

1910 12
EX PARTE LURTON LEWIS HEFLIN,
alias L.L. HEFLIN, alias JUNIOR
HEFLIN,

VS:

STATE OF ALABAMA

IN THE CIRCUIT COURT OF THE

TWENTY-EIGHTH JUDICIAL

CIRCUIT OF ALABAMA

MOTION TO DISMISS

Comes now the State of Alabama, by and through, James A. Hendrix, Solicitor
Twenty-Eighth Judicial Circuit of Alabama, and respectfully moves this Honor-
able Court to dismiss the petition for writ of error coram nobis heretofore
filed in this cause, and as grounds for said motion sets down and assigns the
following grounds, separately and severally:

1. For that the allegations of said petition are vague, indefinite, un-
certain, confusing, and are mere naked conclusions of the petitioner.

2. For that it affirmatively appears that the allegations of said petition
seek to establish matters which were available to petitioner at the time of
trial.

3. For that it affirmatively appears that the allegations of said petition
are not concerned with questions of fact.

4. For that it affirmatively appears that the allegations of said petition
are insufficient to show that the matters alleged would have prevented the
rendition of judgment.

5. For that it affirmatively appears on the face of the petition that
the allegations contained therein are unreasonable and lack the probability
of truth.

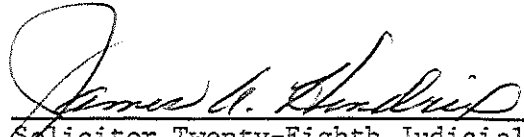
6. For that the allegations of said petition fail to make a credible
showing or a substantial foundation of the matters which petitioner seeks to
establish.

7. For that the allegations of said petition fail to set forth particular
facts which make an adequate showing of the substantiality of petitioner's
claim to enable this Honorable Court to ascertain whether facts alleged would
afford prima facie just grounds for relief.

8. For that the allegations of said petition fail to show a valid defense.

1910 1/2

WHEREFORE, the above premises considered, the State of Alabama respectfully moves this Honorable Court to dismiss the petition for writ of error coram nobis heretofore filed in this cause.


Solicitor Twenty-Eighth Judicial
Circuit of Alabama.

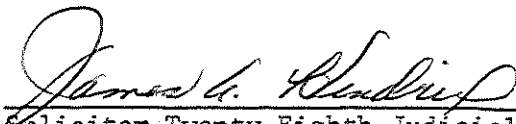
CERTIFICATE OF SERVICE

I, James A. Hendrix, Solicitor of the Twenty-Eighth Judicial Circuit of Alabama, hereby certify that I have served a copy of the foregoing motion upon the petitioner, Lurton Lewis Heflin, alias L.L. Heflin, alias Junior Heflin, by handing a copy of same to him at Baldwin County Jail, on this the 15th day of December, 1964.

FILED

DEC 15 1964

ALICE J. DUCK, CLERK
REGISTER


Solicitor Twenty-Eighth Judicial
Circuit of Alabama.

791072

December 8, 1964

Mr. Frank Lee
Director Department of Corrections and Institution
Montgomery, Alabama

Dear Sir:

Re: Lurton Lewis Heflin

The above subject has filed petition for Writ of error coram nobis in our Circuit Court. A hearing has been set thereon for the 21st day of December, 1964. Please have this prisoner delivered to the Baldwin County jail by the 15th day of December, 1964, in order that he may confer with his attorney.

Very truly yours,

Circuit Clerk

AJD/eb

C O P Y

THE STATE OF ALABAMA
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 21st day of
December, 1964 ~~Monday~~ in, 1964, in a cer-
tain cause in said Court wherein Lurton Lewis Heflin, alias L.L. Heflin, alias Junior
Heflin, Petitioner ~~Plaintiff~~ and State of Alabama, Respondent
~~Defendant~~, a judgement was rendered against said
Lurton Lewis Heflin, alias L.L. Heflin, Alias Junior Heflin
to reverse which judgment, the said Lurton Lewis Heflin, alias L.L. Heflin,
alias Junior Heflin,
applied for and obtained from this office an APPEAL, returnable to the next
Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on
the _____ day of _____, 196next, and ~~the necessary~~ ^{no} bond
having been given by ~~the said~~ Petitioner in prison,
~~with~~ _____, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said State of Alabama
_____ or James A. Hendrix, Solicitor of the Twenty-
Circuit,
Eighth Judicial ~~attorney~~ to appear at the _____ next Term of our
said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 19th
day of January, A. D., 1965.

