

**The Governor's Council for Judicial Appointments**

**State of Tennessee**

***Application for Nomination to Judicial Office***

Name: Walter Bohanan Johnson, II

Office Address: 1013 Brentwood Way  
(including county) Kingston, Roane, Tennessee 37763

Office Phone: (865) 376-4040 Facsimile: (865) 376-4333

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**INTRODUCTION**

The State of Tennessee Executive Order No. 41 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 questionnaire. 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.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website [www.tncourts.gov](http://www.tncourts.gov)). The Council requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit original (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with electronic or scanned signature via email to [debra.hayes@tncourts.gov](mailto:debra.hayes@tncourts.gov), or via another digital storage device such as flash drive or CD.

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

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

Assistant Public Defender, Ninth Judicial District

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

I received my license to practice law in Tennessee in 1984. My Board of Professional Responsibility Number is 011014

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.

Tennessee: 011014; Admitted October 1984 and my license is active.

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

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).

**Professional experience in the practice of law.**

**OFFICE OF THE PUBLIC DEFENDER FOR THE NINTH  
JUDICIAL DISTRICT**

Position: Assistant Public Defender

Dates of Employment: July 20, 1992 to November 30, 1998, and

**from September 20, 1999 until the present.**

**RITCHIE & JOHNSON, PLC,**

Position: Partner/Shareholder

Dates of Employment: **December 1, 1998 through September 19, 1999.**

**RITCHIE, WISE & REEVES, P.C.**

Position: Associate Attorney

Dates of Employment: **July 22, 1988 through July 2, 1992.**

**JOHNSON AND JOHNSON**

Position: Associate/Attorney

Dates of Employment: **October 17, 1984 through July 21, 1988**

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.

N/A

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 am an assistant Public Defender and work solely on the defense of indigent clients in the criminal court of the Ninth Judicial District and Appellate Courts.

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.

**OFFICE OF THE PUBLIC DEFENDER FOR THE NINTH JUDICIAL DISTRICT**

Position: Assistant Public Defender

From July 1992 until December 1999 and from September 1999 until the present, I have served as trial counsel for the Public Defender in the Criminal Courts for Roane, Loudon, Morgan, and Meigs counties. This includes numerous jury and non-jury trials, including First Degree Murder, and all other grades of homicide, Child Rape, Aggravated Rape, Especially Aggravated Kidnapping, Attempted First Degree Murder, Aggravated Assault, Aggravated Burglary, numerous thefts, drug cases, DUI's and other lesser charges all the way down to a jury trial on littering. In addition to trial responsibilities, I have handled numerous Post Conviction, Habeas Corpus, and Coram Nobis petitions filed by the inmates at then Brushy Mountain Correctional and Morgan County Regional Correctional Facilities located in our district. I am also appellate counsel for the office of the Public Defender on all of the above. As such, I prepare all written materials including motions, affidavits, and briefs, and argue cases when necessary in both the Tennessee Court of Criminal Appeals and the Tennessee Supreme Court

**RITCHIE & JOHNSON, PLC,**

Position: Partner/Shareholder

From December 1, 1998 through September 19, 1999, I concentrated on Corporate, Commercial, Banking, Bankruptcy, all arising primarily in representation of commercial lenders and other businesses. I concentrated on Articles 2,3,4,5,8 and 9 of the Uniform Commercial Code and its relationship with the United States Bankruptcy Code. The representation was in all relevant state courts in the area and United States Bankruptcy and United States District Court.

**RITCHIE, WISE & REEVES, P.C.**

Position: Associate Attorney

Responsibilities and Major Concentration: Corporate, Commercial, Banking, Bankruptcy, and Securities Law concentrations arising primarily in representation of commercial lenders and debtors in business bankruptcies. This includes concentration in Articles 2,3,4,5,8 and 9 of the Uniform Commercial Code and its relationship with

the United States Bankruptcy Code. The representation was in all relevant state courts in the area and United States Bankruptcy and United States District Court, and the Sixth Circuit Court of Appeals.

Dates of Employment: **July 22, 1988 through July 2, 1992.**

## **JOHNSON AND JOHNSON**

Position: Attorney

Responsibilities and Major Concentration: General practice concentrating on consumer rights, personal injury litigation, criminal defense, workers compensation, and commercial litigation. . The representation was in all relevant state courts in the area and United States Bankruptcy and United States District Court.

