No.

IN THE
SUPREME COURT OF THE UNITED STATES

REX ALLEN BECKWORTH,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

On Petition for a Writ of Certiorari
to the Alabama Supreme Court

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE - NO EXECUTION DATE SET

QUESTION PRESENTED

Following Mr. Beckworth's capital trial, conviction, and death sentence, his co-defendant was tried for the same murder. During the latter trial, the prosecution presented his co-defendant's confession to a cell mate that he was the triggerman. The cell mate provided the confession to the prosecution more than a year prior to Mr. Beckworth's trial, but it was never disclosed to his defense counsel. Mr. Beckworth's case therefore involves the same evidence and circumstances at issue in *Brady v. Maryland*, 373 U.S. 83 (1963).

This Court has established that a *Brady* claim has three elements: that (1) the prosecution suppressed evidence; (2) the evidence was exculpatory or impeaching; and (3) prejudice resulted. Though Mr. Beckworth's *Brady* claim satisfies these elements, the Alabama Court of Criminal Appeals ruled that the post-conviction claim failed because he did not plead sufficient facts to satisfy an additional element: that the suppressed confession was not known to his defense attorneys at the time of trial.

Mr. Beckworth's case presents the following question to this Court:

> May defense counsel be presumed to have knowledge of exculpatory statements withheld by the prosecution, absent an initial showing otherwise?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Rex Allen Beckworth respectfully requests that this Court issue a writ of certiorari to review the judgment of the Alabama Supreme Court, which declined review of the Alabama Court of Criminal Appeals' decision affirming summary dismissal of his *Brady* claim.

OPINIONS BELOW

On November 14, 2014, the Alabama Court of Criminal Appeals issued a memorandum opinion affirming dismissal of Mr. Beckworth's *Brady* claim.[1] On April 17, 2015, the Court of Criminal Appeals denied rehearing.[2] On September 18, 2015, the Alabama Supreme Court denied Mr. Beckworth's petition for writ of certiorari.[3]

JURISDICTION

The judgment of the Alabama Supreme Court was filed on September 18, 2015.[4] This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

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[1] Attached as Pet. App. A.

[2] *Beckworth v. State*, No. CR-07-0051, 2015 WL 1780044 (Ala. Crim. App. Apr. 17, 2015). Attached as Pet. App. B.

[3] Attached as Pet. App. C.

[4] Pet. App. C.

STATEMENT

In January 2000, Bessie Lee Thweatt, an elderly woman, was found dead in her home. She had been killed by a single gunshot to her head. Investigators eventually identified two suspects: Rex Beckworth and his paternal half-brother, James Walker.

During Mr. Beckworth's capital murder trial in September 2002, the prosecutor told the jury that he had no evidence of the identity of the triggerman: "[T]he State can't tell you -- I admit this right now -- beyond all doubt, a hundred percent in any way from the evidence that the State has, who actually pulled the trigger that killed her."[5]

Following Mr. Beckworth's conviction and death sentence, Timothy Byrd testified at the separate and subsequent trial of Mr. Beckworth's co-defendant, James Walker.[6] Byrd testified that around June of 2000, when he and Walker were cell mates at the Houston County Jail, Walker confessed that he was the triggerman in the murder, that the murder was getting to him, and that he was having bad dreams and crying.[7] Byrd testified that he conveyed this information

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[5] District Attorney's Opening Statement, Trial Record at 254.

[6] *See* Testimony of Timothy Byrd, attached as Pet. App. E.

[7] Pet. App. E at R.1045.

to Houston County Sheriff's Office Investigator Eric Sewell in April 2001.[8]

The trial judge explicitly relied on this triggerman evidence in sentencing James Walker to death: "During the trial it was this Court's understanding that Mr. Beckworth was the shooter . . . . [H]owever, the Court learned that was not necessarily the case. That through the testimony of witnesses or a witness, that your client[, Walker,] is the one that actually did the killing."[9]

With the assistance of volunteer pro bono counsel, Mr. Beckworth timely filed a 79-page post-conviction petition, pursuant to Rule 32 of the Alabama Rules of Criminal Procedure. Mr. Beckworth's petition includes a *Brady* claim,[10] asserting that he was prejudiced because "the prosecution withheld a statement made by co-defendant James Walker to Tim Byrd, a cell mate, that he had committed the murder."[11]

Mr. Beckworth's *Brady* claim, along with the rest of his petition, was summarily dismissed three days after the State answered. The two-page dismissal order did not mention the *Brady* claim.[12]

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[8] *Id.* at R.1047.

[9] *See* Judicial Sentencing of James Walker, attached as Pet. App. F., at R.1492.

[10] Attached as Pet. App. D.

[11] Pet. App. D, p. 2, ¶ 226.

[12] *See* Pet. App. G.

The Alabama Court of Criminal Appeals affirmed the summary dismissal of Mr. Beckworth's petition. On July 3, 2013, the Alabama Supreme Court reversed with respect to the *Brady* claim, concluding that the procedural bar relied on by the Court of Criminal Appeals was inapplicable.[13]

On November 14, 2014, the Alabama Court of Criminal Appeals again affirmed the dismissal of the *Brady* claim. The court held that, although Mr. Beckworth alleged that the prosecution suppressed material exculpatory evidence, his *Brady* claim failed because "Beckworth was required to allege in the petition sufficient facts to establish that evidence of Walker's statement to his cell mate was not known to the defense, and he failed to do so."[14] The Court of Criminal Appeals referred to this new pleading requirement as "the first element of a *Brady* claim . . . ."[15]

On April 17, 2015, the Court of Criminal Appeals denied rehearing.[16] On September 18, 2015, the Alabama Supreme Court declined review.[17]

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[13] *Ex parte Beckworth*, No. 1091780, 2013 WL 3336983 (Ala. July 3, 2013). Attached as Pet. App. H.

[14] Pet. App. A, p. 5.

[15] *Id.*

[16] Pet. App. B.

[17] Pet. App. C.

REASONS FOR GRANTING THE WRIT

A. The addition of a fourth *Brady* element contradicts this Court's decisions establishing a three-part test.

In *Brady v. Maryland*, this Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87 (1963). This Court has since clarified that the prosecutor's duty to disclose favorable evidence exists even absent a request from the defendant. *United States v. Agurs*, 427 U.S. 97, 107 (1976).

In *Strickler v. Greene*, 527 U.S. 263 (1999), this Court reduced the *Brady* rule to a simple test. "There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler*, 527 U.S. at 281-82. This Court's three-factor *Brady* test has been cited in judicial opinions throughout the country.[18]

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[18] *See, e.g., Workman v. Commonwealth*, 636 S.E.2d 633, 643 (Va. 2006) ("There are three components of a violation of the rule of disclosure first enunciated in *Brady* . . ."); *Commonwealth v. Simmons*, 804 A.2d 625, 636 (Pa. 2001) ("[T]here are three necessary components that demonstrate a violation of the *Brady* strictures . . . ."); *United States v. Hughes*, 230 F.3d 815, 819 (5th Cir. 2000) ("There are three components to a *Brady* violation.").

The suppression of favorable evidence in Mr. Beckworth's case is strikingly similar to that which prompted this Court's holding in *Brady*. As in *Brady*, the prosecution suppressed a statement in which the co-defendant admitted that he was the triggerman in a capital murder. 373 U.S. at 84. As in *Brady*, Mr. Beckworth's co-defendant was tried separately and subsequently. *Id.* As in this case, the petition for post-conviction relief in *Brady* was initially dismissed by the trial court. *Id.* at 85.

Despite the parallels between this case and *Brady*, and contrary to this Court's three-factor test, the Alabama Court of Criminal Appeals dispensed with Mr. Beckworth's *Brady* claim for failing to adduce facts in support of a fourth element: that defense counsel were unaware of the suppressed confession at the time of trial. In support of this additional requirement, the Court of Criminal Appeals relies exclusively on dicta from this Court's opinion in *Agurs*, explaining that the *Brady* rule "involves the discovery, *after trial* of information which had been known to the prosecution but unknown to the defense." 427 U.S. at 104 (emphasis added). As the Michigan Supreme Court has reasoned, "[t]he phrase is best understood as a general description of what constitutes *Brady* evidence, instead of the imposition of a new hurdle for defendants." *People v. Chenault*, 845 N.W.2d 731, 737 (Mich. 2014).

The Alabama Court of Criminal Appeals has transformed the statement

from *Agurs* into a *Brady* pleading requirement. Put simply, unless petitioners proffer facts to show that their trial attorneys did *not* know about suppressed exculpatory statements, Alabama courts will presume that they were aware of this evidence, and relieve prosecutors of a disclosure obligation established by this Court more than 50 years ago.

