

**Declaration and Affidavit from
Former Prosecutors
Crystle Carrion and Lee Davis**

HAROLD WAYNE NICHOLS

AFFIDAVIT OF LEE DAVIS

STATE OF TENNESSEE

COUNTY OF HAMILTON

I am Lee Davis and hereby affirm that the following is true to the best of my knowledge, information, and belief:

I am over the age of eighteen (18) years, am competent to give this Affidavit, and have personal knowledge of the facts contained herein.

I reside in Hamilton County, Tennessee.

1. I am a practicing attorney with more than thirty-five years of experience and a partner at Davis & Hoss, P.C. in Chattanooga where I represent clients in criminal investigations and prosecutions in state and federal courts across the country. In addition to my law practice, I have taught Criminal and Constitutional Law at the University of Tennessee at Chattanooga, as well as Trial Practice at the University of Tennessee College of Law.
2. Prior to entering private practice, I was an Assistant District Attorney General for the Eleventh Judicial District in Chattanooga, Tennessee from 1994 to 1998. During my tenure, I prosecuted thousands of cases, from misdemeanors to capital murder. I prosecuted Mr. Nichols's capital murder conviction and death sentence during his state post-conviction proceedings from 1994 through 1998.
3. I worked to maintain Mr. Nichols's capital murder conviction and death sentence. Now, I believe that Mr. Nichols's death sentence should be commuted to life in prison without the possibility of parole. My belief is based upon Mr. Nichols accepting full responsibility for the rape and murder of Karen Pulley and the pain, suffering, and anguish that he has caused Ms. Pulley, her family and friends. I believe his guilty plea to these crimes and his current acceptance of responsibility merit a life sentence without the possibility of parole.
4. I reviewed hundreds of pages of prison records maintained by the Tennessee Department of Correction that detail Mr. Nichols's incarceration over the past thirty-one years. I have spent six days, several hours per day, reading and understanding these documents.



5. From my review of Mr. Nichols's prison records, I understand that in thirty-one years, Mr. Nichols' has had only two disciplinary write-ups, neither of which involved violence or security risk. They appear to be minor policy violations. That Mr. Nichols has had two minor infractions while under close surveillance in thirty years is noteworthy.
6. Executing Mr. Nichols now serves no criminal justice or community safety purpose. Should his sentence of death be commuted, Mr. Nichols will never be released into the public because he is also serving 220 years on his related non-capital convictions.
7. From his records and statements from former prison staff, it is clear that Mr. Nichols has accepted responsibility for his terrible crimes and has adjusted well to life in prison. He should be allowed to die in prison but he should not be executed by the state at this late date. That act of life taking is senseless.



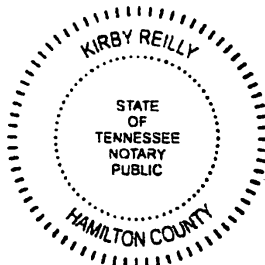
Lee Davis

Sworn to and subscribed to before me this 6th of April, 2022.



NOTARY PUBLIC

My commission expires: 1/23/2023





DECLARATION OF CRYSTLE CARRION

STATE OF TENNESSEE

COUNTY OF HAMILTON

I, Crystle Carrion, do hereby declare the following is true to the best of my knowledge, information, and belief:

I am over the age of eighteen (18) years of age, am competent to make this Declaration, and have personal knowledge of the facts contained herein.

I reside in Hamilton County, Tennessee.

1. I was an Assistant District Attorney for the Eleventh Judicial District in Chattanooga, Tennessee from 2016 to 2021. During my tenure, I prosecuted hundreds of cases, from misdemeanors to major crimes, including multiple homicides. Prior to joining the Office of the District Attorney General, I served as a law clerk for the Honorable Thomas A. Varlan, then-Chief Judge of the United States District Court for the Eastern District of Tennessee.
2. The District Attorney General assigned me to Harold Nichols's case in April 2017, which was pending in the post-conviction court after the Honorable Don R. Ash had granted Mr. Nichols's Motion to Reopen Post-Conviction Proceedings on October 4, 2016. I worked on Mr. Nichols's case until the post-conviction court issued an order in March 2018, denying Mr. Nichols's post-conviction relief.
3. In his Motion to Reopen, Mr. Nichols argued that the United States Supreme Court's decision in *Johnson v. United States*, ruled retroactive in *Welch v. United States*, rendered Tennessee's prior violent felony aggravator unconstitutionally vague. If a court found the aggravator vague, Mr. Nichols would no longer be eligible for a sentence of death because it was the only remaining aggravator that was potentially valid. The other aggravator found by Mr. Nichols's jury, the felony murder aggravator, had been invalidated on direct appeal by the Tennessee Supreme Court.
4. In its order granting Mr. Nichols's Motion to Reopen, the post-conviction court directed Mr. Nichols's counsel to investigate possible claims for relief and file an amended petition. In addition to the *Johnson* claim, Mr. Nichols raised four additional claims for relief in an Amended Petition for Post-Conviction Relief, filed January 13, 2017.

