

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 killed Wicker for pecuniary or other gain. The case went

to the jury on a single count - intentionally causing the death of Troy Wicker by shooting him with a pistol after having been convicted of murder in the second degree in 1977 in the Circuit Court of Marion County, in violation of Ala. Code § 13A-5-40(a)(13)(1975).

On December 5, 1991, Arthur was found guilty of capital murder. After listening to the evidence presented at the penalty phase, the jury recommended by a vote of 11 to 1 that Arthur be sentenced to death. On January 24, 1992, after conducting a separate hearing and reviewing the aggravating/mitigating circumstances, the state trial judge sentenced Arthur to death. The Alabama Court of Criminal Appeals and the Alabama Supreme Court each affirmed both the conviction and the sentence. Arthur v. State, 711 So. 2d 1031 (Ala. Crim. App. 1996); Ex parte Arthur, 711 So. 2d 1097 (Ala. 1997). An application for rehearing was denied by the Alabama Supreme Court on March 20, 1998. Arthur did not, within the time allowed, file a petition for review with the United States Supreme Court.

Arthur filed his Rule 32 petition after the expiration of the statute of limitations. Rule 32.2(c) of the Alabama Rules of Criminal Procedure provides that a petition for

post-conviction relief be filed within two years after the issuance of the certificate of judgment by the Court of Criminal Appeals.¹ A certificate of judgment was issued by the Court of Criminal Appeals on April 7, 1998, establishing April 7, 2000, as the last date on which Arthur could file his Rule 32 petition for relief from the sentence of death imposed on January 24, 1992.

On September 8, 2000, following some two and one-half years of inactivity by Arthur or by anyone on his behalf, the Alabama Attorney General filed, in this Court, a motion requesting a date to carry out the death sentence and to issue a death warrant instructing the State to proceed. On March 23, 2001, this Court granted the Attorney General's motion to set an execution date and ordered that Arthur be executed on Friday April 27, 2001.

On January 25, 2001, Arthur, through counsel, filed a Rule 32 petition in the Circuit Court of Jefferson County. The Rule 32 petition was dismissed as untimely on March 5,

¹This Court, effective August 1, 2002, changed the Rule 32 statute of limitations to one year. Ala. R. Crim. P. 32.2(c) (comment following that rule states the effective date of the amendment).

2001. The Alabama Court of Criminal Appeals affirmed the denial and dismissal of Arthur's Rule 32 petition. Arthur v. State, 820 So. 2d 886, 889 (Ala. Crim. App. 2001). The Court of Criminal Appeals agreed with the trial court that "the two-year limitations period in Rule 32.2(c), Ala. R. Crim. P., is mandatory and jurisdictional." Id. The Alabama Court of Criminal Appeals denied Arthur's application for rehearing on July 27, 2001, and this Court denied certiorari review on November 2, 2001. Id. The United States Supreme Court, on May 13, 2002, denied Arthur's petition for writ of certiorari. Arthur v. Alabama, 535 U.S. 1053 (2002).

On April 20, 2001, seven days before his scheduled execution, Arthur filed a petition for writ of habeas corpus, along with a motion to stay the execution, in the United States District Court for the Northern District of Alabama. That court issued a stay of execution on April 25, 2001. That same day, the federal district court entered an order staying the habeas proceeding pending a resolution of the above-listed state post-conviction proceeding.

Arthur attempted to overcome his failure to comply with the statute of limitation in federal court by asserting a "gateway claim" of actual innocence. His claim was based principally on the affidavits of Alphonso High and Ray Melson, who claimed to have seen Arthur on February 1, 1982, the morning of the murder. Arthur v. Allen, 452 F.3d 1234, 1244-46 (11th Cir. 2006) (summarizing the information in the affidavits). High and Melson gave affidavits to the State that contradicted their earlier affidavits, stating that they could not be certain of the day or month that they saw Arthur. Id.

The federal district court rejected Arthur's "actual innocence" claim and dismissed Arthur's habeas petition as untimely. Arthur's motion for reconsideration was denied. Arthur's motion for a certificate of appealability was granted by the district court. The Eleventh Circuit Court of Appeals affirmed the dismissal. Arthur v. Allen, 452 F.3d 1234 (11th Cir. 2006). The decision was modified slightly on petition for rehearing, with the court elucidating its denial of a hearing and discovery. Arthur v. Allen, 459 F.3d 1310 (11th Cir. 2006). Arthur's

petition for certiorari was denied by the United States Supreme Court. Arthur v. Allen, 127 S.Ct. 2033 (2007).

As shown above, Arthur has exhausted all three avenues of appellate relief. Thus, it is the appropriate time under Rule 8(d)(1) for this Court to enter an order to execute Arthur's duly-adjudicated sentence.

CONCLUSION

Pursuant to Rule 8(d)(1) of the Alabama Rules of Appellate Procedure, the State respectfully requests this Court "enter an order fixing a date of execution" for Thomas Arthur.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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