

RONALD PATRICK SWINEY, )  
 Petitioner, )  
 -vs- )  
 STATE OF ALABAMA, )  
 Respondent. )

CASE NO: CC 88-77,60

MOTION TO DISMISS AND ANSWER TO RULE 32 PETITION

Comes now the State of Alabama, by and through the District Attorney for the Eighteenth Judicial Circuit, and moves this Court for an order dismissing the above-styled petition for post-conviction relief pursuant to Rule 32, Alabama Rules of Civil Procedure and as grounds therefore asserts the following:

1. The State of Alabama denies each and every allegation contained in the petition and demands strict proof thereof;
2. The Petitioner first alleges in Paragraph II.A. that a statement that was illegally obtained following the Petitioner's illegal arrest was later admitted into evidence at his trial in violation of Petitioner's rights as guaranteed by Article 1, Section 5,6 of the Alabama Constitution(1901) in the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution (and, as checked in Paragraph 32.A). Petitioner has failed to specify a proper factual basis for this ground of relief as he has alleged insufficient facts. "A bare allegation that a Constitutional Right has been violated in mere conclusions of law shall not be sufficient to warrant any further proceedings." Alabama Rules of Criminal Procedure, Rule 32.6(B);
3. Petitioner's allegations in Paragraph 32.A. are procedurally barred from review by application of Alabama Rules of Criminal Procedure, 32.2(a)(5), because this issue and/or issues could have been raised on appeal;

5/4/92 - Respondent's Motion to Dismiss is DENIED. Petitioner's Rule 32 Petition is hereby set for trial on August 17, 1992 at 9:00 A.M.

*D. Al Crowson*  
 D. Al Crowson, Circuit Judge

FEB 1992  
 RECEIVED & FILED  
 DAN REEVES  
 CIRCUIT CLERK  
 SHELBY COUNTY, ALA.

*[Handwritten signature]*