STATE OF TENNESSEE
VS
JAMES EARL RAY, Alias ERIC
STARVO GALT, Alias JOHN
WILLARD, Alias HARVEY LOWMEYER,
Alias HARVEY LOWMYER

NO. 16645

MEMORANDUM FINDING OF FACTS AND CONCLUSIONS OF LAW

Indictment No. B-16645 charges the Defendant, James Earl Ray with the offense of Murder in the First Degree in the murder of Dr. Martin Luther King. On March 10, 1969, the defendant, James Earl Ray, while represented by an Attorney of his own choosing, Mr. Percy Foreman, and by Court appointed Attorneys, Messrs. Hugh Stanton, Sr. and Jr., came into Division III of this Court and before the Honorable W. Preston Battle, then Judge of this Court, entered a Plea of Guilty to Murder in the First Degree as charged in this Indictment. A Jury was empanelled, sworn, evidence of witnesses presented, stipulations heard, and a plea of Guilty to Murder in the First Degree was entered in the presence of this Jury. The Jury approved the Guilty Plea and accepted and approved the agreed upon State's recommendation of Ninety-Nine (99) Years Confinement in the State Penitentiary, at Nashville, Tennessee. The Defendant, James Earl Ray was sentenced by Judge Battle, and, at that time, he waived any right to a Motion for a New Trial and Appeal as shown by the minutes of this Court for that day. Judge Battle signed these minutes which are marked exhibits two (2) and three (3) to today's hearing.

On March 31, 1969, Judge Battle died.

On April 1, 1969, two letters purporting to be from the defendant, James Earl Ray and dated March 13, 1969, and March 26, 1969, respectively, were filed with the Clerk of this Court.

On April 7, 1969, a Petition entitled "Amended and Supplemental Motion for a New Trial" and incorporating therein by reference "letters asking for a new trial, especially that communication addressed to Judge W. Preston Battle, dated March 26, 1969," and "he hereby amends and supplements said letters to the effect that he moves this Honorable Court to set aside his Waiver, his Plea of Guilty, and his Conviction and grant him a New Trial pursuant to and in accordance with Section 17-117 of the Tennessee Code Annotated." Seven Exhibits were attached to this amended and supplemental motion, which exhibits were withdrawn this morning before the hearing. This motion was further amended on May 19, 1969.

It is obvious from the wording of the Petition, that the defendant and his privately employed attorneys, Mr. Richard J. Ryan, Mr. J. B. Stoner and Mr. Robert W. Hill, Jr., intended for this Petition to be a Motion for a New Trial. Such was their statement in open Court today.

Tennessee Code Annotated, Section 17-117 reads as follows:

"New Trial after death, or insanity. Whenever a vacancy in the office of trial Judge shall exist by reason of the death of the incumbent thereof, or permanent insanity, evidenced by adjudication, after verdict but prior to the hearing of the Motion for a New Trial, a new trial shall be granted the losing party if motion therefor shall have been filed within the time provided by the rule of the Court and be undisposed of at the time of such death or adjudication."

No rule of Court has been introduced into evidence in this case.

On May 13, 1969, the District Attorney General for the Fifteenth Judicial Circuit for the State of Tennessee, filed a Motion to Strike the "Motion of the Defendant, James Earl Ray, entitled 'Amended and Supplemental Motion for a New Trial' and any incorporates therein purporting to be a Motion for a New Trial." Five exhibits were attached.

The "Motion to Strike" as shown on its face and attached exhibits, as well as the accompanying "Memorandum of Authorities", is based on the theories:

(1) that there is no Motion for a New Trial from a Guilty Plea; and

(2) that the defendant waived any right he had to a Motion for a New Trial and an Appeal.

The State filed on May 23, 1969, a Motion to Strike the "Amendment to Motion for a New Trial," based on the same grounds as cited in the original Motion to Strike.

