

No. 24A60  
CAPITAL CASE

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**In the  
Supreme Court of the United States**

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KEITH EDMUND GAVIN,  
*Petitioner,*  
v.  
STATE OF ALABAMA,  
*Respondent.*

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On Motion for Stay of Execution

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**APPENDIX TO  
OPPOSITION TO MOTION FOR STAY OF EXECUTION**

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Steve Marshall  
*Alabama Attorney General*

Edmund G. LaCour Jr.  
*Solicitor General*

Robert M. Overing  
*Deputy Solicitor General*

Dylan Mauldin  
*Assistant Solicitor General*

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July 18, 2024

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App. 1

Gavin's Pro Se Rule 32 Petition

THE NINTH JUDICIAL CIRCUIT CHEROKEE COUNTY,  
ALABAMA

KEITH EDMUND GAVIN

Petitioner, (Prose)

v.

STATE OF ALABAMA

Respondent.

case no. CC-98-61

CC-98-62

Rule 32 Petition

**FILED**

JUN 17 2024

*Clayton Amos*  
CIRCUIT CLERK, CHEROKEE COUNTY, AL

IN THE NINTH JUDICIAL CIRCUIT COURT OF ALABAMA  
CHEROKEE COUNTY CIRCUIT COURT

KEITH EDMUND GAVIN,  
PETITIONER, (PRO SE).

vs.

STATE OF ALABAMA,  
RESPONDENT.

CCCCCCCCCCCCCCCC

CASE NO. CC-98-61

CASE NO. CC-98-62

FILED

JUN 17 2024

*Cheryl Cross*  
CIRCUIT CLERK, CHEROKEE COUNTY, AL

PETITION FOR RELIEF TO  
DISMISS FOR LACK OF JURISDICTION

COMES NOW THE PETITIONER, KEITH EDMUND GAVIN,  
(PRO SE), AND MOVES THIS HONORABLE COURT TO GRANT  
RELIEF OF CONVICTION AND SENTENCE OF DEATH OF  
PETITIONER, KEITH EDMUND GAVIN FOR LACK OF  
JURISDICTION PURSUANT TO SECTION 13A-5-40(A)(13) OF  
THE CODE OF ALABAMA 1975.

BRIEF HISTORY

MR. GAVIN WAS CONVICTED NOVEMBER 6, 1999 OF  
CAPITAL MURDER OF SECTION 13A-5-40(A)(13).

ALABAMA COURT OF CRIMINAL APPEALS AFFIRMED, SEPTEMBER 26, 2003. ALABAMA SUPREME COURT DENIED WRIT OF CERTIORARI MAY 28, 2004. UNITED STATES SUPREME COURT DENIED WRIT OF CERTIORARI JANUARY 24, 2005. STATE OF ALABAMA SET AN EXECUTION DATE July 18, 2024.

NOW COMES THE PETITIONER, KEITH EDMUND GAVIN SO MOVES THIS HONORABLE COURT IN THE INTERESTS OF JUSTICE TO GRANT RELIEF FOR LACK OF JURISDICTION

THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION UNDER TERRITORIAL PRINCIPLES OF LAW TO TRY, CONVICT AND SENTENCE TO DEATH MR. GAVIN PURSUANT TO SECTION 13A-5-40(A)(13) OF THE CODE OF ALABAMA 1975.

MR. GAVIN ARGUES THAT THIS THE FIRST TIME PETITIONER HAS RAISED THIS ARGUMENT AND IT IS A JURISDICTIONAL CLAIM WHICH CAN NOT BE SUBJECTED TO THE SUCCESSIVE PETITION BARS IN RULE 32.2.

**FILED** UNDER THE GENERAL RULE IN ALABAMA A JURISDICTIONAL CLAIM IS NOT SUBJECT TO

JUN 17 2024

SUCCESSIVE PETITION BARS IN RULE 32-2, REGARDLESS OF WHETHER THE CLAIM FALLS UNDER THE FIRST PRONG OF RULE 32.2(B) — HAVING BEEN RAISED IN A PREVIOUS PETITION, OR THE SECOND PRONG OF RULE 32.2(B) — NOT HAVING BEEN RAISED IN A PREVIOUS PETITION.

SEE EX PARTE ROBEY, 920 So. 2d 1069, 1071 (ALA. 2004); PATTON V. STATE, 964 So. 2d 1247, 1248 (ALA. CRIM. APP. 2007); ABRAMS V. STATE, 978 So. 2d 794, 796 (ALA. CRIM. APP. 2006).

MR. GAVIN STATES THAT HE IS WELL AWARE OF THE EXCEPTION TO THIS GENERAL RULE UNDER EX PARTE TRAWICK, 972 So. 2d AT 784, THEREFORE HE NOTES THAT HE HAS NEVER RAISED THIS CLAIM IN A PREVIOUS PETITION OR ELSE WHERE, NOR THIS ISSUE BEEN ADJUDICATED ON THE MERITS.

MR. GAVIN CLAIMS THAT UNDER SECTION 13A-5-40(A)(3) OF THE CODE OF ALABAMA 1975 A "CONVICTION FOR ANY OTHER MURDER IN 20 YEARS PRECEDING THE CRIME" BECOMES AN ESSENTIAL ELEMENT OF "MURDER BY A DEFENDANT" THAT MAKES IT A CAPITAL OFFENSE.

JUN 17 2024

SEE SECTION 13A-5-40(A)(3) WHICH READS AS FOLLOWS: "MURDER BY A DEFENDANT WHO HAS BEEN CONVICTED OF ANY OTHER MURDER IN 20 YEARS PRECEDING THE CRIME; PROVIDED THAT THE MURDER WHICH CONSTITUTES THE CAPITAL CRIME SHALL BE MURDER AS DEFINED IN SUBSECTION (B.) OF THIS SECTION; AND PROVIDED FURTHER THAT THE PRIOR MURDER CONVICTION REFERRED TO SHALL INCLUDE MURDER IN ANY DEGREE AS DEFINED AT THE TIME AND PLACE OF THE PRIOR CONVICTION."

MR. GAVIN STATES THAT BECAUSE "HIS PRIOR MURDER CONVICTION," EVEN THOUGH FALLS WITHIN THE 20 YEARS PRECEDING THE MURDER WHICH CONSTITUTES THE CAPITAL CRIME, IT WAS NOT A PRIOR MURDER CONVICTION FROM WITHIN THE TERRITORIAL JURISDICTION OF THE STATE OF ALABAMA. THEREFORE, BECAUSE MR. GAVIN'S PRIOR MURDER CONVICTION WAS FROM ANOTHER JURISDICTION IT COULD NOT BE USED AS AN ESSENTIAL ELEMENT TO THE MURDER OF THE VICTIM, MR. CLAYTON WHICH MADE IT A CAPITAL OFFENSE IN COUNT TWO OF MR. GAVIN'S INDICTMENT IN VIOLATION OF SECTION 13A-5-40(A)(3) OF THE CODE OF ALABAMA.

**FILED**

JUN 17 2024



MR. GAVIN CLAIMS THAT NEITHER THE COOK COUNTY MURDER OR IT'S CONVICTION OCCURRED IN THE STATE OF ALABAMA JURISDICTION AND CONVERSELY THERE CAN BE NO TERRITORIAL JURISDICTION WHERE CONDUCT AND IT'S RESULTS BOTH OCCURRED OUTSIDE THE STATES TERRITORY. SEE STATE V. SMITH 481 N.W. 2d 315, 318 (MINN 1988).

COMMON LAW HAS ESTABLISHED A TERRITORIAL PRINCIPLE AS THE JURISDICTIONAL FOUNDATION FOR THE REACH OF STATE LAWS. UNDER THAT PRINCIPLE, STATES HAVE POWER TO MAKE CONDUCT A CRIME ONLY IF THAT CONDUCT TAKES PLACE, OR IT RESULTS OCCURRED WITH THE STATES TERRITORIAL BORDERS. 4 WAYNE R. LAFAVE ET. AL CRIMINAL PROCEDURE 16.1(A), AT 459 (2d. ED). 1999).

IN THE CASE AT HAND THE STATE OF ALABAMA USED CONDUCT THAT TOOK PLACE AND THE RESULTS OF THAT CONDUCT WHICH OCCURRED IN THE JURISDICTION OF COOK COUNTY, ILLINOIS AND MADE THIS CONDUCT AN ELEMENT OF THE MURDER OF MR. CLAYTONS, TO CREATE A CAPITAL OFFENSE UNDER SECTION 13A-5-40(A)(13) OF THE CODE OF ALABAMA 1975. THEREFORE, THE COURT LACKED SUBJECT MATTER JURISDICTION OF THE OFFENSE IN COUNT TWO OF MR. GAVIN'S INDICTMENT.

SECTION 13A-5-40(A)(13) OF THE CODE OF ALABAMA 1975 IS UNCONSTITUTIONAL AS APPLIED TO MR. GAVIN. IT'S APPLICATION DENIED MR. GAVIN THE RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE UNITED STATES AND THE ALABAMA CONSTITUTION OF 1901, AS IT CONFLICTS WITH STATE AND FEDERAL CASE LAW AND THE RULES OF EVIDENCE.