B. Alabama's new pleading requirement conflicts with decisions of other courts recognizing that defense counsel lack equal access to information conveyed orally to the prosecution.

In analyzing *Brady* claims, a number of lower courts have embraced an "equal access" rule. According to this principle, a petitioner cannot satisfy *Brady*'s second prong — that the prosecution suppressed favorable evidence — if he had equal access to the evidence or could have acquired it with reasonable diligence.[19]

In applying this principle, courts have found that defense counsel lack equal access to favorable information orally conveyed to the prosecution by a witness. Thus, in *Boss v. Pierce*, 263 F.3d 734 (7th Cir. 2001), the Seventh Circuit held that the prosecution violated *Brady* by failing to disclose favorable

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[19] *See, e.g., Commonwealth v. Spotz*, 896 A.2d 1191, 1248 (Pa. 2006) ("It is well established that no *Brady* violation occurs where the parties had equal access to the information or if the defendant knew or could have uncovered such evidence with reasonable diligence." (internal citation omitted)); *Maharaj v. Sec'y for Dept. of Corr.*, 432 F.3d 1292, 1315 (11th Cir. 2005) ("Our case law is clear that where defendants, prior to trial, had within their knowledge the information by which they could have ascertained the alleged *Brady* material, there is no suppression by the government." (internal citation omitted)).

evidence it obtained from the defense's own witness. The court rejected "a broad rule that any information possessed by a defense witness must be considered available to the defense for *Brady* purposes." 263 F.3d at 740.

> To begin with, it is simply not true that a reasonably diligent defense counsel will always be able to extract all the favorable evidence a defense witness possesses. Sometimes, a defense witness may be uncooperative or reluctant. Or, the defense witness may have forgotten or inadvertently omitted some important piece of evidence previously related to the prosecution or law enforcement.

Id.

While "equal access" cases typically involve defense counsel's failure to procure documentary evidence through available means, "[i]n cases like the present one, the question is whether defense counsel had access to *Brady* material in a witness's head." *Id.* at 741. "Because mind-reading is beyond the abilities of even the most diligent attorney, such material simply cannot be considered available in the same way as a document." *Id.*

Similarly, in *United States v. Lewis*, the district court determined that the prosecution suppressed evidence, though not material, which could have been used to impeach its witness. 2008 WL 268828 (N.D. Ind. Jan. 29, 2008). In refuting the *Brady* claim, the prosecution argued that "defense counsel could have asked [the witness] about potential impeachment evidence, and should have done so." *Id.* at *4. The court rejected this argument, as "the Defendant cannot be charged with the responsibility to become aware of information that

may not be forthcoming." *Id.*

In *People v. Chenault*, the Michigan Supreme Court determined that the prosecution suppressed favorable, though not material, evidence orally conveyed by a witness during an interview with police. 845 N.W.2d 731 (Mich. 2014). The Court rejected the "equal access" rule altogether, finding that it has no basis in this Court's precedents. *Id.* at 738. The court reasoned that defense counsel's unawareness is not an element of a *Brady* claim; rather, it is a factual question tending to prove or disprove whether the challenged evidence was actually suppressed. *Id.* ("[E]vidence that the defense knew of favorable evidence, will reduce the likelihood that the defendant can establish that the evidence was suppressed for purposes of a *Brady* claim.").

These cases recognize that defense attorneys may not necessarily be able to extract the same information from a witness that the State or a government agent may extract. This is especially true where, as in this case, the witness is a prisoner who may have expected a benefit from the State for providing the information. Timothy Byrd would have received no benefit for advising Mr. Beckworth's attorneys about Walker's confession.

Moreover, Timothy Byrd is a prosecution witness called in a subsequent proceeding. Byrd advised a law enforcement officer of Walker's confession more than a year prior to Mr. Beckworth's trial, but this information was not provided

to his counsel. Indeed, Mr. Beckworth's attorneys had no reason to even know of Timothy Byrd's existence.

The presumption that Mr. Beckworth's trial counsel were aware of Walker's confession, as conveyed by Timothy Byrd to the prosecution, is unreasonable. Had defense counsel learned of Walker's confession, they would have used the information at Mr. Beckworth's trial.[20]

C. Alabama's new pleading requirement shifts the focus of the *Brady* analysis from prosecutorial duties to defense counsel's diligence.

The purpose of the *Brady* rule is the "avoidance of an unfair trial to the accused." *Brady*, 373 U.S. at 87. This Court's precedents emphasize the special role of prosecutors in preventing unfairness by dutifully disclosing favorable evidence to the defense.

In *Brady*, this Court explained that "[a] prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant." 373 U.S. at 87-88. Similarly, in *United States v. Bagley*, this Court declared that "the *Brady* decision, the reasoning that underlay it, and the fundamental interest in a fair trial, combine to give . . . the *prosecutor* the *affirmative duty* to turn over to the defendant[] all information known to the

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[20] *See* Pet. App. D, p. 4, ¶ 232.

government that might reasonably be considered favorable to the defendant's case." 473 U.S. 667, 695-96 (1985) (emphasis added).

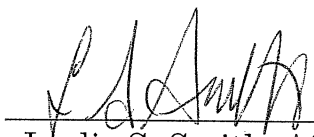
The pleading requirement announced by the Alabama Court of Criminal Appeals in Mr. Beckworth's case places the burden on petitioners, often incarcerated and indigent, to put forth facts to show that their trial attorneys were unaware of suppressed evidence before their *Brady* challenges will be entertained. This additional element misapprehends this Court's precedents, as the crux of the *Brady* rule has always been the prosecution's suppression of evidence and the consequent denial of a fair trial, not defense counsel's state of mind. As the Michigan Supreme Court has explained, "[t]he *Brady* rule is aimed at defining an important prosecutorial duty; it is not a tool to ensure competent defense counsel." *Chenault*, 845 N.W.2d at 738 (emphasis added).

For more than a year prior to Mr. Beckworth's capital trial, the prosecution withheld his co-defendant's confession to being the triggerman. In *Brady*, this Court determined that the suppression of the same evidence amounted to a denial of due process. 373 U.S. at 88. Nevertheless, the Alabama Court of Criminal Appeals has foreclosed relief in this case citing a factor never announced by this Court and unsupported by its precedents. As the prosecutor in Mr. Beckworth's case failed to disclose favorable, material evidence, Mr. Beckworth was denied due process and received an unfair trial.

CONCLUSION

For the forgoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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PETITIONER'S APPENDIX

Alabama Court of Criminal Appeals Memorandum ..... A

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Alabama Supreme Court Reverse and Remand Order ..... H

APPENDIX A

Court of Criminal Appeals

State of Alabama
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MEMORANDUM

CR-07-0051 Houston Circuit Court CC-00-1343.60

Rex Allen Beckworth v. State of Alabama

On Remand from the Alabama Supreme Court

WELCH, Judge.

In 2002 Rex Allen Beckworth was convicted of murder made capital because it was committed during the course of a burglary, a violation of § 13A-5-40(a)(4), Ala. Code 1975, for his participation in the beating and shooting death of 87-year-old Bessie Lee Thweatt while she was in her home. On direct appeal, this Court affirmed Beckworth's conviction and death sentence. Beckworth v. State, 946 So. 2d 490 (Ala. Crim. App. 2005). The Alabama Supreme Court denied certiorari

review, 946 So. 2d 490 (Ala. 2006); the United States Supreme Court also denied certiorari review, 549 U.S. 1120, 127 (2007). A certificate of judgment was issued on June 23, 2006. On June 22, 2007, Beckworth filed a petition pursuant to Rule 32, Ala. R. Crim. P., seeking postconviction relief. The State of Alabama filed its answer to Beckworth's petition, and the circuit court entered an order summarily dismissing the petition. Beckworth appealed from that order, and this Court affirmed the judgment except as to the claims related to Juror A.L., and the cause was remanded for further proceedings as to those claims. Beckworth v. State, [Ms. CR-07-0051, May 1, 2009] ___ So. 3d ___ (Ala. Crim. App. 2009). On remand, the circuit court held an evidentiary hearing as to those claims and then entered an order denying the claims. This Court affirmed that judgment by memorandum opinion. Beckworth v. State, (No. CR-07-0051), ___ So. 3d ___ (Ala. Crim. App. 2010)(table).

