

denied certiorari. *Reams v. Arkansas*, 136 L.Ed.2d 55 (1996).

3. On December 6, 1996, the Arkansas Supreme Court issued the mandate in this case, thus commencing the running of the 60 day Rule 37 clock. This petition is timely filed.¹

II. Respects In Which Mr. Reams' Rights Have Been Violated

4. Mr. Reams was convicted of capital murder and sentenced to death in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article II, sections 3, 7, 8, 9, 10, 11, 13, 15, 21, and 29 of the Arkansas Constitution, and of other enumerated Arkansas law in the following respects:

a. Failure to Change Venue

5. The failure of the trial court to move this case to a jurisdiction that was not contaminated with prejudicial publicity and gossip violated Mr. Reams' rights under the Sixth, Eighth and Fourteenth Amendments to the Constitution, Article II, sections 3, 7, 8, 10, 13 & 21 of the Arkansas Constitution, as well as other rights provided for by state law.

6. This interracial crime generated considerable media coverage and backyard discussion among Jefferson County residents. Many of the potential jurors who reported for jury service confirmed that they had read about the case, had discussed it with others, and had already concluded that Mr. Reams was guilty and deserved the death penalty. Failure to relocate the trial to a community that was not saturated with stories and

¹ Rule 37 places a 10-page limit upon petitions filed under the rule. This rule may be modified only by leave of court. Ten pages does not provide sufficient space for a petitioner who has been convicted of a capital crime to adequately and fairly present his case. Mr. Reams thus asserts his right under Rule 37.1(e) to seek leave in the future to amend this petition.

broadcasts about this case deprived Mr. Reams of a fundamentally fair determination of both his guilt and the appropriate punishment.

b. Arrest Based Upon Unreliable, Insufficient Information

7. Mr. Reams was arrested by Pine Bluff authorities in the absence of sufficient and reliable information in violation of his rights as provided in the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution, in Article II, sections 3, 8, 13, 15, and 21 of the Arkansas Constitution, and in other state law.

8. Mr. Reams was arrested on May 10, 1993, largely on the basis of uncorroborated information provided to Pine Bluff police by untested informants who sought reward money. Prior to placing Mr. Reams under arrest, the police made little effort to determine the reliability and credibility of these sources. The information that authorities possessed at the time of arrest was inaccurate, unreliable, and insufficient, and failed to show probable cause. Because Mr. Reams' illegal seizure led directly to the discovery of testimonial and tangible evidence, the state's use at his trial of his subsequent custodial statements and evidence secured from his dwelling violated the above-enumerated rights.

c. Admission of Illegally Seized Tangible Evidence

9. The Pine Bluff authorities search of Mr. Reams' dwelling and seizure of tangible objects that were later introduced against him at trial violated his rights as provided in the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution, Article II, sections 3, 8, 13, 15 and 21 of the Arkansas Constitution, and other state law.

10. Shortly after his arrest, Pine Bluff authorities sought and secured a warrant to search Mr. Reams' home. This warrant was not supported by reliable information, and

failed to demonstrated probable cause. The introduction at Mr. Reams' trial of the tangible objects that were seized during the search of this residence pursuant to the warrant violated the above-enumerated rights.

d. Admission of Unlawfully Obtained Custodial Statements

11. Statements taken from Mr. Reams during custodial interrogation after his arrest were secured in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution, Article II, sections 3, 8, 10, 13, and 21 of the Arkansas Constitution, and other state law.

12. During the first 48 hours after his arrest, Pine Bluff authorities subjected Mr. Reams to repeated custodial interrogation and intimidation and refused to honor his timely and repeated assertions of his rights to silence and to counsel. Mr. Reams did not knowingly, intelligently or voluntarily waive or abandon his rights to silence and counsel, and his statements were not voluntarily given. The admission at his trial of these custodial statements violated Mr. Reams' state and federal rights.

e. Admission of Other Crimes Evidence During Guilt Phase

13. The admission during the guilt phase of evidence of Mr. Reams' involvement in several unrelated serious crimes violated the Sixth, Eighth and Fourteenth Amendments to the Constitution, Article II, sections 3, 8, 9, 10, 13 and 21 of the Arkansas Constitution as well as other state law.

