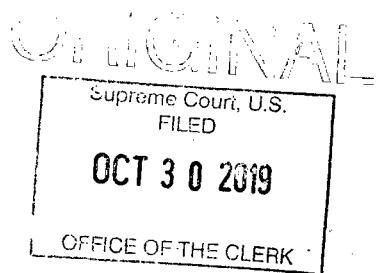


No. 19-8176



IN THE
SUPREME COURT OF THE UNITED STATES

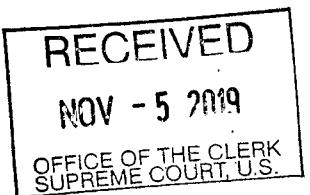
HOMER LAWRENCE LANE,
PETITIONER

VS.

STATE OF ALABAMA,
RESPONDENT(S)

PETITION FOR A WRIT OF CERTIORARI TO
THE ALABAMA SUPREME COURT

Homer Lawrence Lane
AIS #122331
SCCF – 1000 St. Clair Road
Springville, Alabama 35146-5582



QUESTION(S) PRESENTED

I. WHETHER THE STATE OF ALABAMA MAY IMPOSE A STATE PROCEDURAL BAR RULE TO PRECLUDE A STRUCTURAL ERROR CLAIM.

LIST OF PARTIES

[X] All Parties appear in the caption of the case on the cover page.

[] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

INDEX TO APENDICES.....	i
TABLE OF AUTHORITIES.....	ii
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	10
CONCLUSION	10
PROOF OF SERVICE	11

INDEX TO APPENDICES

APPENDIX A: Alabama Court of Criminal Appeals (May 17, 2019) Memorandum
Decision

SUPREME COURT OF ALABAMA (Aug. 9, 2019) CERTIFICATE
APPENDIX B: ~~Alabama Court of Criminal Appeals (May 17, 2007) Memorandum-
OF JUDGMENT
Decision~~

APPENDIX C:

APPENDIX D:

APPENDIX E:

APPENDIX F:

TABLE OF AUTHORITIES CITED

CASES	PAGE
<u>Argersinger v. Hamlin</u> , 407, 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (19972)	5
<u>Arizona v. Fulminante</u> , 499 U.S. 279, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991)	6
<u>Brewer v. Williams</u> , 430 U.S. 387, 399 (1977)	6
<u>Davis v. State</u> , 682 So.2d 476 (Ala.Crim.App. 1995)....	6
<u>Gideon v. Wainwright</u> , 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963)	5
<u>Luis v. United States</u> , 136 S.Ct. 1083, 194 L.Ed.2d 256 (2016)	6
<u>Michigan v. Jackson</u> , 475 U.S. 625, 629 (1986).....	6
<u>Sullivan v Louisiana</u> , 508 U.S. 275, 278, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993)	8

STATUTES AND RULES

Alabama Rules of Criminal Procedure, Rule 32.2 et seq.

OTHER

Federal Constitution:

Amendment 5.

Amendment 6.

Amendment 14

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix N/A to

The petition and is

[] reported at _____ N/A _____ ; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix N/A to

The petition and is

[] reported at _____ N/A _____ ; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at
Appendix A to the petition

The petition and is

[] reported at _____ ; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Alabama Court Criminal of Appeals
Appears at Appendix A to the petition and is
[] reported at _____ ; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was N/A.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Appendix No. N/A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was May 17, 2019. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: June 7, 2019

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Appendix No. N/A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Constitution:

Amendment 6.

Amendment 14.

STATEMENT OF THE CASE

1. The Petitioner, Homer Lawrence Lane (hereinafter, Lane), was indicted by the June 1978 Term of the Talladega, Alabama County Grand Jury for an offense of "ROBBERY OR ATTEMPT THEREOF, WHEN THE VICTIM IS INTENTIONALLY KILLED BY THE DEFENDANT," in a violation of Section 13-11-2(a)(2), Alabama Code 1975.

On or about October 10, 1978, Lane entered a plea of *not guilty* to the offense of Capital Murder.

On or about October 16, 1978, Lane withdrew his plea of *not guilty* and pled *guilty as charged*. Due to the nature of the offense, it was necessary for the State to prove a *prima facie* case before conducting the sentencing phase of the trial.

Accordingly, a jury was selected, impaneled, and sworn in accordance with the law and trial of the case commenced which ultimately resulted in a verdict of guilt for the Capital Murder offense as charged in the indictment and a recommendation for a sentence of death.

