

**CAPITAL CASE
EXECUTION SCHEDULED FOR DECEMBER 5, 2019, at 7:00 P.M., CST**

Nos. 19-6860 and 19A626

IN THE SUPREME COURT OF THE UNITED STATES

In re: LEE HALL, *Petitioner*

ON ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS AND
APPLICATION FOR STAY OF EXECUTION

**PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION
TO ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS AND
APPLICATION FOR STAY OF EXECUTION**

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I. The Tennessee courts' denials of Mr. Hall's federal claims were on purely procedural grounds and any discussion of the merits was dicta.

First of all, the State claims it is "doubtful" that Mr. Hall "fairly presented" his juror claim to the state court. BIO at 5 fn.3. The State is mistaken. Mr. Hall presented his claim to the state court in a manner that adequately gave notice of the claim and gave the state courts "an opportunity to apply controlling legal principles to the facts bearing upon [the] constitutional claim." *Picard v. Connor*, 404 U.S. 270, 277 (1971).

In his second post-conviction petition, he argued presence of the biased juror violated his Sixth and Fourteenth Amendment rights under the United States Constitution and cited *Irvin v. Dowd*, 366 U.S. 717 (1961), and *Morgan v. Illinois*, 504 U.S. 719 (1992). (Appendix C, Second Petition for Post-Conviction Relief at 11-12).

In his motion to stay before the Tennessee Supreme Court, he argued as follows:

The right to a fair and impartial tribunal is deeply rooted in rights embedded in the federal and state constitutions. U.S. Const. amend. VI; Tenn. Const. art. I, § 9. *See, e.g., Irvin v. Dowd*, 366 U.S. 717, 722 (1961) ("[T]he right to a jury trial guarantees to the criminally accused a fair trial The Sixth and Fourteenth Amendments to the United States Constitution guarantee a criminal defendant the right to be tried by impartial and unbiased jurors. *See Morgan v. Illinois*, 504 U.S. 719 (1992).

(Appendix G, Hall's Motion to Stay Execution at 14-15).

Mr. Hall fairly presented his biased juror claim to the state court. The State's contention to the contrary is inaccurate and misleading.

Secondly, the record is clear that Mr. Hall did not receive a merits ruling on his biased juror claim in the Tennessee Courts—which is why a stay must be granted so that an evidentiary hearing on this foundational claim can be held. In its November 6 order, the trial court dismissed Mr. Hall’s petition for writ of error coram nobis and motion to reopen his post-conviction on procedural grounds. (Appendix D, Order at 13). The trial court set a hearing on the Second Post-Conviction Petition for November 14, 2019. (Appendix D, Order at 2, 13). The order explained that the court *would only* address the merits of the petition if the second post-conviction petition was properly before the court. (Appendix D, Order at 13). Absent such a finding, the court would conduct the hearing as an offer of proof. (Appendix D, Order at 13). On November 19, 2019, the trial court entered an order dismissing Mr. Hall’s post-conviction petition. (Appendix F, Order Dismissing Petition for Post-Conviction Relief).

Due to the finding that the second petition was procedurally barred, the evidence presented on November 14, 2019, is only in the record as an offer of proof. The trial court, in dicta, made various findings about the offer of proof but they should not be given the weight of factual findings that are made in a full and fair hearing. Mr. Hall’s offer of proof was a rushed affair. In the eight days counsel had to prepare, Mr. Hall’s state attorneys brought in an out-of-state witness (Juror A), three other witnesses, and hundreds of pages of exhibits—of this evidence formed the basis for the courts’ rulings that were all purely procedural. Notably, lead post-conviction counsel for Lee Hall, attorney Paul J. Morrow, Jr., died on November 11, 2019, three days before hearing. *See Lee Hall’s Reply To State’s Response To His*

Motion To Stay His Execution Pending Appeals Of Right Regarding Biased Juror, filed in the Tennessee Supreme Court on December 3, 2019. (Attached hereto as Appendix 1, at 2). Mr. Morrow's co-counsel, Donald E. Dawson, was out of state before and during the hearing. (Appendix 1, Hall Reply to Stay at 2). The Tennessee Supreme Court did not consider Mr. Hall's reply in its order denying a stay of execution. (Appendix H to Petition). The Order makes no reference to the exhibits included in Mr. Hall's offer of proof. All of this leads to the inescapable conclusion that the Tennessee courts' rulings were procedural in nature and not a full and fair consideration of the evidence.

II. Petitioner has been diligent in discovering this claim of juror bias implicating the foundation of a fair trial. The absolute need for this Court to fashion a remedy for this error presents extraordinary circumstances justifying its consideration of a Petition for Original Writ.

