

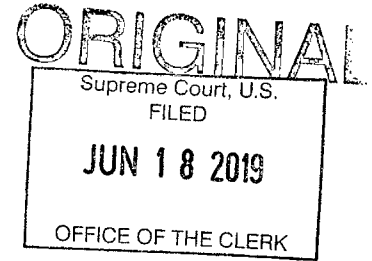
19-5792

IN THE SUPREME COURT FOR UNITED STATES

NTSC No. E2018-00520-SC-R11-PC

RANDALL TURNER
Petitioner
V

TENNESSEE
Respondents



ON PETITION FOR WRIT OF CERTIORARI
FROM FINAL ORDER OF TENNESSEE SUPREME COURT

PETITION FOR WRIT CERTIORARI

Randall Turner # 13323
TCIX
1499 R.W. Moore Mem. Hwy
Only Tn, . 37140.

QUESTION(S) PRESENTED

(1)

Whether the appellate court appeal process was fundamentally unfair and a denial of due process of law under the Fifth, Sixth and Fourteenth Amendment

(2)

Whether the petitioner challenge to the State statute of limitation is time bar.

(3)

Whether the statute of limitation for first degree murder / felony murder is denial of equal protection of law and fundamentally fairness.

(4)

Whether Counsels concealing the malpractice law suit file on them by there client from the trial court amount to structural defect that requires automatic reversal of convictions.

(5)

Whether Counsels active representing a conflict of interest that deprive there client his Sixth Amendment right to be heard at meaningful time and to defend against the prosecution case is structural defect that requires automatic reversal of convictions.

(6)

Whether , bias adjudicator at critical stage of the Capital adversary process is structural defect that requires automatic reversal of convictions.

(7)

Whether the defendant were expose to “Capital Adversary Procedures” at the pretrial hearing to suppress evidence and identification were “offensive to fundamental principle of justice that requires automatic reversal of convictions.

LIST OF PARTIES

Solicitor General of United States
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I here certify that a true and exact copy of the foregoing has been forwarded by first class mail, postage paid to the parties above. On this the 22nd day of August 2019.

Randall Turner
Randall Turner

TABLE OF CONTENTS

OPINIONS BELOW-----	PAGE 1
JURISDICTION-----	PAGE--2
CONSTITUTION AND STATUTORY PROVISIONS INVOLVED --	PAGE -3
STATEMENT OF THE CASE -----	PAGE--4-5
ARGUMENT-----	PAGE--6-9
REASONS FOR GRANTING THE WRIT-----	PAGE 6-10

INDEX TO APPENDICES PAGE

APPENDIX A-----	--11
APPENDIX A(1)---DECSISION OF CRIMINAL COURT OF APPEALS	
APPENDIX A(2)---CRIMNAL COURT OF APPEAL ORDER RECORD	
APPENDIX A(3)---RULE 52 APPEAL	
APPENDIX A(4)---APPEALS COURT DOCKET ACTIVITY	
APPENDIX A((5)---LETTER FROM APPEAL COURT STATING "APPELLANT BRIEF FILE.	
APPENDIX A (6) ---APPELLANT PUBLIC CASE HISTORY	
APPENDIX A (7)---CRIMINAL COURT OF APPEALS (Second Order)	
APPENDIX B CRIMINAL COURT OF HAMLITON COUNTY -----	PAGE 12
APPENDIC C SUPRME COURT OF TENNESSEE DECSION -----	PAGE 13
APPENDIX D PETITION FOR POST-CONVICTION -----	PAGE 14
APPENDIX E APPELLANT WRIT OF CERTIORARI -----	PAGE 15
APPENDIX F-1 STATE CHECK OUT THE RECORD LETTER -----	PAGE 16
F-2 STATE LETTER TO TENNESEE SUPREME COURT	
APPENDIX G -----	PAGE 17
APPENDIX G 1 COPY OF MEDICATION EFFECTS	
G 2 LETTER FROM ERLANDER	
G 3 MALPRRACTICE LAW SUIT	
G 4 MOTION TO SUPPRESS EVIDENCE	
G 5 MOTION TO SUPPRESS IDENTIFICATION	
G 6 TRIAL COURT RULE DOCKET	
G 7 FEAGIN V STATE	
G 8 Preliminary Hearing Transcript	
G 9 ARREST WARRANT AFFIDAVIT	
G 10 SHIVER V STATE	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Morrissey v. Brewer 408 U.S. 471 92 S.Ct. 2593 33 L.ed. 484 (1972)	7/9
Henderson v Kibbe 431 U.S. 145 97 S.Ct. 1730 52 L.ed 2d 203 (1977)	7
Matthew v Eldridge 424 U.S. 319, 96 S.Ct. 893, 47 L.ed 2d 18:	7/9
Medina v California 505 U.S. 437, 112 S.Ct. 2527, 120 L.ed 2d 353:	7/9
Gideon v. Wainwright 372 U.S. 335 83 S.Ct. 792 93 A.L.R. 2d 203 (1963)	7/9
Chapman v California 87 S.Ct. 824	7
Cuyler v Sullivan 446 U.S. 335, 64 L.ed 2d 33 100 S.Ct. 1708 (1980)	7
Rivera v. Illinois 556 U.S. 148 129 S.Ct. 1446 173 L.ed. 2d 320:	9
Ned 527 U.S. at 9, 119 S.Ct. 1827	9
Tumey v Ohio 273 U.S. 510, 47 S.Ct. 437 71 L.ed 749 (1927)	9
Rose v Clark 106 S.Ct. 3110	9
Strickland v Washington 466 U.S. 668, 584-585, 104 S.Ct. 2052, 2063 80 L.ed 2d 674 (1980)	10
Does v Munoz 507 F.3d 961, 964 (6th Cir. 2007)	9

