IN THE CRIMINAL COURT OF TENNESSEE
FOR THE 30th JUDICIAL DISTIRCT, AT MEMPHIS
DIVISION I

STATE OF TENNESSEE	)	
	)	Nos. 87-04408,
v.	)	87-04409, and
	)	87-04410
PERVIS PAYNE,	)	
Defendant.	)	

Filed 1.31.22
Heidi Kuhn, Clerk
BY _____ D.C.

ORDER IMPOSING CONCURRENT SENTENCES FOR DEFENDANT'S FIRST DEGREE MURDER CONVICTIONS

I. Introduction

This matter came before the Court December 13 and 14, 2021, for a sentencing hearing limited to the manner of the Defendant's sentences—i.e., whether Mr. Payne's sentences will be served concurrently or consecutively. Having conducted a sentencing hearing, and after reviewing the exhaustive record, the arguments of the parties, the principles of sentencing, and the relevant authorities, the Court concludes the State has failed to establish consecutive sentencing would be appropriate under the "dangerous offender" provision set forth in Tennessee Code Annotated section 40-35-114(b)(4) and relevant case law. The Court therefore orders that Mr. Payne's two life sentences for first degree murder shall be served concurrently.

II. Case History[1]

A Shelby County jury convicted Defendant of two counts of first degree murder

[1] The Hon. Bernie Weinman, retired Judge of Criminal Court, Division I, presided over the Defendant's trial, original sentencing hearing, and original post-conviction proceedings.

for the 1987 stabbing deaths of Charisse Christopher and her two-and-a-half-year-old daughter, Lacie. The jury also found Defendant guilty of assault with intent to commit first degree murder of Ms. Christopher's three-and-a-half-year-old son, Nicholas, who was also stabbed several times. The jury returned death sentences for both murder counts. The convictions and sentences were affirmed on direct appeal. *State v. Payne*, 791 S.W.2d 10 (Tenn. 1990) ("Payne direct appeal"); *aff'd sub nom. Payne v. Tennessee*, 501 U.S. 808 (1991). As this Court stated in its December 8 order, although not addressed on direct appeal or in the post-conviction proceedings, it appears the trial court ordered all three of the Defendant's sentences to run consecutively.

In January 1992, Mr. Payne filed a timely petition for post-conviction relief. In June 1992, he filed a petition for writ of error coram nobis. After an August 1996 evidentiary hearing, the trial court denied relief in the post-conviction case. In January 1997, the court denied the coram nobis petition. On appeal, the Court of Criminal Appeals affirmed the trial court's rulings denying relief in both cases. *Pervis Tyrone Payne v. State*, No. 02C01-9703-CR-00131, 1998 WL 12670 (Tenn. Crim. App. Jan. 15, 1998),*perm. app. denied* (Tenn. June 8, 1998).

Numerous challenges to the Defendant's convictions and sentences followed in federal court; all proved unsuccessful. The Defendant also sought DNA testing of certain crime scene evidence and to assert he was intellectually disabled and ineligible for the death penalty. Mr. Payne filed a petition for DNA testing in this Court in June 2020. This Court approved testing, but after this Court concluded the testing results were not exculpatory, the Court dismissed the DNA petition in January 2021.

The Defendant filed his most recent intellectual disability petition in May 2021. On November 23, 2021, this Court entered an order concluding the Defendant was

intellectually disabled. Accordingly, this Court vacated the Defendant's death sentences. The Defendant then argued this Court should hold a hearing to determine whether the Defendant's sentences should be served concurrently or consecutively. The State objected, but on December 8, 2021, the Court entered an order granting a hearing to address the concurrent-versus-consecutive sentencing issue.

III. Proof from Defendant's Trial

The Tennessee Supreme Court summarized the evidence produced during the guilt-innocence phase of Defendant's trial:

> Charisse Christopher was 28 years old, divorced, and lived in Hiwassee Apartments, in Millington, Tennessee, with her two children, three and one-half year old Nicholas and two and one-half year old Lacie. The building in which she lived contained four units, two downstairs and two upstairs. The resident manager, Nancy Wilson, lived in the downstairs unit immediately below the Christophers. Defendant's girlfriend, Bobbie Thomas, lived in the other upstairs unit. The inside entrance doors of the Christopher and Thomas apartments were separated by a narrow hallway. Each of the upstairs apartments had back doors in the kitchen that led to an open porch overlooking the back yard. In the center of the porch was a metal stairway leading to the ground. There was also an inside stairway leading to the ground floor hallway and front entrance to the four-unit building.
>
> Bobbie Thomas had spent the week visiting her mother in Arkansas but was expected to return on Saturday, 27 June 1987, and she and Defendant had planned to spend the weekend together. Prior to 3:00 p.m. on that date, Defendant had visited the Thomas apartment several times and found no one at home. On one visit he left his overnight bag, containing clothing, etc., for his weekend stay, in the hallway, near the entrance to the Thomas apartment. With the bag were three cans of Colt 45 malt liquor.
>
> Nancy Wilson was resting in her apartment when she first heard screaming, yelling and running in the Christopher apartment above her. She heard a door banging open and shut and Charisse screaming, "get out, get out." She said it wasn't as though she was telling the intruder to get out, it was like "children, get out." The commotion began about 3:10 p.m., subsided momentarily, then began again and became "terribly loud, horribly loud." She went to the back door of her apartment, went outside and started to go to the Christopher apartment to

investigate, but decided against that, and returned to her apartment and immediately called the police. She testified that she told the police she had heard blood curdling screams from the upstairs apartment and that she could not handle the situation. The dispatcher testified he received her disturbance call at 3:23 `p.m. and immediately dispatched a squad car to the Hiwassee Apartments. Mrs. Wilson went to her bathroom after calling the police. The shouting, screaming and running upstairs had stopped, but she heard footsteps go into the upstairs bath, the faucet turned on and the sound of someone washing up. Then she heard someone walk across the floor to the door of the Christopher apartment, slam the door shut and run down the steps, just as the police arrived.

