

THE STATE OF ALABAMA
Baldwin County - Circuit Court

2652

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 January, 1965 ~~Monday~~, 196~~x~~, in a cer-

tain cause in said Court wherein HENRY ANDREW QUEOR, JR., Petitioner

~~Plaintiff~~, and State of Alabama, Respondent

~~Defendant~~, a judgement was rendered against said Henry Andrew Queor, Jr.

to reverse which Judgment, the said Henry Andrew Queor, Jr.

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 , 196~~x~~ next, 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-Eighth Judicial Circuit, ~~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 10th day of February, A. D., 196~~5~~ 5.

Attest:

Alice J. Duck, Clerk.

I, hereby accept service of a copy of the foregoing this 10th day of February, 1965.

James A. Hendrix Solicitor

2652A

CIRCUIT COURT
Baldwin County, Alabama

Vs. { Citation in Appeal

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

APR 22 1965

2652A

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1964-65

1 Div. 283

Henry Andrew Queor, Jr.

v.

State of Alabama

Appeal from Baldwin Circuit Court

GOODWYN, JUSTICE.

Appellant petitioned the circuit court of Baldwin County for a writ of error coram nobis to set aside a judgment of that court rendered on September 24, 1958, adjudging him guilty of murder in the first degree and sentencing him to life imprisonment. After an oral hearing

2.

on the petition, the circuit court rendered a judgment denying the petition. This appeal is from that judgment.

See: Blauvelt v. State, ___ Ala. ___, 169 So. 2d 399;

Ex parte Wilson, 275 Ala. 439, 440(2), 155 So. 2d 611;

Ex parte Keene, 275 Ala. 197, 153 So. 2d 631.

An indictment charging appellant with first degree murder was returned by a Baldwin County Grand Jury on September 10, 1958. He was arraigned on September 11, 1958, and tried on September 24, 1958. On both occasions, he was represented by two court-appointed attorneys. Upon arraignment, appellant entered a plea of "not guilty." At his trial, he changed his plea to "guilty" under an agreement he would receive a life sentence.

The coram nobis petition was filed in the circuit court on January 5, 1965, and heard on January 22, 1965. At appellant's request, the trial court appointed an attorney to represent him at the hearing.

As we understand the petition, it is based on appellant's charge that he was coerced into changing his plea from "not guilty" to "guilty" and was denied the effective assistance of counsel at his trial.

The evidence taken at the coram nobis hearing fully supports the trial court's conclusion that appellant's change of plea was voluntary and not the result of threats and coercion. In fact, the evidence shows the change was made at appellant's insistence after an agreement had been worked

3.

out (also at appellant's insistence) whereby appellant would receive a sentence of life imprisonment. There is no indication from the evidence that appellant did not completely understand the effect of changing his plea.

The evidence shows that appellant was adequately represented by competent counsel throughout the several proceedings, that is, at his arraignment, at his trial, and at the coram nobis hearing.

Point is made that appellant had no preliminary hearing. As to this, the record is silent. But even if there was no preliminary hearing, such fact would have no bearing on the validity of the indictment and subsequent proceedings incident thereto, i.e., the arraignment and trial. See: Mills v. State, ___ Ala. ___, 171 So. 2d 845; Aaron v. State, 271 Ala. 70, 122 So. 2d 360; Green v. Bomar, 6 Cir., 329 F. 2d 796; Latham v. Crouse, 10 Cir., 320 F. 2d 120. As said in Green v. Bomar: "Assuming the appellant was not given a preliminary hearing, his constitutional rights were not violated. This does not constitute a denial of due process of law. * * * "

The judgment denying coram nobis is due to be, and is, affirmed.

Affirmed.

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

STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 283

Henry Andrew Queor, Jr., Appellant,

v.

State of Alabama, Appellee,

From Baldwin Circuit Court.

The State of Alabama.
City and County of Montgomery. }

Richard W. Neal, Deputy
I, ~~James Thomas~~, Clerk of the Supreme Court of Alabama, do hereby certify that the fore-
going pages numbered from one to three 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, ~~James Thomas~~, Clerk of the Supreme

Court of Alabama, this the 22nd day of

April 19.65

Richard W. Neal

Deputy Clerk of the Supreme Court of Alabama

THE SUPREME COURT OF ALABAMA

1 Div., No. 283

Henry Andrew Queor, Jr.

Appellant,

v.

State of Alabama

Appellee.

From Baldwin Circuit Court.

Certified Copy of

Opinion

BROWN PRINTING CO., MONTGOMERY

2652A

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 64-65

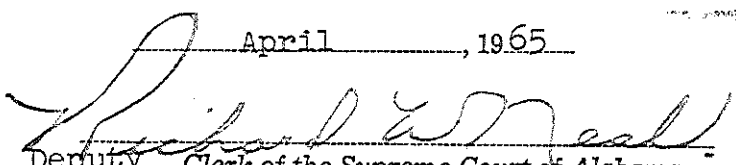
To the Clerk of the Circuit Court,
Baldwin County--Greeting:

Whereas, the Record and Proceedings of the Circuit Court
of said county, in a certain cause lately pending in said Court between
Henry Andrew Queor, Jr., 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 22nd day of April, 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 pay and

~~the costs accruing on said appeal in this Court and in the Court below for which costs have been~~
~~assess~~

Richard W. Neal, Deputy
Witness, ~~to Roderick Thomas~~ Clerk of the Supreme
Court of Alabama, at the Judicial Department
Building, this the 22nd day of

April, 1965

Deputy Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 1964-65

1 Div., No. 283

Henry Andrew Queor, Jr.