Each party has filed a Memorandum of Authorities. The Motion to Strike has come on to be heard on this the 26th day of May, 1969. The State is represented at this hearing by Executive Assistant Attorney General, Robert K. Dwyer, Administrative Assistant, Lloyd A. Rhodes, and Assistant Attorney General, Clyde Mason. The defendant is represented by Mr. Richard J. Ryan*, Attorney-at-law from Georgia, and Mr. Robert W. Hill, Jr., Attorney-at-law of the Chattanooga Bar. All are privately retained counsel of the defendant's own choosing.

The statement has been made that I, as successor Judge, cannot hear this Motion or Petition of the Defendant, which purports to be a Motion for a New Trial, and not being able to hear a Motion for a New Trial in a case disposed of by another Judge, I cannot approve and sign a Bill of Exceptions in the case.

The further contention of the defendant, James Earl Ray is, that without the approved and signed bill of exceptions, he is denied his constitutional right of Appellate Review, without fault of his own.

In answer to these questions, I find that:

(1) I do not, as a successor Judge, have the right to hear a Motion for a New Trial or approve and sign the Bill of Exceptions. Allison vs State, 189 Tenn 67; Darden vs Williams, 100 Tenn 414; Dennis vs State, 137 Tenn 543; O-Quinn vs Baptist Memorial Hospital, 182 Tenn 558; and McLain vs State, 186 Tenn 401.

(2) The defendant had a constitutional and statutory right to have his case reviewed in the Appellate Courts and relief would be awarded if he was deprived of such right without fault of his own. Dennis vs State, supra; State ex rel Terry vs Yarnell, 156 Tenn 327; Tenn Central Railway Co. vs Tedder, 170 Tenn 639.

I emphasize the phrase "Without fault of his own."

Since I, as successor Judge, cannot hear a Motion for a New Trial in this case, do I then have the power to hear and rule on a Motion to Strike a Petition that purports to be, and the defendant insists is, a Motion for a New Trial?

The defendant says that I do not.

I am of the opinion that I do have that power just as I would have the power to hear a Petition for Writ of Habeas Corpus or a Petition filed under the Post Conviction Act in this case; provided the defendant did not have a right to file a Motion for a New Trial, or, if the defendant's Motion for a New Trial had already been disposed of by Judge Battle by Defendant's Waiver of such right.

"It is well established in this State, that a Motion for a New Trial is nothing but a pleading, and cannot be looked to as establishing facts that it alleges." Monts vs State, 214 Tenn 171.

"A Plea may be stricken on motion on the ground that the pleading is not authorized by the procedure of the forum, or that the issue to be raised has already been determined conclusively of record". Wharton's Criminal Procedure, Sec. 1907, Page 775, Vol. IV.

This is a unique case because, to test TCA Sec. 17-117, it appears that, the defendant would have to file what he would allege to be a Motion for a New Trial. If this Court did not act upon such a Motion, possibly a Writ of Mandamus could issue, or a Petition for Writ of Habeas Corpus, or a Petition under the Post Conviction

* Attorney-at-law of the Memphis Bar, Mr. J. B. Stoner,

Act could be filed and heard, citing this statute. I feel, however, that the proper procedure is for me to act upon the Motion to Strike the Petition that purports to be a Motion for a New Trial, and if the Motion to Strike is granted, then a Petition for a Writ of Habeas Corpus or a Petition under the Post Conviction Act could be filed. The Motions and Petitions filed so far by the Defendant, do not contain the necessary elements required by the statute, to allow the Court to act upon them as either a Petition for Writ of Habeas Corpus or a Petition under the Post Conviction Act; especially since the defendant has made it clear that they are to be treated as a Motion for a New Trial.

Two main questions present themselves to be decided today. The first question is: whether the defendant, Ray, had a right to a Motion for a New Trial in a case disposed of on a Guilty Plea based upon an agreed upon settlement and submission. I have been unable to find that this precise question has been decided before in Tennessee.

