

Statement Of The Case

Patrick Swiney was convicted in the Shelby County Circuit Court of Capital Murder in violation of Ala. Code §13A-5-40(a) (10), murder of two or more people, on June 12, 1989. (C.1) The conviction was affirmed on appeal. *Swiney v. State*, 555 So. 2d 1207 (Ala. Crim. App. 1989). (C. 4) In 1993, Swiney filed a Rule 32 petition which was denied following an evidentiary hearing. (C. 4) The denial was affirmed. (*Swiney v. State*, 662 So. 2d 305 (Ala. Crim. App. 1994), *cert. denied, Ex Parte Swiney*, 668 So. 2d 579 (Ala. 1995)). A petition for writ of habeas corpus was denied in the United States District Court for the Northern District of Alabama on June 23, 1998. (C.4) Certificate of Appealability was denied by the 11th Circuit Court of Appeals on August 13, 1999. (C.5) On August 13, 2003, Swiney filed a subsequent Rule 32 Petition in the Shelby County Circuit Court challenging his conviction under Rule 32.1(e), Ala. R. Crim. P. claiming newly discovered evidence of factual innocence. (C. 159) On January 10, 2004, Request For Production Of Evidence was filed by Patrick Swiney. (C. 90) This Rule 32 Petition and the Request For Production Of Evidence were then denied without a

hearing and with prejudice on March 5, 2004. (215-250)
Notice Of Appeal was filed on April 14, 2004. (C. 251)
This appeal followed.

Statement Of The Issues

1. Evidence of Actual Innocence Exists and Is Timely Filed under Rule 32.1(e) A.R. Crim.P..
2. It Was Error to Dismiss the Rule 32 Petition Considering Clearly Established Federal and State Law.
3. Dismissal Of The Petition With Prejudice Without Hearing Was A Denial Of Due Process.
4. Exculpatory Brady Material Was Wrongfully Withheld from Patrick Swiney.
5. It Was Error to Dismiss the Rule 32 Petition Containing Newly Discovered Evidence of Actual Innocence.
6. It Was Error Not To Rule On all The Issues Pled in the Petition..