

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

STEPHON LINDSAY, *Petitioner*,

v.

STATE OF ALABAMA, *Respondent*.

CORRECTED MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner Stephon Lindsay, pursuant to Rule 39 of the Supreme Court Rules, respectfully requests leave to file the attached Petition for a Writ of Certiorari to the Alabama Court of Criminal Appeals without prepayment of costs and to proceed *in forma pauperis*.

Petitioner was found to be indigent prior to trial and proceeded *in forma pauperis* in all prior proceedings in state court. Pursuant to Ala. Code § 15-12-22(b), the Etowah County Circuit Court appointed counsel to represent Mr. Lindsay on his appeal in the court below. See Sup. Ct. R. 39(1). This order is attached as Appendix A. See Appendix A, at 6.

For these reasons, Mr. Lindsay respectfully requests that this Court grant him leave to proceed *in forma pauperis* in this Court.

Respectfully submitted,

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Counsel of Record for Petitioner

April 16, 2021

Appendix A



STATE OF ALABAMA

Vs.

STEPHON LINDSAY,

Defendant.

**§ IN THE CIRCUIT COURT OF
§ ETOWAH COUNTY, ALABAMA
§ CRIMINAL DIVISION
§ CASE NO. CC 2013-652-WBO
§**

JUDGMENT OF THE COURT

PROCEDURAL HISTORY OF THE CASE

The Defendant, Stephon Lindsay, was charged by indictment with one count of Capital Murder alleging the intentional murder of Maliyah Lindsay, a child under the age of 14 years, in violation of Section 13A-5-40(a)(15), Code of Alabama (1975). A jury was struck and sworn in this case, consisting of 4 males and 8 females. 6 of the jurors were African-American, and 6 were white. No Batson challenges were made, and the Court finds that no Batson violations occurred in the selection of the jury. The case was submitted to the jury at the close of the evidence for consideration of the charged offense. The jury subsequently returned its verdict finding the Defendant guilty of Capital Murder as charged in the indictment, whereupon the undersigned judge adjudicated the Defendant guilty in accordance with the jury verdict. Following the adjudication of guilt, a separate sentencing hearing was conducted before the trial jury. After the jury heard evidence of applicable aggravating and mitigating circumstances, the jurors returned a unanimous verdict finding beyond a reasonable doubt that the Defendant had previously been convicted of a felony involving the use or threat of violence to another person, an aggravating circumstance, pursuant to Section 13A-5-49(2). The jurors also returned a unanimous verdict finding that the State had proven beyond a reasonable doubt their other proposed aggravating circumstance, that the offense was particularly heinous, atrocious or cruel as compared to other capital offenses, pursuant to Section 13A-5-49(8). Having found unanimously that two statutory aggravating circumstances applied to this case, the jury then proceeded to return a unanimous recommendation that the Defendant be sentenced to death, with all 12 jurors voting to recommend death, and no jurors recommending life without parole.

The Defendant, having been found guilty by the jury of the capital offense herein, to-wit: intentionally causing the death of Maliyah Lindsay, a child under the age of 14 years, in violation of Section 13A-5-40(a)(15), Code of Alabama (1975), this cause now comes before the Court for the determination of the appropriate sentence. The Court ordered and has received a written presentence investigation report and on this date, conducted a separate sentencing hearing, in accordance with the provisions of Title 13A, Section 13A-5-47, Code of Alabama (1975). At the sentencing hearing, the State, through the District Attorney, has urged the Court to fix the punishment at death as recommended by the jury. The Defendant, through Counsel, has argued that the Court should fix punishment at life without parole.

FACTUAL FINDINGS CONCERNING THE UNDERLYING OFFENSE

Upon consideration of the evidence presented at the trial of the case in both the guilt and the sentencing phases, as well as any evidentiary submissions and arguments presented at the sentencing hearing, the Court finds the essential facts to be as follows:

The testimony and other evidence presented at trial established on or around March 5, 2013, the Defendant resided in an apartment on White Avenue in Gadsden, Alabama, with his girlfriend, Tasmine Thomas, and their two children, Maliyah Lindsay, who was 21 months old, and a newborn daughter. On that date, the evidence indicated that Tasmine had gone to the grocery store with the Defendant's sister Tippanny and niece, Tamiah. After they returned to the apartment, Tasmine was not feeling well, so she took Maliyah and the baby upstairs to bathe, and lie down for bed. Later, the Defendant brought Tasmine something to drink, and told her that Tippanny was going to take Maliyah to spend some time with her, to give Tasmine some time to rest. He took Maliyah from the bedroom that evening, and Tasmine never saw her daughter alive again.