Dates of Employment: **October 17, 1984 through July 21, 1988.**

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

I was involved in a complex series of securities fraud litigation in 1989 while with Ritchie, Wise and Reeves. Our client was the successor in interest to the former Southern Industrial Banking Corporation and the Bank of Commerce in Morristown. The cases arose as a result of the bank financing investments in thoroughbred racing horse limited partnerships. These loans were from approximately 90 investors located around the country, but primarily in Missouri and Arizona. When the investments did not pan out as planned our client sued in state court to collect on the debt, and several investors sued our client for securities fraud in US District Court in Phoenix, Arizona. Eventually the state court cases were removed to federal court and the Arizona case was moved to US District Court in Knoxville. Once the cases were joined in US District Court in Knoxville, several of the legal claims were dismissed pre-trial, but claims under the Securities Exchange Act of 1934 and the Securities Act of 1933 remained. After one week of trial the Court dismissed those claims, and judgment was entered for our client on the debt.

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.

N/A

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

Very little. I was a guardian ad litem appointed by the Court in Knox County three or four times.

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

None

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 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.

None

### 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.

**UNIVERSITY OF TENNESSEE**, College of Law, Doctor of Jurisprudence, June 1984, with **High Honors**.

**Class Standing** 4 of 160 for June 1984 and 4 of 190 for academic year of 1984.

Awards

**American Jurisprudence Book Award for Criminal Law**, June 1982.

**American Jurisprudence Book Award for Contracts**, June 1982.

**American Jurisprudence Book Award for Civil Procedure**, June 1982.

**American Jurisprudence Book Award for Administrative Law**, June 1983.

**American Jurisprudence Book Award for Constitutional Law**, June 1983.

**American Jurisprudence Book Award for Labor Law**, June 1984.

Honor Society

**Order of the Coif**, University of Tennessee, College of Law, July 1984.

Undergraduate Education

**UNIVERSITY OF MARYLAND, UNIVERSITY COLLEGE**, part time student while on active duty with USAF, no degree

**ROANE STATE COMMUNITY COLLEGE**, Associate of Science in General Studies, March 1980, **Magna Cum Laude**.

**UNIVERSITY OF TENNESSEE**, Bachelor of Arts, History, August 1981, with **High Honors**.

Honor Societies

**Phi Beta Kappa**, University of Tennessee, May 1981.

**Phi Kappa Phi**, University of Tennessee, May 1981.

**Gamma Beta Phi**, Roane State Community College, March, 1980.

**PERSONAL INFORMATION**

15. State your age and date of birth.

61; August 13, 1953

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

37 years. I have in Tennessee since I was released from active duty in July 1978 until the present

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

9 years. From February 2006 to today.

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

Loudon

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.

United States Air Force, January 16, 1974 to July 1, 1978, E-4, Sergeant. Release from Active Duty, Honorable.

United States Air Force Reserve, July 1, 1978 to September 25, 1980, E-5, Staff Sergeant. Transfer to Air National Guard.

Tennessee Air National Guard, 572 Air Force Band, September 26, 1980 to September 26, 2012, E-7, Master Sergeant. Transfer to Retired Reserve.

Retired Reserve Gray Area, September 27, 2012 to August 12, 2013.

Retired Master Sergeant United States Air Force, August 13, 2013 to present.

I enlisted in the United States Air Force in January 1974 and was stationed at Bolling Air Force Base, DC. On July 1, 1978 I was released from active duty and joined the mobilization augmentee program of the United States Air Force Reserve also at Bolling AFB and then promoted to Staff Sergeant E-5 that same day. After just over two years in the Air Force Reserve my position was moved to Denver Colorado and as a result in September 1980, I transferred to the Tennessee Air National Guard as a member of the 572 Air Force Band



stationed at McGhee Tyson ANG Base, Knoxville, TN as an instrumentalist trombone. I was promoted to Technical Sergeant in October 1982 and Master Sergeant in October 1984.

In addition to performing as bass trombonist with all performing musical ensembles of the band, I was at various times in charge of administration, operations, and training and by 1988 was the First Sergeant of the unit. In 2000 I was made Band Superintendent, the highest enlisted position in the band with same responsibilities as the Band Commander.

I also created and ran our popular music ensemble from 1992 to 2008. This highly acclaimed ensemble became the standard for the Air National Guard Band program to follow. Indeed, in 2005 the Air National Guard Band Commander and Superintendents Conference for the year was held at McGhee-Tyson Air Base so that our unit could host a symposium for popular music ensembles in the Air National Guard.