The second question is two-fold: (1) Can a defendant expressly waive his right to a Motion for a New Trial in Tennessee; (2) if he can, did the defendant, Ray, effectively waive that right in this case?

If the defendant, Ray, did not have a right to a Motion for a New Trial, in his case, because it was disposed of on an effective guilty plea based upon an agreed upon settlement and submission, or, if he could expressly waive his right to a Motion for a New Trial, and, in fact, did effectively waive that right, then, in either event, TCA 17-117 could not apply since the Motion for a New Trial had already been disposed of. Consequently, the State's Motion to strike would have to be granted. -I-

I will now discuss the first question, and dispose of it.

Tennessee Code Annotated, Section 40-3401, gives either party to a criminal proceeding, except the State upon a judgment of Acquittal, the right to pray an appeal in the Nature of a Writ of Error as in civil cases.

On page 901 of Caruther's History of a Lawsuit (Eighth Edition) under the section heading of "Motions for a New Trial and in Arrest of Judgment" is found the following statement:

"If the Defendant is acquitted, the State cannot obtain a New Trial. But if he is convicted, he is entitled to a New Trial upon all the grounds heretofore stated as sufficient in a civil suit. A Motion for a New Trial is not a prosecution by the State, but a proceeding in error brought by the accused to reverse a judgment rendered against him by the Trial Court."

The purposes of a Motion for a New Trial are stated in Adams vs Patterson, 201 Tenn 655, as follows:

"Motions for New Trial serve two purposes to-wit:

(a) to suspend the judgment so that the trial judge may have time to correct his errors by the grant of a new trial; and

(b) to set out the error as a ground and as prerequisite to an Appellate review where such error depends upon a bill of exceptions. Memphis Street Railway Co vs Johnson, 114 Tenn 632, 88 S.W. 169."

In Tennessee, there are various proceedings for the correction of errors. They are enumerated in Tennessee Code Annotated, Section 27-101.

TCA 27-101. "Methods of correcting error.- Errors xxx not embraced by the provisions of this Code, in regard to amendments, may be corrected in one or more of the following modes: (1) By Writ of Error Coram Nobis; (2) By Re-hearing, Review, or New Trial; (3) By Certiorari; (4) By Appeal; (5) By Appeal in the Nature of a Writ of Error; (6) By Writ of Error."

The next Section of the Code provides that certain actions release errors.

TCA 27-102. "Release of Error by Confession on Injunction.- A Judgment by confession, or the suing out of an injunction against a defendant at law, is a release of errors."

It has been held that a judgment properly entered on a guilty plea is, in effect, a judgment by confession.

"A Judgment in a criminal case which has been properly entered on a plea of guilty is, in effect, a judgment by confession, and ordinarily cannot be reviewed by appeal or error proceedings." 4 Am. Jur. (2d), Appeal and Error, paragraph 271.

And, "In a criminal case a party cannot, as a general rule, have a judgment properly entered on a plea of guilty reviewed by appeal or error proceedings, since such judgment is in effect a judgment by confession." Wharton's Criminal Procedure, Volume 5, Section 2247, page 498.

Caruthers History of a Law Suit (Eighth Edition) Page 688, says:

"A judgment by confession cannot be appealed from, either in a civil or criminal case."

Our Supreme Court said in the case of McInturff vs State, 207 Tenn 102,

"Now, we think it is axiomatic that the defendant, having confessed judgment for the fine and costs, had no right of appeal, nor did the Court have the power to grant such an appeal, because no one can appeal either in a criminal or a civil case from a verdict on a plea of guilty or a judgment based upon confession of liability."

Since it appears that the Court in the McInturff case has recognized in Tennessee that a defendant in a Criminal case cannot appeal from a verdict on a plea of guilty, it must next be determined whether a defendant in a criminal case has a right to a Motion for a New Trial from a verdict on a plea of guilty.