MR. GAVIN ARGUES THAT SECTION 13A-5-40(A)(13) OF THE CODE OF ALABAMA 1975 IS UNCONSTITUTIONAL AS IT WAS APPLIED TO HIM. THEREFORE, MR. GAVIN HAS STANDING TO CHALLENGE IT'S CONSTITUTIONALITY JURISDICTION AS LONG AS HE DEMONSTRATES HOW THE APPLICATION OF THE STATUTE AFFECTED HIM. J. L. N. V. STATE, 894 So. 2d. 738 (ALA. CRIM. APP. 2002), STATING, "A PARTY HAS STANDING TO CHALLENGE THE CONSTITUTIONALITY OF A STATUTE ONLY INsofar AS IT HAS AN ADVERSE IMPACT ON HIS OWN RIGHTS. AS A GENERAL RULE BY COMMON LAW IF THERE IS NO CONSTITUTIONAL DEFECT IN THE APPLICATION OF THE STATUTE TO A LITIGANT, HE DOES NOT HAVE STANDING TO ARGUE THAT IT WOULD BE UNCONSTITUTIONAL IF APPLIED TO THIRD PARTIES IN HYPOTHETICAL SITUATIONS.

**FILED**

JUN 17 2024

Deanna Arneson  
CIRCUIT CLERK, CHEROKEE COUNTY

MR. GAVIN STATES THAT DURING HIS CAPITAL MURDER TRIAL WHERE THERE WAS A TWO COUNT

INDICTMENT, COUNT ONE ALLEGING THAT MR. GAVIN VIOLATED SECTION 13A-5-40 (SEE COPY OF INDICTMENT) AND COUNT TWO ALLEGING A VIOLATION OF SECTION 13A-5-40(A)(3) OF THE CODE OF ALABAMA.

MR. GAVIN CLAIMS THAT THE APPLICATION OF SECTION 13A-5-40(A)(3) TO HIM AT TRIAL DENIED HIM HIS RIGHT TO DUE PROCESS AND A FAIR TRIAL. THE STATE WAS PERMITTED TO USE HIS "PRIOR MURDER CONVICTION" AS AN ELEMENT OF THE CAPITAL OFFENSE DURING THE GUILT-PHASE OF HIS TRIAL. IN DOING SO MR. GAVIN WAS PREJUDICED, AS RULE 404(B)(1) OF THE FEDERAL RULES OF EVIDENCE AND THE ALABAMA RULES OF EVIDENCE PROHIBITS THE USE OF OTHER CRIMES, WRONGS, OR ACTS.

DURING OPENING STATEMENT DISTRICT ATTORNEY ODELL READ COUNT TWO OF MR. GAVIN'S INDICTMENT TO THE JURY AS FOLLOWS, "KEITH EDMUND GAVIN DID INTENTIONALLY CAUSE THE DEATH OF ANOTHER PERSON, WILLIAM CLINTON CLAYTON, JR., BY SHOOTING HIM WITH A PISTOL AFTER HAVING BEEN CONVICTED OF A MURDER ON, TO WIT, JUNE 9<sup>TH</sup> 1982, IN THE CIRCUIT COURT OF ~~BOOK~~ <sup>CHEROKEE</sup> COUNTY, ILLINOIS, IN VIOLATION OF SECTION 13A-5-40(A)(3) OF THE CODE OF ALABAMA, CONTRARY TO LAW AND AGAINST THE PEACE AND DIGNITY OF THE STATE OF ALABAMA."

FILED  
JUN 17 2000  
CIRCUIT CLERK, CHEROKEE COUNTY, AL

SHORTLY THEREAFTER, DISTRICT ATTORNEY ODELL REITERATED TO THE JURY IN OPENING STATEMENT THAT, "THE SECOND COUNT SAYS THAT MR. KEITH EDMUND GAVIN NOT ONLY KILLED MR. CLAYTON, BUT HE DID SO AFTER HAVING PREVIOUSLY BEEN CONVICTED OF MURDER BACK ON JUNE 9<sup>TH</sup> 1982." (TRIAL TRANSCRIPT PAGE 491, 492)

THESE STATEMENTS WERE PREJUDICIAL TO MR. GAVIN AND SHOULD NOT HAVE BEEN HEARD BY THE JURY UNTIL THE SENTENCING-PHASE. MR. GAVIN STATES THAT IN EVERY TRIAL THE INDICTMENT IS READ TO THE JURY BEFORE THE PRESENTATION OF ANY EVIDENCE. IN THIS INSTANCE THE READING OF COUNT TWO AND WHAT SECTION 13A-5-40(A)(3) WAS IN VIOLATION OF DUE PROCESS TO A FAIR TRIAL UNDER THE V, VI AND XIV AMENDMENTS OF THE UNITED STATES CONSTITUTION.

ALSO DURING THE GUILT-PHASE OF MR. GAVIN'S TRIAL THE STATE WAS PERMITTED TO INTRODUCE INTO EVIDENCE A CERTIFIED COPY OF A STATEMENT OF CONVICTION INDICATING THAT MR. GAVIN HAD BEEN CONVICTED OF MURDER IN 1982 IN COOK COUNTY, ILLINOIS. THE CERTIFIED COPY STATED IN PART, "ON MAY 4, 1981, THE ABOVE NAMED DEFENDANT, WHILE REPRESENTED BY COUNSEL, WAS DULY ARRAIGNED

**FILED**

JUN 17 2024

BEFORE THE HONORABLE RICHARD J. FITZGERALD OF THE CIRCUIT COURT OF COOK COUNTY AND ENTERED A PLEA OF NOT GUILTY TO THE OFFENSE. "A JURY WAS IMPANELLED AND THEREAFTER RETURNED AGAINST THE DEFENDANT WHO WAS REPRESENTED BY COUNSEL A VERDICT OF GUILTY OF MURDER ON JUNE 9<sup>TH</sup>, 1982"

MR. GAVIN ARGUES THAT BECAUSE SECTION 13A-5-40(A)(3) MAKES A "PRIOR CONVICTION FOR MURDER IN 20 YEAR PRECEDING" THE MURDER FOR WHICH A DEFENDANT (SUCH AS HIMSELF) IS PRESENTLY ON TRIAL FOR, AN ELEMENT OF THAT OFFENSE IT'S APPLICATION CONFLICTS WITH THE RIGHT TO DUE PROCESS AND A FAIR TRIAL AS THE STATE WAS ALLOWED TO USE EVIDENCE OF HIS PRIOR CONVICTION OF MURDER IN COOK COUNTY, ILLINOIS FOR NOTHING MORE THAN SHOWING HIS PROPENSITY TO COMMIT MURDER TO THE JURY.

THEREFORE, SECTION 13A-5-40(A)(3)'S APPLICATION IN THIS INSTANCE ALSO CONFLICTS WITH STATE AND FEDERAL CASE LAW AS, SEE UNITED STATES

**FILED** PHILLIPS, 599 F.2d 134, 136 (C.A.-6, 1979):

ALSO EX PARTE CASEY, 889 So. 2d 615-621-22  
 JUN 17 2024  
 (ALA-2004) STATING, "THE STATE HAS NO

ABSOLUTE RIGHT TO USE EVIDENCE OF PRIOR ACTS TO PROVE THE ELEMENTS OF AN OFFENSE OR TO BUTTRESS INFERENCES CREATED BY OTHER EVIDENCE OF PRIOR BAD ACTS OF A CRIMINAL DEFENDANT IS PRESUMPTIVELY PREJUDICIAL TO THE DEFENDANT. IT INTERJECTS A COLLATERAL ISSUE INTO THE CASE WHICH MAY DIVERT THE MINDS OF THE JURY FROM THE MAIN ISSUE. THEREFORE, "THE ADMISSION OF SUCH EVIDENCE CONSTITUTES REVERSIBLE ERROR."

MR. GAVIN FURTHER NOTES THAT THE ONLY PURPOSE FOR THE STATES USE OF SECTION 13A-5-40(A)(13) IS CLEAR AS THE STATE PRESENTED THREE AGGREGATING CIRCUMSTANCE DURING MR. GAVIN'S SENTENCING-PHASE.

(1) THAT THE MURDER WAS COMMITTED WHILE GAVIN WAS UNDER A SENTENCE OF IMPRISONMENT, SEE SECTION 13A-5-49(1), ALA. CODE 1975;

**FILED**  
 JUN 17 2024  
 (2) THAT GAVIN HAD PREVIOUSLY BEEN CONVICTED OF ANOTHER CAPITAL OFFENSE OR A FELONY INVOLVING THE USE OR THREAT OF VIOLENCE TO THE PERSON, SEE SECTION 13A-5-49(2), ALA CODE 1975;

*Deanna Carter*  
 CIRCUIT CLERK, CHEROKEE COUNTY, AL

AND (3) THAT THE MURDER WAS COMMITTED DURING THE COURSE OF A ROBBERY IN THE FIRST DEGREE, SEE SECTION 13A-5-49(4), ALA. CODE 1975.