Officer C.E. Owen, of the Millington Police Department, was the first officer to arrive at the Hiwassee Apartments. He was alone in a squad car when the disturbance call was assigned to Officers Beck and Brawell. Owen was only two minutes away from the Hiwassee Apartments so he decided to back them up. He parked and walked toward the front entrance. As he did so he saw through a large picture window that a black man was standing on the second floor landing of the stairwell. Owen saw him bend over and pick up an object and come down the stairs and out the front door of the building. He was carrying the overnight bag and a pair of tennis shoes. Owen testified that he was wearing a white shirt and dark colored pants and had "blood all over him. It looked like he was sweating blood." Owen assumed that a domestic fight had taken place and that the blood was that of the person he was confronting. Owen asked, "[H]ow are you doing?" Defendant responded, "I'm the complainant." Owen then asked, "What's going on up there?" At that point Defendant struck Owen with the overnight bag, dropped his tennis shoes and started running west on Biloxi Street. Owen pursued him but Defendant outdistanced him and disappeared into another apartment complex.

Owen called for help on his walkie-talkie and Officer Boyd responded. By that time Owen had decided Defendant was not hurt and the blood was not his own—he was running too fast. Owen told Boyd that "there's something wrong at that apartment." They returned to 4516 Biloxi. Nancy Wilson had a master key and let them in the locked Christopher apartment. As soon as the door was opened they saw blood on the walls, floor—everywhere. The three bodies were on the floor of the kitchen. Boyd discovered that the boy was still breathing and called for an ambulance and reported their findings to the chief of police and the detective division. A Medic Ambulance arrived, quickly confirmed that Charisse and Lacie were dead, and departed with Nicholas. He was taken to Le Bonheur Children's Hospital in Memphis and was on the operating table there from 6:00 p.m. until 1:00 a.m., Sunday, 28 June. In addition to multiple lacerations, several stab wounds had gone completely through his body from front to back. One of those was in the middle of his abdomen. The surgeon, Dr. Sherman Hixson, testified that he had to repair and stop bleeding of the spleen, liver, large intestine, small intestine and the vena cava. During the surgery he was given 1700 cc's of blood by transfusion. Dr. Hixson estimated that his normal total blood volume

should have been between 1200 and 1300 cc's. He was in intensive care for a period and had two other operations before he left the hospital, but he survived.

Charisse sustained forty-two (42) knife wounds and forty-two (42) defensive wounds on her arms and hands. The medical examiner testified that the forty-two (42) knife wounds represented forty-one (41) thrusts of the knife, "because there was one perforated wound to her left side that went through her—went through her side. In and out wounds produce two." He said no wound penetrated a very large vessel and the cause of death was bleeding from all of the wounds; there were thirteen (13) wounds "that were very serious and may have by themselves caused death. I can't be sure, but certainly the combination of all the wounds caused death." He testified that death probably occurred within, "maybe 30 minutes, that sort of time period," but that she would have been unconscious within a few minutes after the stabbing had finished.

The medical examiner testified that the cause of death of Lacie Christopher was multiple stab wounds to the chest, abdomen, back and head, a total of nine. One of the wounds cut the aorta and would have been rapidly fatal.

Defendant was located and arrested at a townhouse where a former girlfriend, Sharon Nathaniel, lived with her sisters. Defendant had attempted to hide in the Nathaniel attic. When arrested he was wearing nothing but dark pants, no shirt, no shoes. As he descended the stairs from the attic he said to the officers, "Man, I ain't killed no woman." Officer Beck said that at the time of his arrest he had "a wild look about him. His pupils were contracted. He was foaming at the mouth, saliva. He appeared to be very nervous. He was breathing real rapid." A search of his pockets revealed a "pony pack" with white residue in it. A toxicologist testified that the white residue tested positive for cocaine. They also found on his person a B & D syringe wrapper and an orange cap from a hypodermic syringe. There was blood on his pants and on his body and he had three or four scratches across his chest. He was wearing a gold Helbrose wristwatch that had bloodstains on it. The weekend bag that he struck Officer Owen with was found in a dumpster in the area. It contained the bloody white shirt he was wearing when Owen saw him at the Hiwassee Apartments, a blue shirt and other shirts.

It was stipulated that Charisse and Lacie had Type O blood and that Nicholas and Defendant had Type A. A forensic serologist testified that Type O blood was found on Defendant's white shirt, blue shirt, tennis shoes and on the bag. Type A blood was found on the black pants Defendant was wearing when seen by Owen and when arrested. Defendant's baseball cap had a size adjustment strap in the back with a U-type opening to accommodate adjustments. That baseball cap was on Lacie's forearm—her hand and forearm sticking through the opening between the adjustment strap and the cap material. Three Colt 45 beer cans were found on a small table in the living room, two unopened, one opened but not empty, bearing Defendant's fingerprints, and a fourth empty beer can was

on the landing outside the apartment door. Defendant was shown to have purchased Colt 45 beer earlier in the day. Defendant's fingerprints were also found on the telephone and counter in the kitchen.

Charisse's body was found on the kitchen floor on her back, her legs fully extended. The right side of her upper body was against the wall, and the outside of her right leg was almost against the back door that opened onto the back porch. Laura Picard was visiting her sister, Helen Truman, who lived in the downstairs apartment across from Nancy Wilson. She was sunbathing in the back yard and heard a noise like a person moaning coming from the Christopher apartment followed by the back door slamming three or four times, "but it didn't want to shut. And this hand, a dark-colored hand with a gold watch, kept trying to shut that back door." It was about that time that Nancy Wilson came out of her back door looking around. Mrs. Picard testified that she knew the manager was looking for the source of the noise and when Mrs. Wilson looked at her she pointed to the Christopher apartment. She said that it was just a few minutes later that the police arrived. She did not have a watch on at the time. She testified that the dark-colored hand she saw three or four times was at a level between the door knob and the bottom of the door.

The medical examiner testified that Charisse was menstruating and a specimen from her vagina tested positive for acid phosphatase. He said that result was consistent with the presence of semen, but not conclusive, absent sperm, and no sperm was found. A used tampon was found on the floor near her knee. The murder weapon, a bloody butcher knife, was found at the feet of Lacie, whose body was also on the kitchen floor near her mother. A kitchen drawer nearby was partially open.

