The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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INTRODUCTION

The State of Tennessee Executive Order No. 87 (September 17, 2021) hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

The Council requests that applicants use the Microsoft Word form and respond directly on the form using the boxes provided below each question. (The boxes will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit your original hard copy (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts as detailed in the application instructions. Additionally, you must submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your original application, or the digital copy may be submitted via email to laura.blount@tncourts.gov .

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I am Criminal Court Judge, Part II, in the First Judicial District of Tennessee, which consists of Carter, Johnson, Unicoi and Washington counties.

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

I was licensed to practice law in Tennessee in 1992. My Tennessee Board of Professional Responsibility number is 15680.

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

State of Tennessee, 1992, BPR #15680

United States District Court, Eastern District of Tennessee, 1993

United States District Court, Western District of Virginia, Pro Hac Vice on per case basis

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

No, I have never been denied admission to, suspended or placed on inactive status by the Bar of any State.

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

- April 2013 – Present, Criminal Court Judge, Part II, First Judicial District
- January 2010 – April 2013, Solo Practitioner, Stacy L. Street, Attorney at Law, Elizabethton, Carter County, Tennessee
- January 1996 – December 2009, Partner, Hampton & Street in Elizabethton, Carter County, Tennessee

- August 1992 – December 1995, Associate, Hampton & Hampton in Elizabethton, Carter County, Tennessee

- Summer 1990 and 1991, Clerk, Hampton & Hampton in Elizabethton, Carter County, Tennessee

- 1989 – Present, Licensed Affiliate Real Estate Broker (in retirement status). Since 1989, I have invested in several real estate properties, including residential and commercial rental properties. These properties are owned by me individually or in partnership with other investors and are purchased and sold as the market dictates.

- 1999 – Present, my immediate family owns and lives on a fifty (50) acre farm which produces hay and cattle.

- 1985 – 1998, Christmas Tree farmer raising approximately fifteen to twenty thousand Christmas trees on a property owned by my family in Roan Mountain, Tennessee. As the last of the trees were harvested, the farm was converted to other uses.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not applicable.

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

I currently serve as Criminal Court Judge, Part II, for the First Judicial District, which comprises Carter, Johnson, Unicoi, and Washington counties in Tennessee. I am the senior judge for our district and have served two (2) terms as presiding judge. This position has several important responsibilities, including the following:

- Overseeing a docket with approximately six hundred (600) pending matters at any given time. For the last three (3) years, I have closed over sixteen hundred (1,600) cases per year, and each case often includes several counts of separately charged crimes. The number of charges closed on average over the last three (3) years totals over three thousand five hundred (3,500);

- Presiding over criminal indictments, presentments and post-conviction matters ranging from misdemeanor offenses to first-degree murder;

- Reviewing law enforcement applications for search warrants, subpoenas, installation of tracking devices, and wire taps. For the last three (3) years, I have averaged reviewing and signing over two hundred and fifty-five (255) search warrants per year.

- Setting bonds for all cases proceeding from the grand jury presentments for my docket;

- Handling of appeals from the General Sessions Court and Juvenile Courts in the First Judicial District;

- Reviewing the habeas corpus petitions and other similar petitions/motions filed from Northeast Correctional Complex, located in Johnson County, Tennessee, which is one of the larger prisons in the State of Tennessee;

- Serving as co-presiding judge of the Day Reporting Center located in Johnson City, Tennessee;

- Serving as co-presiding judge of the First Judicial District Felony Recovery Court, our outpatient recovery court for the First Judicial District;

- Serving as the co-presiding judge, along with Judge Rice and Judge Goodwin, for the Northeast Tennessee Regional Recovery Center. The male facility is located in Roan Mountain, Tennessee, and the female facility is located in Johnson City, Tennessee. These facilities serve the nine (9) counties of East Tennessee, covering the First, Second and Third Judicial Districts.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about

whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Council needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Council. Please provide detailed information that will allow the Council to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application.

PRIVATE PRACTICE (1992-2013)

I practiced law for over 20 years in the courts of East Tennessee. During the first decade of my practice, I maintained a true general practice of law representing clients in criminal, domestic, personal injury, workers' compensation and estate matters in the Criminal, Circuit, Chancery and General Sessions Courts of each county in Northeast Tennessee. During this period, I tried approximately 50 to 100 civil cases, the majority of which were contested divorce and custody cases. These trials would have been primarily non-jury/bench trials.

While learning as a general practitioner, I was privileged to have several mentors from the bar who encouraged me to practice criminal law early in my career. I was fortunate to begin building a significant criminal practice in the General Sessions and Criminal Courts of all counties in Upper East Tennessee, particularly in Carter, Johnson, Unicoi, and Washington Counties. In 1993, just six months into my practice, I was asked to serve as co-counsel in a first-degree murder capital case in which the state was seeking the death penalty. The requirements that counsel be certified to represent defendants charged in capital cases were not in place at that time. From this first case, I gained invaluable experience which I use to this day. I was lead counsel or co-counsel in 12 death penalty cases. These cases originated in Carter, Johnson, Washington, Sullivan and Greene County, Tennessee. The results in these cases have varied from acquittals to one conviction resulting in the death penalty occurring in Sullivan County, Tennessee. At present, that case is on post-conviction appeal.

When the requirements for certification as lead or co-counsel in death penalty cases were instituted, I remained certified to act as lead counsel, co-counsel, and appellate counsel in capital cases.

I have also, in addition to the above-described capital murder cases, been either lead counsel or co-counsel in approximately 30 additional homicide cases throughout the First, Second, and Third Judicial Districts of Tennessee. These cases range from first-degree murder (non-death penalty cases) to vehicular homicides and criminally negligent homicides. I have tried, as lead counsel, co-counsel, or sole counsel, at least two homicide jury trials in each of the counties in the First Judicial District. Further, I have tried numerous homicide jury trials in Sullivan County, Tennessee, the majority being first or second-degree murder charges. A number of these trials have resulted in acquittals or convictions for lesser-included offenses.

I think my extensive experience in homicide cases best reflects my personal work ethic as a

criminal defense lawyer. A homicide case in general, and a capital case in particular, is the most intense experience, both in preparation and in actual litigation, that I have encountered in the law.

From 2002 to 2013, my practice was almost exclusively criminal defense. Overall, I estimate that I have tried between 75 and 100 jury trials, averaging approximately 4 to 5 per year. I stopped counting the number of cases I tried. For me, it wasn't about my numbers or personal statistics, but it was about my client, the case, and defending my client to the absolute best of my abilities.

The types of cases I tried ranged from the least serious misdemeanor to the most serious felony. Regardless of the nature of the case or the "likability" of the defendant, I tried to treat all defendants, and, frankly, all persons encountering our criminal justice system, with respect and dignity. I tried very hard to separate a person's conduct from the actual person. This allowed me to represent individuals charged with heinous offenses with the same degree of deliberation and skill I used to represent individuals charged with less serious offenses.

The same analysis holds true for all participants in a criminal trial. In a criminal trial, where a person's freedom is at stake, passions generally run high on both sides, be it the prosecution or the defense. Through my experience, I have learned the value of an even temperament. I found that even when a person didn't like the content of what I said, whether it was my own client, a hostile witness, a police officer, opposing counsel, or even the judge, if the information was delivered in a calm, deliberate manner, all parties handled the situation better.

ADMINISTRATIVE LAW PRACTICE

I had a significant practice before the Tennessee Department of Safety regarding seizures of vehicles and other properties pursuant to drug arrests and DUI arrests. I have conducted trials before the Commissioner for the Department of Safety in Fall Branch, Tennessee and in Knoxville, Tennessee.
I also represented many clients in disciplinary hearings before licensing boards in both Nashville, Tennessee, and locally.

FEDERAL COURT PRACTICE

In addition, I tried several jury trials in the United States District Court for the Eastern District of Tennessee at Greeneville, often involving multiple defendants charged with violations of the United States drug laws. Early in my career, I tried at least 5 multi-day civil trials involving fire loss or product liability claims.
I have also tried, after being admitted pro hac vice, two (2) cases in the United States District Court for the Western District of Virginia, one of which resulted in an acquittal of a defendant charged with illegal possession of firearms.

APPELLATE COURT PRACTICE

I have also argued numerous appeals before the Tennessee Supreme Court and the Tennessee

Court of Criminal Appeals. I have researched, drafted briefs and argued the appeals in many cases before each tribunal. On several occasions, I was retained by trial counsel to draft a brief or conduct oral arguments on appeal, in addition to my own cases.

BUSINESS PRACTICE

For several years, I represented the First Utility District of Carter County, Tennessee, and Security Federal Bank in Elizabethton, Tennessee, as retained general counsel. My work on behalf of the Utility District included securing multi-million dollar loans through Rural Development and the federal government. I ceased representing these institutions upon my appointment to the bench in 2013.

JUDICIAL SERVICE (2013-PRESENT)

Since April 16, 2013, I have served as a Criminal Court Judge in the First Judicial District in Tennessee. This court covers a vast territory in Carter, Johnson, Unicoi, and Washington Counties, including both a large urban area in Johnson City, Tennessee, and the most rural in Mountain City, Tennessee. Prior to my appointment, the then-sitting judge suffered from an illness that prevented him from conducting any jury trials during the last two and a half (2½) years of his service. While a senior judge was assigned to our district for a short period, the number of cases requiring a jury trial or an extended hearing was significantly backed up. Though it was no fault of his own, the then-sitting judge was unable to remain in a courtroom for more than an hour at a time, severely backlogging the entire docket.

I was sworn in on a Thursday, and the next day, I presided over a hundred and eight (108) cases in Washington County, Tennessee. This was a very difficult time, as I was also attempting to close my law practice. For the next six (6) months, I would do both jobs in a single day until I could assign my cases to other attorneys or complete them.

At this point, it became my goal to get the dockets for all four (4) counties in some workable manner and to begin eliminating the backlog of jury trials. The next eighteen (18) months were intense, and through the yeoman's efforts by the District Attorney's Office, the attorneys in the district and the Public Defender's Office, as well as our wonderful clerks, we were able to greatly decrease the backlogged cases and conduct a large number of jury trials to further ease the burden of these dockets. While the number of dockets in the First District is large, there is no backlog of cases.

We implemented several procedures to address jail overcrowding, such as dedicated probation violation dockets and a standing rule requiring anyone charged with a probation violation to appear before a criminal court judge within thirty (30) days of arrest. Prior to that, the wait period was more than six (6) months, and the defendant was often released for time served. That practice stopped, and hearings were conducted, and now those cases are dealt with in a timely manner.

In addition, we added more days designated for jury trials, which continues to keep them on a more manageable schedule. Unlike some other districts in the state, we go to each county

every month. Therefore, any defendant or attorney who needs a court date can obtain one on a regular basis. While these procedures are not uncommon, they were never exercised in this district, and after a tense period of re-adjustment, they have now become the norm and make our system more fair and manageable for everyone involved in the criminal justice system, whether it be a witness, a victim, a defendant, the District Attorneys, the attorneys or the clerk's office. Anyone who needs a trial or a motion to be heard has multiple opportunities to schedule them with this court, and it allows our dockets to move more smoothly and greatly increases our ability to dispose of cases properly. This was extremely important to me because delays in trials erode the public's confidence in the proper administration of justice. The constitutional guarantees of defendants and criminal victims are only possible through the diligence of the trial judges, litigating attorneys and the clerks.

I have now served as a Criminal Court Judge for almost thirteen (13) years, following my appointment, having been re-elected twice without opposition. I quickly learned trial judges do not have a defined set of work hours, and we are on duty three hundred sixty-five (365) days a year and twenty-four (24) hours a day. The Criminal Courts for the First Judicial District are in session virtually every working day of the calendar. While not every day is a trial date, our daily dockets involve various motions, hearings, pleas or status updates. In addition, bond motions are often heard, and sentencing hearings are held each week in every county. There are literally hundreds of active indictments on my calendar at any given time. A rough estimate of all cases that I have concluded as a judge in the last thirteen (13) years would number in the tens of thousands. As previously stated, the case number dispositions for my portion of the docket average over sixteen hundred (1,600) cases per year, with each case number containing numerous charged crimes. The actual crimes disposed of in any year total over three thousand and five hundred (3,500) per year. In short, I spend every day of the work week, whether in the office or in court, working for the citizens of the First Judicial District.

JURY TRIALS

Regarding jury trials, between the time spent as a practicing attorney or on the bench, I have been involved in more than three hundred and fifty (350) jury trials. In the year 2025 alone, I presided over thirty-one (31) jury trials in the First Judicial District. This includes ten (10) homicide cases in which the defendants were charged with either First Degree Murder or Second-Degree Murder. During one span, I tried four (4) homicide cases in four (4) weeks. I long ago stopped counting the number of trials that I have conducted. The 2025 numbers are currently readily available only because we are closing our 2025 files. In short, I have been involved in many jury trials covering primarily felony offenses involving such things as sale or possession of drugs, robberies, sexual assaults and rape, burglaries, kidnappings and assaults. It is my opinion that there is no better teacher of, nor substitute for, understanding the many decisions that a trial judge must make during a trial than to serve as a trial judge.

It is impossible for one judge to encounter every possible issue or scenario because there is always some nuance or novel argument that must be addressed. However, I feel that my jury trial experience, both as an attorney and as a judge, has given me a strong understanding of this process and will provide me with unique insight into the legal decisions that trial judges must make, often on the spot. I believe this experience would greatly assist me as an appellate judge

in reviewing trial judges' decisions in criminal cases. This experience has required daily application of the rules of evidence, sentencing law, and constitutional principles, which will provide a strong foundation for appellate review.

OTHER JUDICIAL ACTIVITIES

In addition to the "normal" activities I have engaged in as a criminal court judge, there are several other items that many people do not know that criminal court judges must deal with daily.

First, on any given day, dozens of probation violations are presented to us by probation officers, and we must review and address the bond issue. Secondly, several post-conviction petitions are pending, and in addition to conducting the hearings, the trial judge must provide a written opinion following the hearings and state clearly their decision and the authority supporting it. Thirdly, the workload of a criminal court judge is greatly increased when a prison is located within their district. As stated, one of the largest prisons in the state is in Johnson County, Tennessee. The number of writs of habeas corpus and petitions for writ of error coram nobis coming from that facility has risen steadily over the years, and each one must be addressed on an individual basis. These matters take a tremendous amount of time, and the court's ruling must be clear.

In addition, our courts have an extensive motion practice. Because of the various motion hearings and petitions filed raising evidentiary matters, I spend a tremendous amount of time researching and developing a basis for applying the law and rules of evidence to the particular fact pattern. I require all counsel to file briefs concerning any complex or unique motion and to provide authority for their position. I also do my own research concerning these matters. I have always made it my practice to rule on these motions as they occur, and if necessary, I will issue written findings of fact and conclusions of law after my oral ruling. There are very few occasions on which I do not make an immediate ruling. This is only possible by conducting research and having a thorough knowledge of the law before the hearing. The only time this does not occur is if an issue is raised during the motion hearing that the parties did not previously brief. I feel this experience and practice have provided me with a sound basis for appellate jurisprudence.

I have also been responsible for assisting law enforcement at all hours of the day and night by reviewing applications for search warrants, GPS tracking devices, wiretaps, and other matters that arise outside "normal" working hours. The availability of a judge to review these requests by law enforcement officers is essential for the investigation of crimes and the safety of the community. All local law enforcement agencies, some twenty-six (26) different agencies alone in the First Judicial District, have our judges' personal cell phone numbers. While I have not kept track during my entire thirteen (13) years of the number of search warrants that I have reviewed and either signed or rejected, because of the great increase in number, I have tracked that in each of the past three (3) years, and we have reviewed over two hundred fifty-five (255) search warrants per year. Our district has a drug task force, as well as individual narcotics units in each county, and, as such, we spend a tremendous amount of time reviewing search warrants for residences, cell phones, and social media accounts. These search warrants, especially those

for social media, are often extremely lengthy because of the language required by the various social media providers to distribute the information, and each one must be reviewed on an individual basis. While it is often time-consuming and inconvenient, it is an extremely crucial part of our criminal justice system. As I often tell officers, I would rather they obtain a valid warrant to conduct the search rather than try to justify it for some other reason at a later motion hearing.

PROBLEM SOLVING COURTS

In 2017, at the request of Judge Lisa Rice, she and I created the First Judicial District Felony Recovery Court covering our four (4) counties in the First Judicial District. Through the lengthy accreditation process, she and I, along with a very capable board consisting of representatives from local law enforcement, the District Attorney's office, the Public Defender's office, community corrections, probation and parole, treatment team representatives and a private attorney, created the policies and procedures manual for our program and began the process of establishing the court. We subsequently received accreditation and instituted the program, which currently has sixty-eight (68) active participants. Since that time, we have had close to one hundred (100) graduates with many going on to obtain college degrees, own homes, and regain custody of their children. For three (3) years, we were nominated and named a mentor court for all recovery courts across the United States by the National Association of Recovery Court Professionals (now Rise Up), and we hosted several other recovery courts from across the country to view our process and procedures.

Not long after establishing our recovery court, Judge Rice and I realized, in consultation with Judge James Goodwin of the Second Judicial District, that we were losing some of our outpatient recovery court participants because they remained in the same environment with the same friends and users. At this point, we began actively searching for a way to establish an inpatient residential facility. As always, funding for such an endeavor was difficult to secure, and available space to house it was scarce. Around this same time, the District Attorneys General for the First, Second, and Third Judicial Districts of Tennessee had filed a civil lawsuit against the opioid manufacturers in state court on behalf of a young child born addicted to opioids and the local counties and cities in their districts who chose to participate. Through a lengthy process that included the bankruptcy of many drug manufacturers, a settlement was eventually reached against Endo in what came to be known as the "Baby Doe" lawsuit. Eight of the nine counties in East Tennessee and multiple municipalities located within those counties received a settlement of approximately twenty-four (24) million dollars. This funding had no restrictions, and the counties and municipalities were free to use that money for any purpose, including purchasing water pipes, sewer treatment plants, or equipment. Prior to the settlement being approved, Judge Rice and I were approached by the District Attorneys from the first three (3) judicial districts and asked if there was some way that this money could be used to address opioid addiction and/or drug addiction in the first three (3) districts.

At this time, Judge Rice, Judge Goodwin, and I saw a possibility of preserving some of this money for use in a residential facility. As such, we traveled the nine counties of East Tennessee over a period in excess of one (1) year, appearing in front of all of the city councils, county

commissions and board of mayors and aldermen, requesting that they refrain from spending their Baby Doe settlement money until such time as we could provide them with a structure for a residential facility. These local governments, recognizing the need and the scourge that drug addiction was impacting on our communities, graciously agreed to withhold spending their funding until we could come up with a plan. At this time, we learned of the closure of a work camp in Roan Mountain, Tennessee, which had previously served as an annex to the Northeast Correctional Complex. This was not a typical prison but rather a workhouse with a domiciliary type set up with beds with lockers, full kitchen facilities, full laundry facilities and medical facilities.

Judge Rice, Judge Goodwin, and I, along with Judge Beth Boniface of the Third Judicial District, began lobbying the State of Tennessee to use this facility. While we initially received discouraging news, we continued, and at a fortuitous meeting with Governor Bill Lee and Deputy Governor Butch Eley, we laid out our vision for this plan, and they were extremely interested in this collaborative regional effort. After much discussion, including all our local legislators and county officials, the state agreed to lease this former prison to our board of mayors and town leaders from those cities and counties who agreed to donate money to the facility for one dollar ($1) a year for five (5) years, with an extension of an additional five (5) years.

We then went back to various counties and, through their very generous contribution, accumulated the sum of ten million dollars ($10,000,000.00) for the Northeast Tennessee Regional Recovery Center (NETRRC). In addition to the male-only facility at the former prison, we also secured a women's house through our treatment provider, Families Free, in Johnson City, Tennessee. The NETRRC board, consisting of the mayors of these municipalities and counties, is fully responsible for the funding and approves all expenses provided by the treatment provider, Families Free.

Judge Rice, Judge Goodwin, and I act as the presiding judges of each of these facilities. Each week, we meet with all program participants, and, after a lengthy staff meeting, we call each individual to the podium to discuss their treatment and what's working and what's not. One week, we will travel to the prison, and the next week we meet at the Carter County Courthouse. At present, we have approximately seventy (70) participants at the men's facility and twelve (12) participants at the women's facility. We have had numerous graduates, and the recidivism rate is less than twenty percent (20%) for those that complete this one (1) year program.

This program is unique in that it costs participants nothing, and most of the candidates accepted into it come from jails in the First, Second, and Third Judicial Districts, having violated their probation or facing serious charges. No violent felons are taken, nor sex offenders, and there is a lengthy screening process for each of the participants. The success rate of these residential facilities has been phenomenal, and we can consider them more impactful than any other program in Northeast Tennessee.

The participants, when they reach a certain phase, are allowed to leave the facility to work and they are allowed to keep twenty-five percent (25%) of their earnings in savings accounts that are set up for them and seventy-five percent (75%) of what they earn is to go to pay past

due fines, cost, restitution and unpaid child support. To date, our participants have earned over five hundred thousand dollars ($500,000.00) from their employment, and the majority of that money has gone to pay fines, costs, and past due child support. The remaining funds have been saved by the participants to purchase automobiles and pay for housing when they transition from the residential facility to our outpatient recovery court. In addition, we have partnerships with TCAT in Elizabethton, Tennessee, and Northeast State Community College to provide training and classes for participants during their year-long program. We also have a partnership with East Tennessee State University, Quillen College of Medicine, which provides medical treatment for our participants who are often very sick from years of drug use and abuse.

This program is a minimum of twelve (12) months inpatient followed by twelve (12) months of outpatient treatment. This provides us with the opportunity to continue to monitor and treat these patients for over two (2) years, and for that reason, our program has been a growing success. While these programs take up a substantial amount of our time, it is by far the most rewarding experience of my job as a judge, and the collaboration with Judge Rice, Judge Goodwin and Judge Boniface seems to truly be making a difference for our citizens in Northeast Tennessee.

CRISIS MANAGEMENT

There are other matters I think are important to point out to the committee regarding my time as a criminal court judge.

First, the entire criminal justice system in the State of Tennessee was impacted by COVID-19 and the partial shutdown of our court system. During this period, working with our presiding judge, we received an exemption from the Tennessee Supreme Court that allowed our grand juries to meet with very detailed, specific safeguards in place to conduct their work. We placed them in courtrooms with sufficient spacing and required each law enforcement agency to provide only one officer to present that agency's cases. While this was burdensome, it helped prevent a serious backlog of cases in the First Judicial District. The time between a bindover from General Sessions Court and the grand jury's final action is often when a defendant is incarcerated, and the case cannot move forward until the grand jury acts. By seeking and receiving this exemption, we were able to keep our dockets flowing, and once the in-court restrictions were lifted, we were able to begin addressing these cases immediately. It cannot be overstated how it prevented this troubling and uncertain time from causing a backlog in the First Judicial District once again. Further, we conducted a thorough review of every inmate in our four (4) counties and reduced our jail population based on their offenses to ease the burden on our sheriffs and jails during this pandemic.