Appellant,

vs.

State of Alabama

Appellee.

From Baldwin Circuit Court.

No. 2652

CERTIFICATE OF
AFFIRMANCE

The State of Alabama,

County.

} Filed

this day of 26 19

ALICE L. DICK, CLERK
REGISTER

1. That Hon. J. Connor Owens, Jr., 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. The records disclose that the Petitioner, Henry Andrew Queor, Jr., was indicted for murder in the first degree by the Grand Jury at the fall session, 1958, Circuit Court of Baldwin County, Alabama;
3. That on September 11th., 1958, the Circuit Judge of Baldwin County, Alabama, Hon. Hubert M. Hall, duly appointed Wilson Hayes and Tolbert Brantley, both practicing Attorneys in Baldwin County, Alabama, to represent the Petitioner at said time; that said Attorneys were appointed prior to the Petitioner's arraignment, and that they conferred

with Petitioner regarding the charge against him prior to the time he made his plea at the arraignment, which was a plea of not guilty.

7-23-73 4. That on the 15th day of September, 1958, the Petitioner was duly served with a copy of the indictment, together with a copy of the venire, this being done at the time of the arraignment;

5. That at the Fall session, 1958, of the Circuit Court of Baldwin County, Alabama, on, -to-wit: September 24, 1958, Petitioner, after a jury had been struck and seated, stated to the Court that it was his desire to plead guilty to the offense of murder in the first degree and accept a life sentence in the penitentiary of the State of Alabama;

6. In accordance with said request of the defendant (the petitioner here), and upon the Solicitor agreeing to the same, the jury, which had been seated to try said defendant, was informed of the desire of the defendant to plead guilty to murder in the first degree, and were asked to bring in a verdict in accordance therewith, and the following verdict was rendered by said jury: "We the jury find the defendant, Henry Andrew Queor, Jr., guilty of murder in the first degree as charged in the indictment, and fix his punishment at life imprisonment in the penitentiary. Joseph Iseman, foreman";

7. Thereupon the Court asked the defendant if he had anything to say as to why the sentence of the law should not be passed on him, said nothing; the Court thereupon proceeded to sentence the defendant, Henry Andrew Queor, Jr. to life imprisonment in the Penitentiary of the State of Alabama;

Grant 8. And it further appearing to the Court that both Attorneys, Hon. Wilson Hayes and Hon. Tolbert Brantley, who were representing the defendant on the trial of said cause, testified that the defendant, of his own free will and accord, and against their advice, entered said plea of guilty and accepted said sentence of life imprisonment in the Penitentiary of the State of Alabama;

9. 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 by the evidence, and that said petitioner, of his own volition, entered and agreed to enter a plea of guilty to murder in the first degree and accept a life sentence in the penitentiary, in open Court;

X 10. That it has been clearly shown to the satisfaction of the Court that the defendant was ably represented by the Attorneys so appointed and that every courtesy was accorded to him;

V 11. That the Court, in addition to hearing and considering the testimony of the said petitioner, has also considered the testimony of all witnesses that have testified in this cause and finds there is no ground for the granting of this petition.

V 12. The Court is, therefore, of the opinion that the Petitioner, Henry Andrew Queor, Jr. is not entitled to the relief sought in his petition for writ of error coram nobis, and that the said writ of error coram nobis is without merit, and the same is hereby denied and dismissed.

Dated this 22nd day of January, 1965.

FILED

FEB 5 1965

MAE L. DICK, CLERK
REGISTERED

Seagrang J. Mathis
Judge

Div. No. _____

CERTIFICATE OF APPEAL. (Criminal Cases.)

No. 2652

Baldwin County, Circuit Court

Henry Andrew Queor, Jr.,
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 24th day of September 1958, and
the defendant convicted by a Jury of the offense of Murder in the First Degree
, and that on the 24th day of September 1958,
said defendant was sentenced to a term of Life Imprisonment in the 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 January, 1965

I further certify that on this the 3rd day of February
1965, 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 10th
day of February 1965.

Alice J. Duck
Clerk of Circuit Court of
Baldwin County, Alabama,

2652A

IN THE CIRCUIT COURT OF BALDWIN COUNTY
28th JUDICIAL CIRCUIT
BAY MINETTE, ALABAMA

HENRY ANDREW QUEOR, JR.	Ø	
PETITIONER - APPELLANT	Ø	
V.	Ø	
CIRCUIT COURT OF BALDWIN COUNTY	Ø	CASE NO. 2652
28th JUDICIAL CIRCUIT	Ø	
BAY MINETTE, ALABAMA	Ø	
RESPONDENT	Ø	

- A. NOTICE OF APPEAL AND DESIGNATION OF RECORDS.
- B. MOTION FOR APPOINTMENT OF COUNSEL.