Defendant testified. His defense was that he did not harm any of the Christophers; that he saw a black man descend the inside stairs, race by him and disappear out the front door of the building, as he returned to pick up his bag and beer before proceeding to his friend Sharon Nathaniel's to await the arrival of Bobby Thomas. He said that as the unidentified intruder bounded down the stairs, attired in a white tropical shirt that was longer than his shorts, he dropped change and miscellaneous papers on the stairs which Defendant picked up and put in his pocket as he continued up the stairs to the second floor landing to retrieve his bag and beer. When he reached the landing he heard a baby crying and a faint call for help and saw the door was ajar. He said curiosity motivated him to enter the Christopher apartment and after saying he was "coming in" and "eased the door on back," he described what he saw and his first actions as follows:

> I saw the worst thing I ever saw in my life and like my breath just had—had tooken—just took out of me. You know, I didn't know what to do. And I put my hand over my mouth and walked up closer to it. And she was looking at me. She had the knife in her throat with her hand on the knife like she had been trying to get it

> out and her mouth was just moving but words had faded away. And I didn't know what to do. I was about ready to get sick, about ready to vomit. And so I ran closer—I saw a phone on the wall and I lift and got the phone on the wall. I said don't worry. I said don't worry. I'm going to get help. Don't worry. Don't worry. And I got ready to grab it—the phone but I didn't know no number to call. I didn't know nothing. I didn't know nothing about no number or—I just start trying to twist numbers. I didn't know nothing. And she was watching my movement in the kitchen, like she—I had saw her. It had been almost a year off and on in the back yard because her kids had played with Bobbie's kids. And I have seen her before. She looked at me like I know you, you know. And I didn't know what to do. I couldn't leave her. I couldn't leave her because she needed—she needed help. I was raised up to help and I had to help her.

He described how he pulled the knife out of her neck, almost vomited, then kneeled down by the baby girl, had the feeling she was already dead; said the little boy was on his knees crying, he told him not to cry he was going to get help. His explanation of the blood on his shirt, pants, tennis shoes, body, etc., was that when he pulled the knife out of her neck, "she reached up and grab me and hold me, like she was wanting me to help her ...", that in walking and kneeling on the bloody floor and touching the two babies he got blood all over his clothes. He said he went to the kitchen sink, probably twice, to get water to drink when he thought he was going to vomit, but he denied that he went into the bathroom at any time or used the bathroom lavatory to wash up, as Nancy Wilson testified she heard someone do after the violence subsided.

He was then suddenly motivated to leave and seek help and he described his exit from the apartment as follows:

> And I left. My motivation was going and banging on some doors, just to knock on some doors and tell someone need help, somebody call somebody, call the ambulance, call somebody. And when I—as soon as I left out the door I saw a police car, and some other feeling just went all over me and just panicked, just like, oh, look at this. I'm coming out of here with blood on me and everything. It going to look like I done this crime.

The shoulder strap on the left shoulder of the blue shirt he was wearing while in the victim's apartment was torn, a fact he did not seem to realize and could not remember when it happened. He said he ran because the officer did not seem to believe him. He claimed that he had the Colt 45 beer with him as he ran; that the open can with beer in it spilled into the sack, as he ran from Owen, the bottom of the sack broke, the beer and tennis shoes were scattered along his route. He said that what witnesses had described as scratches were stretch marks from

lifting weights.

Defendant presented five character witnesses who testified that Defendant's reputation for truth and veracity was good. Ruth Wakefield Bell testified that she had known Defendant all of his life. She was age 40 and lived in the same block on Biloxi as the Hiwassee Apartments, across the street. She said that on the Saturday afternoon of the murders, Defendant knocked on her door, identified himself and she looked out her bedroom window and saw him, but she did not let him in—she was upset with her boyfriend and did not want to see or "entertain" anyone. She denied that she was afraid to let him in—or that there was anything unusual about his appearance. She estimated that it was about twenty minutes after he knocked on her door that she saw police cars and an ambulance across the street. Defendant testified that he knocked on her door just before he decided to go to Sharon Nathaniels and went in the Hiwassee Apartments to pick up his bag and beer.

During the cross-examination of Defendant, he was asked and answered as follows:

> Q. Can you explain why there's bloodstains on your left leg?
>
> A. Left leg?
>
> Q. Yes, sir.
>
> A. Evidently it probably came—had to come from when she—when she hit the wall. When she reached up and grabbed me.
>
> Q. When she hit the wall?
>
> A. When she—when she hit—when she hit when I got ready to run up—when I got ready to vomit.
>
> Q. When she hit the wall she got blood on you?
>
> A. When she splashed. It was blood—a lot of blood on the floor.
>
> Q. She got blood on you when she hit the wall. Is that what you said?
>
> A. She hit against the wall when she fell back.
>
> Q. Is that what you said, sir, that she got blood on you when she hit the wall?
>
> A. I didn't say she got blood on me when she hit the wall.

Q. Isn't that what you said just a moment ago, sir?

A. That ain't—that's not what I said.

Blood was smeared on the wall of the kitchen next to the back door and on the door itself, from doorknob height to the floor and laterally approximately six or seven feet.

Payne direct appeal, 791 S.W.2d at 11-15. The Tennessee Supreme Court summarized the evidence presented at Defendant's capital sentencing hearing as follows:

At sentencing the State presented only two witnesses, Mary Zvolanek, Charisse's mother and Detective Sammy Wilson of the Millington Police Department. Mrs. Zvolanek testified very briefly about how her grandson, Nicholas, cried for his mother and sister and could not understand what had happened. Detective Wilson was one of two detectives that conducted the investigation of these crimes. He testified at the guilt phase of the trial and was recalled at the sentencing phase to identify a videotape that he had made of the crime scene. He did so and the tape was played for the jury, over objection.

Defendant presented the testimony of four witnesses at the sentencing phase of the trial, his mother and father, Bobbie Thomas, and Dr. John T. Hutson.

Bobbie Thomas testified that she joined Defendant's father's church and became acquainted with Defendant; that she had a troubled marriage, was abused by her husband and it had a bad effect upon her three children; that Defendant was a very caring person and the time and attention he had devoted to her children had "got them back to their old self." She said she did not drink or use drugs and neither did Defendant; that it was inconsistent with Defendant's character to have committed these crimes.

