

Tennessee Judicial Nominating Commission
Application for Nomination to Judicial Office

Rev. 26 November 2012

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INTRODUCTION

Tennessee Code Annotated section 17-4-101 charges the Judicial Nominating Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission'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 Commission 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 <http://www.tncourts.gov>). The Commission 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 word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit the completed form to the Administrative Office of the Courts in paper format (with ink signature) **and** electronic format (either as an image or a word processing file and with electronic or scanned signature). Please submit fourteen (14) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to debra.hayes@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 an Assistant District Attorney in the 6th Judicial District.

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 2001. My BPR number is 21208.

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.

I am licensed only in Tennessee.

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).

I have never been denied admission, suspended, or placed on inactive status.

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).

Assistant District Attorney 6th Judicial District 2006-Present

Counsel to The Commissioner of Safety 2005-2006

Assistant District Attorney 6th Judicial District 2002-2005

Legislative Counsel Tennessee General Assembly 2002

Law Clerk Gulley and Oldham Law offices 2001

Law Clerk Beth Brooks Attorney at Law 1999-2000

From 1993-1999 during the Summer months I was employed by the Mid Cumberland Human Resource agency as a county supervisor of the Summer Youth Educational Training Program. I was responsible for supervising approximately 60 teenagers between 15 and 18 years old who worked for local non-profit agencies during the summertime.

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.

100 % Criminal Prosecution.

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 Commission 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 Commission. Please provide detailed information that will allow the Commission 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. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

In my time as an Assistant District Attorney I have worked in all Criminal Courts in the 6th

Judicial District. In that time I have prosecuted everything from homicides to public order crimes. At various times I have been assigned to prosecute felony drug cases, violators of the sex offender registry act, and for a period from 2008 until 2009 I was on the Governor's Highway Safety task force as a grant prosecutor prosecuting only Intoxicated Drivers, Vehicular Homicides and Vehicular Assaults. I also have spent a great amount of time involved in the prosecution of the "Top 10" property offenders in the jurisdiction. This is a list of prolific burglars and thieves who are of interest to local law enforcement. Aside from those responsibilities I have always carried a normal trial docket.

The experience I have garnered in this time includes many jury and bench trials, as well as numerous revocation of probation hearings, post conviction relief hearings, and motion hearings on various suppression issues and motions for new trial.

I also drafted all motions, responses, answers, and did the requisite research that goes along with the above mentioned courtroom work. Some of which are discussed below in Question 9.

I have worked in the Grand Jury putting before the members indictments, presentments, and accompanying evidence so the jurors can determine whether or not to true issue a true bill so that a prosecution may commence. This also involves preparing those files to be ready for trial if the Grand Jurors issue a true bill on the matter.

I have likewise worked in all the Sessions Courts in the 6th Judicial District. In that capacity I have served as the supervisor of the first sessions court and Prosecuted all level of Felony and Misdemeanor offenses from the issuance of the warrant through the final stages.

Currently approximately 75% of my time is spent on courtroom work such as hearings, revocations proceedings and document preparation. 10% researching and writing on pending topics of law I am dealing with, and 10% assisting officers on issues of the law or search/evidence issues, and 5% reviewing officer and citizen issued warrants.

During my employment with the Department of Safety my duties included representing the Department at contested civil service hearings, drafting department rules and regulations, and sitting as a judicial officer on cases that were to be heard or appealed to the Commissioner. This position allowed me to preside over cases as a hearing officer. I also acted as the departmental representative on contested civil service matters including appearances before the Civil Service commission. At various times I was called upon to do trials before an administrative law judge concerning forfeiture of property. In matters concerning civil service disciplinary hearings governed by the Uniform Administrative Procedures Act I represented the Department. During these hearings I sought enforcement of any disciplinary action recommended by the Commissioner or the Colonel of Highway Patrol. After the hearing, recommendations would be made, to either the Commissioner or the Colonel, depending on whether a civilian or uniformed employee was the subject of the hearing, concerning any suggested modification of the recommended discipline or the best step for the Department to take should a case be appealed to the Civil Service Commission. When a case was appealed to the Civil Service Commission I handled the hearing process. I also was responsible for drafting and filing departmental rules with the Secretary of State and if a proposed rule was challenged I would represent the

Department in the rule making hearing in compliance with Uniform Administrative Procedures Act.

The first position I held after becoming a licensed attorney was as a Legislative Attorney in the General Assembly. This required sitting in committee meetings and legislative sessions. My primary duties were twofold. First was to answer any questions concerning the law a legislator may have and second to draft or revise pending legislation which was being discussed or voted upon. Once a bill was passed in both the Senate and the House I would ensure the engrossing clerk had the correct copies and that the new law was correct to be codified.

I would finally like to note that a great deal of my time in each legal position I have held has involved researching topics of law and writing either responses or memorandum concerning the research I have done. This has been true as an Assistant District Attorney, Staff Counsel, and Legislative Counsel.

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

In the trials and court proceedings I have handled, some in particular stand out in my memory. The first being *State of Tennessee vs. Huddleston* a case involving the first-degree murder of a family man at the hands of his brother in the victim's house.

There had been no past problems between the two, in fact the victim had recently started a business and was putting his brother to work. The defendant was living with the victim, his pregnant wife, and two young children. Everything went awry one night when the defendant shot his brother 18 times at point blank range as he lay sleeping by his wife, the couples children were sleeping in the bed with them. There was no clear motive, no indications of adultery, but no questions about the facts as the wife awoke and witnessed the entire occurrence. The wife in her pregnant and shocked state had barricaded her two children in a room next door and wrestled the defendant out of the house and called 911. The defense intended to present a defense revolving around the defendant's use of anti depressants and their combination with the defendant's alcoholism causing him to blackout during the occurrence. I had prepped the family that it would likely be a long trial and the crime scene photos, 911 calls, autopsy pictures, and other items from that night would be part of the State's proof.

It was a case I was prepared to proceed on, except for the family. Through all this the family had remained close together and they came forward to me with their concerns that a trial and recounting the experience in court would damage that relationship. This was a time I stepped back listened to the concerns of my surviving victims met with the defense lawyer as we were about to begin jury selection and brokered a deal for 35 years on 2nd degree murder. The court proceedings were very emotional for all sides and it was not easily done but I realized I was

doing the right thing. This is something I try to do daily in my role, listen to all sides, apply the law to the facts at hand, and do the just thing when called upon.

Rigger vs. State of Tennessee involved a local law professor and the public defender filing a Post Conviction Relief case on behalf of a pro se defendant who had plead in sessions court through another district attorney to a charge of Unlawful Possession of a Weapon and Evading Arrest. The defendant had subsequently had his parole revoked and a federal firearms possession case filed against him. The defendant's plea to the state charges did not prompt either the Federal firearms charge or the revocation of his parole, but it is a case that counsel felt that his plea charges had motivated the U.S. Attorney to seek concurrent prosecution on the weapon possession. It is a case we heatedly argued for several days in front of the presiding post conviction judge.

