

IN THE GENERAL SESSIONS COURT FOR DAVIDSON COUNTY,
TENNESSEE

R.U.,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

)
)
)
)
)
)
)
)
)
)

Case No. SC164470

**ORDER GRANTING PETITION FOR WRIT OF AUDITA QUERELA
VACATING PETITIONER'S CONVICTION UNDER TENNESSEE'S
HOMOSEXUAL PRACTICES ACT**

Petitioner R.U.'s¹ petition for the issuance of a writ of *audita querela* vacating his 1995 conviction for violating the Tennessee Homosexual Practices Act came before the Court on September 16, 2016. Upon full consideration of the pleadings, the arguments of counsel, and the entire record, the Court hereby finds and orders as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On September 26, 1995, R.U. pleaded guilty to a Class C misdemeanor in Case No. SC164470 for violating the Tennessee Homosexual Practices Act, formerly codified at Tenn. Code Ann. § 39-13-510 (1991), after having consensual sex with another adult male.

2. In 1996, Tennessee's Homosexual Practices Act was invalidated by the Tennessee Court of Appeals as an unconstitutional violation of the Tennessee

¹ Given the sensitive and private nature of the facts underlying this petition, Petitioner shall be referred to by his initials only.

Constitution's guarantee of a fundamental right to privacy. *See Campbell v. Sundquist*, 926 S.W.2d 250, 266 (Tenn. Ct. App. 1996).

3. In 2003, the Supreme Court of the United States held that the Due Process Clause of the United States Constitution forbids governments from criminalizing consensual sex between adults of the same gender. *See Lawrence v. Texas*, 539 U.S. 558, 578 (2003).

4. Based on the Court of Appeals' decision in *Campbell v. Sundquist* and the U.S. Supreme Court's decision in *Lawrence v. Texas*, meritorious legal objections to Petitioner's conviction under Tennessee's Homosexual Practices Act have arisen subsequent to that conviction becoming final. Additionally, Petitioner's objections do not appear to be redressable pursuant to another post-conviction remedy. *See United States v. Holder*, 936 F.2d 1, 5 (1st Cir. 1991) ("the writ of *audita querela* can only be available where there is a legal objection to a conviction, which has arisen subsequent to that conviction, and which is not redressable pursuant to another post-conviction remedy."); *Seaton v. State*, No. E-1999-01312-CCA-R3-CD, 2000 WL 1177462, at *3 (Tenn. Crim. App. Aug. 21, 2000) (assuming, without deciding, that the writ of *audita querela* may issue where a petitioner can "demonstrate[] any post-judgment occurrence, which would entitle him to issuance of this writ.").

5. The Court therefore finds that Petitioner satisfies the conditions necessary to qualify for issuance of a writ of *audita querela*. The Court further finds that issuance of the writ is necessary to the exercise of this Court's jurisdiction and is essential to effect the ends of justice. *Dodds v. Duncan*, 80 Tenn. 731, 735 (1884); Tenn. Code Ann. § 29-1-105.

6. Accordingly, the Court hereby ORDERS that:

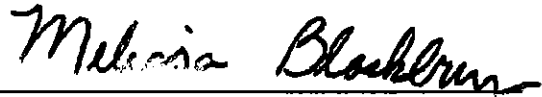
i. Petitioner's petition for writ of *audita querela* is GRANTED, and a writ of *audita querela* shall issue;

ii. Petitioner's conviction under Tennessee's Homosexual Practices Act in Case No. SC164470 should be and is hereby VACATED; and

iii. All legal disabilities against Petitioner arising out of Petitioner's conviction under Tennessee's Homosexual Practices Act should be and are hereby dissolved.

It is so ORDERED.

Entered this _____ day of September, 2016.



Judge Melissa Blackburn
Davidson County General Sessions
Court Judge, Division II