Dr. Hutson is a clinical psychologist, who specializes in criminal court evaluation work. He gave Defendant the Wechsler Adult Intelligence Scale (WAIS) revised version. Defendant's scores were Verbal IQ 78, Performance IQ 82, with a variance of plus or minus 3 on the Verbal and plus or minus 4 on the Performance. He testified that the theoretical norm is 100, that actual test results have moved the norm closer to 110; that historically the mental retardation score was 75, but "retardation" is not commonly used anymore. He preferred mentally handicapped. He also gave Defendant the Minnesota Multiphasic Personality Inventory (MMPI). That test consists of 566 questions that tests a number of different things, that give insight into personality functioning, responses to stress and physical performance. Various "scales" measure lying or faking, hypochondria, depression, hysteria, psychopathic deviance, sexuality, paranoia,

> cyclothymia, schizophrenia and mania. The tests are graded by computer. Dr. Hutson testified that Defendant was in a normal range or near normal range, with the exception of intelligence and schizophrenia. He said that Defendant "was actually lower intellectually than I had anticipated. And he is low enough that I consider it significant." He testified that Defendant scored above the normal—which is moving toward psychotic—but that in his opinion Defendant was not psychotic or schizophrenic—that that scale of the MMPI, "has a racial bias to it. Blacks tend to look higher on it when actually its very normal for them." The testing was performed in October, about three months after the murders. Dr. Hutson described Defendant as "somewhat naive" and one of the most polite individuals he had ever interviewed in jail.
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> Defendant's parents testified that Defendant had no prior criminal record, had never been arrested and had no history of alcohol or drug abuse; that he worked with his father as a painter, was good to children and a good son.

Id. at 17.

IV. Findings of Fact: Sentencing Hearing

The Court finds all witnesses who testified at the sentencing hearing to be credible.

A. Defense Proof

1. Defendant's Family and Friends

Several of the Defendant's family members and friends testified:

- Rev. Carl Payne, Defendant's father;
- Rolanda Holman, Defendant's sister;
- Sylvester Robinson and Darrien McGraw, Defendant's cousins; and
- Damon Wagrry, a friend who has known Defendant since they were five or six years old.

These witnesses described the Defendant's life before his arrest as a relatively stable one. They did not know the Defendant to get into trouble, become angry, or use

illegal drugs. Ms. Holman described her family as close and her parents as "open. We were able to talk about a lot of things . . . amongst us."[2]

The Defendant was the oldest of three children of Rev. Payne and his wife, Bernice, who died in 2005. Ms. Holman was the youngest child (seven years younger than Defendant), and the two siblings had another sister, Tyrasha (five years younger than Defendant), who died in 2016. The family's home life centered around church; Defendant's father has held several positions in the Church of God in Christ (COGIC), a Pentecostal denomination, over the past 39 years. In addition to attending church several times a week, the family also attended revivals and other COGIC events together. The Defendant played drums in the band at Rev. Payne's church and sang in the church choir, and Defendant also played drums in his high school's band. The Payne children were not allowed to listen to secular music, but Rev. Payne was aware the children occasionally listened to music and danced while he was away. Rev. Payne was aware his son drank beer, but neither Rev. Payne nor the other testifying family and friends knew Defendant to use cocaine, as the State alleged at trial.

The Defendant's friends and family knew Petitioner had certain limitations, with Rev. Payne testifying the Defendant "was a little bit slow."[3] Mr. McGraw specifically recalled the Defendant (his cousin) had difficulty reading. Ms. Holman recalled her mother visited with the Defendant's teachers occasionally about "some learning concerns"[4] the teachers had. Ms. Holman said her parents were unable to help her with her homework, implying they were constantly helping Defendant with his homework. Ms. Holman also described an incident in which the Defendant once tried to cook

[2] December 2021 sentencing hearing transcript, at 35.
[3] *Id.* at 63.
[4] *Id.* at 46.

chicken in the family kitchen and almost burned down the house.

Despite his limitations, Defendant's friends and family described him as very helpful to others, with Rev. Payne testifying his son had "the gift of helps."[5] Defendant had chores around the house, including vacuuming and washing dishes, and he helped neighbors with yard work. Once Defendant became old enough to drive, he drove others around the neighborhood. The Defendant also worked in his father's side business, Payne and Son painting; Rev. Payne intended that Defendant would take over that business once Rev. Payne retired from it.

Defendant's family and friends have visited him regularly since he was convicted, except for those periods when visitation was suspended due to COVID. Rev. Payne testified he visited his son at least twice a month, and Ms. Holman said she visited him once every one to two months. She also said she chose to attend Middle Tennessee State University in Murfreesboro to be closer to her brother, and she continues to live in Murfreesboro today. The friends and family also communicate with Defendant by telephone often.

All testifying family and friends said they would support Defendant were he released from prison. Both Ms. Holman and Mr. Wagrry specifically testified they would be willing to have the Defendant live with them.

2. Testimony of Religious and Prison Ministry Individuals

Several persons who knew Petitioner from church or who visited Petitioner in prison testified at the sentencing hearing:

- David Hall, COGIC Bishop and pastor of Temple Church of God in Christ

[5] *Id.* at 66.

in Memphis.

- Kevin Riggs, pastor in Franklin, Tennessee, and prison minister;
- Dann Mann, prison minister;
- Phyllis Hildreth, a Vice President at American Baptist College and Associate Professor at Lipscomb University; has visited and taught inside TDOC prisons;.
- Janet Wolf a former instructor at American Baptist College who taught inside Riverbend Maximum Security Institution, where the Defendant is housed;
- Demetria Kalodimos, a former Nashville news anchor who has visited Defendant in prison for several years;
- David Bass, the Assistant Dean at Lipscomb's School of Engineering, who has visited Unit 2 on Monday nights for several years;
- Jeff Dobyns, a Nashville investment banker and vice chair of the board of directors for Men of Valor, a prison reentry program;
- John R. (J.R.) Davis, who has volunteered for 22 years with Men of Valor. He began as a paid worker about 6 years ago; and
- Rudy Kalis, a retired Nashville sports broadcaster who has volunteered with Men of Valor since 2017.

Bishop Hall testified he knows the Defendant's family, as both he and Rev. Payne have been COGIC pastors for many years. In addition to his pastoral duties, Bishop Hall runs a nonprofit organization, Life Together, which conducts a program called Final Escape. The bishop testified Final Escape tries to "re-cultivate" and socialize ex-inmates (or as he called them, ex-offenders) so they can avoid returning to prison. The program

teaches job skills and helps inmates get jobs after release. The nonprofit also teaches the inmates' families and other persons who work with ex-offenders how to interact with and help ex-offenders in the program meet their goals. Bishop Hall said Defendant would be eligible for this program; he added, "We have taken people who are ex-offenders at every level."[6] On cross-examination, Bishop Hall acknowledged that not all Final Exit participants have been successful, adding, "That's life. We work with them."[7]

Defendant's remaining witnesses all met Mr. Payne while visiting Unit 2 (the Riverbend prison unit housing death row). Several witnesses testified Mr. Payne was not their "designated" inmate to visit, but given the small size of the death row visitation area, Unit 2 visitors would inevitably meet other inmates. Accordingly, these witnesses met Defendant.

