IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11997-H

DEMITRIUS WAYNE ALEXANDER,

Petitioner-Appellant,

versus

WARDEN,
ATTORNEY GENERAL OF THE STATE OF ALABAMA,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

Before: ROSENBAUM and GRANT, Circuit Judges.

BY THE COURT:

Demitrius Alexander has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's August 19, 2020 order, which denied a certificate of appealability and leave to proceed *in forma pauperis* on appeal from the denial of his underlying 28 U.S.C. § 2254 habeas corpus petition. Upon review, Alexander's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

"APPENDIX A"

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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October 09, 2020

Demitrius Wayne Alexander
Elmore CF - Inmate Legal Mail
3520 MARIAN SPILLWAY RD
ELMORE, AL 36025

Appeal Number: 20-11997-H
Case Style: Demitrius Alexander v. Warden, et al
District Court Docket No: 2:19-cv-00930-RDP-SGC

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing, are available at www.ca11.uscourts.gov.

The enclosed order has been ENTERED. NO FURTHER ACTION WILL BE TAKEN ON THIS APPEAL.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gerald B. Frost, H/gmp
Phone #: (404) 335-6182

MOT-2 Notice of Court Action

"APPENDIX A"

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WARDEN,
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Appeal from the United States District Court
for the Northern District of Alabama

ORDER:

Demitrius Alexander, an Alabama prisoner serving a 99-year sentence for murder, seeks a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP") from the denial of his 28 U.S.C. § 2254 habeas corpus petition, which raised five claims: (1) trial counsel was deficient for failing to competently challenge the search of a storage unit and seizure of evidence, including (a) song lyrics; and (b) other items; (2) appellate counsel was deficient for failing to raise as an issue on direct appeal (a) Claim 1(a) and (b) Claim 1(b); (3) the prosecutor improperly argued to the jury that the lyrics were a way to look into a killer's mind; (4) trial counsel was deficient for failing to retain an independent firearms expert; and (5) appellate counsel was deficient for failing to raise Claim 4 on direct appeal. In a reply to the State's response to the § 2254 petition, Alexander also sought to claim that his trial was tainted by a conflict of interest.

"APPENDIX A"

To obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where a § 2254 petition is denied on the merits, the petitioner must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted). Where a habeas petition is dismissed on procedural grounds, the movant must show that reasonable jurists would debate (1) whether the motion states a valid claim of the denial of a constitutional right; and (2) whether the district court was correct in its procedural ruling. *Id.*

If a state court adjudicated a claim on the merits, a federal court may grant habeas relief only if the state court's decision (1) "was contrary to, or involved an unreasonable application of, clearly established [f]ederal law, as determined by the Supreme Court," or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding." 28 U.S.C. § 2254(d)(1), (2). A federal claim is subject to procedural default where (1) the state court applies an independent and adequate ground of state procedure to conclude that the petitioner's federal claim is barred; or (2) the petitioner never raised a claim in state court, and the unexhausted claim would now be procedurally barred under state procedural rules. *Bailey v. Nagle*, 172 F.3d 1299, 1302-03 (11th Cir. 1999). A procedural default may be excused if the movant shows (1) "cause for not raising the claim of error on direct appeal and actual prejudice from the alleged error," or (2) a fundamental miscarriage of justice, meaning actual innocence. *McKay v. United States*, 657 F.3d 1190, 1196 (11th Cir. 2011).

To succeed on a claim of ineffective assistance of counsel, a defendant must show that (1) his counsel's performance was deficient, and (2) the deficient performance prejudiced his defense. *Strickland*, 466 U.S. at 687. Deficient performance "requires showing that counsel made

errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. As to the prejudice prong, the defendant must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

