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No. 20-5874

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IN THE SUPREME COURT OF THE UNITED STATES

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JERRY LARD,

*Petitioner,*

*v.*

STATE OF ARKANSAS,

*Respondent.*

---

**On Petition for Writ of Certiorari to the  
Supreme Court of Arkansas**

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**SUPPLEMENTAL APPENDIX**

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Supp. App. 1  
PROPERTY OF ARKANSAS SUPREME COURT/COURT OF APPEALS  
RECORD IN PREVIOUS APPEAL CR-13-173 PLACED WITH THIS APPEAL

## SUPREME COURT CR-19-351

JERRY DEAN LARD

APPELLANT

V. GREENE COUNTY CIRCUIT COURT  
HON. BRENT DAVIS, CIRCUIT JUDGE  
28CR-12-173

STATE OF ARKANSAS

APPELLEE

2 VOLUME RECORD LODGED

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RECORD FILED APRIL 19, 2019  
STACEY PECTOL, CLERK  
BY DANI NIELSEN, DEPUTY CLERK  
VOLUME 1

1 State of Arkansas )  
2 County of Mississippi )

3  
4  
5 CERTIFICATE

6 I, Rosemary M. Jones, Official Court Reporter for the  
7 Circuit Court, Second Judicial District, certify that I recorded  
8 the proceedings by Stenomask recording in the case of  
9 **IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS, CRIMINAL**  
10 **DIVISION, STATE OF ARKANSAS, Plaintiff, VS. JERRY LARD,**  
11 **Defendant, CR-2012-173,** before the Honorable Brent Davis, Second  
12 Judicial District at Jonesboro, Arkansas, that said recording  
13 has been reduced to a transcription by me, and the foregoing  
14 pages numbered 4 through 108 constitute a true and correct  
15 transcript of the proceedings held to the best of my ability,  
16 along with all items of evidence admitted into evidence.

17 WITNESS MY HAND AND SEAL as such Court Reporter on this 7<sup>th</sup>  
18 day of December, 2015.

19  
20 My Commission expires:  
21 11-6-21



ROSEMARY M. JONES  
Supreme Court Certified Reporter No. 317

22 \_\_\_\_\_ transcript pages @\$4.10  
23 \_\_\_\_\_ exhibit pages @\$1.50  
24 \_\_\_\_\_ total pages  
25

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS  
CRIMINAL DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

CR-2012-173

JERRY LARD

DEFENDANT

RULE 37.5 HEARING DECEMBER 5, 2018

APPEARANCES:

MR. SCOTT ELLINGTON, Esq.  
Prosecuting Attorney 2<sup>nd</sup> Judicial District  
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**ORIGINAL**

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS  
CRIMINAL DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

CR-2012-173

JERRY LARD

DEFENDANT

BE IT REMEMBERED that on this 5<sup>th</sup> day of December,  
2018 before the HONORABLE BRENT DAVIS, Circuit Court Judge  
within and for the Second Judicial District, of which  
Greene County, is a part, the above-styled cause was heard  
before the Court.

The following is a true, correct and complete  
transcription of the record made on the above date.

APPEARANCES:

MR. SCOTT ELLINGTON, Esq.  
Prosecuting Attorney 2<sup>nd</sup> Judicial District  
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1 that the defendant, Jerry Lard, take the witness stand  
2 to provide testimony as to what relief he is  
3 requesting and what his understanding of the  
4 consequences of that relief would be, as well as his  
5 basis for reaching the determination against any  
6 request he is making. Okay.

7 MR. SHORT: Understood. Does the court have any  
8 preferences on where I stand?

9 THE COURT: No, where ever you feel comfortable  
10 and as long as Ms. Jones can hear you and you're not  
11 blocking other counsel.