STATUTES AND RULES

Tenn. R. Crim. P. Rule 12 (b)	7/8
Tenn. R. Crim. P. Rule 12 (e)	8/9
Interlocutory Appeal Rule 9	8
T.C.A. 40-30-102(a)	10
Tenn. R. App. P. Rule 3	4
Tenn. R. App. P. Rule 4(a)	4

OTHER

Feagins v. State 596 S.W. 2d 108 (Tenn. Crim App. 1979)	8/9
Shiver v State 2015 WL 1598050 (Tenn. Crim. App. 2014	5
Cottingham v. Cottingham 193 S.W. 3d (Tenn. Crim, App.2006)	7/8

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari to review the judgment below.

The date on which the highest state court decided my case was March 27, 2019. A copy of that decision appears at Appendix C.

Decision of Criminal Court of Appeals	A1	Appendix A
Order to transmit the record.	A2	
Rule 52 Appeal filed.	A3	
Docket Activity	A4	
Appellant Brief File Document	A5	
Appellate Public Case History.	A6	
Criminal Court of Appeals Order of 11-28-2018.	A7	

Criminal Court of Hamilton County	Appendix B
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Supreme Court of Tennessee	Appendix C
----------------------------	------------

Petitioner Petition for Post-Conviction Relief	Appendix D
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Appellant Writ of Certiorari	Appendix E
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State Check out Record	1	Appendix F
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State letter to Tennessee Supreme Court in Responses to Appellant Writ of Certiorari	2.	
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Medication Effect	G1	Appendix G
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Letter from Erlander	G2	
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Malpractice Law Suit	G3	
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Motion To Suppress Evidence	G4	
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Motion To Suppress Identification	G5	
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Court Rule Docket	G6	
-------------------	----	--

Feagin v State	G7	
----------------	----	--

Transcript	G8	
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Affidavit	G9	
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Shiver v State	G 10	
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XIV Amendment G-11

OPINIONS BELOW

Upon consideration application for permission to appeal to appeal of Randall Turner and the record before us, the application is denied. Further, the petition for writ of certiorari and motion for a Rule 52 B Appeal filed by Randall Turner also denied.

JURISDICTION

The Jurisdiction of this Court is invoked under U. S.C. 1257(a) and,
Under Article III of the Constitution of the United States and,
28 U.S.C. 1651(a) 2241 or 2254(a)

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

XIV Amedment. _____ Page 6/10

Article 1 section 8,9,11 and 16 Tennessee Constitution _____ Page 7

STATEMENT OF THE CASE

The petitioner file petition in the Criminal Court of Hamilton County challenging the constitutionality of the State of Tennessee Statute of Limitation. January 29, 2018 See Appendix D

Appellant did not receive the Trial Court Order on March 8, 2018 because he was transfer to different correctional facility. The Appellant improperly file the Notice of Appeal in the trial court.

Appellant then file Notice of Appeal in the Criminal Court of Appeals in Knoxville Tennessee.

The Criminal Court of Appeals on its Own Motion Waive the late filing on the Appellant Appeals. Stating that the Interest of Justice requires its. See Appendix A1 Page 11.