TO THIS HONORABLE COURT:

Comes now, Henry Andrew Queor, Jr., the party styled petitioner - appellant in this cause and submits this his notice of the desire to appeal the adverse decision rendered him on to-wit, January 22, 1965, in regards to an Error Coram Nobis Hearing held in Baldwin County Circuit, 28th Judicial Circuit, Bay Minette, Alabama, concerning Criminal Case No. 2652.

Further; petitioner - appellant moves this Honorable Court to issue, or cause to be issued, the necessary orders to the Clerk of the Court and Court Reporter to prepare the Transcript (I.E. Warrant of Arrest, Bill of Compliant, Indictment, Judgement Entry, and Court Docket Sheet), and the Evidence Records in the Original/Trial and of the Error Coram Nobis Hearing, and foreward same to the Supreme Court of Alabama for further review thereby not inconsistant with Appropriate Appellate procedure. See Title 7, Section 767, Code of Alabama. 1940.

Further; Petitioner - appellant submits that under and in accordance with Act #525, Alabama Law - S. 351 Wilson, Approved by regular session, September 1963, that a full and complete certified copy of the entire proceedings be afforded petitioner - appellant to perfect his appeal.

That in accordance with and under the Authority of Act #526, Alabama Law, S. 352 - Wilson, approved regular session, September 1963, counsel be appointed to represent petitioner appellant on appeal of this cause.

Wherefore premises considered; petitioner - appellant submits this his notice of appeal without pre-payment of costs, or any costs incurred within this action, as he is without funds for same, nor any reasonable means to procure same.

Petitioner - appellant submits that the foregoing facts are true to the best of his knowledge, information and belief, and prays for any relief this Honorable Court may deem meet and proper.

Respectfully Submitted,

Henry Andrew Queor, Jr.
Henry Andrew Queor, Jr.

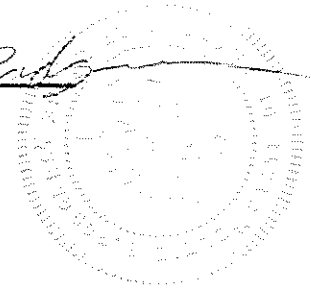
Petitioner - Appellant

Sworn and subscribed before me this 29 day of Jan - 1965.

My commission expires

3-10-67

Edna M. Pate
Notary Public



IN THE CIRCUIT COURT OF BALDWIN COUNTY
28th JUDICIAL CIRCUIT
BAY MINETTE, ALABAMA

HENRY ANDREW QUEOR, JR. § A. NOTICE OF APPEAL AND
PETITIONER - APPELLANT, § DESIGNATION OF RECORDS
V. §
CIRCUIT COURT OF BALDWIN COUNTY § B. MOTION FOR APPOINTMENT
28th JUDICIAL CIRCUIT, AT § OF COUNSEL
BAY MINETTE, ALABAMA. §
RESPONDENT §

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

AFFIDAVIT IN FORMA PAUPERIS

AUTHORITY: ACT # 525 AND 526, GENERAL ACTS OF ALABAMA

SEPTEMBER 16, 1963

Before me, the undersigned notary public, in and for said County and State, personally appeared, Henry Andrew Queor, Jr., who, after being duly sworn by me, deposes and says:

1. That he is a citizen of the United States by birth, and at present a resident of Alabama.
2. That he is of legal age.
3. That he is a pauper within the meaning of the word and law.
4. That he has no funds with which to pay any costs incurred in this action.
5. That he has no property, real or otherwise, of a value in excess of fifty dollars (\$50.00) upon which to give mortgage.

Therefore he is desirous of the permission for leave to proceed as a pauper, for which he will ever pray.

Respectfully Submitted

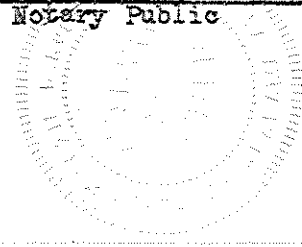

Henry Andrew Queor, Jr.

Petitioner - Appellant

Sworn to and subscribed before me this 29 day of Jan 1965.

My Commission expires 7-11-67


Notary Public



2652A

CERTIFICATE OF SERVICE

This is to certify that I have this date caused to be served upon the following listed parties, a copy of the foregoing, by placing a copy to each, duly addressed to them at their respective offices, in the United States Mail, postage prepaid.

A. Mrs. Alice J. Duck, Clerk of the Court, 28th Judicial Circuit Court,
Bay Minette, Alabama.

B. Honorable Richmond M. Flowers, Attorney General of Alabama, Montgomery,
Alabama.


Henry Andrew Queor, Jr.

Petitioner - Appellate

Sworn to and subscribed before me this 29 day of Jan 1965.

