IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

CHARLES JASON BALDWIN PETITIONER

V. NO. CR 93-450.

STATE OF ARKANSAS RESPONDENT

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR NEW TRIAL UNDER ARK. CODE ANN. §16-112-201, *et seq.*

On this 10 day of September, 2008, came on to be heard the petition for habeas corpus and motion of the Petitioner for a new trial. Based on the pleadings, statements of counsel, and the files and records of this proceeding, the Court finds as follows:

1. The Petitioner and his codefendant Damien Echols are pursuing relief under to Act 1780 of 2001, first codified at §16-112-201 *et seq.* (Supp. 2003). Pursuant to an agreement of the parties, in June 2004, and February 2005, the Court ordered DNA testing of many items of evidence. After obtaining some results that he asserted were favorable to him, Echols raised them in federal district court in a pending habeas-corpus proceeding. The federal district court would not consider them due to the pendency of the proceeding in this Court. Thus, Echols returned to this Court and filed a motion for a new trial in mid-April 2008, seeking relief particularly under Ark. Code Ann. §16-112-208(e) (Repl. 2006). Pursuant to a scheduling order announced at a hearing in this case on April 15, 2008, the Court ordered the Petitioner to file any like pleading by May 30, which he did, and ordered the State to respond by July 15, which it did. The Court also set this and

companion cases for a status hearing on August 20, 2008, and set hearing dates for all cases from September 8 to October 3, 2008. Echols filed a Reply to the State's Response in his case on August 12, 2008. At the August 20 status hearing, the Court granted (over the State's objection) Echols leave to file his Reply and the Petitioner permission to adopt it and gave the State until August 30 to file a further Response, which it did. Both parties were invited to file proposed precedents by that date as well.

2. The Petitioner seeks a new trial pursuant to a 2005 amendment to the DNA-testing statute that was not in effect at the time the Court ordered the agreed-upon DNA testing under a prior version of the statute. That testing provision is no longer in effect and was replaced by a more stringent one also by the 2005 amendment. See 2005 Ark. Acts, No. 2250; compare Ark. Code Ann. §§16-112-201, *et seq.* (Supp. 2003) with Ark. Code Ann. §§16-112-202, 16-112-208 (Repl. 2006). Thus, his petition and new-trial motion is founded on testing results that have not been found to meet the strictures of the statute. Indeed, the State asserts that it would not now agree to the testing that it did under the earlier version of the statute because the testing pursued by the Petitioner cannot produce material evidence raising a reasonable probability that he did not commit the offense, as now required by the statute.

While the Petitioner has invoked the new version of the statute (§16-112-208(e)) in asking for a new trial in light of his DNA-testing results and other claims, he has not separately demonstrated that the testing could be ordered under the new version of the statute (§16-112-202) in the first place.

The State, on the other hand, has not suggested that he must do so or that he is limited to the relief available under the statute as it existed at the time testing was ordered. The Court agrees with the State's observation that before the 2005 amendments to the statute it was unclear how testing results were to be gauged. In these circumstances, the Court must resolve how the current relief provisions found in §16-112-208 operate, particularly here on testing results ordered under the now-repealed testing provision of §16-112-202.

3. That resolution is informed by the simple facts that this case began with the Court's order for DNA testing that might be materially relevant to the Petitioner's mere assertion of actual innocence under the previous statutory scheme for pursuing actual-innocence relief. How the Court must evaluate the results of such testing is necessarily a matter of turning to the statute. The Court is largely persuaded by the State's analysis of the statute as detailed in its responses, particularly as applied to this case given the procedural history and legislative changes recounted above. The Court's legal conclusions are as follows.

The first provision of the statute concerning results, Ark. Code Ann. §16-112-208(b), gives the Court two options when results are inconclusive, order additional testing or deny relief. The Court will address the Petitioner's request for additional testing below. As for the results already obtained, the Court must determine the meaning of inconclusive in this case in light of the testing ordered. Because the Petitioner's testing results were obtained without a finding that he had shown that testing would raise a reasonable probability

that he did not commit the offenses as now required by §16-112-202(8)(B), his DNA-testing results must at least demonstrate as much to avoid denial of relief due to inconclusiveness under section 208(b). Under the statute, results that might support relief will necessarily raise a reasonable probability that a petitioner did not commit an offense, because only testing that could yield such results can be ordered.

