

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

RYAN FERGUSON,)	
)	
Appellant,)	
	)	Case No: WD71264
v.)	
	)	Appeal from the Boone County
STATE OF MISSOURI,	)	Circuit Court, Thirteenth Judicial
	)	Circuit, The Honorable Jodie Asel,
Respondent.	)	Judge

**APPELLANT'S MOTION FOR LEAVE TO
SUPPLEMENT HIS PRAYER FOR RELIEF**

NOW COMES Appellant, Ryan Ferguson, by and through his attorneys, Sam Henderson and Kathleen T. Zellner, and in accordance with Local Rule XXXVII, moves this Court for leave to file a supplemental prayer for relief and in support thereof, states as follows:

Procedural History

On July 17, 2009, the notice of appeal was filed in the circuit court of Boone County. Appellant filed a motion to remand on February 8, 2010, and on March 2, 2010, this Court took the motion for remand with the case. Oral argument was heard on August 5, 2010, and the case is currently under advisement.

This Court's Jurisdiction Over Appellant's Motion to Remand

On March 2, 2010, this Court accepted Appellant's motion to remand and issued an order that the motion to remand would be taken with the case. That assumption of

jurisdiction signaled Appellant that this Court had jurisdiction and the power to grant relief. Had this not been done, Appellant would have filed a Petition for a Writ of Habeas Corpus in Cole County. It appeared that by taking the motion to remand with the case this Court assumed jurisdiction over the motion to remand.

Freestanding Innocence Claim

The newly discovered evidence contained in the motion to remand is sufficient for a freestanding actual innocence claim. It has every element set forth in *State ex rel. Amrine v. Roper*, 102 S.W.3d 541 (Mo.banc 2003). There is clear and convincing evidence of Ferguson's innocence. While Ferguson contends that the evidence at trial was not constitutionally sufficient to support the conviction, at this time there is no credible evidence remaining to support conviction. The only evidence of Ferguson participating in Kent Heitholt's brutal murder was Erickson's testimony at trial. There is no physical evidence that connects Ferguson to this crime. The only physical evidence that exists does not match Ferguson. In fact, all of the physical evidence excludes Ferguson. Erickson's recantation of his trial testimony absolves Ferguson of any involvement in the crimes. Therefore, Erickson's recantation erases the only evidence against Ferguson. There are rare and exceptional circumstances here.

Although multiple issues are raised in the Rule 29.15 appeal, the credibility of Erickson's trial testimony against Ferguson is the key to the resolution of this case. At the hearing in the lower court, witnesses including but not limited to, Dallas Mallory, Shauna Ornt and three jail inmates provided testimony that if believed, established the falsity of Erickson's testimony wherein he implicated Ferguson in the murder. Without Erickson's testimony it is difficult to see how a conviction of Ferguson could be

obtained. Ferguson has presented the evidence necessary to justify an evidentiary hearing in Cole County, where Ferguson is currently incarcerated.

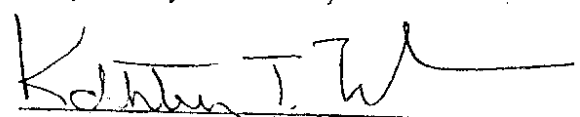
Proposed Supplemental Prayer For Relief

Petitioner seeks to file a supplemental prayer for relief, which is attached as Exhibit A, praying that this Court stay the pending 29.15 appeal, accept the Motion to Remand as a Petition For a Writ of Habeas Corpus and order an evidentiary hearing in the Circuit Court of Cole County, where Mr. Ferguson is incarcerated.

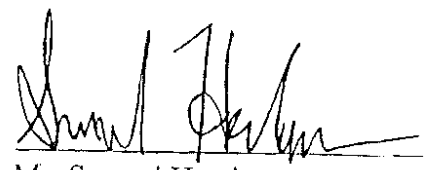
If the Circuit Court of Cole County denies the Petition For a Writ of Habeas Corpus, then Petitioner will file a petition with this Court and ask that it be consolidated with the 29.15 appeal. If, however, the Circuit Court of Cole County grants the Petition For a Writ of Habeas Corpus and a new trial is granted for Ferguson, then the 29.15 appeal could be dismissed as moot.

WHEREFORE, Appellant respectfully requests that this Court grant him leave to file a supplemental prayer for relief, and any and all other relief deemed just.

Respectfully Submitted,


Kathleen. T. Zellner

Law Offices Of Kathleen T. Zellner, P.C.
Drake Oakbrook Plaza
2215 York, Suite 504
Oak Brook, Illinois 60523
(630) 955-1212



Mr. Samuel Henderson
(MBE 56330)
Greensfelder, Hemker & Gale
10 South Broadway
Suite #2000
St. Louis, Missouri 63102-1774
(314) 345-4796

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

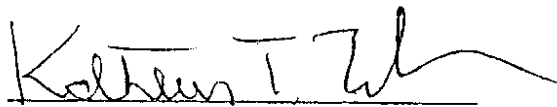
RYAN FERGUSON,)	
)	
Appellant,)	
	)	Case No: WD71264
v.)	
	)	Appeal from the Boone County
STATE OF MISSOURI,	)	Circuit Court, Thirteenth Judicial
	)	Circuit, The Honorable Jodie Asel,
Respondent.	)	Judge

SUPPLEMENTAL HIS PRAYER FOR RELIEF

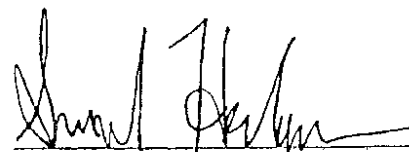
WHEREFORE, Appellant, Ryan Ferguson respectfully requests that this Court

- 1) Stay the pending Rule 29.15 appeal, and;
- 2) Accept the pending Motion to Remand as a Petition for a Writ of Habeas Corpus, and;
- 3) Order an evidentiary hearing in the Circuit Court of Cole County.

Respectfully Submitted,


 Kathleen T. Zellner

Law Offices Of Kathleen T. Zellner, P.C.
 Drake Oakbrook Plaza
 2215 York, Suite 504
 Oak Brook, Illinois 60523
 (630) 955-1212


 Mr. Samuel Henderson
 (MBE 56330)

Greensfelder, Hemker & Gale
 10 South Broadway
 Suite #2000
 St. Louis, Missouri 63102-1774
 (314) 345-4796

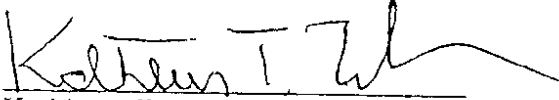
EXHIBIT

A

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2010, a true and correct copy of the forgoing was served upon all parties of record in this case by facsimile transmission.

Mr. Shaun J. Mackelprang
Assistant Attorney General
P.O. Box 899
Jefferson City, MO 65102
FAX: (573) 751-5391
(573) 751-3321


Kathleen. T. Zellner