In Bradford vs State, 184 Tenn 694, the Court said:

"An appeal from a conviction in the lower Court is analogous to a motion for a new trial in the lower court to set aside the verdict of the jury in that in both situations the prodceedings are commenced and prosecuted by the defendant in an effort to show cause why his conviction should not be set aside and a new trial granted."

In 24 Corpus Juris Secundum, Criminal Law, Section 1418, Page 3, is found the following paragraph:

"A new trial can be granted only after a trial, and hence a motion therefore is properly overruled where there has been no trial, as where the original proceedings consisted merely of an arraignment and a plea of guilty. A Motion for a New Trial right after a plea of guilty and trial by Court to determine question of mercy has been held properly overruled."

The Supreme Court of Tennessee in several cases has recognized that there is a difference between a trial and a plea of guilty.

"Defendant did not go to trial but chose instead to enter a plea of guilty" State ex rel, Hall vs Meadows, 389 S.W. (2d) 256; State ex rel Wood vs Johnson, 393 S.W. (2d) 135.

"It must be remembered also that this man entered a plea of guilty to the charge and received a reduced sentence. There was nothing from which he could logically appeal." State ex rel Reed vs Heer, 403 S.W. (2d) 310.

As cited above in Tennessee Code Annotated, 27-101, Motions for New Trial and Appeals are modes of correcting errors. Since a "Judgment properly entered on a plea of guilty" is, in effect, a judgment by confession, and a judgment by confession is a release of errors (Tennessee Code Annotated 27-102), the need for a Motion for a New Trial is not present.

The question now arises as to what constitutes a judgment properly entered on a plea of guilty.

In discussing the principle that a judgment properly entered on a plea of guilty cannot be reviewed by appeal or error proceedings, Wharton's Criminal Procedure, Section 2247, Volume 5, page 496 says:

"Before proceeding to make such a plea the foundation of a judgment, however, the Court should see that it is made by a person of competent intelligence, freely and voluntarily, and with a full understanding of its nature and effect, and of the facts on which it is founded."

Judge Oliver, in State ex rel, Lawrence vs Henderson, 433 S.W. (2d) 96 (1968), Certiorari denied by the Supreme Court of Tennessee on November 4, 1968, cited the law concerning the entering of a plea of guilty as follows:

"A guilty plea induced by promises or threats or other coercion is not voluntary and is a nullity, and a conviction based on such an involuntary plea of guilty is void. Machibroda vs U.S., 368 U.S. 487, 82 Supreme Court 510, 7 Lawyer's Edition (2d) 437;" (citing other cases). In State ex rel Barnes vs Henderson, 220 Tenn, 719, 423 S.W. (2d) 497, our Supreme Court recognized this universal rule: 'It is recognized in this State, as in all jurisdictions, that a plea of guilty must be made voluntarily and with full understanding of its consequences.' And in Brooks vs State, 187 Tenn 67, 213 S.W. (2d) 7, the Court said: 'Out of just consideration for persons accused of crime, Courts are careful that a plea of guilty shall not be accepted unless made voluntarily after proper advice with full understanding of the consequences.'"

The United States Supreme Court, in McCarthy vs United States, supra said:

"Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts."

In order to determine whether or not a judgment was properly entered on a plea of guilty by Ray in this case, it will be necessary to apply the above rules of law to the facts presented at this hearing. This will be done later in this memorandum.

Therefore, for the reasons cited above in this opinion, I find as a matter of law, that a defendant in a criminal case, cannot have a judgment properly entered on a plea of guilty reviewed by a Motion for a New Trial.

II

The next question to be decided is: Can a defendant expressly waive his right to a Motion for a New Trial in a Criminal Case in Tennessee?

In deciding this question, it is necessary to discuss several principles concerning appeals and waivers.

