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IN THE CRIMINAL COURT FOR SHELBY COUNTY, TENNESSEE

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GARY BRADFORD CONE,
Petitioner,

M. J. JOHNSON, CLERK

vs.

BY: *[Signature]*

No. P-06874

STATE OF TENNESSEE,
Respondent.

SECOND AMENDED PETITION FOR POST-CONVICTION RELIEF

Comes now Gary Bradford Cone, by undersigned counsel, who and pursuant to T.C.A. §40-30-101 et seq. submits to the court this Second Amended Petition for Post-Conviction Relief. In support of his petition, petitioner shows as follows:

1. Petitioner Gary Bradford Cone is presently incarcerated at the Riverbend Maximum Security Institution, Nashville, Tennessee, Unit VI, known as death row. Petitioner was convicted of two counts of murder in the first degree, receiving a sentence of death on each count, three counts of assault with intent to commit murder first degree, for which he received a term of years, and one count of armed robbery for which he received a life sentence.

2. The indictment numbers are 74702, 74703, 74898, 74899, 74900, 74902.

3. Petitioner received a trial by jury in Shelby County, Tennessee and was sentenced by judgment of the trial court entered April 23, 1982.

4. Petitioner is presently in the custody of the Warden of Tennessee State Penitentiary in Nashville, Tennessee. Said custody

commenced immediately following petitioner's conviction. Petitioner has been in custody continuously since his arrest.

5. A direct appeal was taken to the Tennessee Supreme Court. The Court affirmed the convictions and sentences on January 23, 1984. *State v. Cone*, 665 S.W.2d 87 (Tenn. 1984). Petitioner filed for writ of certiorari to the United States Supreme Court which was denied by the Court on May 21, 1984. *Cone v. Tennessee*, 467 U.S. 1210 (1984).

6. A prior petition for post-conviction relief was filed in this case on June 22, 1984, pro se. Counsel was appointed and filed an amendment to the petition on November 21, 1984. Following an evidentiary hearing on April 28 and 29, 1986, the petition was denied. The denial of the post-conviction petition was appealed to the Tennessee Court of Criminal Appeals which affirmed the trial court's ruling on November 4, 1987. *Cone v. State, Shelby Co. No. 79* (Tenn. Cr. App. 1987). An application for permission to appeal to the Tennessee Supreme Court was filed by petitioner and denied by the Court on March 14, 1988. Petitioner then filed a petition for writ of certiorari in the United States Supreme Court which denied the petition on October 3, 1988. *Cone v. Tennessee*, 488 U.S. 871 (1988).

7. Petitioner filed another petition for post-conviction relief, which this Court denied without a hearing. The Tennessee Court of Criminal Appeals reversed and remanded for a hearing. *Cone v. Tennessee*, No. 48 (Tenn. Cr. App. May 15, 1991). The Tennessee Supreme Court denied permission to appeal. This document

constitutes Petitioner's amended petition in support of post-conviction relief.

8. Petitioner was represented at trial and direct appeal by John C. Dice, then a member of the Memphis Bar. Mr. Dice also represented petitioner in his application for permission to appeal to the United States Supreme Court.

9. Petitioner was represented in his prior post-conviction petition by James D. Kopernak, a member of the Memphis Bar. Mr. Kopernak and another Memphis attorney, Katherine Witherspoon, represented petitioner in the appeal of the denial of his petition to the Court of Criminal Appeals and also in his application for writ of certiorari to the United States Supreme Court.

10. As stated above, petitioner appealed his conviction and sentence of death to the Supreme Court of Tennessee. The grounds asserted by petitioner in his direct appeal are reflected in the Court's opinion, which is published.

11. The Tennessee Supreme Court considered the grounds asserted and ruled that they were without merit or did not constitute reversible error.

12. As stated above, Petitioner filed a petition for post-conviction relief which was denied. Petitioner appealed the denial of his petition to the Tennessee Court of Criminal Appeals. The grounds asserted by petitioner are reflected in the Court's opinion, which is contained in the record of this proceeding. The Tennessee Court of Criminal Appeals considered the grounds raised by Petitioner in his post-conviction petition and ruled that they

were without merit or did not constitute reversible error.

