

IN THE JUDICIAL CIRCUIT OF BALDWIN COUNTY
IN AND FOR THE STATE OF ALABAMA
AT Bay Minnet, Alabama

Richard Swirn

Petitioner

Case No.

vs.

3117, 3118, 3120, 3128,

State of Alabama

Respondent

To The Clerk of the Court:

Re: Subpoena for Hearing of a Writ of Error Coram Nobis

Sir:

The petitioner in the above styled cause does hereby request that the following named witnesses and records be subpoenaed to the hearing of the Writ of Error Coram Nobis, at the time and date designated by this Honorable Court. (under authority of title 15 sec. 15 Alabama Code 1940)

Subpoena Duces Tecum: The Court Clerk and Court reporter with all of the records of the proceeding and the transcript of the trial.

Subpoena Ad Testificandum: Petitioner respectfully urges the Court to notify and direct acting Warden William C. Holman, of Kilby Prison, or his agent to produce the herein named inmates, who are under his custody, at the hearing of this cause at the proper time and date designated by this Honorable Court for such hearing.

John Shinnets: inmate Kilby Prison, Route 3, Box 115

Charles Sazera: inmate Kilby Prison, Route 3, Box 115

Charles W. Sweeney: inmate Kilby Prison, Route 3, Box 115

Gordon Douglas: inmate Kilby Prison, Route 3, Box 115

Petitioner avers that these witnesses and documents are essential to a proper hearing of this case and cause.

Witnessed by
Charles W. Sweeney
John Shinner
Charles Sagers

Respectfully Submitted
Richard Swain
 Petitioner

Proof of Service

I, Richard Swain, hereby certify that I have served a copy of the foregoing document on the respondent by placing same in a properly addressed envelope, postage prepaid, and placed in the United State mail.

Richard Swain
 Petitioner

Witnessed by
Charles W. Sweeney
John Shinner
Charles Sagers

State of Alabama
Montgomery, Alabama

Affidavit In Forma Pauperis

Affiant and Petitioner, Richard Swirn, being duly sworn deposes and says that he is a citizen of the United States by birth, of legal age, and a resident of the State of Alabama; that he is a poor person without money or property with which to pay the costs of this litigation or bear the expenses of having the records filed, believing himself entitled to the redress sought and showing the Court's facts sufficiently meritorious for the Court to allow him to proceed without the prepayment of fees.

Wherefore the Petitioner, Richard Swirn, respectfully moves the Court to allow this cause to be prosecuted in Forma Pauperis to a successful conclusion. Upon this motion petitioner prays the judgement of the Court.

Respectfully Submitted
Richard Swirn
Petitioner

Witnessed by
Charles W. Lawrence
John Shivers
Charles L. Lazer

EX PARTE

RICHARD SWIRN

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 Honorable 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, uncertain, confusing, completely unintelligible 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 fact 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 allege petitioner's innocence or show a valid defense.

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.

James A. Hendrix
 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, Richard Swirn, by handing a copy of same to him at the Baldwin County Jail, on this the 18 day of January, 1963.

James A. Hendrix
 SOLICITOR TWENTY-EIGHTH JUDICIAL
 CIRCUIT OF ALABAMA

FILED

JAN 18 1963

ALICE I. DUCK, CLERK
 REGISTER

3117A

RICHARD SWIRN,	)	IN THE
	)	
PETITIONER,	)	CIRCUIT COURT OF BALDWIN COUNTY
	)	
VS.	)	ALABAMA. JANUARY 21, 1963
	)	
STATE OF ALABAMA.	)	
	)	
	)	

IN OPEN COURT, JUDGE HUBERT M. HALL PRESIDING.

HON. HARRY J. WILTERS, JR., ATTORNEY APPOINTED BY THE COURT TO
REPRESENT THE PETITIONER.

MR. WILTERS: Your Honor, this is a petition for writ of Coram
Nobis filed by this Petitioner, seeking to have
the sentence of this Court set aside. After
discussing this matter with the Petitioner on
three or four occasions, and with other people
and his parents, the Petitioner has a statement
that he would like to make to the Court.

RICHARD SWIRN, BEING FIRST DULY SWORN, TESTIFIED AND MADE THE
FOLLOWING STATEMENT:

MR. SWIRN: I would like to withdraw this petition that
I filed; I didn't think it would cause all of this trouble, in
the bringing of my witness here, and I have not had legal
counsel up to now and I didn't know that it would be all of
this trouble. I am sorry, and I would now like to withdraw my
petition.

MR. WILTERS: Do you have any other or further statement
that you would like to make?

MR. SWIRN: No, I don't believe so.

3117A

C E R T I F I C A T E:

I hereby certify that the foregoing is a full, true and correct transcript of the proceedings had, in open Court, before Hon. Hubert M. Hall, Judge of said Court, in the captioned cause.

Given under my hand this 21st day of January, 1963.

Louise Dunsenberry
Official Court Reporter,
28th Judicial Circuit of Ala.

FILE

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