THE STATES USE OF THE SECOND AGGREGATING CIRCUMSTANCE INVOLVES GAVIN'S PREVIOUS CONVICTION FOR MURDER. SO WHAT OTHER REASON TO USE MR. GAVIN PRIOR MURDER CONVICTION DURING THE GUILT-PHASE.....

THE STATE OF ALABAMA KNEW THAT THEY INTENDED TO USE THESE AGGREGATING CIRCUMSTANCES BEFORE MR. GAVIN'S TRIAL. THEREFORE, THE STATES USE OF SECTION 13A-5-40(A)(3) WAS APPLIED ONLY TO DENY MR. GAVIN HIS RIGHT TO A FAIR TRIAL.

MR. GAVIN STATES THAT CRIMINAL DEFENDANTS POSSESS A DUE PROCESS RIGHT TO A FAIR TRIAL THAT SHOULD NOT BE DENIED BY THE ADMISSION OF IMPROPER EVIDENCE. U.S. CONST. AM. V, XIV; ARTICLE 1 SECTION 6, 13, ALA. CONST. 1901. EVIDENCE OF MR. GAVIN'S PRIOR MURDER CONVICTION

**FILED** DURING THE GUILT-PHASE OF TRIAL AS AN ELEMENT OF THE OFFENSE UNDER SECTION 13A-5-40(A)(3) WAS INADMISSIBLE, UNCONSTITUTIONAL,

JUN 17 2024

AND REVERSIBLE ERROR. SEE EX PARTE AULTUR, 472 So. 2d 665 (SUPREME COURT OF ALA. MAY 10, 1985) DISCUSSING, C. GAMBLE, McELROYS ALABAMA EVIDENCE SECTION 69.01 (3d Ed. 1977), THE GENERAL EXCLUSIONARY RULE IS DISCUSSED AS FOLLOWS, "ON THE TRIAL OF A PERSON FOR THE ALLEGED COMMISSION OF A PARTICULAR CRIME, EVIDENCE OF HIS DOING ANOTHER ACT WHICH ITSELF IS A CRIME, IS NOT ADMISSIBLE IF THE ONLY PROBATIVE FUNCTION OF SUCH EVIDENCE IS TO SHOW HIS BAD CHARACTER, INCLINATION OR PROPENSITY TO COMMIT THE TYPE OF CRIME FOR WHICH HE IS BEING TRIED THIS EXCLUSIONARY RULE WHICH PREVENTS THE INTRODUCTION OF PRIOR CRIMINAL ACTS FOR THE SOLE PURPOSE OF SUGGESTING THAT THE ACCUSED IS MORE LIKELY TO BE GUILTY OF THE CRIME IN QUESTION....."

<sup>As</sup> THIS EXCLUSIONARY RULE IS SIMPLY AN APPLICATION OF THE CHARACTER RULE WHICH FORBIDS THE STATE TO PROVE THE ACCUSED'S BAD CHARACTER BY PARTICULAR DEEDS. THE REASON FOR THE RULE LIES IN THE BELIEF THAT THE

**FILED**

JUN 17 2024

Cherry O'Neal  
CIRCUIT CLERK, CHEROKEE COUNTY, AL



PREJUDICIAL EFFECT OF PRIOR CRIMES WILL FAR OUTWEIGH ANY PROBATIVE VALUE THAT MIGHT BE GAINED FROM THEM, MOST AGREE THAT SUCH EVIDENCE OF PRIOR CRIMES HAS ALMOST AN IRREVERSIBLE IMPACT UPON THE MINDS OF THE JURORS."

MR. GAVIN STATE THAT BECAUSE OF SECTION 13A-5-40(A)(13)'S APPLICATION IN HIS CAPITAL MURDER TRIAL THE STATE OF ALABAMA WAS ALLOWED TO PRESENT EVIDENCE OF HIS PRIOR BAD ACT OF MURDER FROM JUNE 9<sup>TH</sup>, 1982, IN COOK COUNTY, ILLINOIS DENYING HIM DUE PROCESS OF LAW AND A RIGHT TO A FAIR TRIAL UNDER THE V, VI, AND THE XIV AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE 1 SECTION 6, 13 OF THE ALABAMA CONSTITUTION OF 1901 AND THEREFORE SHALL BE DEEMED UNCONSTITUTIONAL AS APPLIED TO MR. GAVIN, AND MR. GAVIN SHALL BE ENTITLED TO A NEW TRIAL THAT'S NOT TAINTED BY THE ADMISSION OF IMPROPER EVIDENCE.

MR. GAVIN ARGUES THAT IF THE RECORD ESTABLISHES THAT THE PRIOR CONVICTION OCCURRED OUTSIDE OF THE STATES JURISDICTION THIS BECOMES

**FILED**

JUN 17 2024

*Oliver Gimes*  
CIRCUIT CLERK, SHEROKEE COUNTY, AL

A JURISDICTIONAL MATTER THAT CAN BE RAISED AT ANY TIME AS LONG AS THE DEFENDANT REMAINS IN CUSTODY.

## CONCLUSION

MR. GAVIN URGES THIS HONORABLE COURT TO REMAND THIS CASE FOR FACTUAL FINDINGS ON THIS PETITION TO DISMISS FOR LACK OF JURISDICTION.

FURTHERMORE, TO CARRY OUT MR. GAVIN'S DEATH SENTENCE JULY 18, 2024, WOULD BE A GRAVE MISARRIAGE OF JUSTICE, SEE SAWYER V. WHITLEY 505 U.S. 333 (1992).

**FILED**

JUN 17 2024

*Quinn Carter*  
CIRCUIT CLERK, CHEROKEE COUNTY, AL

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CC-98-61

INDICTMENT

The State of Alabama,  
CHEROKEE COUNTY.

CIRCUIT COURT

COUNT ONE:

APRIL Term 1998

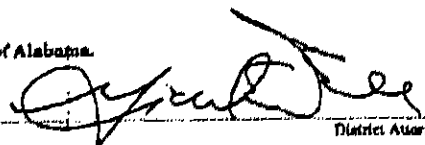
The Grand Jury of said County charges that before the finding of this indictment

KEITH EDMUND GAVIN, whose name to the Grand Jury is otherwise unknown than as stated, did intentionally cause the death of William Clinton Clayton, Junior, by shooting him with a gun, and Keith Edmund Gavin caused said death during the time that Keith Edmund Gavin was in the course of committing a theft of a 1996 Ford van, the property of Corporate Express Delivery Systems, Incorporated, a corporation, by the use of force against the person of William Clinton Clayton, Junior, with intent to overcome his physical resistance or physical power of resistance, while the said Keith Edmund Gavin was armed with a deadly weapon, to-wit: a pistol, in violation of Section 13A-5-40 of the Code of Alabama, in violation of Section 13A-6-2 of the Code of Alabama, contrary to law and against the peace and dignity of the State of Alabama.

COUNT TWO:

The Grand Jury of said County and State further charges that before the finding of this indictment, KEITH EDMUND GAVIN, whose name to the Grand Jury is otherwise unknown than as stated, did intentionally cause the death of another person, William Clinton Clayton, Junior, by shooting him with a pistol, after having been convicted of Murder on, to-wit: June 9, 1982, in the Circuit Court of Cook County, Illinois, in violation of Section 13A-5-40(a)(13) of the Code of Alabama,

contrary to law and against the peace and dignity of the State of Alabama.

  
District Attorney

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INDICTMENT

cc-98-62

The State of Alabama,  
CHEROKEE COUNTY

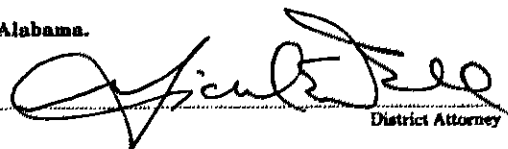
CIRCUIT COURT

APRIL Term 1998

The Grand Jury of said County charges that before the finding of this Indictment

KEITH EDMUND GAVIN, whose name to the Grand Jury is otherwise unknown than as stated, did, with intent to commit the crime of Murder (Section 13A-6-2 of the Code of Alabama), attempt to commit said offense by attempting to shoot Danny Smith, a police officer, with a gun, in violation of Section 13A-4-2 of the Code of Alabama,

contrary to law and against the peace and dignity of the State of Alabama.

  
District Attorney

1 Gavin did intentionally cause the death of another  
2 person, William Clinton Clayton, Jr., by shooting  
3 him with a pistol after having been convicted of a  
4 murder on, to-wit, June 9th, 1982, in the Circuit  
5 Court of Cook County, Illinios, in violation of  
6 Section 13A-5-40(a)(13) of the Code of Alabama,  
7 contrary to law and against the peace and dignity  
8 of the State of Alabama. The second count says  
9 that Mr. Keith Edmund Gavin not only killed Mr.  
10 Clayton, but he did so after having previously  
11 been convicted of a murder back on June the 9th,  
12 1982. Those are the two counts in the capital  
13 indictment, murder during robbery and murder after  
14 having previously been convicted of murder. There  
15 is a second charge lodged against Mr. Gavin as  
16 well and that indictment charges Mr. Gavin with  
17 the intent to commit the crime of murder, he did  
18 attempt to commit said offense by attempting to  
19 shoot Danny Smith, a police officer, with a gun in  
20 violation of Section 13A-4-2 of the Code of  
21 Alabama, contrary to law and against the peace and  
22 dignity of the State of Alabama. Charge number  
23 one, capital murder with two counts, murder during  
24 robbery and murder after having previously been  
25 convicted of murder within 20 years, and the

1' second is an attempted murder on the life of  
2 Investigator Danny Smith.