Beckworth filed a petition for a writ of certiorari, and the Alabama Supreme Court granted certiorari review as to one issue -- whether this Court had properly affirmed the circuit court's summary dismissal of Beckworth's Brady v. Maryland, 373 U.S. 83 (1963), claim regarding his co-defendant's statement on the ground that Beckworth had failed to state a claim because he did not plead any facts that would negate the grounds of preclusion set out in Rule 32(a)(3) and (5), Ala. R. Crim. P. The Supreme Court reversed this Court's judgment as to that issue and stated that, because the claim was asserted as a constitutional violation, it was cognizable under Rule 32.1(a), Ala. R. Crim. P., and not as a claim for relief based on newly-discovered material facts under Rule 32.1(e), Ala. R. Crim. P., which has more pleading requirements. Therefore, the Supreme Court held, "Beckworth's Rule 32 petition should not have been dismissed on the ground that his claim for relief under Rule 32.1(a) lacked allegations negating the preclusive bars of Rule 32.2(a)(3) and (5)." Ex parte Beckworth, [Ms. 1091780, July 3, 2013] ___ So. 3d ___ (Ala. 2013). The Supreme Court remanded the case to this Court for further proceedings consistent with its opinion. The case is now before us for reconsideration of Beckworth's Brady claim in light of the Supreme Court's holding.

The Alabama Supreme Court's holding in Ex parte Beckworth

was limited. The Supreme Court did not hold that the circuit court's summary dismissal of the Brady claim was improper, only that this Court's affirmance of that judgment based on the ground that Beckworth had failed to plead facts regarding the preclusive bars was improper. The Supreme Court stated:

> "The fact that the elements of a claim of 'newly discovered material facts' as contemplated by Rule 32.1(e) need not be proved in order to entitle the petitioner to relief under Rule 32.1(a) -- and, accordingly, need not be pleaded in order to avoid a summary dismissal for failure to state a claim based on Rule 32.1(a) -- does not mean that the preclusive bars of Rules 32.2(a)(3) and (5) might not be applicable. As this Court stated in Ex parte Pierce, 851 So. 2d 606, 614 (Ala. 2000), '[a]lthough Rule 32.1(e) does not preclude Pierce's claim [under Rule 32.1(a)], Rule 32.2(a)(3) and (5) would preclude Pierce's claim if it could have been raised at trial or on appeal.' The question for purposes of the present case, however, is simply who has the burden of pleading the preclusive bars of Rule 32.2(a)(3) and (5)."

Id. at ___. (Emphasis added.)

Beckworth alleged that his co-defendant, James Walker, made a statement to his cell mate admitting that he, not Beckworth, had shot Thweatt, and that the State had failed to disclose this evidence. Specifically, Beckworth alleged the following in his petition:

> "225. The state in this case also withheld the confession of a co-defendant. As in Brady v. Maryland, this demands a new sentencing trial. The facts of this case also mandate a new trial on the issue of guilt or innocence.
>
> "226. .... [T]he prosecution withheld a statement made by co-defendant James Walker to Tim Byrd, a cell mate, that he had committed the murder.
>
> "227. Byrd testified at Walker's trial that he was Walker's cell mate in the Houston County Jail after

> Walker had been arrested and charged with murder. Byrd and Walker had a conversation around June of 2000 in which Walker said that he pulled the trigger. Walker said that it was getting to him. He was having bad dreams and crying. Walker also told Byrd that Mr. Beckworth went with him to commit the burglary. Byrd made a statement to Investigator Eric Sewell in June 2000 after this conversation.
>
> "228. The prosecution found the statement highly probative. The same District Attorney who withheld the evidence during Mr. Beckworth's trial called Mr. Byrd to testify at the later trial of James Walker....
>
> "229. In Mr. Beckworth's case, Byrd's testimony is also material to guilt. Unlike Brady, who 'took the stand and admitted his participation in the crime' (378 [373] U.S. at 84), Mr. Beckworth maintained that the was not a participant in the robbery. There was no physical evidence linking Mr. Beckworth to the scene of the crime. Mr. Beckworth's incriminating statement was susceptible to challenge as involuntary and unreliable...."

(C. 70-72.)

The State filed a response to Beckworth's Rule 32 petition and asserted that this claim was procedurally barred by Rule 32.2(a)(3) and (5) because it could have been, but was not, raised at trial or on appeal. (C. 143-44.) The State also asserted that the claim was insufficiently pleaded.

"To establish a Brady violation, [the defendant] must demonstrate (1) that the prosecution suppressed evidence; (2) that that evidence was favorable to him or exculpatory; and (3) that the evidence was material." Ex parte Kennedy, 472 So. 2d 1106, 1110 (Ala. 1985). "'Furthermore, the rule of Brady applies only in situations which involve "discovery after trial of information which had been known to the prosecution but unknown to the defense." United States v. Agurs, 427 U.S., at 103, 96 S. Ct., at 2397.' Gardner v. State, 530 So. 2d 250, 256 (Ala. Cr. App. 1987), affirmed, Ex parte Weaver, 530 So. 2d 258 (Ala. 1988). (Emphasis in

original.)" Bates v. State, 549 So. 2d 601, 609 (Ala. Crim. App. 1989). See also Bryant v. State, [CR-08-0405, Sept. 5, 2014] ___ So. 3d ___ (Ala. Crim. App. 2014).

Thus, Beckworth was required to allege in the petition sufficient facts to establish that evidence of Walker's statement to his cell mate was not known to the defense, and he failed to do so. Thus, having failed to allege the first element of a Brady claim, Beckworth failed to meet the specificity requirement of Rule 32.6(b), Ala. R. Crim. P., and the circuit court was correct to summarily dismiss that claim. See Rule 32.7(d), Ala. R. Crim. P.

Therefore, we again conclude that summary dismissal of this Brady claim -- that the State withheld evidence of Walker's statement to his cell mate -- was proper. The circuit court's summary dismissal of this claim is affirmed.

AFFIRMED.

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

APPENDIX B

Rel: 04/17/2015

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2014-2015

CR-07-0051

Rex Allen Beckworth

v.

State of Alabama

Appeal from Houston Circuit Court
(CC-00-1343.60)

On Application for Rehearing

WELCH, Judge.

APPLICATION OVERRULED. NO OPINION.

Windom, P.J., and Kellum and Burke, JJ., concur. Joiner, J., concurs specially, with opinion.

JOINER, Judge, concurring specially.

I concur in the Court's judgment overruling Rex Allen Beckworth's application for rehearing. I write separately to state some of my reasons for doing so and to address some of the assertions Beckworth makes on rehearing.

In his application for rehearing, Beckworth maintains that "[t]his Court misapprehends the Alabama Supreme Court's reversal in Ex parte Beckworth," [Ms. 1091780, July 3, 2013] ___ So. 3d ___ (Ala. 2013); Beckworth argues that "[b]y again affirming the summary dismissal of [the] Brady [v. Maryland, 373 U.S. 83 (1963),] claim on the basis that his petition did not include a statement that his defense counsel were unaware of the suppressed evidence at the time of trial, this Court has directly contradicted and circumvented the holding of Ex parte Beckworth." (Beckworth's application for reh'g, p. 1.) Beckworth further maintains that this Court has erroneously "add[ed] a fourth element to the established Brady analysis."

As to Beckworth's assertion on rehearing that our November 14, 2014, unpublished memorandum misapprehends and directly contradicts the Alabama Supreme Court's decision in Ex parte Beckworth, I disagree. The Supreme Court framed the

issue before it on certiorari review as "whether a Rule 32[, Ala. R. Crim. P.,] petitioner has a duty to plead facts negating the affirmative defenses of preclusion under Rule 32.2(a)(3) and (5), Ala. R. Crim. P.," Ex parte Beckworth, ___ So. 3d at ___; the Supreme Court answered that question in the negative. It did not, however, address whether the claim was otherwise sufficiently pleaded. The Court presumably could have answered that question directly given that the second ground in Beckworth's petition included lengthy arguments about the sufficiency of the Brady claim other than the specific argument addressed by the Supreme Court in its opinion. As it stands, however, the Supreme Court thought this Court should take the first opportunity to answer that question.

As this Court's unpublished memorandum affirming this case on remand from the Alabama Supreme Court stated:

> "'To establish a Brady violation, [the defendant] must demonstrate (1) that the prosecution suppressed evidence; (2) that that evidence was favorable to him or exculpatory; and (3) that the evidence was material.' Ex parte Kennedy, 472 So. 2d 1106, 1110 (Ala. 1985). '"Furthermore, the rule of Brady applies only in situations which involve 'discovery after trial of information which had been known to the prosecution but unknown to the defense.' United States v. Agurs, 427 U.S., at 103, 96 S. Ct., at

> 2397.' Gardner v. State, 530 So. 2d 250, 256 (Ala. Cr. App. 1987), affirmed, Ex parte Weaver, 530 So. 2d 258 (Ala. 1988). (Emphasis in original.)' Bates v. State, 549 So. 2d 601, 609 (Ala. Crim. App. 1989). See also Bryant v. State, [Ms. CR-08-0405, Sept. 5, 2014] ___ So. 3d ___ (Ala. Crim. App. 2014)."