Over the next few days, Tasmine cared for her newborn baby while she was also recuperating from the recent birth; the Defendant was very solicitous and attentive, bringing her food upstairs to allow her to rest. When she asked about Maliyah, he told her not to worry, just to get to feeling better. Finally, on March 11, 2013, Tasmine told the Defendant that she was going to go get Maliyah and bring her home. The Defendant left, stating that he was going to get Maliyah and would be back. After several hours passed, the Defendant had not returned home. Tasmine called Tippanny to find out how Maliyah was doing, and to advise that she was coming to get her. Tippanny said that she had not seen Maliyah since she was at their house on March 5. Tasmine then called Gadsden Police Department and reported that Maliyah was missing and listing the Defendant as a suspect. Officers from Gadsden Police Department immediately began searching for Stephon Lindsay. The Defendant was found at a residence on Clayton Avenue in Gadsden the following evening, March 12, 2013. When Detective Wayne Hammonds asked the Defendant where Maliyah was and if she was okay, he said no, she was dead, and that he killed her. He told Hammonds that he would tell him the whole story in due time.

Stephon Lindsay was taken to the Gadsden Police Department, where he was advised of his rights before being interviewed by Detective Hammonds and Sgt. Mike Hooks. The videotape of the Defendant's statement to police was admitted into evidence at trial, in which the Defendant talked at length about his religion, Yahweh bin Yahweh, and how he came to be a believer. He said that he was told by Yahweh to kill his daughter. He said that the reason he had to kill Maliyah was because she had become like an idol to him because of her beauty and innocence, and because he loved her too much. Lindsay described how he murdered his daughter, cutting her throat and nearly decapitating the child. He told Hammonds that he used an axe or hatchet to kill the child on the evening of March 5, 2013 at the apartment on White Avenue, while Tasmine and their infant daughter were sleeping upstairs. He said the murder took place in the room beside the kitchen. Lindsay told detectives that during the murder, Maliyah tried to scream but he held his hand over her mouth.

Lindsay said that he placed Maliyah's body in a tote bag, and put it on the front seat of his car when he left the apartment. He said that he waited until very late to leave with the body,

then just started driving. He said he left her body in the bag in the woods off the side of the road. He took the hatchet and his swords to another street and threw them into the woods. He then used Clorox and washing powders to clean up the blood in the apartment. He left the apartment on March 11, 2013 after telling Tasmine he was going to pick up Maliyah at his sister's house. He said that he sold his car, but that he never intended to run away, he just needed the money. Lindsay said he always intended to tell the truth about what he had done to Maliyah.

Following the directions Lindsay gave, Gadsden police officers went to a wooded area off Plainview Street and began to search. They found Maliyah's body near a bucket in the woods containing a dead puppy. After searching that area, officers brought Lindsay to the scene. He directed them to an area on the side of the mountain off Brentwood Avenue, where he said he threw the hatchet and the swords into the woods. Investigators from Gadsden Police Department, the Etowah County Sheriff's Department, the Etowah County Drug Enforcement Unit, and agents from the Center for Applied Forensics at Jacksonville State University conducted an extensive search of the heavily wooded hillside that went on throughout the night and into the following day. Officers found two knives or swords that had belonged to Lindsay, but the hatchet was not recovered, due to the steep terrain and dense woods. On the other side of the road, in a ravine, officers recovered several torn pieces of paper and/or cardboard containing the Defendant's religious writings, as well as an empty Clorox bottle.

At the scene on Brentwood Avenue, Sgt. Teri Farris described a conversation that she had with the Defendant, after he had again been advised of his rights. Farris said that the defendant demonstrated for her and Commander Rob Savage of the Etowah County Drug Enforcement Unit how he committed the murder, showing them short chopping motions into his hand. Farris said that Lindsay was cooperative at the scene, and never refused to answer questions. She said that he did not appear to be under the influence of drugs or alcohol, and remained very calm with no outbursts or erratic behavior.