**Awards and Decorations:**

**Meritorious Service Medal with One Oak Leaf Cluster**

**Air Force Commendation Medal with One Oak Leaf Cluster**

**Air Force Achievement Medal**

**Tennessee Distinguished Service Medal**

**Tennessee Commendation Ribbon**

**Tennessee Individual Achievement Award**

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

No

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 state and provide relevant details regarding any formal complaints 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.

As Assistant Public Defender for the Ninth District, over the years, I represented numerous inmates at both Brushy Mountain Correctional Institution, and Morgan County Correctional Facility in their efforts to overturn their convictions from other counties across the state. Up until a few years ago we were routinely appointed to all the habeas corpus petitions filed. As a result I had complaints filed with the Consumer Affairs office of the Board of Professional Responsibility by some of the inmates unhappy with the result or me. None of the complaints have ever risen to a formal complaint by the Board against me.

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 have been divorced twice. The first was in Fourth Circuit Court in Knox County in April 1981. The second was in Sessions Court for Roane County in November 1996. Neither was contested and there were no children and no dispute over property division.

I was sued by an inmate at Morgan County Regional in the Chancery Court for Roane County for Writ of Mandamus. The State represented me and the case was dismissed.

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.

American Legion Post 149, Wartburg, Tennessee; Federal Defender Advisory Board; Tennessee

Air National Guard

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

Roane County Bar Association 1992 to present.  
Loudon County Bar Association 2006 to present.  
Knoxville Bar Association 2012 to present.  
TACDL 1992 to present.

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.

Martindale Hubbell AV rating.

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

None

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.

None

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.

None

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

No

34. Attach to this questionnaire 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.

I am the sole author of the writings attached hereto. They are two briefs which are representative of my appellate practice over the years.

### **ESSAYS/PERSONAL STATEMENTS**

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

I seek this trial court position because I believe that I am the best qualified person for this position. For the past 22 years I have devoted my career to the representation of indigent defendants in this very court that I now apply to be judge. That experience gives me a unique perspective and knowledge of this court. In addition to that experience I believe I have the intellect, temperament, and aptitude to serve the needs of our judicial district in this trial court position.

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)*

Obviously as an employee of the Public Defender's office for the past 22 years, I have devoted my career to defending the less fortunate in our society. This is not just a theoretical but a real commitment to justice for all in our society. In addition, for the past 3 years I have had the honor and privilege to serve on the Federal Defender's Advisory Board. An incredible experience to see up close the inner workings of the most acclaimed and best Federal Defender's Office in the nation.

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 seek to be appointed Judge of the Criminal Court for the Ninth Judicial District. This district includes Roane, Loudon, Morgan and Meigs counties. The Criminal Court has concurrent jurisdiction with Circuit Court but focuses on the criminal docket, leaving all other civil docket matters to the Circuit Court. We also have Chancery Court which also handles civil matters in our district. Because of my career in this very court for the past 22 years, my selection as judge of this court would be seamless. I can start on the first day ready to begin.

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)*

As stated above, I am a member of the Federal Defender Advisory Board and the American Legion in Wartburg Tennessee. As I also mentioned above I was a member of the Tennessee Air National Guard for 32 years.

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)*

As can be seen above, I have a broad base of legal experience. I was a general practice attorney for four years concentrating on personal injury, worker's compensation, consumer rights and criminal defense, and bankruptcy. I then spent the next four years representing primarily business interests in all relevant courts including Bankruptcy court. I also filed and was counsel for the Debtor in a liquidating Chapter 11 proceeding in US Bankruptcy court. All of this was prior to coming to the Public Defender's Office. All of that background gives me a unique perspective on not only the law, but the human side of the law. This job is the most human of all the courts and I have a unique perspective on the human condition that I would bring to the Court

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)*

Of course I would uphold the law even if I disagree with it. I honestly cannot believe any attorney would take a contrary position. Obviously in my experience as criminal defense counsel I must take the law as it is, not as I want it to be. There was one experience, however, that did feature the issue. During my 9 month hiatus from the Public Defender Office in 1999, my successor (and predecessor) tried a case in which the Defendant was charged with aggravated assault but convicted of the lesser included offense of reckless endangerment. I took the case on appeal and lost in the Court of Criminal Appeals but Judge Tipton in dissent opined that

reckless endangerment was not a lesser included offense of aggravated assault. I filed for permission to appeal to the Supreme Court on this issue, and permission was granted. At argument the Court asked me directly if I had asked for the charge on reckless endangerment. I stated that since I was not trial counsel, I had not, but that I would have done so if I had been, because it usually is in my client's best interest to charge on as many lesser included offenses as possible. As a result of the appeal, the Court set aside the conviction and remanded to the trial court holding that reckless endangerment is not a lesser included offense of aggravated assault.