3 Now, how did we get here? Well, let me start  
4 by telling you this is a tale about two men. One  
5 is a 68-year-old contract driver for Corporate  
6 Express who lived on the outskirts of Birmingham  
7 with his wife of some 37 years, and the other is a  
8 convicted murderer from Chicago. How is it, you  
9 might ask? And we're going to have to tell you  
10 did the paths of these two men cross on March the  
11 6th of 1998 at an intersection in Centre, Alabama,  
12 not more than a few feet on the other side of this  
13 wall. Well, let me back up and begin with Mr.  
14 Clayton. I can't tell you that the State is going  
15 to be able to prove to you how Mr. Clayton's day  
16 started or how Mr. Gavin's day started, but I can  
17 certainly tell you how they ended. I expect the  
18 evidence to show you that in the late hours, by 10  
19 o'clock on Friday, March the 6th, 1998, William  
20 Clinton Clayton lay dead in the morgue at Cherokee  
21 Baptist Medical Center. And I can also tell you  
22 that I expect the evidence to show you that at  
23 somewhere around 10 P.M. that same night Keith  
24 Edmund Gavin laid in the middle of a creek off the  
25 road between the intersection of Highway 68 and 48

# CERTIFICATE OF SERVICE

I CERTIFY THAT ON JUNE 11<sup>th</sup>, 2024 A COPY OF THE ATTACHED WAS MAILED BY FIRST-CLASS MAIL, POSTAGE PREPAID, TO:

CHELOKEE COUNTY COURTHOUSE  
CIRCUIT COURT CLERK  
100 W. MAIN STREET  
CENTRE, ALABAMA 35960

CHELOKEE COUNTY  
DISTRICT ATTORNEY  
100 W. MAIN STREET  
CENTRE, ALABAMA 35960

**FILED**

JUN 17 2024

*Deanna Amos*  
CIRCUIT CLERK, CHELOKEE COUNTY, AL

*Keith Gavin*  
SIGNATURE OF PETITIONER

App. 2

Gavin's Motion for In Forma Pauperis  
Status



AFFIDAVIT

I, KEITH GARVIN, SOLEMNLY SWEAR THAT  
THE FOLLOWING STATEMENTS ARE TRUE AND  
CORRECT TO THE BEST OF MY KNOWLEDGE.

I UNDERSTAND THAT THIS AFFIDAVIT IS  
MADE UNDER OATH AND THAT FALSE STATEMENTS  
CAN RESULT IN PENALTIES FOR PERJURY.

**FILED**

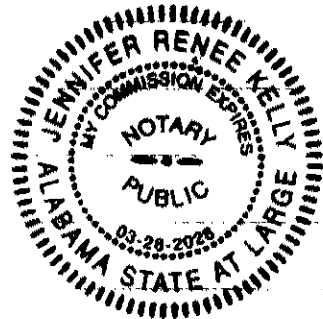
JUN 17 2024

*Deanna Amos*  
CIRCUIT CLERK, CHEROKEE COUNTY, AL

*Keith Garvin*  
PETITIONER SIGNATURE

SWORN AND SUBSCRIBED  
BEFORE ME ON THIS THE 11<sup>th</sup>  
DAY OF June, 2024

*Jennifer R Kelly*  
NOTARY PUBLIC



Case Number

ID YR NUMBER

(To be Completed by Court Clerk)

IN FORMA PAUPERIS DECLARATION

NINTH CIRCUIT COURT CHEROKEE COUNTY  
[Insert appropriate court]

KEITH EDMUND GAVIN  
(Petitioner)

v.  
STATE OF ALABAMA  
(Respondent(s))

DECLARATION IN SUPPORT OF REQUEST TO  
PROCEED IN FORMA PAUPERIS

I, KEITH GAVIN, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed Yes [ ] No []
  - a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.  
\_\_\_\_\_
  - b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.  
\_\_\_\_\_
2. Have you received within the past twelve months any money from any of the following sources?
  - a. Business, profession, or other form of self-employment?  
Yes [ ] No []
  - b. Rent payments, interest, or dividends?  
Yes [ ] No []
  - c. Pensions, annuities, or life insurance payments?  
Yes [ ] No []
  - d. Gifts or inheritances?  
Yes [ ] No []
  - e. Any other sources?  
Yes [] No [ ]

**FILED**

**JUN 17 2024**

*Deanna Amos*  
CIRCUIT CLERK, CHEROKEE COUNTY, AL

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

RELATIVE: \$ 80  
FRIEND: \$ 50  
BROTHER: \$ 85

3. Do you own cash, or do you have money in a checking or savings account?

Yes [ ] No [X]

(Include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes [ ] No [X]

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on JUNE 11<sup>th</sup>, 2024

(date)

*Keith Lavin*

Signature of Petitioner

Certificate

I hereby certify that the petitioner herein has the sum of \$ 28.00 on account to his credit at the Sumner institution where he is confined. I further certify that petitioner likewise has the foregoing securities to his credit according to the records of said Sumner institution:

**FILED**

JUN 17 2024

*Chayne Amos*  
CIRCUIT CLERK, CHEROKEE COUNTY, AL

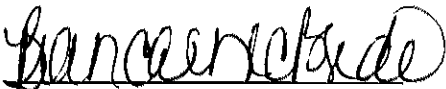
6/11/2024  
DATE

*Dana Chabode*  
AUTHORIZED OFFICER OF INSTITUTION

Alabama Department of Corrections  
Average Inmate Deposit Balances for GAVIN, KEITH EDMUND AIS# 0000Z665

	Average Balance	Gross Deposits
05/31/2024	\$72.54	\$290.00
04/30/2024	\$97.43	\$275.00
03/31/2024	\$76.94	\$325.00
02/29/2024	\$70.40	\$139.00
01/31/2024	\$104.12	\$149.00
12/31/2023	\$139.25	\$335.00
11/30/2023	\$148.26	\$320.00
10/31/2023	\$110.06	\$195.00
09/30/2023	\$93.89	\$320.00
08/31/2023	\$52.08	\$219.00
07/31/2023	\$28.46	\$144.00
06/30/2023	\$27.93	\$100.00
	\$85.11	\$2,811.00

I certify that this is a true and correct copy of inmate Gavin's average balance and gross deposits.

  
Bianca McBride

**FILED**

JUN 17 2024

  
CIRCUIT CLERK, CHEROKEE COUNTY, AL

App. 3

Order denying Pro Se Rule 32 Petition



**IN THE CIRCUIT COURT OF CHEROKEE COUNTY, ALABAMA**

STATE OF ALABAMA

V.

GAVIN KEITH EDMUND #Z-665  
Defendant.

)

)

) Case No.:

)

)

)

CC-1998-61.61-62.61

**ORDER**

The Petitioner, Keith Edmund Gavin, (Pro Se), requests relief from conviction for Capital Murder and sentence of Death pursuant to **Alabama Rule of Criminal Procedure 32**.

On June 17, 2024, Mr. Gavin submitted an In Forma Pauperis Declaration to the Court. In the Motion, Mr. Gavin executed the following declaration:

“I, Keith Gavin, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.”

He stated in his declaration that he is not presently employed. Mr. Gavin is not self-employed and does not own any type of business. He does not pay rent, interest, or dividends. He has no pensions, annuities, or life insurance payments. He has no gifts or inheritance. However, he did state that he has received money from another source that was not listed on the declaration within the last twelve months.

Mr. Gavin listed that he received payment from an unnamed relative in the form of eighty dollars. He received fifty dollars from an unnamed friend and eighty-five dollars from his brother. The amounts listed total two hundred and fifteen dollars. In addition, he stated that he did not own any cash or have any money in a checking/savings account.

Lastly, he stated in the declaration that he does not own real estate, stocks, bonds, notes, automobiles, or other valuable property.

However, the Court received an Average Inmate Deposit Balance Sheet for Keith Gavin. The Inmate Deposit Balance Sheet shows that Mr. Gavin has been receiving at least one hundred and thirty dollars per month for the last twelve months consecutively. His gross deposits total exactly \$2,811.00.

“[A]n inmate who has appreciably more than the amount necessary to pay a filing fee deposited in his inmate account in the 12 months preceding the filing of an [In Forma Pauperis] request is not indigent as that term is defined in Rule 6.3(a), Ala. R. Crim. P. Wyre has \$876.52 deposited to his account in that period-more than twice the amount necessary to pay the filing fee. Thus, he is not indigent.”  
**Cloud v. State**, 234 So. 3d 538 (Ala. Crim. App. 2016) *citing Ex Parte Wyre*, 74

So. 479 (Ala. Crim. App. 2011).

