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No. 18-7359 ORIGINAL

IN THE
Supreme Court of the United States

BILLY JOE GREENWOOD,

Petitioner,

v.

TENNESSEE BOARD OF PAROLE,

Respondent.

On Petition For A Writ Of Certiorari To The
Tennessee Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

TENNESSEE'S PAROLE SYSTEM, AS DOES THOSE OF MANY STATES, UTILIZE SERIOUSNESS OF THE OFFENSE AS A MEANS OF DENYING PAROLE. THE PROBLEM, HOWEVER, IS THAT THE SAME IS BEING USED AS A POLITICAL VEHICLE AND HENCE APPLIED IN AN ARBITRARY, DISCRIMINATORY AND ILLEGAL MANNER. INDIVIDUALS WHO HAVE COMMITTED THE SAME AND/OR MORE SERIOUS OFFENSES, BUT HAVE NO PROTESTERS, ARE GRANTED PAROLE DISPROPORTIONALLY TO THOSE WHO DO NOT. MR. GREENWOOD FILED A STATE COURT WRIT OF CERTIORARI CHALLENGING THIS, HOWEVER, ABSENT ANY DISCOVERY OR AN EVIDENTIARY HEARING TO PROVE HIS CLAIMS, THE TENNESSEE COURTS DENIED THE SAME AS NOT VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION. THE SINGLE QUESTION HERE ASK:

I. Does Tennessee's arbitrary, discriminatory and illegal application of its parole review and release consideration utilizing the seriousness of the offense to deny parole to those with protesters, hence causing them to serve more time than those equally situated or having more serious offenses but have minimal or no protesters, violate the equal protection clause of the United States Constitution?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Billy Joe Greenwood respectfully petitions this Honorable Court for a writ of Certiorari to review the judgment of the Tennessee Court of Appeals and Tennessee Supreme Court in this case.

OPINIONS BELOW

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APPENDIX E: *Billy Joe Greenwood v. David Newberry, Warden, and State of Tennessee*, 1999 WL 105099 (Tenn.Crim.App. March 3, 1999)(Post-Conviction Appeal), Permission to Appeal Denied July 12, 1999.

APPENDIX F: Unpublished Opinion of the Tennessee Court of Criminal Appeals. *State of Tennessee v. Greenwood*, No. 1992 WL 38054 (Tenn.Crim.App. March. 3, 1992)(Direct Appeal).

JURISDICTION

The judgment of the Tennessee Supreme Court denying permission to appeal was entered on February 14, 2018. The decision of the Tennessee Court of Appeals was filed on Oct. 23, 2017. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the constitutional provisions of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Equal Protection Clause of the Fourteenth Amendment provides that “[n]o state shall...deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, § 1.

STATEMENT OF THE CASE

This case follows a state court appeal wherein despite having done all required of him and met all the requirements for the granting of parole, Mr. Greenwood was illegally, fraudulently, arbitrarily and in a discriminatory manner again put off for parole for five years based upon the seriousness of the offense-the same being against parole policy, evidence and the due process and equal protection clauses of the 14th Amendment to the United States Constitution's commands that he not so be.

This case presents a sad, unfortunate and remorseful circumstance of misdirected frustration upon an innocent victim over family matters of which resulted in an unforeseen and unplanned death .

Mr. Greenwood is a state prisoner, convicted of first-degree murder and first-degree burglary. He has a concurrent sentence of life and six years. Initially his sentence was consecutive, but in finding consecutive sentencing improper, the Tennessee Court of Criminal Appeals on direct appeal wrote:

"The record establishes that in April 1989, the defendant was quite distraught over his recent divorce from Alice Evonne Dishman and resulting separation from his young daughter. While in this troubled state of mind, the defendant began to consume excessive amounts of alcoholic beverages and drugs. During the day of 22 April 1989, he drank approximately two cases of beer, smoked marijuana, and ingested cocaine and valium.

That evening, Greenwood broke into the home of Sherry Dishman, Alice Dishman's sister, and took a loaded .30-.30 caliber rifle. Rifle in hand, he sat on the hood of his car in front of her home waiting for his former wife to stop by.

