

IN THE CIRCUIT COURT OF COOSA COUNTY, ALABAMA

TIMOTHY C. DAVIS,

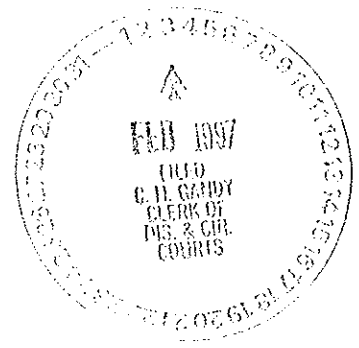
PETITIONER,

VS.

cv
CASE NO. CC-92-014

STATE OF ALABAMA,

RESPONDENT.



ORDER

This petition for relief from sentence was brought by the Petitioner, who is subject to a sentence of death which was imposed by this Court on July 14, 1980.

After a consideration of the hundreds of trial exhibits, the hundreds of pages of transcript, the pleadings, the evidence presented, and argument of counsel, the Court hereby FINDS and ORDERS as follows:

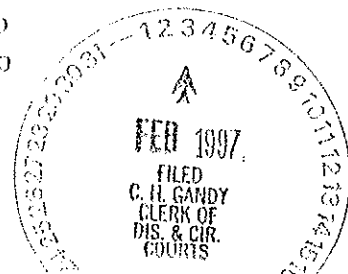
1. Petitioner's claims with regard to the following issues as contained in the petition are due to be denied as being procedurally barred from review because they could have been raised at trial or on appeal but were not:

- Failure to Present Defendant in Court Promptly after Arrest;
- Denial of a Fair and Impartial Judge; Failure to Disqualify Assistant Prosecutor; Improper Juvenile Transfer Hearing;
- Youthful Offender Application Denial Improper; Failure to Disclose Defendant's Statements; Improper Denial of Change of Venue; Improper Denial of Discovery Motion; Illegal Excusal of Jurors Outside Defendant's Presence; Inadequate Voir Dire; Jurors Told Defendant Was In Custody; Improper In-Court Identification; Fourth Amendment Violation; Involuntary and Unreliable Statements Obtained without Voluntary Waiver of Miranda Rights; Use of Illegally Obtained Statements; Failure to Instruct on Lesser Included Offenses; Improper Reasonable Doubt Instruction; Failure to Guide Jury in Determining Whether

Death Penalty Appropriate; Failure to Instruct on Circumstantial Evidence; Unreliable Psychological Testing; Improper Use of Mental Health Records; Pre-Sentence and Mental Health Records Contained Illegally Obtained Statements; Failure to Consider Non-Statutory Mitigating Circumstances; Failure to Find and Consider Certain Statutory Mitigating Circumstances; Improper Application of Aggravating Circumstances; Death Sentence Disproportionate; Incomplete Record; Unconstitutional Method of Execution; Conflict of Interest by Virtue of Former District Attorney being Allowed to Perform Judicial Function; Prosecutorial Misconduct in Opening Statements; Illegal Search of Davis' Home; Failure to Allow Davis an Opportunity to Allocate Prior to Imposition of Sentence; Use of Forensic Evidence; and Denial of Due Process and Equal Protection.

2. Petitioner's claims as to ineffective assistance of counsel contained in the petition are due to be denied because the petitioner has not met the burden of proof regarding any of the following alleged failures on counsels' part, to-wit:

To Move to Recuse the Juvenile Court Judge Who had a Conflict of Interest; To Move to Disqualify the Special Prosecutors Appointed by the Court to Represent the Victim's Family and Prosecute the Case on Behalf of the State; To Move to Disqualify the Assistant District Attorney Who had a Conflict of Interest and Whose Participation in the Prosecution of the Case Prejudiced Mr. Davis; To Present Sufficient Evidence in Support of Mr. Davis' Motion for a Change of Venue; to Conduct a Sufficiently Thorough Voir Dire of Potential Jurors; To Move to Exclude the Improper and Prejudicial In-Court Identification of Mr. Davis by One of The State's Key Witnesses; To Investigate the Background and Prior Convictions of Curtis Smith; To Investigate the Circumstances of Highly Incriminating Statements Allegedly Given by Mr. Davis to a Juvenile Detainee in Savannah, Georgia, Unreasonably Failed to Move to Exclude Such Statements, and Unreasonably Failed to Investigate the Criminal History Background and Law Enforcement Connections of that Witness; To Request Instructions on Lesser Included Offenses; To Object to the Court's Improper Reasonable Doubt Instruction; To Object to the Conflict of Interest Created by Allowing the Former District Attorney to Perform Judicial Functions in the Case; To Object to the Prosecutorial Misconduct in Opening Statement; To Object to the Illegal Search of Mr. Davis' Home and Unreasonably Failed to Seek Suppression of Illegally Obtained Evidence; To



Challenge the Forensic Evidence Presented at Trial; and To Present Compelling Mitigating Evidence,

The Court finds that counsel for Petitioner were not professionally unreasonable, nor has petitioner proven to a reasonable probability that, but for errors of counsel, a different result as to judgment, sentence or appeal would have occurred.

3. Petitioner's claims with regard to the following issues are denied as being raised or addressed on appeal:

Denial of a Fair and Impartial Judge; and the Failure to Present the Defendant in Court Promptly After his Arrest.

4. Petitioner's claim that the State's failure to disclose favorable or exculpatory evidence with regard to Tracy Bignault and Curtis Smith is a violation of the due process requirements of state and federal law is due to be denied because the petitioner has failed to establish that the evidence in question was material or that it is reasonably probable that the disclosure of such evidence would have changed the result of the trial.

Accordingly, Petitioner's petition for relief is Denied.

Done this 31st day of January, 1997.

[Handwritten Signature]
JOHN E. ROCHESTER
PRESIDING CIRCUIT JUDGE

