

The State of Alabama, {

Baldwin County

CIRCUIT COURT, Spring SESSION, 19 61

The Grand Jury of said County charge that before finding this indictment Joe Bell, a convict, did escape from the guard having him in charge under authority of law, either within or outside the walls of the penitentiary, before the expiration of the term for which he was sentenced,

against the peace and dignity of the State of Alabama.

James G. Hendrix
Solicitor of the Twenty-Eight Judicial Circuit.

No. _____

The State of Alabama
Baldwin County

Circuit Court

Spring Term, 19 61

The State

vs.

Joe Bell

Escaping

INDICTMENT

No Prosecutor

WITNESSES:

J. C. Cotton

GRAND JURY NO. 112

A TRUE BILL

James W. Crosby
Foreman Grand Jury.

Filed in open Court and in the presence of
the Grand Jury on the 15 day of
Mar, 19 61

Alice J. Luck
Clerk.

Presented in open Court to the presiding
Judge by the Foreman of the Grand Jury, in
the presence of 12 other Grand Jurors.

Alice J. Luck
Clerk.

Bail fixed \$ 500

W. M. ...
Judge.

THE STATE OF ALABAMA, }

Baldwin County

To Any Sheriff of the State of Alabama:

An indictment having been found against

James Joe Bell

at the *Spring* Term, 19*61*, of the Circuit Court of Baldwin County, for the offense of

Escaping

you are, therefore, commanded forthwith to arrest the said Defendant and commit *him*

to jail, unless *he* give bail to answer said indictment, and that you return this Writ according to law.

Dated this *15* day of *Nov*, 19*61*

Reid J. Leach
Clerk Circuit Court of Baldwin County.

The State of Alabama, }

Baldwin County.

We, _____, as principal and

the other undersigned as sureties, agree to pay the State of Alabama _____

Dollars, unless the said _____ appears

at the _____ Term of the Circuit Court of Baldwin County, and from Term to

Term thereafter until discharged by law, to answer a criminal prosecution for the offense of _____

In signing the above bond we and each of us hereby waive all legal rights of exemptions allowed us by the Constitution and Laws of the State of Alabama.

Witness our hands and seals this _____ day of _____, 19____.

(L. S.)

(L. S.)

(L. S.)

(L. S.)

Taken and approved _____ day of _____, 19____.

Sheriff of Baldwin County.

CAPIAS

No. 112

The State

vs.

Joe Bell

Bail fixed in this Case in Open Court at

\$ 277.00

By H. M. Hall
Judge Presiding

Attest: _____
Clerk.

Executed this 25 day of March, 1961

By arresting the within

named Defendant

and placing him in jail

Jayles Wilkins, Sheriff
W. D. Garner, Deputy Sheriff

O. mi

IN THE CIRCUIT COURT OF BALDWIN COUNTY
BAL MINETTE, ALABAMA

JAMES BELL

PETITIONER

CASE No. 80615

VS.
STATE OF ALABAMA
RESPONDENT

Motion to VACATE SET ASIDE JUDGMENT
AND SENTENCE.

PETITION FOR WRIT OF ERROR CORAM NOBIS Motion For LEAVE
to FILE in FORMA PAUPERIS.

This Petition of JAMES BELL RESPECTFULLY RE-
SENTS AND SHOWS to the Court the Following in ACCORDANCE with
316 U.S. 101, 104 & 2 SUPREME COURT 946-966, SOUGHT UNDER MR.
121 VS. Johnson.

"A CONVICTED PERSON MUST BE GIVEN AN OPPORTUNITY TO OPEN AN
INQUIRY INTO THE FAIRNESS OF THE PROCEEDING UNDER WHICH HE NOW
DESIRES TO CONTEST BY ERROR CORAM NOBIS LITIGATION."

AT PETITIONER'S TRIAL THE LEGALITY OF WHICH HE NOW DESIRES TO
CONTEST BY ERROR CORAM NOBIS LITIGATION.

PETITIONER IS BEING DEPRIVED OF HIS LIBERTY ILLEGALLY AND UN-
LAWFULLY IN VIOLATION OF HIS FUNDAMENTAL CONSTITUTIONAL RIGHT BY
VIRTUE OF THE PROCEEDING AGAINST THE PETITIONER BEFORE AND AT
THE TRIAL.