As stated in the quote above, Mr. Gavin has appreciably more than the amount necessary to pay the filing fee.

Based upon the petition, arguments, evidence, and applicable law, it is hereby

**ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

1. That the Petition for Relief from conviction for Capital Murder and sentence of Death filed pursuant to **Alabama Rule of Criminal Procedure 32** is DISMISSED.
2. That due to the dismissal this Court has no jurisdiction to address the other issues raised in the petition.

**Done this 9<sup>th</sup> day of July, 2024.**

**/s/ SHAUNATHAN C. BELL**  
**CIRCUIT JUDGE**

App. 4

Gavin's Pro Se Motion for Stay of Execution, Alabama  
Supreme Court



IN THE SUPREME COURT OF ALABAMA

Keith Edmund Gavin,  
PETITIONER, (PRO SE).

v.

STATE OF ALABAMA,  
RESPONDENT.

CASE NO. CC-98-61

CASE NO. CC-98-62

"MOTION TO STAY OF EXECUTION  
OR  
GRANT INJUNCTION OF EXECUTION"

HERE by comes Keith Edmund Gavin, petitioner, PRO SE by and through this Motion To Stay of EXECUTION OR GRANT INJUNCTION OF EXECUTION to this Honorable SUPREME COURT OF ALABAMA asking that it GRANTS this motion because:

Clearly established 14<sup>th</sup> AMENDMENT United States Constitution which GUARANTEES the petitioner Keith Edmund Gavin the right to "DUE PROC-ESS."



(1.) Keith Edmund Gavin Filed a petition To Dismiss For Lack of Jurisdiction of the indictment due to Territorial Jurisdiction in the Cherokee Circuit Court on June 11<sup>th</sup>, 2024. (SEE ATTACHED)

It also should be noted that a Pro SE, litigants petition, motions, etc..... ARE DECREED FILED ONCE PLACED INSIDE LEGAL OFFICER HAND.

(2.) PETITIONER, KEITH EDMUND GAVIN Filed a Motion to Expedite based upon EXECUTION date of July 18<sup>th</sup>, 2024, on date of July 1<sup>st</sup>, 2024 in the Cherokee Circuit Court. (SEE ATTACHED)

(3.) PETITIONER, KEITH EDMUND GAVIN Filed Motion to Stay EXECUTION to the Cherokee Circuit Court on July 8<sup>th</sup>, 2024. (SEE ATTACHED)

(4.) PETITIONER, KEITH EDMUND GAVIN also Filed this Motion to Stay EXECUTION or Grant Injunction to Stay EXECUTION on this date July 8<sup>th</sup>, 2024.

This Honorable Court, Supreme Court of Alabama must take notice that under the 14<sup>th</sup> AMENDMENT of the United States Constitution that petitioner, Keith Edmund Gavin is GUARANTEED the right to EQUAL PROTECTION CLAUSE OF THE LAW.



THIS HONORABLE COURT, THE SUPREME COURT OF ALABAMA MUST GRANT THE PETITIONER'S MOTION. IT IS THE ONLY WAY TO ENSURE THE PETITIONER, KEITH EDMUND GAVIN'S GUARANTEED RIGHT OF DUE PROCESS OF LAW UNDER THE 14<sup>TH</sup> AMENDMENT OF THE UNITED STATES CONSTITUTION.

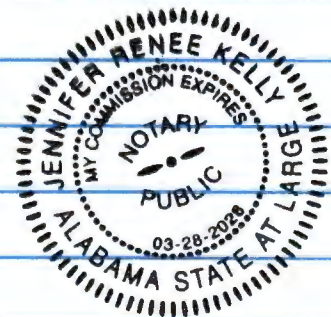
### Grounds For Relief

PETITIONER, KEITH EDMUND GAVIN, PRAY FOR THE SAKE OF LIFE AND LIMB THAT THIS HONORABLE COURT, SUPREME COURT OF ALABAMA GRANT MOTION TO STAY EXECUTION FOR FACTUAL FINDINGS OF PETITIONER'S, PETITION FILED IN THE CHEROKEE CIRCUIT COURT OF ALABAMA.

Keith Gavin  
PETITIONER PRO SE SIGNATURE

SWORN AND SUBSCRIBED  
BEFORE ME ON THIS THE 8<sup>TH</sup>  
day of July, 2024

Jennifer Kelly  
NOTARY PUBLIC



# AFFIDAVIT

I, Keith Edmund Gavin, solemnly swear that the following statements are true and correct to the best of my knowledge.

I understand that this Affidavit is made under oath and that false statements can result in penalties for perjury.

Keith Gavin  
PETITIONER PROSE, SIGNATURE

SWORN AND SUBSCRIBED  
before me on this the 8<sup>th</sup>  
day of July, 2024.

Jennifer R Kelly  
NOTARY PUBLIC





# CERTIFICATE OF SERVICE

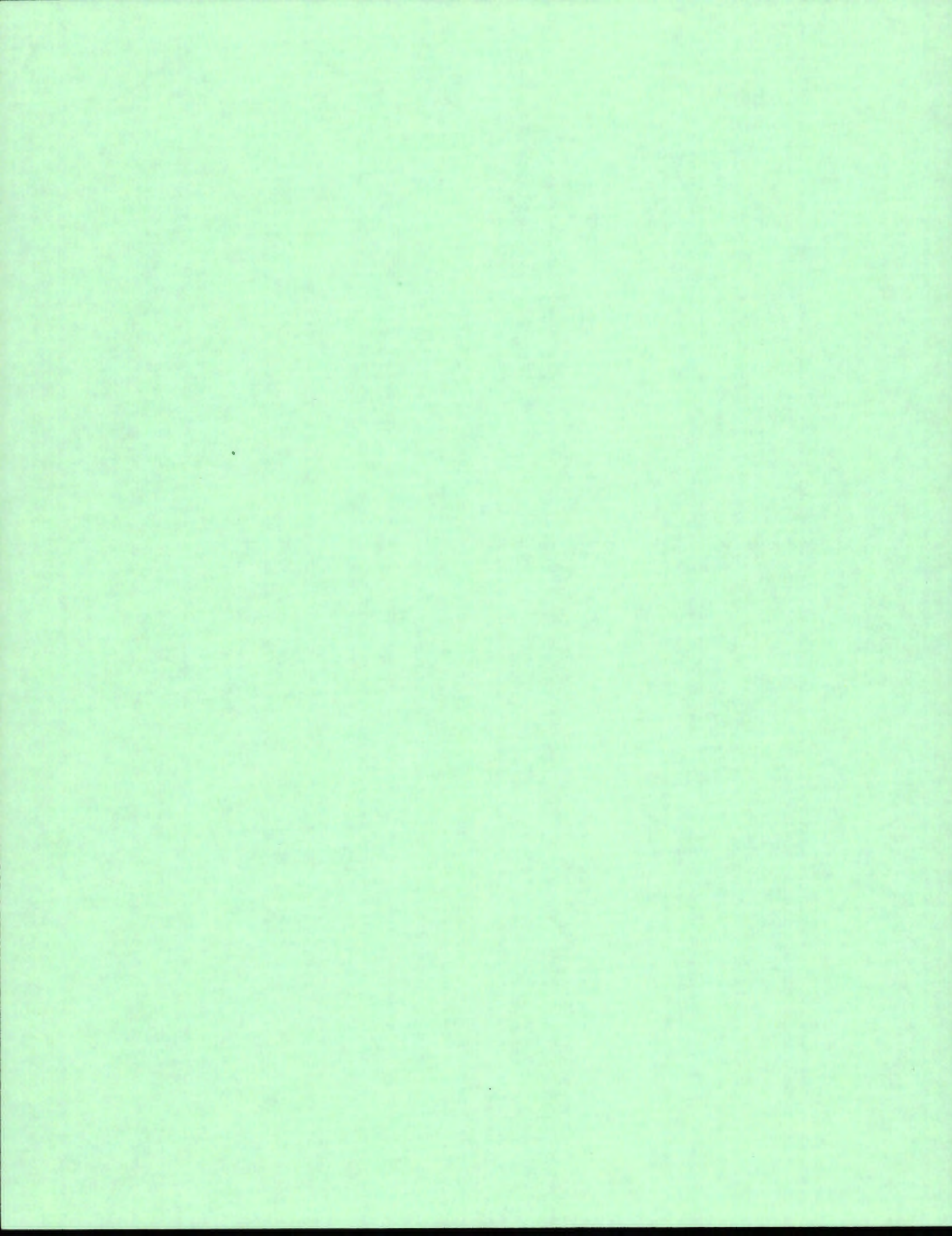
I CERTIFY that on July 8<sup>th</sup>, 2024 a copy of  
the attached was mailed by FIRST-CLASS mail,  
postage prepaid, to:

SUPREME COURT OF ALABAMA  
300 DEXTER AVE.  
MONTGOMERY, ALABAMA 36104

CHEROKEE County Courthouse  
Circuit Court Clerk  
100 W. MAIN STREET  
CENTRE, ALABAMA 35960

CHEROKEE County  
District Attorney  
100 W. MAIN STREET  
CENTRE, ALABAMA 35960

Keith Loni  
SIGNATURE OF PETITIONER



THE NINTH JUDICIAL CIRCUIT CHEROKEE COUNTY,  
ALABAMA

KEITH EDMUND GAVIN

Petitioner, (Prose)

v.