Thus, contrary to Beckworth's assertion on rehearing, since at least 1976 the United States Supreme Court has limited the application of the Brady rule to "situations .... [that] involve[] the discovery after trial of information which had been known to the prosecution but unknown to the defense." United States v. Agurs, 427 U.S. 97, 103 (1976) (emphasis added). This Court's memorandum affirmance on remand from the Alabama Supreme Court merely applies that rule to Beckworth's petition.

The pleading requirements for a postconviction petition under Rule 32, Ala. R. Crim. P., are well settled.

> "The burden of pleading under Rule 32.3 and Rule 32.6(b) is a heavy one. Conclusions unsupported by specific facts will not satisfy the requirements of Rule 32.3 and Rule 32.6(b). The full factual basis for the claim must be included in the petition itself. If, assuming every factual allegation in a Rule 32 petition to be true, a court cannot determine whether the petitioner is entitled to relief, the petitioner has not satisfied the burden of pleading under Rule 32.3 and Rule 32.6(b). See Bracknell v. State, 883 So. 2d 724 (Ala. Crim. App. 2003)."

Hyde v. State, 950 So. 2d 344, 356 (Ala. Crim. App. 2006).

> "'Rule 32.6(b) requires that the petition itself disclose the facts relied upon in seeking relief.' Boyd v. State, 746 So. 2d 364, 406 (Ala. Crim. App. 1999). In other words, it is not the pleading of a conclusion 'which, if true, entitle[s] the petitioner to relief.' Lancaster v. State, 638 So. 2d 1370, 1373 (Ala. Crim. App. 1993). It is the allegation of facts in pleading which, if true, entitle a petitioner to relief. After facts are pleaded, which, if true, entitle the petitioner to relief, the petitioner is then entitled to an opportunity, as provided in Rule 32.9, Ala. R. Crim. P., to present evidence proving those alleged facts."

Boyd v. State, 913 So. 2d 1113, 1125 (Ala. Crim. App. 2003).

Here, as this Court noted in its November 14, 2014, unpublished memorandum, Beckworth's petition did not allege that the statement allegedly withheld was not known to the defense until after Beckworth's trial. Although not noted in our November 14, 2014, memorandum, Beckworth's petition also fails to specifically plead facts demonstrating that the prosecution in fact knew about the statement before Beckworth's trial. In relevant part, Beckworth's petition alleges:

> "227. Byrd testified at Walker's trial that he was Walker's cell mate in the Houston County Jail after Walker had been arrested and charged with murder. Byrd and Walker had a conversation around June of 2000 in which Walker said that he pulled the

> trigger. ... Walker also told Byrd that Mr. Beckworth went with him to commit the burglary. Byrd made a statement to Investigator Eric Sewell in June 2000 after this conversation."

Notably, although the petition alleges that Byrd made a statement to Investigator Eric Sewell in June 2000, the petition does not allege what the substance of that statement was. Only after the circuit court had entered an order summarily disposing of the petition did Beckworth--in his September 6, 2007, motion to reconsider--attempt to assert what the substance of Byrd's alleged June 2000 statement was. (C. 182.) As this Court's 2009 opinion noted, however, Beckworth's September 6, 2007, motion was an untimely attempt to amend his petition. Beckworth v. State, [Ms. CR-07-0051, May 1, 2009] ___ So. 3d ___ (Ala. Crim. App. 2009). Thus, not only was the circuit court not required to consider that motion, but it also should not form the basis upon which to reverse the circuit court's judgment.

APPENDIX C

IN THE SUPREME COURT OF ALABAMA

September 18, 2015

1140799

Ex parte Rex Allen Beckworth. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Rex Allen Beckworth v. State of Alabama) (Chambers Circuit Court: CC-83-112A; Criminal Appeals : CR-07-0051).

CERTIFICATE OF JUDGMENT

WHEREAS, the petition for writ of certiorari in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on September 18, 2015:

Writ Denied. No Opinion. Shaw, J. - Moore, C.J., and Stuart, Bolin, Parker, Murdock, and Bryan, JJ., concur. Main and Wise, JJ., recuse themselves.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 18th day of September, 2015.

Julia Jordan Weller

Clerk, Supreme Court of Alabama

APPENDIX D

particularly deficient since Ms. Gobbel was the only person that trial counsel spoke to in preparation for trial. Trial counsel's failure to learn that Mr. Beckworth could not have stopped the sexual abuse from happening particularly prejudiced Mr. Beckworth because this evidence would have rebutted the prosecution's characterization of Mr. Beckworth as a bad father who did not care for his child.

IV. THE STATE WITHHELD FAVORABLE EVIDENCE FROM THE DEFENSE IN VIOLATION OF MR. BECKWORTH'S RIGHTS UNDER THE FIFTH, SIXTH, EIGHT, AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, THE ALABAMA CONSTITUTION, AND ALABAMA STATE LAW.

A. The Prosecution Withheld the Co-Defendant's Confession to the Murder

224. The United States Supreme Court held in Brady v. Maryland, 373 U.S. 83, 85 (1963) that withholding a co-defendant's admission he had committed the killing during a burglary-murder was a violation of due process that demanded a new sentencing trial. The Supreme Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Id. at 87. See also Ex parte Monk, 557 So. 2d 832 (Ala. 1989).

225. The state in this case also withheld the confession of a co-defendant. As in Brady v. Maryland, this demands a new sentencing trial. The facts of this case also mandate a new trial on the issue of guilt or innocence.

226. In Brady, the prosecution withheld evidence that Brady's conspirator had admitted to the actual homicide in an extrajudicial statement. 378 U.S. at 84. At Mr. Beckworth's trial, also for burglary-murder, the prosecution withheld a statement made by co-defendant James Walker to Tim Byrd, a cell mate, that he had committed the murder.

227. Byrd testified at Walker's trial that he was Walker's cell mate in the Houston County Jail after Walker had been arrested and charged with murder. Byrd and Walker had a conversation around June of 2000 in which Walker said that he pulled the trigger. Walker said that it was getting to him. He was having bad dreams and crying. Walker also told Byrd that Mr. Beckworth went with him to commit the burglary. Byrd made a statement to Investigator Eric Sewell in June 2000 after this conversation.

228. The prosecution found the statement highly probative. The same District Attorney who withheld the evidence during Mr. Beckworth's trial called Mr. Byrd to testify at the later trial of James Walker. As in Brady, withholding this evidence was "material . . . to punishment" and the only just remedy is a new sentencing. 378 U.S. 87; Ex parte Monk, 557 So. 2d 832, 837 (Ala. 1989) ("This statutory mandate that a defendant shall be allowed to offer evidence of mitigating circumstances is another reason why broad discovery must be allowed").

229. In Mr. Beckworth's case, Byrd's testimony is also material to guilt. Unlike Brady, who "took the stand and admitted his participation in the crime" (378. U.S. at 84), Mr. Beckworth maintained that the was not a participant in the robbery. There was no physical

evidence linking Mr. Beckworth to the scene of the crime. Mr. Beckworth's incriminating statement was susceptible to challenge as involuntary and unreliable. It was obtained by a police officer who was primed by Walker to obtain an admission of guilt from Mr. Beckworth. The suppression of evidence that Walker, when plagued by guilt, admitted that he had done the killing himself demands a new trial to determine Mr. Beckworth's guilt or innocence.

230. The prosecution's violation of Brady compounded defense counsel's ineffective assistance in failing to challenge Mr. Beckworth's incriminating statement and to develop the defense that Walker was the person solely or principally responsible for the murder of Ms. Thweatt. As alleged in paragraphs 182 to 186 and paragraphs 188 - 191, trial counsel failed to make available contentions that Mr. Beckworth's statement was involuntary, inadmissible, and, if admitted, unreliable. They did not develop evidence that Mr. Beckworth had often been a fall guy for others and that on a previous occasion Walker had attempted to blame Mr. Beckworth for a crime he had committed.

231. Trial counsel's inadequate investigation also denied Mr. Beckworth the opportunity to prove he did not participate in the robbery that Walker sought to implicate him in. As detailed in paragraphs 159 to 161, trial counsel did not attempt to gather evidence to prove Mr. Beckworth spent the night at the hotel while Walker and Russell left together. Trial counsel did not talk to employees at the hotel or at a nearby convenience store who also could have verified that Mr. Beckworth did not leave the hotel. Trial counsel also failed to

talk to Mr. Beckworth's parole officers. They would have testified that Mr. Beckworth was in Dothan to change his parole and see his daughter.

