

JANUARY 3, 1997

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

RONALD PATRICK SWINEY,  
petitioner,

\*

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vs.

\*

CIVIL ACTION NO.

\*

96-p-2823-S

CHARLES E. JONES, Warden;  
ATTORNEY GENERAL FOR THE  
STATE OF ALABAMA,  
Respondents.

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MOTION FOR AN ORDER

Comes now petitioner Ronald Patrick Swiney through prisoner assistance and respectfully moves this Honorable Court to issue an order directing the respondents to comply with Rule 5 Fed. R. Civ. P., and as grounds therefor, respectfully represent as follows to the court;

1. That the respondents were under a court order to answer to the allegations in petitioner's habeas petition;

2. That the respondents served the petitioner with their answer on the 2nd day of January, 1997;

3. That in their answer the respondents are mentioning and referring to numerous exhibits, apparently marked A - H, for this purpose. ( See, Respondents' answer, specially, pages 26 - 27 ). See, also, Respondents' Certificate of Service, which fails to show the court that NO exhibits were served with their answer.

4. That the amount of postage paid ( \$1.70 ) by the office of Respondent Attorney General through meter number 940110 on December 30, 1996, clearly es-

tablish that NO exhibits were included with their answer.

5. That the petitioner recognizes that the burden of producing the state court's Record is sometimes unduly onerious. However, it is clear that under procedure governing habeas corpus actions, "the obligation to come forward with the state record is squarely upon the respondents, not upon the petitioner." Bundy v. Wainwright, 808 F. 2d 1410, 1415 ( 11th Cir. 1987 ).

petitioner most respectfully submits to the court that it is humanly impossible for him and/or the person currently assisting him to, adequately reply to their answer without having the exhibits mentioned and refered to by the Respondents in their answer.

petitioner files this motion on the ground of fundamental fairness.

WHEREFORE, PREMISES CONSIDERED, petitioner prays this Honorable Court will give favorable consideration to this, his motion for an order, and thereafter the court will issue the requested order.

Dated: this the 3rd day of January, 1997.

pursuant to 28 U.S.C. sec. 1746, I declare ( certify or state ) under penalty of perjury that the foregoing is true and correct in its entirety.

Executed on January 3, 1997.

Ronald Patrick Swiney, Affiant/  
petitioner.

CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of January, 1997, I have served a copy of the foregoing via U.S. Mail, First class, postage prepaid upon Jean Williams Brown, Assistant Attorney General, 11 S. Union Street, Montgomery, AL. 36130-0152.

Ronald Patrick Swiney  
Holman 3700 - D/2  
Atmore, AL. 36503-3700