My commission expires

3 years 
Notary Public

FILED
FEB 3 1965
ALBANY, ALA.
CLERK
JAMES A. DICK, JR.

Tyeon 2652 A

RECEIVED
FEB 2 1965
OFFICE OF
ATTORNEY GENERAL

IN THE CIRCUIT COURT OF BALDWIN COUNTY

28th JUDICIAL CIRCUIT

BAY MINETTE, ALABAMA

HENRY ANDREW QUEOR, JR.

PETITIONER - APPELLANT

V.

CIRCUIT COURT OF BALDWIN COUNTY

CASE NO. 2652

28th JUDICIAL CIRCUIT

BAY MINETTE, ALABAMA

RESPONDENT

A. NOTICE OF APPEAL AND DESIGNATION OF RECORDS.

B. MOTION FOR APPOINTMENT OF COUNSEL.

TO THIS HONORABLE COURT:

Comes now, Henry Andrew Queor, Jr., the party styled petitioner - appellant in this cause and submits this his notice of the desire to appeal the adverse decision rendered him on to-wit, January 22, 1965, in regards to an Error Coram Nobis Hearing held in Baldwin County Circuit, 28th Judicial Circuit, Bay Minette, Alabama, concerning Criminal Case No. 2652.

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That in accordance with and under the Authority of Act #526, Alabama Law, S. 352 - Wilson, approved regular session, September 1963, counsel be appointed to represent petitioner appellant on appeal of this cause.

2652A

Wherefore premises considered; petitioner - appellant submits this his notice of appeal without pre-payment of costs, or any costs incurred within this action, as he is without funds for same, nor any reasonable means to procure same.

Petitioner - appellant submits that the foregoing facts are true to the best of his knowledge, information and belief, and prays for any relief this Honorable Court may deem meet and proper.

Respectfully Submitted,

Henry Andrew Queor, Jr.
Henry Andrew Queor, Jr.

Petitioner - Appellant

Sworn and subscribed before me this 29 day of Jan 1965.

My commission expires

7-14-68 Eden J. P. P. P.
Notary Public

IN THE CIRCUIT COURT OF BALDWIN COUNTY

28th JUDICIAL CIRCUIT

BAY MINETTE, ALABAMA

HENRY ANDREW QUEOR, JR.	§	A. NOTICE OF APPEAL AND
PETITIONER - APPELLANT,	§	DESIGNATION OF RECORDS
V.	§	
CIRCUIT COURT OF BALDWIN COUNTY	§	B. MOTION FOR APPOINTMENT
28th JUDICIAL CIRCUIT, AT	§	OF COUNSEL
BAY MINETTE, ALABAMA.	§	
RESPONDENT	§	

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

AFFIDAVIT IN FORMA PAUPERIS

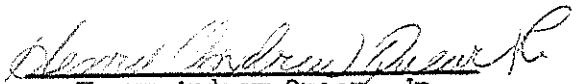
AUTHORITY: ACT # 525 AND 526, GENERAL ACTS OF ALABAMA

SEPTEMBER 16, 1963

Before me, the undersigned notary public, in and for said County and State, personally appeared, Henry Andrew Queor, Jr., who, after being duly sworn by me, deposes and says:

1. That he is a citizen of the United States by birth, and at present a resident of Alabama.
 2. That he is of legal age.
 3. That he is a pauper within the meaning of the word and law.
 4. That he has no funds with which to pay any costs incurred in this action.
 5. That he has no property, real or otherwise, of a value in excess of fifty dollars (\$50.00) upon which to give mortgage.
- Therefore he is desirous of the permission for leave to proceed as a pauper, for which he will ever pray.

Respectfully Submitted


Henry Andrew Queor, Jr.
Petitioner - Appellant

Sworn to and subscribed before me this 29 day of Jan - 1965.

My Commission expires 3-14-67



Notary Public

CERTIFICATE OF SERVICE

This is to certify that I have this date caused to be served upon the following listed parties, a copy of the foregoing, by placing a copy to each, duly addressed to them at their respective offices, in the United States Mail, postage prepaid.

A. Mrs. Alice J. Duck, Clerk of the Court, 28th Judicial Circuit Court,
Bay Minette, Alabama.

B. Honorable Richmond M. Flowers, Attorney General of Alabama, Montgomery,
Alabama.


Henry Andrew Queor, Jr.

Petitioner - Appellate

Sworn to and subscribed before me this 29 day of Jan 1965.

My commission expires _____.


Notary Public

IN THE 28TH JUDICIAL CIRCUIT COURT
BALDWIN COUNTY, BAY MINETTE, ALABAMA

FILED
JAN 9 1958
WILLIAM DICK, CLERK
REGISTER

STATE OF ALABAMA)
BALDWIN COUNTY)
HENRY ANDREW QUEOR, JR., Ø
PETITIONER Ø
VS. Ø
STATE OF ALABAMA, Ø IN THE CIRCUIT COURT
RESPONDENT Ø CASE # 2652

PETITION FOR WRIT OF ERROR CORAM NOBIS
MOTION TO VACATE JUDGEMENT

Comes now Henry Andrew Queor, Jr., petitioner in the above styled cause and shows this Honorable Court that there is error of record in the proceedings leading to petitioners conviction; that his Constitutional rights have been violated and that the sentence in the above numbered case was founded without due process of law. Petitioner is ignorant, inexperienced, and untrained in the field of law and wishes the Court to take judicial notice of this fact.