**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. Joshua Walker, Associate General Counsel, University of Tennessee,
B. William Reedy, Assistant District Attorney General Retired,
C. Patricia D. Murphy, Assistant District Attorney General Retired,
D. Tony Aiken, Chief Deputy Loudon County Sheriff's Department; Mayor, Lenoir City Tennessee,
E. Roger Mills, Major, Tennessee Air National Guard, Commander, 572 Air Force Band; Director of Bands White County High School, Sparta Tennessee,

**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 Criminal Court for the Ninth Judicial District 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 questionnaire with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this questionnaire 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: August 26, 2015.

  
\_\_\_\_\_  
Signature

When completed, return this questionnaire to Debbie Hayes, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.



**THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS  
ADMINISTRATIVE OFFICE OF THE COURTS**

511 UNION STREET, SUITE 600  
NASHVILLE CITY CENTER  
NASHVILLE, TN 37219

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY  
TENNESSEE BOARD OF JUDICIAL CONDUCT  
AND OTHER LICENSING BOARDS**

**WAIVER OF CONFIDENTIALITY**

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Governor's Council for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Council for Judicial Appointments and to the Office of the Governor.

Walter Bohanan Johnson II  
Type or Print Name

[Signature]  
Signature

8/26/2015  
Date

011014  
BPR #

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

N/A



**IN THE COURT OF CRIMINAL APPEALS  
AT KNOXVILLE, TENNESSEE**

**STATE OF TENNESSEE**

**v.**

**C.C.A. NO. E1999-00945-CCA-R3-CD**

**WILLIE JAMES ROBINSON**

**ON APPEAL AS OF RIGHT  
FROM THE CRIMINAL COURT FOR MORGAN COUNTY**

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**BRIEF OF APPELLANT**

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**OFFICE OF THE PUBLIC DEFENDER  
FOR THE NINTH JUDICIAL DISTRICT**

**JOE H. WALKER  
WALTER B. JOHNSON, II  
P. O. BOX 334  
HARRIMAN, TENNESSEE 37748  
(865) 882-5555**

**ORAL ARGUMENT REQUESTED**

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<b><u>State of Tennessee ex rel Anglin v. Mitchell,</u></b> 575 S.W.2d 284, 288 (Tenn 1979).....	5
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### Statutes cited:

<b>T.C.A. §29-21-101 .....</b>	<b>5</b>
<b>Tennessee Rules of Criminal Procedure Rule 32 (e) .....</b>	<b>6</b>
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## **INTRODUCTION**

This record presents an appeal as of right by Willie James Robinson from the Order of Dismissal of the Morgan County Criminal Court dated October 25, 1999 of his Petition for Writ of Habeas Corpus Relief.

The Appellant, Willie James Robinson, will be referred to by name or as "Appellant". The record will be indicated by volume and page number. The Supplemental Affidavit being supplemented in the record pursuant to Rule 24 will be indicated by Supplemental Affidavit.

**ISSUE FOR REVIEW**

The Court erred in dismissing the Appellant's petition for writ of habeas corpus relief without hearing.

## STATEMENT OF CASE

On April 19, 1999, Appellant filed a petition for writ of habeas corpus relief. His allegations stated that his conviction in Knox County in 1987 was void as the Trial Court failed to sign the judgment documents. (TR vol. 1, p. 3-4).

On July 2, 1999, the State Attorney General's Office filed a motion to dismiss supported by a memorandum of law. (TR Vol. 1, pp. 12-21).

On July 9, 1999, Appellant filed a response to the State's motion to dismiss. (TR Vol. 1, pp. 22-25).

On October 25, 1999, Judge E. Eugene Eblen, signed an order denying Appellant's petition for writ of habeas corpus relief. This Order was entered on October 26, 1999 by the Morgan County Criminal Court Clerk. (TR Vol. 1, p. 26).

On November 10, 1999, Appellant filed his notice of appeal with the Morgan County Clerk. (Tr. Vol. 1 p. 28).

On November 22, 1999, an Order appointing legal counsel was signed by the Honorable E. Eugene Eblen. (TR Vol. 1, p. 31).

## STATEMENT OF THE FACTS

The Appellant, Willie James Robinson, is an inmate confined at Middle Tennessee Classification Center in Nashville, Tennessee, but at the time the instant habeas corpus petition was filed the appellant was incarcerated at Brushy Mountain State Prison in Petros, Tennessee, and was subsequently moved to his current location by the TDOC.