Generally, the witnesses described Defendant as quiet and respectful, and they said Defendant is well-liked and respected among his peers. They also depicted Defendant as a person of deep and genuine faith. Specifically, Mr. Riggs, who visited Unit 2 two to three times a month before COVID, testified he had never heard any other death row inmate say anything bad about Mr. Payne. Mr. Mann, who visits Unit 2 every Monday night when visitation is allowed, recalled visiting death row after Defendant's last execution date (ultimately stayed) was announced. Mr. Mann said the visitation room that evening was particularly tense, as the inmates were upset over the setting of an execution date for Defendant.

Ms. Hildreth and Ms. Wolf, both of whom have taught at American Baptist College in Nashville, have conducted various classes with Unit 2 inmates. Ms. Hildreth

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[6] *Id.* at 122.
[7] *Id.* at 123.

taught conflict management there, and Ms. Wolf taught classes on community building and nonviolence. She also taught mediation classes based on Tennessee Supreme Court Rule 31 mediation training. The professors stated the Defendant did not take part in the Rule 31 course or certain other structured classes based on his limitations, but the instructors both worked with the Defendant to teach him the basic concepts of such classes. The professors found the Defendant to be attentive in class and willing to engage instructors and fellow inmates in discussion when in small group settings.

Mr. Dobyns, Mr. Davis, and Mr. Kalis all met Defendant through their work with Men of Valor, a Nashville faith-based prison reentry program which has been operating about twenty-five years. Mr. Dobyns, the vice chair of Men of Valor's board of directors, explained that nationally, about 70 percent of inmates who are released from incarceration will return to custody within three years. Men of Valor, according to Mr. Dobyns, is designed to be a "reentry program helping men become givers instead of takers when they're released from prison."[8] He claimed that persons who complete the Men of Valor program have less than a ten percent recidivism rate one year after release from custody.

Mr. Dobyns explained the program has over 300 volunteers who minister to program participants inside prison through Bible study, counseling, and other programs, including a prison-produced television program. Mr. Davis said Men of Valor staff and volunteers meet with participants weekly, and speakers and musicians also interact with inmate participants. According to Mr. Dobyns, once inmate participants leave custody, they would be eligible to live in one of Men of Valor's two residential facilities—a twenty-five acre campus in the Nashville area which has been open twenty-five years and

[8] *Id.* at 185.

can house 100 men, and a similar campus being built in the Knoxville area.

Mr. Dobyns testified that after release, inmates would undergo "a very intensive program to help them get their driver's license, to get their families back together, to help them find employment, to help them with addiction, [and] counseling."[9] Mr. Dobyns said Mr. Payne would be eligible for the residential program after his release, and Mr. Dobyns also said he would be comfortable with Mr. Payne living in his (Dobyns') home.

3. TDOC Witnesses

Four employees of the Tennessee Department of Correction (TDOC), all of whom work at Riverbend Maximum Security Institution, testified:

- Tony Mays, Warden;
- Michael Keys, Associate Warden of Treatment;
- Ernest Lewis, Associate Warden for Security; and
- Michael Mosley a corrections captain and shift commander.

Their testimony described the Defendant as a quiet, respectful person who is well-behaved and does not get into trouble. The Defendant was also described as a person who gets along well with, and is respected by, his fellow inmates.

Associate Warden Keys explained that Mr. Payne serves as "rock man" for Unit 2, meaning he is the main custodian and janitor for the core of the unit. He buffs and waxes floors and performs other tasks to clean and sanitize the unit. Keys explained the rock man was a position of trust, as Mr. Payne's position required him to work inside the core (where the kitchen, security offices, and laundry for the unit were located) and clean staff offices.

[9] *Id.* at 186-87.

Associate Warden Keys testified Mr. Payne has received no disciplinary infractions in his 34 years of incarceration in TDOC (both at Riverbend and in his brief incarceration at Tennessee State Prison). Keys also said he had no concerns about Mr. Payne's ability to live successfully in the prison environment once he leaves Unit 2.

Officer Mosley recalled an incident in which he was assaulted by another Unit 2 inmate, Henry Hodges. According to Mosley, Hodges cut Mosley's forearm; the officer described his injuries as "topical," but he still required 57 stitches to close the wound. Mosley recalled Mr. Payne and another inmate, David Duncan, came to his aid, placing towels on his arm and staying with him until medical personnel arrived. Mosley described the Defendant as "the ultimate convict because he conducts himself as a man. . . . He treats you with respect."[10]

B. State Proof

The State introduced several exhibits through the testimony of Lieutenant Chris Stokes, interim inspector with the Millington Police Department. Among the exhibits was a copy of the crime scene video, which Lt. Stokes acknowledged had been edited and which was produced by making a digital video recording of the original VHS video as it played on a television. Stokes acknowledged he was not employed by the police department at the time the original video was made.

Three members of the victims' family testified:

- Kathy Hites, Charisse Christopher's former sister-in-law;[11]
- Angela Johnson, Charisse Christopher's sister; and

[10] *Id.* at 249.
[11] At the time of the offenses, Ms. Hites was married to Charisse Christopher's brother, Tim Zvolanek.

- Jim Zvolanek, Charisse Christopher's brother.

The three family members offered victim impact testimony regarding how the offenses have affected the victims' family over the past thirty-four years. Understandably, the loss of Charisse and Lacie Christopher caused the family much pain, which lasts to this day. Ms. Johnson noted Tim Zvolanek, another of Charisse Christopher's siblings, died of cancer a few years back, and Charisse's father had also died. She noted her mother was present for the sentencing hearing, but Nicholas Christopher, the other victim in this case, did not attend this hearing, as the proceedings were too much for him to bear. In the years after the offenses, Ms. Johnson said, Nicholas Christopher had "grow[n] up to be a very sad man. He has no will, nothing to look forward to. Yes, he has all of us, but that doesn't take the place of his mom or his sister."[12]

V. Analysis

A. Sentencing Generally

The Defendant's original sentences were imposed pursuant to the 1982 sentencing act. Tennessee law provides, "Unless prohibited by the United States or Tennessee constitutions, any person sentenced on or after November 1, 1989, for an offense committed between July 1, 1982, and November 1, 1989, shall be sentenced under this chapter." Tenn. Code Ann. § 40-35-117(b). Thus, the consecutive sentencing issue will be resolved under the current sentencing act.[13]

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[12] December 2021 sentencing hearing transcript at 263-64.