Here, the district court properly denied Alexander's claims because the state court's denial of relief was neither contrary to federal law, nor based on an unreasonable determination of the facts. The state court correctly concluded that Claims 1(b), 2(b), and 5 were procedurally defaulted based on an adequate and independent state ground, and the district court correctly concluded that Alexander failed to show cause and prejudice or actual innocence overcoming the procedural default. Claim 3 was procedurally defaulted because Alexander had failed to raise it in his state proceedings, he would be barred from raising the claim now in state court, and he failed to show cause and prejudice or actual innocence to overcome the default. As to Claims 1(a) and 2(a), the state court did not unreasonably conclude that Alexander could not demonstrate prejudice based on his failure to plead details showing how his trial and direct appeal results would have been different without admission of the lyrics. As to Claim 4, the state court reasonably concluded that Alexander could not show prejudice based on his failure to plead details showing how his trial's result would have been different had counsel retained a firearms expert. Finally, the district court properly declined to consider Alexander's argument first raised in his reply to the State's response.

Accordingly, Alexander's motion for a COA is DENIED because he failed to make the requisite showing. *See* 28 U.S.C. § 2253(c)(2); *Slack*, 529 U.S. at 478. His motion for IFP status is DENIED AS MOOT.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

DEMITRIUS WAYNE ALEXANDER,	)	
	)	
Petitioner,	)	
	)	**Case No.: 2:19-cv-00930-RDP-SGC**
v.	)	
	)	
WARDEN HEADLEY, et al.,	)	
	)	
Respondents.	)	

MEMORANDUM OPINION

On February 13, 2020, the Magistrate Judge entered a report (Doc. 12) recommending that the petition for a writ of habeas corpus filed pursuant to 28 U.S.C. §2254 by Demitrius Wayne Alexander be denied. (Doc. 12). Petitioner filed timely objections to the Report and Recommendation. (Doc. 13). For the reasons discussed below, Petitioner's objections are due to be overruled.

First, Petitioner objects to the Magistrate Judge's recitation of the background and procedural history of his claims. (*Id.* at 2). He complains that the Magistrate Judge did not address the facts underlying his conviction in full depth and reported factual inaccuracies. (*Id.*). The only specific information Petitioner alleges that the Magistrate Judge excluded from the Report and Recommendation is that (1) no crime scene tape was used at the site where the victim's body was found, and (2) a comparison of crime scene integrity reports with investigators' trial testimony

"APPENDIX B"

demonstrates inconsistencies in the times investigators allegedly entered and left the site. (*Id.*). But, none of this information (even if it were true) alters the Magistrate Judge's recommendations regarding the disposition of Petitioner's claims. Accordingly, it was unnecessary for the Magistrate Judge to include that information in the Report and Recommendation.

The single alleged "inaccuracy" Petitioner specifies in his objections is that while the Magistrate Judge stated that the victim's body was found on January 15, 2009, the police did not find the body until January 16, 2009. (*Id.*). In fact, the victim's body was found on January 15, 2009 by several high school boys. (Doc. 7-9 at 181-83). Those boys reported their finding to law enforcement officers on January 16, 2009, and that is the date when law enforcement officers located the body. (Doc. 7-10 at 11, 19). So, the Magistrate Judge's statement regarding when the victim's body was found is not factually inaccurate. And, even more importantly, the date on which the body was found is immaterial to the Magistrate Judge's recommendations regarding disposition of Petitioner's claims.

Second, Petitioner objects that the Magistrate Judge did not address the absence of a warrant to search a filing cabinet located in a storage unit rented by Petitioner's mother to hold his possessions. (Doc. 13 at 2-3).[1] However, as the

[1] Petitioner asserts two objections in this regard, which were addressed as a single objection.

Magistrate Judge correctly determined, any claim that a search or seizure violated Petitioner's Fourth Amendment rights does not provide a basis for federal habeas relief because Petitioner had the opportunity to fully and fairly litigate the claim in state court. (Doc. 12 at 13 n.10). Further, the Magistrate Judge also correctly determined that Petitioner's presentation of this Fourth Amendment issue involving the filing cabinet was barred, either by the doctrine of procedural default or because the claim was meritless (based upon the standard of review applicable in a federal habeas proceeding). (*Id.* at 8-20).