STATE OF ALABAMA

Respondent.

case no. CC-98-61

CC-98-62

Rule 32 Petition



IN THE NINTH JUDICIAL CIRCUI COURT OF ALABAMA  
CHEROKEE COUNTY CIRCUI COURT

KEITH EDMUND GAVIN,  
PETITIONER, (PRO SE)

Vs.

STATE OF ALABAMA,  
RESPONDENT.

CASE NO. CC-98-61

CASE NO. CC-98-62

PETITION FOR RELIEF TO  
DISMISS FOR LACK OF JURISDICTION

COMES NOW THE PETITIONER, KEITH EDMUND GAVIN,  
(PRO SE), AND MOVES THIS HONORABLE COURT TO GRANT  
RELIEF OF CONVICTION AND SENTENCE OF DEATH OF  
PETITIONER, KEITH EDMUND GAVIN FOR LACK OF  
JURISDICTION PURSUANT TO SECTION 13A-5-40(A)(13) OF  
THE CODE OF ALABAMA 1975.

BRIEF HISTORY

MR. GAVIN WAS CONVICTED NOVEMBER 6, 1999 OF  
CAPITAL MURDER OF SECTION 13A-5-40(A)(13).



ALABAMA COURT OF CRIMINAL APPEALS AFFIRMED, SEPTEMBER 26, 2003. ALABAMA SUPREME COURT DENIED WRIT OF CERTIORARI MAY 28, 2004. UNITED STATES SUPREME COURT DENIED WRIT OF CERTIORARI JANUARY 24, 2005. STATE OF ALABAMA SET AN EXECUTION DATE JULY 18, 2024.

NOW COMES THE PETITIONER, KEITH EDMUND GAVIN SO MOVES THIS HONORABLE COURT IN THE INTEREST OF JUSTICE TO GRANT RELIEF FOR LACK OF JURISDICTION

THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION UNDER TERRITORIAL PRINCIPLES OF LAW TO TRY, CONVICT AND SENTENCE TO DEATH MR. GAVIN PURSUANT TO SECTION 13A-5-40(A)(3) OF THE CODE OF ALABAMA 1975.

MR. GAVIN ARGUES THAT THIS THE FIRST TIME PETITIONER HAS RAISED THIS ARGUMENT AND IT IS A JURISDICTIONAL CLAIM WHICH CAN NOT BE SUBJECTED TO THE SUCCESSIVE PETITION BARS IN RULE 32.2.

UNDER THE GENERAL RULE IN ALABAMA A JURISDICTIONAL CLAIM IS NOT SUBJECT TO

SUCCESSIVE PETITION BARS IN RULE 32-2, REGARDLESS OF WHETHER THE CLAIM FALLS UNDER THE FIRST PRONG OF RULE 32.2(B.) — HAVING BEEN RAISED IN A PREVIOUS PETITION, OR THE SECOND PRONG OF RULE 32.2(B.) — NOT HAVING BEEN RAISED IN A PREVIOUS PETITION.

SEE EX PARTE ROBEY, 920 So. 2d 1069, 1071 (ALA. 2004); PATTON V. STATE, 964 So. 2d 1247, 1248 (ALA. CRIM. APP. 2007); ABRAMS V. STATE, 978 So. 2d 794, 796 (ALA. CRIM. APP. 2006);

MR. GAVIN STATES THAT HE IS WELL AWARE OF THE EXCEPTION TO THIS GENERAL RULE UNDER EX PARTE TRAWICK, 972 So. 2d AT 784, THEREFORE HE NOTES THAT HE HAS NEVER RAISED THIS CLAIM IN A PREVIOUS PETITION OR ELSE WHERE, NOR THIS ISSUE BEEN ADJUDICATED ON THE MERITS.

MR. GAVIN CLAIMS THAT UNDER SECTION 13A-5-40(A)(3) OF THE CODE OF ALABAMA 1975 A "CONVICTION FOR ANY OTHER MURDER IN 20 YEARS PRECEDING THE CRIME" BECOMES AN ESSENTIAL ELEMENT OF "MURDER BY A DEFENDANT" THAT MAKES IT A CAPITAL OFFENSE.

SEE SECTION 13A-5-40(A)(13) WHICH READS AS FOLLOWS: "MURDER BY A DEFENDANT WHO HAS BEEN CONVICTED OF ANY OTHER MURDER IN 20 YEARS PRECEDING THE CRIME; PROVIDED THAT THE MURDER WHICH CONSTITUTES THE CAPITAL CRIME SHALL BE MURDER AS DEFINED IN SUBSECTION (B.) OF THIS SECTION; AND PROVIDED FURTHER THAT THE PRIOR MURDER CONVICTION REFERRED TO SHALL INCLUDE MURDER IN ANY DEGREE AS DEFINED AT THE TIME AND PLACE OF THE PRIOR CONVICTION."

MR. GAVIN STATES THAT BECAUSE "HIS PRIOR MURDER CONVICTION," EVEN THOUGH FALLS WITHIN THE 20 YEARS PRECEDING THE MURDER WHICH CONSTITUTES THE CAPITAL CRIME, IT WAS NOT A PRIOR MURDER CONVICTION FROM WITHIN THE TERRITORIAL JURISDICTION OF THE STATE OF ALABAMA. THEREFORE, BECAUSE MR. GAVIN'S PRIOR MURDER CONVICTION WAS FROM ANOTHER JURISDICTION, IT COULD NOT BE USED AS AN ESSENTIAL ELEMENT TO THE MURDER OF THE VICTIM, MR. CLAYTON WHICH MADE IT A CAPITAL OFFENSE IN COUNT TWO OF MR. GAVIN'S INDICTMENT IN VIOLATION OF SECTION 13A-5-40(A)(13) OF THE CODE OF ALABAMA.

MR. GAVIN CLAIMS THAT NEITHER THE COOK COUNTY MURDER OR IT'S CONVICTION OCCURRED IN THE STATE OF ALABAMA JURISDICTION AND CONVERSELY THERE CAN BE NO TERRITORIAL JURISDICTION WHERE CONDUCT AND IT'S RESULTS BOTH OCCURRED OUTSIDE THE STATES TERRITORY. SEE STATE V. SMITH 481 N.W. 2d 315, 318 (MINN 1988)

COMMON LAW HAS ESTABLISHED A TERRITORIAL PRINCIPLE AS THE JURISDICTIONAL FOUNDATION FOR THE REACH OF STATE LAWS. UNDER THAT PRINCIPLE STATES HAVE POWER TO MAKE CONDUCT A CRIME ONLY IF THAT CONDUCT TAKES PLACE, OR IT RESULTS OCCURRE WITH THE STATES TERRITORIAL BORDERS. 4 WAYNE R. LAFAYE ET. AT CRIMINAL PROCEDURE 16.1(A), AT 459 (2d. ED. 1999).

IN THE CASE AT HAND THE STATE OF ALABAMA USED CONDUCT THAT TOOK PLACE AND THE RESULTS OF THAT CONDUCT WHICH OCCURRED IN THE JURISDICTION OF COOK COUNTY, ILLINOIS AND MADE THIS CONDUCT AN ELEMENT OF THE MURDER OF MR. CLAYTONS, TO CREATE A CAPITAL OFFENSE UNDER SECTION 13A-5-40(A)(13) OF THE CODE OF ALABAMA 1975. THEREFORE, THE COURT LACKED SUBJECT MATTER JURISDICTION OF THE OFFENSE IN COUNT TWO OF MR. GAVIN'S INDICTMENT.

SECTION 13A-5-40(A)(13) OF THE CODE OF ALABAMA 1975 IS UNCONSTITUTIONAL AS APPLIED TO MR. GAVIN. IT'S APPLICATION DENIED MR. GAVIN THE RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE UNITED STATE AND THE ALABAMA CONSTITUTION OF 1901, AS IT CONFLICT WITH STATE AND FEDERAL CASE LAW AND THE RULES OF EVIDENCE.

MR. GAVIN ARGUES THAT SECTION 13A-5-40(A)(13) OF THE CODE OF ALABAMA 1975 IS UNCONSTITUTIONAL AS IT WAS APPLIED TO HIM. THEREFORE, MR. GAVIN HAS STANDING TO CHALLENGE IT'S CONSTITUTIONALITY JURISDICTION AS LONG AS HE DEMONSTRATES HOW THE APPLICATION OF THE STATUTE AFFECTED HIM. J. L. N. V. STATE, 894 So. 2d. 738 (ALA. CRIM. APP. 2002), STATING, "A PARTY HAS STANDING TO CHALLENGE THE CONSTITUTIONALITY OF A STATUTE ONLY INsofar AS IT HAS AN ADVERSE IMPACT ON HIS OWN RIGHTS. AS A GENERAL RULE BY COMMON LAW IF THERE IS NO CONSTITUTIONAL DEFECT IN TH APPLICATION OF THE STATUTE TO A LITIGANT, HE DOE NOT HAVE STANDING TO ARGUE THAT IT WOULD BE UNCONSTITUTIONAL IF APPLIED TO THIRD PARTIES IN HYPOTHETICAL SITUATIONS.