STATEMENT OF FACTS

On September 24, 1958, petitioner withdrew his plea of "not guilty" and entered the plea of "guilty" as charged in the indictment, being case number 2652. He was adjudged guilty by the Circuit Court of Baldwin County, Alabama and thereupon sentenced to a life term in the penitentiary. Petitioner is now confined at Kilby Prison, Montgomery, Alabama by virtue of said sentence.

STATEMENT OF THE CASE

Petitioner was arrested on the 19th day of March, 1958, at Aberdeen Maryland, by the F.B.I.; taken before a Justice of the Peace who set bond at \$20,000.00. Petitioner was then taken to Baltimore, Maryland, placed in the city jail.

On March 21, 1958, petitioner was taken to the U.S. Marshals office where the Sheriff of Baldwin County, Alabama, (Taylor Wilkins) and State Investigator (Oscar F. Coley), were waiting; Petitioner was then taken before the District Judge, to sign extradition papers for transfer to Alabama.

Petitioner was lodged in the County Jail at Bay Minette, Alabama from the time of his arrival in Alabama, until his conviction. On several occasions petitioner was taken to the Sheriff's Office for questioning, where he was told that if he would sign a statement concerning the alledged crime he was charged with, that he would recieve no more than 20 years and that they would help him when he came up for parole; that they would do all they could to help him. Petitioner refused to sign anything without talking to an attorney and requested that he be allowed to talk to an attorney; petitioner was not allowed counsel and was refused this right every time he made the request. Sheriff Wilkins kept telling petitioner that he would see to it that he would recieve the death penalty if he refused to do as they asked; that he ran the county and people would do as he said. After several days of being abused, threatened, intimidated, coerce and compelled to compliance due to duress, petitioner signed the statement without benifit of counsel to guide him. He was told that he didn't need any lawyer then and that the Court would appoint one in time for the trial.

After signing the statement, petitioner was treated even worse. He was told repeatedly that he would be sure to get the electric chair and they would see to it that he did. The treatment got so bad that petitioner could not stand it any longer and escaped from jail; was only out about one hour before being brought back to the jail, where he was stripped, placed in a bare cell, and for the next 38 days petitioner endured treatment shocking to mankind. Petitioner was not allowed any item; comb, soap, razor, towel or toothbrush. Petitioner was only allowed one bath from March 21 to September 24, and that was the night before the trial. The man in the next cell (Paul McAfee) was subjected to the same treatment for no reason. Petitioners Mother came from New York State to see him, and found him in the same condition; beard two or three inches long, hair that hung over his ears and curled in the back, dirty, filthy and stated that he smelled like a hogpen.

On or about the 10th day of September, petitioner was taken to the Courthouse and at that time the Court appointed an Attorney (Wilson Hayes) who came to the jail and talked to petitioner; this attorney was told everything that had happened since petitioners arrest. Attorney Hayes sent to petitioners home in New York for clothing to be worn at the time of trial, but these were taken from petitioner, who was forced to borrow a pair of trousers and a shirt, both too large; to keep from wearing the filthy rags that he had on.

On September 24, 1958, petitioner was taken to the courthouse, and upon being arraigned in open court pleaded "not guilty" in manner and form as charged in the indictment. The Court then without setting a day for trial, proceeded to place petitioner on trial for his life. Petitioners counsel did not object to this procedure in any way, nor did he enter any pre-trial motions on behalf of petitioner. Petitioner told his counsel to "do something", the lawyer replied: "what can I do"? At this time petitioner knew that everything was fixed against him just as they said it would be and that he could not get a fair trial, so petitioner asked to speak to the Judge. The Judge, Prosecutor, Sheriff, Petitioner and Counsel got together and petitioner told the Judge that he didn't want the electric chair as he had been promised to get, and at this time petitioner was offered the life sentence if he would plead guilty. Not knowing what else to do petitioner agreed to do so. The Judge gave the foreman of the jury a slip of paper and he read it and nodded his head. Petitioners punishment was fixed at life in the penitentiary. No evidence was ever presented to the Jury, nor did the trial judge instruct the jury as to the finding of the verdict. At no time was parole consideration talked about, as is shown in the judgement entry. Petitioner was arraigned, tried, convicted, and sentenced on the 24th day of September, 1958, and thereupon transferred to Kilby prison, Montgomery, Alabama. Petitioners counsel did Not enter any motion for a new trial, nor did he appeal the sentence.

