorneys.

Exhibit #3, is the minute entry made on March 10, 1969, and signed by Judge Battle, which was an order authorizing waiver of trial and acceptance of a guilty plea.

Exhibit #4, is a part of the transcript of Judge Battle's questioning of the defendant, Ray.

Exhibit #5, is the Minute entry on March 10, 1969, which was the actual judgment and sentencing by Judge Battle.

The Order authorizing the 'Waiver of Trial and Acceptance of Plea of Guilty,' and made Exhibit #3 in this case, shows that Judge Battle heard statements made in open Court by the defendant, his Attorneys of record, the District Attorney General, the Assistant Attorney General; and that he questioned the defendant (as shown by Exhibit #4) and his Counsel in open Court. This Minute entry is on the Court's Minutes for March 10, 1969, and was signed by Judge Battle. It further shows, that the Petition of the defendant, James Earl Ray, for Waiver of Trial by Jury and Request for Acceptance of a Plea of Guilty, which was made Exhibit #2 at this hearing, was attached and incorporated by reference in this Order. This Petition was signed by the defendant, Ray and witnessed and signed by his privately retained Attorney, Percy Foreman and his Court appointed Attorneys, Hugh Stanton, Sr. and Jr.

Judge Battle, using the evidence set out above, in this Court's opinion, had ample evidence to find as he did in Exhibit #3, to-wit:

> "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 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."

At the time of the guilty plea, Judge Battle fully questioned the defendant as to his understanding of the charges and proceedings against him, the sentence being recommended, and whether or not the defendant had been induced to plead guilty by any promise other than the agreed sentence. The defendants' answers left no doubt that he fully understood the circumstances surrounding his guilty plea.

It is obvious that Judge Battle's finding complies with the law for acceptance of a Guilty Plea as stated above in the discussion of a properly entered guilty plea in State ex rel Lawrence vs Henderson, supra; McCarthy vs United States, supra; and Wharton's Criminal Procedure, Section 2247, Volume 5, page 498, supra.

It is also obvious that Judge Battle's finding that the defendant intelligently and understandingly waived his right to a Motion for a New Trial and an Appeal, complies with the law of Waivers as set out above in State vs Pence, supra; Johnson vs Zerbst, supra; State ex rel Lea vs Brown, supra; and McCarthy vs United States, supra.

It is therefore the opinion of this Court, based upon the evidence presented at this hearing, that the Guilty Plea entered by the defendant, James Earl Ray, before Judge Battle, was properly entered. This Court finds as a matter of fact that it was knowingly, intelligently, and voluntarily entered after proper advice without any threats or pressure of any kind or promises, other than that recommendation of the State as to punishment; and, that the defendant, Ray, had a full understanding of its consequences, and of the law in relation to the facts.

This Court finds that such Guilty Plea precluded the defendant from ~~fixing~~ filing a Motion for a New Trial in this case.

Further, this Court finds that the defendant, James Earl Ray, knowingly, intelligently and voluntarily expressly waived any right he may have had to a Motion for a New Trial and/or Appeal.

Either one of these two decisions showing that the defendant could not file and have a Motion for a New Trial heard renders Tennessee Code Annotated, Section 17-117 inapplicable in this case. His Motion for a New Trial had already been disposed of by Judge Battle before his death when he allowed the defendant to waive his right to a Motion for a New Trial.

Consequently, this Court after a full evidentiary hearing on this matter, finds that the State's Motions to Strike are well taken and should be granted and that the defendant's Motions, as amended, regardless of what he calls the Motions, should be stricken and dismissed without further hearing.

These motions cannot be treated as a Motion for a New Trial, because the defendant had already waived his right to a Motion for a New Trial as determined by Judge Battle in his minute entry for March 10, 1969, which has been marked Exhibit #3 to the present hearing. Neither can they be treated as a Petition for Writ of Habeas Corpus or under the Post Conviction Act because the elements necessary for the latter two Petitions are not present.

It is therefore Ordered, Adjudged and Decreed that the State of Tennessee's Motions to strike are granted and that the defendant's Motions as amended are stricken and dismissed.

It is further ordered, adjudged and decreed that the Writ of Habeas Corpus issued to return this defendant for hearing, is hereby quashed, vacated and held for naught; and the defendant, James Earl Ray, is hereby ordered to be returned to the State Penitentiary at Nashville, Tennessee, under the authority of the original judgment and orders of this Court, to all of which the defendant, James Earl Ray, has noted his exception.