During the course of our hearing it became apparent the petitioner was attempting to attack the entire method used to accept pleas in Knox County Sessions Courts and the ruling on his Post Conviction petition would have far reaching implications on the local court system. In the end the judge ruled the defendant had adequate knowledge of his constitutional rights therefore making his plea free, knowing, and voluntary. The court also found nothing inherently flawed in the sessions judge going over rights en masse. Though the court did find that in petitioner's case his ability to understand the proceedings to be suspect because of the large amount of cases in the court the day he entered his plea.

Petitioner appealed to the Court of Criminal Appeals with that body affirming the ruling. A copy of my Answer to Petition for Post Conviction Relief and the accompanying Memorandum of Law in Support of the Answer for Post Conviction Relief is attached to this application as one of my writing samples.

State of Tennessee vs. Jackson. This case involved a series of thefts from the Tennessee Valley Authority through use of company gas cards. The cards were used throughout the State. This presented some venue issues that the trial court considered in a motion to dismiss the presentment filed by defendant in the matter. Following suppression hearings on the matter the court entered an order denying the defendant's motion. The defense attorney sought an interlocutory appeal, which was subsequently granted by ruling of the trial court. This is a case that I personally filed an Answer to the Rule 9 Application with the Court of Criminal Appeals along with the Answer filed by the State Attorney General's office. The Court denied the application. A copy of my Answer is also included in my writing samples.

State of Tennessee vs. Qualls. The trial judge granted bond on a probation violation prior to the revocation proceeding, I filed the attached response prior to the bond being set. Following the revocation hearing the presiding judge ordered the defendant to TDOC for the balance of his sentence.

State of Tennessee vs. Hill. A case that I tried and my witnesses were accused, by defense counsel, of violating the Rule of Sequestration during the course of my case in chief. This lead to a bench trial within a jury trial as the judge tried to straighten the accusations out. The case proceeded and the defendant was convicted and sentenced to 16 years in TDOC. The case was

appealed to the Court of Criminal Appeals who upheld the conviction and sentence.

There have been numerous other cases that I have been involved with and conducted trials/hearings for the State of Tennessee or the Department of Safety, but the above mentioned had implications of varying degrees that made them notable.

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.

During my employment with the Tennessee Department of Safety I served as the Commissioner's Representative on cases that by statute or rule were to be heard by the Commissioner. In this capacity I served as a judicial officer on various contested issues. The main two areas were the administrative revocations of driver's licenses and handgun carry permits. The Uniform Administrative Procedures Act and the Tennessee Rules of Civil Procedure governed any case I heard. At the conclusion of such hearings an order stating any findings of and fact and recommendation for any action would be submitted to the Commissioner for approval and signature. If the decision was unfavorable to the applicant the rights of appeal to Chancery Court would be explained and an order entered.

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.

Not Applicable.

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

I have had the pleasure of working in conjunction with many agencies and legal departments in my career as an attorney. While I have been in Knoxville, I have had occasion to work with both the City of Knoxville Law Department and the County Law Director's office. I have had the pleasure to assist the City of Knoxville in some demonstration planning and brief the local law enforcement concerning application of state law and local ordinance application to situations that may arise in the field. During this time I was asked by the city to draft a guide covering the

criminal code sections that are regularly associated with acts of civil disobedience, this is a document still used by the city in training materials and demonstration preparedness.

13. List all prior occasions on which you have submitted an application for judgeship to the Judicial Nominating Commission 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.

Not Applicable.

EDUCATION

14. List each college, law school, and other graduate school which 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.

Western Kentucky University 1991 – 1993, Transferred schools.

University of Tennessee Knoxville 1993 - 1996, Degree Received in Political Science.

University of Memphis Cecil C. Humphreys College of Law 1997-2000, Juris Doctorate received.

PERSONAL INFORMATION

15. State your age and date of birth.

I am 40 years old. I was born March 9th 1973.

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

21 years.

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

7 years.

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

I am registered to vote in Knox County.

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 are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

I have never violated any law, regulation, or ordinance.

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.

I am under no investigation.

22. If you have been disciplined or cited for breach of ethics or unprofessional conduct by any court, administrative agency, bar association, disciplinary committee, or other professional group, give details.

I have never been disciplined or cited for unethical conduct.

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.

No.

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 which you have held in such organizations.

First Baptist Church Knoxville

FBI Citizens Academy Alumni Association

Knox County Republican Party / Precinct Chairman I currently hold this position.

Knoxville Young Professionals

Andy Griffith Rerun Watchers Club Mayberry Chapter

National Rifle Association

27. Have you ever belonged to any organization, association, club or society which 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 which you have held in such groups. List memberships and responsibilities on any committee of professional associations which you consider significant.

Knoxville Bar Association

Knoxville Barristers

Tennessee District Attorney's Association

National College of District Attorney's College Alumnus

Tennessee Bar Association

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

City View Magazine Top Attorneys/Prosecution 2010

City View Magazine Top Attorneys/Prosecution 2011

City View Magazine Top Attorneys/Prosecution 2012

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

Not Applicable.

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.

Trial Practice University of Tennessee College of Law (substitute).

Knoxville Police Department Civil Disorder Crimes

Tennessee Highway Patrol Search and Seizure

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.

I have not been a candidate for public office.

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

I have never been a registered lobbyist.

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

I have included a Post Conviction Answer from Rigger vs. State of Tennessee and the accompanying memorandum of law and an Answer to Rule 9 Application in State of Tennessee vs. Jackson. These were written and researched by me.

ESSAYS/PERSONAL STATEMENTS

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

I have always sought to apply the law to the facts of every case I have handled. I have never considered it my job to convict every defendant I deal with and send them to prison. If the facts and the circumstances dictate that is what should be done then that is what I pursue, if circumstances dictate leniency on occasion I am comfortable with that as well. I am confident in stating you could ask any lawyer I have dealt with and they will say they have noticed that in their dealings with me. A position on the Court of Criminal Appeals is similar. Though they do not have the witnesses or the juries in their court, they have the law. The court of criminal appeals has a history of giving great deference to the proceedings that came before they receive a case. The work of the trial judge, the prosecutor, the defense lawyer, and the jurors are all of great relevance when they review a record on appeal or hear an oral argument. If the law dictates a right has been abridged then a remedy should be afforded. Applying the law to the facts at bar is something I carry out on a daily basis and as such, feel I am well suited for this position.

36. State any achievements or activities in which you have been involved which 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)*

During my time as an Assistant District Attorney I have volunteered time to both Veteran's Stand Down and Project Homeless Connect. Each of these programs provides legal assistance to either veteran's or area homeless who have cases pending in the criminal courts of Knox County. During these programs individuals selected to participate can have their cases evaluated by a district attorney, a public defender, and a judge who also volunteer their time. After this evaluation an agreement is often made as to court costs or fines being relieved or modified so those who have other wise done well on their probationary period are not subject to violation of their probation strictly due to financial matters.

