

SEPTEMBER 17, 1998

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

RONALD PATRICK SWINEY
Petitioner

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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

MOTION FOR JUDGMENT
PURSUANT TO RULE 54 F.R. CIV. P

Comes now this Petitioner and moves this honorable court to grant this motion for judgment pursuant to Rule 54(b) and (c) F.R. Civ. P. in that the state opened the door to consideration of state court Rule 32 [preclusions] A.R. Crim. P. which is not a "state" ground, but a court's judge-made rule. Petitioner thus challenges the rule's constitutionality. The magistrate ignored the challenge, but rather used the same challenged rule against Petitioner. Petitioner demands a judgment as to the constitutionality of the Rule 32 A.R. Crim. P. preclusions based upon the arguments set forth in Petitioner's previous pleadings, Rule 54(d) F.R. Civ. P. This motion is supported by the pleadings in the enclosed Rule 52 motion, and supported by the enclosed Rule 15, 55, 56, 57, 59 and 60 F.R. Civ. P. motions. This matter concerns counter-claims and cross-claims not adjudicated.

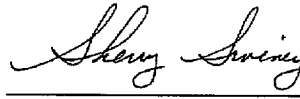
Petitioner prays this motion be granted, so is prayed this 14th day of
September, 1998.

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 September, 1998.



Sherry L. Swiney

Original to:

Clerk of the Court
United State's District Court
1729 5th Avenue North
Birmingham, AL 35203

Copy to:

Office of the Attorney General
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Montgomery, AL 36130

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Files of Sherry Swiney