In other words, the Petitioner cannot jump past section 208(b) to §16-112-208(e) to pursue a new trial simply because he claims his results exclude him as a source of DNA because his testing was not ordered under the rigors of the current version of section 202. All the relief available under section 208 is premised on testing ordered consistently with the current version of section 202. Because there was no finding that Petitioner's testing would raise a reasonable probability that he did not commit the offenses at the time that testing was ordered in 2004 (as no such finding was then required), but that finding is now required under section 202, the Court must evaluate whether his testing results are inconclusive as to that probability under section 208. If the Court did not first evaluate the Petitioner's DNA-testing results by that measure, it would contradict the statute's requirement that only testing that satisfies section 202 should be conducted—i.e., there is no point to a hearing on the results of testing that could not be ordered now. Thus, in order to determine whether relief must be denied under section 208(b), the Court must determine whether the Petitioner's results are inconclusive as to his claim of actual innocence.

The results on which the Petitioner relies are most recently described in Echols's Reply at pp. 14-15, which he has adopted. Although the State apparently would dispute some of his results at a hearing, because the Court is denying relief without an evidentiary hearing, it will accept his results as follows for purposes of its legal analysis in this order. The DNA-testing results exclude the Petitioner as a source of most of the biological material tested to date, particularly from 1) a foreign allele from a penile swab of one victim, 2) a hair recovered from a shoelace used to bind another victim, and 3) a hair recovered from a tree stump at the crime scene. The step-father of one victim and a friend of his are, respectively, not excluded as sources of the latter two items. The Petitioner also is excluded as the source of biological material from a pants cutting of one victim.

The Court finds that the Petitioner's DNA-testing results are inconclusive because they do not raise a reasonable probability that he did not commit the offenses; that is, they are inconclusive as to his claim of actual innocence. The Court readily can find as much from the Petitioner's adoption of Echols's description of the results in his August 12 Reply to the State's Response. The section advancing the reliability and significance of the results concludes by saying they together raise "an inference of innocence[.]" Reply at p. 18. An inference in this context plainly is not a reasonable probability that could support the Petitioner's claim. The Court agrees with the State that the mere exclusion of the Petitioner as the source of some biological material from the crime scene (including the four particular items

on which he relies) neither establishes that he was not there nor that he was not a killer. On the other hand, that two other persons are not excluded from the two hairs does not place them there nor make them killers. That the crimes here may not admit of ready identification of its perpetrators through DNA evidence does not make the Petitioner's burden to demonstrate conclusive DNA-testing results of his innocence any easier. Proof of actual innocence requires more than his exclusion as the source of a handful of biological material that is not dispositive of the identity of a killer. As his DNA-testing results offer no more than that, they are inconclusive and cannot support a hearing to evaluate his assertion of actual innocence.

Even apart from his own luke-warm characterization of his results, however, it is evident from the balance of his pleadings that he is not actually relying on his results alone to overcome the threshold to obtain a hearing, much less relief. Instead his petition and motion depends upon consideration of voluminous exhibits purporting to undermine the evidence of guilt from his trial. His reliance on those materials reflects a fundamental misunderstanding of the claim he can make and his burden to obtain relief under the statute. The statute permits evaluation of claims of actual innocence supported by scientific testing, here the ordered DNA testing, it does not permit reweighing of the trial evidence. The adequacy of that evidence to demonstrate his guilt is fixed, particularly in a case like this in which he did not challenge its sufficiency on direct appeal. The point of the statute is to provide relief when, considering all the evidence of guilt, a petitioner nevertheless can demonstrate

by DNA-testing results that he is actually innocent. The statute places the burden on a petitioner to prove his innocence, not on the State to reprove guilt. As already noted, this proceeding began with a request and an order for DNA testing. The Court did not order forensic evaluation of the trial proof of guilt to be prepared, nor could it have. In short, the Court finds the Petitioner's DNA-testing results to be inconclusive and denies him further relief pursuant to section 208(b).

