

August 14, 1998

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

RONALD PATRICK SWINEY
Petitioner

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vs.

CIVIL ACTION NO. 96-P-2823-S

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

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BRIEF IN OPPOSITION TO
RESPONDENTS OBJECTIONS TO
MAGISTRATE JUDGE'S FINDINGS
AND RECOMMENDATIONS

Comes now the Petitioner, Ronald Patrick Swiney, pro-se, and makes the following objections to the Respondents objections to the Magistrate Judge's findings and recommendations as follows:

1. The Magistrate made no findings of fact, but relied on mere allegations of the State and the erroneous conclusions of State Court from which the Petitioner had originally sought review. The Magistrate did not make conclusions of law, but relied on State Court decisions which find no basis in law, but are rather an arbitrary decision without legal or factual basis, and as the Magistrate is aware or should be aware, there is no default of any kind to bar this Petitioner from redress.
2. The Magistrate Judge's findings should be upon comity, rather than Unconstitutional State Court Rules. The State fears addressing the merits because the only way Alabama can maintain its enormous prison population of

innocent persons, is to avoid and attempt to prevent review of Constitutional Claims, "No state shall make or enforce any law which shall abridge the privileges....of writ of Habeas Corpus shall not be superseded," U.S.C.A.14 and Art. 1 Sec 9 Clause 2 U.S. Const. (respectively).

3. No claim can ever be barred on the ground that is could have been raised on direct appeal, Gray vs. State 684 So. 2d 1051 (Ala. 1993) and Harvell vs. State 594 So. 2d 1301, 617, So. 2d 706 (Ala. 1992). Andy Poole is well aware of that and is attempting to mislead the Federal Judge and Magistrate or to convince them to join in the conspiracy.

A substantive claim concerning jury instruction is NOT BARRED, under ineffective assistance of Counsel, pursuant to Alabama's Fraudulent Rule 32, which offers relief on Constitutional Claims and then says relief is not available. The Rule 32 is a FRAUDULENT document used to preclude citizens from right of redress. The Magistrate Judge erred when he thinks he finds the claim barred. The Magistrate has no power to assert any State law in defense of the State. Rule 32.2 (A)(3) and (5) are Unconstitutional and, are being applied erroneously.

4. Harris vs. Reed 489 U.S. 255, 260-261, 263 (1984) is not applicable in Alabama because the Courts cannot make laws for the State, thus Rule 32 is Unconstitutional. Mr. Poole argues that jury issues cannot be raised in a Rule 32, then here argues that the claim was not raised on appeal of Rule 32. That is simply because it was not raised at the Rule 32 because the Court would not permit it. So there was NO RAISING of Jury claim, no finding of fact, Rule 32.9 (D), thus it would not support an appeal because Alabama's attorneys have no guts to challenge the Courts alleged preclusionary rules as being Unconstitutional. All Counsel could raise on appeal is what was permitted at trial Court level and this is: INEFFECTIVE COUNSEL!!!
5. See issue 4 above.

The Magistrate JUDGE'S findings are total and gross error. No claims are barred or defaulted.

The State's objections are frivolous and in furtherance of the State's attempt to shove their Unconstitutional Rules down the throats of Federal JUDGE'S. The Bear will surely claw the eyes from the Eagle when the Eagle is not being true to itself.

Petitioner re-states his position as a United States Citizen and is not aware of any power of the State of Alabama to withdraw his citizenship or entitlement to the protections of the prohibitions of the United States Constitution, nor aware of any power that gives a Federal Judge the authority to say that a State Court Rule can circumvent and/or make void that Constitution.

Both the State and this Court may think that its actions are done in secret, but rest assured, you are being watched and monitored daily.

Petitioner prays this Court to ignore the State's objections and the Magistrate's findings and recommend as being Unconstitutional and against the very principles on which our basic foundation is built -- "We the People."

Declaration

The foregoing is declared under penalty of perjury to be true and correct to the best of my knowledge and belief.

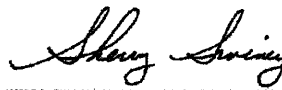
So is declared this 14th day of August, 1998.

Ronald Patrick Swiney

Ronald Patrick Swiney

Certificate of Service

This will certify serving of the foregoing on all parties below placing same in the U.S. Mail, properly addressed. Postage pre-paid this 17th day of August, 1998.



Sherry L. Swiney

Original to:

Clerk of the Court
United State's District Court
1729 5th Avenue North
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Files of Sherry Swiney