He was incarcerated following convictions in Knox County for Burglary Larceny, and Habitual Criminal Act, on November 10, 1987. (TR Vol. 1, p. 6-7).

On April 19, 1999, Appellant filed a petition for writ of habeas corpus relief based on the grounds that these convictions are void due to the fact that the judgment documents are not signed by the Trial Court. (TR Vol. 1, p. 3-4). With the petition for habeas corpus the Appellant attached copies of the convictions which were signed by the clerk of the Court but not by the Judge (TR Vol. 1, p. 6-7). In addition as can be seen from the affidavit of counsel to be supplemented in the record, there is no judgment of conviction signed by the Trial Judge and in addition the minutes of the Court are not signed by the Trial Judge (Supplemental Affidavit of Walter B. Johnson, II).

The Appellant alleges that due to the fact that the Trial Judge failed to follow the mandates of Tennessee Code Annotated §16-1-106, and of Rule 32(e) his judgments are void on their face, and therefore can be properly considered in a petition for writ of habeas corpus relief. (TR Vol. 1, pp. 3-7).

## ARGUMENT

**The Trial Court improperly dismissed the Appellant's petition for writ of habeas corpus.**

The Appellant's petition was dismissed without hearing by the Morgan County Criminal Court on October 25, 1999.

The reasons for dismissal as set forth in the order are as follows:

1. The petitioner does not maintain his sentence has expired, but rather that the judgment against due to irregularities regarding the Judge's signature.

2. The petition shows that the convicting Court had subject matter jurisdiction over the petition and establish certification by the Clerk that the Judgment and sentence appear on file in the Criminal Court Clerk's Office.

3. Based on the presumption of regularity as to the proceedings heretofore had and the failure of proof then the petition is dismissed without hearing.

(TR Vol. 1, p. 35).

The right to habeas corpus relief is guaranteed in Article 1 §15 of the Tennessee Constitution and is codified in **Tennessee Code Annotated**

**§29-21-101:**

Any person imprisoned or restrained of his liberty, under any pretense whatsoever, except in cases specified in §29-21-102, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint.



Further, the Tennessee Supreme Court has interpreted this statute as allowing a person to attack defects in a judgment that render this judgment void by means of a writ of habeas corpus. State ex rel Anglin v. Mitchell, 575 SW2d 284, 287 (Tenn. 1979).

Appellant argues that the unsigned judgment documents of his November 10, 1987 conviction is void on its face. (TR Vol. 1, p. 3). On page 785 in Swanner v. State, 215 SW2d784, (1948), the Tennessee Supreme Court held that a valid judgment, "must be full and definite upon its face and not dependent upon extrinsic evidence for certainty or completeness".

The Tennessee Rules of Criminal Procedure Rule 32 (e) sets forth the requirements of a valid judgment document:

A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

The Trial Court erred in holding that the Appellant failed to meet his burden of proof on the factual issue that the judgment documents were not signed by the Judge, but yet did not give the Appellant an opportunity to prove his case.

The affidavit of counsel establishes that there is no judgment of conviction signed by the Judge as required by Rule 32 (e). The Court in State v. McJunkin, 815 S.W. 2d 542 (Tenn. Crim. App. 1991) in a DUI case where the prosecution sought to convict the Defendant of second offense DUI, the said that an unsigned judgment is void and can not be used for the purpose of enhancing the sentence for a subsequent offense. The Court in McJunkin, cited Swanner

quoted above for the proposition that an unsigned judgment contrary to Rule 32(e) is not "full and definite on its face and not dependent on extrinsic evidence for certainty or completeness." Swanner at 784. Clearly if given a hearing the Appellant can prove there is no valid judgment of conviction and the conviction on which he is being held is void. This is the proper subject of a habeas corpus proceeding.

Furthermore the minutes in the court file are only signed by the clerk and not by the Judge (Supplemental Affidavit). Tennessee Code Annotated §16-1-1 06 (a) concerning the minute book states as follows:

The minutes of the Court of each day's work shall be signed by the judge. The minute book shall provide a place for the judge's signature after the minute entries each day; however, where the orders of the court are photocopied so that an accurate facsimile of the entire order and the judge's signature appears, it shall be sufficient for the judge to sign at the end of the minute book approving all the minutes in the book.