I also deal with many private citizens/victims who wish to swear out private warrants for violations of the criminal laws against them.

Prior to becoming a prosecutor I volunteered during law days presentations that focused on providing basic legal knowledge to lower income individuals. These presentations revolved around basic topics such as living wills or estate planning. I drafted several documents for individuals involved in these seminars. It has been my experience through my participation in the above activities many people do not realize they all have equal access to the courts and the legal system. This lack of understanding is often overcome with some simple conversation and putting individuals on the right path to resolve their issues.

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 a seat on the Tennessee Court of Criminal Appeals. The geographic area of the Court is statewide and hears all criminal appeals of right and appeals by permission concerning misdemeanor and felony cases from the trial courts. The Court also considers appeals concerning petitions for post conviction relief, habeas corpus, and extradition matters. The Court consists of twelve members, four from each of the three grand divisions of the State. Panels of three judges sitting in Knoxville, Nashville, and Jackson hear cases on a monthly basis.

This is a position that does not write the laws it deals with. Judges on the Criminal Court of Appeals are to take the laws as written and apply the legal and constitutional protections we are all assured of to issues before them. This is something I am suited to carry out from first day on the bench forward.

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)*

I was involved in the Governor's Meth is Death campaign where I spoke to local school children

on the dangers of Methamphetamine and what to do if they witnessed suspicious activity.

As discussed in question 36 I have been involved in the local Project Homeless Connect and Veterans Stand Down. These two programs do not just involve the legal aspects of helping these individuals. Medical services, dental, job opportunities, and housing specialists are also made available to assist those who seek such opportunities.

I have volunteered with the local March of Dimes March for babies and preparing the venues for some of the fundraisers they have held to benefit their cause. I have volunteered time to mock trial competitions for law, college, and high school students, as well as providing any guidance to any of the students who may need some assistance in how to pursue an issue in their cases or how to best examine witnesses or make use of evidence. I will continue to volunteer my time in my community as a judge within the bounds of the Rules of Judicial Conduct.

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

I have been lucky in that I was brought up by a good family and learned good values at an early age. It was always stressed to me, by my parents and grandparents, that hard work pays off in the end and this has proven true time and again throughout my life. They further taught me the importance of the golden rule and the value of having and using common sense. I have often felt that these three principles could have gotten me through life without the benefit of my education and legal degree. These are things that I have applied in my personal and professional life and have without fail helped me progress in my career.

Without question a solid legal education is something every good judge possesses, and it is something that I have as well, however, without question, though, in my experiences practicing in front of many different judges throughout my legal career what separates the good jurists from the best are the three principles that were instilled in me as I grew and that I have strove to employ all my life, hard work, treat all as you want to be treated, and approach the issues not only with what is in the legal books, but also with a liberal application of common sense.

These are principles that I will apply to my work as a Judge on the Criminal Court of Appeals.

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 will. Recently I handled a case concerning Tennessee Code Annotated 39-13-607 Observation Without Consent. A component of that law requires the victim of the offense be in area where there is a reasonable expectation of privacy. Without discussing any further facts, that one component was lacking and after informing the aggrieved party and explaining the situation to

the judge I had no choice but to dismiss the case.

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 Commission or someone on its behalf may contact these persons regarding your application.

A. Gregory P. Isaacs

Attorney at Law, The Isaacs Law Firm

618 S. Gay St., Suite 300 Knoxville, TN 37902 (865)673-4953

B. Christopher Coffey

Attorney at Law, Pryor, Flynn, Priest, and Harber

625 Gay Street, Suite 600 Knoxville, TN 37902 (865)522-4191

C. Richard L. Bean

Superintendent, Richard Bean Juvenile Justice Center

3321 Division St., Knoxville, TN 37919 (865)215-6500

D. Gary Rizzo

Special Agent Knoxville Federal Bureau of Investigation

1501 Dowell Springs Blvd., Knoxville, TN 37909 (865)544-0751

E. Randall E. Nichols

District Attorney General

400 W. Main, Suite 168, Knoxville, TN 37902 (865)215-2515

AFFIRMATION CONCERNING APPLICATION

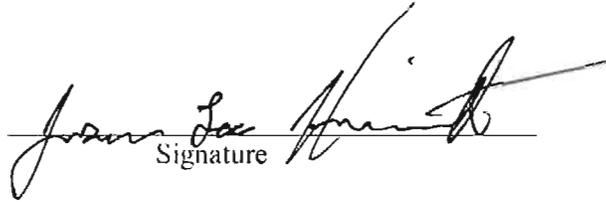
Read, and if you agree to the provisions, sign the following:

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, 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 Commission 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 Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the Governor for the judicial vacancy in question.

Dated: June 10, 2013.


Signature

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



TENNESSEE JUDICIAL NOMINATING COMMISSION

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 which 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 Tennessee Judicial Nominating Commission to request and receive any such information and distribute it to the membership of the Judicial Nominating Commission and to the office of the Governor.

Jason Lee Hunnicutt

Type or Printed Name

Signature

Date

21208

BPR #

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

IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE
DIVISION III

PATRICK JOSEPH RIGGER)	
Petitioner)	
)	
v.)	No. 90084
)	
STATE OF TENNESSEE)	
Respondent)	

ANSWER TO PETITION FOR POST CONVICTION RELIEF

Comes now the State of Tennessee, by and through the District Attorney General for the Sixth Judicial District, and does hereby respond to the Petitioner's Petition for Post Conviction Relief and denies each cause for relief set forth by defendant in said petition for reasons as follows:

1. On September 16, 2007, warrants were issued charging Patrick Joseph Rigger with the offense of failure to provide evidence of compliance with financial responsibility law (warrant number @807560); evading arrest (warrant number @807561); unlawful possession/carrying of a weapon (warrant number @807562); and, roadway lane violation (warrant number @807563).

2. On October 8, 2007, petitioner was taken to the Misdemeanor Division of the Knox County General Sessions Court. While in court, the petitioner was advised of his constitutional rights by the General Sessions Court Judge. The petitioner was advised by the judge of his right to appointed counsel, the right to a preliminary hearing, the right to take the case to the Grand Jury, the right to a jury trial, the right to confront witnesses and have an attorney question those witnesses. The judge advised the petitioner that he could compel witnesses to testify on his behalf, that he had the right not to testify against

himself, and that the choice not to testify could not be held against him. The judge advised the petitioner that if convicted, he had the right to appeal that conviction with the assistance of an appointed attorney. The judge went on to point out that a conviction can be used to enhance subsequent criminal convictions. While petitioner points out that the judge spoke to a large group of people when going over these rights, the Tennessee Supreme Court has held that group plea hearings “do not constitute per se violations of Boykin, Neal, and Rule 11 of the Tennessee Rules of Criminal Procedure.” Howell v. State, 185 S.W.3d 319 (Tenn. 2006).