12 MR. SHORT: Mr. Lard.

13 THEREUPON,

14 JERRY LARD

15 was called as a witness by and on behalf of the Defense and  
16 having been duly sworn, was examined and testified as follows,  
17 to-wit:

18 DIRECT-EXAMINATION

19 BY MR. SHORT:

20 Q] Mr. Lard, if you could please state your name for the  
21 record?

22 A] Jerry Dean Lard.

23 Q] All right. And at this time, Mr. Lard, are you under the  
24 influence of any substances whatsoever?

25 A] No.



1 Q] Are you currently taking any medications at the Department  
2 of Correction?

3 A] No.

4 Q] And currently, you reside at the Varner Supermax?

5 A] Right.

6 Q] And you rode up this morning to court?

7 A] Correct.

8 Q] Did you hear the judge's description of kind of how we got  
9 to where we are in the proceedings today?

10 A] Yeah, but before we go any further, I'd like to address one  
11 little issue. Before, right after the direct appeal, I had sent  
12 you a letter telling you that I wanted to waive my appeals. But  
13 when we come up here, you know, I had intentions with waiving  
14 them appeals, but also knew when I was appointed Patrick Benca,  
15 that I had to have an attorney in order to walk me through these  
16 steps of waiving these appeals. And I want to leave it with  
17 that right there, that way, nobody can misunderstand and think  
18 that I was cross in my mind saying that at one point I wanted to  
19 waive appeals and then changing it to where I didn't want to  
20 waive, and then going back to waiving it. My intentions on  
21 waiving the appeals has been set forth from the gitgo. And I  
22 want to leave it like that right there.

23 Q] And so after the direct appeal was over, you're saying that  
24 it's always been your intention since then to waive any further  
25 appeals or request for relief?



1 A] Right.

2 Q] Okay. And you've told your attorney since that appeal was  
3 finished that you wanted to waive any further post-conviction  
4 relief?

5 A] Right.

6 Q] Now do you understand that you have the ability to go for-  
7 ward with challenges to your conviction and sentence?

8 A] Right. I understand that I can continue the appeal process  
9 and let it drag out until a final verdict come at the end of  
10 however long it takes, whether it be ten years, whether it be  
11 fifteen, or whether it be twenty. But, you know, I'm thinking  
12 of along the lines like this right here. Everybody that's out  
13 there right now, they're victims. I don't care if it's the  
14 victim's family or whether it's my family, they're victims. And  
15 I'm trying to at least stand up as a man and accept my  
16 responsibility. So, you know, I'll leave it at that.

17 Q] Has anyone forced you or threatened you to get you to waive  
18 these appeals?

19 A] No, you can't, man, no, you're not gonna force me to do  
20 nothin'.

21 Q] And what is your understanding of what would happen if you  
22 do not waive your appeals?

23 A] Well, if I don't waive my appeals, it can, like I say, it  
24 can carry on out to where the eventual outcome could be either a  
25 re-sentencing or the death, you know what I'm sayin'? So it's -

1 - I'm seeing either way it could go, you know, and I'm accepting  
2 either way it decides that the choice is gonna be made. But my  
3 choice is still the same and I'm not bending mine, you know what  
4 I'm sayin'? I can't make you make your choice and change your  
5 mind, no more than I could make you take and change your mind.  
6 And that goes with me. You're not gonna change my mind and I'm  
7 not gonna allow him to change my mind. It is what it is.

8 Q] And if you don't waive -- have you had attorneys talk to  
9 you about the types of challenges that would happen in the  
10 future?

11 A] Right. And the only thing that they want to come to  
12 conclusion is, is a mental retardation issue or some kind of  
13 mental defect of the mind, you know what I'm sayin'? But I'll  
14 say this and it might be goin' overboard and out of reach with  
15 this, but there's thirty individuals on the death row and dang  
16 near every death row inmate, that's what these attorneys is  
17 claiming, is a mental disease or defect in the mind, or a mental  
18 retardation issue.