[13] The Court notes the Defendant's release eligibility will be determined under the 1982 sentencing act. *See* Tenn. Code Ann. § 40-35-501(c) (Supp. 1988) (repealed 1989) (release eligibility for standard offender, as applicable to Defendant's assault with intent to commit murder conviction, is 30%); *id.* § 40-35-501(f) (for life sentence under 1982 sentencing act, release eligibility occurs after 30 years).

In sentencing any defendant, the trial court must consider the following factors: (1) the evidence, if any, received at the trial and sentencing hearing, (2) the presentence report, (3) the principles of sentencing and arguments as to sentencing alternatives, (4) the nature and characteristics of the criminal conduct involved, (5) evidence and information regarding any mitigating or statutory enhancement factors, (6) any statement that the defendant makes on his behalf regarding sentencing, (7) any statistical information provided by the Administrative Office of the Courts as to sentencing practices for similar offenses in Tennessee, and (8) results of the validated risk and needs assessment conducted by the department and contained in the presentence report. *See* Tenn. Code Ann. § 40-35-210(b).

In this case, a presentence report was completed following the Defendant's 1988 trial, but a revised presentence report was not conducted before the December 2021 sentencing hearing. Thus, the Court will be unable to consider information that would be contained in a modern presentence report, nor is a risk and needs assessment available for Mr. Payne. However, neither the State nor the Defendant requested a revised presentence report before the recent sentencing hearing, and this Court has more than enough information before it to make the current sentencing determination. Thus, the Court will not require a presentence report to be completed at this time.

The statutory principles of sentencing relevant to this case are set forth in Tennessee Code Annotated section 40-30-103(1) through (5):

> (1) Sentences involving confinement should be based on the following considerations:
>
> > (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;

(B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or

(C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant;

(2) The sentence imposed should be no greater than that deserved for the offense committed;

(3) Inequalities in sentences that are unrelated to a purpose of this chapter should be avoided;

(4) The sentence imposed should be the least severe measure necessary to achieve the purposes for which the sentence is imposed; [and]

(5) The potential or lack of potential for the rehabilitation or treatment of the defendant should be considered in determining the sentence alternative or length of a term to be imposed. The length of a term of probation may reflect the length of a treatment or rehabilitation program in which participation is a condition of the sentence[.]

In reaching its sentencing determination in this case, the Court has considered all required factors provided in the statutes cited above. Regarding the case-specific information reviewed by the Court, the Court has considered all evidence presented at the December 2021 sentencing hearing, including the records from the Defendant's trial and original post-conviction proceedings, both of which were introduced into evidence at the recent sentencing hearing. The Court has also considered evidence introduced during the post-conviction intellectual disability proceeding. To any extent certain evidence is not referenced or summarized in this Order, the Court's failure to do so does not reflect the Court's failure to give such evidence due consideration. Rather, this Court's Order references and/or summarizes the evidence most relevant to its current sentencing consideration to keep an already-lengthy Order from becoming excessively long.

In this case, the Tennessee Supreme Court affirmed the defendant's convictions and sentences for first degree murder and assault with intent to commit first degree murder on direct appeal, and those convictions and sentences survived post-conviction. Because the Court has determined Mr. Payne to be intellectually disabled, the Court is required by statute to sentence Defendant to life in prison for his first degree murder convictions. The only issue to be resolved presently is whether Mr. Payne's life sentences shall be served concurrently or consecutively.[14]

B. Consecutive Sentencing

At the time of the Defendant's initial sentencing, consecutive sentencing was governed by the Tennessee Supreme Court's opinion in *Gray v. State*, 538 S.W.2d 391, 393-94 (Tenn. 1976). That opinion stated, in relevant part:

> Essentially, a consecutive sentence should be imposed only after a finding by the trial judge that confinement for such a term is necessary in order to protect the public from further criminal conduct by the defendant.
>
> Types of offenders for which consecutive sentencing should be reserved may be classified as follows: (1) the persistent offender, defined as one who has previously been convicted of two felonies or of one felony and two misdemeanors committed at different times when he was over eighteen (18) years of age; (2) the professional criminal, one who has knowingly devoted himself to criminal acts as a major source of livelihood or who has substantial income or resources not shown to be derived from a source other than criminal activity; (3) the multiple offender, one whose record of criminal activity is extensive; (4) the dangerous mentally abnormal person, so declared by a competent psychiatrist who concludes as a result of a presentence investigation that the defendant's criminal conduct has been characterized by a pattern of repetitive or compulsive behavior or by persistent aggressive behavior with heedless indifference to consequences; and (5) the dangerous offender, hereinafter defined.

[14] As explained at the end of this Order, the Court's decision on manner of sentence applies only to the two life sentences for first degree murder, as those sentences were the only ones affected by the Court's intellectual disability determination.

The Tennessee Sentencing Commission's comments to section 40-35-115 provide that the current consecutive sentencing statute is "essentially a codification of two Tennessee Supreme Court cases dealing with concurrent and consecutive sentencing: *Gray v. State*, 538 S.W.2d 391 (Tenn. 1976), and *State v. Taylor*, 739 S.W.2d 227 (Tenn. 1987)." In *Taylor*, the Tennessee Supreme Court stated, "[C]onsecutive sentences should not routinely be imposed", and "the aggregate maximum of consecutive terms must be reasonably related to the severity of the offenses involved." *Taylor*, 739 S.W.2d at 230. Considering the Tennessee Sentencing Commission comments and the general statute, cited above, providing that criminal acts committed between the enactment dates of the 1982 and 1989 sentencing acts should be sentenced under the 1989 act, the Court determines the current consecutive sentencing statute shall guide the Court's conclusions as to manner of sentence.

Tennessee's sentencing act provides,

> (b) The court may order sentences to run consecutively if the court finds by a preponderance of the evidence that:
>
> > (1) The defendant is a professional criminal who has knowingly devoted the defendant's life to criminal acts as a major source of livelihood;
> >
> > (2) The defendant is an offender is an offender whose record of criminal activity is extensive;
> >
> > (3) The defendant is a dangerous mentally abnormal person so declared by a competent psychiatrist who concludes as a result of an investigation prior to sentencing that the defendant's criminal conduct has been characterized by a pattern of repetitive or compulsive behavior with heedless indifference to consequences;
> >
> > (4) The defendant is a dangerous offender whose behavior indicates little or no regard for human life and no hesitation about committing a

> crime in which the risk to human life is high;
>
> (5) The defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of defendant's undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical, and mental damage to the victim or victims;
>
> (6) The defendant is sentenced for an offense committed while on probation;
>
> (7) The defendant is sentenced for criminal contempt; or
>
> (8) The defendant is convicted of two (2) or more offenses involving sexual exploitation of an elderly or vulnerable adult [. . . .]