3. After being advised of his rights by the judge, petitioner spoke to an assistant district attorney general. After being advised of his right to appointed counsel, petitioner decided to take the plea agreement offered.

4. In order to enter his plea with the court and in addition to the verbal recitation of rights, petitioner signed a number of documents indicating that he voluntarily, knowingly, and understandingly waived his rights and intended to enter a guilty plea. On warrant number @ 807561, petitioner signed two waivers. The first waived his right to an attorney. The second waived his right to Grand Jury indictment and jury trial. Petitioner signed the same two waivers on warrant number @807562. In addition to these waivers, petitioner signed a “Rights Waiver Form.” This document spells out all the rights petitioner waived by entering a plea agreement. In addition to the explanation of rights, the form states, “I understand I am pleading guilty to the charge of Weapons Poss. & Evading I understand all of the rights set forth above. I further understand that by pleading guilty, I voluntarily waive all of the above rights.” The form was signed by petitioner, Patrick Rigger, and submitted to the court.

5. After the petitioner signed these waivers, the petitioner was taken before the judge and asked individually if he understood the rights as explained by the judge. Petitioner responded in the affirmative. The judge described the offenses and the possible sentences for each offense. At the end of the colloquy, petitioner pled guilty.

6. The assistant district attorney general (ADA) who handled this case met all ethical and professional obligations as required by the Tennessee Rules of Professional Conduct and in no way violated the petitioner's constitutional rights. The ADA and the judge both advised the petitioner of his right to appointed counsel and the procedure for obtaining counsel, and they gave the petitioner a reasonable opportunity to obtain counsel as required by Rule 3.8 (b) of the Rules of Professional Conduct. The ADA could not ethically discuss potential defenses with petitioner as raised in Paragraph 5 of the Petition or advise petitioner of a course of action to take other than to obtain counsel, which petitioner waived. See RPC 4.2.

7. The General Sessions Court Judge ensured that petitioner made a knowing, intelligent, and voluntary waiver of his constitutional rights when the judge accepted petitioner's plea agreement. According to the United States Supreme Court in Boykin v. Alabama, defendants must waive certain constitutional rights in order for their decision to plead guilty to be considered knowing and voluntary. 395 U.S. 238, 243 (1969). A defendant must waive their right to a jury trial, the right to confront witnesses, and the right against self-incrimination. Id. These rights cannot be validly waived without an intentional relinquishment, which cannot be presumed from a silent record. Id. To ensure guilty pleas are entered "knowingly and intelligently," Boykin instructs the

trial court to discuss with the accused the consequences of the decision. Boykin, 395 U.S. at 244.

The General Sessions Court Judge met the requirements of Boykin. The record is not silent. The court verbally advised petitioner of his constitutional rights including the right to jury trial, the right to confront witnesses, the right against self-incrimination, and the right to counsel. At the plea colloquy, petitioner told the court he understood all of these rights. In addition to this verbal acknowledgement that he was entering the plea voluntarily and understandingly, petitioner signed five places on three separate documents indicating that he waived his rights and voluntarily and understandingly did so. The constitutional requirements of Boykin were met six separate times, one verbal and five written waivers.

8. Should this Court find that despite the six waivers made by petitioner, he involuntarily and without understanding waived his constitutional rights, the burden then shifts to the State to prove a constitutional plea. Johnson v. State, 834 S.W.2d 922, 925 (Tenn.1992). However, the failure does not, in and of itself, entitle the defendant to relief. Id. The State may prove by clear and convincing evidence either substantial compliance with the advice requirement, by showing the defendant was made aware of his constitutional rights, or that the defendant independently knew of his constitutional rights, rendering the trial court's omission harmless. Id.

The standard for determining substantial compliance or harmless error necessarily requires inquiry into circumstantial factors surrounding the plea. Blankenship v. State, 858 S.W.2d 897, 904 (Tenn.1993). The relative intelligence of the defendant, the degree of his familiarity with criminal proceedings, the opportunity to confer with competent

counsel regarding plea options, the extent of advice from counsel and the trial court regarding the charges faced, and the desire to avoid a greater punishment resulting from a jury trial are all relevant factors a trial court can use to find a “knowing” and “intelligent” plea. Blankenship, 858 S.W.2d at 904 (citing Caudill v. Jago, 747 F.2d 1046, 1052 (6th Cir.1984)).

The circumstantial factors surrounding this case show that petitioner voluntarily and understandingly entered into a plea agreement. In addition to the verbal and written waivers discussed above, petitioner was familiar with criminal proceedings having pled guilty to a number of offenses including felonies. Petitioner was given an opportunity to confer with counsel having been advised of his right to counsel by both the judge and the ADA. Petitioner was advised by the trial court regarding the charges he faced. Finally, petitioner desired to avoid greater punishment resulting from a jury trial. Petitioner chose to plead guilty in order to get out of jail. Petitioner knowingly and understandingly waived his constitutional rights, and he did so voluntarily.

9. Petitioner’s constitutional rights were never violated. He knowingly, voluntarily, and understandingly waived those rights in order to get a plea agreement. Voluntarily and understandingly entering into a plea agreement is not a violation of petitioner’s constitutional rights. The constitutional requirements set out by the United States Supreme Court and the Tennessee Supreme Court were met.

10. True and exact copies of warrant number @807561, warrant number @807562, the Rights Waiver Form signed by petitioner, and the transcript of the plea colloquy are attached hereunto.

WHEREFORE, the State of Tennessee requests that this Court deny petitioner's
Petition for Post Conviction Relief.

RESPECTFULLY SUBMITTED,

RANDALL E. NICHOLS
DISTRICT ATTORNEY GENERAL

BY: _____
JASON LEE HUNNICUTT
ASSISTANT DISTRICT ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Response to Petition for Post
Conviction Relief has been served upon Mark Stephens District Public Defender and
Jerry Black, Attorneys for Petitioner, this the ____ day of _____, 2009.

JASON LEE HUNNICUTT
ASSISTANT DISTRICT ATTORNEY

IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE
DIVISION III

PATRICK JOSEPH RIGGER)	
Petitioner)	
)	
v.)	No. 90084
)	
STATE OF TENNESSEE)	
Respondent)	

MEMORANDUM OF LAW IN SUPPORT OF ANSWER TO PETITION FOR
POST CONVICTION RELIEF

Comes now the State of Tennessee, by and through the District Attorney General for the Sixth Judicial District, and does hereby submit this Memorandum of Law in Support of the State’s Answer to the Post Conviction Petition. For the reasons listed below, the Post Conviction Petition should be denied.