On or about October 24, 1978, Presiding Judge William C. Sullivan (deceased) rejected the recommendation of the jury and sentenced Lane to a term of imprisonment for "life without parole."

On or about September 26, 2018, Lane submitted a Rule 32 Petition for Postconviction Relief to the Circuit Court of Talladega County challenging his conviction and sentence for the offense of Capital Murder.

On or about October 1, 2018, the said petition was filed, and/or docketed by the Talladega County Circuit Clerk's Office.

On or about December 12, 2018, the State filed its "State's Answer and Motion to Dismiss." (CR. 71-78)

On or about December 27, 2018, Lane filed a "Petitioners Response To States Answer And Motion To Dismiss." (CR. 92-94)

On or about January 10, 2019, the trial court entered an Order denying and dismissing the Rule 32 Petition. (CR. 95-102)

The trial court held that Lane's petition was successive and barred by state procedural Rule(s) 32.2 etc., Ala.R.Crim.Pro..

On or about January 22, 2019, Lane filed a timely 'Notice of Appeal' to the Alabama Court of Criminal Appeals (CR. 103-106)

The Court of Criminal Appeals affirmed the judgment of the trial court on May 17, 2019 and overruled the *Application for Rehearing* on June 7, 2019.

2. A copy of the Opinion of the appellate court is attached to this petition as **Appendix A** which shows the Court of Criminal Appeals case number to be CR-18-0414.

3. Petitioner alleges as grounds for the issuance of the writ the following:

(A) The basis of this petition for the writ is that the decision of the Court of Criminal Appeals is in conflict with prior decisions of the United States Supreme Court on the same point of law.

Accordingly, the Petitioner averred that, "he was **unconstitutionally denied his right to counsel (at a critical stage of the proceedings), in a violation of the Sixth Amendment of the United States Constitution.**"

The Memorandum decision by the Court acknowledges that Petitioner's claim in this cause is jurisdictional but purports that he is not entitled to postconviction relief because he raised this claim in 2007 and the court's (though acknowledging that Lane was denied his right to counsel) ruled adversely on the claim.

The Sixth Amendment guarantees the right of counsel in all criminal prosecutions. The United States Constitution Amendment VI assures the right to counsel in all Federal and State criminal prosecutions that result in imprisonment. Argersinger v. Hamlin, 407, 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (19972); Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

Petitioner's claim in this cause that he was denied counsel (at a critical stage of the proceedings) cannot be deemed as harmless error by this Honorable Court.

Petitioner avers that his initial appearance and arraignment in district court triggered his right to counsel because it was a critical stage in the criminal proceedings and transformed his status from that of 'suspect' to 'criminal defendant.' See; Michigan v. Jackson, 475 U.S. 625, 629 (1986), Brewer v. Williams, 430 U.S. 387, 399 (1977)

Accordingly, the United States Supreme Court held in the case of Arizona v. Fulminante, 499 U.S. 279, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991), "... we divided constitutional errors into two classes. The first we called "trial error," because the errors "occurred during presentation of the case to the jury" and their effect may "be quantitatively assessed in the context of other evidence presented in order to determine whether [they were] harmless beyond a reasonable doubt." Id., at 307-308, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (internal quotation marks omitted). These include "most constitutional errors." Id., at 306, 111 S. Ct. 1246, 113 L. Ed. 2d 302.

The second class of constitutional error we called "structural defects." These "defy analysis by 'harmless-error' standards" because they "affect the framework within which the trial proceeds," and are not "simply an error in the trial process itself." Such errors include the denial of counsel, see Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963), the denial of the right of self-representation, see McKaskle v. Wiggins, 465 U.S. 168, 177-178, n 8, 104 S. Ct. 944, 79 L. Ed. 2d 122 (1984), the denial of the right to public trial, see Waller v. Georgia, 467 U.S. 39, 49, n 9, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984), and the denial of the right to trial by jury by the giving of a defective reasonable-doubt instruction, see Sullivan v. Louisiana, 508 U.S. 275, 113 S. Ct. 2078, 124 L. Ed. 2d 182 (1993).

In the case of Luis v. United States, 136 S.Ct. 1083, 194 L.Ed.2d 256 (2016), the Supreme Court stated that, "We have little trouble concluding that erroneous deprivation of the right to counsel, with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.'"

