

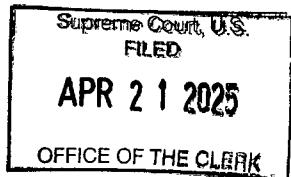
24-7085  
No.                   

ORIGINATED

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 2024



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HOWARD JEFFERSON ATKINS,

Petitioner,

v.

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BRIAN ELLER, Warden,

Respondent.

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PETITION FOR WRIT OF CERTIORARI TO THE  
TENNESSEE SUPREME COURT

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Howard J. Atkins  
T.D.O.C. #00327480  
Petitioner pro se  
Trousdale Turner Correctional Center  
140 Macon Way  
Hartsville, TN 37074

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**QUESTION PRESENTED FOR REVIEW**

- I. Did the Tennessee Supreme Court violate the Separation of Powers doctrine (United States Constitution Amendment XIV §1) and United States Supreme Court precedent (*Kent v. U.S.*, 383 U.S. 541, 86 S.Ct. 1045 (1966)) when it rendered an opinion granting concurrent jurisdiction to the state circuit courts with the state juvenile courts over juveniles alleged to be delinquent, in direct contravention of a legislative statute giving the state juvenile courts “exclusive original jurisdiction” over juveniles alleged to be delinquent?

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**v.**

**BRIAN ELLER, Warden,**

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**PETITION FOR WRIT OF CERTIORARI TO THE  
TENNESSEE SUPREME COURT**

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COMES NOW Petitioner, Howard Jefferson Atkins (hereinafter Atkins), pro se and pursuant to Rules of the Supreme Court Rule 10 and 28 U.S.C.A. §1257, and prays that a Writ of Certiorari issue to review the Tennessee Supreme Court's summary denial of Atkins' Tenn. R. App. P. Rule 11 Application for permission to appeal the Tennessee Court of Criminal Appeals' denial of his state Petition for Writ of Habeas Corpus. The Tennessee Supreme Court's denial was filed on March 12, 2025.

## OPINIONS BELOW

The Tennessee Supreme Court entered its judgment March 12, 2025 denying Atkins' Tenn. R. App. P. Rule 11 Application for permission to appeal, affirming the judgment of the Tennessee Court of Criminal Appeals and the Johnson County Criminal Court. A copy of the judgments / opinions from the Tennessee Supreme Court, the Court of Criminal Appeals for the Eastern District of Tennessee, and the Johnson County Criminal Court are included in the Appendix. (Appendix 1:A, 1:B, and 1:C, respectively)

## JURISDICTION

The question in this case stems from Atkins' reply to the Respondent's (hereinafter State's) Motion to Dismiss Atkins' initial state petition for habeas corpus.<sup>1</sup> (State's Motion to Dismiss – App'x 2:B; Technical Record 2:255)(Atkins' Response in Opposition – App'x 2:C; T.R. 2:264) Thereafter, the issue became the focus of Atkins' appeals to the Tennessee Court of Criminal Appeals and Tennessee Supreme Court – that either the lower courts had misinterpreted the scope of a Tennessee Supreme Court case granting concurrent jurisdiction to the state circuit courts with the juvenile courts over juveniles alleged to be delinquent, or else the decision violates the Separation of Powers doctrine by its contradiction of an explicit state statute. This is discussed further infra.

On March 12, 2025, the Tennessee Supreme Court entered its judgment by issuing a summary denial of Atkins' Rule 11 Application, and mandate thereon was entered on March 17, 2025. No request for rehearing was filed in any state court. Jurisdiction to review the judgment of the Tennessee Supreme Court is therefore conferred upon this Court by Supreme Court Rule 10 and 28 U.S.C.A. §1257.

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<sup>1</sup> The State additionally raised a "collateral estoppel" claim in its Motion to Dismiss, due to Atkins' having raised a "sufficiency of the evidence" claim already in his Petition for Post-conviction relief. However, Atkins refuted this assertion due to the fact that his state habeas corpus petition claim was not a sufficiency claim – his juvenile transfer is actually void on the face of the record or proceedings. The State abandoned its collateral estoppel claim on appeal.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS**

**United States Constitutional Amendment III §1** provides:

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

**United States Constitutional Amendment XIV §1** provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Tennessee Constitution Article II §1** provides:

The powers of the government shall be divided into three distinct departments: legislative, executive, and judicial.

**Tennessee Constitution Article II §2** provides:

No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to any of the others, except in the cases herein directed or permitted.

**Tennessee Constitution Article VI §1** provides:

The judicial power of this state shall be vested in one Supreme Court and in such Circuit, Chancery, and other Inferior Courts as the Legislature shall from time to time, ordain and establish; in judges thereof, and in justices of the peace. The Legislature may also invest such jurisdiction in Corporation Courts as may be deemed necessary. Courts to be holden by justices of the peace may also

be established.

**Tennessee Constitution Article VI §8** provides:

The jurisdiction of the Circuit, Chancery, and other Inferior Courts, shall be as now established by law, until changed by the Legislature.

**Tennessee Code Annotated §37-1-103** provided prior to January 1, 2025:<sup>2</sup>

37-1-103. Exclusive original jurisdiction.

(a) The juvenile court has exclusive original jurisdiction of the following proceedings, which are governed by this part:

- (1) Proceedings in which a child is alleged to be delinquent, unruly or dependent and neglected, or to have committed a juvenile traffic offense as defined in § 37-1-146;
- (2) Proceedings arising under §§ 37-1-141 – 37-1-144;
- (3) Proceedings arising under § 37-1-137 for the purposes of termination of a home placement;
- (4) Prosecutions under § 37-1-412, unless the case is bound over to the grand jury by the juvenile court or the defendant is originally charged with a greater offense of which violation of § 37-1-412 is a lesser included offense;
- (5) Proceedings arising under [former] § 49-5-5209(e) [repealed];
- (6) Proceedings in which a parent or legal guardian is alleged to have violated parental responsibilities pursuant to § 37-1-174; and
- (7) Proceedings arising under § 37-1-190(e).