I. Procedural History

On September 16, 2007, petitioner was stopped by Knoxville Police Department Officer Norman Rickman for a roadway lane violation. In the back seat of the vehicle registered to petitioner and in plain view, Ofc. Rickman spotted a sawed-off .22 caliber Glen Field rifle. Petitioner fled the scene on foot and eluded police. Warrants were issued charging petitioner with the offenses of failure to provide evidence of compliance with financial responsibility law (warrant number @807560), evading arrest (warrant number @807561), unlawful possession/carrying of a weapon (warrant number @807562), and roadway lane violation (warrant number @807563). Petitioner was arrested on these outstanding warrants on October 5, 2007.

On October 8, 2007, the following Monday, petitioner was taken to the Misdemeanor Division of the Knox County General Sessions Court. While in court, the petitioner was advised of his constitutional rights by the General Sessions Court Judge. The petitioner was advised by the judge of his right to appointed counsel, the right to a preliminary hearing, the right to take the case to the Grand Jury, the right to a jury trial, the right to confront witnesses and have an attorney question those witnesses. The judge advised the petitioner that he could compel witnesses to testify on his behalf, that he had the right not to testify against himself, and that the choice not to testify could not be held against him. The judge advised the petitioner that if convicted, he had the right to appeal that conviction with the assistance of an appointed attorney. The judge went on to point out that a conviction can be used to enhance subsequent criminal convictions. Petitioner admits he was present in the courtroom when the judge went over these rights and that he heard the judge announce these rights.

After being advised of his rights by the judge, petitioner “flagged down” an assistant district attorney general. After being advised of his right to appointed counsel, petitioner decided to take the plea agreement offered.

In order to enter his plea with the court and in addition to the verbal recitation of rights, petitioner signed a number of documents indicating that he voluntarily, knowingly, and understandingly waived his rights and intended to enter a guilty plea. On warrant number @ 807561, petitioner signed two waivers. The first waived his right to an attorney. The second waived his right to Grand Jury indictment and jury trial. Petitioner signed the same two waivers on warrant number @807562. In addition to these waivers, petitioner signed a “Rights Waiver Form.” This document spells out all the rights

petitioner waived by entering a plea agreement. In addition to the explanation of rights, the form states, "I understand I am pleading guilty to the charge of Weapons Poss. & Evading I understand all of the rights set forth above. I further understand that by pleading guilty, I voluntarily waive all of the above rights." The form was signed by petitioner, Patrick Rigger, and submitted to the court.

After the petitioner signed these waivers, the petitioner was taken before the judge and asked individually if he understood the rights as explained by the judge. Petitioner responded in the affirmative. The judge described the offenses and the possible sentences for each offense. At the end of the colloquy, petitioner pled guilty.

Petitioner agreed to plead guilty to the charges of evading arrest and possessing a weapon. In return for his plea of guilty, he would be released on time served and receive eleven months and twenty-nine days of unsupervised probation. Subsequently, petitioner was released on these two charges. He is not currently being held on these two charges, but on collateral matters. Petitioner is currently being held in federal custody in the Blount County jail awaiting federal sentencing following his conviction at trial. Petitioner's state court guilty pleas that are the basis of this petition were not used or introduced in the federal trial. Thus, the state guilty pleas have absolutely no bearing on petitioner's federal incarceration. The state weapon and evading charges to which petitioner pled have been placed in the cost docket. The State has honored its end of the plea agreement.

II. Argument

A. Post Conviction Relief can only be granted to constitutional claims. Thus, any claims of technical violations of plea requirements must be denied.

Post Conviction relief can only be granted for the abridgement of a constitutional right. Tenn. Code. Ann. § 40-30-103 (2008). Thus, all claims based on anything other than the abridgement of a constitutional right are not colorable and must be denied.

Violations of the technical requirements set forth in State v. Mackey and alleged by petitioner are not colorable claims because they do not pertain to constitutional issues.

The allegations set forth by petitioner alleging the Assistant District Attorney (“ADA”) handling the case acted unethically do not raise colorable claims in this case. The ADA and the judge both advised the petitioner of his right to appointed counsel and the procedure for obtaining counsel, and they gave the petitioner a reasonable opportunity to obtain counsel as required by Rule 3.8 (b) of the Rules of Professional Conduct. The ADA could not ethically discuss potential defenses with petitioner as raised in Paragraph 5 of the Petition or advise petitioner of a course of action to take other than to obtain counsel, which petitioner waived. See RPC 4.2. Because this does not state a colorable claim, this claim must be denied.

The proposed amendments to Petitioner’s Petition do not state a colorable claim for purposes of the “Post Convictions Procedures Act” contained in Tenn. Code Ann. 40-30-103 et seq. The additional challenges pertain to the validity of the text of the charging instrument and legality of the Petitioner possessing a firearm respectively. These allegations do not allege abridgement of constitutional rights in the conviction process,

which the Post Conviction Procedure Act is designed to address. See Sloan v. State, 477 S.W.2d 219 (Tenn. Crim. App. 1971).

B. Petitioner knowingly, voluntarily, and intelligently entered guilty pleas in this case.

The General Sessions Court Judge ensured that petitioner made a knowing, intelligent, and voluntary waiver of his constitutional rights when the judge accepted petitioner's plea agreement. According to the United States Supreme Court in Boykin v. Alabama, defendants must waive certain constitutional rights in order for their decision to plead guilty to be considered knowing and voluntary. 395 U.S. 238, 243 (1969). A defendant must waive their right to a jury trial, the right to confront witnesses, and the right against self-incrimination. Id. These rights cannot be validly waived without an intentional relinquishment, which cannot be presumed from a silent record. Id. To ensure guilty pleas are entered "knowingly and intelligently," Boykin instructs the trial court to discuss with the accused the direct consequences of the decision. Id. at 244.

The General Sessions Court Judge met the requirements of Boykin. The record is not silent. The court verbally advised petitioner of his constitutional rights including the right to jury trial, the right to confront witnesses, the right against self-incrimination, and the right to counsel. At the plea colloquy, petitioner told the court he understood all of these rights. In addition to this verbal acknowledgement that he was entering the plea voluntarily and understandingly, petitioner signed five places on three separate documents indicating that he waived his rights and voluntarily and understandingly did

so. The constitutional requirements of Boykin were met six separate times, one verbal and five written waivers.

Should this Court find that despite the six waivers made by petitioner, he involuntarily and without understanding waived his constitutional rights, the burden then shifts to the State to prove a constitutional plea. Johnson v. State, 834 S.W.2d 922, 925 (Tenn.1992). However, the failure does not, in and of itself, entitle the defendant to relief. Id. The State may prove by clear and convincing evidence either substantial compliance with the advice requirement, by showing the defendant was made aware of his constitutional rights or that the defendant independently knew of his constitutional rights, rendering the trial court's omission harmless. Id.