Third, Petitioner objects that the Magistrate Judge did not address his contention that the prosecution's introduction at trial of certain song lyrics was prejudicial. (Doc. 13 at 4). But that argument misses the mark. The Magistrate Judge addressed this claim and correctly determined it was either procedurally defaulted or without merit. (Doc. 12 at 18 n.13).

Fourth, Petitioner objects that the Magistrate Judge recharacterized his claims and did not address the merits of all his claims. (Doc. 13 at 4). Petitioner has not explained why he believes the Magistrate Judge recharacterized his claims. (*See id.*). The court understands that his use of the term "recharacterized" relates to the Magistrate Judge's approach to analyzing his claims. That is, the Magistrate Judge addressed his ineffective assistance claim (involving the search of the storage unit and its contents) as presenting two arguments: (1) Petitioner's contentions

surrounding the discovery of the song lyrics in a filing cabinet in the storage unit, and (2) his other contentions about other aspects of the search of the storage unit and its contents. The Magistrate Judge divided Petitioner's ineffective assistance of counsel arguments into those challenging what his trial counsel did (or did not do) and those complaining about the actions (or inactions) of his appellate counsel. But, this division was necessary to allow for the proper analysis of Petitioner's constitutional challenges. Moreover, because the Magistrate Judge correctly determined that certain of Petitioner's claims were procedurally defaulted, it was unnecessary for the report to address the merits of those claims.

Fifth, Petitioner objects to the Magistrate Judge's determination that he is not entitled to an evidentiary hearing. (*Id.*). He asserts that a hearing is necessary to resolve disputed facts. (*Id.*). That argument is without merit. The Magistrate Judge's recommendations do not rely on any disputed facts. Therefore, the Magistrate Judge correctly determined that Petitioner is not entitled to an evidentiary hearing. (Doc. 12 at 20).

Sixth, Petitioner contends he requires counsel and a firearms expert to test the "alleged" murder weapon. (Doc. 13 at 4). But, as the Magistrate Judge correctly determined, Petitioner's claims are either procedurally defaulted or meritless based on the record. Petitioner is not entitled to the appointment of counsel or an expert. *See Johnson v. Avery*, 393 U.S. 483, 487 (1969) ("In most federal courts, it is the

practice to appoint counsel in post-conviction proceedings only after a petition for post-conviction relief passes initial judicial evaluation and the court has determined that issues are presented calling for an evidentiary hearing."); 18 U.S.C. § 3006A(a)(2)(B) (authorizing discretionary appointment of counsel in federal habeas proceeding prior to evidentiary hearing if "the interests of justice so require").

Seventh, Petitioner objects to the Magistrate Judge's determination that his claim asserting that a conflict of interest tainted his trial does not warrant further consideration because he raised the claim for the first time in his reply brief. (Doc 13 at 5). According to Petitioner, the claim is based on newly discovered evidence. But this newly discovered "evidence" relates to a case decision that Petitioner contends provides legal support for his claim. He discovered and presented his arguments about that court opinion after he filed his federal habeas petition. (*Id.*). Legal research does not constitute newly discovered evidence warranting consideration of a claim raised for the first time in a reply brief.

Finally, Petitioner objects to the Magistrate Judge's finding that he did not present certain of his claims in his Rule 32 petition. (Doc. 13 at 5). He asserts that he presented the claims in a motion for reconsideration and a motion to amend, which was filed in the state trial court. (*Id.*). But, the trial court denied those requests for relief, and the Alabama Court of Criminal Appeals held the claims were procedurally barred because they were not properly presented to the trial court. The

Magistrate Judge correctly determined that these claims were indeed procedurally defaulted.

For the all these reasons, the court **OVERRULES** Petitioner's objections. After careful consideration of the record in this case and the Magistrate Judge's report, the court **ADOPTS** the report of the Magistrate Judge and **ACCEPTS** her recommendations. In accordance with the recommendation, the court finds that the petition for a writ of habeas corpus filed pursuant to 28 U.S.C. §2254 by Demitrius Wayne Alexander is due to be **DENIED**. Furthermore, because the petition does not present issues that are debatable among jurists of reason, a certificate of appealability is also due to be **DENIED**. *See* 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000); Rule 11(a), *Rules Governing § 2254 Proceedings.*

A separate order will be entered.

