

FILED

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS 9:09
WESTERN DISTRICT

STATE OF ARKANSAS

ANN LUDSON
CIRCUIT COURT CLERK
PLAINTIFF/RESPONDENT

vs.

NO. CR-93-450

CHARLES JASON BALDWIN

DEFENDANT/PETITIONER

AMENDED PETITION FOR RELIEF UNDER RULE 37 ET SEQ.
ARKANSAS RULES OF CRIMINAL PROCEDURE

____ CHARLES JASON BALDWIN petitions this Court for relief pursuant to A.R.Cr.P. Rules 37 *et seq.* and alleges the following grounds for relief:

1. Petitioner is in the custody of the Arkansas Department of Correction under a sentence imposed on March 19, 1994, for his convictions of three counts of capital murder in violation of A.C.A. §5-10-101. His sentence was imposed in violation of the Constitution and laws of the United States, and in violation of the Constitution and laws of the State of Arkansas.

2. Petitioner timely filed for Rule 37 relief on March 10, 1997, after the mandate was issued on January 10, 1997. A.R.Cr.P. Rule 37.2(c). Pursuant to an agreement with the State, and as the result of the Court's order, this Amended Petition is being filed after the completion of some, but not all, scientific testing moved for by Petitioner on November 20, 2002. This Amended Petition is being prepared with the assistance of counsel Blake Hendrix and John Philipsborn.

3. Petitioner was originally charged in Crittenden County, and a change of venue was ordered to Craighead County, Arkansas. Petitioner is simultaneously filing this petition in both Crittenden and Craighead Counties.

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CLAIMS AND BASES FOR RELIEF

4. Petitioner has filed a petition/motion brought A.C.A. 16-112-201 *et seq.* at the same time as this Petition. He incorporates that statutory pleading together with the Exhibits supporting both it and this Amended Rule 37 Petition as though fully set forth here as permitted under *Johnson v. State*, 356 Ark.534, 541-544, 157 S.W.3d 151 (2004). Petitioner has acquired evidence to support each of the substantive allegations made here, and tenders it as the basis for his claims which is not in the available records as permitted by *Sanders v. State*, 352 Ark. 16, 26-28; 98 S.W. 3d 35 (2003).

I. Petitioner is innocent of the crimes of which he was convicted

5. Petitioner was convicted of killing three eight-year boys, whose remains were found in a creek bed on May 6, 1993, when Petitioner was in school. He was convicted on the theory that he and his friend Damien Echols targeted the victims as part of a satanic ritual, and together with a third teenager named Jessie Misskelley, Petitioner sexually assaulted, beat and stabbed the victims, and then hid their remains in the creek. Petitioner is innocent of the crimes of which he was convicted, and his continuing imprisonment violates the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and of Article II of the Arkansas Constitution.

II. Petitioner was denied his right to a fair and impartial jury

6. Petitioner was denied his right to a fair and impartial jury under the Fifth, Sixth, and Fourteenth Amendments, and Article II, Section 10 of the Arkansas Constitution, as a result of the Court's failure to disqualify jurors who stated they believed in Petitioner's guilt, and/or had followed the case in the media, and because of the trial jurors' admitted exposure to reports

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and consideration of severed co-defendant Jessie Misskelley's statements to police as published in the press, and as discussed between members of the public and the jurors. Petitioner was also denied the right to a fair trial and impartial jury because the jury foreman violated admonishments against using extra-judicial evidence as a basis for Petitioner's conviction, and then misinformed the Court about these violations, as well as by the trial court's statements to the jury panel about threatening and/or prank calls made to members of the jury which tainted the jury panel. Petitioner was also denied a right to a fair trial, due process, and impartial jury by the actions of State personnel who impounded the jury's poster-sized notes after trial and redacted them so as to hide the jurors' misconduct and its consideration of a Misskelley's inadmissible statements.

III. Violation of the right of cross-examination

7. Petitioner was denied his Sixth Amendment, and Article II, Section 10 rights under the U.S. and Arkansas Constitutions when the trial court limited Petitioner's right to cross-examine critical jailhouse witness Michael Carson on prior bad acts including drug abuse.