232. Walker's confession that he pulled the trigger could have been put to use by the defense in combination with the evidence that reasonable trial counsel would have unearthed and presented to the jury. The jury should have heard testimony calling Mr. Beckworth's incriminating statement and participation in the crime into question. It should have heard that Mr. Beckworth has been a fall guy for others. It should have learned that Walker attempted to make Mr. Beckworth the fall guy on another occasion. A jury hearing that evidence in combination with Byrd's statement would have found Byrd's testimony "material . . . to guilt." Brady v. Maryland, 373 U.S. at 87. It would have credited Walker's confession he pulled the trigger while discounting his continuing attempt to implicate Mr. Beckworth.

233. The State withheld information material both to the guilt or innocence and to the punishment of Mr. Beckworth in violation of his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution, the Alabama Constitution, and Alabama State law. The remedy demanded by law is a new trial.

B **The State Withheld Exculpatory Physical Evidence**

234. The police investigation found abundant physical evidence left by the perpetrator at the scene of the crime, including footprints on the hood and roof of the car, fingerprints on the car window, blood on the broken glass of the window through which the

APPENDIX E

marriage or do you know Tim Byrd. Tim Byrd being the individual seated to my left on the Witness Stand and all of you are able to see him.

Do any of you know Tim Byrd or are you related by blood or by marriage to him? Anybody? If so, raise your hand.

(No response.)

THE COURT: I see no hands. Gentlemen, are you satisfied?

MR. VALESKA: Yes, sir.

MR. CRESPI: Yes, sir, Your Honor.

THE COURT: Okay. Go ahead, Mr. Valeska.

Thereupon,

TIMOTHY SHAWN BYRD

was called as a witness on behalf of the State of Alabama and after having been first duly sworn, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. VALESKA:

Q Pull the microphone forward and tell me your name.

A Timothy Shawn Byrd.

Q Mr. Byrd, if I could, do you live in Houston County, South Alabama at this time?

A Not at this time.

Q You live in North Alabama? Is that fair to say?

A That is correct.

Q Speak up. This is a big Court Room. If I could, let me ask you do you know James Earl Walker?

A Yes, I do.

Q Can you tell the Ladies and Gentlemen of the Jury do you see him in the Court Room?

A Yes, sir.

Q Can you point him out and tell me what color shirt he has got on?

A Got on a blue shirt. (Witness indicating toward the Defendant.)

MR. VALESKA: Let the Record reflect that he has indicated the Defendant.

BY MR. VALESKA:

Q Would you tell the Ladies and Gentlemen of the Jury, if I could, please, Mr. Byrd, is it true that you have been convicted of a crime involving moral turpitude, Burglary in the First Degree and you received a sentence of twenty years?

A That is correct.

Q And also it is true that you have been convicted of a crime involving moral turpitude of Assault in the Second Degree and received a ten year sentence?

A That is correct.

Q And, it is also true that those sentences, were they

run concurrent or did you get a split sentence in any manner or fashion on those sentences?

A Not a split sentence.

Q Is it also true that you were convicted of a crime involving moral turpitude of Intimidating a Witness and you got a two year sentence on that?

A Yes, sir.

Q Now, would you tell the Ladies and Gentlemen of the Jury who prosecuted you, which office?

A Houston County.

Q Who was the District Attorney?

A Mr. White.

Q William White? Does that refresh your recollection?

A I believe so.

Q And, would you tell the Ladies and Gentlemen of the Jury the sentence you got, a split sentence, tell them how much time Judge Little ordered you to serve on your thirty-two year sentence?

A Two and a half years.

Q Now, did the DA's Office object to that sentence in any manner or fashion?

A Yes, sir.

Q In fact, your sentence that you received, the DA's Office, my DA's Office, my District Attorney, my Assistant District Attorney asked for more time from

Judge Little?

A That he did.

Q He gave you a lesser sentence. Is that fair to say?

A That's correct.

Q Did you make any deals with the District Attorney, myself or my assistant in order to get you to testify against Walker or Beckworth in any way?

A No, sir.

Q Would you tell the Ladies and Gentlemen of the Jury did you go and serve your time?

A Yes, sir. I did.

Q Now, would you tell the Ladies and Gentlemen of the Jury, I want you to - - - you knew James Walker - - - listen to my questions. Did you have a conversation with James Earl Walker about the Capital Murder of Bessie Lee Thweatt?

A Yes, sir.

Q What did James Earl Walker tell you about the Capital Murder Case of Bessie Lee Thweatt?

MR. CRESPI: Your Honor, at this time, I object and ask to approach.

THE COURT: Approach.

(Thereupon, the Attorneys of Record and the Court Reporter approached the Bench and the following proceedings were held out of the hearing of the Trial Jury, to-wit:)

MR. CRESPI: Without waiving any other objections I have already made, I have an additional objection to the, to Mr. Valeska's questions. We don't have a timeframe for this.

THE COURT: Well, I thought that was coming as far as laying the foundation as to when the conversation took place and where the conversation took place. I will sustain on those grounds.

MR. VALESKA: It was in the jail. I will do it.

THE COURT: Okay. So, sustained as to that specific objection.

MR. CRESPI: Yes, sir.

(Thereupon, the above named individuals returned to their places in the Court Room and the following proceedings were held in the hearing and presence of the Trial Jury, to-wit:)

BY MR. VALESKA:

Q My question to you please, sir, is the conversation that you had with James Earl Walker, was that after

June of 2000?

A (No response.)

Q In other words, I will ask you where were you when you had a conversation with James Earl Walker? Tell the Ladies and Gentlemen of the Jury when you talked to him?

A In the Houston County Jail.

Q Who was your roommate or cell mate?

A James Walker.

Q Is that after he had been arrested and charged with Capital Murder in the case of Bessie Lee Thweatt?

A Yes.

Q Now, would you tell the Ladies and Gentlemen was that after June of 2000? I am not asking the exact date. In other words, was it after that or a week or two ago that you had a conversation?

A It might have been around - - - I think it was around June.

Q Let me ask you this. Do you recall when you were interviewed by Houston County Deputies about this statement?

A Yes.

Q Was that Eric Sewell?

A Yes, sir.

Q Have you seen a copy of the statement you gave Mr.

Sewell?

A Yes, sir.

Q Do you remember the date when Investigator Sewell interviewed you exactly?

A (No response.)

Q When Sewell interviewed you? If you don't remember, tell me you don't remember.

A I don't remember.

Q Looking at your statement, does that refresh your recollection?

MR. CRESPI: Your Honor, I object to him refreshing his recollection from the entire statement. If Mr. Valeska has an area on that that reflects the date - - -

THE COURT: Sustained. Just the top there.

BY MR. VALESKA:

Q Well, did you talk to him in June of 2000, the Defendant?

A We talked for five or six months.

Q And, the times you talked to him, tell the Jury where you were?

A Houston County Jail.

Q Tell the Ladies and Gentlemen of the Jury what Walker said to you about Bessie Lee Thweatt?

A About the whole conversation?

Q Yes, sir. Just what he said about Bessie Lee Thweatt's case, the victim, who killed her?

A He said he did.

Q Did he say who pulled the trigger?

A He said he did.

Q Would you tell the Ladies and Gentlemen of the Jury did he indicate how it affected him in relationship after he got arrested?

A He was going through some, having bad dreams, crying a lot, really getting to him.

Q Would you tell the Ladies and Gentlemen of the Jury did he tell you who went with him or did the burglary of Ms. Thweatt's house, which person?

A His brother.

Q Did he give you a name?

A Rex Beckworth.

MR. VALESKA: That is all.

THE COURT: Thank you. Cross, Mr. Crespi?

MR. CRESPI: Yes, sir.

CROSS EXAMINATION

BY MR. CRESPI:

Q And, back in 2000, you had felony charges pending against you, didn't you?

A Yes, sir.

Q They weren't resolved at that time, were they?

A 2000 or 2001?

Q So, you were still facing charges when you talked to Sewell, weren't you?

A I don't believe I was.

Q In any event, you were trying to work with police officers and others to get your time reduced? Isn't that true?

A No, sir.

Q Where do you live now?

A North Alabama.

Q Have you completed the confinement part of your split sentence?

A I am still on four years probation.

Q What was the date of your sentencing on your Burglary Case?

A March 12, 2001.

Q On your Assault Charge?