Sherry Dishman arrived first. She was accompanied by a male friend, Charles Haney. They did not observe Greenwood, and he permitted them to pass without incident.

A short time later, David Dishman drove up, and Greenwood confronted him. After saying to Dishman, "You ain't Evonne, you son-of-a-bitch," he shot Dishman in the stomach. Leaving Dishman on the ground where he had fallen, the defendant went to the front door of the home, kicked it in, and entered.

Once inside, he was met by Sherry Dishman and Haney. The rifle discharged as the three of them struggled over it. Unable to cock the rifle again, the defendant produced a knife and threatened to use it to kill them.

Haney and Dishman were able to eject the defendant. Outside again, the defendant noticed that David Dishman was attempting to stand. Dishman reached out to the defendant, called his name, and apologized for whatever he had done to him. In response, the defendant said that they would die together and thereupon shot Dishman a second time. Dishman later succumbed to these wounds, and the defendant was arrested two days later."

State of Tennessee v. Billy Joe Greenwood, No. 01-C-019108CC00228, 1992 WL 38054 * 1-2 (Tenn.Crim.App. March 3, 1992).

MR. GREENWOOD'S INITIAL PAROLE HEARING IN 2009

This is Mr. Greenwood's second parole hearing. His first hearing was held on July 20, 2009 and the hearing officer recommended the denial of parole for five years. The final decision returned with the maximum term of six years before next review. Mr. Greenwood did not appeal that decision.

In 2009 there was testimony from various witnesses in opposition, along with the prosecuting attorney. A Mr. Charles Haney testified relative the confrontation with Mr. Greenwood.

Mr. Greenwood's ex wife, Alice Dishman, read a letter that she had written essentially expressing her concerns as to how Mr. Greenwood had allegedly treated her in the past and her own remorse over ever having been involved with him including the subsequent death of her nephew. While reading the letter, at a certain point therein, she became emotional. None of her testimony, however, related to the facts of the case that came in during trial.

The prosecuting attorney testified that the eighteen-year-old was an innocent victim. He positioned a need for Mr. Greenwood's 1989 sentence, allowing for parole eligibility, to be one

that should actually not allow for such eligibility until a minimum of 51 years-as reflected in the new law-as society demands more time for an unjustified killing.

Mr. Greenwood testified and accepted full responsibility for his actions while offering genuine remorse for his past conduct.

Consistent with the trial proof, Mr. Greenwood testified to his having been drinking heavily and having been unable to control his senses over the situation surrounding not having been able to see his daughter. Consistent therewith, he recalled having gone to the residence, and, as was common, entering the back door where he sat on the sofa, without a weapon, waiting to be able to see his daughter and discuss the matter with those associated therewith.

Mr. Greenwood did not bring a weapon to the residence, and only while sitting therein the house did he look over and see that there was a firearm of which he then took possession. He was not convicted of any offenses relative violence toward the other residents, Ms. Dishman or her boyfriend Mr. Haney.

The 2009 parole hearing officer simply prayed for healing and peace for the family, spoke of the victim having been working and going to school, and considered the killing a premeditated senseless and brutal killing. The PHO then recommended programs such as Anger Management, Criminal Thinking, and Substance Abuse Treatment, noting that Mr. Greenwood would not want to be the same person he was when he came in, on the day that he got out. This program recommendation he based on the concern raised in the history set forth by certain family members.

MR. GREENWOOD'S 2015 PAROLE HEARING

Mr. Greenwood's ex wife, Alice Evonne Dishman, testified as in the first hearing and again she read the exact same letter and became emotional at the exact same spot as wherein she had become emotional in reading the letter during the 2009 parole hearing.

The victim's mother, Ms. Sherry Dishman, testified relative her loss, and importantly noted that the Billy that did the killing was not the Billy that she thought that she knew. She asked, however, that Mr. Greenwood not be released.

The District Attorney, Bryan Dunnaway, testified relative the seriousness of the offense, noting the same as being Mr. Greenwood having been laying in wait for his ex-wife, however, having chose an innocent victim. He argued that with the seriousness of the offense, Mr. Greenwood should not be released.