In Tennessee, a defendant in a Criminal case has a constitutional and statutory right to have his case reviewed in the Appellate Courts and relief would be awarded if he was deprived of such right without fault of his own. Dennis vs State, supra; State ex rel Terry vs Yarnell, supra; and Tennessee Central Railway Co vs Tedder, supra.

Since a defendant does have this right, can he waive it? The Supreme Court of Tennessee has held that he can.

In the case of the State of Tennessee ex rel Doyle vs Henderson, 425 S.W. (2d) 593, (1968), on page 596, the Court held:

"It seems to us whether or not a defendant, and particularly this Petitioner, has been deprived of his constitutional right to Appellate review depends upon the facts and circumstances of his case. The legal principles as announced in each of the cases cited above merely furnish guidelines in the application of this protected right. As said above no court that we can find has held that a defendant must appeal his case orthat a waiver will not be recognized."

And later on the same page, the Court says:

"We think, after careful consideration, that under a factual situation as here presented, this amounts to an oral waiver of appeal and none of the constitutional rights of this Petitioner has been violated by not granting him a New Trial from which he could perfect an appeal."

Further evidence that he may waive this right is shown in the case of State vs Simmons, 199 Tenn 479 (1956), in which Chief Justice Neil in his concurring opinion, quotes from perhaps the leading case on the subject of waivers in Tennessee, State ex rel Lea vs Brown, 166 Tennessee 669, 692, 693, Certiorari denied 54 Supreme Court Reporter, 717, 292 U.S. Supreme Court Reports 638, 78 Lawyers Edition 1491 as follows:

On Page 491- "A party may waive any provision of a contract, statute, or constitution intended for his benefit." On Page 492. So, it was said in a leading case, In Re: Cooper, 93 N. Y. (507), 512, 'It is very well settled that a party may waive a statutory and even a constitutional provision made for his benefit, and that having once done so he cannot afterwards ask for its protection.'

This quoted principle is set out in Wallace vs State, 193 Tenn, on page 186, and in State ex rel Barnes vs Henderson, 423 S.W. (2d) 497 (1968).

In State ex rel Barnes vs Henderson, supra; the Court said:

"As a general rule, subject to certain exceptions, any constitutional or statutory right may be waived if such waiver is not against public policy."; AND "Where a constitutional right accorded the accused is treated as waivable, it may be waived by express consent, by failure to assert it in apt time, or by conduct inconsistent with a purpose to insist upon it."

It appears then that not only can the right of appeal be waived but any other statutory or constitutional provision, made for his benefit, may likewise be waived, and that once this right or provision has been waived the defendant cannot afterward ask for its protection. This being true, it must then follow that a Motion for a New Trial can likewise be waived.

Further proof that the right to a Motion for a New Trial can be waived is shown by the following quotations and authorities:

In Hall vs State, 110 Tenn 365, the Court said:

"In his work on General Practice, Judge Elliott (Volume 2, Section 995) says: 'The right to move for a New Trial may be waived by agreement in advance or by inconsistent acts, or by neglecting to take the proper steps. Thus it has been held moving in arrest of Judgment before moving for a new trial is a waiver of the latter motion.'; AND

"The practice in this State is well settled that a Motion in Arrest of Judgment made before a Motion for a New Trial waives the latter motion." This last statement is quoted and cited in Palmer vs State, 121 Tenn. page 489. Almost the identical quote is found in Green vs State, 147 Tenn 299.

In Bradford vs State, supra, where the defendant was not present when his Motion for a New Trial came on to be heard, the Tennessee Supreme Court held:

"We are accordingly, of the opinion that the defendant by his own act has waived the right to have his Motion for a New Trial considered and determined. His conduct was in legal effect an abandonment of the prosecution of his motion. We think, therefore, that the Court did not commit error in ordering the dismissal of that motion. It's judgment so ordering is affirmed."