As has long been held, the minute entries are the 'highest evidence of what has been done in the Court." Howard v. State, 399 S.W. 2d 738, 740 (Tenn. 1966). In its earlier version Tennessee Code Annotated §1 6-106 provided for the minutes to be read each morning in open court and signed by the judge. In this day of photocopies provision has been made for the court's orders to be photocopied and placed in the minute book. However, even the additional provision requires that the judge's signature appear on this photocopied order. While this provision in both versions has been held to be directory rather than mandatory it has been held that it is "right and proper that such directions not be ignored". Howard v. State, 399 SW2d 738, 740 (Tenn. 1966). "With all due

respect to what has heretofore been said by this Court on the subject now before us, we are constrained to the view that so important a judicial function as authenticating the minutes of a Court of Record is not permissibly to be either lightly treated or ignored. Any other rule appears to be fraught with so much of potential mistake, mischief, and even will doing, to demonstrate such to be impermissible.' **Howard v. State**, 399 SW2d 738, 741 (Tenn. 1966). The Court said that because the Trial Judge did not sign the minutes that "(1) there is no valid and effective judgment on the verdict of the jury; (2) there is no valid and efficacious ruling of the Court on the defendant's motion for new trial." The Court then reversed the conviction and remanded the matter to the trial court. Subsequent cases have held that **Howard** does not require that the judgment is void for failure of the trial court to sign the minutes. **See, State v. Mayes**, CCA No. E1999-01374-CCA-R3-CD, February 24, 2000; and **State v. Johns**, CCA No. E1999-00260-CCA-R3-CD, March 9, 2000. Respectfully these holdings are not correct.

The Appellant understands that the Court and the State may not accept the affidavit of counsel for the important substantive allegations made by the Appellant, but says that he was denied a hearing and if given a hearing the facts will be established as outlined in the affidavit. The Trial Court used a presumption of a factual matter to deny the Appellant's petition without giving him a hearing to rebut the presumption. The Appellant asks that this Court to either remand the matter back to the Trial Court to give him the opportunity to rebut the presumption, or accept the affidavit of counsel as proof of the Appellant's factual allegations.

If the Court accepts the affidavit of counsel on the factual matters asserted that the judgment documents are not signed, then the judgment of conviction is void and the habeas corpus petition should be sustained. If the Court does not accept the affidavit of counsel, then the matter should be remanded to the Trial Court to determine if the judgment documents have been properly signed.

**CONCLUSION**

For the reasons stated herein the Appellant asks the Court to reverse the Trial Court and allow the Appellant an evidentiary hearing on his petition for writ of habeas corpus relief, or in the alternative sustain the habeas corpus petition.

Respectfully submitted,

**OFFICE OF THE PUBLIC DEFENDER  
FOR THE NINTH JUDICIAL DISTRICT  
STATE OF TENNESSEE**

---

By: Walter B. Johnson, II  
BPR #011014  
Assistant Public Defender  
P. O. Box 334  
Harriman, TN 37748  
(865) 882-5555

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been forwarded by first class mail, postage pre-paid to State Attorney General, 450 James Robert Parkway, Nashville, Tennessee, 37243-0485 on this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Walter B. Johnson, II

**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE**

**AT KNOXVILLE**

**STATE OF TENNESSEE**

**Appellee,**

**ROANE COUNTY  
CRIMINAL COURT**

**V.**

**No. E1999-02743-CCA-R3-CD**

**RALPH DEWAYNE MOORE**

**Appellant**

---

**APPLICATION FOR PERMISSION TO APPEAL  
A DECISION OF THE COURT OF CRIMINAL APPEALS,  
PURSUANT TO RULE 11, T.R.A.P.**

---

**OFFICE OF THE PUBLIC DEFENDER  
FOR THE NINTH JUDICIAL DISTRICT**

**JOE H. WALKER  
WALTER B. JOHNSON, II  
P. O. BOX 334  
HARRIMAN, TENNESSEE 37748  
(865) 882-5555**

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## INTRODUCTION

The defendant respectfully requests that the Court grant this application for permission to appeal the decision filed in his case on October 13, 2000, in the Tennessee Court of Criminal Appeals at Knoxville. (Copy attached at Appendix A). The defendant has not filed a petition for rehearing with the Court of Criminal Appeals.

This appeal should be granted because of:

- a. the need to secure uniformity of decision;
- b. the need to secure settlement of important questions of law; and
- c. the need for the exercise of the Supreme Court's supervisory authority.