DONE and **ORDERED** this March 12, 2020.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE

"APPENDIX B"

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

DEMITRIUS WAYNE ALEXANDER,	)	
Petitioner,	)	
	)	**Case No.: 2:19-cv-00930-RDP-SGC**
v.	)	
WARDEN HEADLEY, et al.,	)	
Respondents.	)	

FINAL JUDGMENT

In accordance with the accompanying Memorandum Opinion and with Rule 58 of the Federal Rules of Civil Procedure, it is **ORDERED**, **ADJUDGED**, and **DECREED** that the petition for a writ of habeas corpus filed pursuant to 28 U.S.C. §2254 by Demitrius Wayne Alexander is **DENIED**. Additionally, a certificate of appealability is **DENIED**.

The parties shall bear their respective costs.

DONE and **ORDERED** this March 12, 2020.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE

"APPENDIX B"

competency hearing. Washington v. State, 95 So. 3d 26, 71 (Ala. Crim. App. 2012) ("Counsel is not ineffective for failing to raise a baseless claim."). Accordingly, this issue does not entitle Alexander to any relief.

C.

Alexander next argues that he received ineffective assistance of counsel because trial counsel failed to have evidence suppressed as a result of a search of his storage unit. Specifically, Alexander contends that lyrics discovered in the storage unit were seized pursuant to an illegal search, and, therefore, should have been suppressed.[3]

Alexander's claim, however, is insufficiently pleaded pursuant to Rules 32.3 and 32.6(b), Ala. R. Crim. P. Here, Alexander has not pleaded any facts that, if true, demonstrate how the admission of the lyrics prejudiced him. Thus, Alexander has not pleaded any facts showing that there is a reasonable probability that the result of his trial would have been different had the lyrics been suppressed. Strickland, 44 U.S. at 689-90. Accordingly, Alexander's claim with respect to this issue is insufficiently pleaded and does not entitle him to any relief. Hyde, 950 So. 2d at 356; Strickland, 466 U.S. at 697.

D.

Alexander next claims that he received ineffective assistance of appellate counsel. Specifically, Alexander contends that appellate counsel was ineffective for failing to argue that trial counsel was ineffective for failing to have the evidence discovered in Alexander's storage unit suppressed.

---

[3]For the first time on appeal, Alexander also challenges the seizure of additional evidence from his storage unit. These claims are not properly preserved for appellate review. Robinson v. State, 869 So. 2d 1191, 1193 (Ala. Crim. App. 2003) (holding appellant's claim was not preserved for review, because the appellant did not first present the claim to the circuit court)

"APPENDIX C"

Alexander has failed to plead any facts to show that such an appellate claim would have been meritorious. Consequently, Alexander has failed to plead any facts that, if true, would demonstrate that if appellate counsel had raised this issue on appeal, that there is a reasonable probability that the result of his appeal would have been different. Strickland, 44 U.S. at 689-90. Accordingly, this issue does not entitle Alexander to any relief.

E.

Alexander next argues that he received ineffective assistance of counsel because trial counsel failed to retain a DNA expert. Specifically, Alexander contends that because DNA evidence was an issue at trial, his trial counsel should have retained a DNA expert to rebut the State's DNA expert witness.

