

August 14, 1998

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

RONALD PATRICK SWINEY
Petitioner

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§
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vs.

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CIVIL ACTION NO. 96-P-2823-S

CHARLIE JONES, Warden:
ATTORNEY GENERAL FOR
THE STATE OF ALABAMA
Respondents

PETITIONER'S OBJECTIONS
TO MAGISTRATE JUDGE'S
FINDINGS & RECOMMENDATIONS

Comes now the Petitioner, Ronald Patrick Swiney, pro-se, and makes these objections to the Magistrate JUDGE'S findings and recommendations as follows:

- ⇒ Petitioner submits the foregoing attached Declaration/Affidavit in support of this petition as additional evidence that he has been, and is being denied lawfully procedural due process of law in this country by a Judicial system run-a-muck.
- ⇒ Petitioner objects to denial for Motion for Appointment of Counsel to which he is entitled as a matter of State Law under due process U.S.C.A.14. See Rule 6, A.R.Crim.P. (copy infra.) - see issue #3.
- ⇒ Petitioner objects to Magistrate's failure to address Petitioner's Supplement Pleadings.

⇒ Petitioner objects to Magistrate's Act of Representing the State as an adversary against this U.S. Citizen.

⇒ Petitioner objects to Magistrate's use of Unconstitutional preclusionary State Rules to preclude a U.S. Citizen from challenging procedural rules of State as being Unconstitutional.

Page (1.)

The Magistrate erroneously alleged that "Petitioner" raised certain claims on direct appeal, see issue (4) Argument.

This Petitioner has not raised any claim in any petition filed in any State Court. Alabama Courts forbid a Petitioner from having anything to say in his defense, and will not accept any pro-se petitions, see issue (4).

The remainder of the Magistrate's findings are unsupported by the records and are nothing but self-serving statements of what he prefers to believe rather than an impartial examination of the facts alleged.

This Petitioner has a right to an impartial and fair review by an honest law-abiding judge who is true to his oath to the U.S. Constitution.

Page (2.)

[MISSING]

Petitioner cannot make objections as to page (2) as required by Federal Rules, because it is missing and the clerk failed, after request, to send a complete copy.

Page (3.)

The trial Court's findings that claims could have been and should have been raised on direct appeal, at a Rule 32 proceeding constitutes a stipulation by the Court that Trial/Appeal Counsel was ineffective for failing to raise claims at trial and/or on appeal, cause established.

The Rule 32 Judge had no personal knowledge of any facts of trial, DIFFERENT JUDGE/Foot Note 1, therefore his decision is not entitled to any presumption of correctness because it is based on documentary evidence only.

The Rule 32 Court, and perhaps the Bar Association has either misled Petitioner's Rule 32 Counsel, or brainwashed him into believing that if a judge says the claim is barred, he is not to question or challenge that Court. And due to that Counsel's ineffectiveness in defending Petitioner's right to review, Petitioner was prejudiced by Counsel's failure to raise claim on appeal of Rule 32, see issue (3).

The alleged procedural rule does not preclude any claims whatsoever and is an Unconstitutional rule which the Magistrate has ignored in his findings, see issue (3).

There is no such thing as a Counsel Claim that cannot be challenged.

A claim against Counsel is just that, "Against Counsel," not against the State. Neither the State nor any Court has any power to defend any Counsel.

The Magistrate failed to address the issue of Unconstitutional Rule 32 preclusions, and the issue of conspiracy, as well as the fact that the jury was also a victim of lawless acts by State Prosecution and Judge.

Counsel's failure to address all claims raised did not result in abandonment of claims not argued, Meeks vs. Singletary 963 F. 2d 316 (11th Cir 1987) and See Hernandez vs. State 602 So. 2d 911 (Ala 1992).

There exists no reason to appeal claims not yet decided on the merits by the trial Court such as claims that are still outstanding and pending, and amendment is permissible under Rule 15(c) A.R.CIV.P. Garrett vs. State 644 So. 2d 977 (Ala 1994).

The Magistrate is correct this time: it was this "Petitioner" that "DID" raise the claims in this present Federal Habeas Corpus petition, and "this" is the first time "this" Petitioner has had any opportunity to have any input in his defense.

ISSUE #1 Page 5

Trial Counsel was ineffective for his failure to file a Motion for Discovery in reliance on his gentleman's agreement to "OPEN FILE" with the District Attorney.