Dr. Valerie Green from the Alabama Department of Forensic Sciences testified that she conducted a postmortem examination of Maliyah Lindsay's body. She testified that there were sharp force injuries to both of Maliyah's hands, which she described as defensive wounds. She described multiple sharp force injuries to the body, primarily at the neck, and that she was unable to determine the number of blows due to the amount of soft tissue damage. She testified that there was some tissue remaining that still connected the head to the body and that the child's vertebrae was not completely transected, but the cuts to the front of the neck were deep enough to expose the spinal cord, and were fatal injuries. Dr. Green also described a pattern of linear bruises to the left side of the face that would have required a great deal of pressure to be exerted. She said these markings were consistent with an adult hand being placed on Maliyah's face to stop her from screaming. Dr. Green said that the airway was completely transected, allowing no blood to the brain, and that the child bled and suffocated to death.

The defense called Dr. Robert Bare, a psychologist at Taylor Hardin Secure Medical Facility to testify concerning a mental evaluation he conducted on Stephon Lindsay. Dr. Bare said that Lindsay suffered from delusions of grandeur and visual hallucinations; he reached that conclusion based upon reports from the psychiatry staff, social workers, nurses and other day-to-day staff members who observed the Defendant while he was at Taylor Hardin. He diagnosed the Defendant with paranoid schizophrenia and personality disorder. Dr. Bare

testified that he spent a total of six to eight hours with Lindsay, and that he did not conduct any psychological tests during that time. Dr. Bare said that he could not determine whether Lindsay's hallucinations were caused by mental health issues or extensive substance abuse that Lindsay disclosed to him at or around the time of the murder.

CONCLUSIONS REGARDING THE UNDERLYING OFFENSE

From the evidence presented at trial, the Court finds that the Defendant, Stephon Lindsay, did intentionally cause the death of Maliyah Lindsay, who was less than 14 years of age, in violation of Title 13A, §13A-5-40 (a) (15) Code of Alabama (1975).

FINDINGS CONCERNING THE EXISTENCE OR NON-EXISTENCE OF AGGRAVATING CIRCUMSTANCES

The question of whether aggravating circumstances existed in this case, where the alleged aggravating circumstances are not charged in the indictment, was submitted to the jury, pursuant to the procedure set forth in *Ex parte McGriff*, 908 So.2d 1024 (Ala. 2004). The State submitted two proposed aggravating circumstances: (1) that the Defendant had been previously convicted of a felony involving the use or threat of violence to the person, in accordance with §13A-5-49 (2) Code of Alabama (1975); and (2) that the capital offense was especially heinous, atrocious or cruel compared to other capital offenses, in accordance with 13A-5-49 (8) Code of Alabama (1975).

After consideration of the testimony and arguments during the penalty phase of the trial, including the adoption by the State of the evidence previously admitted during the guilt phase of the trial, as well as additional testimony elicited during the penalty phase, including evidence that the Defendant had been previously convicted of a felony involving the use or threat of violence to the person, the jury returned verdicts regarding aggravating circumstances as follows:

(1) The jury voted unanimously (12-0) that the State had proven beyond a reasonable doubt that the Defendant had been previously convicted of a felony involving the use or threat of violence to the person, in accordance with §13A-5-49 (2) Code of Alabama (1975).

(2) The jury voted unanimously (12-0) that the State had proven beyond a reasonable doubt that the capital offense was especially heinous, atrocious or cruel compared to other capital offenses, in accordance with 13A-5-49 (8) Code of Alabama (1975).

Accordingly, pursuant to the law as set forth by the Alabama Supreme Court and the evidence presented in the guilt and sentencing portions of the trial, this Court concurs and finds that two (2) statutory aggravating circumstances exist in this case, that the Defendant had been previously convicted of a felony involving the use or threat of violence to the person, in accordance with §13A-5-49 (2) Code of Alabama (1975), and also that the capital offense was especially heinous, atrocious or cruel compared to other capital offenses, in accordance with §13A-5-49 (8) Code of Alabama (1975).

**FINDINGS CONCERNING THE EXISTENCE OR NON-EXISTENCE
OF MITIGATING CIRCUMSTANCES**

The Court, in determining and weighing mitigating circumstances in this case, reviewed all statutory mitigating circumstances, including the testimony from Dr. Robert Bare presented by the Defendant in support of their contention that the offense was committed while Defendant was acting under the influence of extreme mental or emotional disturbance, pursuant to §13A-5-51 (2) Code of Alabama (1975); and/or that he lacked the capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law, pursuant to §13A-5-51 (6) Code of Alabama (1975). The Court notes that Dr. Bare was unable to give an opinion as to whether the Defendant's symptoms at the time of the offense were caused by actual mental illness or extensive polysubstance abuse. The Court finds that Dr. Bare's testimony was insufficient to support a finding that an applicable statutory mitigator existed in this cause; however, the Court did consider and weigh that testimony as a non-statutory mitigating factor in this cause.