Attest:

_____, Clerk.

I, Hereby accept service of a copy of the foregoing this 20th day of
January, 1965.

James A. Hendrix Solicitor.

CIRCUIT COURT
Baldwin County, Alabama

Vs. { Citation in Appeal

Issued.....day of, 196.....

1910 1/2

IN THE CIRCUIT COURT OF BALDWIN COUNTY
TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

No. 1910

State of Alabama

v.

Lurton Lewis Heflin;
alias L.L. Heflin;
alias, Junior Heflin

APPLICATION FOR APPOINTMENT OF
COUNSEL TO PROSECUTE APPEAL

Comes now the defendant-appellant in the above styled cause and moves this Honorable Court to appoint counsel to represent him in the prosecution of his appeal, from the ORDER of this Honorable Court in sustaining the State's Motion To Dismiss his Error Coram Nobis Application, to the Supreme Court of Alabama, for the following reasons:

1. That defendant-appellant is a poor person and is unable to employ counsel in his own right.

2. That defendant-appellant is a citizen of the United States of America.

3. That questions of law to be presented on appeal are of a highly technical nature requiring the services of experienced counsel to brief and prepare his appeal for review by the Supreme Court of Alabama.

4. That defendant-appellant believes in particular, among others, there is grave error in the rulings of this Honorable Court in sustaining the State's objections to examination of

1910 1/2

rebuttal witness into a field of inquiry opened by counsel for the State, going into the relevancy of pre-trial motions, that should have been filed by counsel for the defendant to have insured him a fair trial and due process of law.

Defendant-appellant respectfully submits the following names of competent attorneys, all members of the Alabama bar, with the hope this Honorable Court might consider and select one as his counsel:

1. Hon. John Coxwell
2. Hon. Vincent Kilborn
3. Hon. Jerome A. Cooper
4. Hon. Roderick Beddow, Jr.

As an alternative, he would request this Honorable Court to appoint any other member of the bar who can conveniently arrange his schedule to accept defendant-appellant's appeal.

Lurton Lewis Heflin
Lurton Lewis Heflin
Kilby Prison
Montgomery, Alabama
Defendant-Appellant

Subscribed and sworn to before me this 4 day of Jan.

1965.

James M. Malone
Notary Public

My commission expires 12-17-65.

cc: Hon. Richmond Flowers
Attorney General of Alabama

FILED

JAN 6 1965

RECEIVED
JAN 6 1965

1910 1/2

IN THE CIRCUIT COURT OF BALDWIN COUNTY
TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

No. 1910

State of Alabama

v.

Lurton Lewis Heflin;
alias, L.L. Heflin;
alias, Junior Heflin

APPLICATION FOR FREE TRANSCRIPT OF
THE EVIDENCE OF ERROR CORAM NOBIS
PROCEEDING ABOVE STYLED

Comes now the defendant-appellant, Lurton Lewis Heflin;
alias L.L. Heflin; alias Junior Heflin, and moves this Honorable Court for a free transcript of the evidence of his error coram nobis proceeding, above styled, for the following reasons:

1. That defendant-appellant wishes to appeal, the order of the Honorable Telfair Mashburn, of December 21, 1964, sustaining the State's Motion To Dismiss, same to the Supreme Court of Alabama for review by that Court.

2. That defendant-appellant is an impoverished citizen of the United States of America now imprisoned in Kilby prison, Montgomery, Alabama, in violation of the laws and constitutions of Alabama and the United States of America.