ALLEGATIONS

The judgement of the Court is assailed upon the grounds that the petitioner was denied due process of the law and the equal protection of the laws, in contravention on the Fourteenth Amendment, specifically as follows:

1. That petitioner was not given a fair, impartial and deliberate trial.
2. That petitioner had not been arraigned as in a capital case.
3. That there had been no order setting the case for trial as in a capital case.
4. That there was no order fixing the date of trial.
5. That petitioner was without the assistance or representation of counsel at every stage of the proceedings against him.
6. That petitioner was coerced by officials of the State of Alabama, whereby he was forced to enter a plea of guilty.

7. That the Court exceeded its jurisdiction by adding to the judgement entry a clause, whereby petitioner was never to be pardoned or paroled.
8. That the judgement is void on its face.
9. That no crime was ever shown to have been committed.

ARGUMENT

The records in the enclosed case show beyond doubt that the presiding judge failed to do what the State law required him to do. This failure of the judge denies petitioner a protection which has been provided to similarly situated defendants over the years and which, so far as now foreseeable, Alabama will continue to provide to all defendants in the future. The equal protection clause of the Fourteenth Amendment forbids such invidious picking out of one individual to bear legal burdens that are not imposed upon similarly situated. Since the legislature has not changed its statute and the Supreme Court of Alabama has not changed its interpretation of those statutes, the law of Alabama remains the same as it was before petitioners conviction. If petitioner has been denied that protection without the laws having been changed, then he has been singled out by the State as the sole person to be so treated. Such a singling out would be a classic invidious discrimination and would amount to a denial of equal protection of the law. For a judicial decision which sends a man to prison by refusing to apply settled law which has been and so far as appears will continue to be applied to all other defendants similarly situated is far more than a mere misapplication of State law, it is a denial of equal protection and of due process of law.

The Fourteenth Amendment to the Constitution is not to protect an accused against a proper conviction, but against an unfair conviction. This Amendment was designed to protect the individual against the deprivation by the State of such fundamental or natural rights as the right to life and liberty, rather than to create new rights to the individual. If a law is so applied and administered as to make unjust discrimination between persons in similar circumstances material to their rights, such denial of equal justice violates "due process of law". The records in this case should satisfy the most doubting, that error infected the entire proceedings.

This indictment is in the form prescribed by the code, and avers all the elements and constituents of murder, which may be punished capitally, by death, or imprisonment in the penitentiary for life. The petitioner having

pleaded not guilty, the primary duty of the court - a duty to be performed in the personal presence of the then defendant was the setting a day for trial of the cause; nad the day having been set, at least one entire day prior thereto, the drawing of special jurors, not less than 25 nor more than 50, as the court deems necessary, to be summoned by the sheriff, under the order of the court, and added to the panel of petit jurors organized for the week; the two constituting the "venire" as it is termed in the statute, from which the jury for the trial were to be selected. Cr. Code 1886, p. 134, Note Sec. 10. A judgement of conviction on an indictment for an offence which may be punished capitally, cannot be supported, when drawn in question of error, unless it is shown affirmatively by the record that there was by the court performance of these duties. Spicer v. State, 69 Ala. 159; Sylvester v. State, 71 Ala. 17; Posey v. State, 73 Ala. 490; Jordan v. State, 81 Ala. 20, 1 So. 577; Washington v. State, 81 Ala. 35, 1 So. 18; Watkins v. State, 89 Ala. 82, 8 So. 134. The present record does not affirmatively show that a day was set for trial of the cause, nor that there was the drawing of the special jurors for the trial as the statute requires. It appears rather, from the records, that there was not observance of the statute in either respect. See Title 30 Section 70, Code of Alabama, 1940, as amended. At any time befofe a special venire has been drawn for the trial of any capital case, if the defendant enters a plea of guilty or in writing waives the right of a special venire, such plea of guilty or such waiver of special venire shall be entered of record, and in either event, no special jury or venire shall be necessary for the trial of such cause; but the trial of the cause shall be had and the question of the degree of guilt must be ascertained and the punishment fixed by a jury to be selected from the panel of regular petit jurors organized by the court during the week such cause is set for trial, in the same manner as juries are organized for the trial of felonies not capital. There was not the observance of the mandatory requirements of the statute. The failure to observe them is an error necessatiting a reversal of the judgement of conviction.

Section 6 of the Alabama Constitution, Section 63 and 69 of the title 30, Code of Alabama 1940, and Circuit Court Rule 30, clearly spell out the rights to which this petitioner was entitled in the matter of the arraignment, setting of his cause for trial, serving him with a copy of the venire, etc.

Title 14, Section 317 sets out the duty of the court, in view of this section it is the duty of the court -- Mandatory duty of the court -- to instruct the jury

orally as to the different and distinguishing elements of each degree of murder. Without such instructions from the court, the jury could not intelligently comply with their statutory duty. Brown v. State, 109 Ala. 70, 20 So. 103. The court failed to hear any evidence what-so-ever in this case as set out in Title 14, Section 317 which states; the court must proceed to determine the degree of the crime, by the verdict of a jury, upon an examination of the testimony and pass sentence accordingly.