(b) The juvenile court also has exclusive original jurisdiction of the following proceedings, which are governed by the laws relating thereto without regard to the other provisions of this part:

- (1) Proceedings to obtain judicial consent to employment, or enlistment in the armed services of a child, if consent is required by law;
- (2) Proceedings under the Interstate Compact for Juveniles, compiled as chapter 4, part 1 of this title; and

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<sup>2</sup> These two T.C.A. statutes were amended May 28, 2024 to grant concurrent jurisdiction over juveniles alleged to be delinquent in certain circumstances, prospectively from January 1, 2025 (discussed further *infra*). All references to these statutes without further elaboration are to the statutes as they existed at the time of Atkins' offense on April 16, 2000.

(3) Proceedings under the Interstate Compact on the Placement of Children, compiled as chapter 4, part 2 of this title.

(c) Except as provided in subsection (d), when jurisdiction has been acquired under this part, jurisdiction continues until the case has been dismissed, or until the custody determination is transferred to another juvenile, circuit, chancery, or general sessions court exercising domestic relations jurisdiction, or until a petition for adoption is filed regarding the child in question as set out in § 36-1-116(f). A juvenile court retains jurisdiction to the extent needed to complete any reviews or permanency hearings for children in foster care as may be mandated by federal or state law; however, only the adoption court has jurisdiction to modify visitation or custody of the child while the adoption remains pending. This subsection (c) does not establish concurrent jurisdiction for any other court to hear juvenile cases, but permits courts exercising domestic relations jurisdiction to make custody determinations in accordance with this part.

(d) (1) A juvenile court in any county of this state shall have temporary jurisdiction to issue temporary orders pursuant to this section upon a petition on behalf of a child present or residing in that county. Upon being informed that a proceeding pertaining to the same child has been commenced in or a determination pertaining to the same child has been made by a court of a county having prior jurisdiction under this part; provided, that the court having temporary jurisdiction shall immediately notify and attempt to communicate with the court having original jurisdiction regarding the status of the child before issuing any temporary order hereunder, the courts shall coordinate with one another to resolve any jurisdictional issues, protect the best interests of the child, and determine the duration of any order entered by a court pursuant to this section.

(2) A court shall have temporary jurisdiction pursuant to this subsection (d) only in a neglect, dependency or abuse proceeding, a termination of parental rights proceeding or an order of protection pursuant to title 36, pertaining to the child whose matter is before the court when the court determines it is necessary to protect the best interests of that child by action of that court.

(3) Upon notice that a proceeding pertaining to the child has been commenced in a court in a county having prior jurisdiction under this part or upon notice that there is a previous determination pertaining to the child that is entitled to be enforced under this part:

(A) The court exercising temporary jurisdiction shall attempt to communicate with the prior court having jurisdiction and resolve jurisdictional issues and determine whether jurisdiction should transfer to the court exercising temporary jurisdiction;

(B) If jurisdiction is not transferred to the court exercising temporary jurisdiction, the orders of the court exercising temporary jurisdiction shall remain in force and effect until an order is obtained from the court having

prior jurisdiction regarding the child;

(C) If jurisdiction is not transferred to the court exercising temporary jurisdiction, the court exercising temporary jurisdiction under this part, either upon motion by a party or on its own, shall enter an order specifying the period of time that the court considers adequate to allow the parties to resume the proceeding in the court having prior jurisdiction under this part; and

(D) If jurisdiction is transferred to the court exercising temporary jurisdiction, all matters thereafter pertaining to the child shall be within the jurisdiction of that court.

(e) Notwithstanding any other law to the contrary, transfers under this section shall be at the sole discretion of the juvenile court. In all other cases, jurisdiction shall continue until a person is no longer a child as defined in § 37-1-102.

(f) The court is authorized to require any parent or legal guardian of a child within the jurisdiction of the court to participate in any counseling or treatment program the court may deem appropriate and in the best interest of the child.

(g) Notwithstanding this section, nothing in subdivision (a)(1) shall be construed to preclude a court from exercising domestic relations jurisdiction pursuant to title 36, regardless of the nature of the allegations, unless and until a pleading is filed or relief is otherwise sought in a juvenile court invoking its exclusive original jurisdiction.

**Tennessee Code Annotated §37-1-104** provided prior to January 1, 2025:

37-1-104. Concurrent jurisdiction.

(a) The juvenile court has concurrent jurisdiction with the probate court of proceedings to:

- (1) Treat or commit a developmentally disabled or mentally ill child;
- (2) Determine the custody or appoint a guardian of the person of a child; and
- (3) Give judicial consent to the marriage of a child if consent is required by law.

(b) The juvenile court has concurrent jurisdiction with the general sessions court for the offenses of contributing to the delinquency or unruly conduct of a minor as defined in § 37-1-156 and contributing to the dependency of a minor as defined in § 37-1-157.

(c) The juvenile, circuit and chancery courts have concurrent jurisdiction to terminate parental or guardian rights pursuant to the provisions of title 36, chapter 1, part 1.

(d) (1) (A) The juvenile court has concurrent jurisdiction and statewide jurisdiction with other courts having the jurisdiction to order support for minor children and shall have statewide jurisdiction over the parties involved in the case.

(B) In intrastate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in accordance with the provisions of title 36, chapter 5, parts 30 and 31.

(C) In any political subdivision or judicial district of the state in which a court by contract is the agency designated to provide child support enforcement pursuant to Title IV-D of the Social Security Act, compiled in 42 U.S.C. §§ 651 et seq., and if a judge with child support jurisdiction in that political subdivision or judicial district agrees, the contracting court shall have jurisdiction in any case in such judge's court in which an application is made for assistance in obtaining support under this part. Upon application being made for child support enforcement assistance as provided by law, the contracting court shall assume jurisdiction and it is the duty of the court clerk to so notify the clerk of any court having prior jurisdiction. The contracting court shall then proceed to make and enforce such orders of support as it deems proper within its jurisdiction pursuant to the agreement. The contracting court shall not have jurisdiction in any case in which an absent parent is in full compliance with a support order of another court.

(2) In any case in which the court has exclusive or concurrent jurisdiction to order the payment of child support, the court may issue a child support order when requested by a party. All provisions of title 36, chapter 5 that relate to child support or child support orders that include an order of spousal support and § 50-2-105 apply to support orders issued in these proceedings.

(e) The juvenile court has concurrent jurisdiction with the circuit and chancery court of proceedings arising from the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

(f) Notwithstanding any law to the contrary, the juvenile court has concurrent jurisdiction with the circuit and chancery court of proceedings to establish the paternity of children born out of lawful wedlock and to determine any custody, visitation, support, education or other issues regarding the care and control of children born out of wedlock. The court further has the power to enforce its orders. Nothing in this subsection (f) shall be construed as vesting the circuit and chancery court with jurisdiction over matters that are in the exclusive jurisdiction of the juvenile court under § 37-1-103.