13. Petitioner hereby presents the following grounds which constitute grounds to reverse and/or void the conviction and sentence of death in petitioner's case.

14. Petitioner's conviction and sentence of death were obtained in violation of his rights guaranteed by the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article 1 §§ 7, 8, 9, 10 and 16 of the Constitution of the State of Tennessee. The basis for petitioner's claim that he is currently being restrained in violation of his federal and state constitutional rights under these amendments and sections include but is not limited to the grounds set forth in the following paragraphs.

15. Petitioner respectfully submits to the court that his counsel was ineffective in representation of him at trial, on appeal, and in his prior petition for post-conviction relief, and that such representation deprived petitioner of his rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 9 and 16 of the Constitution of the State of Tennessee. Petitioner avers that his counsel was ineffective for the following non-exhaustive reasons:

- a. Counsel failed to adequately investigate the background and personal and medical history of petitioner for the existence of mitigating evidence and/or to present such mitigating evidence during the penalty phase of trial.
- b. Counsel failed to request and obtain adequate expert and investigative assistance.
- c. Counsel failed to develop a reasonable trial

strategy or defense for petitioner.

- d. Counsel failed to investigate and present all available evidence that would support petitioner's claims of innocence regarding all charges, including, but not limited to, the first degree murder charge.
- e. Counsel failed to properly rebut the State's case at either the guilt/innocence phase or the sentencing phase of trial.
- f. Counsel failed to adequately investigate for witnesses and/or prepare and present them during the penalty phase of trial to demonstrate all aspects of petitioner's character and background that would support a sentence less than death.
- g. Counsel failed to prepare adequately for either the guilt/innocence phase or the penalty phase of trial and to develop and present to the jury a coherent theory of defense at either phase.
- h. Counsel lacked the experience and knowledge necessary for effective representation of petitioner in a death penalty case.
- i. Counsel failed to properly voir dire jurors, including failing to exclude for cause persons who were in favor of the death penalty, failing to question prospective jurors about their views of drug addiction, and failing to question jurors about their views on scientific and expert evidence. Vols. I-VII
- j. Counsel failed to properly voir dire jurors for racial or other bias against petitioner. Vols. I-VII
- k. Counsel failed to exclude jurors whose opinions would lead them to impose the death penalty in every case or those jurors whose views would prevent or substantially impair the performance of their duties as a juror. Vols. I-VII
- l. Counsel failed to challenge for cause those jurors who by their answers showed bias against the petitioner, his case or any group or class to which the petitioner belongs.

- m. Counsel failed to file necessary motions before, during and after trial, on direct appeal or on post-conviction.
- n. Counsel failed to adequately advise petitioner as to the consequences of his failure to testify and/or render advice sufficient to allow petitioner to make an informed and conscious choice not to testify at either the guilt\innocence or penalty phase of trial or any prior post-conviction proceedings.
- o. Counsel failed to consult with petitioner at crucial stages during all prior proceedings.
- p. Counsel failed to object to the prosecutor's improper, inflammatory, prejudicial, inappropriate and misleading or inaccurate statements concerning the law, the evidence, or the petitioner during voir dire, opening, direct examination, cross examination, closing, and rebuttal closing at the guilt phase of petitioner's trial, and during open, direct examination, cross examination, closing and rebuttal closing at the penalty phase of petitioner's trial.
- r. Counsel failed to object to the State's unconstitutionally discriminatory exercise of peremptory challenges to remove blacks, women, young people and other cognizable groups which petitioner was entitled to have as members of his jury under his right to a jury drawn from a fair cross section of the community and his rights to due process and equal protection.
- s. Counsel failed to object to jury instructions at the penalty phase which shifted the burden of proof to petitioner to show the existence of mitigating circumstances.
- t. Counsel failed to object to inaccurate and misleading statements of law and comments by the trial judge.
- u. Counsel failed to object to the jury's consideration of the impact of the crime on the victim, the victim's family, society and/or the victim's social, moral or religious worth.
- v. Counsel failed to object to jury instructions

which limited the jury's individualized consideration of mitigating factors including, but not limited to, sympathy.