Other than Ms. Sherry Dishman, all parties in opposition essentially testified to matters unrelated to that encompassing the trial proof of which resulted in Mr. Greenwood's conviction.

Mr. Greenwood's own proof consisted of his having again accepted full responsibility for his actions, having expressed genuine remorse for what had occurred and having recognized the devastation caused by his conduct.

He testified the shooting was a result of the obstacles his wife was putting in his way relative the taking away of his daughter and his trying to see his daughter, as well as, prior unknown abortion history of which simply caused him to snap. He testified of his intoxication and the fact that he was just mad at the whole family.

Again it was pointed out that Mr. Greenwood did not go armed, but saw such in the residence while awaiting the return of the family, in order to discuss the issues of his daughter.

He went on as to how the programs that he has taken has taught him how to deal with anger-and as well how to treat others with respect-thus giving him the ability to become a law-abiding citizen. He provided numerous signatures of support from citizens of Overton, Putnam and surrounding counties as well as other Tennessee Department of Correction staff letters and signatures.

He was a 9th grade drop out but had now received his GED. This was his second parole hearing after twenty-six years of incarceration. He was twenty-four years old at the time of the offense and his profession as a Plumbers Helper and Heavy Equipment Operator-and this is what he would return to if granted parole.

Mr. Greenwood's prior criminal conviction history was for a DUI-public disturbance. He had only three disciplinary infractions in twenty-six years, the last was a 2004 class B positive drug screen infraction.

In compliance with the 2009 parole hearing recommendation, he participated in and completed several programs. The programs included the Lifers Club, 7th Step, GED, Group Therapy, Pro Social Life Skills, Victim's Impact, and Behavioral Therapeutic Community. His work in prison consisted of having been an Athletic Equipment Custodian, Machine Cutter, Teacher's Aide, Carpentry, Laborer, Upholster, and Community Service Worker.

Several supporters and friends testified. MCCX Chief Correctional Counselor, Mr. Jeff Nance¹ testified relative Mr. Greenwood's excellent work ethic, being compliant, lack of anger issues and his clearly being ready to be reintegrated back into society.

¹ Counselor Nance, made it clear that it was not customary for him to simply show up at such hearings. He reiterated, however, how important it was to give Mr. Greenwood and others so similarly situated a chance in order to assess the value and effect of the prison programs.

Mr. Greenwood's prisoner job supervisor, Mr. James Godwin, testified relative his excellent work ethic, inclusive of his having operated heavy equipment and done carpentry work for the recreation department. He also noted Mr. Greenwood's assistance to other prisoners.

The 2015 hearing officer stated that he was considering the totality of circumstances and the file in his decision. From there, he recognized and commended Mr. Greenwood's institutional behavior efforts, program participation and admitted anger issues. In turn, he set forth that he could not overcome the seriousness of the offense where an 18-year old, with no involvement in the case, was gun down and senselessly lost his life. He had served less than thirty years, thus to release him at this time would depreciate the seriousness of the offense.

The Hearing Officer continued to commend Mr. Greenwood's efforts, and stated that in five years the board would like to see progress continue even though there would not be a guarantee of parole at that time.

The board accepted this finding, and on October 19, 2015, an appeal therefrom was denied.

Mr. Greenwood filed a timely state court petition for certiorari arguing that after over twenty-six years, at a second parole hearing he presented an excellent prison record, with many supporters and recommendations, but again was put off for parole consideration this time for five more years. The first six-year denial by the Board and the present denial, by implication, serve to surreptitiously add the six year consecutive sentence back, day for day.

He argued his commission of the offense as a very young man, but that he has shown and continues to show great remorse for his actions. He has also proved to be above and beyond that of a model inmate wherein his parole hearing revealed many accomplishments on his part.

He reminded that the Tennessee Court of Criminal Appeals had even changed his sentence from consecutive to concurrent, recognizing the case as one in which occurred while Mr. Greenwood was intoxicated and in a troubled state of mind over divorce issues relative his daughter. Further that the TCCA sought to give him a chance at life by lawfully giving him concurrent sentencing.