## **STATEMENT OF THE CASE**

Atkins was charged for the April 16, 2000 murder of his abusive stepfather, Raymond Franklin Conway Sr. The State filed a motion to transfer Atkins to adult circuit court, and on June 22, 2000, a transfer hearing was held in the juvenile court at Covington Tennessee, wherein Atkins was in fact bound over to circuit court.<sup>3</sup> Atkins was convicted by a petit jury of first-degree premeditated murder, and the trial court sentenced Atkins to Life. The conviction was upheld on direct appeal. (*State v. Atkins*, 2003 WL 21339263 (Tenn. 2003))

A petition for post-conviction relief and petition for writ of error coram nobis were also unsuccessful. (*Atkins v. State*, 2008 WL 4071833 (Tenn. 2008); and *Atkins v. State*, 2010 WL 4274737 (Tenn. 2010), respectively)

Atkins also litigated a lengthy federal habeas corpus petition, which was ultimately denied. (*Atkins v. Crowell*, 945 F.3d 476 (6<sup>th</sup> Cir. 2019))<sup>4</sup> During the same time-frame, Atkins pursued two motions to reopen state post-conviction proceedings in June 2013 and November 2020, arguing Eighth Amendment constitutional claims in regards to his mandatory 51-60 year sentence. The Eighth Amendment issue was ultimately resolved by *State v. Booker* (656 S.W.3d 49 (Tenn. Sup. Ct. 2022)) while the appeal of the denial of the latter motion was pending before the Tennessee Supreme Court.

Finally, Atkins filed a petition for writ of habeas corpus in the Johnson County Criminal Court on February 15, 2024. (App'x 2:A) In the State's response, it claimed that Atkins' sentence is "voidable" rather than "void," which precludes habeas relief because, pursuant to *Sawyers v. State* (814 S.W.2d 725 (Tenn. Sup. Ct. 1991); copy enclosed as App'x 1:F), the state circuit court has concurrent jurisdiction with the juvenile court. In Atkins' reply, he asserted that such an interpretation runs afoul of the Separation of Powers doctrine because it contradicts a statute granting original exclusive

3 Tennessee at one time had a procedural practice in circuit court known as an "acceptance hearing," but this practice had been abolished by the time of Atkins' transfer hearing.

4 This case had numerous captions over the course of litigation, as the Warden having custody of Atkins changed multiple time due to various circumstances. The concluding caption is named here.

jurisdiction to the juvenile court. On April 22, 2024, the Johnson County Criminal Court dismissed Atkins' petition by simply signing the exact sample form provided by the State, which cited failure to state a colorable claim (App'x 1:C). Atkins timely appealed, and the Court of Criminal Appeals at Knoxville affirmed the Circuit Court's dismissal on October 23, 2024 (App'x 1:B). Atkins thereafter filed an Application for Permission to Appeal to the Tennessee Supreme Court pursuant to Tenn. R. App. P. Rule 11, which was summarily denied on March 12, 2025 (App'x 1:A). This Petition for Writ of Certiorari follows.

### **REASONS FOR GRANTING THE WRIT**

#### **STANDARD OF REVIEW**

The Tennessee legislature has encoded its state law in Tennessee Code Annotated (hereinafter T.C.A.). The statutes for filing a state petition for writ of habeas corpus cite, “[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever... may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment.” (T.C.A. §29-21-101 et. seq.)<sup>5</sup> However, “[t]he writ of habeas corpus will issue only in the case of a void judgment or to free a prisoner after his term of imprisonment or other restraint has expired.” (*Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007); quoting *Archer v. State*, 851 S.W.2d 157, 189 (Tenn. 1993)) A judgment is void, warranting habeas corpus relief, when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that the convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired. (*Hickman v. State*, 153 S.W.3d 16 (Tenn. 2004)) Habeas relief is not available for a merely voidable judgment, which “is one that is facially valid and requires proof beyond the face of the record or

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<sup>5</sup> The Tennessee habeas corpus statute, as written, implies broad application for relief. All determinations narrowing the statutes' applicability were imposed by judicial fiat and are themselves questionable under a Separation of Powers analysis. However, this is not at issue in the current petition before the Court.

judgment to establish its invalidity." (*Summers* at 256) There is no statute of limitations on a state habeas corpus petition. (*Potts v. State*, 833 S.W.2d 60, 1992 Tenn. LEXIS 424)

It is the petitioner's burden to demonstrate, by a preponderance of the evidence, that the judgment is void or that the confinement is illegal. (*Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000)) If the habeas corpus court determines from the petitioner's filings that no cognizable claim has been stated and that the petitioner is not entitled to relief, the petition for writ of habeas corpus may be summarily dismissed. (*Hickman* at 20) However, "[t]he basis for [a] motion [to dismiss for failure to state a claim] is that the allegations contained in the petition, considered alone and taken as true, are insufficient to state a claim as a matter of law." (*Cook By & Through Uithoven v. Spinnaker's Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn. 1994)) A trial court is limited to the contents of the petition, taking all factual allegations as true and drawing all reasonable inferences for the petitioner. (*Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W. 3D 422, 426 (Tenn. 2011))

An abuse of discretion occurs when the court "applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party." (*State v. Johnson*, 401 S.W.3d 1 (Tenn. 2013)) However, due to the nature of Atkins' claims, which required the possible clarification or abrogation of a previous opinion of the Tennessee Supreme Court, it was inevitable that review would come before that court, as the intermediate appellate courts in Tennessee are "powerless to set aside a judgment of the Tennessee Supreme Court, which is the final authority on all matters of Tennessee law." (*Duncan v. State*, 1997 WL 700043, at 4 (Tenn. Crim. App. Nov. 10, 1997))

By its summary denial of Atkins' Tenn. R. App. P. Rule 11 Application, the Tennessee Supreme Court has endorsed the Tennessee Appellate Court's interpretation that its prior *Sawyers* opinion grants the Tennessee criminal circuit courts *full concurrent jurisdiction* over juveniles alleged to be delinquent at the time of Atkins' offense, and further endorses its opinion that such a position does not violate the

Separation of Powers doctrine of the United States and Tennessee Constitutions.