Arthur C. Day, Jr.
JUDGE
By Interchange
6/6/69

TO THE HONORABLE CRIMINAL COURT OF APPEALS WESTERN DIVISION OF THE STATE OF TENNESSEE, SITTING AT JACKSON, TENNESSEE, OR TO ANY OF THE JUDGES THEREOF:

STATE OF TENNESSEE	FROM THE CRIMINAL COURT
VS	OF
JAMES EARL RAY	SHELBY COUNTY, TENNESSEE

PETITION OF JAMES EARL RAY FOR

WRIT OF CERTIORARI

Your petitioner would respectfully show to the Court that he is much aggrieved by the judgment of the Criminal Court Division II of Shelby County, Tennessee, the Honorable Arthur C. Faquin, Judge, presiding, said judgment being rendered on the 26th day of May, 1969, and sustaining the State of Tennessee's Motion to Strike the petitioner's Motion for a New Trial.

YOUR PETITIONER STATES:

1. That the Court erred in the hearing of May 26, 1969, in allowing the introduction of testimony by Mr. J. A. Blackwell, Clerk of the Criminal Court of Shelby County, Tennessee, and the introduction of other evidence by Mr. Blackwell to show that the confession of James Earl Ray, petitioner, was freely and voluntarily given at a prior hearing.

2. That the Court erred in not sustaining the objections to testimony of Mr. Blackwell and the introduction of documents in this cause on May 26, 1969.

3. That the Court erred in not holding that the letters and amendments as presented by petitioner-defendant do not constitute a Motion for a New Trial

4. That the Court erred in holding that the petitioner, James Earl Ray, waived his right to a Motion for a New Trial and an appeal.

5. That the Court erred in holding that a guilty plea precludes the petitioner from filing for a Motion for a New Trial.

6. That the Court erred in holding that the petitioner-defendant, James Earl Ray, knowingly, intelligently, and voluntarily expressly waived any right he might have to a Motion for a New Trial and/or Appeal.

7. That on June 16, 1969, the Court ruled erroneously in denying petitioner-defendant's prayer for leave or permission to file an appeal holding (a) that your defendant had waived his right of appeal, (b) that the sustaining of the State of Tennessee's Motion to Strike your defendant's Motion for a New Trial was an Interlocutory Order, and that, therefore, there was no appeal from the same.

To all of the above citations of error the petitioner-defendant has heretofore reserved his exceptions.

8. That the Court erred in not granting your defendant's Motion for a New Trial pursuant to and in accordance with Code Section 17-117 of the Tennessee Code Annotated.

Petitioner would state that notice was served on the Attorney General of Shelby County, Tennessee, more than five (5) days before the filing of the Petition for

Certiorari; and that the Petition would be presented to the Criminal Court of Appeals Western Division of Jackson, Tennessee, or one of the Judges thereof on June 25, 1969; and that a copy of the Petition was presented to the Attorney General of Shelby County, Tennessee, as well as a copy of the Brief filed herein; a copy of the Notice and receipt thereof is attached hereto.

PREMISES CONSIDERED, PETITIONER PRAYS:

1. That a Writ of Certiorari issue by this Honorable Court to the Criminal Court Division II of Shelby County, Tennessee, directing that Court and the Clerk thereof to certify and transmit to this Court the entire record and proceding in this cause including the opinion and judgment of the Trial Judges, consisting of the late Honorable Judge Preston W.Battle and the Honorable Judge Arthur C. Faquin, Judge of Division II of the Criminal Court of Shelby County, Tennessee.

2. That the judgment of the Criminal Court Division II in sustaining the State of Tennessee's Motion to Strike the Motion for a New Trial be reviewed and error complained of corrected; that your petitioner be granted a new trial and this cause remanded to the Courts of Shelby County, Tennessee, for a new trial and for further handling.

3. That petitioner have all such other, further, and different relief to which he is entitled, and he prays for general relief.

THIS IS THE FIRST APPLICATION FOR A WRIT OF CERTIORARI IN THIS CAUSE.

Richard J. Ryan

STATE OF TENNESSEE

COUNTY OF SHELBY

RICHARD J. RYAN, who being first duly sworn, states that he is one of the attorneys for the petitioner James Earl Ray; that he is familiar with the facts set forth in the foregoing Petition for Certiorari, and that the statements contained herein are true, except those made as upon information and belief, and these he believes to be true.

Richard J. Ryan

Subscribed and sworn to before me this the 19 day of June, 1969.

Bessie Lee Turner
NOTARY PUBLIC

My commission expires:

10-7-71

44-1987-Suit-D-137

dd.

dd.

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE

VS

JAMES EARL RAY,

Defendant

NO. 16645

FILED 6/16/69
J. A. BLACKWELL, CLERK
BY [illegible] D. C.