The standard for determining substantial compliance or harmless error necessarily requires inquiry into circumstantial factors surrounding the plea. Blankenship v. State, 858 S.W.2d 897, 904 (Tenn. 1993). The relative intelligence of the defendant, the degree of his familiarity with criminal proceedings, the opportunity to confer with competent counsel regarding plea options, the extent of advice from counsel and the trial court regarding the charges faced, and the desire to avoid a greater punishment resulting from a jury trial are all relevant factors a trial court can use to find a “knowing” and “intelligent” plea. Blankenship, 858 S.W.2d at 904 (citing Caudill v. Jago, 747 F.2d 1046, 1052 (6th Cir.1984)).

The circumstantial factors surrounding this case show that petitioner voluntarily and understandingly entered into a plea agreement. Petitioner has the ability to read, and he admits that he could have read the warrants when they were handed to him, but he chose not to do so. He admits he had adequate time to read the documents, but he simply

did not do so. No one is at fault for this but the petitioner himself. In addition to the verbal and written waivers discussed above, petitioner was familiar with criminal proceedings having pled guilty no less than eleven (11) times between 1995 and 2007. His prior counsel, Tom Slaughter, represented him on many of these cases including Case Number 69057 in Knox County Criminal Court Division III. Petitioner has a lengthy understanding of the criminal justice system and no doubt signed waivers to plea and was informed of his constitutional rights each of the eleven times he pled guilty. Petitioner was given an opportunity to confer with counsel having been advised of his right to counsel by both the judge and the ADA. Petitioner was advised by the trial court regarding the charges he faced. He admitted he knew that he had fled from police two weeks prior to his arrest, and he knew he was signing paperwork forfeiting a weapon. Finally, petitioner desired to avoid greater punishment resulting from a jury trial. Petitioner chose to plead guilty in order to get out of jail that day instead of having to wait for an appointed attorney or waiting at least an extra day to meet with a Public Defender. Petitioner knowingly and understandingly waived his constitutional rights, and he did so voluntarily.

Petitioner's constitutional rights were never violated. He knowingly, voluntarily, and understandingly waived those rights in order to get a plea agreement. Voluntarily and understandingly entering into a plea agreement is not a violation of petitioner's constitutional rights. The constitutional requirements set out by the United States Supreme Court and the Tennessee Supreme Court were met.

C. The Judge and Assistant District Attorney did not misinform petitioner of the consequences of his plea.

Petitioner argues that petitioner did not knowingly and voluntarily enter guilty pleas because the Court and the ADA misinformed petitioner of the consequences of his guilty pleas. Petitioner cites cases where the judge, ADA, or defense counsel misinformed the defendant about the direct consequences of a guilty plea. See Maine v. State, 2005 WL 1996631 (Tenn. Crim. App. 2005) (dealing with mandatory minimum sentence); Howell v. State, 569 S.W.2d 428 (Tenn. 1978) (dealing with parole eligibility date); Skelton v. State, 2008 WL 3983114 (Tenn. Crim. App. 2008) (dealing with length of time spent on the sex offender registry); Parker v. State, 2008 WL 2938046 (Tenn. Crim. App. 2008) (dealing with lifetime requirements of community supervision). Every one of these cases is distinguishable from the present case because those cases dealt with direct consequences of a guilty plea while this case deals with collateral consequences of a guilty plea. Petitioner was told that if he pled guilty to the weapons charge and evading arrest, he would be released from jail that day. If he stayed out of trouble for eleven (11) months and twenty-nine (29) days, no further consequences would flow from these charges. Petitioner pled guilty and was released from jail that day. Petitioner has never been revoked on these charges, and he is currently not being held on these charges. The direct results of his guilty plea were exactly what the Court and the ADA told petitioner they would be.

Petitioner is not being held as a direct consequence of his plea. His present incarceration is collateral to the guilty plea. Petitioner is currently being held in federal custody in the Blount County jail awaiting federal sentencing following his conviction at

trial. Petitioner's state court guilty pleas that are the basis of this petition were not used or introduced in the federal trial. Thus, the state guilty pleas have absolutely no bearing on petitioner's federal incarceration. His incarceration is collateral to his plea agreement.

Furthermore, a state judge or ADA has zero control over the decisions made by the Department of Justice through the United States Attorney. The state has no idea whether federal charges will be filed in any given case. It would be impossible for a state judge or ADA to advise a defendant that federal charges might or might not be filed as a result of the defendant's conduct. This is never a direct consequence of a guilty plea especially when the guilty pleas are not introduced at trial.

The state is not required to advise a defendant of every possible collateral consequence that could potentially arise out of a guilty plea. United States v. Odom presents facts similar to the case at bar. 1994 U.S. App. LEXIS 34072 (6th Cir. 1994) (copy attached). Defendant entered into a plea agreement in state court for weapons possession without knowing he could be indicted and prosecuted in federal court. Defendant was indicted federally and sought to have his state court plea set aside claiming it was not entered voluntarily and intelligently because the state had failed to inform him he could be prosecuted federally. In denying defendant's attempt, the Sixth Circuit followed the precedents of the First and Seventh Circuits. United States v. Campusano, 974 F.2d 1 (1st Cir. 1991) (holding that a state prosecutor did not make a misrepresentation that would render the defendant's guilty plea involuntary when the state prosecutor did not disclose the possibility of federal prosecution to the defendant during plea bargaining); United States v. Jordan, 870 F.2d 1310 (7th Cir. 1989) (holding a State Attorney did not breach a plea agreement because he was under no duty "to discuss

all possible ramifications of a guilty plea”). In Odom, the Sixth Circuit adopted the above rationale and held that a defendant must only be made aware of the direct consequences of his plea. Odom, 1994 U.S. App. LEXIS 34072 at *10.

Direct consequences have been defined by the Sixth Circuit. Direct consequences are those that are “definite, immediate, and automatic.” See King v. Dutton, 17 F.3d 151, 154 (6th Cir. 1994). A collateral consequence is a result that “remains beyond the control and responsibility of the district court in which that conviction was entered.” El-Naboni v. United States, 287 F.3d 417, 421 (6th Cir. 2002) (quoting United States v. Gonzalez, 202 F.3d 20, 27 (1st Cir. 2000)).

Petitioner was not misinformed by either the Sessions Court Judge of the Assistant District Attorney in this case. Petitioner was informed of all the direct consequences that would flow from his guilty plea. Collateral consequences were not discussed because they are not constitutionally required to be discussed. Beyond the fact that they are not required to be discussed, it would be impossible for a judge or an ADA to list all potential collateral consequences of a guilty plea. All constitutional requirements were met, and petitioner’s claim is without merit.

D. Warrant Number @807562 does in fact state an offense and does allege a crime was committed.

Petitioner alleges that warrant number @807562 does not allege a criminal offense. This allegation is false because the face of the warrant charges petitioner with the offense of “Unlawful Possession / Carrying of Weapons, TCA Section 39-17-1307,

Class C Misdemeanor.” Tenn. Code Ann. § 39-17-1307 is a criminal act, and petitioner’s allegation that it is a “non-criminal act” should be denied.