Atkins' Petition comes to this Honorable Court on direct review of the decision of a state court of last resort pursuant to Supreme Court Rule 10(b) and (c). Atkins asserts that a state court of last resort has decided an important federal question in a way that conflicts with the decision of a United States Court of Appeals or this Court, and indeed with a clear provision of the United States Constitution. This case involves an overstep by the Tennessee judiciary, and therefore this Court is Atkins' only hope of redress. Because the case comes on direct review of a state court's final decision, A.E.D.P.A.'s deferential standard does not apply, and review is *de novo*. (see e.g. *Madison v. Alabama*, 586 U.S. 265, 274 (2019))

#### **RELEVANT FACTS<sup>6</sup>**

Atkins was arrested in the early morning of April 17, 2000 for the murder of his abusive stepfather, Raymond Franklin Conway Sr., which crime occurred in the late evening of April 16, 2000. Atkins was sixteen years of age and thus was under the exclusive jurisdiction of the juvenile court. The State filed a "Petition for Transfer from Juvenile Court to Adult Circuit Court," and Atkins was detained at McDowell Juvenile Detention Facility pending his transfer hearing.

The transfer hearing was held on June 22, 2000 before Judge William A. Peeler, Case No. J11500-10-533. A true and exact copy of the juvenile transfer transcript is included with this Petition as Appendices 3 and 4 (T.R. 1:37-150, 2:151-252).

The juvenile court had "exclusive original jurisdiction" over juveniles alleged to be delinquent pursuant to T.C.A. §37-1-103(a) at the time of Atkins' offense. This statute was distinguished by T.C.A. §37-1-104, which granted concurrent jurisdiction under certain circumstances in Tennessee juvenile jurisprudence; however, "juveniles alleged to be delinquent" was not on that list. Further, while the

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<sup>6</sup> While the sole issue for this Court is whether the Tennessee Supreme Court violated the Separation of Powers doctrine, it is necessary that Atkins present the other facts of his petition to establish context for the Tennessee Supreme Court's violation.

legislature specified certain children that *could* be transferred based on age and offense under §37-1-134, it did not make an original jurisdictional distinction based on these factors.

At the time of Atkins' transfer, a number of factors were statutorily required to be met pursuant to T.C.A. §37-1-134 for the juvenile court to effectuate transfer and pass jurisdiction to the circuit court. Three of those factors were *very specific* and were enumerated at T.C.A. §37-1-134(a)(4): "The court finds that there is probable cause to believe that: (A) The child committed the delinquent act as alleged; (B) The child is not committable to an institution for the developmentally disabled or mentally ill; and (C) The interests of the community require that the child be put under legal restraint or discipline."

To be clear, *all three* factors *had to be met* in order to effectuate transfer, but in Atkins' transfer hearing, the juvenile court very explicitly on the record of the proceedings found *contra* to two of the three factors enumerated under T.C.A. §37-1-134(a)(4), yet transferred anyway. However, the wording of the order of transfer (App'x 1:E; T.R. 1:35) was prepared by the juvenile court clerk to reflect the *necessary* statutory requirements, conflicting with the transcript and obfuscating the error. Tennessee courts have determined that when a conflict exists between the document and the transcript, the *transcript* controls. (*State v. Brown*, 479 S.W.3d 200, 213 (2015))

In Judge Peeler's own words, he did not have much experience with juvenile transfer proceedings. (App'x 4 at 201; T.R. 2:236) He treated the transfer hearing as *only* a probable cause hearing, and said as much no less than four times over a very short span. (App'x 3 at 23-24; T.R. 1:60-61) The court further stated: "The only issue for this court is whether or not it's more probable or not that *a crime* occurred." (App'x 3 at 23; T.R. 1:60; emphasis added) The court never even contemplated the possibility that the transfer to circuit court might *not* occur: "Most of the – in fact, *all* of the times if there are felony charges brought, I simply have preliminary hearings and they go over to circuit court." (App'x 3 at 11; T.R. 1:48, emphasis added) In his ruling, Judge Peeler goes into a discourse about his

personal belief that he doesn't have the right to intervene and *not* transfer, and that any serious case "should" be heard by a jury. (App'x 4 at 203; T.R. 2:238)

Before the juvenile court enunciated its ruling, defense counsel made it abundantly clear that probable cause must be found *specifically* for first-degree premeditated murder for the criteria of transfer to be met. (App'x 3 at 61 and App'x 4 at 193; T.R. 1:97, 2:228) Defense counsel and the State each attempted to make their respective arguments for and against premeditation. (App'x 3 at 61-64; T.R. 1:97-100)

In the entirety of the transcript, the juvenile court never states, or even implies, that it found probable cause for premeditation, or first-degree murder itself, which was requisite to meet the criteria under T.C.A. §37-1-134(a)(4)(A). In fact, the court explicitly and intentionally refused to rule on a finding of probable cause for first-degree murder: "The court believes that the State has shown probable cause to believe that the delinquent act has occurred, that *a murder* did occur. The court believes that the argument of whether it's first degree, second degree, that question is a trier of the fact question for the jurors or the judge makes based on all of the evidence. *It's not this court's decision to make today.*" (App'x 4 at 202; T.R. 2:237; emphasis added)

The juvenile court did say that the crime was done "in an aggressive manner" (App'x 4 at 204; T.R. 2:239), but this is *not* one of the three criteria for transfer under T.C.A. §37-1-134(a)(4) – it's one of the seven (7) factors under §37-1-134(b) that the court must consider in reaching it's determination of the three subsection (a)(4) criteria. Subsection (b)(4) reads in full, "Whether the offense was committed in an aggressive and premeditated manner," so it's telling that the juvenile court made a conscious and intentional decision to omit "premeditated."

While it is true that the juvenile court was not authorized to determine actual guilt or innocence, it had a statutory obligation to find probable cause that Atkins committed the crime *as alleged*, i.e. first-degree murder, in order to waive jurisdiction and pass it to the circuit court. By intentionally refusing to

find probable cause for first-degree murder, the court explicitly *did not* find probable cause for the crime *as alleged* and thus ruled in Atkins' favor.