The Supreme Court of Missouri in the case of State vs Pence, 428 S.W. (2d) 503 (1968), said:

"Appellant cites no case in which it has been held that the waiver of the right to file a Motion for a New Trial is, as a matter of law, involuntary when the defendant is not specifically advised of the rights which he will be afforded on appeal. Maness vs Swenson, 8th Circuit, 385, Fed. 2d 943, does hold that the right to appeal must be knowingly and intelligently waived. However, the Court there considered the issue as a factual one to be determined in the light of all of the circumstances."

Since a defendant may waive his right to a Motion for a New Trial and to an Appeal, the next question is : What constitutes a Waiver?

The most cited case appears to be Johnson vs Zerbst, 304 U.S. 464, 58 Supreme Court 1019. It says:

"It has been pointed out that 'Courts indulge every reasonable presumption against waiver' of fundamental constitutional rights and that we 'do not presume acquiesence in the loss of fundamental rights'. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused."

Part of this last quoted statement is cited in McCarthy vs U.S., 89 Supreme Court 1166 (1969).

A further discussion of waiver is found in State ex rel Lea vs Brown, supra:

On Page 691- "Waiver is concisely defined as 'the voluntary relinquishment of a known right', 27 Ruling Case Law 904. Waiver is a doctrine of very broad and general application. It concedes a right, but assumes a voluntary and understanding relinquishment of it. 'It is a voluntary act, and implies an election to dispense with something of value, or to forego some advantage which he might at his option have demanded and insisted on.'"

III

With the above rules in mind for a "judgment properly entered on a plea of guilty" and the elements necessary for a proper "waiver", it is now necessary to discuss the facts presented at this hearing and to apply these rules to the facts.

Most of the evidence presented was by the introduction of certain parts of the Court's minute entries, by Mr. J. A. Blackwell, Clerk of the Criminal Court of Shelby County. The defendant declined to offer any evidence. In considering these minute entries the Court applied the following principles of law:

"It is well settled in Tennessee that a trial Court speaks only through its minutes!" McClain vs State, supra; Jackson vs Handell, 327 S.W. (2d) 55; Howard vs State, 217 Tenn 556.

In the Howard case, the Court said:

"The rule in this State for generations has been, and is, that the 'minutes' are indigenous to Courts of record; and when they are signed by a Judge, they become the highest evidence of what has been done in the Court. So far as they are records of judicial proceedings, they import absolute verity, and are conclusive unless attacked for fraud. The rule has been stated otherwise that a 'Court of Record' is a Court where acts and judicial proceedings are enrolled in parchment for perpetual memorial and testimony. These rolls are called the 'record' of the Court and are of such high and transcendent authority that their truth is not to be questioned."

Introduced into evidence at this hearing by Mr. Blackwell, were the following exhibits:

Exhibit #1, is a minute entry of November 12, 1968, signed by Judge Battle, allowing Attorneys, Hanes Sr. and Jr., to withdraw from the case, and allowing Attorney Percy Foreman to substitute as counsel in this case; and further resetting the case to March 3, 1969, upon application of the defendant.

Exhibit #2, is the Petition for Waiver of Trial and acceptance of Plea of Guilty, signed by James Earl Ray and by his Attorneys.

Exhibit #3, is the minute entry made on March 10, 1969, and signed by Judge Battle, which was an order authorizing waiver of trial and acceptance of a guilty plea.

Exhibit #4, is a part of the transcript of Judge Battle's questioning of the defendant, Ray.

Exhibit #5, is the Minute entry on March 10, 1969, which was the actual judgment and sentencing by Judge Battle.

The Order authorizing the 'Waiver of Trial and Acceptance of Plea of Guilty,' and made Exhibit #3 in this case, shows that Judge Battle heard statements made in open Court by the defendant, his Attorneys of record, the District Attorney General, the Assistant Attorney General; and that he questioned the defendant (as shown by Exhibit #4) and his Counsel in open Court. This Minute entry is on the Court's Minutes for March 10, 1969, and was signed by Judge Battle. It further shows, that the Petition of the defendant, James Earl Ray, for Waiver of Trial by Jury and Request for Acceptance of a Plea of Guilty, which was made Exhibit #2 at this hearing, was attached and incorporated by reference in this Order. This Petition was signed by the defendant, Ray and witnessed and signed by his privately retained Attorney, Percy Foreman and his Court appointed Attorneys, Hugh Stanton, Sr. and Jr.