- w. Counsel failed to have the court instruct the jury on all lesser included offenses.
- x. Counsel failed to have the court instruct the jury on the effect of their inability to agree on a sentence of death and/or on the meaning of a life sentence or the petitioner's eligibility for any release.
- y. Counsel failed to object to the jury's consideration of unconstitutional statutory aggravating circumstances and non-statutory aggravating circumstances at the penalty phase.
- z. Counsel failed to raise the above ineffective assistance of counsel claims on motion for new trial, appeal or in his prior post-conviction proceeding.
- aa. Counsel conceded robbery and murder in front of the jury.
- ab. Counsel failed to properly investigate the facts of the offense and petitioner's background, and failed to provide such information to defense expert witnesses in order to preclude cross-examination and to strengthen petitioner's defense.
- ac. Counsel permitted the introduction at the guilt phase of prior extraneous acts.
- ad. Counsel opened the door to prosecution questioning concerning prejudicial extraneous acts.
- ae. Counsel failed to properly guide defense expert witnesses concerning the nature of their discussions with petitioner, and did not instruct either petitioner or such experts not to discuss whether petitioner committed the offenses charged, thereby permitting such information to be introduced on cross-examination.
- af. Counsel failed to properly cross-examine the State's expert witnesses.

- ag. Counsel failed to present any evidence at the sentencing phase of the trial.
- ah. Counsel failed to make any argument at the sentencing phase of trial.
- ai. Counsel failed to investigate and present available medical and psychiatric records at both phases of the trial.

16. Petitioner further submits that his counsel was constitutionally ineffective in failing to raise at trial or on appeal or in any earlier proceedings all the claims presented herein which petitioner now is compelled to raise in this petition for post-conviction relief.

17. The jury instructions in this case at the guilt phase violated petitioner's rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9, 10 and 16 of the Tennessee Constitution. These unconstitutional jury instructions include, but are not limited to, the following:

- a. Instructions that sympathy should not be considered.
- b. Definitions of premeditation, malice, reasonable doubt, the presumption of innocence and other terms or phrases which were inaccurate, incomplete, confusing, inadequately defined or tended to mislead the jury.
- c. Instructions which shifted the burden of proof on malice, an element of the crime, to petitioner by presuming malice from a homicide itself and by presuming malice from the use of a deadly weapon, and equating malice with recklessness.
- d. Instructions which limited the jury's opportunity to consider evidence concerning reliability as to a confession.

- e. Instructions which discounted petitioner's defense by informing the jurors that they should not properly consider expert testimony.
- f. Instructions which informed the jurors that intoxication was not a defense to the specific intent offense of felony murder.
- g. Instructions which required proof that, to establish insanity, the petitioner must have been incapable of criminal responsibility, when the instructions should have informed jurors that insanity was proven if he did not (regardless of capacity) as a matter of fact have criminal responsibility.
- h. Instructions which told the jurors that intoxication could only be considered insofar as it caused settled insanity, but which also told the jurors that insanity was an issue to be considered only after a finding of the elements of the offenses, when intoxication was in fact a consideration whether the elements were themselves proven in the first place.
- i. Instructions which informed the jurors that the petitioner was presumed to be sane.
- j. Instructions which informed the jurors about the effect of a verdict of "not guilty by reasons of insanity," which permitted consideration of extraneous, irrelevant, and prejudicial information when reaching a verdict.
- k. Instructions which unconstitutionally equated "reasonable doubt" with "moral certainty" of guilt.
- l. Instructions which permitted the jurors to consider notes taken during trial when rendering their verdict, which permitted consideration of material which was not evidence in the case, and which was irrelevant, prejudicial, and extraneous.
- m. Instructions which informed the jurors about the punishment for the other non-murder offenses, which was prejudicial to their finding petitioner guilty of murder and then

sentencing him to death.