Mr. Greenwood argued that he was being punished for conduct that did not play a part in his trial or was reflected in sentencing; and that the collective District Attorney testimony seeks a fifty-one year parole release, and does not contemplate in any way the fact that a non-premeditated bad thing has happened, and should not require Greenwood losing his entire life.

Mr. Greenwood set for the record showing him as a good contributor to society, as opposed to a burden to society that he would be if released when he is old or remains in prison.

He argued the board had said nothing lawful except the fact that politics do unlawfully play a role, as seriousness of the offense is only highlighted based upon protestors as opposed to the offense committed and or the rehabilitative efforts and/or accomplishments of the prisoner. This when compared to other cases wherein the release is granted relative worse offenses.

He argued that the Tennessee Board of Parole decision and appeal denying him parole consideration, for five more years, on the basis that release from custody at this time would depreciate the seriousness of the crime of which he stands convicted or promote disrespect of the law, violates his Fourteenth Amendment right to due process of law under the United States Constitution and article one sections eight and nine of the Tennessee Constitution.

He contended that the Board deviated substantially from their own parole Administrative Rules, Regulations and Decision making Guidelines in both considering this case and making its decision.

Even with the limited due process rights that flow from a liberty interest in parole he argued it mandatory that prisoner(s) are provided with notice of the hearing, an opportunity to be heard, *and if parole is denied, a statement of the reasons for the denial.*

He further argued that due process requires that "some evidence" support the parole board's determination, and that the evidence relied upon must possess some indicia of reliability. Politics is not evidence or a proper consideration to be given.

He set forth that the seriousness of the offense findings were not factually articulated nor in essence a proper statement of reasons for the denial, required by due process, thereby rendering the decision(s) arbitrary, discriminatory, and based upon the subjective lay opinions of the panel member(s).

He set forth that no evidence was noted as supporting the Board's decision herein this case, thus in fairness, and as required under the criteria set forth under the appropriate governing standards and constitutional provisions, he was required to be heard and considered.

He argued the decision as a denial of due process of law, arbitrary and discriminatory due to the board having before it a full disclosure of the facts, yet failing to consider said facts, even when said facts met the test for granting parole at a second parole hearing on a Class A First Degree Murder conviction. The same applies to the Board's consideration of facts not in the record of the trial nor that related to the death of the victim as found by the trial court.

He argued bias, discrimination and arbitrariness were, among other things, evident and present in this case commanding, at least in this circumstance, the question be asked that why, after meeting above and beyond the criteria for release or strong consideration thereof, he was again been put off for parole for another five years. This is even more critical where his offense was not premeditated against the victim, and when other individuals, with crimes more

substantial, have been granted parole and/or otherwise released after having done much less time than he.

He not only exemplified characteristics of an individual who should have been considered likely to succeed on parole and given parole, he further presented substantial evidence in support of the same.

Mr. Greenwood further contended that an evidentiary hearing and discovery would show that similarly situated individuals were actually granted parole by the same board members meeting less of a criteria than he had.

Mr. Greenwood submits that the Board had completely disregarded and deviated substantially from the Tennessee Board of Parole Administrative Rules, Regulations, and/or Guidelines as well as Tennessee Statutory Authority and case law in its consideration, determination, and final decision.

Further, by applying only the present or a combination of the present and former Parole Board Policies, as opposed to those in effect at the time of Mr. Greenwood's offense, the same created an ex post facto violation.

Mr. Greenwood set forth that absolutely no authority existed for the board to take the course of action taken in this case to which the judiciary is called upon to correct.

He went on that by ignoring its own rules and guidelines, ignoring all evidence presented, with absolutely no proof to the contrary, the board had created an arbitrary, discriminatory, and insurmountable hurdle for him to overcome which is further not placed on similarly situated individuals or individuals with worse offenses who have no protesters as he does.