Also, in 2024, Hurricane Helene caused catastrophic damage in all four (4) counties in the First Judicial District. While flooding, power outages, and disruptions to landline and cell phone services greatly impacted our region, our courts were shut down for very few days during this period. The judges of the First Judicial District worked extremely hard. I was presiding judge at the time, and it was difficult to experience personal loss and property damage while continuing to try to keep our justice system moving. With the help of our dedicated judges, assistants, and clerks' offices, we were able to continue serving our citizens while also making appropriate

accommodations for our hurting communities.

In addition to the major events of COVID-19 and Hurricane Helene, we have faced several situations that we had to navigate to find solutions for our district.

In the last thirteen (13) years, my district has dealt with the following:

- Our district attorney unexpectedly passed away, and due to the timing of the next election, the Governor's Office requested the State Court Judges appoint a temporary replacement until the election. The five (5) State Court Judges undertook the interview process and made the appointment.
- One of Washington County General Sessions Judges passed away, the General Sessions Judge in Johnson County was suspended and eventually disbarred, and illnesses with others required that we conduct General Sessions Court in each of the counties at various times by Order of the Tennessee Supreme Court.
- We have had at least three (3) Grand Jury Foremen pass away or retire, which required Judge Rice and I to choose citizens to fill these important roles.
- I have been requested on two (2) separate occasions to appear before joint committees of the Tennessee House and Senate to testify on pending issues of sentencing and the community correction program within the Department of Corrections. Many of my suggestions were later implemented with few changes.
- We have been asked to address opioid abatement councils and county and city government councils regarding the addiction crisis and our programs to address this most important issue.

I recognize that these issues are not uncommon or unusual in our system. However, these issues are not addressed at the Judicial Academy and require additional time and extensive cooperation with diverse parties.

These issues are not referenced to garner sympathy or to claim that I alone am responsible for the resolutions. Its purpose is to convey a capacity and ability to address unique and unexpected situations in a thoughtful and expeditious manner, and an ability to collaborate with other judges to achieve the proper results for those that we serve.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

Addressing cases of particular note, I will first list those I handled during my private practice of law, then conclude with others I presided over as a criminal court judge.

PRIVATE PRACTICE

Representing a significant number of defendants charged with capital or first degree murder during the twenty (20) years of law practice, it is difficult to distinguish one as more significant than the other, however the following do stand out for me as being personal learning experiences or personal satisfaction in the result:

(1) In 1996-1998, I was appointed as co-counsel for the lead defendant in the "Lillelid

Murder Case" in Greene County, Tennessee. The case involved the killing of a mother, father, and their six-year-old daughter and the severe injury of their two-year-old son at a rest area in Greene County, Tennessee. The victims were traveling from Johnson City, Tennessee, to Knoxville after having attended a Jehovah's Witness Convention. The defendants consisted of four adults and two juveniles from the Pikeville, Kentucky area, who had traveled to Greene County, Tennessee, and approached the couple, eventually kidnapping them from the rest area along Interstate 81 in Greene County, Tennessee. The victims were killed a short distance from the rest area. The defendants eventually made their way to Mexico, then back into the United States in Arizona. Upon being arrested, they were transported to Greene County, Tennessee. The state filed notice seeking the death penalty against the four adults and life without parole against the juveniles. There were ten attorneys involved for the defendants and more than twelve hundred (1,200) exhibits in the case. After almost two years of litigation, we convinced the state to withdraw its notice seeking the death penalty. After the defendants entered guilty pleas, a weeklong sentencing hearing was held, resulting in life in prison without parole. This case, more than any other, taught me how to collect, review, and access large volumes of documents and evidence. It has also taught me how to deal with the variety of issues surrounding a high-profile trial. This case was the top news story in the State of Tennessee for two years, in 1997 and 1998. While entering the courthouse, the lawyers were often escorted by armed officers to ensure our safe entry into the courtroom. This experience provided me with the necessary perspective to deal with the weight of public pressure in a controversial, high-profile case, generating personal hostility from the public while focusing intently on representing a young client facing the death penalty.

(2) Other significant cases for me are those in which the defendant was charged with murder. These are the most intense cases in terms of preparation and consequences for all involved. From 2006 to 2010, I tried six homicide cases in Carter, Johnson, and Sullivan County, Tennessee, either as sole counsel or co-counsel. In each of these cases, the defendant was charged with either first-degree or second-degree murder. I feel this period is significant because it took a tremendous amount of time and effort to properly prepare these cases and to try them confidently before a jury in each of the counties. Two of the first-degree murder cases, one in Carter County, Tennessee, and one in Johnson County, Tennessee, resulted in the acquittal of the defendant.

(3) An example of a significant case in a forum other than a Criminal Court jury trial occurred before the Commissioner for the Department of Safety in a seizure hearing arising out of Sullivan County, Tennessee. After executing a search warrant, federal authorities had seized approximately Four Hundred Sixty-Five Thousand Dollars ($465,000.00) in cash from a building on our client's property, allegedly the proceeds of an indoor marijuana grow operation. After a certain period of time, the federal authorities elected not to pursue the case, as they felt the evidence was insufficient to proceed with a federal prosecution.

The matter was then picked up by the Sullivan County, Tennessee, Sheriff's Department, which instituted seizure proceedings against the money and our client. Eventually, our

client was also charged in the Criminal Court of Sullivan County, Tennessee, for the manufacture of marijuana in excess of five hundred pounds. A jury trial resulted in a hung jury on those charges, which were later dismissed by the Criminal Court for Sullivan County, Tennessee.

The Sullivan County Sheriff's Department proceeded with the seizure hearing, which resulted in a three-day trial before the Administrative Law Judge assigned to the case in Knoxville, Tennessee. This case is significant to me in that we were asking the Administrative Law Judge, who was an employee of the State of Tennessee, to find for our client and return the Four Hundred Sixty-Five Thousand Dollars ($465,000.00) in cash that had been held by the Sullivan County Sheriff's Department for over four years. Following the trial, the Administrative Law Judge in fact ruled in our favor and ordered the return of the money. After three appeals and numerous hearings, the Administrative Law Judge's ruling was upheld, and our client received the full amount back.

JUDICIAL SERVICE

Cases that stand out for me as a criminal court judge often involve murder cases with horrific facts and a large number of exhibits. As a criminal court judge, I have presided over two (2) capital cases in which the state sought the death penalty, and these cases involve the most extensive work that a criminal court judge can do. Between the number of pre-trial motions, the necessity of individual voir dire during jury selection, and the oversight of ex parte requests for expert services, these cases are often the most difficult. It is important to keep full focus on a defendant's heightened due process while carefully balancing the state's and the victim's right to a fair trial. My experience with capital cases greatly increased my knowledge of the process and prevented me from having to learn the unique procedures involved.

(1) *State of Tennessee v. Eric Azotea,* Carter County Criminal Court Case No. 23277. This case involved a defendant who killed two (2) victims, dismembered their bodies, and attempted to burn the victims over several days in a burn pile and buried the remains under his residence. This case garnered tremendous publicity because of the long search for the victims before they were found under the defendant's residence. The state filed notice to seek the death penalty. At the trial, the jury selection process took multiple days, and the jury was seated. The defendant ultimately made a motion for a mistrial well into the state's case after a witness wrongfully testified about being familiar with the defendant from serving a prior prison sentence. While contemplating the motion for mistrial, the court directed the parties to discuss the case, and ultimately, the state withdrew the death notice, and the defendant pleaded guilty and received a life sentence with the possibility of parole. To my knowledge, no appeal or post-conviction petition has been taken from this agreement.

Rather than listing all the cases I have tried, I will simply now list and briefly describe some of the homicide trials conducted in 2025:

(1) *State of Tennessee v. Christopher Jones*, Washington County Criminal Court Case No. 49592A (joined with #48775). This was a second-degree murder by fentanyl overdose; the defendant was convicted of second-degree murder.

(2) *State of Tennessee v. Rex Lewis*, Washington County Criminal Court Case No. 48519. This was a second-degree murder of his friend by stabbing and slashing with a samurai sword; the defendant was convicted of second-degree murder.

(3) *State of Tennessee v. Cynthia Ellis*, Carter County Criminal Court Case No. 26789. This was a first-degree murder of her boyfriend following an altercation; the defendant was acquitted.

(4) *State of Tennessee v. Jacob Morley*, Carter County Criminal Court Case No. 26567. This was a first-degree murder of his co-worker/friend, abusing the corpse, and burying it under the crawl space of his house; the defendant was convicted of first-degree murder.

(5) *State of Tennessee v. Tyler Owens*, Unicoi County Criminal Court Case No. 8149. This was a first-degree murder of a girlfriend and abuse of the corpse after removing the victim from the camper and placing the body under trash in the victim's automobile; the defendant was convicted of first-degree murder.

(6) *State of Tennessee v. Joshua and Jacob Hitchcock*, Carter County Criminal Court Case Nos. 26943A & 26943B. This was a first-degree murder of their father, who was shot in the driveway of his home. The brothers requested and received a joint trial. Both were convicted of first-degree murder and conspiracy to commit first-degree murder. Sentencing and Motion for New Trial are pending.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

As a private attorney, I served as substitute General Sessions Judge and Juvenile Court Judge/Referee in Carter County, Tennessee. From approximately 1994 through 1998, the General Sessions Judge appointed me to sit in his absence, hearing a variety of cases, including arraignments and detention hearings. From 1999 through 2013, I served as one of the two appointed referees for the Carter County Juvenile Court, conducting detention hearings for juveniles housed at the Regional Juvenile Detention Center in the Judge's absence. These appointments were made by the General Sessions Judge/Juvenile Court Judge for Carter County, Tennessee, and occurred approximately five to eight times per year, depending upon the judge's absence. I conducted detention hearings for juveniles charged with delinquent acts as minimal as theft or assault and as serious as aggravated rape. These detention hearings were necessary to determine whether the juvenile should continue in the Juvenile Detention Facility pending trial or should be released to an appropriate/willing parent or guardian.

As far as my work as Criminal Court Judge, Part II of the First Judicial District, I have

discussed my work in detail in questions eight (8) and nine (9) and will not repeat that in this space.

Elizabethton Municipal Judge, 2025. In early 2025, the presiding judge of the Elizabethton, Tennessee Municipal Court was suspended from the practice of law, and the Elizabethton City Council appointed me to address a serious backlog in that court. I served on a voluntary basis until a permanent municipal judge was appointed approximately five (5) months later.

Johnson County General Sessions Court, 2024. In 2024, I, along with various other judges in East Tennessee, was appointed by order of the Tennessee Supreme Court to conduct the General Sessions Court for Johnson County, Tennessee, following the arrest and subsequent suspension of the Johnson County General Sessions Court Judge. I would conduct court in Johnson County, Tennessee, multiple times each month, and this continued until the August 2024 election, when a permanent judge took office.

In addition, I have been appointed by the Tennessee Supreme Court to hear cases in Hawkins County, Tennessee; Hamblen County, Tennessee; Hancock County, Tennessee; and Sullivan County, Tennessee due to conflicts of interest with judges in those respective districts from 2014 to present.

11. Describe generally any experience you have serving in a fiduciary capacity, such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

During the early part of my career, from approximately 1992 through 1998, I acted as a guardian ad litem for juveniles in divorce proceedings and for disabled or elderly wards in conservatorship proceedings on numerous occasions. These appointments as guardian ad litem were made in proceedings pending before either the Circuit Court, Chancery Court, or the Juvenile Court for Carter County, Tennessee. My duties in this capacity included interviewing the ward/subject of the proceedings, investigating the facts and circumstances giving rise to the proceedings, and, upon request, preparing and delivering a detailed report to the court.

For twelve (12) years, I served as a trustee of Calvery Baptist Church in Elizabethton, Tennessee, overseeing the investment of the church's real property, income, and payroll.

I served as custodian of the Uniform Trust For Minors Brokerage Accounts for my children. They are now over the age of twenty-one (21) and own the accounts themselves.

I have served as Executor of at least ten (10) estates during my career as an attorney. I was either the named Executor in the will or appointed by the Chancery Court for the First Judicial District. All estates have been closed, and distributions have been made to the beneficiaries. The responsibilities include the collection of all assets, the determination of beneficiaries, and the distribution of the net estate, following the payment of taxes and payment of all valid creditors.

While in private practice, I served as trustee and/or substitute trustee on numerous deeds of

trust and foreclosure matters.

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Council.

Since 2008, I have served as the named executor of two estates, each involving elderly widows leaving no surviving children or grandchildren. The last of these estates, which closed in 2011, involved more than Ten Million Dollars ($10,000,000.00), with most of the assets being held in private or public stock holdings. The work as the executor in this estate involved the sale of the stock and the liquidation of the other assets, with the proceeds being primarily distributed to four major charities or organizations, including the American Heart Association, American Cancer Society, the Shriners Children's Hospital, and St. Jude's Hospital in Memphis, Tennessee.

Beginning in 2016, Judge Lisa Rice and I appeared before numerous organizations, including local government, political clubs, ETSU College of Medicine Instructors, and several budget committees, on the issue of opioid/drug addiction. In addition, we have met separately on three (3) occasions with Governor Bill Lee, then Deputy Governor Butch Eley, and Marie Williams, Commissioner of the Tennessee Department of Mental Health and Substance Abuse, regarding the needs of Northeast Tennessee and the creation of our residential recovery court. We continue to appear before these various organizations and officials to provide updates on the current state of our facilities and on potential future needs.

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Council for Judicial Appointments or any predecessor or similar commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

I applied for my current position in December 2012. I was one (1) of three (3) names submitted to Governor Haslam and was appointed in April 2013; I was re-elected without opposition in 2014 & 2022.

EDUCATION

14. List each college, law school, and other graduate school that you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

- East Tennessee State University, Cum Laude, 1985-1989, B.S. Degree in Political Science with a minor in Real Estate and Criminal Justice.
- Thomas M. Colley School of Law, Lansing, Michigan, 1990 on a full tuition scholarship, 4.0

GPA with book award for highest class average in contracts, criminal law I & II and torts I &II.

I transferred after my first year of law school, despite receiving a full-tuition scholarship, to the University of Tennessee College of Law because I wanted to return to practice in my hometown of Elizabethton, Tennessee.

• University of Tennessee College of Law, 1990-1992, Doctor of Jurisprudence; Cum Laude, graduate with awards for family law, evidence, and participation in the College of Law legal clinic.

PERSONAL INFORMATION

15. State your age and date of birth.

I am 58 years old and my date of birth is [redacted]1967.

16. How long have you lived continuously in the State of Tennessee?

Except for one year of school attendance in Michigan, I have lived continuously in the State of Tennessee for 58 years.

17. How long have you lived continuously in the county where you are now living?

Except for the time away at school, I have lived continuously in Carter County, Tennessee for 58 years.

18. State the county in which you are registered to vote.

I am registered to vote in Carter County, Tennessee

19. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

Not applicable.

20. Have you ever pled guilty or been convicted or placed on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

No, except for two (2) paid speeding tickets in Johnson County, Tennessee in the last twenty (20) years.

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No.

22. Please identify the number of formal complaints you have responded to that were filed against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint.

I have responded to 2 complaints filed by pro se inmates with the Board of Judicial Conduct.

I also responded to an inquiry concerning a rental property that I owned that was leased to an attorney.

The complaints were all dismissed without hearings.

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No.

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No.

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

I was a party plaintiff in a multi-plaintiff lawsuit filed in the Circuit Court for Carter County, Tennessee, in 1999-2000, involving a utility easement over property purchased by the multi-

plaintiffs at auction. This matter was settled shortly after the suit was filed, and the result was the conveyance of an additional portion of land without any payment. No hearing was conducted before any judge or mediator/arbitrator.

I have been named as a co-defendant in my capacity as a judge in two (2) pro se lawsuits filed in Federal Court. Both were dismissed without a hearing.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices that you have held in such organizations.

- Co-Presiding Judge for Day Reporting Center (DRC), First Judicial District Felony Recovery Court (FJDFRC) & Northeast Tennessee Regional Recovery Center (NETRRC). In addition to serving as a presiding judge, I was a co-founder of each of these recovery programs.
- Carter County Records Commission, Presiding Judicial Officer, 2014 to present
- Carter County Court Security Board, Member, 2013 to present
- University of Tennessee College of Law – Dean's Circle/Alumni Council, 2021 to present
- Calvary Baptist Church, Trustee, Sunday School Teacher & Deacon
- Baptist Campus Ministries, East Tennessee State University, Board of Directors, 2012-2020
- Happy Valley Youth Club, Contributor
- Elizabethton Cyclone Touchdown Club, Board Member and Contributor
- American Red Cross, Carter County Office, Board Member through 2003
- Mock Trial Competition for Northeast Tennessee, 1992 to present (serving as team coach, mentor, and/or judge each year)
- Carter County Republican Party, Board Member serving as Parliamentarian, 1998-2000
- East Tennessee Republican Club

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.

    a. If so, list such organizations and describe the basis of the membership limitation.

    b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No.

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices that you have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

- Tennessee Judicial Conference, 2013 to present
  - Executive Committee, 2015-2018 & 2025 to present
  - Convention Chairman, 2026-2027
  - Co-Chairman of the Hospitality Committee, 2015-2016
  - Member of Committee on Criminal Pattern Jury Instructions, 2013 to present
  - Member of the Legislative Committee, 2018 to present
  - Member of the Committee of the Judicial Academy, 2025 to present
- Tennessee Trial Judges Association, 2013 to present
  - Executive Committee, 2017 to present
  - Vice President for 2025-2026
  - Member on Committee for Judicial Safety, 2024 to present
- Tennessee Supreme Court Clerk Policies and Procedures Committee, Member, 2025 to present
- University of Tennessee College of Law Dean's Circle/Alumni Council, 2021 to present
- American Bar Association, 1992 to 2013
- Tennessee Bar Association, 1992 to present
- Carter County Bar Association, 1992 to present (Secretary/Treasurer 1994-1996 and President 1996-1998)
- National Association of Criminal Defense Lawyers, 1996 to 2013
- Tennessee Association of Criminal Defense Lawyers, 1992 to 2013
- Tennessee Association of Justice (formerly Tennessee Trial Lawyers Association), 1992 to 2010
- Attorney Admission Committee for the Northeast Division of the United States District Court (Appointed in February 2010 by U.S. District Judge J. Ronnie Greer for a three-year term)

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school that are directly related to professional accomplishments.

• Tennessee Association of Recovery Court Professionals – Judge Seth Norman Judge Making a Difference Award, 2024

• ETSU Department of Criminal Justice & Criminology, Nicholas J. Carami Jr., Distinguished Criminal Justice Professional Award, Alumni of the Year, 2019

• ETSU, President Trust Member

• Elizabethton Star and Johnson City Press Best Attorney Award, 2012-2013

• Tri Cities Business Journal, Attorney of the Year, 2008

30. List the citations of any legal articles or books you have published.

While I have not published a book or any scholarly legal articles, I have created and distributed material for law school courses, CLE seminars, and other law-related courses for which credit was given, as described in thirty-one (31). The majority of the material distributed was my personal creation from various sources.

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

• Tennessee Association of Criminal Defense Lawyers, Presidents' Tour for Tri-Cities in Kingsport, Tennessee, and Johnson City, Tennessee, 2009 through 2013

• Washington County Bar Association, Annual Review Seminar, 2016 to present
- Criminal Law Update

• Tennessee Trial Lawyers Association, Annual Review Seminar, Criminal Law update, 2014 to present
- Criminal Law Update

• I have presented on three (3) separate occasions to the Tennessee Judicial Conference either as a panelist or as the sole speaker, including a Capital Case Seminar involving the preliminary stages of a capital case, including the impaneling of a jury, distribution of questionnaires, individual voir dire, and assisting the court clerks in assimilating required material.

• University of Tennessee, Winston College of Law, the 1L Law Competition from 2018 to present, which involves judging the competition of 1L students delivering opening statements with a panel of other judges.

• East Tennessee State University, I have spoken on numerous occasions to the pre-law classes as well as the criminal justice classes on behalf of the chair of the criminal justice department, Dr. Larry Miller, from 2013 to the present.

• East Tennessee State University Quillen College of Medicine Office of Continuing Medical

Education, 2024 presented a three (3) hour seminar on recovery in Appalachia and an overview of our treatment and providers for our various recovery courts.

• I have presented at the Tennessee Broadcasters Association Reporters Workshop, 2023, as part of a program hosted by the Tennessee Bar Association, along with other judges from across the state, to discuss with members of the media the role of courts and ways to work together for proper courtroom conduct of reporters and for more accurate reporting of events.

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

• Criminal Court Judge, Part II, First Judicial District of Tennessee (Carter, Johnson, Unicoi, and Washington counties), appointed by Governor Bill Haslam in April of 2013, elected in 2014, and re-elected in 2022.

• Elizabethton Municipal Judge, 2025 (temporary appointment from Elizabethton City Council as municipal judge for Elizabethton, Tennessee, following the suspension of the presiding municipal judge's license, served on a volunteer basis until the permanent municipal judge was appointed.)

• In 2024, Johnson County General Sessions Court; I, along with other judges in East Tennessee, was appointed by order of the Tennessee Supreme Court to conduct the General Sessions Court for Johnson County, Tennessee, following the arrest and subsequent suspension of the Johnson County General Sessions Judge.

• In addition, I have been appointed by the Tennessee Supreme Court to hear cases in Hawkins County, Tennessee; Hamblen County, Tennessee; Hancock County, Tennessee; and Sullivan County, Tennessee, due to conflicts of interest with the judges of those respective districts, 2014 to present.

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No.

34. Attach to this application at least two examples of legal articles, books, briefs, or other legal writings that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

The first attached example is *Conley Ross Fair v. State of Tennessee, Case No. S19440,* an order from a post-conviction petition from Unicoi County, Tennessee, that had been delayed since its filing in 1999. This order is entirely my work. The ruling in this matter was upheld on appeal.

The second attached example is *Ethan Alexander Self v. State of Tennessee, Case No. 37CCI-2018-CR-13,* an order issued in a post-conviction petition from Hawkins County, Tennessee. This order is entirely my work. The ruling in this matter was upheld on appeal.

ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? ***(150 words or less)***

I seek this position because I feel my professional life has prepared me to contribute meaningfully to the Court of Criminal Appeals. For 33 years, I have worked in Tennessee's criminal justice system—20 years as an advocate and 13 as a trial judge. I have now spent over half of my life performing this work. As my career has evolved, it has become apparent that criminal law has provided the most satisfaction across all areas: mentally, emotionally, financially, and professionally. I have strived to apply my experience to set high standards in the Criminal Court of the First Judicial District. I have worked very hard to create a timely, efficient, and professional forum for criminal cases to be decided in my district, while always striving to be respectful to all parties involved, whether the prosecution, the defendants, the victims, or the jurors. That experience has given me daily responsibility for applying constitutional principles, standards of review, and the rules of evidence to real records and real people.

The Court of Criminal Appeals has a unique role in ensuring that our trial courts provide for the rights of all citizens, in rendering legal opinions and principles that address the specific case, and in providing guidance to judges and advocates across the state in future cases. This Court is often the court of last resort for a criminal defendant, as the Tennessee Supreme Court accepts only a limited number of appeals. My personal and professional experience as a judge, as well as my familiarity with the Court of Criminal Appeals and the current sitting judges, I feel, will uniquely qualify me for the transition from trial court judge to the appellate bench. I feel that the extensive experience of a criminal court trial judge, with their unique knowledge of the law and its application to specific fact patterns, is necessary to perform the duties of this position as a Court of Criminal Appeals Judge. I would approach this role with respect for precedent, fidelity to the record, and an appreciation for the practical realities faced by trial judges making immediate decisions in the courtroom.

36. State any achievements or activities in which you have been involved that demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. ***(150 words or less)***

PRIVATE PRACTICE

During my 20-year career as an attorney, I carried a caseload of approximately two hundred (200) cases at any given time, and I worked each case to the best of my ability regardless of the client's social or financial status. I was counsel of record in several pro bono cases, large and small, from first-degree murder to speeding, in all courts in the First and Second Judicial Districts for the State of Tennessee. My goal was always to represent these clients, not depending upon their station in life, but rather on the issues of their cases. Pro bono cases often involved the most work but almost always provided the most satisfaction at the conclusion of

the cases.

JUDICIAL SERVICE

During my time on the bench, my biggest commitments to equal justice under the law and pro bono service have been my work with our Recovery Courts. These programs are more fully described in other areas of this application, but for these purposes, I feel it is important to note that I was a co-founder in each of these organizations. Since 2013 with the DRC and since 2017 with the First Judicial District Felony Recovery Court, I have served as a presiding judge for each of these programs, and each judge, as well as our outstanding team, serves without compensation. Our recovery courts in the First Judicial District meet every Wednesday from 4:00 p.m. until sometimes as late as 10:00 p.m. at night. We spend many hours each week reviewing each participant's progress in the program, mapping out future treatment goals, and learning more about their individual personal lives. Following this staffing, we meet with each participant in our program to discuss these matters. These programs are important to me on a professional and personal basis. Rarely in life do you have the opportunity to begin something and see it have such a lasting effect. These programs have now served over 300 participants, and we currently have approximately 250 participants combined across the programs. These programs are changing our participants' lives. Our participants are at the absolute lowest point in their lives and face a future that involves either incarceration or, unfortunately, often death. The ability to provide them with an alternative means of living is the most rewarding experience I have had in my professional career. It is my desire and intent to continue this work regardless of the position that I may hold.

Also, any success I have had in the practice of law or as a judge is attributable to experienced attorneys and judges who have mentored me. During my time on the bench, I have had numerous law clerks from law schools including the University of Tennessee (Winston College of Law), Belmont, Appalachian School of Law, Wake Forest University, Lincoln Memorial University and others as well as undergraduate institutions including E.T.S.U., King College, University of Tennessee and Milligan College who have clerked for me throughout the year or during the summer months. I have been able to mentor many young students and attorneys, and it is extremely rewarding to see them go on to successful careers.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. ***(150 words or less)***

I am seeking an appointment to the Tennessee Court of Criminal Appeals, Eastern Division. This court is comprised of twelve (12) judges, four (4) from each grand division of the state. This court hears appeals in three (3) judge panels that rotate monthly between Jackson, Nashville, and Knoxville, and serves as the intermediate appellate court for criminal cases in Tennessee. I believe my selection would provide the appellate court with extensive trial experience as a judge. As an attorney and a trial judge, I have conducted over three hundred fifty (350) jury trials, as well as the motion practice leading up to them. Also, I have tried as an attorney or a judge fourteen (14) death penalty cases, argued numerous cases before both the Tennessee Court of Criminal Appeals and the Tennessee Supreme Court, and have served as a

presiding judge on three (3) separate problem-solving courts or rehabilitative programs. This provides me with a unique perspective across a broad spectrum of issues facing both the prosecution and defense across this state.

The judgeship I seek will deal almost exclusively with issues arising from pre-trial motions, motions during trials, and decisions made by judges and juries. This is what I have done for the last thirty-three (33) years, and while I don't profess to have seen everything, I feel I am well-versed in applying the law to the various fact situations that trial judges encounter. The experience of looking witnesses, victims, and jurors in the eye at what is often the most traumatizing time in their lives allows a trial judge not only to understand the facts but also how the law does and should apply in these cases. Understanding the experience of a trial judge in making what is often a split-second decision will provide this court with a valuable perspective. Early in my judicial career, I was fortunate to befriend the late and great John Everett Williams, a member of the Court of Criminal Appeals. His first comment to me was that "he never loses sight of the fact that when he reviews a decision of a trial judge, he has the benefit of two (2) other judges, three (3) law clerks and months to work through an issue that a trial judge had sixty (60) seconds to decide." This was profound to me, and I believe it provides the proper perspective for a Court of Criminal Appeals Judge in reviewing cases. I appreciate both the deference owed to factfinders and the appellate court's duty to correct errors. It is important that appellate court decisions and opinions clearly explain both the background and the legal reasoning for their decisions, providing guidance to judges and attorneys across this state who face the daily challenges of our criminal justice system. I would strive to write clear, concise, and timely opinions not only to decide the issues in individual cases but also to promote uniformity in our laws.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? ***(250 words or less)***

My community service involves work in my church, programs under the supervision of the First Judicial District and the legal community.

I have been a member of Calvary Baptist Church in Elizabethton, Tennessee, for approximately 56 years. I have held several positions, including Trustee, Sunday School Teacher, and Deacon. This work led to my appointment as a board member of the Baptist Campus Ministries at E.T.S.U., where I oversaw the university's Baptist Student Ministries for several years.

As I previously explained in this application, I am a co-presiding judge of the Day Reporting Center, the First Judicial Felony Recovery Court, and the Northeast Tennessee Regional Residual Recovery Center, which are outgrowths of the need to address addiction and the problems associated with alcohol and drug abuse. I spend many hours each week working with each of these programs, both in formal settings and via email and text messages, addressing problems with individual participants and the overall structure, policies, and procedures for each program. In addition to our weekly scheduled meetings, our presiding judges "drop in" during the treatment classes to provide encouragement and sometimes reminders to participants about the importance of what they are doing and of these programs. We are consistently looking for

housing, employment as well as mentorship for our participants. While this work is done without compensation, it is extremely time-consuming, but as I have stated, it is the most rewarding professional experience that I have had during my career.

I have served as a board member for various youth clubs and sports organizations throughout our region and served as a coach for Little League Baseball and for Youth League Football for approximately fifteen (15) years. In 2018, following the illness and subsequent death of the long-time radio voice of the Elizabethton Cyclone football team, I was asked by our local radio station (107.9 WBEJ) to serve as a color commentator for Elizabethton High School and other Carter County teams on Friday nights. I have done this each Friday night since that time, and on a weekly basis, we are told that we reach an audience of fifteen to twenty thousand listeners in the various formats in which these games are produced. While announcing football games is often a welcome change of pace from my daily job, I also find that it helps to develop my communication skills and further enhance my ability to be efficient with my time.

I have been a member of the University of Tennessee, Winston College of Law Dean's Circle/Alumni Council for approximately three (3) years. Council members serve as ambassadors not only for the law school but also for the dean and the faculty and serve to discuss issues in legal education. This council meets twice a year and is working diligently to expand legal education and address the shortage of attorneys serving our rural communities in Tennessee.

A judge should be respected in the community. They must conduct themselves as if they are wearing the robe at all times. I am committed to protecting and preserving the respect of the position by remaining actively involved in the community, regardless of the position I may hold.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Council in evaluating and understanding your candidacy for this judicial position. ***(250 words or less)***

My most important life experiences and talents are, I feel, my ability to work hard and to treat everyone respectfully. I have worked at a variety of jobs throughout my life, including in a restaurant, on a cattle farm, on a Christmas tree farm, as a practicing lawyer, and as a trial court judge. My law practice involved many serious cases across many judicial districts, and my current position as a trial judge involves even more. In each job, I learned that a person must face the task and work diligently because that is expected by the employer. It is also what the public we serve expects. Over time, it is what I have also come to expect from myself.

In each job, I also learned that it is crucial to respect others. I believe that no person has the right to be disrespectful to another human being, regardless of their station in life. This has served me well and has nurtured many wonderful relationships with a variety of people. I have been fortunate to represent a wide range of clients, from multimillionaires to the poorest people in our area. I have also had the opportunity to befriend many judges from across the State of Tennessee, including most, if not all, who currently sit on the Court of Criminal Appeals. I have tried to treat each person that I encounter with respect, especially everyone involved in the court system. From the clerks, the bailiffs, the attorneys, and especially the participants, I attempt to

be respectful of both the person and their position.

My most impactful life experience involves my children. My daughter, Annie, earned a master's degree in speech pathology and has a servant's heart. She currently works with severely challenged children. My son Nick is currently a law student at Wake Forest University, receiving a full merit scholarship. I strive to be an example of a servant in a public role and to exemplify excellence to the best of my ability for them, particularly my son, who will be entering this noble profession.

A judge should always be respectful toward everyone involved in the case. I believe my experience and temperament would enable me to serve as a Court of Criminal Appeals Judge and do so in a hardworking and respectful manner.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. ***(250 words or less)***

I believe a judge must uphold and enforce the law, regardless of personal opinions about the agreement or disagreement with its content. As a criminal defense attorney, I frequently faced these issues. The cases that I tried involved very serious and disturbing crimes and involved very sympathetic victims. Regardless of my moral stance as to their guilt or innocence, that was not my role. It was necessary to set aside any moral considerations and follow the law as it applied to the facts and represent my client to the best of my ability.

As a judge, I face this issue more frequently. The best example would be in the difficult area of sentencing. Each week, I hear testimony from victims or victims' families who have faced a traumatizing event. I also hear background information on defendants that describes an upbringing either socially or within their own family that involves drug abuse, sexual abuse, or mental abuse. In some cases, I feel the law is too lenient toward defendants and that a particular case should carry a harsher punishment or be ineligible for probation. However, I am often obligated to grant alternative sentencing to someone I feel is not worthy or unlikely to succeed, because the law must be followed.

In the alternative, there are many new laws in the State of Tennessee that carry mandatory sentencing or mandatory release eligibility dates that involve a defendant serving one hundred percent (100%) of their sentence. Sometimes I feel this is too harsh for a particular defendant, but, given the facts and circumstances of the case, it is my obligation to sentence that defendant in accordance with our laws. In these situations, my personal opinion must take a back seat to the law, and I must follow it as a judge.

I seek this position with no personal agenda. This position will require a transition from a trial judge to an appellate judge who can review not only the facts and the law but also what occurred in a trial court. While this judgeship is not a position to create law, sometimes a decision can carry the force of law, so long as it complies with the direction of the Supreme Court of the State of Tennessee and the United States, regardless of whether the individual judge agrees with the law. A change in the law is an extraordinary circumstance and should not occur

unless absolutely necessary and is most often a task for a higher court or the appropriate legislative body.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Council or someone on its behalf may contact these persons regarding your application.

A. Judge Clifton L. Corker
United States District Judge, Eastern Division
[redacted]

B. Tim Hicks
State Representative, District 6
[redacted]

C. Rusty Crowe
State Senator, District 3
[redacted]

D. Chancellor John Rambo
Chancellor of First Judicial District
[redacted]

E. William B. Greene Jr.
Chairman, BancTenn Corp.
Bank of Tennessee
[redacted]

AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Court of Criminal Appeals of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended application with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this application shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: February 5, 2026.

Signature

When completed, return this application to Laura Blount at the Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.

IN THE CRIMINAL COURT FOR UNICOI COUNTY, TENNESSEE

AT ERWIN

CONLEY ROSS FAIR	*	
	*	
Petitioner/Defendant	*	
	*	
V.	*	CASE NO: S19440
	*	(Petition for Post Conviction Relief)
STATE OF TENNESSEE	*	
	*	
Respondent	*	

ORDER

The petitioner, Conley Ross Fair, was convicted by a jury in the Unicoi County Criminal Court of one count of First Degree Murder and one count of Attempted First Degree Murder. For the First Degree Murder conviction, the petitioner was sentenced to life in prison, and for the Attempted First Degree Murder conviction he was sentenced as a Range II, multiple offender, to 35 years in prison to be served consecutively to the life sentence. The petitioner was further fined Fifty Thousand Dollars ($50,000.00).

On appeal, the Court of Criminal Appeals of Tennessee at Knoxville affirmed the convictions on November 19, 1999. See State vs. Fair No. 03C01-9810-CR-00362. 1999 W.L. 1045074(Tenn. Crim. App.). The petitioner has now filed Post Conviction Writ that is properly before this court and evidentiary hearing concerning the Petition was heard on December 18, 2014.

PROCEDURAL HISTORY

The procedural history of this case is somewhat confusing; however the court feels it is necessary to address the history to put the case in proper prospective. The initial trial for the petitioner occurred in 1997. However that trial ended in a mistrial because a witness made reference to the prior incarceration of the defendant. The petitioner's counsel during the initial trial was Mr. William Lawson, who was also counsel in the trial that is the subject of this petition.

The second trial for Mr. Fair occurred in 1998 and resulted in the convictions as described above. Following a Motion for New Trial, the appeal of right was heard and decided by the Court of Criminal Appeals of Tennessee at Knoxville on November 19, 1999 and the convictions were affirmed in all respects.

At that time, the case took various turns which result in the confusion in this case. There was no application for permission to appeal filed by the petitioner or his counsel. On June 22, 2002, the petitioner filed a Post Conviction Petition with this court. Then Criminal Court Judge Lynn Brown found that the Post Conviction Petition was filed nine months beyond the expiration of the statute of limitations and denied the petition on February 3, 2003.

The petitioner then appealed the denial of the Post Conviction Petition. On March 1, 2004, the Court of Criminal Appeals of Tennessee at Knoxville filed an Order remanding the issue to the trial court for appointment of counsel and for evidentiary hearing to determine whether or not due process required the tolling of the statute of limitations so as to give the petitioner the opportunity to seek application for permission to appeal to the Tennessee Supreme Court.

The next entry in the court file that this judge can find occurs on March 26, 2010 in which the Honorable Lynn W. Brown held a hearing in which he found that due process did in fact require the tolling of the statute of limitations and, on May 20, 2010, entered an Order reinstating the petitioner's case to the Court of Criminal Appeals in order to allow him to file a Rule 11 Application for Permission to Appeal to the Tennessee Supreme Court.

On October 20, 2010, the Tennessee Supreme Court entered an Order denying the petitioner's application for permission to appeal. On September 27, 2011, the current Post Conviction Petition was received in the clerk's office for Unicoi County, Tennessee and the court entered a Preliminary Order on March 28, 2013. Upon the retirement of Judge Lynn Brown, the current judge entered an additional Preliminary Order on June 28, 2013 appointing counsel, assigning the requirements for an Amended Petition and response and set this matter for hearing.

On December 18, 2013, this court conducted the evidentiary hearing regarding the Amended Petition and in particular regarding the colorable claim raised by the petitioner for ineffective assistance of counsel.

GROUNDS FOR POST CONVICTION RELIEF

The petition alleges the following grounds which can be listed under two categories:

1. That the convictions were based upon less than proof beyond a reasonable doubt of every element of the crime, which equates to an allegation of insufficient evidence to support the convictions; and

2. Ineffective assistance of counsel for which the petitioner makes three claims

A. That counsel failed to properly pursue petitioner's right to present a defense of self defense, failed to properly prepare any defense or present favorable evidence and failed to investigate or present any mental defenses to the charges.

B. That the convictions were based upon prejudicial prior inconsistent statements that could not be effectively impeached or cross examined by the defense and that counsel failed to, following a denial of the court of the introduction of prior recorded testimony of a deceased witness, make an offer to proof and preserve the issue on record for the purposes of appeal.

C. That counsel failed to properly advise the petitioner of his right to testify and failed to have the petitioner properly waive his right to testify on the record.

These are the issues in which this court found that a colorable claim was raised and these were the issues addressed during the evidentiary hearing.

FACTS OF CASE

The facts which resulted in the petitioner's convictions are set out in the Court of Criminal Appeals opinion from the petitioner's direct appeal as noted in State of Tennessee v. Conley Ross Fair, Tenn. Crim. App. No. 03C01-9810-CR-00362. The facts are as follows:

> The defendant was convicted of the first degree murder of Bruce Stukey and the attempted first degree murder of James Brown. By the time of trial, Mr. Brown had died of causes not related to this case. However, the jury heard an audiotape of his testimony from the defendant's preliminary hearing, and a transcript was admitted into evidence. At the preliminary hearing, Mr. Brown testified that around 6:30 p.m. on August 14, he drove Mr. Stukey to the defendant's house. He said Mr. Stukey wanted to buy a gun from the defendant, but the defendant said the gun was hidden on Fire Tower Road. He said the defendant stated that Mr. Brown's car could not make the drive and asked Mr. Stukey to come back in an hour, and the two would go to Fire Tower Road to get the gun. Mr. Brown testified that Mr. Stukey did not want to wait an hour, and they drove to Mr. Stukey's house to get Mr. Stukey's truck. He said they then picked up the defendant, and the three of them went to Fire Tower Road around 7:30 p.m.

Mr. Brown testified that Mr. Stukey had no gun or other weapon and that he would have been able to tell if Mr. Stukey had a weapon underneath his clothing. He said the defendant directed Mr. Stukey to Fire Tower Road and had Mr. Stukey pull off the main road near a trail. He said they all got out of the truck and started walking down the trail. He said the defendant led the way, followed by Mr. Stukey, then himself. He said they walked through heavy woods, then veered off the trail on to a walking path. He stated that the path had lots of stickers and brush and that he stopped and told the defendant and Mr. Stukey that he would wait for them because the area was too wooded. He testified that the defendant told him to continue because they were already there.

Mr. Brown testified that he was about twenty feet from the defendant and Mr. Stukey and that as he tried to make his way down the trail toward them, he heard a loud popping noise. He said he looked up and saw the defendant coming toward him pointing a gun toward his head. He said the defendant shot the gun in his direction, then turned and shot Mr. Stukey twice in the back. He said Mr. Stukey had no weapons and had not threatened the defendant. He said Mr. Stukey fell face down, and the defendant came toward Mr. Brown again. Mr. Brown testified that the defendant looked like he had snapped, and he said he started running through the woods, away from the defendant. He said the defendant chased him through the woods and fired four or five more shots at him. He said the defendant stated, "Come here, boy."

Mr. Brown testified that he continued running but that the incline of the mountains was so steep, he fell and slid down part of the mountain. He said he ran for a long time until he no longer heard the defendant chasing him. He said he continued walking and running through the woods but that he hurt his leg, and it was getting dark. He said that when it became too dark to continue, he sat down and waited for morning. He testified that when it became light again, he continued walking through the woods until he found a trail that let him to a house. He said he found a man who drove him to a convenience store where he called the police. He said that a bullet had grazed his finger.

Mr. Brown testified that all three had smoked marijuana on the way to Fire Tower Road. He said that several weeks before the shooting, Mr. Stukey had suspected the defendant of stealing money from him. Mr. Brown stated that he had been in a detoxification program for heroin three weeks before the shooting.

Troy Lewis, an officer with the Unicoi County Sheriff's Department, testified that on April 15, 1995, he was dispatched to Jerry's Market. He said that when he arrived, medical personnel were treating Mr. Brown. Officer Lewis stated that Mr. Brown had numerous scratches and a burn on his right middle finger. He said he learned that Mr. Stukey had been shot on Fire Tower Road and that Mr. Brown had spent the night getting out of the woods. Officer Lewis testified that he and Sergeant Harris went to Fire Tower Road on Buffalo Mountain and searched the

area. He said they found Mr. Stukey's red truck, and they secured the scene for the Tennessee Bureau of Investigation (TBI).

Ron Arnold, a criminal investigator with the Unicoi County Sheriff's Department, testified that he was dispatched to Buffalo Mountain around 7:30 a.m. on August 15. He said that fifteen to twenty people were searching for Mr. Stukey's body, but they could not find it. He said they learned that Mr. Stukey was wearing a pager, and they decided to call it. He said they located the pager but not Mr. Stukey's body. He testified that he found a trail consisting of Mr. Brown's receipts, cigarettes, and car keys that led to a blood-stained area deep in the woods. Agent Arnold testified that he determined that this was the location of the shooting. He said he assembled a search party to search the immediate area, and Mr. Stukey's body was found about thirty minutes later, about one-quarter to one-half mile from the crime scene. He testified that the body had numerous scratches. Agent Arnold testified that the next day, he returned to the crime scene with a metal detector and found a spent bullet on the ground.

Agent Arnold testified that he learned that the defendant had gone to his sister's house in Dothan, Alabama, but was on his way to Tennessee. He said that on August 17, he learned that the Johnson City Police Department had the defendant in custody. He said he went to Johnson City to bring the defendant to Unicoi County. Agent Arnold said the defendant was then arraigned and booked and that during the booking process, the defendant removed a piece of paper from his pocket and began to tear it up. Agent Arnold said that another Agent got the letter from the defendant, and they pieced it together. He said the letter was written and signed by the defendant. The letter was admitted into evidence, and in the letter, the defendant admitted killing Mr. Stukey and trying to kill Mr. Brown. He claimed that Mr. Stukey and Mr. Brown took him into the woods to show him a pot plant. He wrote that Mr. Brown struck him from behind, causing him to fall into Mr. Stukey and knock a gun out of Mr. Stukey's pants. The defendant wrote that he fired the gun because he feared for his life.

Agent Arnold testified that after reading the letter, they took the defendant to the emergency room to have him examined. Agent Arnold said he did not notice any injuries on the defendant nor did the defendant complain of any. He said the defendant was not treated for any injuries at the hospital. Agent Arnold testified that after interviewing the defendant's family, he went to 700 E. Maple Street in Johnson City where the defendant had been living with family members. He said he and other officers looked for a gun in the wooded area behind the street. He said they found a gun containing one bullet and a box of ammunition between 632 and 634 E. Maple Street.