- n. Instructions which informed the jurors that petitioner could be convicted of felony murder without any proof of malice or intent to kill.
- o. Instructions which informed the jurors that deliberation could be formed in an instant.

18. The jury instructions in this case at the penalty phase violated petitioner's rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 16, 8 and 9 of the Tennessee Constitution. These unconstitutional jury instructions include, but are not limited to, the following:

- a. Instructions that shifted the burden to petitioner to show the existence of mitigating circumstances.
- b. Instructions on aggravating circumstances which failed to narrow the class of persons eligible for the death penalty and to provide meaningful detailed guidance to the jury, including definition of heinous, atrocious, or cruel.
- c. Instructions which limited the jury's consideration of mitigating factors including, but not limited to, sympathy.
- d. Instructions that diminished the jury's responsibility for imposing the death penalty.
- e. Instructions on aggravating circumstances, which were vague and overbroad as applied in petitioner's case and which did not adequately channel the jury's discretion and invited arbitrary, capricious and inconsistent application of the death penalty.
- f. Instructions on aggravating circumstances that duplicated an element of the crime itself.
- g. Instructions which allowed application of more than one aggravating circumstance to be based

upon the same set of factors or "double counting" of aggravating circumstances.

- h. Instructions which required the jury to unanimously find mitigating evidence outweighed aggravating evidence before life was the punishment, which precluded full consideration of mitigating evidence.

19. Either before petitioner's trial, during the guilt/innocence phase or penalty phase of his trial, or during post trial or post-conviction proceedings, the Court committed errors that violated petitioner's rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9, 10 and 16 of the Tennessee Constitution. These unconstitutional errors include but are not limited to the following:

- a. The Court denied petitioner's request for adequate funds to obtain expert and investigative assistance.
- b. The Court denied petitioner's pretrial, trial, post trial and post-conviction motions, including but not limited to such as motions: motion to dismiss, motion for mistrial, motion to strike testimony, etc..
- c. The Court failed to instruct the jury on all lesser included offenses.
- d. The Court kept relevant facts from the jury regarding petitioner's sentence.
- e. The Court allowed the jury to consider the impact of the crime on the victim or the victim's family.
- f. The Court denied petitioner an opportunity to rebut the State's case at either the guilt/innocence or penalty phase of the trial.
- g. The Court allowed the jury to consider the non-statutory aggravating circumstances.

- h. The Court allowed the jury to consider the constitutionally invalid prior conviction(s) as aggravating factor(s) under T.C.A. §39-2-203 (i)(2).
- i. The Court allowed the State to systematically exclude cognizable groups of jurors, such as blacks, women, young people from the jury.
- j. The Court failed to allow voir dire of the jury for racial bias or any other bias or prejudice prospective jurors might have.
- k. The Court failed to allow voir dire of the jury concerning misconceptions they might have about parole and other relevant matters concerning sentencing.
- l. The Court improperly excluded jurors based upon their attitudes toward the death penalty, the defendant, the offense, possible defenses, and aggravating and mitigating circumstances.
- m. The Court improperly failed to exclude jurors based upon their attitudes toward the death penalty, the defendant, and aggravating and mitigating circumstances, whose views would prevent or substantially impair the performance of their duties as a juror.
- n. The Court improperly limited defense into the jurors attitudes toward the death penalty, the defendant, the offense, possible defenses, and aggravating and mitigating circumstances.
- o. The Court improperly allowed the prosecutor excessive latitude by permitting inquiry into the jurors attitudes toward the death penalty, the defendant, the offense, possible defenses, and aggravating and mitigating circumstances.
- p. The Court improperly admitted statements of petitioner given during a psychological examination or evaluation.
- q. The Court improperly interpreted the statutory mitigating circumstances and/or the non-statutory mitigating circumstances so as improperly limit the ability of the defense to present mitigation.
- r. The Court interpreted the statutory

aggravating circumstances to allow the introduction of improper evidence.