The warrant is the charging instrument in Sessions Court like the Indictment, Presentment, or Information in Criminal Court. The Affidavit of Complaint is just that, an affidavit. The affidavit is not the charging instrument. The affidavit gives notice of the events that lead to the issuance of the charging instrument, the warrant. Here, the warrant specifically charges the petitioner with the offense of “Unlawful Possession / Carrying of Weapons, TCA Section 39-17-1307, Class C Misdemeanor.” The warrant alleges a criminal offense and is thus valid.

Further, petitioner alleges the affidavit of complaint is insufficient. According to Rule 3 of the Tennessee Rules of Criminal Procedure, an affidavit of complaint must be in writing, must be sworn before a magistrate or clerk, and must allege the facts of the offense. Here, the affidavit of complaint was in writing, sworn by Ofc. Norman Rickman before a Judicial Commissioner, and alleging that officers observed a Glen Field .22 with ammunition in petitioner’s vehicle in violation of TCA § 39-17-1307, and alleging that petitioner was a felon based on a felony drug conviction from September 16, 1998. Nothing more is required to satisfy Rule 3. The affidavit only needs to make clear who is being charged, for what offense, and based on what facts. See Raybin, 9 Criminal Practice and Procedure § 1:5 (2008). Unlike the cases cited by petitioner, this affidavit was signed by the affiant and sworn before a neutral magistrate. All of the requirements of Rule 3 were met in this case, and the warrant is not void.

E. Petitioner's allegation that he is factually innocent of these allegations is incorrect.

In his amended petition, petitioner alleges that because he carried a rifle, his conviction under Tenn. Code Ann. § 39-17-1307 is void. For the Class C misdemeanor to which petitioner pled, the statute makes no distinction between handguns and long guns. The statute states, "A person commits an offense who carries with the intent to go armed a *firearm*, a knife with a blade length exceeding four inches (4"), or a club." Tenn. Code Ann. § 39-17-1307(a)(1) (2006) (emphasis added). The fact that petitioner carried a sawed-off rifle and not a handgun makes no difference under the statute. It was illegal for petitioner to carry a firearm of any kind.

Defendants have been found guilty of the criminal offense of carrying a weapon with the intent to go armed by carrying unloaded weapons, Brooks v. State, 215 S.W.2d 785 (Tenn. 1948); having constructive possession of a weapon, State v. Robinson, 2005 WL 2008186 (Tenn. Crim. App. 2005); and where a defendant reached under a pillow when an officer entered a room and underneath was indeed a firearm, State v. Cross, 2005 WL 1252631 (Tenn. Crim. App. 2005).

In the case at bar, we have a semi-automatic rifle with the stock sawed off in close proximity to a pillowcase containing rounds of ammunition that fit that weapon. The firearm and ammunition were found inside a Ford Bronco owned by petitioner that the police investigated for a lawful purpose. The ammunition and firearm in close proximity give rise to the assumption that it was being carried with the intent to go armed. These facts, when considered together, give rise to a valid charging instrument in line with the

Rules of Criminal Procedure, the Tennessee Code Annotated, and prior case law in Tennessee, mentioned above.

III. Conclusion

Petitioner's pleas were entered knowingly, voluntarily, and understandingly. It is not a constitutional defense that you made a bad plea agreement. Furthermore, the agreement in this case was not a bad agreement. Petitioner was released on time served and is not being held in custody on this case in any way. This case is in the cost docket. Petitioner's current incarceration is a result of a jury conviction that found him guilty of the same offense that he pled guilty to in this case. The federal charges did not flow from petitioner's guilty plea. The Department of Justice is not influenced by misdemeanor plea agreements. The plea was not introduced in his federal trial. There is no way that the federal charges were a direct consequence of the state plea agreement. As such, the Court and the ADA had no duty, constitutional or otherwise, to advise petitioner of any collateral consequences within the realm of possibilities.

Petitioner was advised of all the things required by the constitution. After being advised by the Court, petitioner both verbally and in writing waived his rights. Based on these waivers, petitioner entered a knowing and voluntary plea. All constitutional requirements were met.

The charging instrument in this case is a valid warrant. It was sworn by the arresting officer before a neutral magistrate, and it laid out all facts sufficient to give notice to the petitioner of the charges against him. The warrant specifically cited the statute that petitioner was charged with violating. Petitioner had the time and ability to

read the warrant, affidavit of complaint, and rights waiver form, but he chose not to do so. Any fault in this case lies with the petitioner, not with the Court or the State of Tennessee.

WHEREFORE, the State of Tennessee requests that this Court deny petitioner's Petition for Post Conviction Relief.

RESPECTFULLY SUBMITTED,

RANDALL E. NICHOLS
DISTRICT ATTORNEY GENERAL

BY: _____
JASON LEE HUNNICUTT
ASSISTANT DISTRICT ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Addendum to Answer to Petition for Post Conviction Relief has been served upon Mark Stephens, District Public Defender, and Jerry Black, Attorney for Petitioner, this the ____ day of _____, 2009.

JASON LEE HUNNICUTT
ASSISTANT DISTRICT ATTORNEY

IN THE CRIMINAL COURT OF APPEALS EASTERN DIVISION

STATE OF TENNESSEE

VS.

NO. E2009-00546-CCA-R9-CD

**JAMES CHRISTOPHER JACKSON,
ALIAS**

ANSWER TO RULE 9 APPLICATION

The State of Tennessee, by and through the District Attorney General for the Sixth Judicial District, hereby answers the court's Order granting a Rule 9 appeal in the above-styled case.

Defendant appeals challenging venue in the above styled case. Defendant also appeals claiming the state incorrectly aggregated the continuing acts of defendant into one indictment. Finally, defendant claims prosecution in Knox County is prejudicial. The State disagrees for reasons as follows:

- 1) Mr. Jackson is charged with Theft from the Tennessee Valley Authority ("TVA") in an amount totaling \$16,262.10;
- 2) Mr. Jackson allegedly used Wright Express Fuel Cards stolen from the Allen Fossil Plant in Shelby County, Tennessee, and two different PIN numbers to purchase gas for himself, friends, and family totaling the above amount;
- 3) Mr. Jackson is alleged to have turned in mileage claim sheets claiming gas usage paid for by TVA due to the above use of the gas cards;

4) The usage of the cards occurred in Shelby, Trousdale, Wilson, and Knox Counties;

5) All payments for the mileage claims and gas charge card usage come through the TVA offices in Knoxville, Knox County, Tennessee;

6) Pursuant to Tennessee Rules of Criminal Procedure Rule 18(b): “If one or more elements of an offense are committed in one county and one or more elements in another, the offense may be prosecuted in either county;”

7) The taking of a good and lawful sum of U.S. currency occurred in Knox County, Tennessee, from the TVA offices due to the above activities.