3. That the ORDER of this Honorable Court dismissing defendant-appellant's Application For A Writ Of Error Coram Nobis was an abuse of discretion on the part of this Honorable Court to the end that there is manifest error in the ORDER doing violence to the recent decisions of the United States Supreme Court in the cases of HAMILTON v. UNITED STATES, 82 S Ct. 157, 368 U.S. 52 7 L Ed 2d 114; POWELL v. ALABAMA, 77 L. Ed. 162; CARNLEY v. COCHRAN,

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82 S. Ct. 884, 369 U.S. 596, 51 Ed. 2d 70; GIDEON v. WAINWRIGHT, 372 U.S. 335, 9 L. Ed. 2d 799, 83 S. Ct. 792, 93 ALR 2d 733; DOUGLAS v. CALIFORNIA, 372 U.S. 353; and SANDEFS v. ALABAMA, U.S. Supreme Court, April 20, 1964, plus other grave errors.

4. That the preponderance of the evidence adduced at the said Error Coram Nobis hearing does not support this Honorable Court's ORDER of dismissal.

Defendant-appellant therefore asks for a free transcript of the evidence of the said hearing in accordance with the ruling of the Supreme Court of the United States of America in the case of LANE v. BROWN, 372 U.S. 477; and Act 525 of the Alabama Legislature, September 16, 1963.

January 5, 1965.

Lurton Lewis Heflin
Lurton Lewis Heflin
Kilby Prison
Montgomery, Alabama
Defendant-Appellant

Subscribed and sworn to before me this 4 day of January, 1965.

My commission expires 10-17-68

James W. Malone
Notary Public

cc: Hon. Richmond Flowers
Attorney General of Alabama

FILED

JAN 6 1965

ALBANY COUNTY CLERK
REGISTER

1910 1/2

IN THE CIRCUIT COURT OF BALDWIN COUNTY
TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

No. 1910

State of Alabama

v.

Lurton Lewis Heflin;
alias, L.L. Heflin;
alias, Junior Heflin

DESIGNATION OF RECORD

Defendant-appellant designates the entire record in this case to be prepared and transmitted to the Clerk of the Supreme Court of Alabama.

January ⁴/₇, 1965

Lurton Lewis Heflin
Lurton Lewis Heflin
Kilby Prison
Montgomery, Alabama
Defendant-Appellant

cc: Hon. Richmond Flowers
Attorney General of Alabama

FILED

JAN 6 1965

RECEIVED
JAN 6 1965

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Items permissible via mail service; Will consist of U.S. Money orders, solid color socks, white underwear, white handkerchiefs (all must be made of cotton) and black or tan shoes.

Items not allowed brought or sent into the institution: Food or drinks of any discription, electric appliances of any kind, tobacco, matches and cigarettes.

Money may be deposited for inmate with Officer in charge on visiting days.

Kilby Prison

Montgomery, Alabama

Mrs. Alice Duck, Clerk

Circuit Court of Baldwin County

Re: Case No. 1910

Courthouse

Bay Minette, Alabama

Dear Madam:

I enclose herewith Notice of Appeal, Application For Appointment Of Counsel, Application For Free Transcript, and Designation Of Record.

At this time I would respectfully request that you file the Notice Of Appeal and, at the same time, call my Application For Appointment Of Counsel to the attention of the Honorable Judge Mashburn. Please hold the Application For Free Transcript and Designation Of Record in abeyance until Judge Mashburn has ruled on my request for counsel; in event of adverse ruling in re counsel please file the other mentioned papers.

Trusting and thanking you for your cooperation, I am

Very truly yours,

Lurton Lewis Heflin
Lurton Lewis Heflin
Kilby Prison
Montgomery, Alabama

January 4, 1965.

cc: Hon. Richmond Flowers
Attorney General

KILBY PRISON

MAIL RULES

(FOR PERSONS WRITING TO KILBY INMATES)

All mail is censored.

Your letter will not be delivered unless you are on the inmate's approved correspondence list.

Your letter will not be delivered unless your full name and correct address are on the outside of the envelope.

Your letter will not be delivered if it contains obscene language, false information, or code of any sort.

Send only U. S. Postal Money Orders by mail. DO NOT SEND CASH OR PERSONAL CHECKS.

DO NOT SEND STAMPS.

Items permissible via mail service; Will consist of U.S. Money orders, solid color socks, white underwear, white handkerchiefs (all must be made of cotton) and black or tan shoes.

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Money may be deposited for inmate with Officer in charge on visiting days.

Kilby Prison

Montgomery, Alabama

Honorable Telfair Mashburn

Circuit Judge

County Courthouse

Bay Minette, Alabama

Re: State of Alabama

v.