20. Either before, during or after petitioner's trial, the State violated petitioner's rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution. These unconstitutional violations include, but are not limited to, the following:

- a. T.C.A. §39-2-203 (f) and (g) provides insufficient guidance to the jury concerning who has the burden of proving whether mitigation outweighs aggravation and what standard of proof the jury should use in making that determination.
- b. T.C.A. §39-2-203 does not sufficiently narrow the population of defendants, convicted of first degree murder, who are eligible for a sentence of death.
- c. T.C.A. §39-2-203 does not sufficiently limit the exercise of the jury's discretion because, once the jury finds aggravation, it can impose the sentence of death no matter what mitigation is shown.
- d. T.C.A. §39-2-203 insufficiently limits the exercise of the jury's discretion by mandatorily requiring the jury to impose a sentence of death if it finds the aggravating circumstances to outweigh the mitigating circumstances.
- e. T.C.A. §39-2-203 allows the jury to accord too little weight to non-statutory mitigating factors and limits the jury's options to impose the sentence of life.
- f. T.C.A. §39-2-203 does not require the jury to make the ultimate determination that death is the appropriate punishment.
- g. T.C.A. §39-2-203 does not inform the jury of its ability to impose a life sentence out of mercy.

- h. T.C.A. §39-2-203 provides no requirement that the jury make findings of fact as to the presence or absence of mitigating circumstances, thereby preventing effective review on appeal under T.C.A. §39-2-205 (c).
- i. The imposition of the sentence of death pursuant to T.C.A. §39-2-203 is cruel and unusual punishment.
- j. The imposition of the sentence of death pursuant to T.C.A. §39-2-203 by electrocution is cruel and unusual punishment.
- k. The imposition of the sentence of death pursuant to T.C.A. §39-2-203 has been imposed in Tennessee on the basis of race, sex, geographic region in the state, economic and political status of the defendant.
- l. The proportionality and arbitrariness review conducted by the Tennessee Supreme Court pursuant to T.C.A. §39-2-205 is inadequate and deficient, in part because the Court did not consider all mitigating evidence presented at trial.
- m. T.C.A. §39-2-203(c), permits the introduction of relatively unreliable evidence in the State's proof of aggravation or rebuttal of mitigation.
- n. T.C.A. §39-2-203(d) allows the State to make final closing arguments to the jury in the penalty phase.
- o. T.C.A. §39-2-203(h) prohibited the jury from being informed of the consequences of its failure to reach a unanimous verdict in the penalty phase.

21. The State violated petitioner's rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution by joining in one trial and not serving the non-capital and murder indictments, thereby permitting the jury to render verdicts on all counts and to impose a life sentence on the

robbery count before sentencing the petitioner on the murder counts, thereby effectively precluding a life sentence for petitioner. e.g., *State v. Leonard Smith*, ___ S.W.2d ___ (Tenn. Mar. 29, 1993)

22. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution by not permitting individual voir dire in this case.

23. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution by permitting Juror Strawn to remark in front of the jury that if sentenced to a life sentence, the petitioner would be released early, thereby irreparably prejudicing the jury.

24. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution by permitting the identification of petitioner through suggestive photo line-ups, which were unduly suggestive.

25. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution by permitting the suggestive identification of petitioner in the courtroom.

26. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States

Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution because the jurors relied upon the consideration of wanting to bring back a sentencing verdict before the end of the day on Friday evening.

27. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution by illegally searching the petitioner's auto and removing items from it, without a warrant and without exigent circumstances.

28. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution by permitting the jury to view prejudicial photographs and to be informed about the smell in the victim's residence.

29. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution by permitting the State to introduce expert testimony against petitioner from Drs. Hutson and Burtsen who did not properly inform petitioner about his right to remain silent, that anything he told them would be used against him, and that he could have counsel present, but then used petitioner's statements against him at trial.

30. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States

Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution by permitting the testimony of Officer Flynn, who spoke with petitioner, without the State presenting competent proof that he provided petitioner proper Miranda warnings, and that petitioner waived his rights after petitioner had been arrested and/or indicted in Florida, and by permitting Officer Flynn to testify that petitioner was sane at the time of the offense, when he had no basis for such knowledge whether as a lay witness or an expert witness.

31. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution by convicting petitioner when the State did not prove beyond a reasonable doubt his guilt of first-degree murder, and did not exclude every hypothesis except the petitioner's guilt.

32. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution by permitting the consideration of non-statutory aggravating evidence at sentencing.

33. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution because the State relied on invalid prior convictions and sentenced petitioner to death without proof beyond a reasonable doubt that the offenses of convictions were committed for the

purpose of avoiding lawful arrest.

34. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution when the State unconstitutionally argued that petitioner had not presented evidence in his defense, including evidence from petitioner's sister, and evidence from other medical or other doctors.

35. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution by failing to provide petitioner material exculpatory evidence including evidence concerning absence of forced entry which negated burglary, concerning contradictory statements made by eyewitnesses, and any and all information concerning State witness Ilene Blankman which demonstrated that she received consideration for her testimony and/or testified falsely concerning facts relating to petitioner and his drug use.

36. The State violated petitioner's rights under Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7, 8, 9 and 16 of the Tennessee Constitution by presenting unconstitutional, inflammatory, and prejudicial argument at the guilt phase, in which the State referred to petitioner as an animal, attacked defense counsel, ridiculed petitioner's indigence, inflamed the jury with prejudicial photographs, commented on petitioner's failure to

present defense evidence, called petitioner a drug seller, argued facts not in evidence, derogated the death of petitioner's fiancée, and made derogatory remarks about the petitioner.

37. The above and foregoing constitute grounds to avoid imposition of the death penalty in petitioner's case.

38. The above and foregoing constitute grounds to avoid the convictions in petitioner's case.

39. The above claims were not raised previously either due to the law regarding the claim not being established at the time, ineffective assistance of counsel, the novelty of the claim, or counsel's failure to apprise petitioner of the claim or its relevance to his case. Because of this, the petitioner himself has never had an opportunity before now to either raise these claims or waive them. Neither petitioner nor any person previously appointed to represent petitioner has knowingly and understandingly failed to raise any and all such claims earlier.

40. Petitioner is without funds to hire counsel or any support personnel and shall be allowed to continue proceed *in forma pauperis*.

WHEREFORE, petitioner prays:

1. That he be allowed to proceed *in forma pauperis*.
2. That appointed counsel be given sufficient time to investigate petitioner's case and prepare an appropriate amended pleading setting forth such grounds as counsel deems proper and to supplement the grounds claimed herein, if necessary.
3. That petitioner be provided sufficient funding for expert,

investigative, mental health and other appropriate assistance.

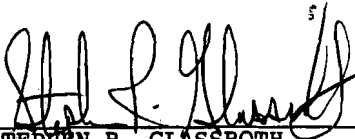
4. That the Court hold an evidentiary hearing on the above matters.

5. That the Court grant petitioner the relief sought herein.

Respectfully submitted,



KEMPER B. DURAND



STEPHEN R. GLASSROTH

Attorneys for Petitioner

OF COUNSEL:

THOMASON, HENDRIX, HARVEY,
JOHNSON & MITCHELL
29th Floor, One Commerce Square
Memphis, Tennessee 38103
(901) 525-8721

GLASSROTH & ASSOCIATES, P.C.
615 South McDonough Street
Post Office Box 910
Montgomery, Alabama 36101-0910
(205) 263-9900

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Petitioner for Post-Conviction Relief upon the Office of the District Attorney General, 30th Judicial District, 201 Popular Avenue, Suite 301, Memphis, Tennessee, 38102, by ~~placing same in~~ ^{hand-delivery} ~~the United States mail, postage prepaid and properly addressed~~ this the 3rd day of August, 1993.

Henry B. Duval
OF COUNSEL