The Court has also considered all of the evidence presented by the Defendant during the penalty/ sentencing phase of the trial regarding non-statutory mitigators, including testimony from his stepfather and his sister, and their love and concern for him. The Court has also considered and carefully weighed the testimony of the Defendant's mitigation specialist. The Court notes that there was evidence of serious abuse and neglect of this Defendant as a child, a significant absence of parental stability and nurturance (an alcoholic mother, and multiple stepfathers, some of whom were physically abusive to the Defendant), and the absence of a stable home environment until he was placed in the custody of his maternal grandmother at around 13 years of age. The Court notes that the Defendant's sister and his former stepfather appear to have loved and cared for him, both as a child and as an adult. The Court finds and considers as a non-statutory mitigating factor that Defendant's family loved Defendant, that they felt the love that Defendant had for them, that they believe that he has good and admirable qualities, and that they urge this Court to spare the Defendant's life so that he will have an opportunity to continue to be a loved, valued member of their friendship or family circles. The Court further finds and considers as mitigating evidence in the Defendant's behalf all relevant evidence of the Defendant's life, background, family and education history, and accords it the weight to which it is due.

The Court finds no evidence that the victim participated in the Defendant's conduct or consented to it. The Court further finds no evidence that the Defendant acted under duress or under the substantial domination of another person.

This Court has considered all of the evidence presented by the Defendant in mitigation in this case, and weighed that evidence individually, and as a whole. Each fact and circumstance offered in mitigation was accepted and considered by the Court as valid and accorded due weight in the sentence in this case.

The Court has also considered the death recommendation of the jury in its opinion and determination, after duly finding the presence of the two aggravating factors, and its weighing of those aggravators with the mitigators presented by the Defendant.

The Court has further considered all the evidence and arguments of counsel presented at the Defendant's sentencing hearing held on this date, June 3, 2016.

CONCLUSION AND SENTENCE

Based upon consideration of the evidence presented both at the trial of this cause, and the sentencing hearing, the aggravating and mitigating circumstances applicable to this case, the presentence report and the recommendation of the jury contained in its advisory verdict, the Court hereby finds that the aggravating circumstances set out in Alabama Code §13A-5-49 (2) and (8) exist in this case, and are sufficient to support the sentence of death. The Court further finds that the evidence presented in support of statutory mitigating circumstances was not persuasive in this case, and that the non-statutory mitigating circumstances heretofore enumerated are insufficient to outweigh the aggravating circumstances. The Court therefore finds that the punishment of this Defendant, Stephon Lindsay, should be fixed by the Court at death for the Capital Murder of Maliyah Lindsay.

On this the 16th day of May, 2016, with said Defendant being now in open Court and being asked by the Court if he has anything to say why the Judgment of the Court and Sentence of Law should not be imposed upon him, Defendant made no response.

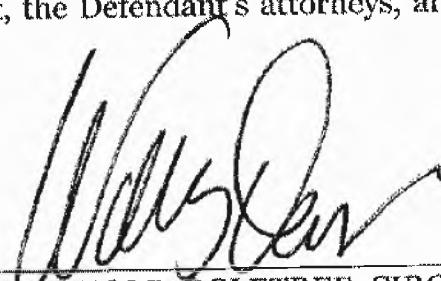
It is, therefore, **ORDERED AND ADJUDGED BY THE COURT**, and it is the **JUDGMENT AND SENTENCE OF THE COURT** that the Defendant be, and hereby is sentenced to death by lethal injection, said sentence to be carried out in the manner and at such time and place as may be prescribed by law. The Defendant is further assessed the sum of \$10,000.00 Dollars as a Victim Compensation Assessment under §15-23-17(b), Code of Alabama (1975), plus court costs and attorneys' fees.

It is further **ORDERED BY THE COURT** that the Clerk and Court Reporter prepare a transcript of these proceedings and forward same to the Alabama Court of Criminal Appeals.

It is further **ORDERED BY THE COURT** that Paul Roberts, Esq. and Scott Stewart, Esq. are hereby appointed as counsel for the Defendant for purposes of his appeal.

It is further **ORDERED BY THE COURT** that the Clerk of this Court furnish a copy of this Judgment of the Court to the Defendant, the Defendant's attorneys, and the District Attorney.

DONE this the 3rd day of June, 2016.



WILLIAM B. OGLETREE, CIRCUIT JUDGE