

APPENDICES [A] - [D]



IN THE SUPREME COURT OF ALABAMA

October 3, 2018

1171115

Ex parte Ronnie Lee Fagan. PETITION FOR WRIT OF MANDAMUS:
CRIMINAL (In re: State of Alabama v. Ronnie Lee Fagan)
(Lawrence Circuit Court: CC-81-103; Criminal Appeals:
CR-17-0957).

ORDER

The Petition for Writ of Mandamus filed by Ronnie Lee Fagan on September 4, 2018, directed to the Honorable Mark Braxton Craig, Judge of the Circuit Court of Lawrence County, having been submitted to the Court,

IT IS ORDERED that the Petition for Writ of Mandamus is DENIED.

Stuart, C.J., and Bolin, Parker, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 3rd day of October, 2018.

A handwritten signature in cursive script, reading "Julia Jordan Miller".

Clerk, Supreme Court of Alabama

FILED October 3, 2018 3:21 pm Clerk Supreme Court of Alabama
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cc:
Mark Braxton Craig
D. Scott Mitchell
Lawrence County Circuit Clerk's Office
Ronnie Fagan

THE STATE OF ALABAMA - - JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

CR-17-0957

Ex parte Ronnie Lee Fagan

PETITION FOR WRIT OF MANDAMUS

(In re: State of Alabama v. Ronnie Lee Fagan)

Lawrence Circuit Court No. CC-81-103

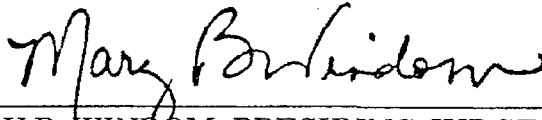
ORDER

Ronnie Lee Fagan filed this petition for a writ of mandamus requesting that this Court enter an order of acquittal as to the charges upon which he was convicted and sentenced in 1981. Fagan alleges in his petition that his first trial resulted in mistrial due to a hung jury. His attorney was unavailable to be in court when the jury returned due to a prior commitment, and the trial judge stated in open court that he had told the stand-in attorney for Fagan's counsel that it was not necessary to be in court when the jury reported its impasse. Fagan alleges that under the principles of double jeopardy he should not have been retried since his attorney was not present at a critical stage of his first trial.

In essence, this appears to be a postconviction petition.¹ The Court of Criminal Appeals does not have original jurisdiction to dispose of an action attacking a conviction and sentence. See § 12-3-9, Ala. Code 1975. Accordingly, this petition is hereby **DISMISSED**.

Windom, P.J., and Welch, Kellum, Burke, and Joiner, JJ., concur.

Done this 29th day of August, 2018.



MARY B. WINDOM, PRESIDING JUDGE

¹This Court takes judicial notice of its own records and observes that Fagan has filed at least 10 Rule 32 petitions for postconviction relief in the Lawrence Circuit Court.

mind right here and just deal with that one matter, has the State proved him guilty. If they have proved to you beyond a reasonable doubt and to a moral certainty that he is guilty, then you must pronounce him guilty. If they haven't, you have got to say that he is not guilty and turn him loose.

You have got to keep in mind, we are not talking about innocence; innocence is a moral type judgment. We are talking about whether or not a person has been proven guilty. We say prove him guilty under the Law, or proven not guilty under the Law, and there are no moral judgments in a Court of Law. You deal with legal judgments only. So finding that the Defendant is not guilty is not a finding that he is innocent of anything, because that is not the question submitted to you. The question is, has the State proven by competent and credible evidence beyond a reasonable doubt and to a moral certainty that he is guilty. If they have, you have got to convict him. If they haven't proved it, you have got to acquit him of a crime that he is charged with.

Anything else?

MR. LITTRELL: No, sir.

THE COURT: (To the Foreman) Does that help you any, I hope.

THE FOREMAN: That clears it up, Judge.

THE COURT: Any motions or exceptions to those instructions?

MR. WHITE: No.

MR. LITTRELL: No, sir.

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that no further deliberation or discussion would make any difference.

Do you think it would look different tomorrow, or do you think it will still be the same situation?

THE FOREMAN: I think it would be the same thing, Judge.

THE COURT: Okay. All right, the procedure that we follow in a situation like this will be to enter a mistrial and put the case back on the docket and submit it to another jury at a later time. We would not do it this week, but it would possibly come up again next week. I don't even know now, you know, depending on the availability of the witnesses again next week.

Like I said, I don't want to punish you. Of course if everyone on the jury has arrived at whatever position that you are through your consideration of the evidence, and you have a division and there is no hope that you would get together, like I said, I have no choice except to declare a mistrial.

I take it from my talk to you that that is generally the consensus; is that the consensus of all the members of the jury, that this jury cannot resolve these issues one way or the other, and every person feels that way; is that generally how you feel?

THE FOREMAN: Yes, sir.

THE COURT: Mr. Littrell, do you have any motions you want to make?

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MR. LITRELL: No, sir, if they can't reach a verdict, why, they can't reach a verdict.

THE COURT: Mr. White had an appointment and he had to leave, and the other lawyer was going to stand in for him, but under the circumstances I told the other lawyer that it wouldn't be necessary for him to come over. *Note*

All right, at this time, then, the Court will go ahead and enter a mistrial and order this case put back on the docket and let it be tried to another jury at the next appropriate time that we can schedule for trial.

I am going to excuse you ladies and gentlemen at this time. I know several of you have asked about being excused permanently from the jury venire this week. We will try several cases, so if you will just give me your names now, those that have conflicts, and we will let you off.

(WHEREUPON SEVERAL MORE COMMENTS WERE
(MADE BY THE COURT TO JURY VENIRE CONCERNING
(THEIR SERVING ON OTHER CASES FOR THE WEEK, WHICH
(ENDED THE PROCEEDING IN THE CASE.)

END OF PROCEEDINGS

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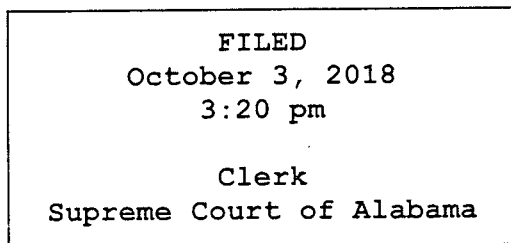
The Motion and Affidavit In Support of Motion for Leave
to Appeal In Forma Pauperis filed by Ronnie Lee Fagan on
October 1, 2018, having been fully considered,

IT IS ORDERED that the motion is GRANTED.

Witness my hand this 3rd day of October, 2018.

A handwritten signature in cursive script, reading "Julia Jordan Miller".

Clerk, Supreme Court of Alabama



cc:
Ronnie Fagan
Steven Marshall