

CAPITAL CASE

No. _____

IN THE

Supreme Court of the United States

TERRY LYNN KING,

Applicant,

v.

STATE OF TENNESSEE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS OF TENNESSEE

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Cullen M. Wojcik
BPR # 030564

Joshua D. Hedrick
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Counsel of Record for Petitioner

Comes the Petitioner, Terry Lynn King, and asks leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Petitioner has been found indigent and permitted to proceed *in forma pauperis* by Tennessee state courts as well as the United States District Court for the Eastern District of Tennessee and the United States Court of Appeals for the Sixth Circuit.

The Tennessee trial court that handled Mr. King's original trial and his post-conviction proceedings appointed undersigned counsel to represent petitioner pursuant to Tenn. Code Ann. § 40-14-201 *et seq.* in his motion to reopen his petition for post-conviction relief. *See* attached Order.



CULLEN M. WOJCIK

Lead Counsel

JOSHUA D. HEDRICK

Co-counsel

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Counsel of Record for Petitioner

IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE
DIVISION III

TERRY LYNN KING,)
)
 Petitioner,)
)
 VS.)
)
 STATE OF TENNESSEE,)
)
 Respondent.)

FILED

SEP 25 2016

By Mike Hammond, Clerk

NO. 72987
(CAPITAL CASE)
(POST-CONVICTION)

ORDER

This matter is before the Court on Petitioner's June 22, 2016 motion to reopen his petition for post-conviction relief. Mr. King asserts he is entitled to reopen his post-conviction based upon new rules of law as announced in *Johnson vs. United States*, ___U.S.___, 135 S. Ct. 2251 (2015), and *Welch v. United States*, ___U.S.___, 136 S. Ct. 1257 (2016). Petitioner's assertion that he should be permitted to reopen his post-conviction petition involves purely a question of law. Stated another way, the issue before this Court is whether or not the petition to reopen states a colorable claim for relief, and if so, to what relief, if any, this petitioner is entitled.

Mr. King was convicted of first degree felony murder and other crimes on February 1, 1985. The jury imposed a sentence of death, premised upon four aggravating circumstances, to wit:

- (1) the defendant was previously convicted of one or more felonies, other than the present charge, which involved the use of threat of violence to the person;
- (2) the murder was especially heinous, atrocious or cruel in that it involved torture or depravity of mind;

- (3) the murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest of the defendant or another; and
- (4) the murder was committed while the defendant was engaged in committing, or was an accomplice in the commission of, or was attempting to commit, or was fleeing after committing or attempting to commit, any rape, robbery, larceny or kidnapping.

Tenn. Code Annotated §39-2-203(i), (2), (5), (6), and (7) (1982) (repealed 1989). At issue, therefore, is whether *Johnson* creates a new rule of law affecting the (i)(2) aggravator cited above, and if so, whether the petitioner is entitled to relief as a consequence. Accordingly, the Court finds as follows:

1. The petitioner is indigent within the meaning of T.C.A. §40-14-201. This Court appoints Cullen Wojcik and Joshua Hedrick of the Knox County Bar to represent the petitioner in these proceedings.
2. This matter shall be set for hearing which hearing shall be limited to the issue of whether the petition states a colorable claim which warrants a finding that Mr. King's post-conviction should be reopened. Should the Court find a colorable claim is stated, the Court will order further hearing and briefing.
3. Counsel shall be prepared to address the following issue:
Is the *pre-1989* language found within T.C.A. §39-2-203(i)(2) subject to constitutional scrutiny in light of the holding in *Johnson*.
4. The matter shall be set for hearing on Jan. 19th, 2017 at 9:00 a.m.
5. Any amendment to the petition to reopen, which shall include but not be limited to the citation of additional authority, shall be filed within sixty (60) days following entry of this Order. The state shall have forty-five (45) days within which to respond to any additional pleading filed by the petitioner.

The Clerk of this court is directed to forward a copy of this Order to Cullen Wojcik, Esq., Joshua Hedrick, Esq., and to the Knox County Deputy District Attorney General Leland Price.

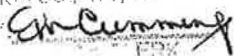
It is so ORDERED.

ENTER this the 26th day of September, 2016.



JUDGE G. SCOTT GREEN
SIXTH JUDICIAL DISTRICT
CRIMINAL COURT, DIVISION III

CERTIFIED TRUE COPY
MINE HAMMOND, CLERK
CRIMINAL COURT
KNOX COUNTY, TN

BY 
ERK