Criminal Court of Appeals also issues Order to the Trial Court to prepare and transmit the record within 45 days. SEE Appendix A2 Page 11

Appellant file a Rule 52 Appeal in the Criminal Court of Appeals (SEE Appendix A3 Page 11 Rule 52 Appeal) and the Criminal Court of Appeals construe the Rule 52 Appeal as Brief and consolidated it with the first Appeal, SEE Appendix A4 Page 11.

The Case was Docket as (On Briefs) case on 8-7-2018. See Appendix A5 Page 11.

The Appellant sent letter to the Clerk, Criminal Court of Appeals asking about the record the Criminal Court Clerk was Order to Prepare and Transmit the Record.

The Clerk of Criminal Court of Appeals sent the Appellant a letter, stating the record was filed and copy of the Appellate Court Public Case History. See Appendix A6 Page 11.

After the appeal was docket on 8-7-2018 the State Attorney apparently went before the Criminal Court of Appeals Judges in Knoxville Tennessee on 9-26-2018 for "Oral Argument / Submission hearing. See Appendix A 6 Page 11.

The case was Re-Docket on 9-26-2018 One Judge from the Criminal Court of Appeals in Knoxville Tennessee, and Two Judges from Nashville Tennessee denied the Appellant Appeal.(Appendix A7 Page 11) Appellant file Writ of Certiorari to the Tennessee Supreme Court (See Appendix E Page 15) stating petitioner appeal the trial court order, Criminal Court of Appeals waive the late filing in the "Interest of Justice" Tenn.. App. P. Rule 4 (a) requires A Notice of Appeal under Tennessee Rule of Appellate Procedure 3 to be file within thirty days of the entry of the Judgment which is being Appeal. However, the notice is not jurisdictional, and the filing may be waive in the interest of justice. Tenn. R. App. P. Rule 4(a). Such a waiver, is not automatic . In determining whether waiver of the notice requirement is in the interest of justice, this court may look to the nature of the issues presented for review, the reasons for and the length of the delay in seeking relief, and any ,

other relevant factors. When examining the nature of the issues presented for review, this court has taken into consideration the merits of the appeal. The underlying issues of this case require resolution in order to do substantial justice. Since the appeal of the appellate has merits, it is in the interest of justice that the notice of appeal requirement be waived. Quoting *Shivers v. State* 2015 WL 1598050 (Tenn. Crim. App. 2014). See Appendix G10 Page 17.

The oral argument and submission hearing conducted by the State before the court of Appeals on 9-26-2018 is violation of Due Process of the Sixth and Fourteenth Amendment.

Reason is, the appellant was not present nor represented by counsel. The appellant was not provided a copy of the Record sent up to the Criminal Court of Appeals by the trial court clerk. State was allowed to check this record out to prepare their responses to the Appellant Appeal. SEE Appendix F1 Page 16.

Appellant represented that Order of November 28, 2018 is void because Judge Wiitt and the two Judges he uses from Nashville Tennessee does not have power to Overturn the Three Judges of March 23, 2018 that Waive the late filing Interest of Justice. Jurisdiction of this case is Knoxville Tennessee, which is the appropriate Appellate Court shall be the Court determines whether such a Waiver is in the Interest of Justice.

Apparently the Knoxville Criminal Court of Appeals believe that the appellant petition have merits and the Appellant has right to fundamental fairness to allow that court to finish resolution of that Appeal.

Respectfully moves that Criminal Court of Appeals Order of 11-28-2018 be Vacated and the March 23, 2018 Order be Re-Set and Remand back to the Judges of March 23, 2018 Order for Resolution.

The issues of challenging the Constitutionality of the State Statute of Limitation using Federal Constitution and Equal Protection of Law is not time barred.

Appellant is entitled as a right to Appeal the trial court ruling to the Criminal Court of Appeals in Knoxville Tennessee.

State letter to Tennessee Supreme Court in responses to Appellant Writ of Certiorari. See Appendix F.2 Page 16.

ARGUMENT

(1)

The appellant represent that Criminal Court of Appeals Process is violation of Due Process and Equal Protection of law.

