

No. 1040733

In the SUPREME COURT of ALABAMA

Ex parte RONALD PATRICK SWINEY.

RONALD PATRICK SWINEY,
Petitioner-Appellant,

v.

STATE of ALABAMA,
Respondent-Appellee.

On Appeal from the Circuit Court
of Shelby County
(CC-88-77.61)

On Writ of Certiorari to the Court
of Criminal Appeals (CR-03-1163)

INITIAL BRIEF IN OPPOSITION TO THE
PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

In 1989, Ronald Patrick Swiney was convicted of the murder of two or more persons pursuant to one scheme or course of conduct in violation of § 13A-5-40(a)(10), Ala. Code (1975), for the murders of Betty Snow Swiney and Ronnie Lynn Pate. (CR. 5-6.)¹ Swiney waived his right to a sentencing hearing by the jury, and the state stipulated that it would not seek the death penalty. (R. 1038-40.) The trial judge sentenced Swiney to life imprisonment without the possibility of parole. (CR. 6; R. 1053-54).

The Court of Criminal Appeals affirmed Swiney's conviction and sentence. Swiney v. State, 555 So. 2d 1207 (Ala. Crim. App. 1989) (Table). Swiney's application for rehearing was overruled and his Rule 39(k) motion denied. Swiney v. State, 572 So. 2d 893

¹ References to the clerk's record of the trial will appear as (CR. _). References to the trial transcript will appear as (R. _). References to Swiney's first Rule 32 petition will appear as (R32.1.R. _). References to Swiney's second Rule 32 petition, at issue on this appeal, will appear as (R32.2.R. _). References to the supplemental record concerning Swiney's Rule 32 Petition will appear as (SR. _). References to the Court of Criminal Appeals memorandum opinion that gives rise to this decision will appear as (Mem. Op. _). The Circuit Court order dismissing the second Rule 32 Petition will appear as (Order _).

(Ala. Crim. App. 1990) (Table). This Court denied his petition for writ of certiorari. (R32.1. 23, 30, 63.)

On November 25, 1991, Swiney filed his first Rule 32 petition along with a motion for discovery. (R32.1. 5, 22-49, 63.) The circuit court, after an evidentiary hearing, issued an order denying his petition. (R.32.1 7, 62-71.) The Court of Criminal Appeals affirmed. Swiney v. State, 662 So. 2d 305 (Ala. Crim. App. 1994) (Table). This court denied Swiney's petition for writ of certiorari. Swiney v. State, 668 So. 2d 579 (Ala. 1995) (Table).

Swiney next filed a petition for writ of habeas corpus in the United States District Court for the Northern District of Alabama, which was denied June 23, 1998. (R.32.2. 4.) The Eleventh Circuit Court of Appeals denied Swiney a certificate of appealability August 13, 1999. (R.32.2. 5.) The United States Supreme Court denied certiorari. Swiney v. Harrelson, 512 U.S. 1210 (1999).

On August 13, 2003, Swiney filed a second Rule 32 petition in the Shelby County Circuit Court. Swiney challenged his conviction under Ala R. Crim. P.

32.1(e), asserting the existence of newly discovered evidence of factual innocence. (R32.2. 159.) The court dismissed his petition without a hearing and with prejudice March 5, 2004. (R.32.2. 215-50.) On January 7, 2005, the Court of Criminal Appeals affirmed in an unpublished memorandum opinion. An Application for Rehearing was filed January 20, 2005, and denied February 11, 2005. On February 25, 2005, Swiney filed a petition for certiorari with this Court.

STATEMENT OF THE ISSUE

Whether Swiney has stated a basis in Rule 39(a) of the Alabama Rules of Appellate Procedure for the issuance of a writ of certiorari?

STATEMENT OF THE FACTS

Overwhelming evidence establishes that on December 10, 1997, Ronald Swiney murdered his wife, Betty Swiney ("Betty"), and her ex-husband, Ronnie Pate ("Pate").

Betty and Pate were found shot to death in Betty's home in Saginaw. (R. 396-97, 532-34, 543.) Betty and Pate had divorced in the spring of 1987. (R.331, 339-40, 363, 379. Betty continued to live in the same house, which was owned by her parents. (R. 332, 339,

575.) Swiney moved in with her and they were married June 30, 1987. (R. 345, 627, 648.)

Soon after they were married, Swiney began saying he was going to leave or divorce Betty. (R. 610-11, 652-53.) He stated his suspicion that she was still involved with Pate, and made several threats to kill Pate. (R. 374, 603-04, 616.) In November of 1987, Swiney said that if he could not have Betty, no one else could. (R. 605, 637-38.)

On December 7, Pate told his mother that he and Betty were going to try to get back together. (R. 336, 367, 372.) On the same day or the next, Betty told her father that her marriage with Swiney was over. (R. 350, 352, 355.) On December 8, Betty removed Swiney's belongings from her home. (R. 606, 642, 708, 713-14.)

At about 4 p.m. on December 10, the day of the murders, Sergeant Leonard Griffin of the Alabaster Police Department saw Swiney in Alabaster. Swiney told Sgt. Griffin that his wife's ex-husband was driving a Corvette without a license and that he might have been drinking. Swiney asked Sgt. Griffin to call the Sheriff's Department to ask them to look for Pate. (R.

392, 394-96.) Pate had, on several occasions, driven to and from work in the Corvette, which belonged to Betty. (R. 333, 340-41.)

Swiney visited the home of Betty's mother, Mrs. Snow, four times that day to ask about Betty, Pate, and the Corvette. (R. 607-09.) He also called Snow on the phone to raise similar issues. (R. 609-10.) After 6 p.m., Swiney called Buster Brooks, whose wife was a friend of Betty's. (R. 700.) Swiney asked Brooks whether he had seen Betty and stated that he intended to file a stolen vehicle report on the Corvette and get a warrant for Pate's arrest. (R. 695-97, 727-28.)

Just after 9 p.m., Pate called Marie Bates, his daughter from a previous marriage, to make plans for the next day. (R. 734-35.) Judy Bates, Marie's mother, arrived home soon after and called Betty's house to talk to Pate at exactly 9:30 p.m. The phone was answered by someone else, a man Bates described as having a deep, low, calm-sounding voice with a distinct Southern accent. (R. 736-38, 741-42.)

Also at or about 9:30 p.m., Sgt. Griffin and Officer Mark Wilder arrived at the house in response to

a reported shooting. (R. 396-99.) The front door appeared to have been forced open. (R. 397, 449.) They found Betty and Pate shot, lying on the floor in separate rooms. (R. 399-401, 449.) As the officers were leaving the house, they discovered that Robin Carter, Swiney's sister, and another lady had entered the house. The officers escorted them outside to be watched by another officer. (R. 400, 413.) The paramedics arrived at 9:36 p.m. and found that both Pate and Betty were already dead. (R. 488-89, 531-34, 537-38, 544-46.)

Investigating officers later determined that a shot was fired from outside the house through the window, near where Pate's body was found. (R. 425-26, 428, 435, 446, 459-62. 480-82. 485, 488, 760.) Shells and bullets from Remington brand .22 caliber ammunition were found in the dining room and kitchen areas. (R. 434-35, 466-71.) Betty had been shot in her face, chest, abdomen, back, and buttocks; Pate had been shot in the back of his neck and his left temple. The shots in Pate's temple and Betty's back and buttock were