Lurton Lewis Heflin

No. 1910

Dear Judge Mashburn:

With reference to the enclosed papers, I wish to advise that I waive any right I might have to be present when this matter comes on for hearing regarding my indigency status.

Upon conviction in the U.S. District Court at Birmingham, Alabama, in May, 1954, I sought to appeal in forma pauperis; Judge H.M. Grooms ordered an investigation to determine my financial status, and on the basis of the aforesaid investigation he allowed me to proceed in forma pauperis as did the U.S. Fifth Circuit Court of Appeals. In 1958 I instituted a collateral proceeding, pro se, upon the same conviction and was granted certiorari, and permission to proceed in forma pauperis by

The United States Supreme Court on June 30, 1958. At the recent coram nobis hearing before Your Honor it was apparently established, as counsel for the State made no effort to prove to the contrary, that my sole income is the 50 cents the State gives me every three weeks.

KILBY PRISON

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DO NOT SEND STAMPS.

Items permissible via mail service; Will consist of U.S. Money orders, solid color socks, white underwear, white handkerchiefs (all must be made of cotton) and black or tan shoes.

Items not allowed brought or sent into the institution: Food or drinks of any description, electric appliances of any kind, tobacco, matches and cigarettes.

Money may be deposited for inmate with Officer in charge on visiting days.

I feel sure Your Honor can readily appreciate my position and lack of enthusiasm toward riding the transfer truck should it not be necessary, not to mention the other factors involved.

If need be, please consider this letter as a motion of waiver.

Thanking you most respectfully for any consideration, I am

Very truly yours,

Lurton Lewis Heflin
Lurton Lewis Heflin
Kilby Prison
Montgomery, Alabama

January 4, 1965.

cc: Hon. Richmond M. Flowers

KILBY PRISON

MAIL RULES

(FOR PERSONS WRITING TO KILBY INMATES)

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DO NOT SEND STAMPS.

191042

IN THE CIRCUIT COURT OF BALDWIN COUNTY
TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

No. 1910

State of Alabama

v.

Lurton Lewis Heflin;
alias, L.L. Heflin;
alias, Junior Heflin

NOTICE OF APPEAL

Lurton Lewis Heflin; alias L.L. Heflin; alias Junior Heflin,
the defendant in the above numbered cause, hereby serves Notice
Of Appeal from the ORDER of the Honorable Telfair Mashburn of
December 21, 1964, sustaining the Solicitor's Motion To Dismiss
his hereinbefore filed Application For A Writ Of Error Coram
Nobis, to the Supreme Court of Alabama.

January 4, 1965.

Lurton Lewis Heflin
Lurton Lewis Heflin
Kilby Prison
Montgomery, Alabama
Defendant-Appellant

cc: Hon. Richmond Flowers
Attorney General of Alabama

1965
JAN 11 1965

Div. No. _____

CERTIFICATE OF APPEAL. (Criminal Cases.)

No. 1910

BALDWIN County, Circuit Court

LURTON LEWIS HEFLIN, alias L.L. HEFLIN, alias
JUNIOR HEFLIN, Appellant

VS.

The State of Alabama,
Appellee

The State of Alabama,

Baldwin County, The Circuit Court of Baldwin
County.

I, Alice J. Duck, Clerk of the Circuit Court
of Baldwin County in and for said County and State, do
hereby certify that in the above stated case, which was tried and
determined in this Court on the 21st day of October 1954, and
~~December 20, 1954~~, and
the defendant convicted by a Jury of the offense of Murder second degree
54
19 65, and that on the 1st day of October 19 65,
said defendant was sentenced to a term of Thirty years imprisonment in the
State Penitentiary is
on Writ of error Coram Nobis, which writ was denied in the Circuit Court of Baldwin County on
pending an appeal to the Supreme Court of Alabama.
the 21st day of December, 1964.

I further certify that on this the 6th day of January
19 65, the defendant gave notice in writing of an appeal to the
Supreme Court of Alabama.

Witness my hand and the seal of this Court, this the 19th
day of January 19 65.

Alice J. Duck
Clerk of Circuit Court of

Baldwin County, Alabama,

1910 1/2

1910 1/2

THE STATE OF ALABAMA

VS.