Reason is, State Attorney went before the Criminal Court of Appeals and had Oral and Submission on 9-26-2018 and the appellant was not present and no lawyer to represent him. The Appeal was taken off the Docket before the Three Judges that Grant the Appellant a time waiver in the Interest of Justice and Re-Docket on another Docket after the Oral hearing on 9-26-2108. The Appellant was not provided a Copy of the Record sent up to the Criminal Court of Appeals from the trial court clerk. Appellant represent that the One Judge from the Knoxville Tennessee Division and two from the Nashville Tennessee Division does the have Power to Over Rule the Three Judges from Knoxville Tennessee Division because it is that Division of the Court that have appropriate Jurisdiction to grant or deny time wavier. (Appendix G 10 Shiver v State). That panel of Judges gave the appellant the waiver and Accept the Appeal to the Trial Court Ruling as a Appeal of Right. In other words the Appellant had Right to Appeal the trial court Ruling to the Criminal Court of Appeals.

When the appellant has been denied an appeal without an attorney and could not afford one, he certainly been denied equal protection inasmuch as the State has highly paid and trained attorneys who prepared the case against him.

(2)

The Rule governing time-bar is itself unconstitutional in any case and also specifically unconstitutional in appellant case because of (drug prescribed by jail doctor and defense team doctor that impair your judgment). (See Appendix G ½ Page 17.

(A) The United States Constitution remains the final governing docket in this Country---it outweighs any and all court rules and procedures; this fact cannot be denied or even questioned by any court or ant other government body.

(b) The XIV Amendment of the United States Constitution clearly and unequivocally states that all person born in the United States has the absolute right to due process before that person can be deprived of his liberty. See Appendix G 11.

(c) It nowhere adds that a time limit may be places on this right, ergo the right continues unbroken as long as the person lives.

(d) Consequently, any law or rule that limit this right is clearly a violation of the Constitutional right.

(e) Also, the law provides a statute of limitations, the amount of time for this depending on the crime, and for murder and a few other crimes there is no limitation.

(f) However, the state through law and court rule places a limitation on the individual's right to appeal a murder conviction.

(g). This violates the equal protection and gives advantages to the State

(3)

DISCUSSION

Appellant represents that his convictions is unconstitutional under both the Federal and State law and. Therefore his convictions and sentences that is depriving him of his liberty is cruel and unusual punishment in violation of the Eighth Amendment.

Appellant convictions requires automatic reversal of convictions because there is “Structural Defects” in the constitution of the trial mechanism under the Sixth and Fourteenth Amendment of the United States Constitution , Article One Section 8, 9, 11, and 16 of the Tennessee Constitution and because adversary procedures is so offensive to the principle of justice and violates Due Process Clauses “Compulsory Process” by preventing the Appellant from establishing a defense to the prosecution case before trial. His convictions and sentences violates the “fundamental fairness” of due process. Therefore , Appellant is being deprive of his liberty without due process of law in violation of the federal law rights guarantees in “*Morrissey v. Brewer* 408 U.S. 471 92 S.Ct. 2593, 33 L.ed 2d 484 (1972) and ‘ *Henderson v. Kibbe* 431 U.S. 145 87 S.Ct. 1730 52 L.ed 203 (1977) and “ *Matthew v Eldridge* 424 U.S. 319, 96 S.Ct. 893, , 47 L.ed 18: and *Medina v. California* 505 U.S. 437, 112 S.Ct. 2572, 120 L.ed 353: and “ *Gideon v. Wainwright* 372 U.S. 335 83 S.Ct. 792, 93 A.L.R. 2d 733 (1963).

(a) Counsels concealing the malpractice law suit file on them by there client from the trial court is a “Structural Defect” that requires automatic reversal of convictions. *Cottingham v. Cottingham* 193 S.W. 3d 531 (Tenn. 2006); *Gideon v. Wainwright* supra, *Henderson v. Kibbe* supra,. Reason is, Appellant file malpractice law suit in the Hamilton County Circuit Court on his Defense Counsels (See Appendix G3 Page 17. Malpractice Lawsuit). Counsels were aware of the law suit. But never inform the trial court on the record.

Counsels concealing the malpractice law suit from the trial court is “prejudicial to the Appellant Sixth Amendment Right to Counsel (*Gideon v Wainwright* supra, *Chapman v. California* 87 S.Ct. 824) That requires automatic reversal of convictions. (*Cottingham v. Cottingham* supra, *Gideon v. Wainwright*, supra, *Chapman v. California*, Supra.).

(b) Counsels active presenting a conflict of interest that deprive there client his Sixth Amendment Right to be heard at meaningful time and to defend against the prosecution case is “ Structural Defect” (*Cottingham v. Cottingham* , supra. *Cuyler v. Sullivan* 446 U.S. 335, 64 L.ed 2d 33, 100 S.Ct. 1708 (1980). That requires automatic reversal of convictions. (*Cottingham v. Cottingham* , supra. *Gideon v Wainwright*, supra. *Chapman v. California*, supra.).