IV. Prosecutorial misconduct, violations of *Brady* obligations

8. The State committed prosecutorial misconduct in that it admittedly failed to timely provide the name of Dr. Duke Jennings pursuant to Rule 17.1 A.R.Cr.P. The State also admitted having *ex parte* communications with the trial Court to obtain a one-day continuance during trial proceedings, and further communicated with the Court with respect to a ruling regarding a necklace alleged to have had blood drops on it. It committed misconduct by withholding information obtained from lay witnesses including Garrett Schwarting and Domini Teer to the effect that it was aware that a knife located in the Lakeshore Trailer Park (and

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presented in evidence) had been thrown in the lake before the homicides in this case, and by withholding evidence of its knowledge of exculpatory witness statements.

9. The State committed prejudicial misconduct in conducting a demonstration with a grapefruit during its closing arguments when there was no evidentiary or scientific basis for the use of the grapefruit to simulate injuries on human skin and a human body knowing of the impropriety of its actions. The trial court compounded the error by failing to sustain Petitioner's objection.

V. Ineffective assistance of counsel

10. Petitioner was denied effective assistance of counsel within the meaning of the Sixth and Fourteenth Amendments, and Article II, Sections 8 and 10 of the Arkansas Constitution because of the following prejudicial acts or omissions:

a) Petitioner's counsel (hereafter in this section 'counsel') failed to adequately and effectively prepare this case for trial within the meaning of *Strickland v. Washington*, 466 U.S. 668 (1984), and specifically failed to make "reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id* at 690-691. This included their decision not to retain an investigator, and not to investigate as necessary, and not to share co-defendant's investigation.

b) Counsel failed to interview and/or present as witnesses: school officials; Petitioner's classmates; Petitioner's family members; Petitioner's neighbors and friends; friends of Petitioner with whom he talked on the phone the night of the killings; school classmates and school bus drivers who could have testified about Petitioner's actions and demeanor. These people could account for Petitioner's whereabouts and activities on the two critical days, May 5

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and 6, 1993. Their information is available in the supporting exhibits, which this Court should consider. *Sanders v. State*, supra, 352 Ark. 16, 26-28. They would have helped prove that Petitioner was not involved in the killings. Counsel failed to conduct an investigation into the whereabouts of co-defendant Damien Echols at or near the time of the crimes charged, and failed as well to investigate and present evidence of what relationship if any existed between Petitioner and Misskelley at the time of the killings. Had they done so, they would have discovered that Petitioner and Echols did not regularly socialize with Misskelley and that no one had seen the three of them together shortly before the crimes as would have been required by the theory presented by the State.

c) Petitioner had a defense for the charges which counsel did not present based his having been in school on the day of the killings, and on the day after, and being able to account for his whereabouts, which had been reported to police by his mother Gail Grinnell; her friend 'Dink' Dent; Petitioner's brother Matt; and Petitioner's friends. Counsel failed to become informed that Petitioner was known to be non-violent and squeamish about blood, as noted by one of the Juvenile Unit staff members. None of this evidence was presented at trial. Had it been, Petitioner would have been acquitted.

d) Petitioner was prejudiced by his counsels' failure to effectively investigate cause of death and mechanism of injury to the victims, such that the State was able to present the scientifically dubious theory that the three victims in this case were killed after having been sexually assaulted, beaten, and stabbed. With adequate and effective investigation, counsel would have demonstrated that the State's theory was erroneous, and that there was no scientific basis for it. Counsels' omissions in this respect included their failure to adequately and

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effectively investigate the State's DNA evidence, which was provided by an incompetent DNA scientist who mistakenly claimed to have identified possible semen on some victims' trousers.

e) Counsel were also ineffective in their failure to have investigated the veracity of Michael Carson, a jailhouse informant who testified against Petitioner. Had they effectively and adequately done so, they would have been informed that none of the detainees that Carson claimed to have been around in the company of Petitioner corroborated Carson's account, and Carson was not likely in Petitioner's presence at the time of the alleged admissions, according to Unit logs and witnesses. Detention Center employees, had they been interviewed, would have undermined Carson's account. In addition, Carson had spoken with a local counselor, Danny Williams, who provided information to the prosecution and defense, during the trial, undermining Carson's veracity. This evidence was never introduced.

f) Counsel also failed to present Petitioner as a witness. Petitioner had always denied his guilt, and could account for his whereabouts on the relevant days. He would have denied his guilt and truthfully accounted for his activities during the days in question.

g) Counsel attempted to defend this case by using a 'stealth defense' in the hope that the jury would focus on co-defendant Damien Echols. The strategy employed was objectively unreasonable, given that Petitioner had been targeted for arrest largely on the basis of his observed association with Echols.

h) Had Petitioner's counsel presented the evidence summarized here, and described in detail in the supporting Exhibits, he would not have been convicted, he would have been acquitted.

