

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

FILED

97 MAR 10 PM 4:33

STATE OF ARKANSAS

VS.

NO. CR-93-450

PLAINTIFF/RESPONDENT
CIRCUIT AND CHANCERY
COURT CLERK

CHARLES JASON BALDWIN

DEFENDANT/PETITIONER

PETITION FOR RELIEF UNDER RULE 37
ARKANSAS RULES OF CRIMINAL PROCEDURE

Comes now Charles Jason Baldwin, pro se, and for his Petition for Relief Under Rule 37 of the Arkansas Rules of Criminal Procedure, states:

1. That the jurisdiction of this Court is invoked pursuant to the provisions of Rule 37, Arkansas Rules of Criminal Procedure.
2. That Petitioner is a prisoner in custody of the Arkansas Department of Correction under sentence of this Court for the term of LIFE WITHOUT THE POSSIBILITY OF PAROLE, date of commitment being March 19, 1994, having been convicted of the felony offense of Capital Murder (3 Counts) in violation of A.C.A. § 5-10-101.
4. That the sentence under which Petitioner is presently confined was imposed in violation of the Constitution and laws of the United States of America and the State of Arkansas or is otherwise subject to collateral attack.
5. That Petitioner's application for relief here is filed in the Court in a timely fashion under Arkansas Rules of Criminal Procedure 37.2. The mandate was issued on January 10, 1997. This petition, being filed within 60-days of the issuance of mandate, is timely.
6. That Petitioner, being without funds is unable to pay the costs of these proceedings or to employ counsel. Petitioner requests that he be allowed to proceed *in forma pauperis*. (Attached is Affidavit in Support of Request to Proceed *In Forma Pauperis*). Petitioner asks that counsel be

appointed and asserts that it would be an abuse of this Court's discretion to deny appointment of counsel.

7. That Petitioner requests the Court to set an evidentiary hearing and order the presence of Petitioner at such hearing.

8. That Petitioner was originally charged in Crittenden County, Arkansas; that Petitioner's Motion for Change of Venue was granted and was subsequently tried in Craighead County, Arkansas. That due to the lack of clarity in the law in this regard, Petitioner is simultaneously filing this Petition in both Crittenden County and Craighead County, Arkansas.

GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL

9. That Petitioner was denied effective assistance of counsel in violation of his rights under the 6th and 14th Amendments and Article 2, Section 8 and 10 of the Arkansas Constitution, for the following reasons:

- A. Petitioner's counsel failed to properly preserve for appellate review Petitioner's argument that the judicial magistrate who issued the search warrant had abandoned his detached and neutral role despite testimony from Det. Brian Ridge that the issuing magistrate told him what he must do in order to get a warrant.
- B. Petitioner's counsel failed to preserve for appellate review Petitioner's argument that the search warrant was improperly issued in light of the fact that the Affidavit for Search Warrant contained false statements.
- C. Petitioner's counsel failed to properly preserve for appellate review Petitioner's argument with respect to the reliability of the informant for the issuance of the search warrant, in light of the fact that Petitioner's counsel did not abstract the statement of the informant attached as an exhibit to the search warrant and was in fact introduced as an exhibit at the hearing on

Petitioner's Motion to Suppress.

D. Petitioner's counsel failed to properly preserve for appellate review Petitioner's claim that he was entitled to a separate trial for the following reasons:

(1) Petitioner's counsel failed to argue that the Court had made a binding commitment to grant a severance in the event one of the parties testified. That although Petitioner's counsel did request a severance at the time the co-defendant, Damien Echols, testified, he did not argue that severance was required by the Court's previous binding commitment.

(2) Petitioner's counsel failed to obtain a proper ruling by the Court on Petitioner's argument that he was entitled to a separate trial pursuant to Arkansas Stat. Ann. 43-1802, which was held not preserved for appellate review.

(3) Petitioner's counsel did not timely object to the State's questioning of the co-defendant Damien Echols with respect to a written document obtained from the cell of Damien Echols despite the fact that said document contained references to the Petitioner. Petitioner's counsel never requested a severance based upon the existence, and if severance or objection was made, it was untimely and therefore waived Petitioner's argument with respect thereto.

E. . Petitioner's counsel failed to properly preserve for appellate review matters relating to the testimony of Michael Carson in that Petitioner's counsel did not proffer testimony of Michael Carson with respect to his abuse of LSD; failed to proffer testimony with respect to the impact of LSD on the witness Michael Carson's ability to perceive and recall; and failed to properly raise the confrontation clause argument with respect to the inability to fully cross-examine and impeach the credibility of Michael Carson. Further, Petitioner's counsel failed to proffer the juvenile records of Michael Carson which established the good faith basis to question him with respect to his LSD abuse, and further failed to proffer the testimony of

Danny Williams, the counselor of Michael Carson, with respect to the knowledge known by Michael Carson and the source of said knowledge.