The juvenile court additionally ruled in Atkins' favor in the factor enumerated as T.C.A. §37-1-134(a)(4)(C), whether the interests of the community require the child be put under legal restraint or discipline<sup>7</sup>: "The child is *not* committable as being mentally retarded or the interests of the community requires that the child be put in legal restraint discipline." (App'x 4 at 202; T.R. 2:237; emphasis added) The juvenile court conflated the findings of subsections (B) and (C) and answered in the negative, that the interests of the community did not require Atkins to be put under legal restraint or discipline.

It is apparent that the juvenile court's understanding of the third criteria was not in a *prospective* sense. In other words, it was not that the interests of the community required that Atkins *continue* to be put in legal restraint or discipline; the court's understanding was in the past tense, as revealed a few pages later: "One of the matters is that the Court does consider to be paramount in this case is the third criteria of three and that is the community *required* the child to be put under legal restraint." (App'x 4 at 204; T.R. 2:239; emphasis added) The court's interpretation was that the third criteria of the statute was met simply because Atkins had been arrested and detained, which would explain why the court had transferred *every single case* as previously attested by the court itself. (T.R. 1:48) The court immediately thereafter reduced Atkins' bond under the assertion that he was "not a risk" (App'x 4 at 205; T.R. 2:240), and Atkins was in fact released on bond until the conclusion of his trial in circuit court on November 29, 2000. (App'x 1:I)

The clerk apparently presumed the juvenile court had found the correct statutory criteria and prepared the Appendix 1:E Order for Transfer from Juvenile Court to Circuit Court accordingly, in

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<sup>7</sup> This finding is understood to be in a prospective sense, that the child is a threat to the community, and therefore the community requires the child *continue* to be put under legal restraint or discipline. (see generally *Clinard v. Lee*, M.D. Tenn. --- F.Supp.3d ---, 2023 WL 6108163, at 26 et. seq.) In Atkins' case, the juvenile court opines that "[it thinks] the community has an interest in this case and has a right to decide what should be done," (T.R. 2:239), but this is simply *not* the intent of subsection 37-1-134(a)(4)(C).

conflict with the transcript. This clerical error obfuscated the fatal error on the transfer order and caused a severe delay in the fatal error's location. If the clerical errors were corrected to match the transcript, the Appendix 1:E transfer order would read as follows:

...

- 1) There is probable cause to believe the child committed the delinquent act(s), to wit: a murder, either first or second degree, of Raymond Conway, Sr. on April 17, 2000, in Tipton County, Tennessee.

...

- 4) The child was required to be put under legal restraint, but the interests of the community do not require that the child continue to be put under legal restraint or discipline.

The findings under (1) and (4) are irreconcilable with an order to transfer under T.C.A. §37-1-134, and if either one exists the Order is void and a nullity. To reiterate, this is not a sufficiency argument; the juvenile court enunciated findings in Atkins' favor but still transferred due to a misunderstanding of the transfer statutes.

The Tennessee Supreme Court recognizes three types of errors: 1) clerical errors; 2) appealable errors; and 3) fatal errors. (*Cantrell v. Easterling*, 346 S.W.3d 445 (Tenn. S. Ct. 2011))

Clerical errors are simply mistakes in filling out legal documents and are addressed through a Tenn. R. Cr. P. Rule 36 Motion to Correct Clerical Error.<sup>8</sup> “Tennessee Rules of Criminal Procedure 36 provides that '[a]fter giving any notice it considers appropriate, the court may *at any time* correct clerical mistakes in judgments, *orders*, or other parts of the record, and errors in the record arising from oversight or omission.’” (*id.* At 449, emphasis added) As previously noted, if a conflict exists between the document and the transcript, the *transcript* controls. (*State v. Brown*, *supra*, at 213)

Appealable errors are those for which Tennessee's Sentencing Act specifically provides a right of direct appeal. (*Cantrell* at 449-50) While not explicit in the Act, the courts of Tennessee have

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<sup>8</sup> Atkins did not file a Tenn. R. Crim. P. Rule 36 Motion to Correct Clerical, because correction of the error still would have resulted in his filing a petition for state habeas corpus relief. The fatal error on the Appendix 1:D Judgment sheet (T.R. 1:33) is not “created” by the clerical error on the Appendix 1:E order of transfer (T.R. 1:35); correction of the clerical error would simply make the fatal error obvious.

interpreted that errors in a juvenile transfer order can be raised on direct appeal as a certified question of law pursuant to Tenn. R. App. P. Rule 37. (*State v. Bell*, 2015 Tenn. Crim. App. LEXIS 149)

However, this generally presumes the juvenile court “erroneously found” the *correct* criteria for transfer.

Fatal errors are “so profound as to render the sentence illegal and void. An illegal sentence is ‘in direct contravention of the express provisions of [an applicable statute], and consequently [is] a nullity...’” (*Cantrell* at 452) The Court further expounds on a void judgment as “one which shows upon the face of the record a want of jurisdiction in the court assuming to render the judgment, which... may be either of the person, or of the subject matter generally...” (*id.*, at 453-54) An “appealable error” is not mutually exclusive from a “fatal error” if that error is jurisdictional; in other words, an error can be fatal even if it could also be raised on direct appeal. Errors with juvenile transfer orders *were* considered jurisdictional prior to the Tennessee Supreme Court’s ruling in *Sawyers* (*id.* at 728), which created concurrent jurisdiction through a judicial action, discussed further infra.

In the case sub judice, the State misstated and minimized Atkins’ claim as that he received an “inadequate transfer proceeding” and is basing his argument of a void judgment *only* on a clerical error on the transfer order (App’x 2:E at 12-13). However, this is not an accurate assessment, and respectfully, the State has *completely missed the mark*.

The appellate court was a *little* closer but still overlooks the point. It found that: “[Atkins] alleged that the juvenile court failed to make required statutory findings before transferring his case to the circuit court” (App’x 1:B, at 2); “[Atkins] asserts that the trial court lacked jurisdiction because the juvenile court failed to consider the required statutory factors in transferring his case to the trial court” (*id.*, at 3); and “[h]e argues that... the juvenile court’s failure to make the required statutory findings is ineffective to transfer jurisdiction to the trial court” (*id.*, at 4). However, Atkins never claimed he was deprived of an “adequate” transfer hearing, nor did he argue that the juvenile court “failed to consider

or make required statutory findings.” The error is more severe than this. As explained, the juvenile court actually found *in Atkins' favor* by enunciating findings contra to two of the three factors under T.C.A. §37-1-134(a)(4) but *transferred anyway*. This is comparable to a Grand Jury not finding probable cause for first-degree murder but still issuing an indictment on that offense.