19 Q] And you don't want that claim to proceed?

20 A] No, it's not meant that I don't want that claim to proceed,  
21 you know, and you've got to quit taking count, man, and I may be  
22 shallow, and when I say "shallow," I may be a -- let me think  
23 of what I'm trying to say here -- there's people, man, that,  
24 like I say, they're victims on both sides. Okay? And dragging  
25 this out, dragging this out, you've got my family which is going

1 to have to deal with me being in the penitentiary and all of  
2 that. You've got these folks. Did the victim's family want to  
3 drag this out for ten, fifteen, twenty years down the line  
4 before they can even get a peace of mind? Now you call me what-  
5 ever you want to call me. Call me selfish if that's what you  
6 want to call me, by me waiving my appeals, I accept whatever you  
7 want to call me, because I've been called worse than that; you  
8 know what I'm sayin'? So, you know, it is what it is.

9 Q] And what is your understanding of what would happen if you  
10 do waive your post-conviction relief?

11 A] Well, if I waive 'em, and he signs off and like the judge  
12 says that he wants to say that yeah, he's unfit to waive his  
13 appeals, then it goes to another higher court and then the  
14 higher court gets to make up their mind to see if there's any  
15 kind of thing that he might have done wrong. And you know what  
16 I'm sayin', and if he did something wrong, the judge did some-  
17 thing wrong, then the other court, the higher court says that he  
18 did something wrong, then they're gonna throw it back down to  
19 the lower courts again. And then it's got to be all back over  
20 again, the same steps back and forth, back and forth, back and  
21 forth, you know. No, I got plenty of time, but I'm not trying  
22 to do all of that.

23 Q] Okay. And I think you've said this already, but I didn't  
24 ask it directly: why is it that you want to waive your post-  
25 conviction remedies?

1 A] 'Cause I can take responsibility for what I've done. When  
2 I take responsibility for what I've done, and we're allowed to  
3 go through this process and they allow me to waive my appeals,  
4 then you know, it takes the stress off of my family, whether,  
5 it's not gonna change nothin', because they're still records,  
6 you know what I'm sayin'? They've lost a family member, just  
7 like them other folks. It's not gonna change nothin', because  
8 they still lost a family member. You know, the only thing is  
9 doin', and stop draggin' the folks through the water with it.  
10 And that's all it is. I'm tryin' to stop draggin' through the  
11 water, you know what I'm sayin'? And if folks don't like it, it  
12 is what it is and I don't care how the person really feels.

13 Q] And this may seem like a simple question, bit I've got to  
14 ask you: do you understand the difference between life and  
15 death?

16 A] Yeah.

17 Q] And what do you understand death to be?

18 A] I mean, death, you're no longer here. You're no longer,  
19 you cease to exist. Anything and everything about you are  
20 nothin' but memories. And in time, memories fade. So it is,  
21 and I know I sound like a broken record when I say "it is what  
22 it is," but it is.

23 Q] Okay. And do you understand that if the court lets you  
24 waive your post-conviction relief, do you understand that you  
25 can't undo that?

1 A] Right. And to be frank about it, I'm not tryin' to do  
2 that, you know, I've been tryin' to waive these appeals process  
3 and if it so be that I can't waive the process or waive these  
4 appeals, then I know what we got to look forward to next.

5 Q] Okay. And what do you mean by that?

6 A] Well, if I can't waive my appeals, then that means we're  
7 gonna have to keep draggin' this stuff through the mud.

8 Q] Okay. Do you have any questions about what the proceedings  
9 are if you don't waive, or do waive, do you have any questions  
10 about what it means to waive, any questions at all about that  
11 process either way?

12 A] No, I ain't got no questions on that.

13 Q] Do you feel like you understand the process if you do waive  
14 or don't waive?

15 A] Right.

16 Q] Okay. And is it your desire at this time to waive any  
17 further post-conviction issues in your case?

18 A] Right. It's been my choice, it's been that way since the  
19 direct appeals.

20 Q] And you understand that this judge, or the courts, may find  
21 that your attorneys, or the courts, made an error and you should  
22 get a new sentencing or you should get a life sentence, or you  
23 should get a new trial?

24 A] Yeah, I understand that. Yes, I do. And I really under-  
25 stand it more than anybody really ever thinks, 'cause I'm livin'



1 in it, you know, I'm not just seein' it, I'm livin' it.