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i) Petitioner's counsel had solicited the appointment to represent Petitioner because this was a highly publicized matter, and the high profile case would have beneficial professional effects. Notwithstanding their knowledge that the case was highly publicized, and the jury pool exposed to the alleged facts and unsubstantiated claims, counsel failed to effectively and adequately prepare and present their case at trial. Their motives placed them in a conflict with Petitioner.

j) Counsel failed to consult with necessary experts to address serology, DNA, and pathology (other than having interviewed the State's pathologist). They called a fiber expert whose admitted professional psychological problems, and lack of adequate and effective preparation, caused him to fail to effectively attack the fiber evidence.

k) Counsel failed to obtain and review laboratory documentation and bench notes concerning the State's physical evidence, which would have demonstrated an inadequate foundation for the introduction of scientific evidence including the fibers.

l) Counsel failed to effectively investigate the context in which Echols allegedly made certain damaging admissions at a ball game - which could have been explained and rendered harmless had the circumstances been placed in context.

m) Counsel failed to introduce any evidence to the effect that Petitioner's school, and home, were miles away from the crime scene, Robin Hood Woods. Petitioner was not known to frequent those Woods, nor was his co-defendant Echols. Petitioner's current exhibits support his contentions, and there were witnesses available on these facts. Moreover counsel never presented evidence that while police tried to find forensic evidence that linked Petitioner and co defendant Echols to the soils, shoe prints, and fingerprints found at the scene, they never succeeded. Had

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they not omitted to present this and all other evidence described here, Petitioner would have been acquitted.

n) Counsel failed to preserve for appellate review the following issues: that the court made a binding commitment to grant severance as a basis for obtaining severance from co-defendant Echols; the need for a proper ruling on Arkansas Statute 43-1802 permitting the granting of a separate trial; the objection to the State's questioning of Echols concerning a document retrieved from his cell; matters concerning the testimony of informant Michael Carson, including the failure to proffer the juvenile records of Carson to establish a basis on which to question him, and the failure to proffer the testimony of Danny Williams concerning Carson. They also failed to preserve for review rulings adverse to Petitioner when it came to questioning Dr. Peretti on whether the victims had been forced to perform oral sex, and whether it was proper, and properly founded, for Peretti to have opined whether the victims' injuries could have been caused by knives and sticks introduced into evidence.

o) Counsel failed to: adequately and effectively bring a motion *in limine* regarding the use of the State's expert testimony on satanism and the occult; to properly preserve an objection to the State's use of Duke Jennings as a witness; to object to several *ex parte* communications between the court and jurors, as well as between the court and the State.

p) Counsel had a conflict of interest due to an agreement to allow their case, and direct consultations with their client, to be a part of a film prepared for commercial distribution, and the conflict prejudiced Petitioner.

VI. Actual or constructive denial of counsel

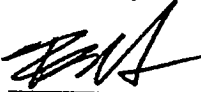
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11. As a result of the acts or omissions alleged above, Petitioner was denied counsel within the meaning of the Sixth and Fourteenth Amendments, and Article 2, Sections 9 and 10 of the Arkansas Constitution.

WHEREFORE, Petitioner respectfully requests and moves:

- A. That this Court declare Petitioner's sentence and conviction void;
- B. That this Court grant an evidentiary hearing, and order the presence of Petitioner;
- C. That this Court grant any and all relief deemed just and proper.

Respectfully submitted by,



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AFFIDAVIT AND VERIFICATION

I, CHARLES JASON BALDWIN, now state under oath that I have read the foregoing Amended Petition for Relief Under Rule 37 and that the facts stated in the petition are true, correct, and complete to the best of my knowledge and belief.


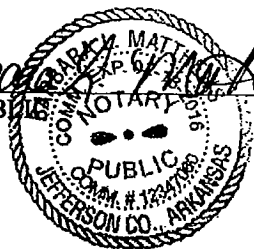

CHARLES JASON BALDWIN
ADC No. 103335

STATE OF ARKANSAS

COUNTY OF Jefferson

Subscribed and sworn to before me the undersigned Officer this

27th day of May, 2008


NOTARY PUBLIC


My commission expires: 2/13/2016

CERTIFICATE OF SERVICE

I, J. Blake Hendrix, certify that a true and correct copy of the foregoing was placed in the U. S. Mail with sufficient postage affixed hereto, as to guarantee proper delivery to the following on this 28 day of May, 2008:

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