A August 12, 2001.

Q How much longer are you going to be on parole from today?

A Three years and six months.

Q And, the minute this topic of conversation came up between you and James Earl Walker, you immediately contacted Deputy Sewell? Is that what you are telling us?

A I won't say the next day.

Q And, you don't remember exactly when the conversation took place either, do you?

A In April.

Q How long had you been cell mates?

A About six months.

Q When did you cease being cell mates?

A It was in April, the 17, 2001.

Q Okay. And, when did you leave the Houston County Jail?

A April of 2000; in April.

Q What year?

A 2001.

Q 2001? So, it was in the same month that you talked to Sewell that you were released from jail? Correct?

A Not released. I went to prison.

Q You went to prison? Okay. You were transferred?

A Yes, sir.

Q And, you have written or contacted other officials in order to give them information to get concessions on some of your criminal charges? Isn't that true? This is not the only time you have done this, is it?

A I don't follow what you are saying.

Q This is not the only time that you have offered to

give information to police and prosecutors? That is true, isn't it?

A It has never gone anywhere.

Q But, you have tried, haven't you?

A I think once before.

Q And, the intent was to get yourself a better deal? Isn't that true?

A No, sir.

Q Just being a good citizen then on the other times you offered to give information?

A You could say that.

Q Okay. Which law enforcement agency did you contact about the other matter you gave information on?

A Houston County.

Q Sheriff's Office?

A Yes, sir.

Q Sewell?

A No, sir.

Q The Burglary Offense, was the Burglary and the Assault Offenses the same event?

A Yes, sir.

Q So, it involved entering someone's house unlawfully?

MR. VALESKA: Objection. He can't go into specifics. He can ask about the crime and that is all he can ask.

THE COURT: Sustained.

BY MR. CRESPI:

Q And, you had - - - everybody in connection with the other matters you gave information on or this one had written letters to the Attorney General's Office, too? Isn't that true?

A It was about my case.

Q After your transfer from the Houston County Jail, were you transferred to a prison in North Alabama?

A Yes, sir.

MR. CRESPI: At this point, nothing further.

THE COURT: Mr. Valeska, Redirect?

REDIRECT EXAMINATION

BY MR. VALESKA:

Q Tell this Jury when you pled guilty to Burglary, Assault, and Intimidating a Witness, which lawyer in this Court Room was your lawyer?

A Mr. Hogg.

MR. VALESKA: That is all.

THE COURT: Mr. Crespi, anything else?

MR. CRESPI: No further questions, Your Honor.

THE COURT: Do y'all have further need of this witness?

MR. VALESKA: He can be excused.

APPENDIX F

you will sentence him to Death.

Thank you, judge.

THE COURT: Thank you, Mr. Valeska. Gentlemen, it is 11:15; I am going to take a ten minute recess and I will come back and sentence the Defendant in this case.

We are adjourned for ten minutes.

(Thereupon, a recess was called and taken by all parties. Upon completion of said recess, all parties returned to the Court Room and the following proceedings were had, to-wit:)

THE COURT: Gentlemen, y'all have had your say. As I indicated earlier, this case was tried in August, 2003 and the Jury returned a verdict of guilty of Capital Murder as charged in the Indictment. That same Jury recommended a Death Sentence of twelve to nothing August 22, 2003.

This is the seventh Capital Case that this Court has addressed. It does not get any easier, nor should it. There are two families that suffer today. I recognize that. This Court recognizes, of course, the gravity of these proceedings.

Before I move on to sentencing, I would like to address briefly Alabama's Capital Sentencing Statute, the sentencing structure for Capital Cases. There have been remarks that this Court has always followed Jury Recommendations which, is indeed true. This Court has followed Jury Recommendations. And, of course, I will explain that and explain the sentencing with respect to Capital Cases as this Court understands it.

There has been an attack on Capital Cases, of course, for many years. There was a time when the Death Penalty was outlawed as being cruel and unusual and applied arbitrarily and capriciously. In response to that, Alabama enacted a new Capital Statute, a new Death Penalty Statute, if you will. It involved a three-tiered process as these attorneys, of course, know. There is a phase in which a Jury will find a person either guilty or not guilty of the Capital Offense. If the person is convicted of a Capital Offense, then there is a second phase or a second tier and that is what is known as the Sentencing Phase of the trial. And, we had that in this case. It is a process in which the Jury and then ultimately the Court will decide whether or not aggravating circumstances outweigh

mitigating circumstances. Well, first, whether or not any of those existed. Secondly, if they are found to exist, whether one outweighs the other. In this case, the Jury found that the aggravating circumstances outweighed the mitigating circumstances. But, that is not the end of it.

Alabama Law says ultimately the decision must be made by the Circuit Judge who tried the case. He, too, must decide whether or not the aggravating circumstances outweigh the mitigating circumstances. And, I believe that it is this process that removed passion and sympathy and prejudice.

Again, Capital Cases are attacked; most recently that judges should not have this authority to override Jury recommendations. That Juries should make this determination and in Alabama, Juries do make these determinations in many respects. They do make a recommendation and that recommendation is to be given great weight by the sentencing judge. It should not be set aside based on the passion or sympathy or prejudice of the circuit judge. But, there are situations, I believe, where a Jury recommendation could be overridden. And, I think that the legislature,

in it's infinite wisdom, determined there may be situations where Juries acted one way or the other, either an appeal for mercy or an appeal regarding passion. But, that the Court should review that and make that determination. I do not believe that a circuit judge reviewing the Jury Recommendation is in any way unconstitutional.

I tried this case. I heard the evidence in this case. I heard the Sentencing Phase of this trial. I listened as the State presented evidence of aggravating circumstances. I listened as the Defendant introduced evidence of mitigating circumstances. I note that the Defendant is quite young in this case and the number of other mitigators that came into evidence. And, I want to say this; I know that in any Capital Case inevitably there is an appeal for mercy, there is reference to the Bible and after all is said and done, there will only be one judge and it won't be this Court. But, the appeal, they usually take the course of either for mercy or two, as you argued Mr. Decker, to prevent from passion from coming into play and I certainly respect that argument. I understand that argument. This Court comes down on the side of life. The life of an eighty-seven year

old woman who lived a good, decent life, who raised a family, who had every right to live out her golden years in peace and with dignity and that life was ended as a result of your client's actions.

I have thought about this case often since the trial. During the trial it was this Court's understanding that Mr. Beckworth was the shooter and that was from reading the statement of your client; that he did not go into the residence, that he did not have anything to do with it other than to be there and that when it happened, he fled in fear. Those were the statements of your client. During the trial however, the Court learned that was not necessarily the case. That through the testimony of witnesses or a witness, that your client is the one that actually did the killing. I know inevitably in these type cases where Co-Defendants are involved, many times there is finger pointing at each other. And I believe that it probably happened in this case as well, that there was finger pointing. But, in this case, there was evidence that your client was the trigger man. Had he not been, perhaps the Jury Recommendation might have been different. Had his story been, as he presented it, at least in the statements that he gave

investigators, the Jury may have recommended Life Without Parole. But, it didn't turn out that way.

The Defendant shall approach.

(Thereupon, the Defendant, James Earl Walker, accompanied by his Attorney of Record, the Honorable Charles D. Decker, approached the Bench as instructed by the Court and the following proceedings were had, to-wit:)

THE COURT: The Jury having returned a verdict of guilty of Capital Murder and recommended the Death Sentence, this Court adjudges you guilty of Capital Murder. Do you have anything to say as to why sentence of law should not be pronounced upon you at this time?

THE DEFENDANT: I just want to say, Your Honor, I do feel for the victims. I am not cold hearted. I hope they feel justice is served.

THE COURT: I beg your pardon?

THE DEFENDANT: I said I hope they feel justice is served and that they can go on with their lives.

THE COURT: Anything else?

THE DEFENDANT: (Shrugs his shoulders.)

THE COURT: The Court considered the

evidence in this case and the Court determines that the aggravating circumstances outweigh the mitigating circumstances and giving great weight to the Jury's recommendations in this case, you are hereby sentenced to Death by Electrocution or Lethal Injection. You are remanded to the custody of the Board of Corrections until such time that sentence is carried out. You have forty-two days from this date to appeal this decision, if you so choose. You are in custody.

THE DEFENDANT: Yes, sir.