2 Q] And you know by waiving, you're giving up the possibility  
3 of having a new trial, a new sentencing, or a life sentence as  
4 opposed to a death sentence?

5 A] Right.

6 Q] And you're giving up the right that maybe ten years from  
7 now, you'll want to still be alive?

8 A] Ten years from now, I'm still gonna be on the same path  
9 that I am right now. If we're gonna waive these appeals, that's  
10 what I've always what I, you know, since the conviction, period,  
11 and I was told that there was a direct appeal. After the direct  
12 appeal then I was told that I could - - I had the choice to  
13 either waive these appeals or continue with these appeals. And  
14 I've chose, and I've stuck with that. I've chose to waive these  
15 appeals. And the attorney that I had, Patrick Benca, before, he  
16 wasn't tryin' to walk in that path. He wanted to do with this  
17 mental retardation, mental defect. That's the reason why he  
18 ain't no longer my attorney, and you're my attorney. And since  
19 you have been my attorney, even though it's against what you  
20 stand on, you're still walking me in that direction that I want  
21 to go, whether you like it or not, you're still doin' it.

22 MR. SHORT: Judge, that's all of the questions I  
23 have for Mr. Lard.

24 THE COURT: Mr. Ellington, any questions?

25 CROSS-EXAMINATION



1 BY MR. ELLINGTON:

2 Q] Mr. Lard, did you think that your original trial counsel  
3 were ineffective at your original trial?

4 A] No, I think what that is, man, is when they want to claim  
5 ineffective assistance of counsel, is that their strategy that  
6 they went on before didn't work, so now they want to say that  
7 they messed up. That way, they can sit there and say "well,  
8 this right here, we should've done this, we should've done  
9 that." Well, if you should've done that and you should've done  
10 that and you knew that you could've done that from the gitgo,  
11 then you should've took those avenues. So no, I'm not, I don't  
12 buy that, you know, and you can sell tickets all day, but I'm  
13 not buyin' 'em.

14 Q] Do you think they provided a good defense for you, then?

15 A] To me, yeah. But whether they think they did or not, then  
16 that's them.

17 Q] Were you in agreement with, uh, when the defense counsel at  
18 the original trial was trying to use mental disease and defect  
19 as a defense at the original trial, were you in agreement with  
20 that?

21 A] I wasn't in agreement with none of it. But at the same  
22 time, you know, that's what they wanted to use, and that's what  
23 it was used, you know, if they was tryin' to say the mental  
24 disease defect, then that's what they was doin'. Now all of a  
25 sudden they want to come back and change their mind and say,

1 "oh, well, it could've been mental retardation, you know what  
2 I'm sayin' man, there's two sides of the coin. But when you're  
3 tryin' to use a double-faced coin to try to get the verdict the  
4 way you want to get, no, that don't sit right with me, man. It  
5 don't sit well at all.

6 Q] And I think when you were talking with Dr. Casey, you knew,  
7 you were familiar with the direct appeal and how many judges  
8 voted to affirm your decision, and how many voted to dissent on  
9 the opinion?

10 A] Right.

11 Q] And you were familiar with that opinion, and all of that?

12 A] Right.

13 Q] And then I think you were also talking about, you were  
14 talking about life and death, you've described one method of how  
15 the death penalty is implemented; do you recall what you told  
16 Dr. Casey about that, how they implemented the death penalty  
17 there at the Unit?