Mr. Greenwood additionally asserted that the Board of Probation and Paroles clearly exceeded its jurisdiction and acted illegally, fraudulently and arbitrarily when it failed to follow the requirements of its own rules, regulations, policies and guidelines in this case.

Mr. Greenwood relied upon all relevant and applicable State and Federal statutory and constitutional provisions in support thereof.

Without permitting discovery or an evidentiary hearing, the Davidson County Chancery Court subsequently entered an order dismissing Mr. Greenwood's petition upon finding that "[t]he declination of parole based on the seriousness of the offense is supported by evidence in the hearing transcript in this case, describing [Mr. Greenwood's] murder of a defenseless eighteen year old who was not involved in the dispute between [Mr. Greenwood] and his ex-wife." The court concluded that "the Board's final decision to decline [parole based on the seriousness of the offense was proper pursuant to Tenn. Code Ann. § 40-35-503(b) and *Arnold* [v. Tenn. Bd. of Paroles, 956 S.W.2d 478 (Tenn. 1997).]." **See Chancery Court Order Appx C.**

The trial court further found that the Board's deferral of parole for five years was "not unlawful or arbitrary." Regarding Mr. Greenwood's equal protection argument, the trial court concluded that a petition for writ of certiorari was "an improper vehicle for such a claim." **See Chancery Court Order Appx C.**

Mr. Greenwood timely appealed that decision to the Tennessee Court of Appeals. The Tennessee Court of Appeals, while recognizing and/or otherwise confirming Mr. Greenwood's accurate description of the procedural and factual record, affirmed the Chancery Court finding in most respects.

As it relates to the equal protection claim, the TCCA found that the same was not proper for a writ of certiorari, however, wrote pertinently as follows:

...Nevertheless, Mr. Greenwood refers to the government's "arbitrary actions" in his equal protection argument. Inasmuch as Mr. Greenwood argues that his equal protection rights were violated by the Board and that the Board's decision to deny parole was discriminatory and thereby arbitrary or illegal, we determine that his equal protection argument should be considered. *See, e.g., Brown, 2007 WL 2097548, at *4-5.* Because the issue is one of law, we will consider whether Mr. Greenwood's equal protection rights were violated by the Board's decision to deny parole.

Mr. Greenwood claims that "similarly situated individuals were actually granted parole by the same board members in cases which satisfied less of a positive candidate than he." Despite Mr. Greenwood's conclusory allegations that he was treated differently than other inmates, the record before us does not contain any evidence to support his argument. *Mr. Greenwood has failed to present the trial court or this Court with any specific examples which would have supported the existence of any similarly situated individuals to whom he refers.*

*Greenwood v. Tennessee Board of Parole, 2017 WL 4776747 * 8-10 (Tenn.Ct.App.October 23, 2017). Appx. B*

The TCA went on to find that, assuming arguendo that he was denied parole while other similarly situated individuals were granted parole, there was a rational basis for denying parole. *Id.* The court went on to find that inmates are not a suspect class for equal protection purposes, and there was a rational basis of seriousness of the offense and that releasing him on parole would promote disrespect for the law findings. *Id. Appx. B*

Thereon specifically the Court wrote:

"Because the Board had a rational basis for its decision denying Mr. Greenwood's parole, the Board's decision was not illegal or arbitrary. Therefore, although the trial court should have considered Mr. Greenwood's equal protection claim insofar as it was a claim of discrimination that if successful, would have rendered the Board's decision illegal or arbitrary, we determine any error in this regard to be harmless because Mr. Greenwood's equal protection argument is unavailing.

Id. at 10. Appx. B Permission to Appeal Denied by Supreme Court February 14, 2018.

REASONS FOR GRANTING THE WRIT

I. Review is necessary where Tennessee continues to arbitrarily, discriminatorily and illegally apply and conduct its parole review and release considerations utilizing the seriousness of the offense to deny parole to those with protesters, hence causing them to serve more time than those equally situated or having more serious offenses and have minimal or no protesters, in violation of the equal protection clause of the United States Constitution.