4. Even if the Court agreed with the Petitioner that his DNA-testing results should be evaluated under section 208(e) because they exclude him as the source of DNA, the Court would deny his motion without a hearing. The evaluation of his DNA-testing results under (e)(3) calls for a demonstration that those results "establish by compelling evidence that a new trial would result in an acquittal" when considered with all the other evidence in the case regardless whether it was admitted at trial. The Court agrees with the State that the Petitioner's new forensic evidence and numerous exhibits (e.g., pertaining to expert opinions on post-mortem animal predation) are not to be considered under that section. As already noted, the Petitioner's burden is to show his innocence by DNA-testing results, despite all other evidence of guilt, not by reweighing the trial evidence against new forensic evidence or opinions. Those matters simply are not cognizable under the statute.

The Petitioner's reliance on that new evidence is misplaced and again reflects a fundamental misunderstanding of the statute's scope in the Arkansas post-conviction scheme, as evidenced again by his latest adoptive pleading.

The introduction argues, "[o]nce it is established that [the Petitioner's] convictions are invalid and not entitled to conclusive effect, it will be apparent that new scientific evidence" supports relief. Reply at p. 2. He has the cart before the horse. The time to consider the validity of his convictions has long since passed. The statute, however, gives him an opportunity to demonstrate that—*despite* the validity of his convictions—he should obtain relief from them because he is actually innocent. That demonstration simply has nothing whatever to do with discrediting the proof of guilt by re-evaluating it or considering new forensic evidence disputing it.

The Court finds that the Petitioner has not made that demonstration with his DNA-testing results. Even accepting those results as unchallenged, they merely exclude him as the source of several pieces of biological material that have differing connections to the crime scene and do not exclude two other persons connected to one of the victims. The results do not, however, foreclose the possibility that he nevertheless committed the offenses. In other words, a jury readily could reject the absence of DNA identity evidence as inconsistent with other proof of guilt, particularly the several admissions of guilt from the Petitioner and his codefendants' recounted by the State in its Response and exhibits. In particular, the Court finds that it may consider against the Petitioner here the statement that Jessie Misskelley gave to prosecutors after he was convicted in 1994. Thus, the Petitioner's DNA-testing results are not compelling evidence that he would be acquitted.

Additionally, the Court rejects the Petitioner's view that the statute requires a lesser burden of him to obtain relief under (e)(3) because it provides only for a new trial, while section 201(a) contemplates his complete discharge from criminal liability. Given the 2005 amendment of the statute adding section 208, the Court is doubtful that any greater relief than permitted there is any longer independently available under section 201(a), as is evident by harmoniously reading the two sections together. Nevertheless, the Court agrees with the State that the Petitioner's claim to an easier burden under section 208(e) because outright discharge is possible under section 201(a) should be rejected to avoid an unnecessary separation-of-powers ruling on the constitutionality of section 201(a) vis-à-vis the Governor's clemency power.

Finally, even if the Court accepted the Petitioner's proposed lesser burden from federal authorities and credited his new forensic evidence on animal predation and indulged him further impeaching evidence of the trial evidence, it would still deny him a new trial. The Court agrees with the State's analysis that, upon comparison to House v. Bell, 547 U.S. 518 (2006), the Petitioner has fallen well short of the stringent showing of a compelling claim of actual innocence found there. While the Petitioner, like House, has some DNA results that exclude him as a source, they are not as significant as the evidence to which House pointed. House had new DNA evidence linking the victim's abusive husband to the crime as well as evidence of the husband's admissions of guilt. The Petitioner's claim would fail even under House.

5. The Court agrees with the State that it cannot entertain the Petitioner's juror bias and misconduct claims under the DNA-testing statute and that the Court's consideration of them in any proceeding is foreclosed by law of the case. The same considerations apply to the claim advanced in the Petitioner's August 12 Reply concerning a sealed affidavit. Consequently, they are hereby denied.

6. The Court also denies the Petitioner's request for further testing of animal hairs and certain fibers. As is true of the results he relies on now, any results of those further tests would not raise a reasonable probability that he did not commit the offenses, a required showing under §16-112-202(8)(B).

IT IS SO ORDERED.

David Burnett
CIRCUIT JUDGE DAVID BURNETT

DATE OF ENTRY: 9/10/08

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TIME :10:57:05 AM
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