Agent Arnold testified that he processed Mr. Stukey's truck for fingerprints but that none were identifiable. He said he found a marijuana pipe containing what appeared to be marijuana residue in Mr. Stukey's truck. He testified that when Mr. Stukey' body was found, it was clothed in a tank top and cotton sweat pants

with an elastic stretch band. He admitted that the defendant voluntarily went to the authorities in Johnson City.

Dr. Cleland Blake, the Assistant State Chief Medical Examiner, testified that he performed an autopsy on Mr. Stukey's body on August 16. He testified that the victim died from three gunshot wounds and that he retrieved two bullets from the victim's body. He said one bullet penetrated the front of the victim's left chest, traveling in a downward trajectory and lodging above the rib bone. He said another bullet entered the back through the lower chest area, lodging in a vertebra. He said he found a third wound that entered the back and exited in the front, just under the collarbone. He said this wound caused bleeding in the left chest cavity and penetrated the top of the lung. Dr. Blake testified that the victim lived for as much as one hour after his injuries were inflicted. He said the victim had numerous scratches and bruises. He testified that the first two wounds received were those to the back of Mr. Stukey, with the final would inflicted at the front of the chest of Mr. Stukey was falling. He testified that the shots were fired from at least three feet away and from a steep angle.

Robert Royse, a firearms identification specialist with the TBI, testified that he examined the revolver found in the bushes, the ammunition in the adjacent box, and the bullets that were retrieved from Mr. Stukey's body and from the crime scene. He testified that the bullets in the ammunition box were also consistent with the bullets from Mr. Stukey's body and the scene.

TBI Agent Shannon Morton testified regarding the extensive search for the defendant's body. He testified that the search was treacherous because of the wooded, rugged terrain on the mountain and the steep incline. Agent Morton also testified regarding the defendant pulling out a letter and ripping it up during booking. His testimony was substantially the same as that of Agent Arnold. Agent Morton testified that the defendant had no visible injuries and made no complaint of injuries.

Diane Trivette, the defendant's sister, testified that the defendant came to her house in Dothan, Alabama, around 1:00 a.m. on August 15. She said he told her that he thought he had shot and killed someone in self-defense. She told him to turn himself in to the police. She did not see any injuries on the defendant.

Cathy Fair, the defendant's sister-in-law, testified that the defendant lived with her and her husband. She testified that the defendant had stated that he was going to get Mr. Stukey and that she told him to let the law handle the matter. She said she saw the defendant on their porch at around 2:00 a.m. on August 15 and that the defendant said, "I did it." She said she did not know what he meant, and she went inside. She said that when she came outside, the defendant said he had killed the victim. She said she remembered making a statement to Agent Morton relating what the defendant told her about that night. In her statement, she said that the defendant told her that he, Mr. Stukey and Mr. Brown went to the

mountain and walked down the trail. She said the defendant told her he asked Mr. Stukey why Mr. Stukey had asked the defendant's niece for "a piece of ass." The defendant told her that Mr. Stukey denied making the statement. She said the defendant told her that he called Mr. Stukey a "lying son-of-a-bitch" and shot him in the middle of the chest. Ms. Fair stated that the defendant told her that Mr. Stukey said he would kill the defendant and that Mr. Stukey came toward the defendant. She said the defendant told her that he then shot Mr. Stukey in the heart and that Mr. Brown ran off. She said the defendant told her that Mr. Stukey was trying to crawl away, and he shot him twice in the back.

Ms. Fair stated that the defendant told her that he went through Mr. Stukey's pockets and took sixty dollars, cigarettes, and a lighter. She said the defendant told her that he talked to Mr. Stukey as he was dying and that Mr. Stukey asked the defendant why he shot him and told the defendant that he loved him. She said the defendant told her that he told Mr. Stukey that "no one f***s with my family" and lives.

At trial, Ms. Fair testified that before the defendant left to go with Mr. Stukey on the night of the murder, she knew the defendant was mad at Mr. Stukey for making the sexual comment to her daughter. Ms. Fair testified that the defendant told her that on the mountain, he could not find the keys to Mr. Stukey's truck but that if he had, he planned to take Mr. Stukey to a crack house in Kingsport to make it appear as if he had been killed by drug dealers. She said the defendant told her that he did not chase Mr. Brown down the mountain because he was out of bullets.

Jennifer Gibson, the defendant's niece, testified that on August 11, Mr. Stukey was outside her house in his truck, waiting for the defendant. She said Mr. Stukey asked her "for a piece of ass" and asked her to meet him that night at 8:30 a.m. She said the comment scared her because she had been raped twice before, though not by Mr. Stukey. She said she told the defendant about the comment later that day, and the defendant said he would take care of it. She testified that on August 14, the defendant left with Mr. Brown and Mr. Stukey. She said that when the defendant returned, he told her that he had not shot Mr. Stukey in the back and killed him because of what Mr. Stukey had said to her.

Eric Alford, a Unicoi County Deputy Sheriff, testified that on August 18, 1997, the defendant initiated a conversation with him following a court hearing. He said the defendant wanted to file a motion to contest the autopsy because the autopsy report was wrong regarding where Mr. Stukey was shot. Deputy Alford testified that the defendant told him that he shot Mr. Stukey "side by side on the shoulder blade" and that he should know because "he shot the mother***er." Deputy Alford said the defendant stated that Mr. Stukey had messed with his niece and that a child molester was the worst kind of criminal. He said the defendant stated that he was raised around violence and that when someone messes with him, his

first instinct is to kill them. He said the defendant stated, "if it happened to your niece you'd … put a bullet in their head."

POST CONVICTION ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

In the petitioner's Amended Petition for Post-Conviction Relief, the petitioner stated that he had ineffective assistance of counsel and his allegations are as follows:

Petitioner asserts that he was denied his right of effective assistance of counsel, as provided in the 6th and 14th Amendments to the United States Constitution and Article 1, Section 9 of the Tennessee Constitution by the actions and failings of his trial counsel, Mr. William B. Lawson, Esq., in the following instances:

1. Petitioner alleges he was denied the effective assistance of counsel by Mr. Lawson (hereinafter referred to as "trial counsel"), in that trial counsel failed to make an offer of proof of a prior inconsistent statement made by Mr. James Brown, who was the only eyewitness to the shooting on Buffalo Mountain. Although Mr. Brown died of pneumonia prior to the trial, the court admitted his preliminary hearing as testimony as substantive evidence pursuant to Tenn. R. Evid. 804(b)(1). Trial counsel then attempted to elicit a prior inconsistent statement made by Mr. Brown to TBI Agent Shannon Morton, pursuant to Tenn. R. Evid. 806. When the court ruled that the prior statement was not admissible, trial counsel made no offer of proof. By failing to preserve the record of appeal, trial counsel's performance fell below the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) and prejudiced the Petitioner given that Mr. Brown never testified before the jury in this case and was the only eyewitness to the shooting.

2. Petitioner alleges he was denied his right to effective assistance of counsel, in that trial counsel failed to properly present a self-defense theory by neglecting to offer sufficient proof that the victims were the first aggressors. In support of this assertion, Petitioner maintains that trial counsel failed to investigate and call witnesses who could testify as to the victims' violent nature in order to support Petitioner's claim of self-defense. (*see* Tenn. R. Evid. 404(a)(2), 405(a), and *State v. Ruane* 912 S.W.2d 766 (1995).

3. Petitioner alleges he was denied his right to effective assistance of counsel, in that trial counsel failed to demonstrate to the court that Petitioner personally waived his right to testify. In support of this claim, Petitioner maintains that the record contains no indication that he ever personally waived his right to testify. Furthermore, Petitioner's decision as to whether he should have testified or not was a critical aspect of this case, especially in light of the defense theories that Petitioner acted in self-defense and/or with adequate provocation. The petitioner alleges that by failing to show the court that Petitioner personally waived his right

to testify in this case, trial counsel's performance fell below constitutional standards and prejudiced the Petitioner.

EVIDENTIARY HEARING

On December 18, 2013 an evidentiary hearing was held in this matter and the following testimony was heard by the court:

PETITIONER'S PROOF

The petitioner's proof consisted of the entry as an exhibit, the trial transcript consisting of seven (7) volumes. The petitioner also took the stand and testified. During his direct examination, the petitioner stated that his primary complaint for ineffective assistance of counsel surrounded the fact that his trial counsel, Mr. Lawson, failed to place the statements of Mr. James Brown, who was the victim of the attempted murder charge, into evidence and failed to preserve or to make an offer of proof to preserve them from the record on appeal. In summary, Mr. Fair stated that Mr. Brown gave three (3) different statements to various law enforcement agencies and he initially states that he cannot remember exactly what the statements contained. He did recall that one statement was given to Mr. Ron Arnold with the Unicoi County Sheriff's Department and that two (2) other statements were given to the TBI agent Mr. Shannon Morton.

Mr. Fair goes on to state that his attorney tried to enter these statements into trial but the trial judge would not allow the statements into evidence. He stated that his attorney objected but at that point in time he did not put the statements into the record to preserve the issue for appeal.

When asked how this affected his trial, Mr. Fair stated "I cannot say that it would have made a difference in the trial."

This ended the petitioner's testimony on the initial direct examination regarding the failure of counsel to preserve the statements of the victim into the record.

2. On the initial direct examination, the petitioner further testified that his trial counsel, Mr. Lawson, failed to interview key witnesses and failed to secure their attendance at his trial. When asked the names and addresses of such witnesses, Mr. Fair stated that he informed his attorney to interview and call a Ms. Nikki Christian who petitioner said had told him a few nights before the killing that the victim Bruce Stukey was going to do something to him because he had thought the petitioner had stolen five hundred dollars ($500.00) from him. He also requested that a Michael Head be interviewed who was an inmate with Mr. Fair who allegedly stated that the victim, Mr. Bruce Stukey, said he was going to kill him.

When asked on the initial direct examination if their testimony was important, the petitioner stated that their testimony would have made a difference in his trial.

3. With regard to the issues of whether or not to testify at trial, on the initial direct examination the petitioner acknowledged that he engaged in a conversation with his attorney prior to trial and that his attorney, Mr. Lawson, had told him that it would be in his best interest not to testify because the petitioner had such an extensive prior record that it would hurt him in the eyes of the jury if he took the stand. The petitioner stated that he wanted to testify but that his attorney had stood up told the judge that he would not testify. The petitioner said he did not say anything to the judge or to his attorney at that time objecting to his attorney's statement that he would not testify.

4. Also, in the initial direct examination, the petitioner raised an issue for the first time that his lawyer allowed the court to take a recess to allow the pathologist who testified to correct himself about a shot that would have paralyzed the victim. The petitioner stated that the pathologist should not have been allowed to then correct himself and state that the shot would

not have paralyzed the victim nor correct his statement that the body was brought to the coroner which in fact apparently did not occur in this case.

The court will note that this issue was not raised in the petition for ineffective assistance of counsel and this was the only testimony or proof regarding this fact that is in the record.

CROSS EXAMINATION OF PETITIONER

During the initial cross examination, the petitioner was asked exactly what contradictory statements that were made by the victim, James Brown, that were not placed into evidence. The petitioner stated there were three (3) things that were contained in the prior statement that should have been placed before the jury:

(1) the number of shots that were fired;

(2) that Mr. Brown had testified that he was a former heroin addict; and

(3) the location of each of the parties when the shots occurred.

The petitioner stated that these three (3) issues were contained in his prior statements but were not brought out during the preliminary hearing and that these statements were not entered into evidence or provided as an offer of proof following the playing of the preliminary hearing transcript at the trial.

During the initial cross examination, the petitioner was then asked whether or not he provided his trial attorney, Mr. Lawson, with the names and addresses in order to find the two (2) witnesses, Nikki Christian and Michael Head, in order for his attorney to interview them. The petitioner stated that he gave his attorney the address for Nikki Cross but acknowledged that all he could give was that she lived in Kingsport, Tennessee. He acknowledged that no specific street address nor phone number was given for Ms. Cross.

The petitioner said that the address for Michael Head was unknown but that he was probably in jail because he was usually incarcerated. The court will note that no other testimony was given as to whether or not the petitioner actually knew the whereabouts of either of these two (2) witnesses.

With regard to the petitioner's allegation that he was not allowed to testify during his trial, the petitioner acknowledged on the initial cross examination that he had had a conversation with his attorney about testifying and that he was advised not to testify due to his extensive prior record. However, the petitioner again said that he wanted to testify during the trial.

REDIRECT OF PETITIONER

At this point, the post conviction counsel requested the opportunity to re-direct the petitioner to clarify points which this court allowed. The following testimony was given during re-direct examination.

1. The petitioner was asked to clarify the procedural history for his two (2) trials. The petitioner stated that there was in fact two (2) trials. The first trial ended in mistrial because a witness mentioned that the defendant and the victim of the murder charge, Mr. Stukey, were incarcerated together. Apparently this witness made the comment from the witness stand, and trial counsel in the first trial, who was also Mr. Bill Lawson, immediately objected and requested a mistrial which was granted. The petitioner stated that Mr. Lawson did a very good job during the first trial and appeared to be really fighting for him and on top of things.

The petitioner then stated that during the second trial his attorney, Mr. Lawson, was "no good." When asked what he meant by no good, the petitioner stated that Mr. Lawson did not ask questions that the petitioner wanted him to.

In particular, the petitioner stated that the state entered the preliminary hearing transcript of Jimmy Brown, the victim of the attempted murder charge, because Mr. Brown had died of pneumonia prior to the trial. When pressed further about the trials, the petitioner stated that he met with Mr. Lawson twice before the first trial and at during the first meeting he gave him the list of witnesses mentioned previously. Petitioner then stated during their second meeting that the trial counsel had an investigator, Mr. Tom Hager, meet with him but they did not meet again until the day of trial. However the petitioner once again stated that Mr. Lawson did a good job in the first trial.

The petitioner then was asked what occurred between the first trial, which ended in a mistrial, and the second trial. The petitioner stated that he knew that Nikki Christian and Michael Head had not been interviewed and that he wanted them interviewed. He testified that he had met with Mr. Lawson prior to the second trial maybe four or five times, once being in the cell block because his trial counsel had been arrested for a DUI. When asked again what he thought his trial counsel had failed to do that deprived him of a fair trial the petitioner stated "all I can say is that Lawson did not do was to call witnesses for interviews."

The petitioner then volunteered that his counsel failed to cross examine the pathologist because the pathologist was wrong in stating where the victim was shot. When asked what he meant by this, the petitioner said "I shot Stukey. I know where I shot him. The first shot was in the center of the stomach and I then shot him twice in the back of the right shoulder. The pathologist was wrong as to where he was shot because I should know because I shot him."

The court would note that this ended the proof of the petitioner for the Post Conviction Petition and no other proof was given regarding any of the other issues listed in the Petition for Post Conviction Relief.

THE STATE'S PROOF

The state's proof consisted of the testimony of trial counsel, Mr. William B. Lawson. Mr. Lawson testified that he, in May of 2014, he will have practiced law for thirty (30) years. Mr. Lawson also acknowledged that he had represented the petitioner in both trials. Mr. Lawson then addressed the petitioner's allegations in the following order:

(1) The offer of proof regarding the inconsistent statement.

Mr. Lawson stated that with regard to the offer of proof of the inconsistent statement, that the prior inconsistent statement was made during the preliminary hearing. Mr. Lawson stated that during the preliminary hearing, and as contained in the transcript that was given to the jury, Mr. Brown stated that the weapon used was a revolver. However, Mr. Lawson said in a previous statement that the victim had stated that the weapon that was used was an automatic.

Mr. Lawson stated that he tried to have the trial court put the prior inconsistent statement into the record. Mr. Lawson stated that he brought the book Tennessee Law of Evidence, then authored by Mr. Don Paine, into the courtroom with him and read directly from Paine's work in an attempt to convince the trial judge to allow the inconsistent statement into the record and to be read to the jury. However, in spite of his attempts, Mr. Lawson said that the presiding judge, Mr. Arden Hill, did not allow the prior inconsistent statement before the jury.

Mr. Lawson stated that this was an issue that was raised on appeal but was rejected in part because no offer of proof had been made and the statement was not before the Appellate Court. Mr. Lawson admitted that no offer of proof was made. He stated that he followed the procedure as listed in Payne's Law of Evidence book to get the statement in, and after the court disallowed this, he took no further action.

Mr. Lawson reiterated that the only statement that he wished to have entered was the statement of Mr. Brown that the gun was an automatic weapon and not a revolver.

(2) Interviewing of witnesses.

With regard to the finding and interviewing of witnesses, Mr. Lawson on direct examination stated that he tried to find the witnesses that were given to him by the petitioner but he could not locate the witnesses nor was he given an address or telephone number in which to find the witnesses.

(3) Petitioner's testifying at trial.

With regard to the petitioner's allegation that he was not allowed to testify, Mr. Lawson testified that he has practiced law twenty-nine (29) years and has practiced criminal law his entire career. Mr. Lawson says he has no independent recollection of meeting with the petitioner regarding testifying, but he does recall advising him that it was not in his best interest to testify because of his extensive prior record.

Mr. Lawson also stated that when the petitioner was arrested, there was a note in his pocket that was extremely incriminating and this evidence would have been brought out during the trial had the petitioner taken the witness stand.

Also, Mr. Lawson stated that the petitioner had made a statement to a court officer that was incriminating and could be viewed as an admission and would have been brought before the jury had the petitioner testified.

CROSS EXAMINATION OF TRIAL COUNSEL

On cross examination Mr. Lawson was asked about the witnesses that were not called and he once again stated that the only thing he remembers was being asked to speak to the girl

(Nikki Christian) and that she was in Kingsport but he was given no street address or telephone number. He stated that he attempted to contact her but was unsuccessful.

The last thing that Mr. Lawson was asked on cross examination was what was the defense strategy for the petitioner's trial. Mr. Lawson said that the original theory was self defense. However when the impeachment material was disallowed by Judge Hill regarding Mr. Brown, this theory did not "pan out" and they were left to try the case based upon reasonable doubt as to the defendant's guilt.

PETITIONER'S REBUTTAL EVIDENCE

During the evidentiary hearing, following the cross examination, the petitioner once again took the stand in rebuttal and repeated the prior testimony but did conclude by saying that after the impeachment material was disallowed, "Lawson's hands were tied." The court then asked the petitioner if he had ever told anyone, including the trial judge, that he wished to testify in his case either before the trial, after the state rested or after the trial. He answered no.

This concluded the evidentiary hearing regarding the Post Conviction Petition.

FINDINGS OF FACT AND CONCLUSION OF LAW

INSUFFICIENT EVIDENCE

The court finds that the Petition for Post Conviction Relief, other than the allegation of ineffective assistance of counsel, contain only statements or conclusions and do not state sufficient facts to support the conclusions and do not provide a proper basis for granting of Post Conviction Relief. The court further finds that no evidence was provided by the petitioner during the evidentiary hearing to support the statements or conclusions. These issues were also raised in the petitioner's direct appeal and found to be without merit.

This court finds that these allegations are without merit.

Therefore, the petition with regard to these allegations is respectfully DENIED.

INEFFECTIVE ASSISTANCE OF COUNSEL

The crux of the petition is that the petitioner failed to receive effective assistance of counsel during his second trial. In particular, the petitioner states three (3) main areas which he alleges that counsel was deficient and each area will be addressed separately following the reciting of the law that this court is required to follow in determining this issue.

In considering a claim of ineffective assistance of counsel, the court is required to consider the following:

> The right of a criminally accused to representation is guaranteed by both the Sixth Amendment to the United States Constitution and article I, section 9, of the Tennessee Constitution. **[*12]** *State v. White*, 114 S.W.3d 469, 475 (Tenn. 2003); *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999); *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). The following two-prong test directs a court's evaluation of a claim for ineffectiveness;
>
> First, the [petitioner] must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the [petitioner] by the Sixth Amendment. Second, the [petitioner] must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the [petitioner] of a fair trial, a trial whose result is reliable. Unless a [petitioner] makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.
> *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. Melson*, 772 S.W.2d 417, 419 (Tenn. 1989).
>
> In reviewing a claim of ineffective assistance of counsel, this Court must determine whether the advice given or services rendered by the attorney are within the range of competence demanded of attorneys in criminal **[*13]** cases. *Baxter*, 523 S.W.2d at 936. To prevail on a claim of ineffective assistance of counsel, a petitioner must show that "counsel's representation fell below an objective standard of reasonableness." *House v. State*, 44 S.W.3d 508, 515 (Tenn. 2001) (citing *Strickland*, 466 U.S. at 688 (1984)).
>
> When evaluating an ineffective assistance of counsel claim, the reviewing court should judge the attorney's performance within the context of the case as a whole, taking into account all relevant circumstances. *Strickland*, 466 U.S. at 690; *State*

v. Mitchell, 753 S.W.2d 148, 149 (Tenn. Crim. App. 1988). The reviewing court must evaluate the questionable conduct from the attorney's perspective at the time. *Strickland*, 466 U.S. at 690; *Hellard v. State*, 629 S.W.2d 4, 9 (Tenn. 1982). In doing so, the reviewing court must be highly deferential and "should indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Burns*, 6 S.W.3d at 462. Finally, we not that a defendant in a criminal case is not entitled to perfect representation, only constitutionally adequate representation. *Denton vs. State*, 945 S.W.2d 793, 796 (Tenn. Crim. App. 1996). In **[*14]** other words, "in considering claims of ineffective assistance, 'we address not what is prudent or appropriate, but only what is constitutionally compelled.'" *Burger v. Kemp*, 483 U.S. 776, 794, 107 S. Ct. 3114, 97 L. Ed. 2d 638 (1987) (quoting *United States v. Cronic*, 466 U.S. 648, 655 n.38, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984)). Counsel should not be deemed to have been ineffective merely because a different procedure or strategy might have produced a different result. *Williams v. State*, 599 S.W.2d 276, 279-80 (Tenn. Crim. App. 1980). The fact that a particular strategy or tactic failed or hurt the defense does not, standing alone, establish unreasonable representation. *House*, 44 S.W.3d at 515 (citing *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996)). However, deference to matters of strategy and tactical choices applies only if the choices are informed ones based upon adequate preparation. *House*, 44 S.W.3d at 515.

If the petitioner shows that counsel's representation fell below a reasonable standard, then the petitioner must satisfy the prejudice prong of the *Strickland* test by demonstrating "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694; **[*15]** *Nichols v. State*, 90 S.W.3d 576, 587 (Tenn. 2002). This reasonable probability must be "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694; *Harris v. State*, 875 S.W.2d 662, 665 (Tenn. 1994). In the context of a guilty plea as in this case, the effective assistance of counsel is relevant only to the extent that it affects the voluntariness of the plea. Therefore, to satisfy the second prong of *Strickland*, the petitioner must show that "there is a reasonable probability that, but for Counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985); *see also Walton v. State*, 966 S.W.2d 54, 55 (Tenn. Crim. App. 1997).