Alexander's claim, however, is without merit. Prior to trial, Alexander's trial counsel retained a DNA expert, Dr. Ronald Acton, who reviewed and evaluated the DNA evidence at issue in this case. After an independent review, testing, and evaluation, however, Dr. Acton reached the same conclusion as the State's expert -- that the DNA found at the scene belonged to Alexander. Although trial counsel did not call Dr. Acton to testify at trial, trial counsel did thoroughly cross-examine the State's DNA expert, Deborah Dodd. Spencer v. State, 201 So. 3d 573, 601 (Ala. Crim. App. 2015) ("'"Counsel is not required to 'continue looking for experts just because the one he has consulted gave an unfavorable opinion.'"'" (quoting Waldrop v. State, 987 So. 2d 1186, 1193 (Ala. Crim. App. 2007), quoting in turn Walls v. Bowersox, 151 F.3d 827, 835 (8th Cir. 1998), quoting in turn Sidebottom v. Delo, 46 F.3d 744, 753 (8th Cir. 1995))); Davis v. State, 44 So. 3d 1118, 1136 (Ala. Crim. App. 2009) ("'"the failure to call an expert and instead rely on cross-examination does not constitute ineffective assistance of counsel"'" (quoting State v. Hartman, 93 Ohio St. 3d 274, 299, 754 N.E.2d 1150, 1177 (2001), quoting in turn State v. Nicholas, 66 Ohio St. 3d 431, 436, 613 N.E.2d 225, 230 (1993))). Consequently, Alexander's claim is without merit, and he is not entitled to any relief.

F.

imposed is so harsh and disproportionate as to constitute cruel and unusual punishment, a violation of the Eighth Amendment." (C. 33.)

Although couched as an illegal-sentence claim, Alexander's claim is actually a constitutional claim. Further, even constitutional claims are subject to the procedural bars of Rule 32.2, Ala. R. Crim. P. See Tarver v. State, 761 So. 2d 266, 268 (Ala. Crim. App. 2000). Alexander's claim is procedurally barred by Rule 32.2(a)(3), Ala. R. Crim. P., because it could have been raised at trial. Accordingly, this claim is procedurally barred and Alexander is not entitled to any relief.

The claims raised in Alexander's petition are either without merit, insufficiently pleaded, and/or procedurally barred. As such, the circuit court did not err in summarily dismissing Alexander's petition.

Accordingly, the judgment of the circuit court is affirmed.

AFFIRMED.

Welch, Kellum, Burke, and Joiner, JJ., concur.

"APPENDIX C"

#2. Conviction Obtained by use of evidence gained pursuant to an Unconstitutional search and seizure - Denial of effective assistance of Counsel when issue was not Competently raised

My sealed, post-marked, self-addressed mail was illegally seized, opened and used against me as evidence in trial. This violated my Fourth, Fifth, Sixth and Fourteenth U.S. Constitutional Amendment Rights against illegal search and seizure, self-inerimination, ineffective assistance of counsel and denial of due process.

- U.S.C.A. 18 § 1703(b) 8. Search and Seizure. First Class mail cannot be seized and retained, nor opened and searched, without authority of a search warrant.

- Lustiger v. U.S., C.A. Ariz. (1967), 386 F.2d 132, cert. den. 88 S.Ct. 1042, 390 U.S. 951, 19 L.Ed.2d 1142

There was no warrant to unlock or open my filing cabinet or to seize, retain, open and search my mail that was stored in it. I had an expectation of privacy in

"APPENDIX C"

CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA,
CASE NO. CC-12-0465.60

was discussed in open court. Furthermore, as the appellate court noted, and as the undersigned recalls, "Alexander's trial testimony and his comments from his sentencing hearing do not suggest an insufficient present ability to understand the proceedings or the inability to consult with his lawyer and aid in his defense." (CR-13-1454, p. 4, Memorandum opinion). Finally, the petitioner has not provided the court will any additional information to establish that he did not understand the wrongfulness of his acts at the time of the offense or that he could not assist his attorney at trial. Based upon the foregoing, Alexander's trial counsel was not ineffective in failing to rely on the defense of Not Guilty by Reason of Mental Disease or Defect.

