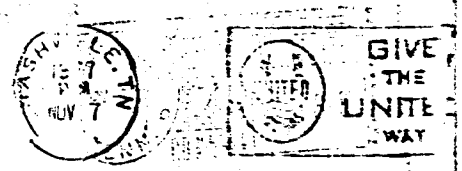
Jack Kershaw
Attorney-at-Law
3710 Lealand Lane
Nashville, Tennessee 37204



MR. TED GANDOLFO
ASSASSINATION INFORMATION COMMITTEE
1214 First avenue
New York City 10021

IN THE CIRCUIT COURT OF MORGAN COUNTY

STATE OF TENNESSEE)
)
)
VS.) NO_____
)
)
JAMES EARL RAY)
)

MOTION TO DISMISS

with
Brief in Support Attached.

Comes the Defendant and moves the Court to dismiss the charge of escape from prison for the reason that Defendant is not and has not been legally confined. The burden is on the state to show lawful confinement and this the state has not done.

Wherefore, Defendant prays that all charges of escape be dismissed and Defendant released from administrative confinement.

Respectfully submitted,

Jack Kershaw
JACK KERSHAW, ATTORNEY FOR THE DEFENDANT

Filed Oct 10 1977

STATE OF TENNESSEE)
)
)
VS.) NO._____
)
)
JAMES EARL RAY)
)
)

BRIEF IN SUPPORT OF MOTION

James Earl Ray on March 10, 1969, entered a guilty plea in the Circuit Court of Shelby County, Tennessee.

This plea will be shown to be void ab initio on its face.

The general rule is that:

"...a judgment or decree of a court of competent jurisdiction is binding and conclusive on the parties thereto and their privies, until vacated or reversed in the proper manner, and such judgment or decree, even though voidable, cannot be collaterally impeached, but only by direct proceedings for that purpose."

This is supported by Overton v. Lackey, 3 Tenn. 193 through a long line of cases up to and including at least Fidelity Phenix Fire Ins. Co. v. Ford, 164 Tenn. 107.

There are exceptions.

One is that:

"If the court rendering a judgment or decree has jurisdiction of the subject matter and of the parties decreed against, the judgment or decree is valid, when collaterally brought in question, these facts appearing on the face of the pleadings and decree, and this question must be tested by the record in such cases, except in case of an attack on the judgement or decree for fraud in obtaining it." Campbell v. Bryant, 1 Leg. Rep. 134, 2 Tenn. Cas. (Shann.) 146, 147, citing Kindall v. Titus, 56 Tenn. (9 Heisk.) 727.

However, in apparent contradiction, a later case, Turner v. Bell 279 S.W. 2nd 71 states:

"A collateral attack will not lie against a decree valid on the face of the record or voidable only for fraud, accident, mistake or for some other defect." McCartney v. Gamble, 184 Tenn. 242, 198 S.W. 2d 552; Mayenney v. Karsch, 167 Tenn. 32, 65 S.W. 2d 562, 92 A.L.R. 343; Gibson's Suits in Chancery (4th Ed.) Sec. 446.

But the case at bar does not rely only on fraud, etc. but clearly is void on its face and comes under the rule as stated in Gibson's Suits Chancery 4th Edition. Sec 446, p. 397:

"Void judgments and decrees being those that appear on the face of the record itself to have been rendered without jurisdiction of the parties or the subject matter, or without being justified by the pleadings or the consent of the parties, void judgments have no efficacy or probative force, and yield to collateral attack."

Police brutality may constitute a basis for collateral attack:

"Police brutality, in order to constitute a basis for a collateral attack on a judgment of conviction must have resulted in a coerced confession or in admissions which were used at trial or in some other manner to defendant's prejudice." Green v. Bonnar, 320 F 2nd 796.

And, parole evidence is admissable:

"The general rule precluding collateral attack on judgment does not prevent introduction of parol evidence to explain a judgment which is incomplete and ambiguous on its face." Fleming v. Kemp, 178 SW 2nd 397.

Violation of constitutional principles in original conviction justifies collateral attack.

"A person can successfully attack collaterally a conviction for interstate transportation of firearm by convicted felon when his state felony conviction, obtained without benefit of defense counsel, has been subsequently voided under constitutional principles." 18 U.S.C.A. 922 (g) (1); 18 U.S.C.A. App. 1202 (a); 28 U.S.C.A. 2255; Federal Firearms Act, 2 (g,3), 15 U.S.C.A. 902 (g,e).