The allegations of the petitioner regarding ineffective assistance of counsel will now be addressed individually in the order contained in the petitioner's Amended Petition for Post Conviction Relief:

1. Petitioner alleges he was denied the effective assistance of counsel by Mr. Lawson (hereinafter referred to as "trial counsel"), in that trial counsel failed to make an offer of proof of a prior inconsistent statement made by Mr. James

> Brown, who was the only eyewitness to the shooting on Buffalo Mountain. Although Mr. Brown died of pneumonia prior to the trial, the court admitted his preliminary hearing testimony as substantive evidence pursuant to Tenn. R. Evid. 804(b)(1). Trial counsel then attempted to elicit a prior inconsistent statement made by Mr. Brown to TBI Agent Shannon Morton, pursuant to Tenn. R. Evid. 806. When the trial court ruled that the prior statement was not admissible, trial counsel made no offer of proof. The petitioner argues that trial counsel provided ineffective assistance of counsel by failing to preserve the record for appeal purposes.

The court finds that counsel for the petitioner attempted to introduce the prior inconsistence statements made by James Brown to rebut his testimony at the preliminary hearing as played to the jury during the trial due to Mr. Brown's death prior to trial. Mr. Lawson, trial counsel, testified he followed the proper procedure to attempt to admit such statements according to the Tennessee Law of Evidence and followed the step by step procedure in which to admit such statements. The court ultimately ruled against admitting such evidence. The court finds there was no ineffective assistance of counsel rendered in this portion of the trial as counsel performed his constitutionally required duty.

The issue then becomes whether counsel provided ineffective assistance of counsel by failing to make an offer of proof after the court ruled the prior statement was not admissible. The court would note that the Tennessee Court of Criminal Appeals opinion did in fact state that the issue of the court failing to admit the statements was without merit and did so in part because there was nothing in the appellate court record for which the court could review the trial court's findings. Therefore, it does appear that trial counsel's performance did fall below an objective standard of reasonableness by failing to make an offer of proof to preserve the statements for the record.

However, as noted in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984); and *Nichols v. State*, 90 S.W.3d 576, 587 (Tenn. 2002), if the petitioner shows that counsel's

representation fell below a reasonable standard, the petitioner must satisfy the prejudice prong of the *Strickland* test by demonstrating "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." In this case, the court finds that the prior inconsistent statements consisted of the fact that Mr. Brown was mistaken concerning whether or not the weapon used by the petitioner to shoot Mr. Stukey, and at Mr. Brown, was a revolver and not an automatic weapon and that he gave a contradictory statement regarding the location of the parties when the shots occurred. It also appears that the statements were sought to be introduced regarding the fact that Mr. Brown was a heroin addict which the court finds could be used for impeachment purposes only. The court finds that these statements, while they may possess some information to impeach the credibility of Mr. Brown's testimony, would not have overcome the other evidence of the defendant's guilt. The failure to make an offer of proof of the statements into the record does not demonstrate a reasonable probability that, but for the failure to make an offer of proof, that the result of this proceeding would have been any different.

The facts of this case, as cited by the Tennessee Court of Criminal Appeals, are at the beginning of this order. From those facts, it appears that the petitioner let it be known that he intended to seek revenge for what he perceived to be a violation of his niece by Mr. Stukey. The facts show that the petitioner engaged in a detailed plan to lure the victim Stukey to the location where he was ultimately killed and that Mr. Brown, the victim of the attempted murder, was in the wrong place at the wrong time in being with Mr. Stukey. The facts show that the petitioner brought the weapon to the scene and admitted, even during the post conviction hearing, that he in fact is the one that shot Mr. Stukey multiple times and also shot at the victim, Mr. Brown. It is

also undisputed that the petitioner fled the scene, fled the state, and ultimately came back and provided numerous incriminating statements against himself.

From all of this, the court finds that the facts of the defendant's guilty are overwhelming and that the results of this proceeding would not have been different had the statements been admitted into evidence or if they had been admitted as an offer of proof. Therefore, the court finds that this issue is without merit.

> 2. Petitioner alleges he was denied his right to effective assistance of counsel, in that trial counsel failed to properly present a self-defense theory by neglecting to offer sufficient proof that the victims were the first aggressors. In support of this assertion, Petitioner maintains that trial counsel failed to investigate and call witnesses who could testify as to the victims' violent nature in order to support Petitioner's claim of self-defense.

The court finds both the petitioner and trial counsel, Mr. Lawson, testified at the evidentiary hearing that all that was provided to trial counsel were only names of witnesses that the petitioner would like to be called at trial. Both also testified that no addresses where given concerning these witnesses with the exception of the female witness and the only address given for her was that she was in Kingsport, Tennessee. The court further finds that there were two (2) trials in this matter, one ending in a mistrial after which it was known that the witnesses were not going to be present during the first trial. Following this, petitioner made no efforts to provide counsel with updated addresses concerning these proposed witnesses nor was anything brought to counsel's attention at that time.

The court therefore finds that with regard to this allegation, trial counsel did not provide ineffective assistance of counsel and that this issue is also without merit.

> 3. Petitioner alleges he was denied his right to effective assistance of counsel, in that trial counsel failed to demonstrate to the court that Petitioner personally waived his right to testify. In support of this claim, Petitioner maintains that the record contains no indication that he ever personally waived his right to testify. Petitioner also argues his decision as to whether he should have

testified or not was a critical aspect of this case, especially in light of the defense theories that Petitioner acted in self-defense and/or with adequate provocation.

The court finds that the record does not indicate that the petitioner waived his right to testify on the record, either in writing or by being asked the questions that are commonly referred to as Momon questions, that are required when a defendant elects not to testify. However, the court further finds that this is not the question for this court to consider in this case. The issue is whether or not that trial counsel's performance fell below the constitutional standards required and whether or not such performance prejudiced the petitioner by failing to show the court that the petitioner had personally waived his right to testify in this case.

The court finds that based upon the testimony of the petitioner and trial counsel at the evidentiary hearing, there were detailed conversations between petitioner and counsel concerning the defendant testifying at the trial. It is undisputed that counsel's advice to petitioner was not to testify due to the extensive prior record of the petitioner as well as the numerous incriminating statements made by petitioner following his arrest. The court further finds that there were two (2) trials in this matter, and following the first trial ending in a mistrial, no further mention was made of the petitioner testifying at that trial. During the second trial, both petitioner and counsel testified that a conversation again took place regarding the petitioner's testifying at his trial and once again counsel opined that it would be in the petitioner's best interest that he not testify for the same reasons.

The court finds that had such a waiver of the right to testify been placed in the record either in written or oral form in response to questions, it would have shielded petitioner's counsel from this allegation of ineffective assistance of counsel. However, the court does not find that the petitioner was prejudice in anyway by failing to show the court that the petitioner personally waived his right to testify in this case.

Once again, the court finds that the evidence of the petitioner's guilt was overwhelming in this case. Had the petitioner testified, his long and extensive prior record would have been placed before the jury as well as the numerous incriminating statements that were made by the petitioner. The petitioner has failed to demonstrate that he was prejudiced in this matter by the trial counsel's performance.

Therefore this issue is also without merit.

Therefore, the court has thoroughly reviewed the Petition, Amended Petition and the testimony of the evidentiary hearing and the court finds no error based on the evidence presented at the post conviction hearing. Therefore, the petitioner has not proved by clear and convincing evidence that he is entitled to post conviction relief.

Therefore, the court finds the petitioner's post conviction writ is without merit and is therefore respectfully DENIED AND DISMISSED.

The costs of this cause are taxed to the State of Tennessee as the petitioner is indigent. The clerk is hereby ordered to distribute copies of this Order in accordance with the certificate of service.

Enter this the _____ day of February, 2014.

_____

STACY L. STREET
CRIMINAL COURT JUDGE, PART II

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this Order has been served upon the following by sending a true and exact copy of the same in the United States Mail, with sufficient postage to carry the same to its destination, and addressed as follows:

Hon. Ryan Curtis
Assistant District Attorney General
P.O. Box 730
Erwin, TN 37650

William B. Lawson
Attorney at Law
P.O. Box 16
Erwin, TN 37650-0016

Conley R. Fair 122153
Morgan County Correctional Complex
541 Wayne "Cotton" Morgan Drive
Wartburg, TN 37887

This the _____ day of _____, 2014.

_____
CLERK

IN THE CRIMINAL COURT FOR HAWKINS COUNTY, TENNESSEE

AT ROGERSVILLE

ETHAN ALEXANDER SELF	*	
	*	
Petitioner	*	
	*	
V.	*	CASE NO: 37CCI-2018-CR-13
	*	(Petition for Post Conviction Relief)
STATE OF TENNESSEE	*	
	*	
Respondent	*	

ORDER

The petitioner, Ethan Alexander Self, was convicted by a jury in the Hawkins County Criminal Court on August 22, 2013 of First Degree Murder and sentenced to life in prison with parole. The trial court conducted a hearing on a Motion to Enforce Rule 11 Plea Offer and a Motion for New Trial on November 25, 2013, and denied both motions.

On appeal, the Court of Criminal Appeals of Tennessee, Eastern District at Knoxville affirmed the convictions on August 29, 2016. See State vs. Self No. E2014-02466-CCA-R3-CD filed August 29, 2016. On January 19, 2017, the Tennessee Supreme Court denied permission to appeal and on June 5, 2017, the United States Supreme Court denied certiorari.

The petitioner filed a Petition for Post Conviction Relief on January 22, 2018. An Amendment to the Petition for Relief of Conviction or Sentence was filed by appointed counsel on December 16, 2019 and the State's Response was filed on January 7, 2020. An evidentiary hearing was heard on this petition on June 30, 2020, in the Criminal Court for Hawkins County, Tennessee at Rogersville.

PROCEDURAL HISTORY

The procedural history of this case is somewhat straightforward, however the court feels it is necessary to address this timeline for the hearing and delays. The victim in this case, Mr. Roger Self, was found dead on March 24, 2010. The victim was a sergeant with the Greeneville, Tennessee City Police Department. The defendant, Ethan Self, was the victim's son. It appears from the record, that the Third Judicial District, District Attorney's Office recused themselves because of their working relationship with the Greeneville City Police Department and that the District Attorney General's Conference appointed Mr. Tony Clark, then District Attorney General for the First Judicial District, as the District Attorney Pro-Tem. He was assisted at trial by Assistant District Attorney General Dennis Brooks. Further, it appears that because of the victim's employment, the judges of the Third Judicial District recused themselves from this case and the Tennessee Supreme Court appointed Senior Judge Jon Kerry Blackwood as presiding judge of the trial. The defendant, apparently through family, hired Greeneville attorney John T. Milburn Rogers as his defense attorney in this matter. At some point during the pendency of this case, but prior to trial, Mr. Rogers suffered a severe medical condition at which point he associated his daughter, attorney Jenny C. Rogers, and Knoxville attorney, Mr. Herb Monicer to assist with the defense in this matter.

At the time of the evidentiary hearing in this matter, the Honorable Jon Kerry Blackwood had retired and moved out of state and was unable to hear the post conviction matter. Tragically, District Attorney General Pro-Tem Tony Clark and John T. Milburn Rogers, lead defense counsel, had passed away due to separate medical conditions. Therefore, on March 12, 2018, Chief Justice Jeffrey S. Bivins of the Tennessee Supreme Court appointed Criminal Court Judge Stacy L. Street of the First Judicial District as presiding judge. After an exhaustive search for post conviction

counsel, on July 3, 2018 Judge Street appointed Mr. Caleb McDaniel of the Carter County Bar to represent Mr. Ethan Self and submitted a preliminary order in this matter. Assistant District Attorney General, Dennis Brooks, conducted the evidentiary hearing on behalf of the State of Tennessee.

The court would note that this was multi-week trial and post conviction counsel was afforded a long period of time to review the lengthy transcripts and exhibits and the state was allowed additional time to file their response to the petition and amended petition. As time grew near for the evidentiary hearing to take place, the hearing was continued on multiple occasions due to the fact that the coronavirus/COVID-19 pandemic caused in-court hearings to be suspended for a period of time and further caused the Tennessee Department of Corrections to halt transportation of defendants. This further hampered the scheduling of a hearing as the defendant was housed at a state facility. The evidentiary hearing in this matter took place on June 30, 2020 in person with all witnesses being live with the exception of a defense witness which was stipulated to by the parties to be conducted live in the courtroom via virtual internet connection. This witness was a defense witness and such virtual presentation of the evidence was presented in such a manner at the defense's request without objection.

As stated, Judge Blackwood conducted a hearing regarding the motion to enforce the Rule 11 plea offer on November 25, 2013, prior to the motion for new trial and the court ruled that a plea offer made by the state is revocable until accepted by the trial court and that, until there is an acceptance of plea agreement, the district attorney general is at liberty to exercise their discretion to withdraw the plea agreement and that appears to be what occurred during the trial.

The crux of the petitioner's argument of ineffective assistance of counsel is that the withdrawal by General Clark of this plea offer was because of vindictiveness and/or discussions

with the defendant's and victim's family and their anger at a portrayal of the victim as being abusive towards the defendant. Further, it appears that the defendant's petition raises issues of attorney-client communications regarding the various plea offers and whether or not the defendant was counseled to accept or reject or given the option to do so prior to the offer being withdrawn. These factual allegations will be dealt with further in the body of this order as it relates to the testimony elicited at the evidentiary hearing.

The remaining facts relevant to this petition for post conviction relief regard the use or lack of use of expert witnesses regarding a potential defense or argument regarding the mental state of the defendant and the possibility of being found a lesser included offense. The court will address the pertinent facts during the discussion of those issues in this order.

GROUNDS FOR POST CONVICTION RELIEF

The petition, as well as the amended petition, alleges the following grounds for post-conviction relief as to ineffective assistance of counsel:

1. PETITIONER'S ATTORNEYS, DURING THE MID-TRIAL PLEA NEGOTIATION PROCESS, OVERWHELMINGLY FAILED TO PROPERLY CONVEY, APPROPRIATELY ACT UPON AND/OR OTHERWISE PERMIT THE PETITIONER TO ACCEPT A FIFTEEN YEAR PLEA OFFER TO SECOND DEGREE MURDER OF WHICH THEY WERE AWARE THAT THE PETITIONER WOULD HAVE ACCEPTED; AND

2. PETITIONER'S ATTORNEYS FAILED TO RAISE AND/OR PROPERLY RAISE ON MOTION FOR NEW TRIAL AND/OR DIRECT APPEAL THE PROSECUTION'S INTERFERENCE WITH HIS SIXTH AMENDMENT RIGHT TO COUNSEL AND THE EFFECTIVE ASSISTANCE OF COUNSEL IN THE PLEA NEGOTIATION PROCESS AND THE PROSECUTION'S VINDICTIVE AND/OR OTHERWISE RETALIATORY ACTS AND/OR ACTIONS RELATIVE THE WITHDRAWAL OF THE SECOND DEGREE MURDER, FIFTEEN YEAR SENTENCE, PLEA OFFER AFTER THE PETITIONER'S COUNSEL ATTEMPTED TO PROVIDE HIM WITH HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO COUNSEL, TO PRESENT A DEFENSE AND A FAIR TRIAL UNDER THE UNITED STATES CONSTITUTION; AND

3. COUNSEL FAILED TO UTILIZE DEFENSE WITNESS DR. BRIESTEIN, OTHER WITNESSES AND PROOF, ALONG WITH CLOSING ARGUMENT, AS A MEANS TO SUBSTANTIATE THE ALTERNATIVE POSITIONS THAT THE SHOOTING IN THIS CASE WAS ONE OF UNYIELDING PASSION AND/OR LACK OF PREMEDITATION OF WHICH HAD COUNSEL DONE SO THERE IS A REASONABLE PROBABILTIY THE PETITIONER WOULD HAVE BEEN FOUND GUILTY OF EITHER OF THE LESSER OFFENSES OF MANSLAUGHTER, NEGLIGENT HOMICIDE AND/OR AT WORSE SECOND-DEGREE MURDER; AND

4. COUNSEL FAILED TO THOUROUGLY INVESTIGATE THE CASE BY PROOF RELATIVE ESTABLISHING OR OTHERWISE RAISING THE ISSUE OF PETITIONER SELF'S YOUNG AGE AS AFFECTING HIS ABILITY TO ACT RATIONALLY UNDER THE CIRCUMSTANCES AS HE BELIEVED THEM TO EXIST IN THIS CASE, DESPITE OVERWHELMINGLY AVAILABLE SCIENTIFIC EVIDENCE AND EXPERTS IN THIS FIELD WHO COULD HAVE TESTIFIED RELATIVE THERETO, HENCE BEING ABLE TO NEGATE THE ESSENTIAL ELEMENTS FOR A FIRST-DEGREE MURDER CONVICTION AND MORE IN TUNE WITH AN ACCIDENTIAL SHOOTING OR OTHER LESSER OFFENSE(S); AND

5. ATTORNEY JOHN T. MILBURN ROGERS SUFFERED AN ANEURISM DURING THE PENDENCY OF THE PROSECUTION AT ISSUE AND UPON INFORMATION AND BELIEF WAS COGNITIVELY IMPAIRED

DURING THE TRIAL, RENDERING ATTORNEY ROGERS UNABLE TO EFFFECTIVELY PRESENT PROOF TO THE JURY AND SUFFICIENTLY COMMUNICATE WITH AND ADVISE PETITIONER.

These are the issues in which this court found that a colorable claim was raised and these were the issues addressed during the evidentiary hearing.

FACTS OF CASE

The facts which resulted in the petitioner's convictions are set out in the Court of Criminal Appeals at Knoxville opinion filed on August 29, 2016, on the petitioner's direct appeal as noted in State of Tennessee v. Ethan Alexander Self, Tenn. Crim. App. No. E2014-02466-CCA-R3-CD. The opinion is ninety-three (93) pages long and contains an additional four (4) pages of a concurring in part and dissenting in part opinion. Further, this was a multi-day trial containing volumes of testimony both from the state as well as the defense. The summary of the facts of this case are that the defendant's conviction relates to the killing of his father, Roger Self, who was a sergeant with the Greeneville Police Department. The victim was shot in the back of his head with his service revolver while lying in bed in the home shared by both the defendant and the victim. While initially denying any knowledge or involvement, the defendant subsequently confessed to shooting the victim but contended that the shooting was accidental and/or that the victim/father had been abusive toward him. The victim was found shot dead on March 24, 2010, and it was subsequently learned that he was shot with his own service revolver but no weapon was found at the scene. After his initial denial, the defendant provided a statement to the Tennessee Bureau of Investigation which included an admission that the defendant, following the shooting of his father, tied the service revolver used in the shooting to a brick with zip ties and threw them in a pond in Greene County, Tennessee. The weapon was later found by divers and admitted into evidence during the trial.

Due to the length of the trial and the numerous witnesses that were called, this court will reframe the facts from the trial and summarized at length in the Court of Criminal Appeals opinion of August 29, 2016. That opinion finds that the evidence is sufficient to support the conviction of First Degree Murder and denies the various points of error raised on the direct appeal in this matter.

Further, the defendant's petition for post-conviction relief due to ineffective assistance of counsel focuses on plea negotiations that did not entirely take place within the confines of the courtroom and on the failure of counsel to utilize expert witnesses. Therefore, this Order will only recite the relevant facts concerning these allegations.

In addition, the defendant filed a well-documented Motion to Enforce Rule 11 Plea Offer which resulted in an evidentiary hearing being held on November 25, 2013, before the motion for new trial was heard. A transcript of the proceeding is contained in Volume XXBII. At this hearing, both District Attorney General Clark and attorneys John T. Milburn Rogers and Herb Monicer testified and presented evidence of the out of court plea negotiations.

The relevant facts from this proceeding provide the following timeline as spelled out in the State's Response to the Petition for Relief from Conviction or Sentence. On August 14, 2013, the State engaged in exploratory discussions with defense counsel about the possibility of a second degree murder plea offer. On August 15, 2013, the State concluded their case in chief and Judge Blackwood dismissed the jury until August 19, 2013, when the defense proof would begin. On Saturday, August 17, 2013, during a conference call between District Attorney General Clark and trial counsel, the defense offered to plea to voluntary manslaughter with an out of range sentence. On Sunday, August 18, 2013, another phone call occurred between the state and Mr. Rogers where Mr. Rogers further asked about other considerations such as giving up the inheritance and reconciling with the victim's family. On August 19, 2013, the defense began presenting proof. Near or about the lunchtime break, Mr. Monicer offered that the defendant would be willing to plea to manslaughter with a ten (10) year sentence along with the other considerations. At that point, the prosecutors discussed the situation with the victim's family but apparently held firm to the offer to plea to second degree murder and receive a fifteen (15) year sentence. On August 20,

2013, the defense concluded it's proof which included evidence of the good character of the defendant but further presented both lay and expert testimony regarding the defendant's allegations of violence by the victim toward him in the past and/or at the near of time of the victim's death. On August 21, 2013, the state presented limited rebuttal proof. At a break, Mr. Monicer again approached General Clark about agreeing to a thirteen point five (13.5) year mitigated sentence for second degree murder. General Clark declined the latest counter-offer. At that point, closing arguments began with the state's initial closing argument just before the lunch break. During this lunch break, District Attorney General Clark informed the defense counsel that the previous offer and any other offer were "no longer on the table" and all further closing arguments occurred and the jury retired to consider their verdict.

The jury returned a verdict of guilty to first degree murder and the defendant was subsequently sentenced to life in prison. The defendant's counsel filed a motion for new trial and a Motion to Enforce Rule 11 Plea Offer alleging that the state had improperly withdrawn the plea agreement. Judge Jon Kerry Blackwood conducted the motion hearings on November 25, 2013. The defendant then, and now, appears to argue that there was a plea agreement in place and that the state improperly revoked or withdrew the offer. A review of the transcript of that hearing styled Transcript of Proceedings Volume XXVII show that both District Attorney General Tony Clark and the defense attorneys, John Rogers and Herb Monicer, testified at the Motion to Enforce Rule 11 Plea Offer proceeding. A review of the transcript does not appear to provide any proof that a plea agreement was ever entered into or accepted by the defendant. Mr. Rogers' testimony states that during the lunch break on Wednesday, August 21, 2013, after the state had made it's opening argument and before the defense had began it's closing argument that the following conversation occurred between themselves and District Attorney Clark:

I asked him, "I said Mr. Clark, I believe when the defendant gets back that we are going to be in a position to accept this offer but I haven't gotten permission to do that yet. He indicated to me that the offer had been taken off the table and I was utterly shocked." Transcript of Proceedings Page 19 of Volume XXVII.

