

On April 16, 2008, the United States Supreme Court definitively held that Kentucky's lethal injection protocol, which is substantially similar to Alabama's lethal-injection protocol, does not violate the Eighth Amendment's prohibition of cruel and unusual punishment. Baze v. Rees, No. 07-5439, 2008 WL 1733259, at *5-17 (Apr. 16, 2008). In ruling that "a lethal injection protocol substantially similar to the protocol we uphold today" complies with the United States Constitution, the Supreme Court removed any question as to the constitutionality of Alabama's lethal-injection protocol. Baze, 2008 WL 1733259, at *16. Consequently, after 20 years have passed since Arthur's original conviction and sentence of death; the end of direct appeal, state post-conviction proceedings, and federal post-conviction proceedings; and with no credible argument that Alabama's lethal-injection protocol is unconstitutional, the State's strong interest in the "timely enforcement of a sentence [has acquired] an added moral dimension," that requires this Court set a date for the execution of Arthur's duly adjudicated sentence of death. See Arthur v. King, 500 F.3d 1335, 1340 (11th Cir.

2007) (quoting Calderon v. Thompson, 523 U.S. 538, 556, 118 S.Ct. 1489, 1501 (1998)).

Facts of Arthur's Crimes and Judicial Proceedings

Arthur has been thrice convicted in Alabama courts of capital murder and thrice sentenced to death for his crime. Arthur was convicted in 1977 of murder in the second degree in the Circuit Court of Marion County, in violation of Ala. Code § 13A-5-40(a)(13) (1975). He was sentenced to life imprisonment. While serving that sentence and assigned to a work release center in Decatur, Arthur murdered Troy Wicker, the husband of one of his paramours, by shooting him with a .22 caliber pistol through the right eye, while he was asleep. He was indicted for that murder by a Colbert County grand jury on August 29, 1982. At trial, Arthur was convicted and sentenced to death by electrocution. The Alabama Court of Criminal Appeals affirmed both the conviction and the sentence. Arthur v. State, 472 So. 2d 650 (Ala. Crim. App. 1984). This Court reversed because the trial court had improperly permitted the State to offer evidence at trial of the details of the 1977 murder conviction, which provided one of the factors that made Arthur eligible for the death penalty. Ex parte

Arthur, 472 So. 2d 665 (Ala. 1985)(details of prior murder were improperly admitted at trial under identity exception to general exclusionary rule).

In May of 1987, after a change of venue to the Circuit Court of Jefferson County, Arthur was again convicted of the murder of Troy Wicker and was sentenced to death. The second conviction was reversed by the Alabama Court of Criminal Appeals. Arthur v. State, 575 So. 2d 1165 (Ala. Crim. App. 1990)(The trial court improperly admitted in evidence a statement made by the defendant to a police officer in the absence of counsel two weeks after he had asserted his right to remain silent.), cert. denied, Ex parte State of Alabama [Re Arthur v. State] 575 So. 2d 1191 (Ala. 1991).

Arthur was indicted for the third time on August 29, 1991, on two counts of capital murder - murder done for pecuniary or other valuable consideration (Ala. Code § 13A-5-40(a)(7)) and murder by one previously convicted during the past twenty years (Ala. Code § 13A-5-40(a)(13)). Before the case was submitted to the jury, however, the prosecutor elected to dismiss one count - that which charged Arthur with capital murder because he had allegedly