14. Beginning with the prosecution's opening statement, and continuing throughout the state's case in chief, several state witnesses repeatedly referred to, and testified at length about, several other criminal episodes that were not charged in the information in

this case, and were not in any way related to this case. Thereafter, the prosecution utilized this evidence to support its theory that Mr. Reams, rather than co-defendant Goodwin, was the actual shooter. The introduction and use of this evidence deprived Mr. Reams of a fundamentally fair verdict at each phase of trial.

f. Admission of Inadmissible, Prejudicial Hearsay

15. The state's introduction of prejudicial hearsay evidence throughout its case, in the absence of a demonstration that the evidence satisfied a duly recognized exception violated the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution, Article II, sections 3, 8, 10, 13, and 21 of the Arkansas Constitution and related state law.

16. Throughout the testimony of law enforcement witnesses, and with other prosecution witnesses as well, the prosecution repeatedly elicited testimony that was plainly hearsay, and made no effort to demonstrate prior to drawing out such evidence that it was admissible pursuant to a well-established exception. The introduction of this material provided the jury with substantial "evidence" that was misleading, often lacked minimal indicia of reliability, and could not be confronted by Mr. Reams. The verdicts at both phases of trial were fatally tainted by this material.

g. Underrepresentation of African-Americans in Jury System

17. The jury system in Jefferson County systemically underrepresented African-American citizens in trial jury venires in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article II, sections 3, 7, 8, 10, 13, and 21 of the Arkansas Constitution, and related state law.

18. African-American citizens constitute 40% of the voting age population in

Jefferson County, but routinely the number of African-Americans who are called to trial jury service is significantly less. This significant underrepresentation is the direct result of non-random, discretionary selection procedures. The pool from which the jury in this case was selected significantly underrepresented African American citizens. This systematic underrepresentation violates the above-enumerated rights and deprived Mr. Reams of a fundamentally fair trial.

h. Discriminatory Exercise of Peremptory Challenges

19. In this mixed-race capital case, the prosecution's peremptory excusal of all but one qualified African-American juror violated the Fourteenth Amendment to the United States Constitution, Article II, sections 3, 7, 8, 10, 13, and 21 of the Arkansas Constitution and related state law.

20. During jury selection, several African-American jurors who had qualified for service in this case were excluded peremptorily by the prosecution. Race-neutral reasons were not provided to justify these strikes. The state's removal of African-American jurors in this case is consistent with the prosecution's practice in other serious felony cases. The strikes in this case violated Mr. Reams' rights as enumerated above.

i. Insufficient Evidence of Extreme Indifference

21. The prosecution's failure to prove the extreme indifference element of capital murder shows that Mr. Reams' conviction and death sentence violate the Eighth and Fourteenth Amendments to the Constitution, Article II, section 3, 7, 8, 9, 10, and 21 of the Arkansas Constitution, and relevant state law.

22. The state had the duty at trial to prove each element of capital murder beyond

a reasonable doubt to obtain a capital murder conviction. The record evidence in this case fails to show that Mr. Reams acted with the requisite extreme indifference to human life during the events that led to Mr. Turner's death that is necessary for a capital conviction. His conviction and death sentence thus stand in violation of the above-enumerated rights.

j. Absence of Crucial Jury Instructions

23. The trial court's failure to instruct the jury on what constitutes "extreme indifference" under the capital murder statute, as well as on the limited use the jury could make of the other crimes evidence, independently and collectively deprived Mr. Reams of his rights under the Sixth, Eighth and Fourteenth Amendments to the Constitution, Article II, sections 3, 7, 8, 9, 10, and 21 and related state law.

24. At no time during the trial court's guilt-phase instructions was the jury provided with a definition or construction of the important extreme indifference element of the capital murder count. The trial court also never instructed the jury, either during the state's case in chief when evidence of other criminal acts was introduced, or in its final charge, that this other crimes evidence could be considered only for specified and limited purposes. The absence of each instruction violated the above enumerated rights.

k. Failure of State to Demonstrate Death-Eligibility

25. Because the record shows that Mr. Reams suffers from mental retardation, and did not kill, attempt or intend the death of the victim, his sentence of death violates the Sixth, Eighth and Fourteenth Amendments to the Constitution, Article II, sections 3, 7, 8, 9, 10, and 21 of the Arkansas Constitution and related state law.

26. At the time that Mr. Reams was placed on trial, state law forbade the death-

sentencing of offenders who are mentally retarded. *See* A.C.A. §5-4-618. The record evidence establishes that Mr. Reams suffers from mental retardation as defined in that statute. He thus was not then, and is not now, eligible for a capital sentence.

27. The record evidence also fails to show beyond a reasonable doubt that Mr. Reams killed, intended or attempted to kill, or otherwise engaged in conduct that shows sufficient culpability to justify a capital sentence. For these and other reasons, his death sentence is unlawful and must be vacated.