Tenn. Code Ann. § 40-35-115(b).

The provisions of subsections (b)(3) and (b)(5) through (8) clearly do not apply to Defendant. Given Defendant's lack of a criminal record before these offenses and his lack of disciplinary record while incarcerated, subsection (b)(1) also does not apply to Mr. Payne. This Court notes that in imposing consecutive sentences based on the "extensive criminal history" factor, the sentencing court may find the defendant's criminal record is extensive based on the convictions in the instant case—even if the defendant has no prior criminal record. *See State v. Cummings*, 868 S.W.2d 661, 667 (Tenn. Crim. App. 1992). However, this Court's research has found no case law applying *Cummings* to a case in which a defendant with no prior criminal record was convicted of three offenses at one trial. Nor has the Court located case law applying the "extensive criminal history" factor based on the nature of the offenses. Thus, the only consecutive sentencing factor at issue in this case is the "dangerous offender" factor found in

subsection (b)(4).

C. "Dangerous Offender" Consecutive Sentencing Factor

The Tennessee Supreme Court has held,

> Proof that an offender's behavior indicated little or no regard for human life and no hesitation about committing a crime in which the risk to human life was high, is proof that the offender is a dangerous offender, but it may not be sufficient to sustain consecutive sentences. Every offender convicted of two or more dangerous crimes is not a dangerous offender subject to consecutive sentences; consequently, **the provisions of Section 40–35–115 cannot be read in isolation from the other provisions of the Act. The proof must also establish that the terms imposed are reasonably related to the severity of the offenses committed and are necessary in order to protect the public from further criminal acts by the offender**. In addition, the Sentencing Reform Act requires the application of the sentencing principles set forth in the Act applicable in all cases. The Act requires a principled justification for every sentence, including, of course, consecutive sentences. *See* Tenn. Code Ann. §§ 40–35–102(1); 40–35–103(1)(2); 40–35–113; 40–35–114[.]

State v. Wilkerson, 905 S.W.2d 933, 939 (Tenn. 1995) (emphasis added).

In the current case, most of the factors announced in section 40-35-115(b)(4) and *Wilkerson* are easily established. The record reflects Charisse Christopher suffered 42 stab wounds to her chest, abdomen, back, neck, head, and thigh, and 42 defensive wounds on her hands and arms. The testifying medical examiner identified thirteen wounds "that were very serious and may have by themselves caused death."[15] Lacie Christopher, age two-and-a-half, died after suffering nine stab wounds to her chest, abdomen, back, and head, including one wound which "cut [her] aorta and would have been rapidly fatal."[16] Nicholas Christopher, age three-and-a-half, suffered multiple stab wounds, some of which were abdominal wounds which injured his spleen, liver, both intestines, and one of his venae cavae (the two large veins which return blood to the

[15] *State v. Payne*, 791 S.W.2d at 12.
[16] *Id.*

heart). The surgeon who performed surgery on Mr. Christopher noted one of these stab wounds went completely through the boy's body.

Given the number and severity of the victims' injuries and the fact that two of the victims in this horrific attack were children, there is no question the Defendant committed these offenses with no regard to human life and had no hesitation about committing these offenses when the risk to human life was high.[17] Furthermore, the Court can easily conclude the imposition of consecutive sentences would reasonably relate to the severity of these offenses, which ended two young lives and forever altered a third.

The only contested issue facing the Court focuses on *Wilkerson*'s requirement that "an extended sentence is necessary to protect the public against further criminal conduct by the defendant." *Wilkerson*, 905 S.W.2d at 939. The "protecting the public" factor has not, in this Court's view, been addressed adequately by the Tennessee Supreme Court. Some Court of Criminal Appeals opinions suggest that future dangerousness should be assessed at the time of sentencing rather than at the time the defendant committed the offense. *See, e.g., State v. Jonathan Lee Adams*, No. E2008-00400-CCA-R3-CD, 2009 WL 2176577, at *8 (Tenn. Crim. App. July 22, 2009) (appellate court reversed trial court's imposition of consecutive sentences for first degree murder and especially aggravated robbery; in the four years defendant, who had no prior criminal record, was on bond between offense and sentencing, he maintained stable employment, avoided other criminal charges, and attended church regularly).

In determining a defendant's future dangerousness for consecutive sentencing

[17] The Defendant testified in his own defense at trial and has continued to assert his innocence since then. However, all legal challenges to the Defendant's convictions have proven unsuccessful so far. Therefore, the Court must accredit the Shelby County jury's conclusion that the Defendant was the person who committed these acts.

purposes, the sentencing court may look to certain factors, including these identified by the Court of Criminal Appeals:

> This court has suggested that "[a]menability to rehabilitation relates directly to [the] protection of the public factor and may, on occasion, be determinative of whether the concurrent or the consecutive sentence should be imposed." *State v. Donald Mitchell Boshears and Ronald Dewaine Morrow, III,* No. 01C01-9412-CR-00402, 1995 WL 676402, at *5 (Tenn. Crim. App. Nov. 15, 1995) (citing Tenn. Code Ann. § 40-35-103). The defendant's youthfulness and lack of a criminal record may also establish that the defendant is not a threat for continued criminal behavior—and, therefore, that an extended sentence is not necessary to protect the public from the defendant. *State v. Tadaryl Darnell Shipp,* No. 03C01-9907-CR-00312, 2000 WL 290964, at *4 (Tenn. Crim. App. Mar. 21, 2000).

Jonathan Lee Adams, 2009 WL 2176577, at *8.

In Mr. Payne's case, this Court has been provided with ample evidence supporting his assertion that he is no longer a threat to society. The original presentence report indicated the Defendant had no criminal record before committing these offenses, and the evidence presented at the resentencing hearing depicted a person who has shown himself to be more than amenable to rehabilitation. As of the December 2021 sentencing hearing the Defendant had not incurred a single disciplinary infraction in his thirty-four years of incarceration in the Department of Correction. The Defendant's position as "rock man," which permits him to clean the core areas of Unit 2—including staff offices—establishes that he has gained a position of trust with both fellow inmates and TDOC staff. Mr. Payne's participation in Bible study, other faith-based programs, and educational opportunities further suggest his active pursuit of rehabilitation.