**ISSUES FOR REVIEW**

- A. FELONY RECKLESS ENDANGERMENT IS NOT A LESSER INCLUDED OFFENSE OF AGGRAVATED ASSAULT.
- B. THE EVIDENCE WAS INSUFFICIENT TO CONVICT THE DEFENDANT BEYOND A REASONABLE DOUBT OF RECKLESS ENDANGERMENT.

## STATEMENT OF THE CASE

On September 22, 1996 the Defendant was arrested by the Roane County Sheriff's department on the offense of aggravated assault on Irvin Taylor. (Vol. I, p. 6). On November 4, 1996, a preliminary hearing was held, and Judge Austin of the Roane County Sessions Court bound the Defendant over to the next term of the Roane County Grand Jury. (Vol. I, p. 6). On June 16, 1997, the Roane County Grand Jury indicted the Defendant on the charges of disorderly conduct, and aggravated assault on Irvin Taylor by pointing a weapon at the said Irvin Taylor and causing him to fear imminent bodily injury, and aggravated assault on Lakisha Taylor by pointing a weapon at the said Lakisha Taylor and causing her to fear imminent bodily injury. (Vol. I, pp. 2-5).

A jury trial was held on March 9, 1999, and the Defendant was found guilty of disorderly conduct in count 1 of the indictment, guilty of assault on Lakisha Taylor in count 2 of the indictment, and reckless endangerment on Irvin Taylor. (Vol. I, p. 10-12).

A sentencing hearing was held on April 21, 1999, and the Defendant was sentenced to 30 days community corrections on count 1, (Vol. I, p. 13); 11 months and 29 days community corrections with 7 days to serve on count 2, (Vol. I, p. 13); and 1 year community corrections on count 3, (Vol. I, p. 15). The Defendant filed his Motion for New Trial on May 14, 1999 (Vol. I, p.16). This was overruled by the Court by Order dated August 18, 1999. (Vol. I p. 19). The Defendant filed his Notice of Appeal on August 25, 1999. (Vol. I, p. 20). The Defendant appeals as a matter of right pursuant to Tennessee Rules of Appellate Procedure 3.

The appeal was dismissed, all relief was denied, and the judgment of the trial

court affirmed, by a majority opinion dated October 13, 2000, with a dissent by J. Tipton.

## STATEMENT OF THE FACTS

At approximately 4:30 p.m. on the afternoon of September 12, 1996, the Defendant and Lakisha Taylor with her friends engaged in a verbal altercation at the home of Lakisha Taylor and her next door neighbor. (Vol. III, pp. 6-8). Ms. Taylor who was 14 at the time, then went inside to wait for her mother to arrive. (Vol. III, p. 6). When her mother arrived they informed her of the altercation, the mother then went outside to confront the Defendant, and engaged in another verbal altercation with the Defendant. (Vol. III, p. 7). Her mother then went to get Ms. Taylor's father who was at work. (Vol. III, p. 7).

Irvin Taylor, Lakisha Taylor's father arrived and confronted the Defendant. They were arguing back and forth when the Defendant pretended to have a gun, and at that point Mr. Taylor picked up a baseball bat and approached the Defendant. (Vol. III, p. 9).

The friend of the Defendant then handed the Defendant a shotgun, and allegedly pointed the shotgun at Lakisha Taylor. (Vol. I, p. 10-11). At that point Lakisha Taylor went next door at the fence, and heard the shotgun fired. (Vol. I, p. 12). She did not see where the shot was aimed, or who fired the shot. (Vol. I, p. 12). Mr. Taylor says that he approached the Defendant with a bat, and when the gun was produced he told the girls to go inside, and he went back toward the house, and did not see the shot fired. (Vol. I, p. 41). Lakisha Taylor says that at that time her father was running inside. (Vol. I, p. 12). Neither Lakisha Taylor, nor her father Irvin Taylor know in what direction the shot was fired or who fired the shot. (Vol. I, pp. 12, 41).

## ARGUMENT

### A. FELONY RECKLESS ENDANGERMENT IS NOT A LESSER INCLUDED OFFENSE OF AGGRAVATED ASSAULT.

As stated above the Defendant was convicted of the offense of felony reckless endangerment as a lesser included offense of aggravated assault. Judge Tipton in his dissent agreed that the proof was sufficient to support the conviction, but that felony reckless endangerment is not a lesser included offense of the indicted offense of aggravated assault saying:

Thus, one may commit the offense of aggravated assault by causing fear of bodily injury while using or displaying a weapon without committing the offense of felony reckless endangerment. Likewise, one may commit the offense of felony reckless endangerment without committing the offense of aggravated assault by causing fear. In other words, neither offense covers the range of conduct or result of the other. This means that neither offense is included in the other. I would vacate the felony reckless endangerment conviction.