The record indicates that the appearance of counsel was pro forme rather than zealous and active. The proof lies from the record of proceedings and things done through counsel as well as things omitted by counsel. Petitioner suffered throughout proceedings by the obvious failure of counsel to act in petitioners best interest; collaboration is clearly reflected between counsel and the prosecution, and in all litigations the proof thereof can be circumstantial as well as direct evidence, where representation of an accused by his counsel is so lacking in diligence and competence that the accused is without representation and the trial reduced to a sham. State must see that the essential rights of the accused are preserved him by appropriate intervention. See Lunce v. Overlade, C.A. Ind. 1957, 244 F. 108 2d, 74 ALR 2d 1384. An essential element of fair trial of defendant with court - appointed counsel is trial court's sensitivity to protecting defendant against hasty trials and against obvious mistakes of young, inexperienced, appointed counsel. Constitutional requirement of court appointed defence counsel is not satisfied if court appointed counsel makes merely perfunctory appearance and does nothing whatever before or during trial to advise his client of protecting his rights. See Turner v. State of Maryland, C.A. Md. 1962, 303, F. 2d 507. A defendant is entitled to conscientious services of competent counsel at time of entering plea and mere perfunctory representation of assigned counsel is not enough. U.S. v. Tribote, C.A. N.Y. 1961, 297 F. 2d. 598. The right of a defendant in a criminal action to an attorney embraces effective representation throughout all stages of the trial and where the representation is of such low caliber as to amount to no representation, the guaranty of due process has been violated. To permit accused ignorant of the law to be misrepresented and prejudiced by ignorance and misconduct of someone pretending to represent accused and to permit a trial to proceed to verdict and final judgement without counsel representing accused does not constitute "due process of law". U.S. ex rel. Hall v. Ragen, D.C. Ill., 1945, 60 F. Supp. 820. The right of accused to assistance of "counsel" means that accused is entitled to the good faith of a lawyer in defending the accused against the indictment upon which he is put to trial.

U.S. ex rel, Foley v. Ragen, D.C. Ill. 1943, 52 F. Supp. 265. The records show affirmatively that petitioner was not represented by counsel at every phase of the proceedings against him and it is next to impossible for the Justice of the Courts in Alabama not to be acquainted with the decision of the United States Supreme Court in the case of Powell vs. Alabama, 287 U.S. 45. The United States Supreme Court made it unmistakably clear to lawyers and laymen alike that any person charged with a capital offence is entitled to be represented by counsel at every stage of the proceedings. "Every stage of the proceedings" is not limited to the trial. "Every stage of the proceedings" means anything and everything that occurs after arrest - up to and including the completed trial - without exception. Under the circumstances disclosed, petitioner holds that he was not accorded the right of counsel in any substantial sense, the resulting conviction is wrong. No man should be denied his constitutional rights no matter how heinous the crime; for then, it is not the man who is on trial; it is the constitution of the United States that is on trial, and an abuse or disregard for the Constitution is a direct affront and an abuse of our precious heritage of freedom.

That petitioners plea of guilty was the result of coercion and threats by the State officers is clearly shown in the statement of the case, and where a plea of guilty is coerced from a defendant by police officers of state, such coercion is a violation of due process; further pleas of guilty, which is induced by coercion, will not support a judgement of conviction, and conviction based upon such a plea is violative of defendants rights; a plea of guilty must be based on voluntary testimony to sustain a conviction, and there is no due process of law where a plea of guilty is involuntary because of coercion; See Com. ex rel, Carlini v. Burke, 1952, 92 A. 2d 267, 172 Pa. Supr. 116; State v. Malnourie, N.D. 1954, 67 N.W. 2d 330; Palmer v. Cranor, 1954, 273 P. 2d 985, 45 Wash. 2d 278. Any promise made by officers to accused following arrest was sufficient to render judgement void. Accused who has been convicted on plea of guilty induced by threats, promises and intimidation by law enforcement agents has been deprived of constitutional rights to the same extent as a person who has been convicted upon a confession obtained through coercion. A plea of guilty is not voluntary simply because it is the product of sentient choice, but is involuntary, though it involves a choice, it is a result of duress. The Court before accepting a guilty plea must determine whether plea has been improperly induced by the prosecutor and whether defendant is aware of

nature of charges, statutory offence included within the range of allowable punishments thereunder, possible defences to charge and circumstances in mitigation thereof and all other facts essential to a broad understanding of the whole matter, and such a determination may be made only by penetrating and comprehensive examination of all circumstances under which plea is made. This rule, that court shall not accept plea of guilty without first determining that plea is made voluntarily with understanding of nature of charge, contemplates that there be something more than a perfunctory examination conducted by the prosecutor that does not serve to inform judge extent of prisoners knowledge of consequences of his choice of a guilty plea. The court in this case accepting guilty plea failed to perform its duty to determine whether plea was voluntarily made with an understanding of the nature of the charge and the punishment that could be imposed.