- F. Petitioner's counsel subjected him to undue prejudice in that Petitioner's counsel's questioning of the State's witness Dr. Peretti, opened the door to the issue of whether or not the three victims had been sodomized.
- G. Petitioner's counsel failed to preserve for appellate review Petitioner's objection to the testimony of Dr. Peretti with respect to whether or not they had been forced to perform oral sex and whether it was proper for Dr. Peretti to be allowed to give testimony opinions as to whether or not the victims' injuries could have been caused by knives and sticks which were introduced into evidence.
- H.. Petitioner's counsel subjected Petitioner to undue prejudice in that Petitioner's counsel improperly and/or negligently drafted the Court Order in limine regarding the use of occult testimony by use of the phrase "and/or" so as to allow the State to put on testimony with respect to the occult nature of the crime. The drafting of the Order allowed the State to present such testimony if it could establish that the Petitioner's activities were linked to the occult or that the crime was linked to the occult, not a requirement that the State link the Petitioner's activities to the occult and the crime to the occult which had been the Court's true ruling.
- I. Petitioner's counsel failed to properly preserve for appellate review Petitioner's objection to the use of Dr. Jennings as a witness regardless of whether his testimony was considered as part of the State's reopened case-in-chief or as a rebuttal witness.
- J. Petitioner's counsel failed to properly preserve for appellate review Petitioner's objection to the ex-parte continuance granted the prosecution without notice to the Petitioner or

Petitioner's counsel. Further, Petitioner's counsel failed to require the Court to properly inquire of the jury with respect to the communications they had had in light of the fact that several of the jurors learned of the ex-parte continuance through the media and did not show up for trial.

- K. Petitioner's counsel failed to properly preserve for appellate review Petitioner's objection to the ex-parte communication which took place between the Court and the prosecution with respect to a necklace which was found that contained evidence of blood splattering.
 - L. Petitioner's counsel failed to properly preserve for appellate review Petitioner's objection to the jury being instructed on accomplice liability, and further failed to properly abstract the accomplice liability instruction that was given to the jury.
 - M. Petitioner's counsel failed to properly preserve for appellate review Petitioner's cumulative error argument which was advanced on appeal, but which was not advanced at the trial court level.
 - N. Petitioner's counsel failed to properly preserve for appellate review Petitioner's argument for a new trial in light of the fact that the written motion for a new trial was based upon Rule 59 of the Arkansas Rules of Civil Procedure as opposed to Arkansas Rules of Criminal Procedure 36.22.
 - O. Petitioner's counsel failed to properly preserve for appellate review Petitioner's claim with respect to the ex-parte communication between the Court and prosecution with respect to a necklace, as opposed to raising it in the form of a motion for new trial. This is a particular concern to Petitioner in light of the fact that the State of Arkansas has admitted that such an ex-parte communication took place between the prosecution and the Court.
10. Petitioner states that in each of the foregoing matters, counsel did not perform to the

standards of competence required by constitution and law, and, had counsel performed properly, there is a reasonable probability that the result would have been different.

11. Other specified grounds for relief which Petitioner submits to the Court are as follows:

GROUND TWO: PROSECUTORIAL MISCONDUCT

- A. The State of Arkansas has admitted prosecutorial misconduct in that it admittedly failed to provide as required by the Rule 17.1 of the Arkansas Rules of Criminal Procedure the name of Duke Jennings as a witness for the State of Arkansas. Further, the State of Arkansas has admitted having ex-parte communications with the Court in order to obtain a one-day continuance during the trial proceedings, and further having a communication with the Court with respect to the Court's anticipated ruling regarding a necklace which was found that had blood splattering on it. Further, the prosecution was guilty of misconduct in conducting a demonstration with a grapefruit during the State's closing arguments.

GROUND THREE: JUDICIAL MISCONDUCT

- A. The Court in the trial of the case committed judicial misconduct in that it admittedly participated in ex-parte conversations with the State with respect to a one-day continuance during the trial, and further communicated with the State with respect to its anticipated ruling regarding the necklace which was found to have blood on it. Further, the Court admitted having committed error in not informing Petitioner's counsel of his communication with the jury with respect to a prank phone call received by one of the jurors.

GROUND FOUR: IMPARTIAL JURY

- A. The Petitioner was denied an fair trial in that his right to an impartial jury was denied by the conduct of the Court. The Court was aware of prank phone calls being received by one of the jurors, and communicated that fact to the remaining jury panel, thereby tainting the entire panel. Further, the jury foreman received an indirect threat to one of his family members and this fact was likewise communicated to the entire jury panel. This denied Petitioner his constitutional right to trial by an impartial jury of his peers in violation of the 6th Amendment and Article 2, Section 10 of the Arkansas Constitution.

GROUND FIVE: CONFRONTATION CLAUSE

- A. The Petitioner was denied his constitutional right to confront his accusers by the Court unduly restricting his right of cross-examination of the witness Michael Carson with respect to his abuse of LSD in violation of his rights under the 6th Amendment, Article 2, Section 10 of the Arkansas Constitution.