LURTON LEWIS HEFLIN, alias
L. L. HEFLIN, alias JUNIOR
HEFLIN,

PETITIONER

IN THE

CIRCUIT COURT OF BALDWIN

COUNTY, ALABAMA. AT-LAW.

NO. 1910 1/2

TO: LOUISE DUSENBURY,
OFFICIAL COURT REPORTER,
28TH JUDICIAL CIRCUIT OF ALABAMA,
BAY MINETTE, ALABAMA.

WHEREAS, Lurton Lewis Heflin, alias L. L. Heflin,
alias Junior Heflin, filed a motion for writ of error coram
nobis in the Circuit Court of Baldwin County, Alabama, on the
3rd day of December, 1964, and whereupon the same was heard
on the 21st day of December, 1964, and the State's Motion to
strike said petition for writ of error coram nobis was granted;
and

WHEREAS, the Petitifoner, Lurton Lewis Heflin,
alias L. L. Heflin, alias Junior Heflin, has appealed from the
judgment of the Court, and has made a pauper's affidavit and
motion for a transcript of the testimony therein;

THEREFORE, you are, as said Official Court Reporter,
28th Judicial Circuit of Alabama, ordered to prepare and file
said transcript of said trial or hearing on the Petition for
writ of error coram nobis.

Dated at Bay Minette, Alabama, this the 18th
day of January, 1964.

FILED

JAN 18 1965

CLERK
REGIST.

J. J. G. McAdams
Judge, 28th Judicial Circuit of
Alabama.

1910 1/2
STATE OF ALABAMA,

VS.

LURTON LEWIS HEFLIN, alias
L. L. HEFLIN, alias JUNIOR
HEFLIN,

Petitioner.

)
) IN THE
)
) CIRCUIT COURT OF BALDWIN
)
) COUNTY, ALABAMA. AT LAW.
)
) NO. 1910 1/2
)
)
) December 21, 1964
)

D E C R E E

This cause coming on to be heard was presented on the petition for writ of error coram nobis filed by the Petitioner, and the motion to dismiss the petition on behalf of the State of Alabama, and on the testimony of witnesses taken ore tenus.

The Court, after considering the matter ascertains and finds as follows:

1. That Hon. J. LeNoir Thompson, a practicing Attorney in Baldwin County, Alabama, was appointed by the Court to represent and protect the rights of the Petitioner in this proceeding, and under said appointment he did represent the Petitioner therein;

2. That Petitioner was indicted for murder in the first degree by the Grand Jury at the Spring Session of the Circuit Court of Baldwin County, Alabama, 1954.

3. That at the fall session, 1954, of the Circuit Court of Baldwin County, Alabama, on, to-wit: October 1, 1954, the Petitioner was tried in said Court for murder in the first degree;

4. That on September 25, 1954, the Circuit Judge, Hon. Hubert M. Hall, duly appointed Hon. Harry J. Wilters, Jr. and Hon. Tolbert M. Brantley, both practicing Attorneys in Baldwin County, Alabama, to represent the petition at said time.

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5. That said Attorneys were appointed prior to the petitioner's arraignment, and that they conferred with him regarding the charge against him prior to the time he made his plea at the arraignment;

6. That prior to October 1, 1954, the date on which Petitioner was put to trial, the Hon. John Tucker, a licensed practicing Attorney from Jefferson County, Alabama, was employed by members of the Petitioner's family to represent petitioner and that he did, as a matter of fact, act as Attorney-in-chief at Petitioner's trial on October 1, 1954;

7. That on September 25, 1954, the Petitioner was arraigned in the Circuit Court of Baldwin County, Alabama, and after the reading of the indictment to him he stood mute, whereupon the Court entered a plea of not-guilty, based on Defendant's refusal to plead;

8. That on the 25th day of September, 1954, a copy of the indictment, together with a copy of the venire was served upon the Petitioner, this being done prior to his arraignment;

9. That on October 1, 1954, the Petitioner was duly tried in the Circuit Court of Baldwin County, Alabama; on October 2, 1954 a jury returned a verdict as follows: "We, the jury find the defendant guilty of second degree murder and fix his sentence at 30 years in prison within the penitentiary? signed: George Stough, foreman";