18 A] What do you mean by "implement"?

19 Q] How they administer the death penalty, one of the methods  
20 that they use to administer the death penalty?

21 A] Oh, by lethal injection?

22 Q] Yes?

23 A] Look here, man. One thing that I know of, man, is when  
24 you've got a death sentence and they've got the issues of what  
25 drugs they want to use, whatever, and stuff like that, man, I

1 get an irony - - here's the irony of that. Before I even talked  
2 to Casey on that at the evaluation, the federal attorneys had  
3 this thing, man, where they come and ask individuals what kind  
4 of method would they prefer to be executed by. (Laughing.) You  
5 know what I'm sayin'? Hey, and me, myself, man, hey, if you're  
6 gonna be executed, you're gonna be executed. It don't matter if  
7 you're bein' hung, whether you're doin' the gas chamber, whether  
8 you're doin' the electric chair or whatever, you know, the out-  
9 come is one thing: death. You know, I'm not gonna sit here and  
10 tell you, "man, oh, man, I'm gonna be all, no, I don't want to  
11 die, I don't want to die because, you know, I don't want to feel  
12 no pain." Hey, lookie here, I hear a lot of that from the death  
13 row inmates, man, talkin' about "I don't want to feel no pain  
14 when I die." Well, look, what about the victims? They felt  
15 pain. Would you think you're a pain-free death? Come on.

16 MR. ELLINGTON: I pass the witness.

17 THE COURT: Okay. Mr. Lard, a couple of questions.

18 EXAMINATION BY THE COURT:

19 Q] Do you understand that if you choose to waive your right to  
20 post-conviction appeal, which is what Rule 37.5 is, and to  
21 challenge the effectiveness of your attorneys at trial, do you  
22 understand that you're giving up that right to challenge the  
23 result of your trial?

24 A] I sure do. I sure do. And not only am I givin' up that  
25 right, I'm givin' up all rights to any other further appeal

1 process that could help or hurt in the outcome.

2 Q] Okay. I mean, do you understand that the outcome of the  
3 Rule 37 proceedings, those hearings are just partially complete,  
4 and the result or outcome of those could be that you receive a  
5 new trial or that you receive an opportunity to be sentenced at  
6 something other than the death penalty?

7 A] I understand that, but at the same time even you saying  
8 that, if say I was to get, go through these appeals and I was to  
9 get a resentencing, then you can still come back at me with the  
10 death penalty, even on a resentencing. You ain't got to just  
11 come at me with a life sentence. You could come back straight  
12 (snapping fingers) back-to-back with the death penalty again. I  
13 understand that.

14 Q] Are you saying that if you received a favorable decision on  
15 your petition for Rule 37 relief and got a new hearing, the jury  
16 could give you a death sentence the second go around, as well?

17 A] Yes they could, as well as give me a life without sentence.

18 Q] Okay. And do you understand if you waive this proceeding  
19 and you're asking the court to dismiss your petition; if you do  
20 that, then that option of having a trial, having a new trial or  
21 having a new sentencing, that's off the table?

22 A] Yeah, it's off.

23 Q] And what you got the first time is what you're going to  
24 get?

25 A] Right.

1 Q] Is that what you want to do?

2 A] I've embraced my fate. And that's all I can say, is I've  
3 embraced my fate, however it come, whether it be a life without  
4 sentence, whether it be the death penalty. One thing I know for  
5 certain: from our first breath, there was only one true  
6 possibility of outcome, and that's death. And I've embraced that  
7 from day one.

8 Q] And during the course of the process with your attorneys,  
9 have they discussed with you what your appeal rights are, and  
10 what the likely, or possible scenarios are if you pursue them?

11 A] Yes, they have.

12 Q] Do you feel like they've accurately done that, thoroughly  
13 done that to give you a clear understanding of what the options  
14 are?

15 A] Well, I feel like they gave me a clear accuracy as far as  
16 what they're willing to go, because on these appeal process,  
17 when you get to the federal level, the federal level of appeal  
18 process, man, they've got means. And I tell 'em they've got  
19 means that they can use that goes beyond the scope, but they're  
20 not using, they're not utilizing all of those means. They're  
21 taking two things, just two things: the mental retardation and  
22 the mental disease and defect. Now this has been going on, man,  
23 for years and years and years. They have done worse than that so thin  
24 that they expect everybody that come to death row, they either  
25 got to be mentally messed up in the mind-wise, or they got to



1 have a brain defect. Them's the only two options that they've  
2 given. They ain't tryin' to get you - - their outcome is if  
3 they give you a life, if they get you a life without sentence,  
4 they've done you a favor. They ain't tryin' to get you no  
5 sentence to where you can see freedom, and trust me, there's  
6 some folks, man, that on death row that might need to see free-  
7 dom one day. I'm not sayin' everybody, 'cause there's a lot of  
8 'em that need to be laid down, but that's beside the point. We  
9 ain't talkin' about them, we're talkin' about me right now.