PETITIONER WAS CONVICTED OF ESCAPE ON ONE COUNT AND SENT-
ENCE TO THREE (3) YEARS. UPON THIS CONVICTION HE WAS DEPRIVED OF
HIS CONSTITUTIONAL RIGHTS.

PETITIONER ALLEGES HE DID NOT HAVE COUNSEL BEFORE AND AT THE
TRIAL.

"WITHOUT DOUBT THE OPINION OF THE UNITED STATES SUPREME
COURT OF MARCH 13, 1963, IN THE CASE OF MIDGON VS. WAINWRIGHT
WILL HAVE THE GREATEST IMPACT ON THE GENERAL PETITIONER AS THIS
CASE EXPRESSLY OVER RULES THE COURT'S OPINION OF 1962 IN THE
CASE OF BELLS VS. BELL. HOLDING THAT IN ABSENCE OF SPECIAL
CIRCUMSTANCES, COUNSEL IN CAPITAL CASES IS NOT REQUIRED -- BY
MAKING THE REQUIREMENTS UPON THE STATES THAT INDIGENTS DE-
FERENT BE FURNISHED COUNSEL AT TRIAL OF ALL SERIOUS OFFENSES.
IT SHOULD BE NOTED THE MIDGON OPINION'S SUPPORT IS NOT LIMITED
TO FELONY CASES."

For CERTIORARI ARE GRANTED. THE JUDGMENT IS VACATED AND THE CASE IS REMANDED FOR FURTHER CONSIDERATION IN LIGHT OF MIDSON VS. WAHNE 312 U.S.

SINCE MIDSON APPARENTLY MUST BE REGARDED AS BEING ACTIVE IN OPERATION AND EFFECT, WHAT MUST THE RECORD SHOW IN THE CASE WHICH WAS TRIED UNDER BEYER VS. BRADY? A PARTIAL ANSWER MAY BE FOUND IN THE CASE OF CHARLEY VS. COCHRAN.

PRESUMING WAIVER FROM A SILENT RECORD IS IMPERMISSIBLE. THE RECORD MUST SHOW OR THERE MUST BE AN ALLEGATION AND EVIDENCE WHICH SHOWS THAT AN ACCUSED WAS OFFERED COUNSEL BUT INTELLIGENTLY AND UNDERSTANDINGLY REJECTED THE OFFER. AND THING LESS NOT WAIVED. SEE: MIDSON VS. WAHNE 312 U.S. 335 (1963).

UNDER OUR CONSTITUTIONAL TRIAL TRIAL IS NOT A LUXURY BUT A NECESSITY. THE FACT THAT THE PETITIONER SPENT A NUMBER OF YEARS IN PRISON UNDER A FATEALLY VOID CONVICTION IS NO REASON TO CONTINUE TO DENY HIM HIS RIGHTS. SEE: CHARLEY VS. COCHRAN 369 U.S. 506, 513, (1962).

IT IS SETTLED THAT WHERE THE ASSISTANCE OF COUNSEL IS A CONSTITUTIONAL REQUISITE THE RIGHTS TO BE FURNISHED COUNSEL DOES DEPEND ON A REQUEST. INDEED AS EARLY AS 1945. THE SUPREME COURT HELD IN LICE VS. OLSON 342 U.S. 786 (1945). THAT A PLED OF GUILTY CANNOT OPERATE AS A WAIVER OF COURT APPOINTED COUNSEL, AND THAT THE ABSENCE OF REQUEST THEREFORE WAS TOTALLY IRRELEVANT TO A DETERMINATION OF WHETHER COUNSEL SHOULD HAVE BEEN APPOINTED. SEE: FAY VS. NOIA 372 U.S. 391, 439 (1963).