1. Double Counting of Circumstance

28. The jury's reliance upon the pecuniary gain aggravating circumstance as a crucial factor in determining that death was an appropriate sentence violates the Eighth and Fourteenth Amendments to the Constitution, Article II, sections 3, 8, 9, 10, and 21 of the Arkansas Constitution, and relevant state law.

29. Mr. Reams was convicted of capital murder on the theory that he aided another in the murder of the victim during the commission of a robbery. At the penalty phase, the prosecution sought to establish not solely death eligibility but also death appropriateness on the basis of the pecuniary gain aggravating circumstance which it explained was fully proven here by the evidence showing the robbery motive. This "double counting" violates the above enumerated rights.

j. Arbitrary Failure to Consider Mitigating Evidence

30. The jury's failure to find and weigh Mr. Reams' unrebutted mitigating evidence such as his youth and his mental retardation violated the Eighth and Fourteenth Amendments to the Constitution, Article II, sections 3, 8, 9, 10 and 21 of the Arkansas

Constitution, and related state law.

31. During trial, Mr. Reams presented evidence which showed, *inter alia*, that he was 18 years old at the time of the crime, and suffers from mental retardation. These circumstances are mitigating, and the jury was required to consider and weigh them against the aggravating circumstances in reaching its sentencing judgment. The jury forms show that the jury neither considered nor weighed either circumstance. This arbitrary denial deprived Mr. Reams of a fundamentally fair sentencing determination.

k. Ineffective Assistance of Trial and Appellate Counsel

32. Mr. Reams was deprived of the effective assistance of counsel both at trial and on appeal in violation of the Sixth and Fourteenth Amendments, Article II, sections 3, 8, 10, and 21 of the Arkansas Constitution, and related state law. Counsel's ineffectiveness includes but is not limited to the following:

a. Counsel failed to take steps necessary for a reasonably complete and adequate investigation for facts to support the development and proof of issues to be litigated in pretrial motions, as well as ones necessary for him to conduct voir dire and exercise strikes in a reasonably informed manner.

b. Counsel failed to adequately prepare and prosecute necessary pretrial motions. For example, counsel did not seek a change of venue.

c. Counsel failed to conduct a reasonably adequate guilt phase investigation so he could subject the state's case-in-chief to meaningful adversarial testing. Counsel did not contest the lawfulness of Mr. Reams' arrest, or of the seizure of evidence from Mr. Reams' home, or of the custodial statements that constituted a significant part of the state's

case, or object to nearly all of the hearsay evidence, or object to the admission of the highly prejudicial other crimes evidence.

d. Counsel failed to seek guilt-phase instructions on, among other issues, the proper construction of extreme indifference, or on limiting instructions on the proper consideration of the other crimes evidence.

e. Counsel failed to adequately investigate and prepare for the penalty phase of trial, or to present available mitigating evidence in a reasonably effective manner.

f. Counsel failed to identify, and adequately brief numerous available issues before the state supreme court, and did not appear to orally argue the case.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Mr. Reams prays that (1) he be granted, upon application, leave to amend, (2) that a hearing be set at a time convenient for both parties and the court, (3) that his conviction and sentence be set aside, and (4) he be awarded a new trial.

Respectfully submitted,

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By: 

Counsel for Mr. Reams

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF ARKANSAS
ELEVENTH JUDICIAL DISTRICT

KENNETH REAMS,

Petitioner,

-VS-

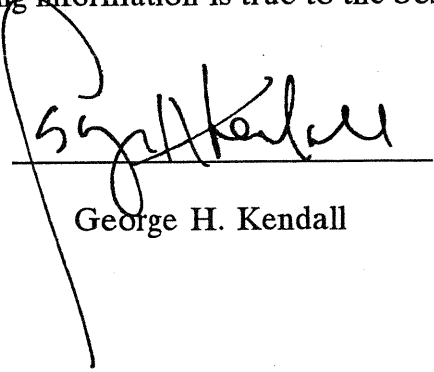
STATE OF ARKANSAS,

Respondent.

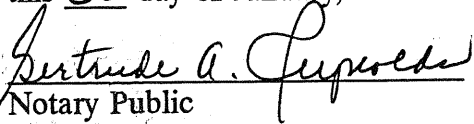
No. CR-93-301-3

VERIFICATION OF RULE 37 PETITION

I, George H. Kendall, affirm that the foregoing information is true to the best of my knowledge, information and belief.


George H. Kendall

Sworn and subscribed before me
this 30 day of January, 1997.


Notary Public

My commission expires:

GERTRUDE A. REYNOLDS
Notary Public, State of New York
No. 24-4824270
Certified in Kings County
Commission Expires July 31, 1998