The State of Tennessee says that Petitioner was not diligent in uncovering this information about Juror A sooner. However, what the State seems to be advocating is neither efficient nor desirable. Jurors are pulled into the difficult experience of a capital trial through no fault of their own, besides their status as American citizens and their willingness to do their civic duty. Once they have served, they must go on with their lives. The State would have defense counsel harassing them and asking personal questions of them for the rest of their lives in order to prove diligence. The State would also have investigators double-checking every aspect of every juror's sworn testimony, even in the absence of a reason to doubt it.

In the present case, counsel made attempts over the years, some successful,

some not, to contact all fifteen¹ of Mr. Hall's jurors and to ask them about their experiences. As the district court in this case stated: "The Court specifically notes that there is no suggestion of abandonment, inexcusable neglect, or vexatious or abusive litigation tactics in Petitioner's request, and the record demonstrates that Petitioner has not yet ha[d] the opportunity to raise the relevant claims of juror bias in district court." (Appendix I, Order at 4-5 fn.1). In 2014, the first time Juror A spoke with the defense about her experiences as a juror, she did not reveal that she had given false answers during jury selection. Furthermore, nothing in the records of jury selection would give the defense any reason to doubt her sworn testimony.

The fact remains that Juror A concealed her painful past from nearly everyone. Although, as the State argues, she had begun talking to a therapist in 2008, she is still very reluctant to talk about her history of domestic abuse with her own family, let alone with total strangers. At any rate, she did not volunteer the information in 2014, even though she shared other aspects of her personal life, and would not have volunteered it any sooner than that. However, for whatever reason, she did reveal this information in September of 2019.² This late revelation is what has necessitated this hurried litigation, not a lack of diligence.

And what Juror A revealed was significant: Not only had she given false answers to the questions that the court and both sides used to determine which potential jurors were qualified to serve, but the experiences she covered up in voir

¹ There were three alternate jurors.

² Juror A testified that she did not "know why [she] started talking about it" with Mr. Hall's state legal team in September 2019. (Appendix E, Hearing Transcript at 43).

dire did indeed influence her as she listened to the evidence presented. Upon learning of this, counsel for Mr. Hall had an absolute obligation to report it to the courts. This is because the service of a biased juror in a death penalty case strikes at the heart of our justice system.

However, even with compelling evidence of juror bias, “the gates to this Court’s jurisdiction over the new § 2254 remain locked[,]” as Judge Corker found when Mr. Hall attempted to argue his case in federal district court. (Appendix I, Order at 6). In order to get a federal tribunal to hear a claim that his federal rights were violated, Mr. Hall must show that he is actually innocent in order to qualify to have his constitutional right to “a fair trial in a fair tribunal” vindicated. *See Irvin v. Dowd*, 366 U.S. 717, 722 (1961) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)) (“A fair trial in a fair tribunal is a basic requirement of due process.”).

Any participant in the judicial process would recognize that many defendants brought to trial are indisputably guilty of having committed some offense. In those cases, the question for the jury to answer is not whether the defendant is guilty, but rather, what offense did the defendant commit?³ That question might be just as difficult to resolve, but no less important, than in a case where the jury must decide between guilt and innocence. The fairness of the tribunal in that case is no less important, nor any less required by the Constitution. Furthermore, when the stakes are heightened by the possibility of a death sentence, the need for fairness and

³ In Mr. Hall’s case, the jury had instruction on both First Degree Murder and Second Degree Murder. (*State v. Hall*, Hamilton County Criminal Court Nos. 188000, 188001, Trial Vol. 8, pages 1185-86).

impartiality is likewise heightened. “Finality is well and good, but should not trump fairness and justice.” (Appendix H, Order, *State v. Hall*, No. E1997-00344-SC-DDT-DD (Lee, J., dissenting at 2) (Tenn. Sup. Ct. Dec. 3, 2019).

Extraordinary circumstances exist in this case. Here, a juror made last-minute revelations about traumatic circumstances led her to conceal painful memories that would have disqualified her from jury service in this capital case. Those circumstances led her to identify with the victim and to admit feelings of “hatred” for Lee Hall because he behaved so much like her first husband. This fatally undermines that foundation of Hall’s capital trial: a fair and impartial jury. As soon as counsel became aware of these facts, counsel brought them to court, both state and federal. In every instance, the courthouse doors were barred with byzantine rules of PROCEDURAL DEFAULT. On this day of his execution, Lee Hall turns to this Court seeking a forum to give his claims plenary consideration.

For these reasons, Petitioner Lee Hall, asks this Court to stay his execution, consider his petition and send this case to the district court for a full evidentiary hearing.

Dated: December 5, 2019

Respectfully submitted,

A handwritten signature in cursive script that reads "Stephen A. Ferrell". The signature is written in black ink and is positioned above a horizontal line.

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