At no time does either Mr. Rogers or Mr. Monicer state that the plea agreement was accepted by the defendant or that they had conveyed such an acceptance of the plea offer to the prosecution.

Further, District Attorney Clark testified concerning the reasoning for the plea offer and the reasoning for the withdrawing the plea offer and the timing of the withdraw. General Clark stated as follows:

"When I made the plea offer it was because I thought that given the circumstances of what had been presented during our proof that there could be quite a bit of sympathy for the defendant in this case. I thought that the jury with what had been brought out during the first week of trial that there could be a likelihood of a hung jury and I didn't feel real comfortable as a prosecutor for over twenty (20) years having several murder cases, I just didn't know how the jury – we never know but I thought that the state at that point would put on the best proof that we could put on that there was a likelihood because of the self-defense, possible accident and of course the alleged abuse that Mr. Ethan Self, that the jury maybe, some jurors may be sympathetic towards that in we had a very good chance in possibly having a hung jury and that was my feeling that I expressed to Mr. Brooks on Sunday. Of course, I am not going to express that to the defense cause that's not what I do. That's what I was thinking, your Honor."
Transcript of Proceedings Volume XXVII, Page 46.

General Clark was then asked how his outlook had changed between Monday when having such feelings and Wednesday when there was a withdraw of the offer. General Clark stated the following while being questioned by Assistant District Attorney Dennis Brooks:

"Considerably because you and I had spoke about it, we had looked at the jurors, we watched the jurors, we watched their reactions and I thought – I, had no problem constitutionally the defense has a right to put on proof, they have a right to put on no proof. But I think all the evidence that they put on, and I think the fact that the victim in this case was put on trial, was vilified by the defense, I think that turned the jury off in my opinion ... the various defense throwing them all up there, in my opinion, hoping something sticks, in my opinion I wanted to withdraw that plea. I thought we had a very good case. We were at the end of the proof, the

defense had rested, we had rested, you had given your first closing argument and at that point I thought we had a very good chance of winning this case or at least getting a first or second degree conviction in this case with the jury and that was my basis." Transcript of Proceedings Volume XXVII, Page _____

General Clark went on to state the following regarding the wishes of the victim's (who is also the defendant's) family:

"I certainly take into account the victim's rights as we are required to do. I take into account the victim's considerations but they did not make this decision for me period. I did make the statement truthfully that the family was upset and that I was not happy with what had been done to the victim in this case. But that was not the sole basis nor is the main contributing factor of me withdrawing the plea." Transcript of Proceedings Volume XXVII, Page 47.

In ruling on the motions, Judge Jon Kerry Blackwood denied the motion for new trial and further ruled in denying the defendant's Motion to Enforce Rule 11 Plea Offer that principals of contract law apply to plea negotiations. Judge Blackwood went on to state "*until there is an acceptance of a plea agreement, the district attorney general, in this court's opinion is at liberty to exercise his discretion if he withdraws the plea agreement ... he is certainly within his right to do so." Transcript of Proceedings Volume XXVII, Page 71.* Therefore, Judge Blackwood denied all defendant's post trial motions.

EVIDENTIARY HEARING

On June 30, 2020, an evidentiary hearing was held in this matter and the following testimony was heard by the court:

The parties were allowed to make opening remarks and during the opening remarks by the State of Tennessee, General Brooks rested on the answer to complaint and the answer to the amended complaint and at that point requested that the trial record and all transcripts be admitted as exhibits which the court granted with no objection from the defendant. At that point, the large boxes containing the trial transcripts and exhibits were marked as exhibit 1 to this evidentiary hearing.

PETITIONER'S PROOF

The petitioner's proof consisted of the testimony of three (3) witnesses: one (1) the defendant, Ethan Alexander Self; two (2) the defendant's aunt, Helen Elizabeth Amos (via skype); and three (3) the testimony of one of his trial attorneys Mr. Herbert Monicer. Each of the witnesses testimony will now be summarized by the court.

ETHAN SELF

The defendant, Ethan Self, began his direct examination by explaining how he first came into contact with his lead attorney, Mr. John Rogers. Mr. Self testified that his grandmother had actually hired Mr. Rogers after the incident and that he and Mr. Rogers talked and met at the Greene County Detention Center where he was being held and he estimated that this was very late in March of 2010 or early in April of 2010. The defendant stated Mr. Rogers would come and visit him quite often and they would have as much contact as they could at the detention center at that time. The defendant stated that he was eighteen (18) years old at the time and that Mr. Rogers was his only attorney during this early period. The defendant stated that Mr. Rogers came quite

often to visit with him and around a year to a year and a half later he was bonded out of jail. He estimates it was sometime shortly before his twentieth (20th) birthday. At the time he bonded out of jail, the defendant testified that he actually stayed with Mr. Rogers at his house, "sleeping there and everything like that." He testified this was done at the suggestion of Mr. Rogers out of fear of retaliation from law enforcement or other concerns and because of the uncertainty whether or not to live with his grandmother or his aunt or anybody else that was living in Greeneville at that time. The defendant estimates that he lived or resided with Mr. Rogers for about a week. When asked what his relationship with Mr. Rogers was at this time, the defendant described it as really relaxed, and that he stayed there with his family and at least one of his daughter's was residing there at the time with a newborn child. He also testified that they "just hung out, talked, watched tv, kind of lived a normal life and helped Mr. Rogers' wife cook and clean the house." The defendant describes the relationship during this period as a time in which he and Mr. Rogers developed a bond and that even after leaving Mr. Rogers' residence, he continued to meet with him quite often in his office in Greeneville and that there was numerous discussions concerning his case, the evidence and the trial.

The defendant was then asked about the case being set for trial and the numerous continuances that had occurred between the time of his release from jail and the actual trial of this matter in August of 2013. The defendant stated that the first time the trial was reset it had something to do with the District Attorney's Office. He testified it was his understanding that the second and third resetting was due to a medical condition of Mr. Rogers which he described as aneurysm and that Mr. Rogers ended up having to go to a hospital in Michigan or somewhere up north in a specialized hospital. He testified he stayed there for a while and that the defendant did not have any contact with him the entire period that he was hospitalized. The defendant then

described that after about a month Mr. Rogers returned to Greeneville at which point the defendant went to his office to re-establish their relationship. He stated that Mr. Rogers sat down with him and explained to him everything that was going on and the medical condition that he suffered from. The defendant believes that it was at that time he explained to him that he was going to be bringing on Herb Monicer to assist him in the trial. The defendant stated that Mr. Rogers didn't feel like he was adequate enough to do the case and that the aneurysm had kind of affected him and he felt like he needed help. When asked if anyone else was brought in, he testified that John also brought Jenny in who is Mr. Rogers' daughter but the defendant stated "she wasn't necessarily much of anything because she had never really done in anything in criminal court and it was his understanding that she was there as essentially moral support for Mr. Rogers and more or less in the context of a paralegal to help with the paperwork and things like that."

The defendant was then asked amongst the now team of trial lawyers who was his main point of contact for asking questions or asking for advice. The defendant stated it was always John, meaning Mr. Rogers. He stated that "he didn't really have a relationship with Herb and if he ever spoke with Mr. Monicer, Mr. Rogers was always present." He also stated that if he talked to Mr. Rogers, Mr. Monicer wasn't really there nor was his daughter, Jenny. The defendant also stated that he felt most comfortable with Mr. Rogers and that during the three (3) year period Mr. Rogers was always his point of contact.

The defendant was then asked to describe the person who was deciding the theory, plan of action and division of action amongst the attorneys for the trial. The defendant responded that "John was always the person to decide these and he would actually dictate terms to the other attorneys." He described it as "John Rogers was calling the shots and telling Herb what to do and who to interview."

The defendant was then asked to described the change in attorney Rogers before his medical condition and after the medical condition. The defendant stated that "he was quite a different person, quite a different individual." He stated that beforehand Mr. Rogers "seemed sharp, always on point, always cordial and didn't really have many lapse in speech and always conducted one long fluid conversation." After the aneurysm, the defendant stated that "there would be a lot of pauses, a lot of kind of like, you know, looking off in the distances and he really didn't seem like himself." The defendant described Mr. Rogers as being "a really watered down version of himself and not really all there after the aneurysm." The defendant goes on to state that after the aneurysm, Mr. Rogers would forget things and in mid-conversations he would forget the conversation that they were talking about.

As far as the conduct of the trial itself, the defendant was then asked if there was a deviation from the pre-trial plan as to what witnesses would be examined by what attorney and what questions would be asked. The defendant responded that the defense team had set out each witness and who would be cross-examining or examining them and what terms would be used. The defendant stated that at times during the trial, "Mr. Monicer would get up to examine someone that John hadn't prepared for but that Mr. Rogers would tell Mr. Monicer to sit down and that Mr. Rogers would do the examination." The defendant described this as situations in which Mr. Rogers "really muddled it because he wasn't prepared for it." Mr. Self testified that such decisions were always Mr. Rogers.

The defendant was further asked to explain his observations of attorney John Rogers during opening statements. The defendant stated that "he could not really recall the whole gist of it but that he felt like that Mr. Rogers was really unprepared and wasn't really all there." He stated he was struggling with the information and having difficulty presenting himself to the jury. The

defendant then stated there was times in which Mr. Rogers forgot his name and had to be reminded by his daughter, Jenny, to say "Ethan" and would whisper that to him at some points during the trial. The defendant summarized his feelings of Mr. Rogers pre and post injury as such: "when Mr. Rogers was hired, he was really good, really sharp, really was well prepared. After the injury, he felt like it was struggle for Mr. Rogers, that he was swimming with a hundred- pound vest on at all times."

The defendant was then asked at what point does he first recall being made a plea offer during the trial. The defendant stated that at the end of the prosecution's proof and he thought the date to be August 14th. When asked if he recalls the nature of the plea offer the defendant stated "yeah it was fifteen (15) years, a second degree murder plea." He was then asked what conversations he had with attorneys about the plea bargaining process prior trial and the defendant stated "none." The defendant was then corrected that the plea offer was made sometime around August 15th, 2013, to clarify the point of when the first plea offer was made. The defendant was then asked to explain the conversation with John Rogers concerning the plea agreement. The defendant stated they were in court, he was sitting at the defense table and that Mr. Rogers had gone over and spoke to District Attorney Pro-Tem Clark and Assistant District Attorney Brooks and that he came back to the defense table and sat down and looked at Mr. Self and whispered "hey they made an plea offer of second degree at fifteen (15) year." The defendant stated "you know, do I need to take it right now? Is this what needs to happen?" He states that Mr. Rogers then stated "No, you have all the time in the world to take it." The defendant then states "So I can go and talk to my family and explain to them why I'm going to take the plea because I'm going to take it but I need time to explain to them because the time and money and everything that they've invested in me and invested in this entire ordeal, you know?" At that point, the defendant testified

that Mr. Rogers stated "Yeah, again, you have until the last juror walks out into the jury room," meaning at the very end of the trial is what he had told me." The defendant was then asked if he was made aware of any conditions or restrictions on the plea offer. The defendant stated "no." The defendant then went on to explain that he did not know anything about plea offers or plea negotiations and he was relying on what Mr. Rogers allegedly said that "you've got all the time in the world, man." The defendant was then asked about his true understanding as to the length of time he had to accept that plea. The defendant stated that "again, until you know whoever was over there in the jury the last person would walk and he essentially explained that as soon as the door shut behind the last juror, is, you know, that would be the end of it. But before the door ever shut, you know, the juror could really be just walking through the door and before you lock the door, the doors left open a crack, I still had time to take it."

The defendant was then asked to explain what took place over the weekend between the close of the State's proof on that Thursday and the restart of the trial on Monday the 19th. The defendant explained that he and Ruth Birkey had gone to Mr. Monicer's office in Knoxville and John was already there and that they sat down and discussed everything. He stated that they talked to him about what a fifteen (15) year sentence looked like, what it carried, the percentages and broke it all down for him but they also talked to him about everything before second degree murder as well as first degree murder and any lesser included offenses. The defendant stated that they explained to him what was on the table and everything else that was involved. The defendant stated that the attorneys did not explain to him that the state would be able to revoke the offer at that time. The defendant stated that he did not realize that the offer could be "taken off the table at anytime or at any point." The defendant also stated during this meeting that the attorneys explained that they were going to make a phone call to the state and try to make further plea

negotiations but that he was not informed about the results of any of these discussions from Saturday or Sunday.

The defendant was then asked as the trial resumes that following Monday at what point did he tell his attorneys that he intended to take the plea offer. The defendant testified that Monday was going to be the beginning of the defense proof and that John Rogers was over in the hotel and when the defendant showed up before court, he had gone into Mr. Rogers' hotel room and that while they were talking the defendant stated "I'm ready to take the plea offer." He stated that Mr. Rogers said "ok, cool. We are going to go on with the defense proof" to which the defendant responded "ok, I guess, you know, but I didn't know, again, the context of pleas or anything like that, but, like I said, I told him that I was ready to take it."

The defendant was then asked that if he recalls the quote from Mr. Rogers at the Rule 11 hearing occurring in November of 2013 in which Mr. Rogers testified that he did not have authority to accept the plea offer and what was his explanation for that. The defendant responded that "he felt that he was – that we were going to be in a position to take the plea when I came back in and I don't know what was going on in his mind … but I don't know how much more permission or in the context of a plea offer or anything how much more clear I can get that I want to take it when I tell him that I'm ready to take it and, you know, sign it, do whatever in order for me to get the fifteen years and go and do my time." The defendant goes on to testify that he only told John that he wanted to take the offer and that he did so because he was his "chief lawyer." The defendant was then asked why then did the defense proceed to put on proof? The defendant testified that he did not know, "that he was unaware of the process of accepting plea agreements and that he thought that lawyers were simply trying to allow him to spend more time with his family before he began serving his time." The defendant then testified that he had no further conversations with attorney

Rogers or Herb Monicer regarding any further plea negotiations beyond the fifteen year offer that was made by the state and that any terms of counter-offers or discussions between the state and his legal team were not discussed with him. He further stated that he was unaware that his attorneys were continuing to negotiate with the state.

The defendant was then asked when his trial attorneys had authority to accept the plea offer. The defendant stated that on Monday, August 19, 2013, they had authority to accept the offer and that he had told them that he was ready to take it and he just needed to talk to his family but that on that Monday morning he told them that "I was ready to sign it, I was ready to take it." The defendant was then asked about his discussions with his family concerning the plea agreement. The defendant stated that he talked to his grandmother about it and had some discussions with his aunt Beth about it and that those were the two (2) main people involved and the only people he discussed this matter with. When asked about the nature of the conversations with his family, he stated "he told them they had offered a fifteen (15) year plea and that he was going to take it and thought it was in his best interest." When asked if the family had any questions he stated "they were interested and wanted to know how much time essentially comes with a fifteen (15) year sentence and things such as that nature." When asked if his family expressed any concerns with regards to the trial continuing despite the fact that he indicated that he was going to take the plea the defendant stated "no, his family were being lead by Mr. Rogers and felt that he knew what he was doing and had their best interest in mind and no one understood why the trial was continuing."

Mr. Self was then asked at what point did he learn that the plea was being revoked. The defendant testified that the during trial that either Mr. Rogers or Mr. Monicer was told by General Clark or General Brooks that the plea had been taken off the table because of certain things going on through the trial that they didn't like and that they didn't like the defense that was being put on

and the defendant stated that he thought they were being vindictive. When asked what conversations occurred between Mr. Rogers and himself about the offer being revoked the defendant stated that "Mr. Rogers seemed just as shocked as he was." He said "they were sitting there in their seats and neither seemed to know what to do at that point." He stated that the revocation of the offer appeared to be as much a surprise to Mr. Rogers as it was to himself. The defendant was then asked and reiterated that at no point during the pendency of the trial did his attorneys tell him that the state could take the offer off the table.

CROSS EXAMINATION OF ETHAN SELF

The cross examination of the defendant was conducted by Assistant District Attorney General Dennis Brooks and began with introductory questions about the fact that the defendant had a copy of the trial transcript during the time in which the post conviction relief was drafted as well as the amendments. The defendant was also asked if he had read the state's response which included numerous citation to points in the transcript where Mr. Rogers correctly stated the defendant's name and appeared to have not forgotten his name or who he was representing. The defendant responded by stating that at least at some point he remembered Mr. Rogers standing in front of the jury and not remembering his name to which his daughter, Jenny, stood up and said the word "Ethan" but the defendant did not recall at what point that occurred.

The defendant was then asked when he noticed a difference in Mr. Rogers after his medial condition. The defendant responded that "he simply was not as sharp or on point as he was and that during conversations he would kind of forget what he was talking about mid-way through the conversations."

The defendant was then asked about the decision to bring on Mr. Herb Monicer as co-counsel and the defendant testified that he had no prior knowledge of Mr. Monicer but that Mr. Rogers had

bragged about Mr. Monicer and what a good trial lawyer that he was and the defendant testified that he trusted Mr. Rogers' choice. When asked if he had had the opportunity both prior to trial and during the trial itself to watch Mr. Monicer in the courtroom and did he seem capable and competent to which the defendant responded "yes and that he had trust in him through his trust in Mr. Rogers and that he thought Mr. Monicer was on his side."

The defendant was then asked about the plea offer. He was asked if it was offerd on the day the trial was suspended for three (3) days because the defense was not quite ready to present it's proof on Friday and the recess was taken until the Monday morning. The defendant was asked during this three (3) days off from court if he had the opportunity during that long weekend to consider the fifteen (15) year offer and discuss it with his family. The defendant stated that "yes he had." The defendant was then asked when he told Mr. Rogers that he wished to take the plea to which the defendant stated "in the courtroom when we were in here and I told him I was ready to take it, that I needed to discuss it with my family. Then on Monday, that morning is when I told him I was ready to take it." The defendant then stated that he "didn't need an extended period of time to think about it, that he wanted to take the offer, however he asked for the time to talk to his family because they had spent a lot of money and that he felt it would be unfair not to say something to them about that." He stated that Mr. Monicer was not a party to this conversation with Mr. Rogers and that he was uncertain if Mr. Monicer was within a ear shot of hearing the conversation.

The defendant was then asked about the three (3) day weekend and about the conversations with his family, his grandmother and his aunt, that occurred with Mr. Rogers and Mr. Monicer in Mr. Monicer's law office in Knoxville. The defendant testified that there was a lengthy discussion concerning first degree murder, second degree murder and all of the lesser included offenses as

well as exactly what the fifteen (15) year sentence meant as far as percentages and the likely amount of time in which he would serve. The defendant was asked if he had confidence in what he was told by his attorney and he stated that he did. The defendant was then asked if at any point during this conversation at Mr. Monicer's office if he told his attorneys, including Mr. Monicer, that he wished to take the fifteen (15) years that was offered to which the defendant stated "yeah, I told John that I was ready to take it." He was then asked if he told John that he would take the offer with Herb Monicer being present to which the defendant testified "no." The defendant testified that he had no further follow up questions with trial counsel about the fifteen (15) year offer until the day of closing arguments. The defendant testified that he again had told Mr. Rogers on the following Monday that he wanted to take the offer and that Mr. Monicer was not a party to that conversation nor was there any discussion about why the defense was then proceeding to put on proof in his defense.

The defendant was then asked about his perception of the cognitive decline and speech issues that he states Mr. Rogers was having during the trial and did he consider needing to have a conversation with Mr. Monicer about the fifteen (15) year offer. The defendant testified that "he did not have that type of relationship with Mr. Monicer and that he did not feel comfortable enough to discuss the plea offer." The defendant then testified that "he had no discussions with his trial attorneys about attempts to negotiate a better deal or make counter-offers to the State of Tennessee."

The defendant was then asked about the testimony of his attorney John Rogers during the Motion to Enforce Rule 11 Plea Offer that occurred in November of 2013 in which Mr. Rogers testified that in his discussions with Gen. Clark that he did not have authorization to accept the fifteen (15) year plea offer but that he anticipated that he soon would. The defendant testified that

he did not understand why Mr. Rogers would say this and that he had told Mr. Rogers that he was ready to take the plea offer.

The defendant was then asked about the conversations that he had with his grandmother and aunt about the plea offer and the meeting with the attorneys and whether or not they suggested that further plea negotiations take place. The defendant testified that "no such conversations had taken place and that he had told them that the fifteen (15) years was offered and that he was going to take it."

REDIRECT EXAMINATION OF ETHAN SELF

The defendant was then asked a short series of questions by post conviction counsel concerning the course of negotiations and discussions regarding the plea agreement and whether or not the defendant understood that he when he was communicating with attorney John Rogers, that Mr. Rogers was then communicating those conversations with the rest of the legal team. The defendant testified that he felt anything that he talked to Mr. Rogers about that Mr. Rogers would then discuss that with Mr. Monicer and his daughter, Jenny. He reiterated that he did not have any dealings with Herb Monicer or Jenny Rogers and that all of talks or negotiations were with Mr. Rogers. He also testified that he felt that he had complete trust in Mr. Rogers and that he would communicate to the state his position to accept the plea offer at the appropriate time.

WITNESS NO. TWO – BETH AMOS (AUNT OF THE DEFENDANT)

The defendant's second witness was his aunt Beth Amos who the court understood to be living in Florida. The defense requested that her testimony be taken by virtual means, in particular a Skype program, and counsel set up the courtroom so that Ms. Amos appeared on both the large screen and as well as the screens in front of counsel and the court. There was no objection by the state of the taking the testimony in such manner and the connection, both video and audio, were clear for all to see and hear. Ms. Amos also stated that she could see and hear all parties involved including anyone asking questions of her. Ms. Amos testified that she was the aunt of the defendant, Ethan Self, being the sister of his mother. She testified that while she lives in Florida now she was in Tennessee during the time of the defendant's trial. She testified that she was a witness during the trial and actually testified during the trial so she was not present in the courtroom during the majority of the trial because she was required to remain outside of the courtroom until as such time as she testified.

She was then asked by post conviction counsel at what time during the trial did the defendant discuss a potential plea offer with her and her mother, who would have been the defendant's grandmother. Ms. Amos testified that she was not exactly sure when it was presented to him but that she and the defendant's grandmother went to eat lunch at one of the fast food restaurants near the courthouse. She stated that they sat and discussed the pros and cons of the defendant taking the plea deal. When asked what her understanding was following this conversation, Ms. Amos testified that her understanding was he was going to accept the plea deal and that he had specifically told her that he was going to accept the deal. She was then asked what her understanding was why the plea did not take place to which she testified "they took it off the table. They decided they didn't offer it to him." She further testified that she did not remember

the day of the week that she had such conversation with the defendant. She ended her direct examination by reiterating it was her understanding that the defendant was prepared to take the plea offer of fifteen (15) years to second degree murder.