MR. GAVIN STATES THAT DURING HIS CAPITAL MURDER TRIAL WHERE THERE WAS A TWO COUNT

INDICTMENT, COUNT ONE ALLEGING THAT MR. GAVIN VIOLATED SECTION 13A-5-40 (SEE COPY OF INDICTMENT AND COUNT TWO ALLEGING A VIOLATION OF SECTION 13A-5-40(A)(13) OF THE CODE OF ALABAMA.

MR. GAVIN CLAIMS THAT THE APPLICATION OF SECTION 13A-5-40(A)(13) TO HIM AT TRIAL DENIED HIM HIS RIGHT TO DUE PROCESS AND A FAIR TRIAL. THE STATE WAS PERMITTED TO USE HIS "PRIOR MURDER CONVICTION AS AN ELEMENT OF THE CAPITAL OFFENSE DURING THE THE GUILT-PHASE OF HIS TRIAL. IN DOING SO MR. GAVIN WAS PREJUDICED, AS RULE 404(B)(1) OF THE FEDERAL RULE OF EVIDENCE AND THE ALABAMA RULES OF EVIDENCE PROHIBITS THE USE OF OTHER CRIMES, WRONGS, OR ACTS.

DURING OPENING STATEMENT DISTRICT ATTORNEY ODELL READ COUNT TWO OF MR. GAVIN'S INDICTMENT TO THE JURY AS FOLLOWS, "KEITH EDMUND GAVIN DID INTENTIONALLY CAUSE THE DEATH OF ANOTHER PERSON, WILLIAM CLINTON CLAYTON, JR., BY SHOOTING HIM WITH A PISTOL AFTER HAVING BEEN CONVICTED OF A MURDER ON, TO WIT, JUNE 9<sup>TH</sup> 1982, IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, IN VIOLATION OF SECTION 13A-5-40(A)(13) OF THE CODE OF ALABAMA, CONTRARY TO LAW AND AGAINST THE PEACE AND DIGNITY OF THE STATE OF ALABAMA."



SHORTLY THEREAFTER, DISTRICT ATTORNEY ODELL REITERATED TO THE JURY IN OPENING STATEMENT THAT "THE SECOND COUNT SAYS THAT MR. KEITH EDMUND GAVIN NOT ONLY KILLED MR. CLAYTON, BUT HE DID SO AFTER HAVING PREVIOUSLY BEEN CONVICTED OF MURDER BACK ON JUNE 9<sup>th</sup> 1982." (TRIAL TRANSCRIPT PAGE 491, 492)

THESE STATEMENTS WERE PREJUDICIAL TO MR. GAVIN AND SHOULD NOT HAVE BEEN HEARD BY THE JURY UNTIL THE SENTENCING-PHASE. MR. GAVIN STATES THAT IN EVERY TRIAL THE INDICTMENT IS READ TO THE JURY BEFORE THE PRESENTATION OF ANY EVIDENCE. IN THIS INSTANCE THE READING OF COUNT TWO AND WHAT SECTION 13A-5-40(A)(3) WAS IN VIOLATION OF DUE PROCESS TO A FAIR TRIAL UNDER THE V, VI AND XIV AMENDMENTS OF THE UNITED STATES CONSTITUTION

ALSO DURING THE GUILT-PHASE OF MR. GAVIN'S TRIAL THE STATE WAS PERMITTED TO INTRODUCE INTO EVIDENCE A CERTIFIED COPY OF A STATEMENT OF CONVICTION INDICATING THAT MR. GAVIN HAD BEEN CONVICTED OF MURDER IN 1982 IN COOK COUNTY ILLINOIS. THE CERTIFIED COPY STATED IN PART, ON MAY 4, 1981, THE ABOVE NAMED DEFENDANT, WHILE REPRESENTED BY COUNSEL, WAS DULY ARRAIGNED

BEFORE THE HONORABLE RICHARD J. FITZGERALD OF THE CIRCUIT COURT OF COOK COUNTY AND ENTERED A PLEA OF NOT GUILTY TO THE OFFENSE. "A JURY WAS IMPANELLED AND THEREAFTER RETURNED AGAINST THE DEFENDANT WHO WAS REPRESENTED BY COUNSEL A VERDICT OF GUILTY OF MURDER ON JUNE 9<sup>TH</sup>, 1982"

MR. GAVIN ARGUES THAT BECAUSE SECTION 13A-5-40(A)(3) MAKES A "PRIOR CONVICTION FOR MURDER IN 20 YEAR PRECEDING" THE MURDER FOR WHICH A DEFENDANT (SUCH AS HIMSELF) IS PRESENTLY ON TRIAL FOR, AN ELEMENT OF THAT OFFENSE IT'S APPLICATION CONFLICTS WITH THE RIGHT TO DUE PROCESS AND A FAIR TRIAL AS THE STATE WAS ALLOWED TO USE EVIDENCE OF HIS PRIOR CONVICTION OF MURDER IN COOK COUNTY, ILLINOIS FOR NOTHING MORE THAN SHOWING HIS PROPENSITY TO COMMIT MURDER TO THE JURY

THEREFORE, SECTION 13A-5-40(A)(3)'S APPLICATION IN THIS INSTANCE ALSO CONFLICTS WITH STATE AND FEDERAL CASE LAW AS. SEE UNITED STATES V. PHILLIPS, 599 F. 2d 134, 136 (C.A.-6, 1979): ALSO EX PARTE CASEY, 889 So. 2d 615-621-22 (ALA. 2004) STATING, "THE STATE HAS NO



ABSOLUTE RIGHT TO USE EVIDENCE OF PRIORITY ACTS TO PROVE THE ELEMENTS OF AN OFFENSE OR TO BUTTRESS INFERENCES CREATED BY OTHER EVIDENCE OF PRIOR BAD ACTS OF A CRIMINAL DEFENDANT IS PRESUMPTIVELY PREJUDICIAL TO THE DEFENDANT. IT INTERJECTS A COLLATERAL ISSUE INTO THE CASE WHICH MAY DIVERT THE MINDS OF THE JURY FROM THE MAIN ISSUE. THEREFORE, "THE ADMISSION OF SUCH EVIDENCE CONSTITUTES REVERSIBLE ERROR."

MR. GAVIN FURTHER NOTES THAT THE ONLY PURPOSE FOR THE STATE'S USE OF SECTION 13A-5-40(A)(13) IS CLEAR AS THE STATE PRESENTED THREE AGGRAVATING CIRCUMSTANCES DURING MR. GAVIN'S SENTENCING-PHASE.

(1) THAT THE MURDER WAS COMMITTED WHILE GAVIN WAS UNDER A SENTENCE OF IMPRISONMENT, SEE SECTION 13A-5-49(1), ALA. CODE 1975;

(2) THAT GAVIN HAD PREVIOUSLY BEEN CONVICTED OF ANOTHER CAPITAL OFFENSE OR A FELONY INVOLVING THE USE OR THREAT OF VIOLENCE TO THE PERSON, SEE SECTION 13A-5-49(2), ALA. CODE 1975;

AND (3) THAT THE MURDER WAS COMMITTED DURING THE COURSE OF A ROBBERY IN THE FIRST DEGREE SEE SECTION 13A-5-49(4), ALA. CODE 1975.

THE STATES USE OF THE SECOND AGGREGATING CIRCUMSTANCE INVOLVES GAVIN'S PREVIOUS CONVICTION FOR MURDER. SO WHAT OTHER REASON TO USE MR. GAVIN PRIOR MURDER CONVICTION DURING THE GUILT-PHASE.....

THE STATE OF ALABAMA KNEW THAT THEY INTENDED TO USE THESE AGGREGATING CIRCUMSTANCES BEFORE MR. GAVIN'S TRIAL. THEREFORE, THE STATES USE OF SECTION 13A-5-40(A)(3) WAS APPLIED ONLY TO DENY MR. GAVIN HIS RIGHT TO A FAIR TRIAL.