SMITH VS. UNITED STATES 391 U.S. 469. IT IS NOT AN ERROR TO BE CORRECTED BY A NEW TRIAL, IT IS NOT AN ERROR BY THE COURT TO BE CORRECTED BY A NEW TRIAL, BUT TO DISCHARGE HIM FROM IMPRISONMENT. THE COURT ARE NOW CONFRONTED WITH A QUESTION: CAN A MAN BE RELIED ON A CHARGE THAT IS VOID? NEGATIVE BECAUSE (1) THE LAW OF THE LAND IS THE CONSTITUTION OF U.S. AND THE SUPREME COURT IS ITS INTERPRETER HAS RULED THAT A PERSON SERVING A SENTENCE WITHOUT AID OF COUNSEL MUST BE RELEASED FROM PRISON AND WHERE THE RECORD REVEAL A VIOLATION.

3.

OF THE CONSTITUTIONAL RIGHTS OF A PERSON AT THE TIME OF
HIS TRIAL. THE COURT DOES NOT HAVE THE RIGHT TO PROCEED
TO JUDGMENT AND ANY SENTENCE METED OUT IS OBSCURE
AND VOID AS IT IS SAID IN CASE, SCOT. VS. ALEX. 261 U.S. 86
435 CT. 265 ED. 43, HOWES VS. REGAN 331 U.S. 235. 69 SET 10.

PETITIONER WAS NOT PROTECTED BY THE CONSTITUTIONAL PROVIS-
ION SURROUNDING TO HIS RIGHTS. HE WAS DENIED DUE PROCESS OF
LAW TO PROTECT HIM OF HIS RIGHTS. IT WAS NOT A CASE OF ERROR
BUT A CASE OF DENYING A PERSON A CONSTITUTIONAL RIGHTS.
AND WHERE SUCH A CASE APPEARS ON RECORD. THE PARTY
IS ENTITLED TO BE DISCHARGED FROM IMPRISONMENT. SEE: FAY
VS. NOIS 835 CT. 822 (1963) 312 U.S. S. C. 391 ALABAMA
OWEN VS. SAID 312 U.S. S. C. 293 (1963).

WHEREFORE PETITIONER PRAYS THAT THE WRIT OF HABEAS
CORPUS NOBIS BE ISSUED DIRECTED RESPONDENT COMMANDING
THEM TO PRODUCE THE BODY OF THIS PETITIONER BEFORE THE
HONORABLE COURT AT THE HEARING ON THIS PETITIONER FOR
THE PURPOSE OF ARGUING HIS CASE BEFORE THE OPPOSITION
IF SUCH OPPOSITION THERE BE; AND IF THERE IS NO OPPOSITION.
THAT PETITIONER BE GRANTED RELIEF SUCH AS THE COURT
MAY DEEM MEET AND PROPER AND IN DUTY BOUND HE WILL
EVER PRAY. E. T. C.

RESPECTFULLY SUBMITTED
~~James Bell~~
PETITIONER James Bell

In the Circuit Court of Baldwin County
Bay Minette, ALABAMA

JAMES BELL
Petitioner

Case No. 80615

vs.
State of ALABAMA
Respondent

Affidavit in Support of Application Motion for Leave to Proceed
in FORMA PAUPERIS.

Come now Petitioner JAMES BELL who under oath states.

1. He is a citizen of the United States of legal age.
2. He is a pauper without the funds to pay the cost of this action.
3. He seeks the relief petitioned in good faith.
4. He feels he is entitled to the relief petitioned under the guarantees of the Constitution of the United States and Alabama.

Where the foregoing premises considered Petitioner prays
he be granted leave to file and proceed with his cause with
out the prepayment of cost.

James Bell
Petitioner

Certificate of Service

Petitioner JAMES BELL certifies that he has served a copy
by U.S. Mail to the following:
Honorable Mr. Donald Mallon
Office of the Attorney General
Montgomery, ALABAMA

Clerk of the Circuit Court
Baldwin County Court House
Bay Minette, ALA.

James Bell
Petitioner
At More Prison Farm
At More, ALA.

Served and subscribed before me this day of March 1969

Notary Public Buford W. Hatfield
My Commission Expires

My Commission Expires Oct. 5, 1970

IN the Circuit Court of Baldwin County
BAY Minette ALABAMA

JAMES JOE BELL
Petitioner

vs. Petition For writ OF
STATE OF ALABAMA MANDAMUS
Respondent

JAMES JOE BELL, Petitioner herein Files this
Petition For the ISSUANCE OF A writ OF MANDAMUS,
directed to the Above NAMED Respondent.