Reason is, counsels not informing the trial court of the conflict of on the “record” that was created by the malpractice law is Prejudicial to the Sixth Amendment Right to Counsel. (*Gideon v. Wainwright*, supra.).

Counsels conflict of interest deprive the accused of a substantial procedural right that the law entitled him to have under Rule 12(b) of Tenn. Rules. Of Criminal Procedures. (Any defense, objection, or request which is capable of determination before trial of the general issue may be raised before trail by motion.

- (1) Defenses and objections based on defects in the institution of the prosecution or
- (2) Omitted.
- (3) Motions to suppress evidence.

On February 5, 2001 the Motion to Suppress Evidence and Dismiss Charges with Prejudice (See Appendix G4 Page 17). and Motion to Suppress Identification (See Appendix G5 Page 17) was before the Court for Resolution . The trial court Refused to Rule on the Motions, and defer resolution of the motions until trial. See Appendix G6 Page 17.

No Ruling on Motion to Suppress can be defer until trial, because Rule 12 (e) of Tenn. R. Proc. C. expressly places a duty on the trial court to determine Motion to Suppress before trial. (See Appendix G7 Page 17 Feagins v. State 596 S.W. 2d 108 (Tenn. Crim. App. 1979).

Therefore, counsels should have file Rule 9 Interlocutory Appeal because the trial court failure to proceed according to essence requirements of the law.

The accused was totally denied his Sixth Amendment Right to Counsel at a critical stage of the adversary process. Counsels concealing the actual conflict of interest contaminate the accused Sixth Amendment Right to Counsel and cause prejudicial to the judicial that requires automatic reversal of convictions. (Cottingham v Cottingham 193 S.W. 3d 531 Tenn, Crim. App. 2006). Which prejudice the accused by denying him of substantial procedural right that the law entitled him to have Tenn. Rules Of Criminal Procedures 12 (b). because the trial court was not in substantial compliance with its own State Procedures Rules Requirement of Rule 12 (e).Counsels denied the accused of substantial defense. Reason is, the in-court identification in Session Court were highly suggested and unconstitutional (See Appendix G8 Page 17. Hearing Transcript page 6-8). Secondly the arrest warrant affidavit had been alter and did not have enough information make out probably cause. (See Appendix G9 Page 17 Arrest warrant affidavit). (Appendix .G4 Motion to Suppress Evidence and Dismiss Charges with Prejudice).

DISCUSSION

Prior to the appointment of counsels and return of indictments the Appellant file two motions mentioned above in Division One trial court. Doing appointment of counsel the trial judge told me that he was going hear those Motions. Defense Counsel and District Attorney General had the case removed from Division One Trial Court before the Judge could Rule on the Motions. When the case was move to Division Three the trail court refused to Rule on the motions because He had counsels. Counsels were unwilling for a long time to redo and file the Motions. Only after the appellant kept asking them they finally re-done the motions.

However, when the motions was before the trial court for resolution the appellant was totally denied his Sixth Amendment Right to Counsel at critical stage of the adversary process. That sealed the appellant fate and compelled him to be witness against himself and plea guilty.

(4)

The second “Structural Defect” is bias adjudicator at critical stage of the Capital Adversary Process. The trial court demonstrated bias against the accused). Reason is, Rule 12(e) places a duty on the trial court to rule on Motions to Suppress before trial. (See Feagin v State Appendix G 7). Bias Adjudicator accused by not Proceeding according to essence requirements of law” under Tenn. R. Crim. P. Rule 12(e) is Prejudicial to Judicial and is “structural defect” that requires automatic reversal of convictions. (See Matthews v. Eldridge 424 U.S. 319, 96 S.Ct. 893 47 L.ed 28, 1).The trial court actions is not “Harmless error” the trial court deferring a Ruling on the Motions to Suppress were detrimental to the accused right to “ impartial adjudicator “ and his actions gave the State advantage over the accused. Because the Capital Adversary process at the pretrial hearings to suppress were “fundamentally unfair” unreliable and denial of due process of law.