This issue was raised in the Rule 32 and appeal therefrom. The Rule 32 Court erroneously found no need to file a Motion for Discovery because "COUNSEL" had access to examine the D.A.'s file and physical evidence.

The problem arises where it is the "COUNSEL" but not the Petitioner who is permitted to view the files and evidence. Counsel was not the person arrested, nor was he involved. Counsel had no personal knowledge of any facts of the case, nor history of the parties. Therefore, for "COUNSEL" to view the files and evidence, but not Petitioner, deprived the Petitioner of opportunity to properly assist Counsel in preparing his defense. Whereas, a Motion for Discovery would have required that the files, documents and physical evidence to be used, would have been stipulated in open Court, in the presence of the Petitioner, thereby giving the Petitioner the opportunity to have input in assisting in preparing his defense. An open file to Counsel only is the equivalent of a "Trial by ambush," Herriman vs. State 504 So. 2d 353 (Ala 1987).

Naturally, the trial Court found Counsel was not ineffective; they are all members of the same good-old-boy club. Petitioner had no personal knowledge of the contents of most documents until after appeal, and had no knowledge of other documents until "AFTER" filing this present Federal Habeas Corpus petition, as those documents were apparently available to trial Counsel in the "Open File" but not to the Petitioner of the case. Petitioner

cannot say whether the documents were actually in the "Open File" that Counsel reviewed, without asking that Counsel personally. If said documents were not in that file, then the State was withholding evidence from that "Open File" with intent to obtain a conviction in a TRIAL BY AMBUSH. Alabama has a history of obtaining convictions by unlawful means and then maintaining the illegal incarcerations by using their unlawful procedural rules to avoid and elude any review of Constitutional challenges.

This has nothing to do with trial strategy but rather a failure to provide a meaningful defense. Petitioner was deprived of the SHOW & TELL DAY.

The Alabama Court erroneously held that Petitioner failed to carry his butden as set by Strickland vs. Washington (Resp. Ex H). This is not true, but the truth is that the Appeal Court did know or should have known that the claims raised in the trial Court did point to evidence "COUNSEL" failed to discover and that it was the trial Court that would not permit the Petitioner to raise or argue those claims on the ground that it could have been raised in appeal, again, using the Rule 32 as a devise to circumvent the Constitutional Claims by trickery and fraud.

As to Rule 32 appeal findings, Petitioner "DID" point to evidence that Counsel failed to discover. This was raised in, and as part of, the other claims which the trial Court ruled were issues that could not be raised in a Rule 32 because they could have been and should have been raised on direct appeal, thereby preventing the Petitioner from pointing to the evidence that Counsel failed to discover, and that is EXACTLY what Petitioner was claiming - that the issues could have been and should have been raised at trial or on appeal, and that Appeal Counsel was ineffective because of failing to do so.

As for Counsel's failure to discover evidence, this is not to say that Counsel did not view the documents containing the evidence, but it is to say that because Petitioner was not permitted to view the documents in the "OPEN FILE," then Counsel could look at the documents all day and never realize the factual evidence or the importance thereof, contained therein, and therefore, Counsel failed to discover the evidence contained in those

documents because the documents were in an "OPEN FILE," available to the Counsel, but not this Petitioner.

ISSUE #2 Page 7

Trial Counsel was ineffective in allowing prejudicial and irrelevant testimony about Petitioner shooting a bird with a B.B. or pellet gun while he was living/married to the victim, his wife.

This Petitioner filed this Habeas Corpus to the Federal Court because he was not satisfied with the decisions of the State Courts, and the Magistrate here relies on the findings of the State Court and restates same.

The State Court held that:

Because Petitioner was a police officer, he was therefore a trained marksman when he shot a bird with a B.B. gun and the fact that he shot that bird was sufficient to prove intent to kill people.

The State Court further held that:

The Court did not consider the shooting of a bird as portraying him as a violent man, but that it was evidence of intent to kill people.

Apparently the appeals Court is alleging that (1) anyone who kills a bird with a B.B. gun, intends to kill people, and (2) that killing a person is "NOT" a violent act.

This same Petitioner, as an officer of the law, made many arrests over the years which resulted in saving the lives of many people (and in his 13 years as a police officer, he never shot anyone, even though he carried a weapon with him at all times while on duty),