PRAYER FOR APPEAL

Comes now the defendant, James Earl Ray, by and through his attorney of record, Richard J. Ryan, having heretofore respectfully excepted to Your Honor's ruling upon his Motion for a New Trial, now moves this Honorable Court for permission and leave to file his Appeal from this Court to the Court of Criminal Appeals for the Western District of Tennessee.

Richard J. Ryan
RICHARD J. RYAN,
ATTORNEY FOR DEFENDANT

44-1987-Sub-C-138

6/23/69

AIRTEL

TO: DIRECTOR, FBI (44-38861)

FROM: SAC, MEMPHIS (44-1987) (P)

SUBJECT: MURKIN

Enclosed for the Bureau are 2 copies each of the following three documents:

1. Prayer for Appeal filed by the subject's attorney, RICHARD J. RYAN, in the Shelby County, Tenn., Criminal Court, asking the Court's permission to file an appeal in the Court of Criminal Appeals for the Western District of Tennessee.

2. Petition of JAMES EARL RAY for Writ of Certiorari (first application).

3. Memorandum Finding of Facts and Conclusions of Law, prepared by Judge ARTHUR C. FACQUIN, JR., 6/6/69, explaining his denial of the subject RAY's motion for a new trial.

Airtel_____

Teletype_____

A.M. 2 - Bureau (Encs. 6)
2 - Memphis
JCH:jap
(4)

A.M.S.D. jap

Spec. Del._____

Reg. Mail_____

Registered_____

SEARCHED_____

SERIALIZED_____

INDEXED_____

FILED_____

44-1987-Sub-0-139

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

JAMES EARL RAY,	§	
Resident of Tennessee; Legal resident of or domicile in Illinois,	§	NO. _____
Petitioner	§	
VS.	§	
PERCY FOREMAN, Resident of Texas, WILLIAM BRADFORD HUIE, resident of Alabama, and ARTHUR J. HANES, resident of Alabama	§	
Defendants	§	

PETITION

Your petitioner would respectfully show the Court:

That this cause is subject to federal jurisdiction, in that there is a diversity of citizenship (see caption) and that the subject matter of this suit is in excess of $10,000; and also that the defendants entered into a conspiracy to violate your petitioner's civil rights and that subsequent to the overt acts stated below, that they did in fact by fraudulent use of the Court process and other matters stated below violate his civil rights; said violation in direct contravention of the rights as protected by 42 U.S.C. 1985. Defendants acted in such a manner as to make a farce and mockery of justice and completely denied the petitioner of his constitutional right to effective counsel.

That he is presently in the Tennessee State Penitentiary at Nashville serving time under a sentence of 99 years imposed by the Criminal Court of Shelby County, Tennessee, the Honorable Judge Preston Battle (now deceased) then presiding.

That he was imposed upon by the respondents in the following manner: Petitioner first consulted with Arthur J. Hanes, an attorney at law in the State of Alabama, and that they reached a tentative agreement for the said Hanes to defend him on a charge of murder. The petitioner charges that he was before and at all

ROBERT W. HILL, JR.
418 PIONEER BUILDING
CHATTANOOGA,
TENNESSEE 37402
TEL. 615/267-0911

times since in jail without bail and under every restrictive security. Petitioner would show that after the original meeting with Hanes that he and Hanes started a line of discussion relative to Hanes' fee and expenses.

That Hanes revealed to the petitioner that he had been approached by the respondent, Huie, and that Huie would be willing to pay large sums of money for the exclusive rights to the story of your petitioner's life, including any and all facts surrounding the petitioner's alleged involvement in the slaying of Martin Luther King (whom petitioner at that time stood charged with murdering). After being assured by Mr. Hanes that his rights pending the homicide case would not be prejudiced or imperiled, the petitioner entered into a contract with respondent Hanes and with respondent Huie (a copy of which, together with other material contracts and correspondence, is attached to the original petition.

Your petitioner now realizes and so charges that the original and all subsequent contracts were not in any way for the petitioner's benefit; nor were they ever so intended to be. On the contrary, it is charged that respondent Hanes entered into collusion with respondent Huie, each having the specific intent to exploit your petitioner's plight to their own monetary benefit. Your petitioner was under extreme emotional and mental stress, whereby he was made more susceptible to the urgings of the attorney who was allegedly acting in his behalf. Respondent Hanes realized that your petitioner was a stranger to the tangles of the law, and therefore proceeded to "take him in."

Your petitioner would show that he at all times depended wholly upon the advice of Mr. Hanes until such time as Percy Foreman, the lawyer from the Texas Bar, entered into the case. At this point in time, the petitioner released Mr. Hanes and depended fully upon the advice of said Percy Foreman.

Your petitioner would show that he initially entered into a contract with Mr. Hanes, but that through an amendatory agreement induced by Mr. Percy Foreman, he signed a contract by