(5)

Appellant were expose to “Capital adversary Procedures at the pretrial suppressions hearings” that were “offensive to fundamental principle of justice.” That it requires automatic reversal off convictions. Morrissey v. Brewer 408 U.S. 471 92 S.Ct. 2593, 33 L.ed 2d 484 (1972): Rivera v. Illinois 556 U.S. 148, 129 S.Ct. 1446, 173 L.ed. 2d 320 : Mathews v Eldridge 424 U.S. 319, 96 S.Ct. 893, 47 L.ed 2d 353: Because bias adjudicator at critical stage of the capital adversary procedures is Structural Defect that is Prejudicial to the Judicial. Matthew v. Eldridge, supra. Medina v. California 505 U.S. 437, 112 S.Ct. 2572, 120 L.ed 2d 353: and violation of the appellant due process right under the Fourteenth Amendment, Article 1 section 8, 9, 11, and 16 of Tennessee constitution.

The trial court interfere with the accused right to fair trial with impartial judge when the trial court did not proceed according to essential requirement of the law under Tenn. Rules of Criminal Procedure, Rule 12 (E). Which places a duty on the trial court to determined merits of motion to suppress before trial. Feagins v. State 596 s.W. 2d 108 (Tenn. Crim. App. 1979) (Appendix G7 Page 17).

(6)

Because of the Sixth Amendment Right violations by counsels concealing the conflict of interest from the trial court on the record and, bias adjudicator and , adversary procedures that violates “principle of fundamental fairness”. Substantial Due Process Protections (Does v. Munoz 507 F. 3d 964 (6th Cir.) invalidated the appellant convictions. Because the Capital Criminal Trial Process were Unreliable Vehicle for determining guilt or innocence. Recueno v. 518, U.S. at 218-219, 126 S.Ct. 2546 (quoting Neder 527 U.S. at 9, 119 S.Ct. 1827) Rivera v. Illinois 556 U.S. 148, 129 S. Ct. 1446 L.ed 2d 320). And, denied the appellant of a meaningful time to be heard and meet the prosecution case against him.

In conclusion, certain fundamental rights are “safeguard by the Fourteenth Amendment” and the “Bills of Rights Guarantees” against the State invasion. Gideon v. Wainwright 327 U.S. 335, 83 S.Ct. 792 , 93 A.L.R. 2d 733 (1963). The State “must” provide a trial before impartial judge (Tumey v Ohio 273 U.S. 510, 47 S, Ct. 437, 71 L.ed 749 (1927) with counsel to help defend against the State charges. Gideon v Wainwright, supra. (Quoting Rose v, Clark 106 S.Ct. 3101)

The State of Tennessee for Eleventh Judicial District invaded these Federal laws and Constitutional Rights and requires the Lifting of the Statute of Limitation. Because the punishment of the appellant is "fundamentally unfair" base on the composition of reasons in this Writ. The trial judge , and appellant own counsels violated the appellant constitutional guarantee rights to have "meaningful opportunity " present a complete defense. California v Trombella, 467 U.S. at 485, 104 S.Ct. at 2532: Strickland v. Washington 466 U.S. 668, 584-585, 104 S.Ct. 2052, 2063 80 L.ed 2d 674 (1984).

To allow the State of Tennessee to uses its Statutory Statute, such as the Statute of limitation T.C.A. 40-30-102(a) to bar the appellant claims. Where the State of Tennessee intentional invaded fundamental rights and Bill of Rights Guarantees as well as Substantial Due Process and Federal laws Mandates is Unconstitutional because its fundamentally unfair to the Appellant.

The Due Process Clause of the Fourteenth Amendment provides that a person mat not be deprive of life, liberty or property without due process of law. U.S. Amend. XIV> and when invaded by the State "substantial due process invalidated those convictions. Because liberty of justice would not exist if they are sacrificed. Does v. Munoz, supra.

There is no statute of limitation on the State right to bring murder charges against a defendant. Therefore, the Federal or State placing a time limit on defendant right to seek justice on a murder charge violates equal protection and give the advantage to the State.

Therefore, the appellant prays that the court grant the Writ, and find that the Statute of Limitation that places limit on the time a party can seek justice, i.e. Post -conviction violates equal protection and fundamental fairness since the State have No Statute of Limitation on when charging can be places against an accused defendant . Which give unfair advantage to the State, and the cost of this appeal be tax against the State of Tennessee cause the appellant is indigent and, any other relief deem necessary.

I Randall Turner declare under the penalty of perjury that the foregoing is true and correct to best of my knowledge. This the 22nd day of August 2019.

Respectfully Submitted

By: Randall Turner
Randall Turner # 133233
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