Judge Battle, using the evidence set out above, in this Court's opinion, had ample evidence to find as he did in Exhibit #3, to-wit:

"It appearing to the Court after careful consideration, that the defendant herein has been fully advised and understands his right to a trial by jury on the merits of the Indictment against him, and that the defendant herein does not elect to have a jury determine his guilt or innocence under a plea of Not Guilty; and has waived the formal reading of the Indictment; AND it further appearing to the Court that the defendant intelligently and understandingly waives his right to a trial and of his free will and choice and without any threats or pressure of any kind or promises other than the recommendation of the State as to punishment; and does desire to enter a Plea of Guilty and accept the recommendation of the State as to punishment, waives his right to a Motion for a New Trial and/or an Appeal.

It is therefore Ordered, Adjudged and Decreed that the Petition filed herein be and the same is hereby granted."

At the time of the guilty plea, Judge Battle fully questioned the defendant as to his understanding of the charges and proceedings against him, the sentence being recommended, and whether or not the defendant had been induced to plead guilty by any promise other than the agreed sentence. The defendants' answers left no doubt that he fully understood the circumstances surrounding his guilty plea.

It is obvious that Judge Battle's finding complies with the law for acceptance of a Guilty Plea as stated above in the discussion of a properly entered guilty plea in State ex rel Lawrence vs Henderson, supra; McCarthy vs United States, supra; and Wharton's Criminal Procedure, Section 2247, Volume 5, page 498, supra.

It is also obvious that Judge Battle's finding that the defendant intelligently and understandingly waived his right to a Motion for a New Trial and an Appeal, complies with the law of Waivers as set out above in State vs Pence, supra; Johnson vs Zerbst, supra; State ex rel Lea vs Brown, supra; and McCarthy vs United States, supra.

It is therefore the opinion of this Court, based upon the evidence presented at this hearing, that the Guilty Plea entered by the defendant, James Earl Ray, before Judge Battle, was properly entered. This Court finds as a matter of fact that it was knowingly, intelligently, and voluntarily entered after proper advice without any threats or pressure of any kind or promises, other than that recommendation of the State as to punishment; and, that the defendant, Ray, had a full understanding of its consequences, and of the law in relation to the facts.

This Court finds that such Guilty Plea precluded the defendant from filing a Motion for a New Trial in this case.

Further, this Court finds that the defendant, James Earl Ray, knowingly, intelligently and voluntarily expressly waived any right he may have had to a Motion for a New Trial and/or Appeal.

Either one of these two decisions showing that the defendant could not file and have a Motion for a New Trial heard renders Tennessee Code Annotated, Section 17-117 inapplicable in this case. His Motion for a New Trial had already been disposed of by Judge Battle before his death when he allowed the defendant to waive his right to a Motion for a New Trial.

Consequently, this Court after a full evidentiary hearing on this matter, finds that the State's Motions to Strike are well taken and should be granted and that the defendant's Motions, as amended, regardless of what he calls the Motions, should be stricken and dismissed without further hearing.

These motions cannot be treated as a Motion for a New Trial, because the defendant had already waived his right to a Motion for a New Trial as determined by Judge Battle in his minute entry for March 10, 1969, which has been marked Exhibit #3 to the present hearing. Neither can they be treated as a Petition for Writ of Habeas Corpus or under the Post Conviction Act because the elements necessary for the latter two Petitions are not present.

It is therefore Ordered, Adjudged and Decreed that the State of Tennessee's Motions to Strike are granted and that the defendant's Motions as amended are stricken and dismissed.