If the initial judgment is unconstitutionally infirm and void, it may be and must be attacked; this is not a forbidden "collateral attack."

"'Collateral attack' on judgment is any proceeding in which the integrity of judgment is challenged, except those made in action where judgment is rendered or by appeal, and except suits brought to obtain decrees declaring judgments to be void ab initio." Reger v. Reger, Mo., 293 S.W. 414, 421. (Emphasis added.)

State v. Ray is void ab initio and on its face.

The core of the counts voir dire of the accused is:

> "(The Court): Are you pleading guilty to murder in the first degree in this case because you killed Dr. Martin Luther King under such circumstances that it would make you legally guilty of murder in the first degree under the law as explained to you by your lawyers? (Emphasis supplied.)
>
> "Answer): Yes, legally, yes."

This is not a guilty plea to shooting or factually killing King. This is a "confession" to being an accessory only. In this case the point is crucial. If the Defendant were only an accessory then there were others involved.

But the State through its District Attorney General Canole states in the record:

> "I want to state to you (the Court) as your Attorney General that we have no proof other than that Dr. Martin Luther King, Jr. was killed by James Earl Ray alone, not in concert with any body else." (Emphasis supplied.)

Then Mr. Foreman, a lawyer with a variety of reputions who had volunteered to represent the Defendant, agreed with the Attorney General and made these remarks:

> "It took me a month to convince myself of that fact which the Attorney General of these U.S., J. Edgar Hoover of the F.B.I. (sic) announced last July that is, what Mr. Canole (the District Attorney General of Tennessee) has (just) told you that there was not a conspiracy."(Emphasis supplied.)

Then after some running irrelvancies, one being the observation that a sentence of 99 years was worse than the death penalty, Mr. Foreman asked every member of the jury if he would go along with a mercy sentence of 99 years.

They all agreed and both sides accepted the jury.

Then James Earl Ray all alone stood and addressed the Court as follows:

"James Earl Ray: Your Honor, I would like to say something. I don't want to change anything that I have said, but I just want to enter one other thing. The only thing that I have to say is that I can't agree with Mr. Clark.

"Mr. Foreman: Ramsey Clark.

"The Court: Mr. who?

"James Earl Ray: Mr. J. Edgar Hoover, I agree with all these stipulations, and I am not trying to change anything.

"The Court: You don't agree with those theories?

"James Earl Ray: Mr. Canale's, Mr. Clark's, and Mr. J. Edgar Hoover's about the conspiracy. I don't want to add something on that I haven't agreed to in the past.

"Mr. Foreman: I think, that what he said is that he doesn't agree that Ramsey Clark is right, or that J. Edgar Hoover is right. I didn't argue that as evidence in this case, I simply stated that under-riding the statement of General Canale that they had made the same statement. You are not required to agree with it all.

(Why not? in fact, his agreement is essential.)

"The Court: You still, your answers to these questions that I asked you would still be the same? Is that correct?

"James Earl Ray: Yes, sir."
(Emphasis supplied.)

At this point we are at this crucial position.

1) The Court has elicited from the Defendant a confession that he is an accessory--that he has in some way taken part in the crime of murder, not that he pulled the trigger that sent the bullet to the brain.

2) The State has no proof of accessories or conspiracies; it's only contention is that Ray and Ray alone did it.

3) Ray's lawyer agrees with the State.

4) Ray states at this moment in open court that there is a conspiracy. There are others involved. This and this alone

is the substance of his guilty plea as stated by the Court itself.

At this point what does the Judge do? Does he seize this golden moment to ask Mr. Ray: With whom were you involved? How? Why? To what extent?

None of these. The moment of truth comes and goes without a sound.

The Court shuffles his prepared notes and merely repeats what he has asked before:

> "Are you pleading guilty to Murder in the First Degree in this case because you killed Dr. Martin Luther King under such circumstances that it would make you legally guilty of Murder in the First Degree under the law as explained to you by your lawyer. Your answer is still yes? Alright, Sir, that is all, you may swear the jury."

The Court does not even give Ray a chance to answer. Then the State proceeded to put on a very few witnesses.

Samuel B. Kyles, on direct examination by Mr. Dwyer, testified that he knew Dr. King and saw him shot and described the wound--a gaping wound in the face and that the bullet cut off King's necktie; he was shown a photograph of an area back of the rooming house and he said there were bushes (there), it wasn't clear, and that he saw no one moving. No picture of the rooming house(the alleged source of the fatal shot) is shown and there is no cross exam.