2. The petitioner then argues that the search of his filing cabinet was illegal; therefore, the "lyric" found in the cabinet was inadmissible. He argues that he should receive a new trial because his trial attorney was ineffective in failing to have the evidence seized from the storage unit suppressed and that appellate counsel was ineffective in failing to raise this issue on appeal. This argument is without merit for several reasons. First, the defendant's mother has access and control over the storage unit, and the defendant said he had never been to the unit. The defendant's mother had authority to allow the police search the unit. It also appears that the defendant's mother actually got the envelope with the "lyrics" and gave it to the police (see R. 394 and R. 479); therefore, it was not a State action subject to suppression based upon an illegal search. Finally, as noted by a review of the concise statement of facts in the Court of Criminal Appeals Memorandum decision, the evidence in this case was overwhelming. Therefore, any error in the admission of the "lyrics" was harmless error.

3. The defendant also argues that his trial attorney was ineffective in failing to retain a firearms expert and that counsel should have gotten a DNA expert to rebut the testimony of witness Dodd. The petitioner fails to note that his attorney did hire a DNA expert (Dr. Ronald Acton) after obtaining $6,135.00 in indigent funds. Clearly, the results were not helpful to the defense. This was discussed by the lawyers during trial when defense counsel objected to his own test results being mentioned by the State unless the State brought the witness to court from "Cincinnati". (R.54-56) Furthermore, the petitioner has show no reason to believe that the State's firearms expert was incorrect or that the testimony could seriously be questioned.

4 & 5. The defendant asserts that due to his innocence and his mental state, Alexander's 99 year sentence was Cruel and Unusual punishment. Since the defendant's sentence was within the statutory range allowed by Alabama law, and the offense was especially heinous, the sentence was not illegal or improper.

6. The defendant then states that if he had been told that his attorney had previously taught one of the prosecutor's in law school that he 'would not have gone to trial with attorney Luker.' Furthermore, he asserts that attorney Luker should have stepped down once he realized that Deputy District Attorney Gonzalez was handling the case. Neither of these argument have merit. First, there is no evidence that attorney Luker's representation of the defendant was compromised by having taught the prosecutor. Next, even if this issue had been raised prior to trial, this court would

not have found that the relationship in question was sufficient grounds to order that a new attorney be appointed to represent the defendant. The defendant was not prejudiced by the teacher student relationship.

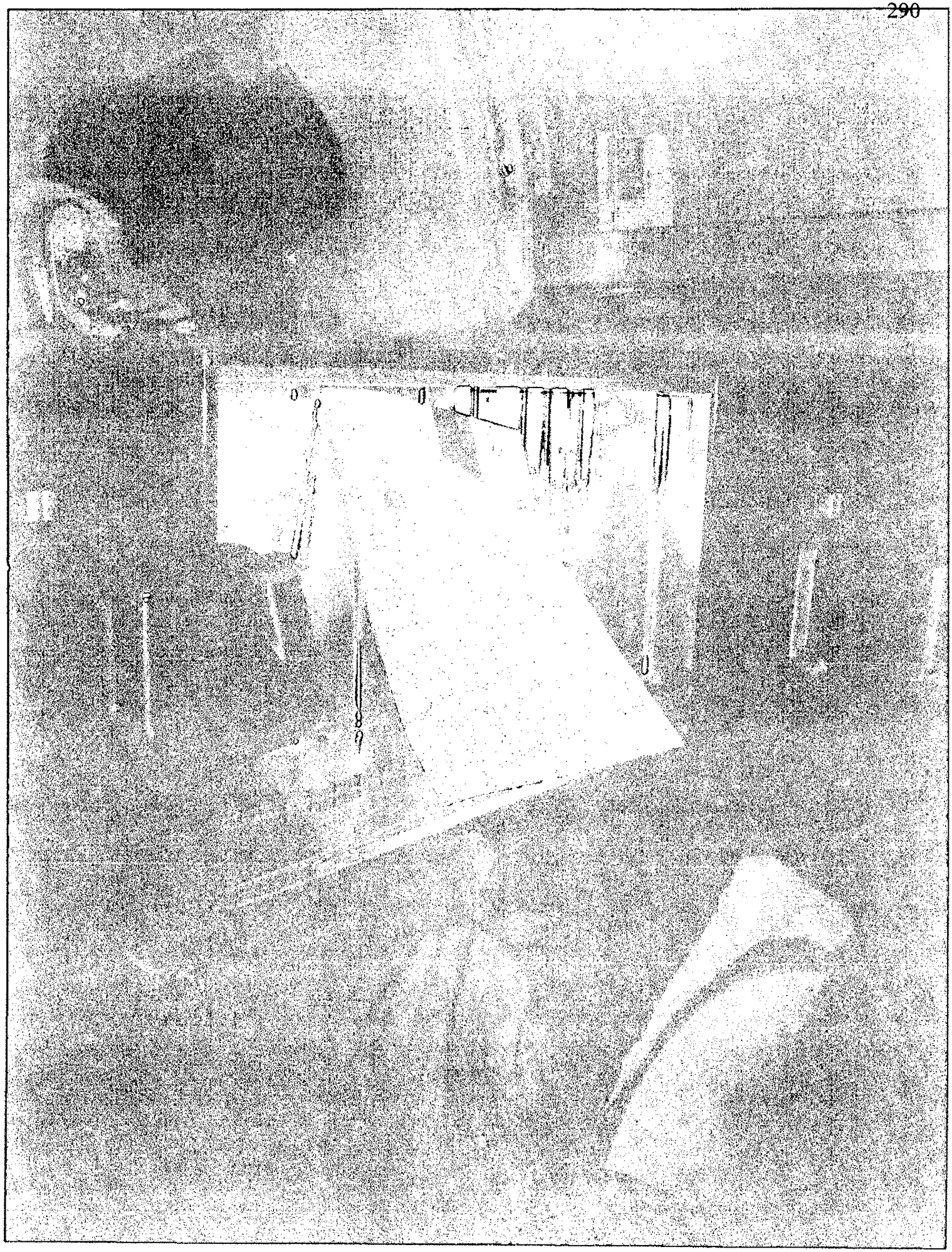
Based upon the foregoing, the defendant's Rule 32 Petition is denied and the State of Alabama Motion to Dismiss Rule 32 Petition is granted.