It is further ordered, adjudged and decreed that the Writ of Habeas Corpus issued to return this defendant for hearing, is hereby quashed, vacated and held for naught; and the defendant, James Earl Ray, is hereby ordered to be returned to the State Penitentiary at Nashville, Tennessee, under the authority of the original judgment and orders of this Court, to all of which the defendant, James Earl Ray, has noted his exception.

/s/ Arthur C. Faquin, Jr.
JUDGE
By Interchange
6/6/69

Whereupon Court adjourned until Sine Die.

Arthur C. Faquin
JUDGE FAQUIN BY INTERCHANGE

****

FRIDAY, JUNE 13, 1969

R E S O L U T I O N

BY
THE JUDICIAL CONFERENCE OF THE STATE OF TENNESSEE
IN MEMORY OF
THE HONORABLE W. PRESTON BATTLE

BE IT RESOLVED that the following Resolution be spread upon and made a part of the permanent records of the Judicial Conference of the State of Tennessee so that the memory of W. Preston Battle might survive those who survived him and so that the accomplishments of his life, the strength of his character, and the testimony of his friends, colleagues, and adversaries, might continue to be remembered and memorialized by those who may come after him.

JUDGE W. PRESTON BATTLE was found dead in his Judicial Chambers on Monday, March 31, 1969. A memorial service was conducted in his memory by the Memphis and Shelby County Bar Association at 9:30 A.M. in Judge Battle's Courtroom, Division III of the Criminal Court of Shelby County, Tennessee, on Thursday, April 3, 1969.

W. Preston Battle was born in Memphis, Tennessee, on May 6, 1908. He attended the Memphis University School, Woodberry Forest School, Washington and Lee, and the University of Memphis Law School where he received an LLB Degree. He was admitted to the Bar of Tennessee in 1933 and became a member of the Memphis and Shelby County Bar Association on September 6, 1934. He entered the practice of law with the firm of Sivley, Evans & Evans.

During the eleven years from 1934 to 1945, Preston Battle served as an Assistant District Attorney, and in 1945 became associated in private practice with the firm of Shea & Pierotti. He remained with that firm until 1959 at which time Governor Buford Ellington appointed him to the newly created Court Bench after he had been successful in a Bar Association election. He served as Judge of the Criminal Court in Memphis from 1959 until his death. He was known as an able advocate, both for the prosecution and the defense and while on the Bench, he served capably as the presiding trial judge in many important criminal cases.

Judge Battle was a member of the Grace St. Luke Episcopal Church and is survived by his wife, the former Florence Warfield Boyce of Memphis, and four children: Mrs. B. Frank King, Mr. W. J. Britton, III, Mrs. E. R. Kennebrew, III, and Walter Preston Battle, Jr., all of Memphis.

W. Preston Battle was a unique individual. His love for the law and literature, his strength of character, his courage, self-discipline and dignity reflected credit upon both the Bench and the Bar, and both were proud to claim him. His loyalty to his profession and his City motivated him to expend much of his time and substance so that the law might be improved and so that his City might be reflected upon with credit. He extended the hand of friendship to all on an equal basis, but especially to those in need. Neither race nor wealth nor past failure nor future reward affected his judgment of the value of a man.

Preston Battle was possessed of one of the great intellectual, profoundly inquiring minds of our period. He was a student of philosophy and of Latin. His knowledge of the criminal law was for thirty years unquestioned and unsurpassed. He was a firm Judge because it was his crystallized philosophy that people must respect the Court and the Judge, not because of the man who wears the robe, but because of the position that robe designates.

For many years Judge Battle lived at 1584 Carr Avenue in the central City of Memphis, the City that he loved. He was known to be a good neighbor and an active church man. Although stern on the Bench, in the proper circumstance, he evidenced a subtle, but delightful wit and a rare ability to communicate.

(CONTINUED ON FOLLOWING PAGE)