10 Q] Okay. Do you understand that if you do what you say you  
11 want to by waiving this appeal, your right to appeal, that the  
12 end result may be that you choose to go ahead and have the death  
13 penalty executed in your case?

14 A] Right. And I'm gonna say it like I told that dude, the  
15 Casey dude, if I got his name right, and at the State Hospital.  
16 And the last thing I told him as that session ended at that  
17 evaluation, I told him, I said "lookie here, man, any man who's  
18 standing against me on waiving these appeals, is the ones who  
19 want to conflict, steady conflict the anguish and everything  
20 else on both victims' families, my family and the victim's  
21 family. I'm trying to waive the appeal process, so you, there's  
22 no way you can blame all of this other, further litigation or  
23 whatever the appeal process is on me, if the individuals choose  
24 to go against me trying to waive these appeals."

25 Q] Okay.



1                   THE COURT: Anything further from counsel?

2                   MR. SHORT: Judge, just one brief matter.

3                   RE-DIRECT EXAMINATION

4 BY MR. SHORT:

5 Q] Mr. Lard, you indicated that if you obtain relief, let's  
6 say you won at a Rule 37 hearing and you got a new trial, you  
7 indicated that you could receive a life sentence, or even a  
8 death sentence again; correct?

9 A] Right.

10 Q] Do you also understand that you could potentially receive a  
11 sentence that allows you to see freedom again?

12 A] Save that game for somebody else. You ain't lyin' to me.  
13 I'm not gonna allow you to lie to me. This is a police officer,  
14 for Christ's sake. Do you think that they're gonna give me  
15 freedom? (Laughing) Don't sell me no ticket that you can't cash.  
16 You might as well come to me and talk about, "hey, you could get  
17 a life without, or you could get the death penalty." Them's the  
18 only two options. Them's the only two options that they're  
19 gonna offer. You might reflect, when the prosecutor, it come  
20 out of his mouth, matter of fact during trial, if giving me a  
21 life without sentence of First Degree Murder and life without  
22 sentence, that's despicable. You know what I'm sayin', and what  
23 I did was pure Capital Murder, you know what I'm sayin'? Death  
24 of a police officer? Come on, man. I'm not seein' freedom. My  
25 freedom is when I'm dead and gone. That's my freedom.

1 Q] Do you under - - and I know you don't believe a jury would  
2 ever give you that; do you understand that that's a legal  
3 possibility?

4 A] I understand that that could be a legal possibility, but  
5 hey, look here. I'm wadin' in the muddy water, okay? But even  
6 though I'm wadin' in that muddy water, I can see a little bit,  
7 you know what I'm sayin'? I'm not just gonna wade out in that  
8 muddy water and sit there and say "well, I got a shot at  
9 freedom." Man, no. Save that for some other sucker, man, hey,  
10 I might have 'fool' written on my forehead, but I'm no dummy,  
11 man. I'm not mentally unstable; I'm not mentally challenged.  
12 Hey, I got a little bit of common sense to me, you know what I'm  
13 sayin'?

14 MR. SHORT: No further questions, Your Honor.

15 THE COURT: Mr. Ellington, anything further?

16 MR. ELLINGTON: None.

17 THE COURT: The court doesn't have any more  
18 questions. Mr. Lard, you can step down. Be careful.

19 THE WITNESS: Yes.

20 MR. SHORT: Your Honor, I believe the court wanted  
21 to hear from Dr. Casey next?

22 THE COURT: Correct.

23 THEREUPON,

24 JOHN CASEY, M.D.

25 was called as a witness by and on behalf of the Defense and