"No one doubts the fundamental character of a criminal defendant's Sixth Amendment right to the ``Assistance of Counsel.'' In *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963), the Court explained:

``The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.' ' *Id.*, at 344-345, 83 S. Ct. 792, 9 L. Ed. 2d 799 (quoting *Powell v. Alabama*, 287 U.S. 45, 68-69, 53 S. Ct. 55, 77 L. Ed. 158 (1932)).

It is consequently not surprising: first, that this Court's opinions often refer to the right to counsel as ``fundamental,'' *id.*, at 68, 53 S. Ct. 55, 77 L. Ed. 158; see *Grosjean v. American Press Co.*, 297 U.S. 233, 243-244, 56 S. Ct. 444, 80 L. Ed. 660 (1936) (similar); *Johnson v. Zerbst*, 304 U.S. 458, 462-463, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938) (similar); second, that commentators describe the right as a ``great engin[e] by which an innocent <*pg. 263> man can make the truth of his innocence visible,'' *Amar, Sixth Amendment First Principles*, 84 Geo. L. J. 641, 643 (1996); see *Herring v. New York*, 422 U.S. 853, 862, 95 S. Ct. 2550, 45 L. Ed. 2d 593 (1975); third, that we have understood the right to require that the Government provide counsel for an indigent defendant accused of all but the least serious

crimes, see *Gideon*, *supra*, at 344, 83 S. Ct. 792, 9 L. Ed. 2d 799; and fourth, that we have considered the wrongful deprivation of the right to counsel a ``structural'' error that so ``affects the framework within which the trial proceeds'' that courts may not even ask whether the error harmed the defendant. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 148, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006) (internal quotation marks omitted); see *id.*, at 150, 126 S. Ct. 2557, 165 L. Ed. 2d 409.

Accordingly, Petitioner avers his claim "that he was denied his right to counsel" is not subject to any preclusion grounds where the United States Supreme Court has held that ""structural error" requires automatic reversal of a conviction."

(B) The basis of this petition for the writ is that the decision of the Court of Criminal Appeals is in conflict with prior decisions of the United States Supreme Court on the same point of law.

Accordingly, the Petitioner averred that, "**the trial court committed "structural error" where the court failed to give a "reasonable doubt" instruction to the jurors.**"

Petitioner avers that the United States Supreme Court held in *Sullivan v. Louisiana*, 508 U.S. 275, 278, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993); that an error in an instruction on reasonable doubt can never be harmless error.

The failure to give a jury instruction on reasonable doubt is a structural defect that nullifies the proceedings. *State v. Langley*, 896 So.2d 200 (La.Ct.App. 2004)

In *Davis v. State*, 682 So.2d 476 (Ala.Crim.App. 1995), the appellate court found reversible error in a trial court's failure to give a jury instruction on 'reasonable doubt' in a Capital Murder trial after the defendant had pled guilty, relying on the case of *Sullivan v. Louisiana*, *supra*.

The United States Supreme Court in *Sullivan v. Louisiana*, *supra*, stated that an error in an instruction defining reasonable doubt can never be a harmless error.

Likewise, the failure to define reasonable doubt and to instruct the jury on reasonable doubt during a trial proceeding in which the appellant pleads guilty to Capital Murder and in which the State is required by statute to prove the Appellant's guilt beyond a reasonable doubt is reversible error.

In the case at bar the trial court failed to give the jury an instruction on reasonable doubt. The failure to give a reasonable doubt jury instruction is a structural error that nullifies the proceedings.

"A structural error destroys the validity of the proceedings; the trial and resulting verdict are an absolute nullity and can have no effect whatever."

Where the trial court failed to give the jury a 'reasonable doubt' instruction, the court committed reversible error and Lane is entitled to postconviction relief in this cause.

REASONS FOR GRANTING THE PETITION

Petitioner avers that this Honorable Court should settle the question of whether a state procedural bar can preclude a "structural defect" claim as the State of Alabama has done in this case.

CONCLUSION

Petitioner respectfully requests that after a preliminary examination, the writ of certiorari be granted and that this Honorable Court proceed under its own rules to review the matters complained of and to reverse the judgment of the court of criminal appeals, and for such other relief as Petitioner may be entitled to as a matter of law.

Respectfully Submitted,

Homer L. Lane

Homer L. Lane, *pro-se*

Date: 12-30-19