Petitioner asserts that the Above NAMED Respond-
ent has Fail to Act upon A Motion styled Motion to
VACATE And set Aside Judgement, Conviction And
Sentence, Filed to said Circuit Courts on OR ABOUT
MARCH 6, 1969;

Petitioner feels that said instrument should
be EXPEDITIONALLY AND CONSCIONALLY ACTED UPON AND
has OSTENSIBLY PROMULGATED, POLICY OF PREJUDICE
AND DISCRIMINATION AGAINST the Petitioner.

The Petitioner contends that under the PROVISION
OF the due PROCESS Clause OF the 5th Amendment
to the United States Constitution, he is entitled
to the SAME EQUAL PROTECTION OF the United States
Laws AS GIVEN to the Person who is NOT IMPRISONED
AND to thoes who ARE FINANCIALLY WELL OFF. See: BOLLING
VS. U.S. SUPREME COURT (1954)

The Petitioner, MAINTAINS that the ARBITRARY AND CAP-
RICIOUS OF PLEAD LITIGATION AND obscuring the RIGHT OF
AN individual FOR A PERIOD OF MANY MONTHS AND even
YEARS, SIMPLY because OF his eligence AND incarceration
is OF CHOICE AND deCEITFUL AND has NO PLACE in
OUR SYSTEM OF GOVERNMENT, AN the AMERICAN CON-
CEPT of labeled LIBERTY.

Wherefore in the Cause Presented herein And Above the Petitioner prays that this honorable high Court will Issue the writ of Mandamus to the Respondent, ordering the Respondent to show Cause As to why he has not Acted Upon the Petition As Said.

Petition should be Acted Upon within the spirit And intent of Article one (1) Section Nine (9) of the United States Constitution As Applied to the due Process of the 5th Amendment to the United States Constitution.

PAUPER'S OATHS

I James Joe Bell AM A PAUPER, within MEANING OF the word And Law.

I do not have Money, or MEANS to PAY the Filing OF the Above styled Cause And it is Prayed that this Court will issue orders providing For the Filing OF this Cause And Allow Petitioner to Proceed in FORM PAUPERIS.

Certificate of Service

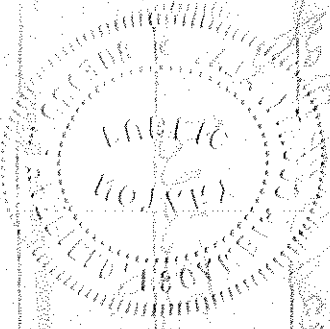
Petitioner JAMES JOE BELL Certifies that he has sent A COPY OF this Petition by U.S. MAIL to the Following.

Clerk of the Circuit Court	C/o the Clerk
Baldwin County Court house	ALABAMA COURT OF APPEALS
BAY Minette ALABAMA	MONTGOMERY ALABAMA

James Joe Bell
Petitioner

Sworn And Subscribed to before Me 22nd of May 1969
Notary Public Buford W - Hatfield
MY Commission Expires

My Commission Expires Oct. 5, 1970



3318-77

My dear Mr. [illegible]

[illegible]

[illegible]

My dear Mr. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

JAMES JOE BELL

Petitioner

VS:

STATE OF ALABAMA,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

CASE NO. 3318-A

This cause was heard by the Court on the motion of the Petitioner for a Writ of Error Coram Nobis on the 1st day of August, 19 69, and said petition was granted.

And the Court having duly investigated the petitioner's ability to pay for the cost of said proceeding and is convinced that the petitioner is an indigent defendant as defined by the laws of Alabama.

It is, therefore, Ordered, Adjudged and Decreed by the Court that the fees due the Circuit Clerk of Baldwin County, Alabama, for her services in said matter in the amount of \$10.00 to be paid to Alice J. Duck, Clerk of said Court as provided by law, provisions of Title 11, Section 65.

Dated this 22nd day of August, 19 69

Felicia J. Marshall
Circuit Judge of
Baldwin County, Alabama.

3318

TO THE UNITED STATES OF AMERICA

UNITED STATES OF AMERICA

WASHINGTON, D.C.

1-11-52

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