

night of the incident Lieutenant Stanley Oliver of the Alabaster Police Department and Jim Walters, Deputy Sheriff of Shelby County, left the scene of the homicides and went to the Petitioner's sister's home. That these officers then arrested the Defendant without an arrest warrant or probable cause and then, a short time later, extracted a statement from him which was used as evidence against him at the trial. That the statement was illegal per se in that it was the product of his illegal arrest. Further, at the time that Lieutenant Oliver illegally arrested the Petitioner, Oliver illegally seized a .22 rifle from the Petitioner's sister's home without a search warrant, probable cause or consent for the seizure.

Further, the Petitioner asserts that the issue could not have been properly raised on direct appeal because of the Petitioner's former attorney's failure to raise an objection at trial and properly preserve the issue for appellate review.

2.) As to Paragraph "B" - #4-6, the Petitioner's asserts that he has specifically alleged a meritorious claim and that has provided ample facts necessary to support the claim. Further, the issue could not have been raised on direct appeal because of the Petitioner's former attorney's failure to raise an objection at trial and properly preserve the issue for appellate review.

3.) As to all of the averments contained in the Petitioner's claim in Paragraph "C", the Petitioner asserts that all averments are specifically detailed and meritorious. Further, that none of these issues regarding this claim could have been raised on

direct appeal because the Petitioner's trial counsel was also his appellate counsel, thus he could not raise the claim of ineffective assistance of counsel against himself. Therefore, collateral attack is the only legally proper avenue to raise this claim and not by direct appeal. (See, Jackson v. State, 534 So.2d 689 (Ala.Cr.App. 1988); Hope v. State, 521 So.2d 1383 (Ala.Cr.App. 1988)).

4.) As to Paragraph "D" - #25-28, the Petitioner asserts that the issue could not have been properly raised on direct appeal because of the failure of the Petitioner's former attorney's failure to raise an objection at trial and properly preserve the issue for appellate review.

5.) As to Paragraph "E" - #29-31, the Petitioner asserts that the issue could not have been properly raised on direct appeal because of the failure of the Petitioner's former attorney's failure to raise an objection at trial and properly preserve the issue for appellate review.

6.) As to Paragraph "F" - #32-36, the Petitioner asserts that the issue could not have been properly raised on direct appeal because of the failure of the Petitioner's former attorney's failure to raise an objection at trial and properly preserve the issue for appellate review.

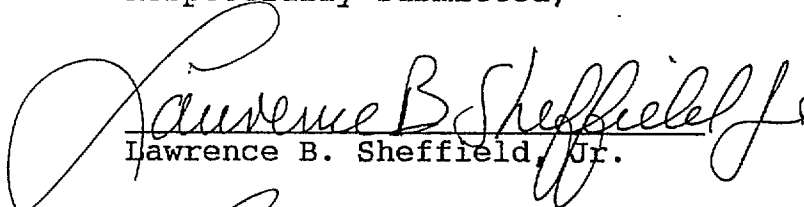
7.) As to Paragraph "G" - #37-40, the Petitioner asserts that the issue could not have been properly raised on direct appeal because of the failure of the Petitioner's former attorney's

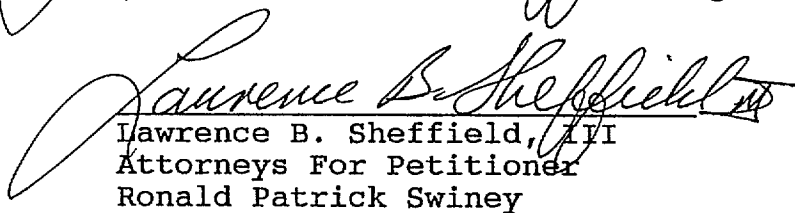
failure to raise an objection at trial and properly preserve the issue for appellate review.

8.) The Petitioner asserts that his petition is sufficiently specific and states meritorious claims in which issues of material facts exist which thereby entitle him to relief under Rule 32 A.R.Crim.P., and that summary dismissal is neither warranted or justified pursuant to Rule 32.7(d) A.R.Crim.P., and/or the cases cited herein.

WHEREFORE, PREMISES CONSIDERED, the Petitioner prays this Honorable Court will deny the Respondent's Motion for summary dismissal and set this cause for an immediate evidentiary hearing pursuant to Rule 32.9 A.R.Crim.P..

Respectfully submitted,


Lawrence B. Sheffield, Jr.


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

OF COUNSEL:

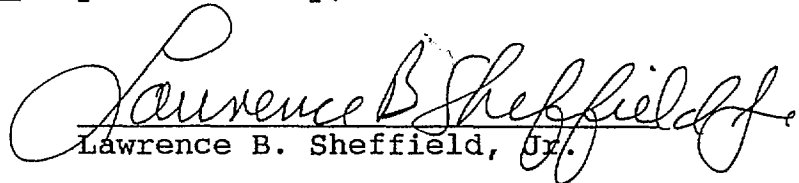
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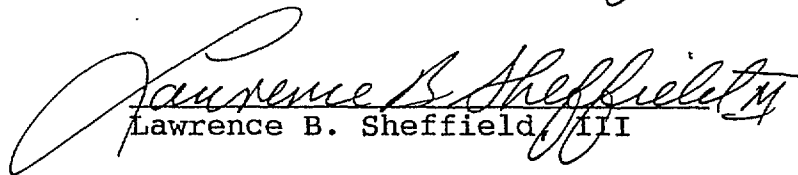
CERTIFICATE OF SERVICE

We hereby certify that we have served a copy of the above and

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foregoing Response upon the Honorable Mary Kay Laumer, Assistant District Attorney of Shelby County, Alabama, by placing a copy of the same in the United States Mail, postage prepaid and properly addressed on this the 11th day of February, 1992.


Lawrence B. Sheffield, Jr.


Lawrence B. Sheffield, III