The conflict is apparent on the face of the record or proceedings, voids the order of transfer, and *would* simultaneously nullify the jurisdiction of the circuit court but for the unconstitutional decision by the Tennessee Supreme Court in *Sawyers* granting concurrent jurisdiction between the two courts. In other words, the circuit court's judgment *is* void because the transfer order *is* void; correction of the clerical error would only make this fact obvious.

Neither the State nor the Tennessee courts contested the facts above, only that the concurrent jurisdiction – which was judicially-seized by the *Sawyers* court – renders Atkins' sentence “voidable” rather than “void.” Under their assessment, Atkins' claim is not viable for habeas corpus relief and is in fact time-barred under any other avenue for relief. In other words, were it not for the judicially-created concurrent jurisdiction in violation of the United States and Tennessee Constitutions, Atkins' sentence would be void for lack of jurisdiction in the trial court.

## **LAW AND ARGUMENT**

### **The Tennessee Supreme Court's Opinion in *Sawyers* Vesting Concurrent Jurisdiction in the Circuit Court Over Juvenile Offenders Alleged to be Delinquent of “Certain Offenses” and “Falling Within a Specified Age Span” Violates the Separation of Powers Clause and Must Be Abrogated to That Extent.**

*Sawyers v. State* (see App'x 1:F) was a case which came before the Tennessee Supreme Court in 1991 on appeal from a petition for post-conviction relief. Petitioner Sawyers pled guilty in state court to a number of serious crimes, including first-degree murder, while he and the State were under the

sincere belief that he was an adult at the time of his offenses. Eight years later, *Sawyers* discovered he had actually been *under* the age of eighteen when he committed his crimes and sought relief based on the premise that his sentence was void because the circuit court lacked subject matter jurisdiction to try him absent a transfer order.

Before *Sawyers*, similar issues with juvenile transfer in Tennessee *were* considered jurisdictional (*id.*, at 728), and indeed a transfer hearing in juvenile court would be a pointless endeavor if the question sought to be answered was not whether to transfer *jurisdiction*. Any other interpretation is absurd.

However, the Tennessee Supreme Court in *Sawyers* determined that “the absence of a transfer order cannot be said to affect the court's subject matter jurisdiction, which, in a real sense, is concurrent with that of the juvenile court as to certain offenses committed by children falling within a specified age span.” (*id.*, at 729) The court realized it could not confer actual concurrent jurisdiction which is vested first *exclusively* in the juvenile court pursuant to T.C.A. §37-1-103(a)(1), so it utilized somewhat ambiguous language as though “something like” concurrent jurisdiction applied – but only to juvenile offenders “alleged to be delinquent of certain offenses” and “falling within a specified age span,” and perhaps implying that it pertained only to those who had a *complete absence* of a transfer hearing. However, the court *did* state plainly that it does not consider the lack of a valid transfer hearing to be a jurisdictional matter. (*ibid.*)

Whatever the *Sawyers* court's intent, the Tennessee circuit and appellate courts interpreted *Sawyers* as vesting *actual* full concurrent jurisdiction in the circuit courts over juveniles alleged to be delinquent.

The *Sawyers* opinion thereafter informed a long line of cases addressing juvenile court jurisdiction throughout the subsequent thirty-four years based solely upon the aforementioned statement of the Tennessee Supreme Court in *dicta*. Initially, these cases dealt with circumstances

analogous to Sawyers where *no* transfer hearing was held. (e.g. Depriest v. Meyers, 2001 Tenn. Crim. App. LEXIS 494; Potter v. State, 2006 WL 2406769; Wray v. State, 2005 WL 1493158) In those where the offender was without fault for the error or the statute of limitations had not expired, a *de novo* transfer hearing was held to see if jurisdiction would in fact have passed to the circuit court. In others which dealt with state habeas corpus proceedings, the error required evidence outside the face of the record or proceedings and thus was not “void.” (e.g. Mosely v. State, 2018 WL 6828882, at 10)

While the initial cases all dealt with situations where there was a *complete absence* of a transfer hearing, the Tennessee appellate courts experienced a sort of “mission creep” where they progressively laid claim to concurrent jurisdiction between the circuit and juvenile courts in *all* cases.<sup>9</sup> By the time of the Mosely opinion in 2018, the Tennessee appellate courts had seized full and actual concurrent jurisdiction in this arena.<sup>10</sup> In fact, the appellate court that delivered the opinion in Atkins' case fully adopted this stance as well as the State's position that “the complete absence of a transfer hearing” and “a transfer hearing where the juvenile court fails to make the required statutory findings” is a “distinction without a difference.” (State's appellate brief App'x 2:E at 12; App'x 1:B Opinion at 4)

Atkins simultaneously submitted an alternative theory to his Separation of Powers claim to the Tennessee Supreme Court in his Rule 11 Application – that the Sawyers Court must have intended something “like” concurrent jurisdiction to attach *only* in cases where there was a *complete absence* of a transfer hearing (which is disparate from Atkins' case), and the intermediate appellate courts must have simply misinterpreted the Sawyers court's intent. However, the Tennessee Supreme Court's summary denial of Atkins' Rule 11 Application both rejects this alternative premise and implicitly

9 The Sawyers opinion may in fact have had a chilling effect on some appellants with meritorious claims. In most cases where a juvenile offender claimed a jurisdictional error but was rebuffed by the appellate court based on a “concurrent jurisdiction” theory under Sawyers, the juvenile appellant took the appellate court opinion at face value and never sought Tenn. R. App. P. Rule 11 review before the Tennessee Supreme Court.

10 To Atkins' knowledge, the Tennessee Supreme Court never specifically addressed the jurisdictional question again between its opinion in Sawyers and its summary denial of Atkins' Tenn. R. App. P. Rule 11 Application. Of the cases it heard dealing with juvenile transfer issues, jurisdiction was not the dispositive factor before the court.

adopts the appellate courts' interpretation of Sawyers.

Nonetheless, Atkins would submit that under *most* circumstances, an error in juvenile transfer proceedings *would* render the judgment of the circuit court "voidable" rather than "void." In other words, because the Tennessee Supreme Court has interpreted Tennessee's Sentencing Act to provide the ability to appeal juvenile transfer proceedings via direct appellate review, errors with those proceedings *would* generally be considered "voidable."

