

6. The Order in this Case Does Not Address All the Issues Pled in the Petition.

A Motion For Declaratory Judgment (C. 53) and Motion for Summary Judgment (C.59) were filed by Patrick Swiney, and the trial court Erred when it failed to rule on both of these motions.


Patrick Swiney contends that a remand may be necessary , because their were open motions at the time, and this motion for never ruled upon by the trial court. Without there being a ruling on all of the issues , Patrick Swiney suggests that remand to the trial court in order to obtain final rulings on all pending motions may be appropriate at this time. The trial Court erred when it did not rule on the pending motions, none of which were denied by operation of law, before issuing a"final order." Patrick Swiney contends that this case is due to be reversed under the authority of *Hardy v. State*, [Ms. CR-02-1626, February 27, 2004] ___So.2d___ (Ala. Crim. App. 2004) under the same reasoning as is employed in the case of *Ex parte Gardener*, [Ms. 1030309, January 27, 2004] ___So.2d___ (Ala. 2004) *Gardener*, id was a case where a Rule 32 petition was denied, after the rules had changed, and under the changed time limit, the Rule 32 petition was due to be

dismissed. In Gardner, this Court suspended the rules and allowed gardener to file his Rule 32 petition under the old rule. Patrick Swiney suggests that there is a precedent for this Court to safeguard the availability of postconviction relief under Rule 32, against Robert curry and capricious actions, regardless of the source. Protection of that right to relief is called for in this case, with the protection being necessary to foreclose justice being tonight to Patrick Swiney, by the use of deliberately faulty logic.

The action of the trial court violated the rights granted to Patrick Swiney by the Fifth and Fourteenth Amendments to the United States Constitution and by Article I, Section 6, Consitution of Alabama of 1901.


The judgment of the trial court is due to be reversed .

WHEREFORE, the premises considered, Ronald Patrick Swiney prays that this Court will reverse and set aside the denial of an evidentiary hearing in this case and will order that such hearing take place so that Ronald Patrick Swiney can fully present evidence and testimony to support his claim of actual innocence.


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CERTIFICATE OF SERVICE

I certify that I have served all parties to this cause by placing a copy of the foregoing in the United States Mail. First class postage prepaid, properly addressed as shown below, on this the 25th day of February 2005.


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