Dissent at page 1.

The Defendant was charged with the offense of aggravated assault by “causing Irvin Taylor to reasonably fear imminent bodily injury pursuant to Tenn. Code Ann. §39-13-101(a)(2). The Defendant was convicted of the offense of felony reckless endangerment by recklessly placing another in imminent danger of death or serious bodily injury, pursuant to Tenn. Code Ann. §39-13-103. As stated by Judge Tipton the latter offense occurs whether or not the victim knows of the danger whereas the former requires that the victim be placed in fear whether or not an actual danger is present. Therefore felony reckless endangerment is not a lesser included offense of aggravated

assault. **See, State v. Burns**, 6 S.W.3d 453 (Tenn. 1999).



B. THE EVIDENCE WAS INSUFFICIENT TO CONVICT THE DEFENDANT BEYOND A REASONABLE DOUBT RECKLESS ENDANGERMENT.

As the Court knows appellate Courts are not to reweigh or reevaluate the evidence in determining sufficiency to convict, and they must afford the State every reasonable and legitimate inference from the evidence. State v. Pruett, 788 S.W.2d 559 (Tenn. 1990). Indeed it has been said that:

When an accused challenges the sufficiency of the convicting evidence, this Court must review the record to determine if the proof adduced at the trial is sufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt. T.R.A.P. 13(e). We do not reweigh or re-evaluate the evidence and are required to afford the State the strongest legitimate view of the proof contained in the record as well as all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn.1978).

State v. Creasey, 885 S.W. 2d 829 (Tenn Cr. App. 1994) at p. 831.

Despite this standard a review of the transcript will show that the evidence was insufficient to convict the Defendant beyond a reasonable doubt of disorderly conduct.

Tenn. Code Ann. §39-13-103 governs this case and reads as follows:

**39-13-103. Reckless endangerment.**

(a) A person commits an offense who recklessly engages in conduct which places or may place another person in imminent danger of death or serious bodily injury.

(b) Reckless endangerment is a Class A misdemeanor; however, reckless endangerment committed with a deadly weapon is a Class E felony.

[Acts 1989, ch. 591, § 1.]

The Defendant was convicted in count 3 of reckless endangerment with a deadly weapon. (Vol. I, p. 15). It is hornbook law that the prosecution must present evidence on each element of the offense. **See, State v. Creasey**, cited above.

In the instant case there was a failure to introduce evidence on all the elements of reckless endangerment, and the case must be dismissed. In order to sustain the conviction the State must show, 1) that the Defendant recklessly engaged in conduct which placed or might have placed Irvin Taylor in imminent danger of death or serious bodily injury; and 2) that the Defendant used a deadly weapon. The only evidence adduced at trial which could potentially meet the above standard is the firing of the shotgun.

On these facts, the firing of the shotgun will not support the conviction for reckless endangerment. First, neither Sandra Taylor, Lakisha Taylor, nor Irvin Taylor saw the shotgun being fired. (Vol. III, p. 12, 41, 69). This means that no witness saw the Defendant fire the weapon. If the Defendant were the only person present with the ability to fire the weapon that may be sufficient to prove he fired the weapon, but in this case the Defendant's friend John Russell was also present, and could have fired the weapon. (Vol. III, p. 13). In addition, even if there is a sufficient inference that the Defendant fired the shotgun, there is no evidence that the shotgun was fired in the direction of Irvin Taylor. Indeed Irvin Taylor stated that he did not know if the shot had been fired into the "air or what". (Vol. III, p. 41).

This is not sufficient to convict the Defendant of reckless endangerment.

**CONCLUSION**

For the reasons stated herein the Defendant asks the Court grant permission to appeal to the Tennessee Supreme Court and ultimately to dismiss count 3 of the indictment against him.

Respectfully submitted this \_\_\_\_\_ of \_\_\_\_\_, 2000.

**OFFICE OF THE PUBLIC DEFENDER  
FOR THE NINTH JUDICIAL DISTRICT**

By: \_\_\_\_\_

Walter B. Johnson, II  
P.O. Box 334  
Harriman, Tennessee 37748  
(865) 882-5555

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been forwarded by first class mail, postage pre-paid, State Attorney General, 450 James Robertson Parkway, Nashville, Tennessee 37243-0485 on this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Walter B. Johnson, II