The Equal Protection Clause of the Fourteenth Amendment provides that “[n]o state shall...deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, § 1. The Clause “does not take from the States all power of classification,” *Personnel Adm'r of Mass. V. Feeney*, 442 U.S. 256, 271, 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979), but “keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike,” *Nordlinger v. Hahn*, 505 U.S. 1, 10, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992). See also *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985) (holding that the Equal Protection Clause “is essentially a direction that all persons similarly situated should be treated alike”).

To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination. Once this showing is made, the court proceeds to determine whether the disparity in treatment can be justified under the requisite level of scrutiny. See e.g., *City of Cleburne*, 473 U.S. at 439-40, 105 S.Ct. 3249; *In re Long Term Admin. Segregation of Inmates Designated as Five Percenters*, 174 F.3d 464, 471 (4th Cir.), cert. denied *Mickle v. Moore*, 528 U.S. 874, 120 S.Ct. 179, 145 L.Ed.2d 151 (1999);

Sylvia Dev. Corp. v. Calvert County, 48 F.3d 810, 818-19 (4th Cir.1995); *Morrison v. Garraghty, et al.*, 239 F.3d 648, 653-654 (4th Cir. 2001).

It has been set forth in this Court that “when the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilizes one and not the other, it has made as an invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment.” *McLaughlin v. State of Florida*, 394 U.S. 184, 194 (1964).

This Honorable Court has further made clear that “though the law itself be fair on its face, and impartial in appearance, yet, if is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.” *Yick Wo v. Hopkins*, 118 U.S. 356, 373-374 (1886).

Recognized in Mr. Greenwood’s case is the fact that he made a claim that only inmates like himself who have the same offenses and/or lesser-but have protesters-are not granted parole or given parole in proportion to those who have the same or worse facts in their cases and/or offenses and situation yet have no protesters.

No other legitimate reason except the difference in one having protesters gets the seriousness of offense stamp or some other odd reason, while the other, without such protest, has a better chance and is likely released on parole.

Add to this, as prisoners are treated differently, so are victims. There is a favorable treatment and value of one equally situated prisoner over another just as is the case of the favorable treatment of one equally situated victim over another. It all essentially is in who your

victim or his/or her supporters know and not any legitimate interest that can survive constitutional protection.

Mr. Greenwood asked for discovery and an evidentiary hearing in the Chancery Court, however, was ignored as to the same and hence never given any in order to obtain parole board and other records on which to set forth his claim in that Court. Instead he was denied relief on the merits finding that the equal protection clause did not apply.

The Tennessee Court of Appeals finding that the same did apply should have instead remanded the case to the trial court for discovery and an evidentiary hearing relative the same. A court cannot find that an equal protection claim was essentially properly alleged and hence go to the merits thereof without having provided the appropriate discovery and an evidentiary hearing to address this widespread Tennessee practice.

There is no rational basis behind this and to allow seriousness of the offense to be a rubber stamp to shield any state from such arbitrary, discriminatory and illegal application of the law to individuals like Mr. Greenwood, for no other reason except his protesters, warrants review of his equal protection claim by this Court.

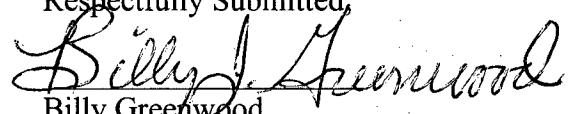
Mr. Greenwood submits that the prevalence and political problems that exists within this practice can and will only be rectified by review in this Honorable Court as the Tennessee Court of Criminal Appeals and Tennessee Supreme Court are simply never going to address this issue of political suicide in any of its own decisions to the point of giving and/or otherwise requiring fair consideration thereof.

Mr. Greenwood's record here, recognized by all involved, substantiates and makes ripe one in which review is appropriate and hence for the above reasons he respectfully ask that the Writ of Certiorari to the Tennessee Court of Appeals of Tennessee be granted.

CONCLUSION

For the foregoing reasons, Mr. Greenwood respectfully requests that the petition for writ of certiorari is granted and that the appropriate relief is granted relative the important issues raised herein.

Respectfully Submitted,



Billy Greenwood

Petitioner-Appellant

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