PROCEEDINDGS CONCLUDED

APPENDIX G

IN THE CIRCUIT COURT OF HOUSTON COUNTY, ALABAMA

CRIMINAL DIVISION

REX ALLEN BECKWORTH,)
)
Petitioner,)
)
VS.) CASE NO. CC 2000-1343
)
STATE OF ALABAMA,)
)
Respondent,)

ORDER

The matter before the Court is the Rule 32 Petition for post-conviction relief filed by Defendant, Rex Allen Beckworth regarding his capital murder conviction and sentence in September of 2002. Defendant has filed through counsel a 79 page petition on June 22, 2007 followed by a 58 page answer or response filed by the State on August 13, 2007. The Court well remembers the trial in this case and has reviewed the petition and the response thereto.

The Court finds that the allegations in the Petition are of a conclusionary and speculative nature and do not give rise to the charge of ineffective assistance of counsel. Although, in retrospect, various different or additional investigation and trial measures might have been employed, the Court finds that none of the allegations raised in the Petition give rise to the lack of trial conduct that would have made any difference in Mr. Beckworths' trial or its results.

There does not appear to be any specific matters raised or any combination thereof which would have materially affected the result of the trial in light of the overwhelming evidence presented. Much of the substance of the allegations raised

were reviewed on appeal on their merits even though not couched in terms of ineffective assistance of counsel. Although, the Defendant's petition raises different trial strategies and suggests better focusing on other issues after the opportunity to review the transcript after the case was actually tried, such does not constitute ineffectiveness of prior counsel and therefore fails to state a claim as to which relief can be granted. Therefore, the court dismisses the Petition for Post Judgment Relief.

DONE AND ORDERED, this the 16th day of August, 2007.

Edward Jacobs

CIRCUIT JUDGE

APPENDIX H

REL: 07/03/2013

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2013

1091780

Ex parte Rex Allen Beckworth

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS

(In re: Rex Allen Beckworth

v.

State of Alabama)

(Houston Circuit Court, CC-00-1343.60;
Court of Criminal Appeals, CR-07-0051)

MURDOCK, Justice.

This case involves the summary denial of a Rule 32, Ala. R. Crim. P., petition for postconviction relief from a capital-murder conviction and death sentence. This Court granted certiorari review to consider whether a Rule 32 petitioner has a duty to plead facts negating the affirmative defenses of preclusion under Rule 32.2(a)(3) and (5), Ala. R. Crim. P. (claims that could have been, but were not, raised at trial or on appeal, respectively).

I. Facts and the Proceedings Below

The evidence at trial showed that Rex Allen Beckworth and his younger half brother, James Walker, broke into the house of Bessie Lee Thweatt, an 87-year-old widow who lived alone in a rural area surrounded by farmland.[1] Thweatt was beaten and shot in the head with a .22 caliber rifle. She died as a result of the attack. Among other things, Thweatt's house was ransacked. There was evidence indicating that Thweatt was known to keep a substantial sum of money at her house.

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[1]Walker was tried separately and convicted for his role in the burglary-murder. His conviction and death sentence were affirmed on appeal. Walker v. State, 932 So. 2d 140, 145-46 (Ala. Crim. App. 2007), aff'd, 972 So. 2d 737 (Ala. 2007).

After his arrest, Beckworth made two statements to law enforcement officials that were tape-recorded and later introduced into evidence in his trial. In those statements, Beckworth admitted that he broke into Thweatt's house with the intent to steal from her, but he claimed that Walker was the one who beat and shot Thweatt.

The jury convicted Beckworth of capital murder, see § 13A-5-40(a)(4), Ala. Code 1975, (murder made capital because it was committed during a burglary), and he was sentenced to death. Beckworth's conviction and death sentence were affirmed on direct appeal. Beckworth v. State, 946 So. 2d 490 (Ala. Crim. App. 2005) ("Beckworth I").

On June 22, 2007, Beckworth timely filed the present Rule 32 petition for postconviction relief, alleging, among other claims, that the State failed to disclose evidence favorable to the defense as required by Brady v. Maryland, 373 U.S. 83 (1963). Beckworth alleged that the State improperly failed to disclose evidence of a statement Walker made to his

cell mate, in which Walker admitted that he was the one who had shot Thweatt.[2] Beckworth alleged in his petition:

> "225. The state in this case also withheld the confession of a co-defendant. As in Brady v. Maryland, this demands a new sentencing trial. The facts of this case also mandate a new trial on the issue of guilt or innocence.
>
> "226. .... [T]he prosecution withheld a statement made by co-defendant James Walker to Tim Byrd, a cell mate, that he had committed the murder.
>
> "227. Byrd testified at Walker's trial that he was Walker's cell mate in the Houston County Jail after Walker had been arrested and charged with murder. Byrd and Walker had a conversation around June of 2000 in which Walker said that he pulled the trigger. Walker said that it was getting to him. He was having bad dreams and crying. Walker also told Byrd that Mr. Beckworth went with him to commit the burglary. Byrd made a statement to Investigator Eric Sewell in June 2000 after this conversation.[3]
>
> "228. The prosecution found the statement highly probative. The same District Attorney who withheld the evidence during Mr. Beckworth's trial called Mr. Byrd to testify at the later trial of James Walker....
>
> "229. In Mr. Beckworth's case, Byrd's testimony is also material to guilt. Unlike Brady, who 'took the stand and admitted his participation in the crime'

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[2]Beckworth's Rule 32 petition also raised additional Brady claims relating to other evidence. We did not grant certiorari as to any of those other claims, however.

[3]Beckworth's trial was held over two years later, in September 2002.

> (378 U.S. at 84), Mr. Beckworth maintained that the was not a participant in the robbery. There was no physical evidence linking Mr. Beckworth to the scene of the crime. Mr. Beckworth's incriminating statement was susceptible to challenge as involuntary and unreliable. ..."

(Emphasis added.)

On August 13, 2007, the State filed a response to Beckworth's Rule 32 petition in which it asserted, among other things, that the present Brady claim was procedurally barred by Rule 32.2(a)(3) and (5) because it could have been, but was not, raised at trial or on appeal. The State also asserted that Beckworth's Rule 32 claim was insufficiently pleaded because the petition did not include allegations explaining Beckworth's failure to raise this claim at trial or on appeal. The State also asserted that this Brady claim was insufficiently pleaded because Beckworth did not explain how Walker's statement was exculpatory in light of the fact that it was consistent with the State's theory that Beckworth had participated in the crime.

On August 16, 2007, three days after the State filed its response to Beckworth's Rule 32 petition, the trial court entered an order summarily dismissing Beckworth's petition.

The trial court's order did not expressly address any of the above-described issues.

On appeal, the Court of Criminal Appeals affirmed the trial court's summary dismissal of Beckworth's petition. Beckworth v. State, [Ms. CR-07-0051, May 1, 2009] ___ So. 3d ___, ___ (Ala. Crim. App. 2009) ("Beckworth II"). As to the Brady claim involving Walker's statement, the Court of Criminal Appeals held that the claim was precluded because Beckworth failed to allege in his Rule 32 petition "any facts indicating when he learned of Walker's alleged statement to Byrd, or indicating that he did not learn about the statement in time to raise the issue in a posttrial motion or on appeal." Beckworth II, ___ So. 3d at ___.

In this regard, although Beckworth's Brady claim asserts a constitutional violation and therefore is cognizable under Rule 32.1(a), Ala. R. Crim. P., the discussion by the Court of Criminal Appeals draws from cases discussing the pleading requirements applicable to claims made under Rule 32.1(e), Ala. R. Crim. P. (newly discovered material facts), in concluding that Beckworth should have pleaded facts sufficient to avoid the preclusive bars of Rule 32.2(a)(3) and (5). This

Court granted certiorari review to consider whether the Court of Criminal Appeals improperly affirmed the trial court's summary denial of Beckworth's Brady claim on the ground that Beckworth failed to plead facts negating the affirmative defenses of preclusion prescribed by Rules 32(a)(3) and (5).

II. Standard of Review

The sufficiency of pleadings in a Rule 32 petition is a question of law. "The standard of review for pure questions of law in criminal cases is de novo. Ex parte Key, 890 So. 2d 1056, 1059 (Ala. 2003)." Ex parte Lamb, [Ms. 1091668, Oct. 28, 2011] ___ So. 3d ___ (Ala. 2011).

III. Analysis

Rule 32.7(d), Ala .R. Crim. P., provides:

> "If the court determines that the [Rule 32] petition is not sufficiently specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which would entitle the petitioner to relief and that no purpose would be served by any further proceedings, the court may either dismiss the petition or grant leave to file an amended petition."

In this case, we must decide whether a petition grounded on Rule 32.1(a) must plead facts tending to negate the affirmative defenses of preclusion under Rule 32.2(a)(3) and (5) in order to survive summary disposition under

Rule 32.7(d). More specifically, must a petition allege facts indicating that the claim could not have been raised at trial or on appeal in order to "state a claim" under Rule 32.1(a)?