However, if an error is so severe that the order of transfer is void on the face of the record or proceedings, in the absence of concurrent jurisdiction that error would *also* void the subsequent judgment of the trial court. Atkins presented that his is such a case, in which a virtually incomprehensible scenario arose wherein the juvenile court enunciated findings directly contra to the statutory criteria for transfer, yet transferred anyway.

The only logical conclusion is that the juvenile court's misunderstanding of the statutes (which is supported by the existing transcript) drove its decision to transfer, and therefore the court *would not have transferred* if it understood the statutes and in fact *was unable to transfer* based on its unmitigated statements. There is a significant difference between a juvenile court "wrongly finding" the criteria for transfer and "finding the wrong" criteria for transfer.

The Separation of Powers is a fundamental principle of American constitutional government, applied to the states via the United States Constitution at Amendment XIV §1. (Underwood v. State, 529 S.W.2d 45, at 47 (Tenn. 1975)) The citizens of Tennessee preserved this fundamental principle in article II, sections 1 and 2 of the Tennessee Constitution. (*Id.*) Section 1 divides our state government into three distinct departments – the legislative, the executive, and the judicial. Section 2 provides that one department shall not exercise any of the powers belonging to the others. "In theory, the legislative department makes and repeals the law, the executive department administers and enforces the law, and the judicial department interprets and applies the law." (Underwood, at 47).

The courts of Tennessee have determined that “[t]he most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope.” (*In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015) (quoting *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995)). To that end, “[the court] begin[s] with the actual words of the statute, to which [it] accord[s] their natural and ordinary meaning.” *Martin v. Powers*, 505 S.W.3d 512, at 518 (Tenn. 2016)(citing *Baker v. State*, 417 S.W.3d 428, at 433 (Tenn. Sup. Ct. 2013)). The federal courts agree – that the plain language of a statute is the best evidence of Congressional intent. (see e.g. *Holloway v. United States*, 526 U.S. 1, 6, 143 L.Ed. 2d 1, 119 S.Ct. 966 (1999); *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450, 151 L.Ed. 2d 908, 122 S.Ct 941 (2002) – explaining that when construing a statute, “the first step is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. *The inquiry ceases if the statutory language is unambiguous and the statutory scheme is coherent and consistent.*” (emphasis added, citations and internal quotation marks omitted))

In *State v. Alley* (594 S.W.2d 381, 383-84 (Tenn. Sup. Ct. 1980)), Tennessee Supreme Court Justice Fones states: “[w]here the legislature has used words of plain and definite import, it would be very dangerous to put upon them a construction which would amount to holding that the legislature did not mean what it had expressed... that the intention of the legislature is to be learned from the words it has used... and, if that intention is expressed in a manner devoid of contradiction and ambiguity, there is no room for interpretation or construction, and the judges are not at liberty, on consideration of policy or hardship, to depart from the words of the statute; that they have no right to make exceptions or insert qualifications, however abstract justice or the justice of the particular case may seem to require it.”

In another case, the Tennessee Supreme Court has announced: “If the words [of a statute] are free from ambiguity and doubt, and express plainly, clearly, and distinctly the sense of the framers of the instrument, there is no occasion to resort to other means of interpretation. It is not allowable to

interpret *what has no need of interpretation.*” (*State ex rel. Coates v. Manson*, 105 Tenn. 232, 238, 58 S.W. 319, 320 (Tenn. Sup. Ct. 1900), emphasis added) In other words, the courts' authority falls well short of contradicting explicit legislative intent.

The present Tennessee Supreme Court has abandoned these foundational principles, as the concept of concurrent jurisdiction of juveniles alleged to be delinquent in Tennessee prior to January 1, 2025 clearly violates the Separation of Powers provision of the United States Constitution Amendment XIV §1 and the Tennessee Constitution Article II §§1 and 2. Judicial jurisdiction is created *solely* by legislative enactment. (United States Constitution Article III §1; Tennessee Constitution Art. VI §§1 and 8) There was no need for interpretation, nor was the Tennessee Supreme Court faced with answering a constitutional question. T.C.A. §37-1-103 prescribed in unambiguous terms “exclusive” (i.e. “sole”) original jurisdiction in the juvenile court. No court can countermand the legislature and declare jurisdiction for itself where expressly forbidden by statute, but that is exactly what the Tennessee Supreme Court did for the circuit courts thirty-four years ago in *Sawyers*.

As shown by T.C.A. §§37-1-103 and 104 at the time of Atkins' offense, *no* legislative authority vested a Tennessee circuit court with jurisdiction over juveniles alleged to be delinquent unless and until that jurisdiction was waived by the juvenile himself or by the juvenile court after a valid transfer hearing. The juvenile court had exclusive original jurisdiction over proceedings where a child was alleged to be delinquent. (T.C.A. §37-1-103(a)(1)). Once jurisdiction had been acquired under this part, it continued until the case was dismissed in the juvenile court, or for several other reasons not applicable to this Petition. (T.C.A. §37-1-103(c)) Transfers under this section “shall be at the sole discretion of the juvenile court. In all other cases, jurisdiction shall continue until a person is no longer a child as defined in §37-1-102.” (T.C.A. §37-1-103(e)) There is simply *no way* to read concurrency of jurisdiction over juveniles alleged to be delinquent into this statutory scheme.

Additionally, the Tennessee legislature knows how to grant concurrent jurisdiction when it is the

legislature's intent. Under T.C.A. §37-1-104(f), granting concurrent jurisdiction under certain circumstances, that subsection concludes: "Nothing in this subsection (f) shall be construed as vesting the circuit and chancery court with jurisdiction over matters that are in the exclusive jurisdiction of the juvenile court under § 37-1-103."

If the plain and explicit language of the Tennessee legislature was in *any way* ambiguous on these points, a bill passed just last year lays that ambiguity to rest. The Assembly enacted "2024 Tennessee Laws Pub. Ch. 1007 (S.B. 624)" which went into effect January 1, 2025 (see Appendix 1:H). This Act created a "Serious Youthful Offender" subcategory of juveniles adjudged to be delinquent. Pertinent to this appeal, the Act, among other things, amended T.C.A. §37-1-103 and 104 to vest concurrent jurisdiction in the circuit courts over juveniles alleged to be delinquent and who, if so adjudged, would be required to be classified as "Serious Youthful Offenders." By definition of T.C.A. §37-1-131, created by the Act, these are juveniles "alleged to have committed certain serious offenses" under subsection (g)(2) and falling within "specified age spans" (14 years of age or older) – almost verbatim the circumstances under which the Sawyers court presumed to grant concurrent jurisdiction to the circuit courts in 1991.<sup>11</sup> However, this Act is prospective-only from January 1, 2025. It is apparent that the Tennessee legislature never intended concurrent jurisdiction to apply to juveniles alleged to be delinquent before their 2024 Act. Therefore, the circuit courts *could not have had* concurrent jurisdiction prior to this date, and any judicial pronouncement to the contrary is a nullity.