5. The District Attorney General assigned me to Mr. Nichols's reopened post-conviction due to my previous experience analyzing legal claims based on *Johnson v. United States*. The Supreme Court issued its opinion in *Johnson* during my clerkship with Judge Varlan. I researched and briefed Judge Varlan on several federal habeas corpus petitions that involved claims for relief that relied on the *Johnson* decision.
6. While the case was pending, Mr. Nichols's counsel approached me to discuss the possibility of reaching a disposition in the case. We had multiple discussions, including the merits of the *Johnson* claim, as well as other pending claims and potential procedural bars. Based on these discussions, my prior experience with *Johnson*-based claim analysis, as well as my analysis of *Johnson*'s application to Tennessee's prior violent felony conviction aggravator, I concluded that the decision in *Johnson* rendered Mr. Nichols's violent felony prior conviction aggravator invalid.
7. In addition to the discussions of the pending claims, we also discussed Mr. Nichols's transformation during his approximately twenty-eight years of incarceration on Tennessee's death row. I reviewed several hundred pages of Mr. Nichols's Tennessee Department of Correction file. For close to thirty years, Mr. Nichols had been a model inmate, who the prison staff trusted and relied on. Because of his transformation, prison staff members who had known him over the years were supportive of him being removed from death row and placed in general population.
8. Mr. Nichols's counsel also presented statements from three jurors who had sentenced Mr. Nichols to death. Although these jurors had voted for death, they never intended for Mr. Nichols to be executed. The intention of the death verdict was to be a *de facto* life in prison without the possibility of parole sentence, since no such sentence existed at the time of Mr. Nichols's crimes. The jury's only choice was to sentence Mr. Nichols to death or to life with the possibility of parole after serving twenty-five years. The assumption of the jurors was that it was very unlikely that the State of Tennessee would ever carry out the death sentence and that a sentence of death would remove parole eligibility.
9. Through my discussions with Mr. Nichols's counsel, my determination of the merit of the *Johnson* claim, and discussions with the District Attorney General, the District Attorney General and I reached the conclusion that it was in the interests of justice to concede the merit of the *Johnson* claim.
10. Through further discussions with Mr. Nichols's counsel and me, the District Attorney General determined that Mr. Nichols should be sentenced in this case to life with the possibility of parole after serving twenty-five years. He further required that the life sentence run consecutive to the 220 years that Mr. Nichols is currently serving for related non-capital convictions. Based on

the negotiated disposition between the State and Mr. Nichols, Mr. Nichols would have to serve his 220-years' sentence before he could begin serving his life sentence.

11. During a telephonic conference on December 8, 2017, counsel for Mr. Nichols and I informed the post-conviction court of our agreed disposition for the case. The court set a date for the disposition and resentencing and directed Mr. Nichols's counsel to provide the court with a transportation order to secure Mr. Nichols's presence at the hearing.
12. On January 31, 2018, the date of the disposition hearing, the District Attorney General and I appeared with Mr. Nichols and his counsel. The post-conviction court without warning rejected the agreed disposition. This was completely unexpected. Television cameras were there, which was confusing since our office had not alerted the press, Mr. Nichols's case did not even appear on the docket, and we were using a courtroom not ordinarily used for criminal cases.
13. During my tenure as a prosecutor, I had not experienced or heard of another case in which a court wholesale rejected an agreed upon case disposition. It was an injustice to Mr. Nichols. I recall the respect and dignity with which Mr. Nichols responded to the court's questions though he was shown no such respect or dignity in return.
14. This experience on Mr. Nichols's case has stayed with me. I believe that Mr. Nichols was and still is deserving of a sentence less than death and I fully support Governor Lee granting Mr. Nichols clemency. During my time at the District Attorney General's Office, the office policy was that once an offer was extended to a defendant, that offer remained open and would never be retracted.

I declare the foregoing under penalty of perjury.



Crystle Carrion, Declarant

Date: 5/27/25