GROUND SIX: VIOLATION OF THE 4TH AMENDMENT REGARDING SEARCHES AND SEIZURES

- A. The Petitioner was denied his constitutional right to be freed from unreasonable searches and seizures in that the search warrant was issued in violation of Arkansas law, was based upon false and unreliable statements, it failed to specifically identify the places to be searched, and the items to be seized, and finally was issued in the total absence of any reliable evidence to suggest that items subject to seizure would be located within the residence of Petitioner in violation of his rights under the 6th Amendment, Article 2, Section 10 of the Arkansas Constitution.

GROUND SEVEN: ACTUAL OR CONSTRUCTIVE DENIAL OF COUNSEL

A. Petitioner was denied counsel by a qualified, competent attorney due to ineffectiveness of counsel which facts have been submitted elsewhere in this Petition in violation of Amendments 6, 14; U.S. Constitution and Article 2, Sections 9 and 10 of the Arkansas Constitution.

WHEREFORE, Petitioner respectfully requests:

- A. That this declare Petitioner's sentence and conviction void.
- B. That this Court grant an evidentiary hearing, appoint Counsel for Petitioner, and order the presence of Petitioner;
- C. That this Court grant Petitioner a new trial and any and all relief the Court deems just and proper.

RESPECTFULLY SUBMITTED,



Charles Jason Baldwin, Petitioner, pro se
ADC # 103335

Arkansas Department of Corrections, Varner Unit
P.O. 600
Grady, AR 71644

VERIFICATION

I, Charles Jason Baldwin, the Petitioner herein, and in support of my Rule 37 Petition, after first being duly sworn, do hereby swear that the statements, matters and things contained in my Rule 37 Petition are a true and accurate account to the best of my knowledge, information and belief and for the purposes herein stated, set forth and contained.

Charles Jason Baldwin

Charles Jason Baldwin, Petitioner pro se
ADC # 103335

STATE OF ARKANSAS)
) SS.
COUNTY OF Lincoln)

Subscribed and sworn to before me this 10 day of March, 1997.

Camille Sarrett

NOTARY PUBLIC

MY COMMISSION EXPIRES: 4-17-2004

CERTIFICATE OF SERVICE

I, Charles Jason Baldwin, petitioner herein, do certify that a copy of this Petition has been served this 10 day of March, 1997, to Brent Davis, Prosecuting Attorney, 2nd Judicial District, 630 South Main Street, Jonesboro, AR 72401, by mailing same to his address with sufficient postage affixed to ensure delivery.

C. Jason Baldwin

Charles Jason Baldwin, Petitioner pro se
ADC #103335

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

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STATE OF ARKANSAS

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PLAINTIFF/RESPONDENT
ANN HOUSON
CIRCUIT AND CHANCERY
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CHARLES JASON BALDWIN

DEFENDANT/PETITIONER

**AFFIDAVIT IN SUPPORT OF
REQUEST TO PROCEED IN FORMA PAUPERIS**

I, Charles Jason Baldwin, being first duly sworn, depose and say that I am the Petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs or to give security therefore; that I believe I am entitled to redress.

I further swear that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes _____ No X

- (a) If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.
- (b) If the answer is no, state the date of last employment and amount of salary and wages per month which you received.

I have never been employed prior to incarceration

2. Have you received, within the past twelve months any money from any of the following sources?

- (a) Business, profession or any form of self-employment? Yes _____ No X
- (b) Rent payments, interest or dividends? Yes _____ No X
- (c) Pensions, annuities or life insurance payments? Yes _____ No X

(d) Gifts or inheritances? Yes _____ No X

(e) Any other sources? Yes _____ No X

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months. _____

3. Do you own any cash, or do you have money in a check or savings account?

Yes _____ No X

If the answer is yes, state the total amount in each account.

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)? Yes _____ No X

If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support. State your relationship to those persons and indicate how much you contribute toward their support.

None

6. TO BE COMPLETED ONLY IF PETITIONER IS INCARCERATED IN THE ARKANSAS DEPARTMENT OF CORRECTIONS OR ANY OTHER PENAL INSTITUTION.

Do you have any funds in the inmate welfare fund? Yes _____ No X

If the answer is yes, state the total amount in such account and have the certificate found below completed by the authorized officer of the institution.

I understand that a false statement or answer to any question in this Affidavit will subject me to penalties for perjury.

Charles Jason Baldwin
CHARLES JASON BALDWIN

STATE OF ARKANSAS

COUNTY OF Lincoln

The Petitioner, Charles Jason Baldwin, being first duly sworn under oath, presents that he has read and subscribed to the above and states that the information therein is true and correct.

SUBSCRIBED AND SWORN to before me this 10 day of March, 1997.

Camille Garrett
NOTARY PUBLIC

My Commission Expires: 4-17-2004

If the answer to question 6 is yes -- the following must be completed:

CERTIFICATE

I hereby certify that the Petitioner herein, Charles Jason Baldwin, the sum of \$ 60⁷⁷ on account to his credit at the Varner Unit institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said Varner Unit institution:

None

Carolyn Knight Bookkeeper
Authorized Officer or Institution