

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

RONALD PATRICK SWINEY,
PETITIONER.

v.

STATE OF ALABAMA,
RESPONDENT.

CASE NUMBER:
CC88-77,60

PETITION FOR RELIEF FROM CONVICTION OR SENTENCE
PURSUANT TO RULE 32, ALABAMA RULES OF CRIMINAL PROCEDURE

Prison Number AIS #154406 Place of Confinement West Jefferson
County of Conviction Shelby

NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY THE
ACCOMPANYING INSTRUCTIONS.

1. Name and location (city and county) of court which entered the judgment of conviction or sentence under attack Shelby County Circuit Court, Columbiana, Shelby County, Alabama.
2. Date of conviction June 12, 1989
3. Length of sentence Life without Parole
4. Nature of offense(s) involved (all counts) Violation of §13A-5 40(a)(10) of the Alabama Criminal Code. Murder wherein two or more persons are murdered by one act or pursuant to one scheme or course of conduct.
5. What was your plea? (Check one)
 - (a) Guilty _____
 - (b) Not Guilty _____
 - (c) Not Guilty by reason of mental disease or defect _____
 - (d) Not Guilty and not guilty by reason of mental disease or defect X

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

N/A

6. Kind of trial: (Check one)
(a) Jury X (b) Judge only _____

7. Did you testify at trial?
Yes X No _____

8. Did you appeal from the judgment of conviction?
Yes X No _____

9. If you did appeal, answer the following:
(a) As to the state court to which you first appealed, give the following information:
(1) Name of court Alabama Court of Criminal Appeals
(2) Result Affirmed without opinion
(3) Date of Result August 3, 1990

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:
(1) Name of court Supreme Court of Alabama
(2) Result Writ of Certiorari denied
(3) Date of Result December 14, 1990

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:
(1) Name of court N/A
(2) Result N/A
(3) Date of result N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes _____ No X

11. If your answer to Question 10 was "yes" then give the following information in regard to the first such petition, application, or motion you filed:

(a) (1) Name of court N/A
(2) Nature of proceeding N/A
(3) Grounds raised N/A
(4) Did you receive an evidentiary hearing on your petition, application, or motion? N/A
(5) Result N/A
(6) date of result N/A

(b) As to any second petition, application, or motion, give the same information:
(1) Name of court N/A
(2) Nature of proceedings N/A

- (3) Grounds raised N/A
- (4) Did you receive an evidentiary hearing on your petition, application, or motion, give the same information: N/A
- (5) Result N/A
- (6) Date of result N/A

- (c) As to any third petition, application, or motion, give the same information:
 - (1) Name of court N/A
 - (2) Nature of proceedings N/A
 - (3) Grounds raised N/A
 - (4) Did you receive an evidentiary hearing on your petition, application, or motion? N/A
 - (5) Result N/A
 - (6) Date of result N/A

- (d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion? N/A

- (e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not: N/A

12. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

GROUND(S) OF PETITION

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

A. The Constitution of the United States or the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

For your information, the following is a list of the most frequently raised claims of constitutional violation:

- (1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding the nature and consequences of the plea.
- (2) Conviction obtained by use of coerced confession.
- (3) Conviction obtained by use of evidence gained pur-

- suant to an unconstitutional search and seizure.
- (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (5) Conviction obtained by a violation of the privilege against self-incrimination.
- (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (7) Conviction obtained by a violation of the protection against double jeopardy.
- (8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (9) Denial of effective assistance of counsel.

This list is not a complete listing of all possible constitutional violations. If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details. (See, Attached).

___ B. The court was without jurisdiction to render the judgment or to impose the sentence.

If you checked this ground for relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

___ C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports the claim. Be specific and give details.

___ D. Petitioner is being held in custody after his sentence has expired.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

___ E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because: the facts relied upon were not known by the petitioner or petitioner's counsel at the time of trial or sentencing or

in time to file a post-trial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and

The facts are not merely cumulative to other facts that were known: and

The facts do not merely amount to impeachment evidence; and if the facts had been known at the time of trial or sentencing, the result would have probably have been different; and

The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground for relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

F. The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.

If you checked this ground for relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

13. IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32(b)
LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES.
IT PROVIDES:

"Successive Petitions. The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf on the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that a failure to entertain the petition will result in a miscarriage of justice."

A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes _____ No X

B. If you checked "Yes" give the following information as to earlier petition attacking this conviction or sentence:

- (a) Name of court N/A/
- (b) Result N/A
- (c) Date of result N/A

C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labelled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could have been ascertained through reasonable diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice."

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes No X

15. Give the name and address, if know, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

- (a) At preliminary hearing Richard Bell, 201-A Yeager Parkway, P.O. Box 427, Pelham, Alabama 35124
- (b) At arraignment and plea Same as above
- (c) At trial Same as above
- (d) At sentencing Same as above
- (e) On appeal Same as above
- (f) In any post-conviction proceeding N/A
- (g) On appeal from adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
Yes No X

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes No X

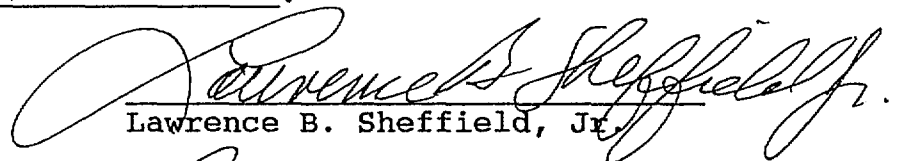
18. What date is this petition being mailed? November 22, 1991

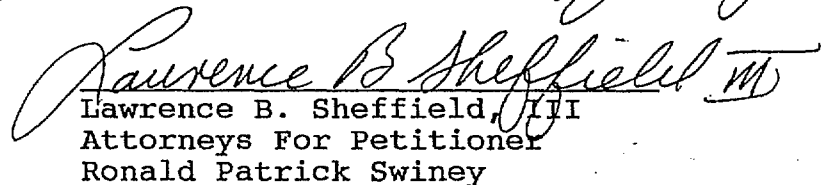
Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

ATTORNEYS' VERIFICATION UNDER OATH SUBJECT TO
PENALTY FOR PERJURY

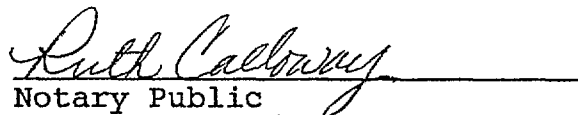
We hereby swear or affirm under penalty of perjury that, upon information and belief, the foregoing is true and correct.

Executed on November 22, 1991.


Lawrence B. Sheffield, Jr.


Lawrence B. Sheffield, III
Attorneys For Petitioner
Ronald Patrick Swiney

SWORN TO AND SUBSCRIBED before me this the 22nd day of
November, 1991.


Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.
MY COMMISSION EXPIRES: May 31, 1995.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

OF COUNSEL:

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