CROSS EXAMINATION OF MS. AMOS

Assistant District Attorney General Brooks conducted the cross examination of Ms. Amos and asked a number of questions trying to pin down when the lunchtime conversation took place with the defendant and his grandmother but it was unclear from the record when exactly such conversation took place according to her testimony. Ms. Amos did admit that this was the only discussion or plea offer that she knew anything about and again reiterated that the defendant clearly stated that he wanted to take the plea deal. When asked if there was anyone trying to talk the defendant out of taking the plea deal or having further discussions about trying to get a better deal, Ms. Amos testified that they discussed "the pros and cons and was there a possibility that the defendant could do better by going on with the trial and possibly receiving a better verdict." Ms. Amos admitted that they were trying to determine what the better option was. When asked whether these conversations had taken place in the presences of Mr. Self or the defendant with his attorneys and whether or not she was present for those discussions, Ms. Amos stated "if she was, she does not remember it at all." This concluded the examination of Ms. Amos.

WITNESS NO. THREE – HERBERT SANFORD MONICER (Co-Counsel for the Defendant)

The defendant next called his trial counsel, Mr. Herbert Monicer, as his third and final witness. Mr. Monicer testified that he met the defendant, Mr. Self, in Mr. John Rogers' law office sometime in July of 2013. Mr. Monicer testified that he was asked by Mr. Rogers to serve as second seat to Mr. Rogers as lead counsel in representing Mr. Self. Mr. Monicer described the reason he was asked to serve as second chair because Mr. Rogers had medical conditions regarding his heart and how it had affected what were called "brain bleeds" in the past. Mr. Monicer testified that the case had been continued several times because of Mr. Rogers' medical conditions and at a particular point in time it was interfering with the trial going forward. He also testified that Jenny Rogers would be assisting but it would be his understanding that she had never tried a murder case before or a serious criminal case. Mr. Monicer then explained that he was not completely sure of the medical condition that Mr. Rogers was suffering but believed it to be a "brain bleed associated with some type of aneurysm and that he was treated at a center in Minnesota or somewhere up north."

Mr. Monicer then testified that he had known John Rogers since about 1980 and that he had worked with him previously on a number of cases. Mr. Monicer was then asked when he began working in this case and what difference, if any, did he see in Mr. Rogers from when he had worked with him in the past. Mr. Monicer testified that "I'm not too sure in the pre-trial preparation matter, that anything stood out to me as being different during that period of time during the pre-trial, and that would have consisted of us dividing up preparation, specifically he was responsible for preparing and presenting the testimony of a Dr. Kelly and a Dr. Eric Ingham. I was responsible for preparing and presenting the testimony of a Dr. Brienstein." Mr. Monicer

went on to testify as to the discussions of dividing up the responsibility for who was to handle what witnesses in general and division of trial responsibilities.

Mr. Monicer was then asked if there was a point in time during the trial itself that he noticed changes or differences in Mr. Rogers behavior or conduct that he hadn't notice previously when working with him in the past. Mr. Monicer testified that "yes there was" and went on to explain that "during the course of the trial, and it seemed a little intermittent but during the course of the trial, John would proceed to ask witnesses questions and he would state part of the question, pause, state it again then pause, in other words, there would sort of be false starts or multiple efforts to express himself however he always got himself expressed. It not as though he left a subject matter in the middle of a thought, that didn't happen." Mr. Monicer also testified that "since I knew John Rogers, I considered him to be an extraordinary trial attorney and communicator. The more hesitant or slowing down of his presentations was the difference."

Mr. Monicer testified that John Rogers was lead counsel when he was brought in and he stayed lead counsel throughout the trial. When asked about client communications and the division of labor amongst the legal team with regard to client communications, Mr. Monicer stated that John Rogers had a relationship with Mr. Self and that it was fairly exclusively John Rogers having communications with the defendant. Mr. Monicer also testified that Mr. Rogers had a very close relationship with the defendant's family including the person who was financing Ethan's defense. Mr. Monicer also testified that there were certainly conversations between Mr. Rogers and the defendant in which he was not a party and that he or Jenny Rogers were not privy to. He also stated that he thought that Mr. Rogers talked to the defendant without him participating on a regular basis.

When asked if it was fair that amongst the legal team most client communications were between Mr. Rogers and Ethan, Mr. Monicer testified that "the communications were between Mr. Rogers, Ethan, Ruth Birkey, Norma George and when we got into trial, we learned that there was another person that was providing Ethan advice." "It was an older lady that he had established an affair or established a personal relationship with, and frankly I don't know what her name was and she wasn't sort of part of the team but he was certainly listening to her."

When asked if there were points in time that the attorneys deviated from the pre-trial process plan concerning witnesses, Mr. Monicer testified that "yes there were, that there were times in which Mr. Rogers examined a witness that was pre-planned to be examined by another attorney." However, this was not uncommon in his experience as a trial attorney. That while Mr. Rogers was the lead attorney, he was not the one making all the decisions or "calling all the shots for the legal team." Mr. Monicer gave an example of times in which he expressed his strong opinion about who should conduct the examination and where it should occur during the trial. Mr. Monicer went on to explain that during the trial "we had a team at that table that Ethan's sitting at right now. I was on the outside. It's my memory that Ethan was sitting next to me and then there was John and seated next to John I believe was Jenny and my administrative assistant, Carol Holbert, was sort of sitting at the end of the table. So quite often, discussions were more sort of a group than they were just one on one." Mr. Monicer admitted that there were times in which there could have been "huddles" at the table that only involved Mr. Rogers and the defendant. Mr. Monicer went on to testify that the defense team had a routine during trial and that routine was that the defendant would come to their motel each morning and assist in carrying the files that were kept in Mr. Rogers' room and carry it to the car to be taken to the courthouse and set up in the courtroom. Mr. Monicer stated that happened each morning and that there were talks individually

and as a group under those circumstances and there were times when they all met together and at serious times "we all met together, and when I say we all, I include Ruth Birkey and Norma George." This indicates that the defendant's family was involved in many of the "serious" discussions.

Mr. Monicer was then asked to recall the first conversation that was had with the defendant about the plea offer during the trial. Mr. Monicer proceeded to testify that he had reviewed a memo prepared by Ms. Jenny Rogers to refresh his recollection prior to his testimony and that on Tuesday, August 13th which was the day the proof began, that the first offer for second degree murder with no set sentence was related to John Rogers by Dennis Brooks. The plea offer did not contain any conditions or time limitations. He then testified "we related that offer to Ethan that same day." Mr. Monicer testified Mr. Brooks made mention of a plea to second degree murder, there were no conditions placed on it and there was no time limit placed on it, "there was no specific sentence mentioned at that time." He then testified that there was a small room in the back room of the courthouse that was a place that Mr. Rogers' wife would bring the defense team lunch everyday and they would sit down as a group and talk about the trial. Mr. Monicer testified that during the lunch of the day they were told by Mr. Brooks of a potential second degree murder charge, "we conveyed that to Ethan." Mr. Monicer then states "I could testify unequivocally that there were no time limits that were placed upon it and there were no conditions that were placed upon it and there was no sentence that was offered at that time." Mr. Monicer also testifies that because of the fact that there was no specific sentence attached to the plea offer that he was "confident that I would not have discussed taking a plea without a specific sentence."

Mr. Monicer was then asked about the weekend meeting at his office in Knoxville, Tennessee following the plea offer. He testified that on Saturday, the 17th of August, a meeting

was scheduled with Mr. Rogers, Jenny Rogers, Ruth Birkey, Norma George, the defendant, and himself. Mr. Monicer testified that any discussions that he had with the District Attorney's Office concerning this plea or counter-offers occurred subsequent to that weekend meeting.

When describing the meeting, Mr. Monicer stated the first thing that happened was that they had gone over all the degrees of homicide including first degree murder, second degree murder, voluntary manslaughter, reckless homicide, negligent homicide and not guilty and discussed the punishments for each of those offenses as an informative matter so that they would understand all potential sentences. Mr. Monicer stated that they had gone through these during their first meeting when he came on as co-counsel, but he's sure that he went through these again at the Saturday meeting. Mr. Monicer then testified that it is his recollection that during the Saturday meeting the question came up for the first time as to whether or not "we had authority to speak to the prosecutors about a negotiated plea, because until that time, well I distinctly remember a negotiated plea was not – was mentioned when I met with them and Ruth Birkey and Norma George were very strong against any plea, it just wasn't a consideration." He then states that "Ethan was very docile during those discussions. He was listening, he was absorbing, I assume he was absorbing what was being said, but in my view, the people that he was listening to were at least Norma George and Ruth Birkey and they were both adamantly against any plea."

Mr. Monicer then testifies that it was during that Saturday meeting that they obtained from the defendant authority to contact the Attorney General with regard to the offer and discuss the problems with the plea-bargaining situation with Mr. Self, Ms. George and Ms. Birkey. Mr. Monicer then states that they called Attorney General Clark by telephone from his office at that time and outlined to him the thoughts and broached at that time the possibility of a plea to Voluntary Manslaughter with a sentence out of range, that they would waive inheritance and seek

a reconciliation with defendant's father's family. Mr. Monicer testified that Mr. Clark said he would talk to the family about it and that was all that occurred on Saturday. Mr. Monicer stated the defendant was present during this conversation and that the purpose of the call was "feeling out a plea to voluntary manslaughter with a sentence out of range and a disinheritance and a reconciliation with the family."

Mr. Monicer then states that on Sunday that Mr. Rogers and Attorney General Clark had a telephone conversation that he was not part of. He testified that he was told by Mr. Rogers that Attorney General Clark during that Sunday phone conversation had offered second degree murder and a fifteen-year sentence and that was his offer. He states that this is the first time he was told by Mr. Rogers, on that Sunday conversation, that there was a second degree murder offer with a fifteen-year sentence.

Mr. Monicer then testified that on that following Monday, Mr. Self came to the hotel to begin gathering things for court "my memory is that the fifteen-year Second Degree Murder sentence was conveyed to him in response to the fact that we were unsuccessful at a Voluntary Manslaughter ten-year sentence offer." At this point defense counsel asked Mr. Monicer if it was possible that Mr. Rogers and the defendant had private conversations during this period of time in which he was not a party. Mr. Monicer stated yes however he went on to state that "I believe that Mr. Rogers always told me when it was of any substance and particularly on the plea-bargaining part of it." When pressed if it was possible that Mr. Self conveyed to Mr. Rogers that morning that he wanted to take plea offer, Mr. Monicer stated that "I was unaware of it and I have, as we go forward as to what happened with the plea bargaining, that would surprise me if that happened." He goes on to state "if Mr. Self had said to "take it" I was not – I certainly did not get that information."

He then testified that had he been given such information "the first thing that he would have done would have been speak to the defendant to assure himself that he completely understood what was being done and then he would have informed the district attorney, Mr. Clark, and the court that the defendant would have accepted the plea to fifteen-year Second Degree Murder and would have gone into a plea hearing." Mr. Monicer stated that had he been told the defendant wished to accept the plea that it was his duty "if I were informed of that then by duty would have been to inform the court and the state.

Mr. Monicer then described that the defense began their proof on that Monday which was August 19, 2013. He then stated that there was a plan to meet with everyone, the defendant and his family, to discuss with the defendant what appeared to be the offer of second degree murder and fifteen years. That meeting was planned for that Monday the 19th. Mr. Monicer states that he then "sort of stuck my nose into it if you will and I went over to Mr. Brooks and I was suggesting to Mr. Brooks of voluntary manslaughter and once again making the sentence the same as it would be on a second degree murder." He stated that nothing came of that on that Monday. Mr. Monicer was then asked if the defendant was told that the offer was revocable by the state and Mr. Monicer testified that "i don't know what Mr. Rogers advised him with regard to that and I don't recall having a conversation with him about that."

Mr. Monicer then testified that on the Tuesday morning as they were beginning to pack up that "John was becoming more persuasive that Ethan should take the deal on Tuesday morning and voiced his opinion very briefly, and what we agreed to do Tuesday morning was to meet that night with all of the group, the team, and talk through all the possibilities again and for Ethan to make a decision what he was going to do."

In describing that meeting, Mr. Monicer stated "we met in John's motel room. Persons present were Ethan (the defendant), Ruth Birkey, Norma George, Jenny Rogers, Carol Holbert and myself." Mr. Monicer testified that the purpose of that meeting was to discuss the status of the trial and the status of the plea. When asked if it was his understanding that the defendant could accept the plea up until anytime that the jury retired, Mr. Monicer stated:

> "I remember that meeting lasted an hour or more and I remember saying that it could be withdrawn at any time. Now I want to say that my memory is clouded somewhat by the fact that is always what I would say. I would never say to a client that a plea agreement that had been made without a time limit, could be, would be open up until whenever the jury got the case or something like that. Now, I might have said it could, but I would never tell a client that a plea agreement would as a matter of law be available up until the time the jury got the case. I would not do that."

As he continues to describe the Tuesday night meeting with the family and the defendant, Mr. Monicer states that the meeting was "sort of a town hall meeting if you will. At one time or another everybody would state their opinions or what they thought as is common in any criminal case during trial." He stated that he distinctly remembers going over all of the degrees of homicide and being asked what the jury was going to do. Mr. Monicer stated that his response to the family and the defendant was "I don't know, however, I distinctly remember stating that there is sufficient proof in this record that Ethan could be convicted of First Degree Murder equally there was sufficient evidence in this record that Ethan could be convicted of Second Degree Murder and down the line to all the lesser includeds." He stated that he further said "there was a potential under the evidence that we'd heard up until that time that Ethan could be convicted of both First or Second Degree Murder and I wouldn't go further than that." He then stated that:

> "John did." John became very insistent that Ethan was going to be convicted of at least Second Degree Murder and our styles were different. My style is always to leave it up to the client. John was pushing hard and actually pushing harder than I would have pushed. Ethan sat on the couch in a corner and basically didn't say anything through it all. Ruth Birkey was very insistent that Ethan not

> take the plea. I'm trying to remember Norma George, I don't remember her as strong as I remember Ruth Birkey, you know, and I kept saying, folks, listen to me, you know, you all haven't been through this before and you need to let him make up his own mind."

He then states "I always defaulted back that Ethan needed to make the decision. He then stated "a decision was not made that night. When we left that meeting that night, I did not know whether Ethan was going to accept the plea or whether he wasn't going to accept the plea." Mr. Monicer then stated "I would have never told them that it (the plea) can't be withdrawn up until the time the jury goes out." When asked if he described the defendant as being docile, Mr. Monicer stated that he was:

> "very docile." Well he had been very docile on each of the – very young, very docile. I came under the – when I had the first meeting with Ethan, I walked away with the feeling that Ethan was being influenced by his grandmother and his spiritual mother and they loved him very, very, very much and I was concerned about that."

Mr. Monicer was then asked what happened the next day on Wednesday morning of the trial. Mr. Monicer stated that he doesn't recall whether he was present when the defendant picked up the files at the hotel room. He stated that he did not talk to the defendant that Wednesday morning and that he was told that the defendant had joined Mr. Rogers for breakfast at the hotel that morning. He stated that he was not privy to any conversations that they may have had. He was then asked about the circumstances of the plea being withdrawn to which Mr. Monicer stated:

> "Because of what John told me about his conversation with Ethan, I had decided to try to sweeten the deal to get something and I went to Dennis Brooks during the morning hours of Wednesday and I asked him whether or not or I offered a Second Degree Murder plea as a mitigated offender which would reduce … which would reduce the sentence to thirteen and one-half years. I was told that he would present it to the family. That was maybe mid morning. The next thing I knew is that John Rogers some time right around the lunch break or at the lunch break had told me that Tony Clark or Dennis Brooks I'm not sure which one, had withdrawn the Second Degree Murder fifteen year sentence withdrawn the offer because of the testimony that was presented by the defense of the abuse that Ethan had suffered at

the hands of his father and it was specifically mentioned because of the testimony of some nurses about that abuse that had been put into evidence the day before."

When asked if his attempt to negotiate the plea offer as a mitigated Second Degree plea was something that was discussed with the defendant, Mr. Monicer "no I was trying to get anything I could to change what I'd heard." At this point Mr. Monicer was finally asked what it is that he "heard."

Mr. Monicer then described the following the conversation he had with Mr. Rogers:

"On that Wednesday morning; when I went down, my memory is I met John in the lobby area of the hotel and John told me that Ethan turned down the deal."

Mr. Monicer ended the direct examination by stating he was very surprised when he was told that the offer had been withdrawn. He was surprised in part because he thought that the testimony of the abuse of the defendant had occurred throughout the trial and especially in the defense proof and the fact that their defense was going to be "premised or be placed upon the abuse that Ethan suffered, that was no secret." "We'd already put on evidence of all of that so to come up you know Wednesday around lunch and say "oh, well, we're withdrawing it because you presenting this defense," was a shock to me." This ended the direct examination of Mr. Monicer.

CROSS EXAMINATION OF MR. MONICER BY DENNIS BROOKS

Mr. Monicer's cross examination began with questions surrounding Mr. Rogers medical condition and his prior testimony that at times Mr. Rogers appeared to be searching for words. Mr. Monicer stated that "he thinks that the Mr. Rogers found the words he was looking for. It may have been more slowly than his prior experience but that he always appeared to express what he intended to." Mr. Monicer was asked if at any time during the trial he had been of the opinion that Mr. Rogers was not able to carry out his duties in representation of the defendant would he have taken action? Mr. Monicer stated "yes, had I thought that he was not able within the sense of

Strickland v. Washington, of course of which I'm very familiar with, yes, I would have taken action. And frankly, I think I probably, in this case, I think I took on more responsibility than I was originally brought on to do, and, you know, Jenny Rogers as well." When asked if he had any problem with Mr. Rogers' capabilities during this trial Mr. Monicer stated "I did not have a problem that he ultimately was able to express his position and Ethan's position to the jury." Mr. Monicer then stated that if during the trial that Mr. Rogers was unable to proceed or another medical situation occurred that he was prepared to "carry this ball at trial." Mr. Monicer, in response to cross examination questions, agreed that there were times in which Mr. Rogers may have examined a witness that was originally intended for Mr. Monicer to examine, however he admitted that Mr. Rogers covered the ground that he would have covered and that they conferred during the trial. He also stated that "i recall having materials prepared in these limited instances where I was going to handle the witness to where I had portions that I had highlighted and/or tab-marked that I would present to John to make sure that those points got in."

Mr. Monicer was then asked his ethical responsibility if the defendant had expressed his desire to plea and Mr. Moncier agreed that it would have been his responsibility to report that to the court. Specifically he stated "if I had conferred with the client and satisfied that the client was making a knowing intelligent decision and was not being placed under any undo pressure by anybody to make that decision, I would facilitate the client's desire to enter that plea."

The following exchange then occurred when Mr. Brooks and Mr. Monicer;

Mr. Brooks: "At no time during that meeting or any other meeting, did you hear Ethan Self say "I want to take that offer of fifteen years, Second Degree?"

Mr. Monicer: "i did not hear that."

Mr. Monicer was then asked during the weekend prior to the defense proof if there had been a long conversation about the plea bargaining question as well as a long discussion during the Tuesday night conference to which Mr. Monicer responded: "Yes - and that everyone gave their opinion." He went on to state that following the weekend meeting, "the defendant had authorized counsel to reach out to see if there was a potential to get a better offer."

Mr. Monicer was then asked about the family being present during these conferences on Saturday and Tuesday night and he described the family of the defendant as being "they were very opinionated." Mr. Monicer stated that in dealing with clients and family members, in particular opinionated relatives of the client, he stated that "you try to listen to it and then you try to advise them that they need to let the client make up the client's own mind cause the client is going to be the one that lives with the consequences of the decision. And while they love the client, while they have their opinions about this and have opinions about that, they need to keep those to themselves and let the client make the decision." Mr. Monicer was then asked did he make sure that kind of communication happened to during those meetings to which Mr. Monicer stated "yes I did. On that Tuesday night particularly." Mr. Monicer stated "the grandmother was vocally against any plea agreement and the girlfriend wasn't there that we suspected that Ethan was going to be talking to, and no decision was made that night." When asked if at any time during that meeting on Tuesday night that the defendant stated that he would take the plea offer of fifteen years Mr. Monicer stated "no, he did not, at least not to me." In the follow up question as to whether or not it was possible that the defendant had privately told Mr. Rogers that he would take the plea and that Mr. Rogers would not convey that to Mr. Monicer, he stated "that would surprise me particularly in the fact that John related to me the exact opposite on Wednesday morning." This concluded the testimony of Mr. Monicer.

INEFFECTIVE ASSISTANCE OF COUNSEL

The crux of the petition is that the petitioner failed to receive effective assistance of counsel during his trial. In particular, the petitioner states five (5) main areas which he alleges that counsel was deficient and each area will be addressed separately following the reciting of the law that this court is required to follow in determining this issue.

In considering a claim of ineffective assistance of counsel, the court is required to consider the following:

> The right of a criminally accused to representation is guaranteed by both the Sixth Amendment to the United States Constitution and article I, section 9, of the Tennessee Constitution. **[*12]** *State v. White*, 114 S.W.3d 469, 475 (Tenn. 2003); *State v. Burns*, 6 S.W.3d 453, 461 (Tenn. 1999); *Baxter v. Rose*, 523 S.W.2d 930, 936 (Tenn. 1975). The following two-prong test directs a court's evaluation of a claim for ineffectiveness;
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> First, the [petitioner] must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the [petitioner] by the Sixth Amendment. Second, the [petitioner] must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the [petitioner] of a fair trial, a trial whose result is reliable. Unless a [petitioner] makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.
> *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. Melson*, 772 S.W.2d 417, 419 (Tenn. 1989).
>
> In reviewing a claim of ineffective assistance of counsel, this Court must determine whether the advice given or services rendered by the attorney are within the range of competence demanded of attorneys in criminal **[*13]** cases. *Baxter*, 523 S.W.2d at 936. To prevail on a claim of ineffective assistance of counsel, a petitioner must show that "counsel's representation fell below an objective standard of reasonableness." *House v. State*, 44 S.W.3d 508, 515 (Tenn. 2001) (citing *Strickland*, 466 U.S. at 688 (1984)).
>
> When evaluating an ineffective assistance of counsel claim, the reviewing court should judge the attorney's performance within the context of the case as a whole, taking into account all relevant circumstances. *Strickland*, 466 U.S. at 690; *State v. Mitchell*, 753 S.W.2d 148, 149 (Tenn. Crim. App. 1988). The reviewing court must evaluate the questionable conduct from the attorney's perspective at the time.