10. That on October 2, 1954, the defendant was duly sentenced to imprisonment in the penitentiary for the term of 30 years - "Jury and verdict, we, the jury find the defendant guilty of second degree murder and fix his sentence at 30 years in prison within the penitentiary, George Stough, foreman." The defendant, being then present in open Court and attended by his attorneys, was called before the Bar of the

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by the Court and asked if he had anything to say why the judgment of the Court and the sentence of the law should not be pronounced upon him, said nothing, whereupon the Defendant was sentenced by the Court to imprisonment in the State penitentiary for 30 years, said sentence to begin at the expiration of the sentence in the Federal Penitentiary;

11. That the Court has considered the several grounds set out in the petition for writ of error coram nobis, and finds that there is no basis for the same and that none of the grounds contained therein have been substantiated and that said petition^{er}/was duly and legally tried, convicted and sentenced to the penitentiary of the State of Alabama;

~~12. That it has been clearly shown to the~~
satisfaction of the Court that the Court and all of the officials attached thereto did all within their power to see that the petitioner received and was granted a fair and impartial trial at the fall session of the Circuit Court of Baldwin County, Alabama, 1954;

13. That the Court in addition to hearing and considering the testimony of the said Petitioner, Lurton Lewis Heflin, alias L. L. Heflin, alias Junior Heflin, has also considered the testimony of all witnesses that have testified in this cause and finds that there is no ground for the granting of this petition.

The Court is, therefore, of the opinion, and does hereby find that the Petitioner, Lurton Lewis Heflin, alias L. L. Heflin, alias Junior Heflin, is not entitled to the relief sought in his petition for writ of error coram nobis, and that said writ for error coram nobis is without merit, and the motion of the State to dismiss the same is hereby granted.

1910 72

Dated at Bay Minette, Alabama, this the 21st day
of December, 1964.

J. Blair G. Mansel

Judge of the 28th Judicial
Circuit of Alabama.

Filed.

Dec. 21, 1964

Blair G. Mansel, Clerk

1910 1/2

IN THE CIRCUIT COURT OF BALDWIN COUNTY

BAY MINETTE, ALABAMA

State of Alabama

v.

Lurton Lewis Heflin,
alias L.L. Heflin,
alias Junior Heflin

No. 1910

APPLICATION FOR A WRIT OF ERROR CORAM NOBIS

Defendant alleges:

1. That his conviction was obtained in violation of the laws and constitutions of Alabama and the United States of America.
2. Defendant incorporates, by reference thereto, the files and records in this case, above numbered, and asks that they be made a part of this application.
3. That he was denied the right to counsel at the time of his arraignment; hence, he was also denied the right to make vital and indispensable pre-trial motions allowed under Alabama law. In view of this he was unable, among others, to:
 - (a) Demur to his indictment as to its legal sufficiency.
 - (b) Move for a change of venue.
 - (c) Move for a sanity hearing.
 - (d) And such other pre-trial motions that an alert and diligent lawyer would have filed to protect defendant's rights and interest.
4. That he is an innocent person and a victim of an unjust and unwarranted prosecution.

FILED

Dec 3 - 1961

ALICE L. DUCK, CLERK
REGISTER

1910 1/2

5. That he was denied, by the Court's failure to advise him, of his right to have counsel and to have a free trial transcript to appeal his conviction to the Alabama Supreme Court.

In view of the foregoing defendant asks that a hearing be held with himself present to develop the issues of fact and law presented herein.

That upon final determination the writ of error coram nobis be sustained.

December 1, 1964.

Lurton L. Heflin
Lurton L. Heflin,
Kilby Prison,
Montgomery, Alabama,
Defendant.

Subscribed and sworn to before me this 1 day of December, 1964.

My commission expires 7-1-67

E. J. [Signature]
Notary Public

CERTIFICATE OF SERVICE

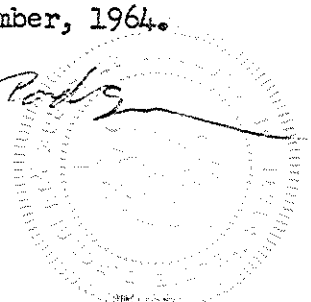
I hereby certify that I have this date placed a copy of the foregoing in the United States mail, Kilby Prison facility, postage prepaid, and properly addressed to Hon. Richmond M. Flowers, Attorney General of Alabama, Montgomery, Alabama, for proper service thereon.