Rule 32.3, Ala. R. Crim. P., provides that "[t]he petitioner shall have the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle the petitioner to relief." Not surprisingly, therefore, what must be alleged in order to make out a prima facie claim for relief -- i.e., to avoid summary dismissal under Rule 32.7(d) for failure to sufficiently "state a claim" -- depends upon the specific provision of Rule 32 upon which a claim for relief is based and on what ultimately must be proved in order to prevail based on that provision. In the latter regard, Rules 32.1(a) and 32.1(e) differ. Rule 32.1(a) states simply that a petitioner may "secure appropriate relief on the ground that ... [t]he constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief." A claim for relief under Rule 32.1(e) requires more. Among other things, for relief under Rule 32.1(e) a petitioner must show -- and therefore must sufficiently plead -- that

> "[n]ewly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:
>
> "(1) The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a posttrial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding and could not have been discovered by any of those times through the exercise of reasonable diligence."[4]

The fact that the elements of a claim of "newly discovered material facts" as contemplated by Rule 32.1(e) need not be proved in order to entitle the petitioner to relief under Rule 32.1(a) -- and, accordingly, need not be pleaded in order to avoid a summary dismissal for failure to state a claim based on Rule 32.1(a) -- does not mean that the

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[4]In Ex parte Pierce, 851 So. 2d 606, 613 (Ala. 2000), this Court confirmed the distinction between a claim for relief under 32.1(e) and one under 32.1(a):

> "Pierce was not required to prove that this information meets the elements of 'newly discovered material facts' under Rule 32.1(e). While the information about Sheriff Whittle's contacts with the jury may be 'newly discovered,' Pierce does not seek relief under Rule 32.1(e). Pierce does not contend that '[n]ewly discovered material facts exist which require that the conviction or sentence be vacated by the court.' Rule 32.1(e). Instead, Pierce's claim fits under Rule 32.1(a): 'The constitution of the United States or of the State of Alabama requires a new trial....' Rule 32.1(a) states a ground for relief distinct from that stated in Rule 32.1(e)."

preclusive bars of Rules 32.2(a)(3) and (5) might not be applicable. As this Court stated in Ex parte Pierce, 851 So. 2d 606, 614 (Ala. 2000), "[a]lthough Rule 32.1(e) does not preclude Pierce's claim [under Rule 32.1(a)], Rule 32.2(a)(3) and (5) would preclude Pierce's claim if it could have been raised at trial or on appeal." The question for purposes of the present case, however, is simply who has the burden of pleading the preclusive bars of Rule 32.2(a)(3) and (5).

Rule 32.3 provides that "[t]he state shall have the burden of pleading any ground of preclusion, but once a ground of preclusion has been pleaded, the petitioner shall have the burden of disproving its existence by a preponderance of the evidence." (Emphasis added.) Thus, Rule 32.3 does not impose any burden of pleading on the petitioner regarding preclusion, only a burden of disproving preclusion if preclusion is pleaded by the State. As we stated in Ex parte Lucas, 865 So. 2d 418, 420 (Ala. 2002), "[t]he fact that a claim might be precluded under Rule 32.2(a)(3) or (5) would have no bearing on whether the statement of the claim was facially valid." (Emphasis added.) Accordingly, a dismissal of a Rule 32.1(a) petition on the ground that the petitioner has failed to

affirmatively plead the absence of facts sufficient to sustain a defense of preclusion under Rule 32.3 is error.

Of course, the foregoing rationale and result are reflections of the fact that the various grounds of preclusion are waivable affirmative defenses, meaning that the State might or might not elect to raise them in its response to a petitioner's Rule 32 petition. See Ex parte Clemons, 55 So. 3d 348, 353 (Ala. 2007) (holding that "the State may waive the affirmative defense of the procedural bars of Rule 32.2(a)"). See also Ex parte James, 61 So. 3d 352, 456 (Ala. 2009) (preclusion is an affirmative defense to be pleaded by the State).

In Ex parte Hodges, [Ms. 1100112, Aug. 26, 2011] ___ So. 3d ___ (Ala. 2011), this Court rejected the notion that a Rule 32 petition must allege facts negating the defense of preclusion and held that the petitioner in that case was entitled to an evidentiary hearing. After noting the petitioner's burden of pleading and the fact that preclusion is an affirmative defense to be pleaded by the State, the Hodges Court quoted from Johnson v. State, 835 So. 2d 1077,

1079-80 (Ala. Crim. App. 2001), with regard to the distinction between the burden of pleading and the burden of proof:

> "'Initially, it is important to distinguish between a petitioner's burden to plead and a petitioner's burden to prove.
>
> > "'"[A]t the pleading stage of Rule 32 proceedings, a Rule 32 petitioner does not have the burden of proving his claims by a preponderance of the evidence. Rather, at the pleading stage, a petitioner must only provide 'a clear and specific statement of the grounds upon which relief is sought.' Rule 32.6(b), Ala. R. Crim. P. Once a petitioner has met his burden of pleading so as to avoid summary disposition pursuant to Rule 32.7(d), Ala. R. Crim. P., he is then entitled to an opportunity to present evidence in order to satisfy his burden of proof."
>
> "'Ford v. State, 831 So. 2d 641, 644 (Ala. Crim. App. 2001). A claim may not be summarily dismissed because the petitioner failed to meet his burden of proof at the initial pleading stage, a stage at which the petitioner has only a burden to plead. ...'"

Hodges, ___ So. 3d at ___ (quoting Johnson, 835 So. 2d at 1079-80).

On the basis of the foregoing, we must conclude that Beckworth's Rule 32 petition should not have been dismissed on the ground that his claim for relief under Rule 32.1(a) lacked allegations negating the preclusive bars of Rule 32.2(a)(3)

and (5). Accordingly, we reverse the judgment of the Court of Criminal Appeals to the extent it holds to the contrary, and we remand this case to that Court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Moore, C.J., and Parker, Shaw, and Bryan, JJ., concur.

Stuart, J., concurs specially.

Bolin, J., concurs in the result.

Main and Wise, JJ., recuse themselves.*

*Justice Main and Justice Wise were members of the Court of Criminal Appeals when that court considered this case.

STUART, Justice (concurring specially).

I agree with the main opinion that a circuit court's summary dismissal of a ground pleaded pursuant to Rule 32.1(a), Ala. R. Crim. P., because the petitioner failed "to affirmatively plead [in his petition] the absence of facts sufficient to sustain a defense of preclusion under Rule 32.3[, Ala. R. Crim. P.,] is error." ___ So. 3d at ___. In this case, the circuit court's summary dismissal was premature. As the main opinion provides, Beckworth was not required to plead facts in his petition to avoid the application of the preclusionary bars to his grounds. However, after the State in its response asserted that his grounds were precluded, Beckworth had the burden of establishing in his reply to the State's answer and/or at a hearing that the preclusionary bars pleaded by the State were inapplicable and that summary dismissal was improper. See Ex parte Pierce, 851 So. 2d 606, 616 (Ala. 2000). Because the circuit court summarily dismissed Beckworth's petition before Beckworth had an opportunity to establish that the preclusionary bars were inapplicable and because the record on its face does not establish that the application of the

preclusionary bars was proper, the judgment must be reversed. If Beckworth can establish that the application of the preclusionary bars is improper, then he avoids summary disposition of his petition and is entitled to a hearing on the merits of his grounds. Ford v. State, 831 So. 2d 641, 644 (Ala. Crim. App. 2001)("Once a petitioner has met his burden of pleading so as to avoid summary disposition pursuant to Rule 32.7(d), Ala. R. Crim. P., he is then entitled to an opportunity to present evidence in order to satisfy his burden of proof.").

I further observe that the Court of Criminal Appeals in McWhorter v. State, [Ms. CR-09-1129, Sept. 30, 2011] ___ So. 3d ___ (Ala. Crim. App. 2011), properly recognized that a Brady violation may be pleaded pursuant to the provision for relief in Rule 32.1(a). See also Yeomans v. State, [Ms. CR-10-0095, March 29, 2013] ___ So. 3d ___ (Ala. Crim. App. 2013). These decisions implicitly overrule Payne v. State, 791 So. 2d 383, 398 (Ala. Crim. App. 1999), and its progeny, which held that "[a] postconviction Brady [v. Maryland], 373 U.S. 83 (1963)] claim raised in a Rule 32 petition must meet

all five prerequisites of 'newly discovered evidence' in Rule 32.1(e) Ala. R. Crim. P." McWhorter, ___ So. 3d at ___.