The State argues the Defendant's progress while in the controlled environment of prison may not guarantee the Defendant poses no threat to society once he returns to the

outside world. However, unlike many prisoners who are released from custody, the Defendant has an extensive network of family, friends, and supporters who are willing to work with him upon his release. Perhaps more importantly, he will have the opportunity to enroll in either Men of Valor's residential program or Final Escape, the prison reentry program administered by Bishop Hall's nonprofit. In either program, the Petitioner will have access to job placement services and other life skills taught by the respective programs. Should the Defendant participate in either program, he will have close contact with staff members and volunteers who will hold him accountable for his actions. And should the Defendant complete one of these two programs, he will have the opportunity to live with his sister or Mr. Dobyns, both of whom testified the Defendant was welcome in their respective homes. The combination of the Defendant's efforts to rehabilitate himself inside prison and the opportunities which would allow the Defendant to continue his rehabilitation efforts once he leaves prison suggest Mr. Payne would pose little threat to society upon his release.

This Court acknowledges the Court of Criminal Appeals has concluded that certain factors may overcome evidence suggesting a defendant does not pose a danger to society. Specifically, the appellate court has stated that "otherwise favorable factors" supporting a defendant's assertion he does not present a continued threat to the public "may be offset in an appropriate case by the circumstances of the offense and the dangerous offender's lack of remorse." *State v. Tadaryl Darnell Shipp,* No. 03C01-9907-CR-00312, 2000 WL 290964, at *4 (Tenn. Crim. App. Mar. 21, 2000) (citations omitted) (based upon especially violent nature of offenses, appellate court upheld trial court's determination that juvenile with no prior record was a dangerous offender for consecutive sentencing purposes). In Mr. Payne's case, the Court is fully aware of the horrific nature

of these offenses, which are described above. And as the victim impact testimony from the December 2021 sentencing hearing makes clear, these offenses continue to cause the victims' family great pain nearly thirty-five years later.

However, the unique procedural circumstances of this case and the evidence presented by the Defendant at the December 2021 sentencing hearing lead the Court to conclude that consecutive sentences are not necessary to protect the public from potential continued criminal conduct by Mr. Payne. In most instances, a trial court determining whether dangerous offender-based consecutive sentences are appropriate is faced with the sentencing decision relatively soon after the offenses occur. In such instances, there is not likely to be evidence establishing a defendant has pursued rehabilitation and is likely to continue rehabilitative efforts after leaving custody. In such instances, the nature and circumstances of the offenses may be the only evidence available to the sentencing court as it assesses the defendant's future dangerousness and the need to protect society from the defendant's further actions. Such a conclusion would have been justified in Mr. Payne's case following his 1988 trial.

Conversely, the Court's resentencing determination in Mr. Payne's case is not a "typical" case. The evidence presented at the December 2021 resentencing hearing shows that while incarcerated over the past three decades, the Defendant has exhibited good behavior and gained the trust of his fellow inmates and Riverbend staff. The Defendant has also participated in numerous rehabilitative opportunities while incarcerated. Perhaps more importantly, if Defendant is released from custody he will have an extensive support network of family, friends, and professionals who will give Mr. Payne the opportunity to continue his rehabilitative efforts. Without either the Defendant's demonstrated gains while incarcerated or the support network which would await him if

released, this Court may well reach a different conclusion today. However, the combination of these two factors convinces the Court that Mr. Payne's threat to society should he be released is low, and therefore consecutive sentences are not necessary to protect the public from the Defendant.

In conclusion, the Court finds that considering the evidence presented by the Defendant, the State has failed to establish by a preponderance of the evidence that consecutive sentencing would be appropriate based upon the dangerous offender factor.

V. Conclusion

As stated at the December 2021 sentencing hearing, the issue of consecutive sentencing has weighed heavily on the Court. The nature and circumstances of this case are egregious, and the victims' family is still affected by the loss of Charisse and Lacie Christopher and the life-altering attack on Nicholas Christopher. However, the unrefuted evidence presented at the resentencing hearing shows Mr. Payne has made significant rehabilitative efforts while incarcerated, and if released from custody the Defendant would have an extensive support network to assist him in his continued rehabilitation. Thus, after considering the relevant authorities, the principles of sentencing, and all relevant evidence in this case, the Court concludes the State has failed to establish, by a preponderance of evidence, that the Defendant is a dangerous offender within the meaning of T.C.A. section 40-30-115(b)(4), *Wilkerson*, and related authorities.

Accordingly, the Defendant's two sentences for first degree murder in Shelby County Case Nos. 87-04410 (first degree murder of Charisse Christopher) and 87-04409 (first degree murder of Lacie Jo Christopher) shall be served concurrently. Per the prevailing statute at the time of these offenses, each sentence shall have a release

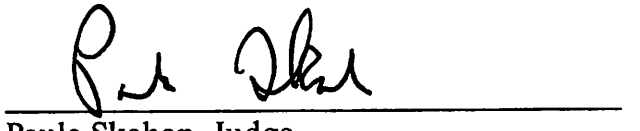
eligibility of thirty years.

In the Court's view, the Defendant's sentence in Shelby County Case No. 87-04408 (assault with intent to commit first degree murder of Nicholas Christopher) was not the subject of this sentencing hearing. This Court's determination that the Defendant is intellectually disabled affected only Mr. Payne's sentences for first degree murder. Thus, consistent with the sentence imposed at the 1988 sentencing hearing, the Defendant's sentence in Case No. 87-04408 shall be thirty years in the Department of Correction, imposed consecutively to the Defendant's sentence in Case No. 87-04409. Per the statute in effect at the time of these offenses, the release eligibility will be 30% (or nine years).

Accordingly, the Defendant's effective sentence shall be two concurrent life terms, plus thirty years, to be served in the Department of Correction. The Court's reading of the relevant statutes leaves it with the impression that Mr. Payne will be eligible for release after the service of thirty-nine years, with the Defendant receiving credit for all time served since his arrest.

The State shall prepare judgment forms to be entered into the record.

IT IS SO ORDERED this the 31 day of January, 2022.



Paula Skahan, Judge
Criminal Court, Division I
30th Judicial District, at Memphis