Clerk's Office to send the defendant a copy of this order at AIS # 295421, Bibb Correctional Facility, 565 Bibb Lane, Brent, AL 35034.

DONE this 29th day of December, 2017.

/s/ BILL COLE
CIRCUIT JUDGE

"APPENDIX C"



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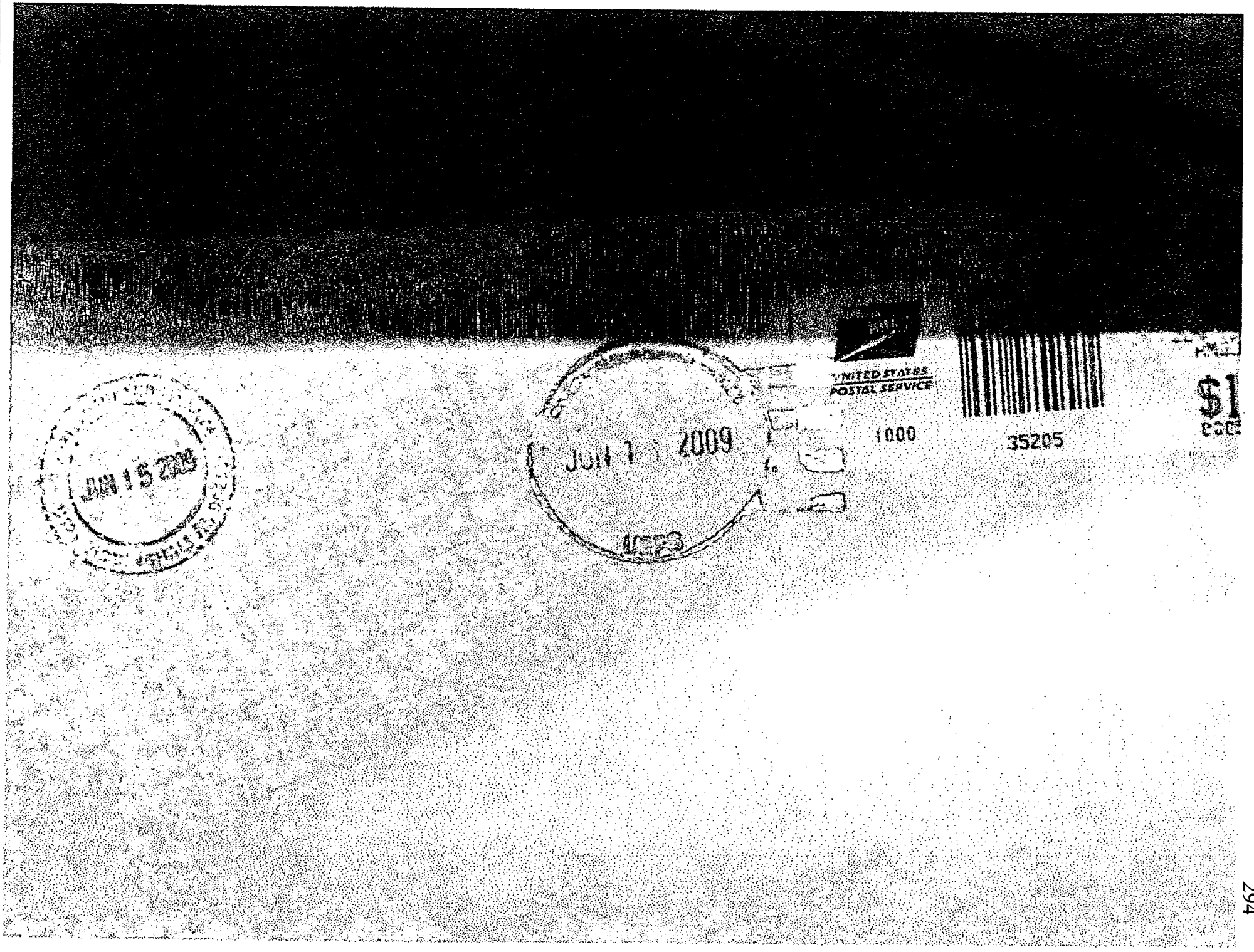
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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION

State of Alabama,	)	
	)	
v.	)	CC-2012-00000[redacted]
	)	
Demitrius Wayne Alexander,	)	
Defendant.	)	

AMENDED MOTION FOR NEW TRIAL

The defense files this amended motion for new trial in the above cause, assigning the following matters as grounds, pursuant to Alabama Rule of Criminal Procedure 24.1, and seeking a hearing and the granting of a new trial and/or a reduction in the sentence imposed. As grounds:

1. There is insufficient evidence to establish guilt, and a judgment of acquittal should have been granted.

2. The trial is the result of prejudice to the extent that defendant was denied a fair and impartial trial.

3. There are errors of fact which render the verdict a nullity, not being supported by sufficient evidence.

4. That the verdict and sentencing is contrary to the law and to the facts presented.

5. The verdict is against the great weight of the evidence and is unjust.

6. The prosecution failed to prove a prima facie case of each and every element of the alleged offense.

17. That ballistic evidence was not proper and was presented without a proper legal predicate being presented for such admission.

18. That personal writings were presented to the jury as evidence of guilt, when such had no relation to the charges here, and were only used as a means to prejudice this defendant.

19. That the court erred in not granting the defense request for payment of a jury selection expert to assist defense counsel.

20. That jury members were allowed to serve when they should have been removed either by the court for cause or by defense counsel.

21. That law enforcement failed and refused to seek other individuals in this case, even with physical evidence at the scene where the deceased was found.

22. That the court allowed photographs into evidence which were highly prejudicial and lacking in probative value. These photos created prejudice which was reflected in the verdict of guilty.

23. That the sentence is unduly excessive and the result of prejudice and a lack of proper consideration of this matter and of the defendant's lack of a criminal record which would justify such.

24. That the prosecution presented hearsay testimony in place of real evidence.

25. That the defense motion to suppress should have been granted.