Strickland, 466 U.S. at 690; *Hellard v. State*, 629 S.W.2d 4, 9 (Tenn. 1982). In doing so, the reviewing court must be highly deferential and "should indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Burns*, 6 S.W.3d at 462. Finally, we not that a defendant in a criminal case is not entitled to perfect representation, only constitutionally adequate representation. *Denton vs. State*, 945 S.W.2d 793, 796 (Tenn. Crim. App. 1996). In [*14] other words, "in considering claims of ineffective assistance, 'we address not what is prudent or appropriate, but only what is constitutionally compelled.'" *Burger v. Kemp*, 483 U.S. 776, 794, 107 S. Ct. 3114, 97 L. Ed. 2d 638 (1987) (quoting *United States v. Cronic*, 466 U.S. 648, 655 n.38, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984)). Counsel should not be deemed to have been ineffective merely because a different procedure or strategy might have produced a different result. *Williams v. State*, 599 S.W.2d 276, 279-80 (Tenn. Crim. App. 1980). The fact that a particular strategy or tactic failed or hurt the defense does not, standing alone, establish unreasonable representation. *House*, 44 S.W.3d at 515 (citing *Goad v. State*, 938 S.W.2d 363, 369 (Tenn. 1996)). However, deference to matters of strategy and tactical choices applies only if the choices are informed ones based upon adequate preparation. *House*, 44 S.W.3d at 515.

If the petitioner shows that counsel's representation fell below a reasonable standard, then the petitioner must satisfy the prejudice prong of the *Strickland* test by demonstrating "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694; [*15] *Nichols v. State*, 90 S.W.3d 576, 587 (Tenn. 2002). This reasonable probability must be "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694; *Harris v. State*, 875 S.W.2d 662, 665 (Tenn. 1994). In the context of a guilty plea as in this case, the effective assistance of counsel is relevant only to the extent that it affects the voluntariness of the plea. Therefore, to satisfy the second prong of *Strickland*, the petitioner must show that "there is a reasonable probability that, but for Counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985); *see also Walton v. State*, 966 S.W.2d 54, 55 (Tenn. Crim. App. 1997).

The allegations of the petitioner regarding ineffective assistance of counsel will now be addressed individually in the order contained in the petitioner's Amended Petition for Post Conviction Relief:

> **1. Petitioner's attorneys, during the mid-trial plea negotiation process, overwhelmingly failed to properly convey, appropriately act upon and/or otherwise permit the petitioner to accept a fifteen year plea offer to second degree murder of which they were aware that the petitioner would have accepted.**

The defendant is alleging that he received ineffective assistance of counsel by his counsel's failure to properly convey, appropriately act upon or otherwise permit the petitioner to accept the state's fifteen year plea offer to second degree murder that was received at the conclusion of the state's proof. The defendant further states that his attorneys were aware that he would have accepted such a plea offer.

The court has quoted at length in this opinion from the evidentiary hearing occurring on June 30, 2020. This court felt it necessary to do so in that the allegations of ineffective assistance of counsel by the defendant revolved almost exclusively around private conversations between himself and his trial counsel. These are not matters of record as far as the trial transcript and were heard for the first time at the evidentiary hearing. In addition, this court has quoted from the transcript of the motion to enforce Rule 11 plea offer and motion for new trial conducted on November 25, 2013, in which both the defendant's counsel Mr. John Rogers and District Attorney General Pro-Tem Tony Clark testified.

This court finds that the defendant wants this court to believe that when given the fifteen year plea offer to second degree murder, that he told his "chief" lawyer, John Rogers, that he wanted to accept the deal. The defendant further states that he was unaware that his counsel was attempting to continue to negotiate with the state and also that he was unaware as to why the trial proceeded with the presentation of defense proof. The defendant's explanation for this is that he trusted his attorney John Rogers and was simply following his advice. The defendant finally testified that he was under the assumption that he had until the last juror left the courtroom to accept the plea offer and that this was the advice given to him by his attorney John Rogers.

This court finds that the defendant statements under oath are the only evidence in this case to support such an accusation. With regard to the allegation that trial counsel failed to properly

convey the plea offer, both the defendant and Mr. Monicer testified at length about meetings that occurred between the defendant and "the defense team" and the defendant's family members. Mr. Monicer specifically testified that at the first meeting he explained all the various degrees of homicide and potential punishments to the defendant. Mr. Monicer further testified that at the weekend meeting after receiving the plea offer he again discussed the lesser included offenses as well as all punishments for all degrees of homicides. He also testified that he answered any questions by the defendant and/or his family members. The defendant also testified that at the weekend meeting, all the degrees of homicide were explained to him and specifically what a second degree murder charge would carry and the percentage to which he would have to serve. The defendant also acknowledges that his grandmother and aunt were at the meeting and were involved in the discussions. This court finds that the defendant failed to prove that his counsel did not properly convey the offer to the defendant by the State of Tennessee and that in fact counsel conveyed the offer on numerous occasions, fully explaining the ramifications of such a plea.

With regard to the allegation that his attorneys did not appropriately act upon the plea offer this court finds that the defendant appears to state his counsel failed to properly inform the court and the State of Tennessee the defendant's willingness to accept the plea offer. Again, this court finds that no such evidence exist in the record.

This court finds that defendant's co-counsel, Mr. Herb Monicer, specifically testified that when a defendant advises that he wishes to pled guilty to a charge that there is a specific process that is to be followed. Mr. Monicer testified that first, he would assure himself that the client was making a knowing, intelligent and voluntary decision to accept the plea offer. He then described the process would be to accept the offer from the state and then inform the court of the decision and move to a plea hearing. Therefore, this court finds that defendant's counsel knew the proper

procedure for acting upon a defendant's request to accept a plea. What this court can not find is that the defendant ever conveyed such a request to accept the plea offer to his trial counsel. This court specifically finds that there is no evidence in the record, other than the defendant's testimony, that the defendant told his trial counsel that he wished to accept the state's offer of second degree murder and a fifteen year sentence.

This court specifically finds that Mr. Monicer testified of two (2) meetings in which he and John Rogers met with the defendant and his family and discussed the plea offer. This occurred both at the courthouse in Hawkins County and then again during the weekend conference with the defendant and his family at Mr. Monicer's office in Knoxville, Tennessee. This court finds that Mr. Monicer testified that there was a lively discussion concerning the plea offers and specifically testified that the defendant's grandmother and/or aunt were fiercely against the defendant accepting any plea agreement and that the defendant sat docile during most of this meeting and appeared to be taking everything in. Mr. Monicer also testified that with the defendant's agreement, a phone call was made at that time during the meeting to the state in an attempt to make a counteroffer for a lesser degree of homicide. Further, Mr. Monicer testified that such "negotiations" with the state concerning a plea offer continued up until the point of the defense concluding their proof and the state withdrawing the offer of second degree murder at fifteen years. Lastly, this court closely listened as Mr. Monicer described his conversation with Mr. Rogers on Wednesday morning when he was told specifically by Mr. Rogers that the defendant "was not going to accept the plea."

The court further finds that in an attempt to revive the offer, the defendant's counsel, after the conviction, attempted to have the court enforce the plea offer by filing the Motion to Enforce Rule 11 Plea Offer that was heard by Judge Blackwood on November 25, 2013. Without such

hearing taking place, this court would have been without any testimony of John Rogers and/or District Attorney General Pro-Tem Tony Clark. However such hearing did take place and this court has quoted it extensively from their testimony. After reviewing the transcript of that hearing, this court can find at no point did John Rogers testify that the defendant, Ethan Self, told him that he wished to accept the plea offer.

Therefore, this court finds that no proof exists other than the defendant's testimony that his defense counsel was ever informed that he wished to accept the state's offer for second degree murder and a fifteen year sentence. This court finds that the defendant was represented by two (2) well respected criminal defense attorneys and from both the length and content of the trial transcripts, it is evident that the trial counsel provided a vigorous and hard fought representation. This is also evident from the fact that the state would make a plea offer at the conclusion of their proof. Further, the court finds it impossible to believe that such experienced attorneys would have a client inform them that they wished to accept a plea offer and then never act upon it again other than try to get a "better deal." This court further can not find that these attorneys in this case would continue to negotiate such a deal and then attempt to revive the deal after the conviction with the motion to enforce the plea offer if they had such offer and acceptance to begin with. Therefore, this court finds that the defendant failed to establish by clear and convincing evidence that his trial counsel failed to act upon the plea offer in this matter.

Lastly, with regard to the defendant's allegation that his trial counsel failed to permit him to accept a fifteen year plea offer, the court finds that no such proof was provided either through the petition or any amendment nor was any provided during the testimony at the evidentiary hearing. The defendant may have testified that he told John Rogers he wished to accept the plea and gave some vague statement that he was simply trusting his counsel and that he was unfamiliar

with the plea process. The court finds that other than the defendant's statement there is no evidence in this record to support such allegation. This court finds that the defendant was informed of the plea offer, on at least two (2) occasions had thoroughly explained to him the ramifications of such a plea offer and the possibilities, that his family and other people that he entrusted or sought advise from where present during such discussions and that any such decision was left to the defendant. It appears to this court from the record that even after having been given this information, the defendant declined to accept the offer which in hindsight was a mistake. However nothing in this record reflects his trial counsel did not "permit" him to accept the offer. In fact, the exact opposite appears to be the fact. Mr. Monicer testified that during at least one meeting, he felt that Mr. Rogers had gone beyond what he was comfortable with in encouraging the defendant to accept the plea offer and that he was told he would be convicted of at least that degree of homicide at the conclusion of the trial. This statement, more than any other, causes this court to find that the defendant was permitted to make any decision that he wished to make and was not hindered in any manner by this trial counsel.

The court finds that the defendant has failed to establish by clear and convincing evidence that allegation no. 1 of his post conviction petition and this ground is respectfully DENIED by the court.

> **2. Petitioner's attorneys failed to raise and/or properly raise on motion for new trial and/or direct appeal the prosecution's interference with his sixth amendment right to counsel and the effective assistance of counsel in the plea negotiation process and the prosecution's vindictive and/or otherwise retaliatory acts and/or actions relative the withdrawal of the second degree murder, fifteen year sentence, plea offer after the petitioner's counsel attempted to provide him with his sixth and fourteenth amendment rights to counsel, to present a defense and a fair trial under the United States Constitution.**

This court finds that the petitioner is alleging that his trial counsel was ineffective in failing to raise or properly argue the prosecution's interference with his sixth amendment right to counsel

and/or that the prosecution's withdrawal of the plea was vindictive and violated his constitutional rights to present a defense and a fair trial in this matter.

This court finds that no evidence exists in this record that the defendant was denied his right to effective assistance of counsel and a fair trial by his counsel's failure to properly raise issues regarding the withdrawal of the plea offer and/or the perceived vindictiveness in withdrawing such offer. This court specifically finds that the defense engaged in a vigorous cross-examination of all state's witnesses and, following the plea offer, presented exactly the defense that was planned during the trial. It is clear from the record that while such plea negotiations were ongoing, his counsel continued to present evidence and call witnesses for his defense. There is no indication that such presentation was affected by the offer made from the State of Tennessee or any slack by his counsel in presenting such evidence.

Further, the court finds that there is no evidence that the state made a such a plea offer and then withdrew it in an attempt to deprive the defendant of effective assistance of counsel. As stated, the court quoted numerous portions of the transcript for the Motion to Enforce Rule 11 Plea Offer hearing on November 25, 2013. District Attorney General Pro-Tem Tony Clark testified as to the reasons that such an offer was made as well as the reasons why the offer was eventually withdrawn. General Clark stated that at the conclusion of the state's proof that they felt uneasy about the proof and also believed that the jury may have some sympathy for the defendant. Therefore, they felt it appropriate to broach the subject of a plea offer with the defense. This court finds that is the providence of the state to make such an offer at any point and time prior to the jury's verdict.

This court further finds, in accordance with Judge Blackwood's ruling of November 25, 2013, that the state also has the right to withdraw such a plea agreement at anytime before it is

accepted. The defendant appears to allege in this ground for relief that the state made the offer and withdrew in hopes of causing his counsel not to present the case they would have normally have presented. As stated, the record does not support such a finding and in fact, it appears that the defense was very vigorous and directly attacked much of the state's proof. However, it appears that the jury, by it's verdict, did not believe the defense's version and instead felt that the state had proven beyond a reasonable doubt that this was a knowing and intentional premeditated killing.

Further, District Attorney General Pro-Tem Clark testified at the November 25, 2013 hearing that as the defense presented it's case, he detected a change in the jury and at that point felt that the offer should be withdrawn. General Clark admitted that he had discussed this with the victim's family, who also happen to be family members of the defendant, and it was their desire that such plea offer would be withdrawn. General Clark stated that he took their request into consideration, however that was not the only reason that the plea offer was withdrawn.

This court can not specifically find whether such withdrawal of the plea offer was vindictive or not vindictive or a combination of a number of reasons. However, this court does find that such distinction is unnecessary in this case. The court finds that the state is free to withdraw the plea offer at any time until there is acceptance of the offer. As stated in ground one for relief, this court finds that there was never a true acceptance by the defendant nor was such acceptance conveyed to his counsel or to the State of Tennessee.

Therefore, the court finds that the defendant has failed to prove by clear and convincing evidence this ground for relief and such ground is respectfully DENIED.

3. Counsel failed to utilize defense witness Dr. Brienstein, other witnesses and proof, along with closing argument, as a means to substantiate the alternative positions that the shooting in this case was one of the unyielding passion and/or lack of premeditation of which had counsel done so there is a reasonable probability the petitioner would have been found guilty of either of the lesser offenses of manslaughter, negligent homicide and/or at worse second-degree murder.

The court finds that the petitioner appears to allege that his trial counsel failed to properly utilize defense witnesses, the state's expert witness Dr. Abramin Brienstein, other witnesses or proof as means to show the defendant lacked the mental state for a first degree murder and should have been found guilty of a lesser offense. A review of the record in this matter would show otherwise.

Early in the case, the defendant's counsel successfully obtained the services of a respected forensic psychologist, Dr. Eric Engum. It appears that Dr. Engum did extensive interviews with the defendant as well as conducted numerous conferences with trial counsel in preparation for his testimony at trial. At trial, Dr. Engum testified to his conclusions that the defendant had been abused by his father, that the indications from his interview of the defendant were consistent, in his professional opinion and background, in speaking to abused victims. Furthermore, he diagnosed the defendant as being a victim of post traumatic stress disorder, a condition that he stated would have diminished his capacity to form a premediated intent to kill his father. Dr. Engum further testified on direct examination that his opinion was that the PTSD of the defendant likely caused a state of hyper-arousal, one which would result in an "exaggerated startled." And thus explained why the trigger might have been accidentally pulled when a sudden noise, such as snoring, occurred. This testimony clearly shows that there was a concerted effort by the defendant's counsel to present proof of a lack of premeditation or excited passion in this case.

In anticipation of countering this psychological proof presented by the defense, the state obtained a similar expert in Dr. Abrahim Brienstein. The defendant had undergone a psychiatric interview by Dr. Brienstein which was recorded. Dr. Brienstein was subjected to an intensive cross examination by the defense during his testimony and a taped interview of the defendant was allowed by the trial court to be played to the jury. As the state points out in their response to this

petition for post conviction relief, this allowed the jury to hear a video taped statement from the defendant without it being cross examined by the state.

Further, the defendant, in it's presentation of proof, provided numerous witnesses to testify as to the defendant's good character, but also attempted to portray the victim/father as being abusive toward the defendant as a way to explain the defendant's actions.

During the evidentiary hearing in this matter, the defendant presented no further proof regarding this ground for relief nor was there any mention in the amended petition for post conviction relief. The court finds that the defendant's assertion that counsel failed to utilize the witnesses or substantiate alternative positions regarding his mental state is unfounded. It appears from the record that the defense went to great lengths to present alternative theories for the jury which included expert testimony of post traumatic stress disorder and an opinion from an expert that the defendant appeared to be a "victim." It also appears that the defense engaged in a very rigorous cross examination of the state's expert and, while ultimately providing damaging testimony against the defendant, appeared to agree with a number of the defense's assertions regarding the defendant in this matter.

When evaluating an ineffective assistance of counsel claim, the reviewing court should judge the attorney's performance within the context of the case as a whole, taking into account all relevant circumstances. *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984); and *State v. Mitchell*, 753 S.W.2d 148, (Tenn. Crim. App. 1988). As pointed out by the state in their response, the overwhelming evidence in this case was that the defendant shot his father while he slept in his bed and then engaged in a number of specific maneuvers to both hide the gun used to kill his father as well as engaging in evasive actions and untrue statements until ultimately admitting to shooting his father while he slept. The defendant's counsel presented witnesses and

evidence to the jury regarding the defendant's mental state and diagnosis. This evidence was apparently rejected by the jury by their verdict. This ground for relief has not been proven by clear and convincing evidence and is Denied by this Court.

> **4. Counsel failed to thoroughly investigate the case by proof relative establishing or otherwise raising the issue of petitioner self's young age as affecting his ability to act rationally under the circumstances as he believed them to exist in this case, despite overwhelmingly available scientific evidence and experts in this field who could have testified relative thereto, hence being able to negate the essential elements for a first-degree murder conviction and more in tune with an accidental shooting or other lesser offense(s).**

As to this ground of relief, the court is of the opinion the defendant is claiming that his counsel failed to retain or otherwise procure expert witnesses for the purpose of providing that the defendant's young age affected his ability to act rationally under the circumstances and that this would negate this essential element of first degree murder. While the defendant sites many conclusions in the petition for post conviction relief regarding this ground, the defendant provides no factual basis for such allegation and no proof was presented at the evidentiary hearing regarding this ground for relief.

In ground three (3) of this petition, this court explained at length the employment and presentation of expert witnesses, in particular Dr. Eric Engum on behalf of the defense who testified about the very things which this ground for relief rest upon. In particular, the defense presented proof of the defendant's age, his post dramatic stress disorder and an expert opinion that the defendant appeared to be "a victim of such abuse by a parent." Further, as the state points out in their response, the petitioner's age at the time of the crime was described in depth by the experts of both the state and defense. The jury was fully aware that the petitioner was eighteen (18) years old and a senior in high school who was living with his father in his father's home. The jury further was advised that he was financially dependent upon his father and was given in-depth picture of

the relationship between the father and son which contained both good and bad incidents. Therefore, the jury was fully aware that they were dealing with an eighteen (18) year old and his psychological and/or psychiatric makeup was well presented to this jury. Therefore, it appears in this court's opinion, that the jury was provided with evidence of the defendant's age and/or maturity or immaturity. The court was further not provided with any expert testimony during the evidentiary hearing in this matter nor was any factual basis cited in the petition or amended petition to support this conclusionary statement.

Therefore, the court finds that this ground for relief for ineffective assistance of counsel is not founded and should be respectfully DENIED.

5. Attorney John T. Milburn Rogers suffered an aneurism during the pendency of the prosecution at issue and upon information and belief was cognitively impaired during the trial, rendering attorney Rogers unable to effectively present proof to the jury sufficiently communicate with and advise petitioner.

This court finds the defendant lastly alleges that one of his trial attorneys, John T. Milburn Rogers, suffered an aneurism during the pendency of the prosecution and that he was cognitively impaired during the trial and was unable to effectively present proof and to communicate and properly advise the defendant.

The court finds that there is sufficient testimony in the record from the defendant, from Mr. Herb Monicer and from the recordings of the pre-trial hearings in this matter that the defendant's counsel Mr. Rogers did in fact suffer an aneurism in the months and years leading up to the jury trial. Both the defendant and Mr. Monicer testified that because of Mr. Rogers medical condition Mr. Monicer and Mr. Roger's daughter, Jenny Rogers, were brought on to assist Mr. Rogers with the defense of the defendant. This court finds that both Mr. Monicer and the defendant testified that prior to this medical condition, that Mr. Rogers was one of the most effective communicators and trial attorneys in the East Tennessee area. The court further finds that both Mr. Monicer and

the defendant testified that after his medical condition that he appeared to have periods where he was slower or took longer to express his thoughts or points he wished to make. Both acknowledged his slowness occurred both during conversations and at trial. However, this court finds that, as testified to by Mr. Monicer, that Mr. Rogers appeared to ultimately always get his point across.

The court finds that Mr. Rogers remained the lead trial counsel for the entire pendency of this trial. The court finds that during this, trial there were instances where Mr. Rogers would examine or cross-examine a witnesses not previously planned, however as Mr. Monicer testified, this is not uncommon in a jury trial. Mr. Monicer also testified that if such an unplanned witness was examined by Mr. Rogers, he had his notes and any points not covered by Mr. Rogers was pointed out to him prior to that witness being excused. Further, it appears that Ms. Jenny Rogers was present for the entire trial and provided support and assistance to Mr. Rogers at all points during the trial.

In short, Mr. Rogers had a team of attorneys and support staff present with him this entire trial. Mr. Monicer testified that while he may have been "slower than normal," Mr. Rogers always got his point across. This is also evident from the fact that, due in large part to Mr. Rogers cross-examinations, the state felt uneasy about their case to the point that a plea offer was made after the state concluded their own proof. Further, a review of the record shows that Mr. Rogers was vigorous in his cross-examination and appeared to present every fact through the defense witnesses that the defense wished to convey to this jury.

Therefore, this court finds that the defendant has failed to prove that Mr. Rogers' medical condition rendered him unable to effectively present proof or sufficiently communicate and advise the defendant. The defendant testified to numerous conversations between he and Mr. Rogers and Mr. Monicer told of numerous conversations occurring between both he and Mr. Rogers and with

the trial team. At no point did Mr. Monicer feel it necessary to bring to the defendant's attention or to the court's attention any lapse by Mr. Rogers either pre-trial or during the trial itself.

This court finds that the defendant has failed to establish by clear and convincing evidence that his trial attorney, John T. Milburn Rogers, medical condition rendered him ineffective in representing the defendant and this ground is respectfully DENIED.

Therefore, the court has thoroughly reviewed the Petition, Amended Petition and the testimony of the evidentiary hearing and the court finds no error based on the evidence presented at the post conviction hearing. Therefore, the petitioner has not proved by clear and convincing evidence that he is entitled to post conviction relief.

Therefore, the court finds the petitioner's post conviction writ is without merit and is therefore respectfully DENIED AND DISMISSED.

The costs of this cause are taxed to the State of Tennessee as the petitioner is indigent. The clerk is hereby ordered to distribute copies of this Order in accordance with the certificate of service.

Enter this the _____ day of September, 2020.

_____

STACY L. STREET
CRIMINAL COURT JUDGE, PART II

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this Order has been served upon the following by sending a true and exact copy of the same in the United States Mail, with sufficient postage to carry the same to its destination, and addressed as follows:

Hon. Dennis Brooks
Assistant District Attorney General
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MCCX
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Wartburg, TN 37887

This the _____ day of September, 2020.

_____
CLERK