Lurton L. Heflin
Lurton L. Heflin,
Kilby Prison,
Montgomery, Alabama,
Defendant

Subscribed and sworn to before me this 1 day of December, 1964.

My commission expires _____.

E. J. [Signature]
Notary Public.



1114/2

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 64-65

To the Clerk _____ of the _____ Circuit _____ Court,

Baldwin _____ County—Greeting:

Whereas, the Record and Proceedings of the _____ Circuit _____ Court _____
of said county, in a certain cause lately pending in said Court between

Lurton Lewis Heflin, alias, etc. _____, Appellant____,

_____ and _____

State of Alabama _____, Appellee____,

wherein by said Court it was considered adversely to said appellant____, were brought before our
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant____:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by
our Supreme Court, on the 20th day of May _____, 1965, that said _____

_____ judgment _____ of said _____ Circuit _____ Court be in all things
affirmed, and that it was further considered, ordered, and adjudged that the appellant____, ~~and~~ _____
Lurton Lewis Heflin, pay _____

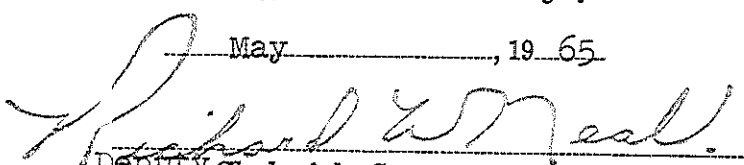
the costs accruing on said appeal in this Court and in the Court below, for which costs let execution
issue. _____

Richard W. Neal, Deputy
Witness, ~~Richard Thomas~~, Clerk of the Supreme

Court of Alabama, at the Judicial Department

Building, this the 20th day of _____

May _____, 19 65


Deputy Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 1964-65

1 Div., No. 280

Lurton Lewis Heflin, alias, etc.

Appellant,

vs.

State of Alabama

Appellee.

From Baldwin Circuit Court.

CERTIFICATE OF
AFFIRMANCE

The State of Alabama,

Baldwin County. } Filed

this 24 day of May 1965

Alice J. Duck

1910 72
MAY 20 1965

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1964-65

1 Div. 280

Lurton Lewis Heflin, alias, etc.

v.

State of Alabama

Appeal from Baldwin Circuit Court

GOODWYN, JUSTICE.

Appeal from judgment of circuit court of Baldwin County denying appellant's application for writ of error coram nobis after a hearing on said application.

On March 11, 1954, appellant was indicted by a Baldwin County Grand Jury for first degree murder. At that

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2.

time, he was a federal prisoner. He was arraigned on September 25, 1954, tried on the following October 1st and 2nd, and on October 2nd convicted of second degree murder and sentenced to 30 years imprisonment in the penitentiary, said sentence to begin at the expiration of his federal sentence. At his arraignment, he was represented by two court-appointed attorneys. There, he stood mute, as did his attorneys. Whereupon, the court, pursuant to Code 1940, Tit. 15, § 276, entered a plea of "not guilty" for him. On his trial, he was represented by the same court-appointed attorneys and also by an attorney obtained by his family. There is no indication that these attorneys were other than fully competent to represent appellant and did adequately represent him at his trial. There was no appeal to this court from said judgment; and, so far as the record discloses, there was no motion for a new trial.

The application for coram nobis was filed on December 3, 1964, and heard on December 21, 1964. The instant appeal was taken on January 6, 1965, and submission was had here on April 14, 1965.

In the coram nobis proceeding, the trial court appointed experienced counsel to represent appellant. The same counsel represents him on this appeal, not by appointment of the trial court, but at appellant's request. A free transcript of the coram nobis proceeding was furnished appellant, at his request, and is now before us on this appeal.

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3.