The court exceeded its authority and jurisdiction by adding to the judgement entry an alleged agreement that no parole would be applied for and the judgement is defective and of no force and effect. Title 14 Section 318, punishment for murder does not preclude parole and authority to grant same is within power and jurisdiction of parole board. Title 42 Section 5, The board (pardon and parole) shall be charged with the duty of determining what prisoners serving sentences in the jails and prisons of the state may be released on parole and when and under what conditions. The courts do not have authority except that which expressly conferred by constitution and statutes. Usurpation of statutory and constitutional authority of parole board is excess of authority of court.

In the case of Griffin vs. Proctor, 14 So. 2d 116, Supreme Court of Alabama, the court stated: "It is well settled that where a decree has been rendered which is void on the face of the record, the court rendering it possesses the inherent power, and should, on motion, vacate said decree. The rule seems to be, that any court should, on proper application, vacate any order, decree or judgement, at any time subsequent to its rendition, if the same is void on the face of the proceedings in record."

See the case of McDonald vs. Lyle, 121 So. 2d 885, Supreme Court of Alabama: "Where it appears on the face of the record that a judgement is void, either from want of jurisdiction of the subject matter or of the defendant, it is the duty of the court, on application by party having rights and interests immediately involved, to vacate the judgement or decree at any time subsequent

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to its rendition, and where the judgement or decree is void on its face, the court rendering it has inherent power to vacate it on motion, and such power is not dependant on statute." See Hobson - Starnes Coal Co. vs. Alabama Coal and Coke Co., 56 So. 622, Supreme Court of Alabama: " A Circuit Court has inherent power at all times to remove a void judgement from the record, unaffected by the practice act, whereby the power over final judgement is restricted to thirty days."

CONCLUSION

Petitioner prays this Honorable Court to issue the Writ of Error Coram Nobis, together with its order directing the respondent to produce the petitioner before this Court on a day ascertained by said court, to show cause why said writ of error coram nobis should be granted. Petitioner now seeks to secure remedy in this deserving cause which state court's have jurisdiction, and if remedy is refused by the state courts, he wishes to have his Federal Constitutional rights adjudicated and passed on by the state courts as a prerequisite to seeking relief and remedy in the Federal Courts. Petitioner states, that he is informed of the premises, that he knows the facts here are true to the best of his knowledge, information and belief, and that he submits this petition in good faith and a deserving cause.

Petitioner prays this Honorable Court will afford him such relief as may be due him and will find the sentence void and order him a new trial.

Respectfully submitted,

Henry Andrew Queor, Jr.
Henry Andrew Queor, Jr.

Sworn to and subscribed before me this 5 day of Jan - 1965

My commission expires

7-14-67

Edward M. Raley
Notary Public

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STATE OF ALABAMA

MONTGOMERY COUNTY

Title 26, U.C. Code Section 1915, also sought under ADKINS vs. DUPONT, section 1915.

I, Henry Andrew Queor, Jr., petitioner in the attached cause, under the penalties of perjury do hereby swear that I am a Citizen of the United States by birth, and of legal age. I am a pauper within the meaning of the word and the law. I do not have any monies concealed or set aside for future use. I own no property, either real or otherwise. Because of my poverty I am unable to pay the cost of hearing this appended petition, and it is prayed by petitioner that appropriate orders be issued by the Court for the filing of this case in Forma Pauperis.

Respectfully submitted,

Henry Andrew Queor, Jr.
Henry Andrew Queor, Jr.

Sworn to and subscribed before me this 5 day of Jan. 1965.

My commission expires 3-14-67

John M. Adams
Notary Public

PROOF OF SERVICE

I hereby certify that I have this date served a copy of the forgoing on counsel for respondent, Attorney General, Richmond M. Flowers, Attorney Generals Office, Montgomery, Alabama, and Mrs. Alice J. Duck, Baldwin County Circuit Clerk, Bay Minette, Alabama.

Henry Andrew Queor, Jr.
Henry Andrew Queor, Jr.

STATE OF ALABAMA
MONTGOMERY COUNTY
2652

Title 28, U.C. Code Section 1915, also sought under ADKINS vs. DUPONT.

section 1915.

I, Henry Andrew Queor, Jr., petitioner in the attached cause, under the penalties of perjury do hereby swear that I am a citizen of the United States by birth, and of legal age. I am a pauper within the meaning of the word and the law. I do not have any monies concealed or set aside for future use. I own no property, either real or otherwise. Because of my poverty I am unable to pay the cost of hearing this appended petition, and it is prayed by petitioner that appropriate orders be issued by the Court for the filing of this case in forma pauperis.

Respectfully submitted,

Henry Andrew Queor, Jr.
Henry Andrew Queor, Jr.

Sworn to and subscribed before me this 2 day of June, 1962.

Henry Public
Henry Public

My commission expires 3/1/64

PROOF OF SERVICE

I hereby certify that I have this date served a copy of the foregoing on counsel for respondent, Attorney General, Richmond M. Flowers, Attorney General's Office, Montgomery, Alabama, and Mrs. Alice J. Duck, Baldwin County Circuit Clerk, Bay Minette, Alabama.

Henry Andrew Queor, Jr.
Henry Andrew Queor, Jr.