Mr. Chauncey Eskridge, an attorney, testified that he was standing on the ground looking up at Dr. King who was leaning over the balcony; that he heard a bullet come by his right ear; he turned and looked, but saw no one. He went to the funeral. He was not cross examined.

Dr. Jerry Francisco testified that he performed an autopsey, but did not submit it as part of his testimony. He found a bullet. He described the angle of entry as being "...from above downward from right to left passing through the chin, base of the neck, spinal cord to the back." He visited the scene and determined that the angle of entry indicated the bullet came from the second floor of a rooming house and not from the ground. He determined this by "viewing" the scene. He was not asked what effect Dr. King's "stooping" position (as witnessed by Rev. Kyle) would have on angle calculations. He was not cross=examined.

N. E. Zachery of the Police Department testified that he found a package outside Canipe Amusement Co., an establishment next door to the rooming house which contained everything from gun, to undershorts, and beer cans, necessary to identify James Earl Ray. There was no testimony as to the idendity of the person who left the package there and there was no cross examination.

Mr. Robert G. Jensen of the F.B.I. testified about how the F.B.I. traced the gun, the shorts, and Ray all over the U.S.A.; no testimony concerning Ray's activities on the day of the murder or his presence or absence in the rooming house from which the shot was allegedly fired. No cross examination.

That is all the testimony.

There is a "narration" by an unidentified Mr. Beasely who delivered a long address to the jury about what the state would prove if it put on a case. No witness to the shooting. No ballistics test. No Ray fingerprints in the bathroom. It purported to establish that Ray traveled in Canada, U.K., and

(?)

Mexico, and was in Memphis and in Mrs. Brewer's rooming house at some period to time before or on the day of the murder. That is all. No cross-examination possible. He wasn't on the witness stand.

The Court made no attempt to discover if the very unusual methods of incarceration used to contain Mr. Ray in solitary confinement for eight months prior to the trial had in any way effected his ability to make a voluntary and knowing plea.

Can a man make a clear, rational decision after having spent eight months under constant bright lights night and day; gaurds present at all times; his every movement, including bowel, monitored by t.v. cameras; his every sound electronically recorded; no private consultation allowed with counsel or anyone else; ¼" steel plate over all windows; no fresh air; no excercise; and all this inducing nose bleeds, skin rashes, and headaches?

It is true the Judge offered some relief. For sleep, he suggested a night mask and ear plugs. He refused to allow Ray to dismiss Foreman and told him he would have to go to trial with him and/or the Public Defender, neither of whom had prepared a defense.

The above constitutes police brutality and deprivation of effective counsel resulted in a coerced plea of guilty and is a constitutional basis for a collateral attack on the judgement; haste, not justice, was the key to the proceedings.

In addition, the Judgement is void on its face in that the State charged one thing--independant guilt--and the

defendant admitted (and plead) some sort of conspiracy in which he may have or may not have been criminally involved, and this situation made a knowing and voluntary plea impossible.

The Court in failing to investigate the nature and extent of Defendant's participation, if any, in the crime, deprived the Defendant of due process under our Tennessee Constitution and rendered a void judgment.

Respectfully submitted,

Jack Kershaw

Jack Kershaw, Attorney for the Defendant

Filed Oct 10, 1977

IN THE CRIMINAL COURT FOR MORGAN COUNTY, TENNESSEE

STATE OF TENNESSEE)
)
VS.) NO.
)
JAMES EARL RAY)

MOTION FOR PRELIMINARY
PSYCHIATRIC EVALUATION

Comes the defendant by and through his counsel and moves the Court to order him psychiatrically evaluated preliminarily by _____ to determine:

1. If he is presently competent to stand trial and advise with counsel in his own defense.

2. To determine his state of mind as of the dates of the alleged offenses of murder and escape. Particularly in view of his history of apparent mental breakdown immediately preceeding a trial, due, very possibly, to defendant's prolonged experience in solitary confinement both before his Guilty Plea in the Criminal Court of Shelby County, Tennessee, and afterwards.

3. To determine if defendant is in need of further psychiatric treatment and/or evaluation at this time in compliance with T.C.A. 33-708a.

Respectfully submitted,

_____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been delivered to the office of the District Attorney General for the State of Tennessee on this the _____ day of October, 1977.

_____