Appellant takes the position that, in effect, he was without counsel at his arraignment because his appointed counsel (I) did not have sufficient time, between their appointment and the arraignment, to prepare and make "pre-trial motions allowed under Alabama law" and (II) stood mute at the arraignment. Other points made by appellant are (III) "that he was denied, by the court's failure to advise him, of his right to have counsel and to have a free trial transcript to appeal his conviction to the Alabama Supreme Court," and (IV) that the trial court did not appoint counsel to represent him on the appeal now before us, as requested by him on the basis of his indigency.

I and II.

In denying the coram nobis petition, the trial court made the following pertinent findings, among others, which the evidence supports, viz:

"4. That on September 25, 1954, the Circuit Judge, Hon. Hubert M. Hall, duly appointed Hon. Harry J. Wilters, Jr. and Hon. Tolbert M. Brantley, both practicing Attorneys in Baldwin County, Alabama, to represent the petitioner at said time.

"5. That said Attorneys were appointed prior to the petitioner's arraignment, and that they conferred with him regarding the charge against him prior to the time he made his plea at the arraignment;

4.

"6. That prior to October 1, 1954, the date on which Petitioner was put to trial, the Hon. John Tucker, a licensed practicing Attorney from Jefferson County, Alabama, was employed by members of the Petitioner's family to represent petitioner and that he did, as a matter of fact, act as Attorney-in-chief at Petitioner's trial on October 1, 1954;

"7. That on September 25, 1954, the Petitioner was arraigned in the Circuit Court of Baldwin County, Alabama, and after the reading of the indictment to him he stood mute, whereupon the Court entered a plea of not guilty, based on Defendant's refusal to plead;

"8. That on the 25th day of September, 1954, a copy of the indictment, together with a copy of the venire was served upon the Petitioner, this being done prior to his arraignment;

* * * *

"10. That on October 2, 1954, the defendant was duly sentenced to imprisonment in the penitentiary for the term of 30 years - 'Jury and verdict, we, the jury find the defendant guilty of second degree murder and fix his

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5.

sentence at 30 years in prison within the penitentiary, George Stough, foreman'. The defendant being then present in open Court and attended by his Attorney, was called before the Bar of the Court and asked if he had anything to say why the judgment of the Court and the sentence of the law should not be pronounced upon him, said nothing, whereupon the Defendant was sentenced by the Court to imprisonment in the State penitentiary for 30 years, said sentence to begin at the expiration of the sentence in the Federal Penitentiary;

"11. That the Court has considered the several grounds set out in the petition for writ of error coram nobis, and finds that there is no basis for the same and that none of the grounds contained therein have (sic) been substantiated and that said petitioner was duly and legally tried, convicted and sentenced to the penitentiary of the State of Alabama;

* * * *

There was no request for additional time to confer with appellant before his arraignment, nor for a continuance, nor for an opportunity to file any other motion or pleading prior to the arraignment or trial. Indeed, there is no

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6.

indication that such inaction on the part of appellant's counsel was detrimental to appellant. There being an absence of any showing whatever that appellant's counsel did not competently and adequately represent him at his arraignment, we hold that contentions I and II are without merit. As already noted, Code 1940, Tit. 15, § 276, requires the court to enter a plea of "not guilty" for an accused when he stands mute on arraignment.

III.

There is no showing that appellant indicated he wanted to take an appeal. Under the circumstances, we see no basis for holding that the trial court should have advised appellant "of his right to have counsel and to have a free trial transcript to appeal his conviction to the Alabama Supreme Court."

IV.

Since appellant has counsel representing him on the present appeal, the failure of the trial court to appoint counsel to represent him is of no consequence.

The judgment is due to be, and is, affirmed.

Affirmed.

Livingston, C. J., Lawson and Coleman, JJ., concur.

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STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

I Div., No. 280

Lurton Lewis Heflin, alias, etc.

, Appellant.,

v.

State of Alabama

, Appellee.,

From

Baldwin Circuit

Court.

The State of Alabama.

City and County of Montgomery. }

Richard W. Neal, Deputy

I, ~~Richard W. Neal~~, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered from one to six inclusive, contain a full, true, and correct copy of the opinion of

said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Richard W. Neal, Deputy

Witness, ~~Richard W. Neal~~, Clerk of the Supreme

Court of Alabama, this the 20th day of

May 19 65

Richard W. Neal
Deputy Clerk of the Supreme Court of Alabama

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