This Honorable Court has acknowledged that exclusive jurisdiction in a juvenile court vests jurisdiction *solely* in that court. (see Kent v. U.S., 383 U.S. 541, 86 S.Ct. 1045, 1055 et. seq. (1966); App'x 1:G) The Sawyers court actually cites Kent (Sawyers at 729) for the proposition that the complete absence of a transfer hearing cannot be harmless error, but the Sawyers court then somehow

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<sup>11</sup> The Act excludes first-degree murder offenders ages to 16-17 from the list under T.C.A. §37-1-131(g)(2)(A) and prescribes procedures for them under §37-1-134 which seem to make holding a transfer hearing *mandatory* for these offenders, while also lessening the State's burden by prospectively removing consideration of factor §37-1-134(a)(4)(C).

reaches the opposite conclusion to what the *Kent* Court sets out regarding the definition of exclusive jurisdiction. Therefore, the determination of the Tennessee Supreme Court runs afoul not only of the United States Constitution, but also this Court's precedent.

Further, the federal courts recognize that the Separation of Powers is a fundamental principle of the United State Constitution. (see e.g. *Granite State Insurance Company v. Star Mine Services, Inc.*, 29 F. 4th 317, 2022 U.S. App. LEXIS 6657 (6<sup>th</sup> Cir. 2022) – The federal circuit court and the Kentucky state court recognized that when the legislature makes a clear and constitutional statutory decree, the courts were not allowed to reinterpret or second-guess the legislature's judgment.) Tennessee's Constitution is even *more* explicit than the U.S. Constitution in its empowerment of the legislative branch as the sole authority to declare the jurisdiction of the state courts. (Tenn. Const. Art. VI §§1, 8)

Nonetheless, the *Sawyers* court judicially rewrote what the Tennessee legislature explicitly and unambiguously decreed in T.C.A. §37-1-103 and 104, creating jurisdictional law apparently for the sole purpose of preventing petitioner Sawyers from escaping justice for several crimes he committed as a juvenile.<sup>12</sup> Regardless of its intent, the court was simply *not* constitutionally empowered to do this.

In reaching its conclusion, the *Sawyers* Court speaks in the language of legislative deliberation. It actually *eschews* Tennessee Code Annotated and analyzes the legislative codes and case law *from other states*. (*Sawyers* at 729, citing *Commonwealth v. Sims*, 379 Pa. Super. 252, 549 A.2d 1280 (1980)) *Sims* is a case from Pennsylvania, whose juvenile criminal procedure differs *fundamentally* from Tennessee's. From a cursory examination of the relevant Pennsylvania code, it appears that their circuit courts have original jurisdiction over *all* cases, and the alleged juvenile delinquent must petition the circuit court to be transferred *to* juvenile court. (see 42 Pa. C.S.A. §6322)

Under such law, which the *Sawyers* Court apparently found "consistent with Tennessee

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<sup>12</sup> What's further inexplicable about this decision by the Tennessee Supreme Court is that petitioner Sawyers was convicted of additional crimes, including murder, committed when he was in fact *over* 18 years of age, so regressing him to juvenile court on these convictions would still not have released him from confinement for decades to come, if at all.

authority and wholly persuasive" (*id.* At 729), Atkins and others like him would have no standing. However, under Tennessee state law, Sawyers is in direct contravention of the Tennessee Code enacted by the state legislature and thus violates the Separation of Powers doctrine.

As noted under the subheading "Relevant Facts" *supra*, the State did not dispute this in its appellate brief (App'x 2:E, at 12), asserting only that the intermediate appellate court is bound by Tennessee Supreme Court precedent. (see Duncan, *supra*) The appellate court only addressed the Separation of Powers issue in a footnote in its Opinion and deferred to similar precedent, although it noted disagreement with Atkins' premise with no enunciation of its reasoning. (App'x 1:B, at 4)

But it is clear, by the plain language of the statutes coupled with the inability of the State and the intermediate appellate court to articulate a defense to their position on the issue, that the Sawyers opinion is in violation of the Constitutional provisions proclaiming the Separation of Powers and must be abrogated to that extent. The Tennessee Supreme Court has implicitly endorsed the lower courts' stance with its summary denial of Atkins' Application and has unapologetically usurped the legislative privilege to create law by writing its own jurisdictional authority. Review by this Honorable Court is therefore imperative under Supreme Court Rule 10(c) to exercise its supervisory authority over a state court that has decided an important federal question in a way that conflicts with relevant decisions of this Court and, indeed, with the plain language of the United States Constitution Amendment XIV §1 and Tennessee Constitution Article II §§1 and 2.

The Tennessee courts do not contest the underlying facts of Atkins' claim and indeed *cannot*, as they are apparent from the face of the record. Thus, the sole issue for this Honorable Court is whether the Tennessee Supreme Court had authority under the Separation of Powers doctrine to claim concurrent jurisdiction where such was explicitly proscribed by legislative enactment. Atkins submits that it is not even a close question.

## CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Petitioner, Howard Jefferson Atkins requests this Honorable Court appoint counsel and set a hearing on the merits of his argument, and thereafter that it grant his Petition. Specifically, Atkins requests this Court: 1) overrule the Tennessee Supreme Court's decision in *Sawyers v. State* to the extent that it violates the Separation of Powers doctrine by its granting concurrent jurisdiction to the Tennessee circuit courts with the Tennessee juvenile courts in direct contravention of T.C.A. §37-1-103 as it existed at the time of Atkins' offense; 2) reverse its denial of Atkins' Tenn. R. Crim. P. Rule 11 Application; and 3) remand Atkins' habeas corpus petition to the state courts for further proceedings consistent with this opinion.

Or any other relief the Court deems just and proper.

Respectfully submitted,



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