8) The State contends the above facts, which would be presented at trial, render defendant’s argument that venue does not lie in Knox County and that the State incorrectly aggregated the above thefts in a single indictment unripe in this matter;

9) If defendant wishes to challenge venue in this matter it is an issue which could readily be considered on a Rule 3 appeal after trial;

10) Aggregation of the defendant’s continuing course of conduct in to one indictment is not improper as the consummation of the actus reas required for Theft occurred when the money charged on the cards was removed from TVA’S coffers as approved through the Knox County offices;

11) Defendant’s motion challenging the above issues was not timely filed, as it was filed February 6, 2009. The case was set for trial February 23, 2009. The Presentment initiating the charge was returned May 8, 2007;

12) Defendant’s contention that a trial in Knox county is prejudicial lacks merit because he availed himself to the courts of this county through his felonious act.

CASE LAW IN SUPPORT OF STATE'S POSITION

In commencing a prosecution by presentment or indictment, the state is required under Article I § 9 of the Tennessee Constitution to proceed in the county in which the alleged crime was committed. The state must make a showing of proof at trial that this requirement has been met. Venue is a question for the jury and may be shown by a preponderance of evidence. Hopper v. State, 326 S.W.2d 448 (Tenn. 1959); see also, State v. Young, 196 S.W. 3d 85, 101-102 (Tenn. 2006) (citing State v. Hamsley, 672 S.W.2d 437, 439 (Tenn. Crim. App. 1984) (each holding “venue is a question for the jury, and can be established by circumstantial evidence”)). Furthermore, slight evidence with respect to venue will be sufficient to carry the state’s burden of proof. See State v. Bennett, 549 S.W.2d 949 (Tenn. 1977).

The offense of Theft, in Tenn. Code Ann. § 39-14-103, requires the defendant to obtain or exercise control over property, without the owner’s consent, with the intent to deprive the owner of the property. Thus, in order for venue to lie in Knox County in the case at bar, some element of the offense must have occurred in Knox County. The case before this court alleges the taking of a sum of good and lawful U.S. currency from the Tennessee Valley Authority by use of improperly submitted mileage claims and the unauthorized use of Wright Express Fuel Cards. The headquarters for the TVA is located in Knoxville, and all payments of TVA’s obligations are processed out of the offices in Knoxville. Thus, the state would contend and seek to show at trial the actual taking of the U.S. currency did in fact occur in Knox County, Tennessee.

In State v. Sheldon, the defendant called a furniture store in Dickson County, made false representations about her identity to the store, and arranged financing. State

v. Dorothy Sheldon, 1997 Tenn. Crim. App. LEXIS 1140, *2 (Tenn. Crim. App. 1997) (copy attached). The furniture was delivered to Humphreys County, and the documents for the requested credit were signed in Humphreys County. Id. Humphreys County was also the location from which the defendant made the phone call. Id. The defendant was prosecuted in Dickson County and found guilty. Id. The Court of Criminal Appeals in denying the defendant's appeal challenging venue found the defendant constructively present in Dickson County although the majority of the offense occurred in Humphreys County. Id. at *7.

In coming to its conclusion, the Court of Criminal Appeals noted "it is a settled principal of law that, when one puts in force an agency for the commission of a crime, that person, in legal contemplation, accompanies the agent to the point where the crime becomes effectual." Id. at *8. This legal doctrine, known as *crimen trahit personam*, means the crime carries the person. Id. Thus, when the defendant uses an agent to commit an element of the crime, they open themselves to prosecution in the courts where that agent is located.

In the instant case, the defendant used fuel cards taken from TVA, and they were used various places throughout the State of Tennessee; however, the crime did not become "effectual" until the money was approved for withdrawal from the TVA's accounts through the Knoxville offices.

Even without the above doctrine, the court in Sheldon further noted; "the appellant set into motion a series of acts. . ." in the county in which she was prosecuted. Id. at *9. The crime was ongoing and continuous until its consummation.

Again, in the case at bar, the State would contend the theft was consummated when TVA paid out a sum of U.S. currency via its TVA offices in Knoxville. “Theft is deemed to be a continuing course of conduct.” See State v. Lon Mitchell Pierce Jr., 1998 Tenn. Crim. App. LEXIS 943 (Tenn. Crim. App. 1998) (copy attached). In the case at bar the continuing course of conduct was consummated in Knox County.

Defense contends that because only “one or two” uses of the stolen WEX cards occurred in Knox County that venue would not lie in this court. This contention lacks merit.

In State v. Casper, the defendant was indicted in Rutherford County for 19 counts of sale of securities by an unregistered broker-dealer. State v. Michael Casper, 2008 Tenn. Crim. App. LEXIS 593 (Tenn. Crim. App. 2008) (copy attached). Prior to trial, the state dismissed three of the counts. Id. at *1. At the conclusion of state’s proof, the court dismissed one count; however, the jury found the defendant guilty of the remaining fifteen counts. Id. The defendant appealed challenging several issues including venue. Appellant argued that only two of the transactions in question were “commenced” or “consummated” in Rutherford County because only two victims lived in Rutherford County, and all the documents were signed at each of the fifteen victims’ residences. Id. at *20. The court dismissed this argument, noting “all of the paperwork memorializing their agreements. . . was processed through and in the office of [defendant] in Rutherford County. Therefore, an integral element of the sale of the securities to residents of other counties occurred in Rutherford County and venue was proper in that county.” Id. at *22.

Similar to the case above, in the case at bar, an integral element of theft, the taking of money from the Tennessee Valley Authority through the Knoxville office,

occurred in Knox County. The transactions for the fuel purchases were processed through Knoxville as were the mileage sheets of the defendant.

Defendant contends that aggregation of his acts into one indictment is improper the State disagrees. Aggregation of separate thefts is generally permissible where separate larcenous acts are (1) from the same owners, (2) from the same location, and (3) pursuant to a continuing criminal impulse or a single larcenous scheme. State v. Byrd, 968 S.W. 2d 290 (Tenn. 1998). In the case at bar all these factors are present. TVA is the owner, the money and transactions were approved through the Knoxville office, and the defendant's continuing criminal impulse is indicated by his taking of various fuel cards and using various PIN numbers when one would be deactivated.

Finally, defendant contends a trial in Knox County would be prejudicial to him for a "multitude of reasons." However this is without merit as discussed above in State v. Dorothy Sheldon, 1997 Tenn. Crim. App. LEXIS 1140, *2 (Tenn. Crim. App. 1997) (copy attached).

The State so answers and prays.

RESPECTFULLY SUBMITTED,

RANDALL E. NICHOLS
DISTRICT ATTORNEY GENERAL

BY: _____
JASON HUNNICUTT
ASSISTANT DISTRICT ATTORNEY

CERTIFICATE

I hereby certify that I have delivered a true and exact copy of the above-captioned Answer to _____; the Appellate Court Clerk by hand delivery this the _____ day of _____, _____.

JASON HUNNICUTT
ASSISTANT DISTRICT ATTORNEY