MR. GAVIN STATES THAT CRIMINAL DEFENDANTS POSSESS A DUE PROCESS RIGHT TO A FAIR TRIAL THAT SHOULD NOT BE DENIED BY THE ADMISSION OF IMPROPER EVIDENCE. U.S. CONST. AM. V, XIV; ARTICLE 1 SECTION 6, 13, ALA. CONST. 1901. EVIDENCE OF MR. GAVIN'S PRIOR MURDER CONVICTION DURING THE GUILT-PHASE OF TRIAL AS AN ELEMENT OF THE OFFENSE UNDER SECTION 13A-5-40(A)(3) WAS INADMISSIBLE, UNCONSTITUTIONAL

AND REVERSIBLE ERROR. SEE EX PARTE RUTHUR, 472 So. 2d 1615 (SUPREME COURT OF ALA. MAY 10, 1985) DISCUSSING, C. GAMBLE, McELROYS ALABAMA EVIDENCE SECTION 69.01 (3d Ed. 1977), THE GENERAL EXCLUSIONARY RULE IS DISCUSSED AS FOLLOWS, "ON THE TRIAL OF A PERSON FOR THE ALLEGED COMMISSION OF A PARTICULAR CRIME, EVIDENCE OF HIS DOING ANOTHER ACT WHICH ITSELF IS A CRIME, IS NOT ADMISSIBLE IF THE ONLY PROBATIVE FUNCTION OF SUCH EVIDENCE IS TO SHOW HIS BAD CHARACTER, INCLINATION OR PROPENSITY TO COMMIT THE TYPE OF CRIME FOR WHICH HE IS BEING TRIED THIS EXCLUSIONARY RULE WHICH PREVENTS THE INTRODUCTION OF PRIOR CRIMINAL ACTS FOR THE SOLE PURPOSE OF SUGGESTING THAT THE ACCUSED IS MORE LIKELY TO BE GUILTY OF THE CRIME IN QUESTION....."

"THIS EXCLUSIONARY RULE IS SIMPLY AN APPLICATION OF THE CHARACTER RULE WHICH FORBIDS THE STATE TO PROVE THE ACCUSED'S BAD CHARACTER BY PARTICULAR DEEDS. THE FOR THE RULE LIES IN THE BELIEF THAT THE

PREJUDICIAL EFFECT OF PRIOR CRIMES WILL FAR OUTWEIGH ANY PROBATIVE VALUE THAT MIGHT BE GAINED FROM THEM. MOST AGREE THAT SUCH EVIDENCE OF PRIOR CRIMES HAS ALMOST AN IRREVERSIBLE IMPACT UPON THE MINDS OF THE JURORS."

MR. GAVIN STATE THAT BECAUSE OF SECTION 13A-5-40(A)(13)'S APPLICATION IN HIS CAPITAL MURDER TRIAL THE STATE OF ALABAMA WAS ALLOWED TO PRESENT EVIDENCE OF HIS PRIOR BAD ACT OF MURDER FROM JUNE 9<sup>th</sup>, 1982, IN COOK COUNTY, ILLINOIS DENYING HIM DUE PROCESS OF LAW AND A RIGHT TO A FAIR TRIAL UNDER THE V, VI, AND THE XIV AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE 1 SECTION 6, 13 OF THE ALABAMA CONSTITUTION OF 1901 AND THEREFORE SHALL BE DEEMED UNCONSTITUTIONAL AS APPLIED TO MR. GAVIN, AND MR. GAVIN SHALL BE ENTITLED TO A NEW TRIAL THAT'S NOT TAINTED BY THE ADMISSION OF IMPROPER EVIDENCE.

MR. GAVIN ARGUES THAT IF THE RECORD ESTABLISH THAT THE PRIOR CONVICTION OCCURRED OUTSIDE OF THE STATES JURISDICTION THIS BECOMES

A JURISDICTIONAL MATTER THAT CAN BE RAISED AT ANY TIME AS LONG AS THE DEFENDANT REMAINS IN CUSTODY.

## CONCLUSION

MR. GAVIN URGES THIS HONORABLE COURT TO REMAND THIS CASE FOR FACTUAL FINDINGS ON THIS PETITION TO DISMISS FOR LACK OF JURISDICTION.

FURTHERMORE, TO CARRY OUT MR. GAVIN'S DEATH SENTENCE JULY 18, 2024, WOULD BE A GRAVE MISARRIAGE OF JUSTICE. SEE SAWYER V. WHITLICK 505 U.S. 333 (1992).



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CC-98-61

INDICTMENT

The State of Alabama,  
CHEROKEE COUNTY.

CIRCUIT COURT

COUNT ONE:

APRIL Term 1998

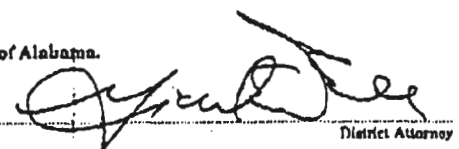
The Grand Jury of said County charges that before the finding of this indictment

KEITH EDMUND GAVIN, whose name to the Grand Jury is otherwise unknown than as stated, did intentionally cause the death of William Clinton Clayton, Junior, by shooting him with a gun, and Keith Edmund Gavin caused said death during the time that Keith Edmund Gavin was in the course of committing a theft of a 1996 Ford van, the property of Corporate Express Delivery Systems, Incorporated, a corporation, by the use of force against the person of William Clinton Clayton, Junior, with intent to overcome his physical resistance or physical power of resistance, while the said Keith Edmund Gavin was armed with a deadly weapon, to-wit: a pistol, in violation of Section 13A-5-40 of the Code of Alabama, in violation of Section 13A-6-2 of the Code of Alabama, contrary to law and against the peace and dignity of the State of Alabama.

COUNT TWO:

The Grand Jury of said County and State further charges that before the finding of this indictment, KEITH EDMUND GAVIN, whose name to the Grand Jury is otherwise unknown than as stated, did intentionally cause the death of another person, William Clinton Clayton, Junior, by shooting him with a pistol, after having been convicted of Murder on, to-wit: June 9, 1982, in the Circuit Court of Cook County, Illinois, in violation of Section 13A-5-40(a)(13) of the Code of Alabama,

contrary to law and against the peace and dignity of the State of Alabama.

  
District Attorney

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**INDICTMENT**

cc-98-62

**The State of Alabama,  
CHEROKEE COUNTY**

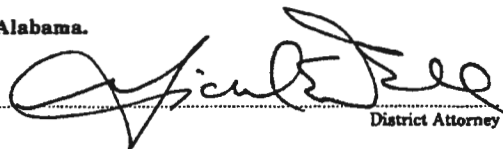
**CIRCUIT COURT**

**APRIL** Term **1998**

The Grand Jury of said County charges that before the finding of this Indictment

**KEITH EDMUND GAVIN, whose name to the Grand Jury is otherwise unknown than as stated, did, with intent to commit the crime of Murder (Section 13A-6-2 of the Code of Alabama), attempt to commit said offense by attempting to shoot Danny Smith, a police officer, with a gun, in violation of Section 13A-4-2 of the Code of Alabama,**

**contrary to law and against the peace and dignity of the State of Alabama.**

  
District Attorney

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Gavin did intentionally cause the death of another person, William Clinton Clayton, Jr., by shooting him with a pistol after having been convicted of a murder on, to-wit, June 9th, 1982, in the Circuit Court of Cook County, Illinios, in violation of Section 13A-5-40(a)(13) of the Code of Alabama, contrary to law and against the peace and dignity of the State of Alabama. The second count says that Mr. Keith Edmund Gavin not only killed Mr. Clayton, but he did so after having previously been convicted of a murder back on June the 9th, 1982. Those are the two counts in the capital indictment, murder during robbery and murder after having previously been convicted of murder. There is a second charge lodged against Mr. Gavin as well and that indictment charges Mr. Gavin with the intent to commit the crime of murder, he did attempt to commit said offense by attempting to shoot Danny Smith, a police officer, with a gun in violation of Section 13A-4-2 of the Code of Alabama, contrary to law and against the peace and dignity of the State of Alabama. Charge number one, capital murder with two counts, murder during robbery and murder after having previously been convicted of murder within 20 years, and the



1 second is an attempted murder on the life of  
2 Investigator Danny Smith.

3 Now, how did we get here? Well, let me start  
4 by telling you this is a tale about two men. One  
5 is a 68-year-old contract driver for Corporate  
6 Express who lived on the outskirts of Birmingham  
7 with his wife of some 37 years, and the other is a  
8 convicted murderer from Chicago. How is it, you  
9 might ask? And we're going to have to tell you  
10 did the paths of these two men cross on March the  
11 6th of 1998 at an intersection in Centre, Alabama,  
12 not more than a few feet on the other side of this  
13 wall. Well, let me back up and begin with Mr.  
14 Clayton. I can't tell you that the State is going  
15 to be able to prove to you how Mr. Clayton's day  
16 started or how Mr. Gavin's day started, but I can  
17 certainly tell you how they ended. I expect the  
18 evidence to show you that in the late hours, by 10  
19 o'clock on Friday, March the 6th, 1998, William  
20 Clinton Clayton lay dead in the morgue at Cherokee  
21 Baptist Medical Center. And I can also tell you  
22 that I expect the evidence to show you that at  
23 somewhere around 10 P.M. that same night Keith  
24 Edmund Gavin laid in the middle of a creek off the  
25 road between the intersection of Highway 68 and 48

AFFIDAVIT

I, KEITH CARVIN, SOLEMNLY SWEAR THAT THE FOLLOWING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

I UNDERSTAND THAT THIS AFFIDAVIT IS MADE UNDER OATH AND THAT FALSE STATEMENTS CAN RESULT IN PENALTIES FOR PERJURY.

Keith Carvin  
PETITIONER SIGNATURE

SWORN AND SUBSCRIBED BEFORE ME ON THIS THE 11<sup>th</sup> DAY OF June, 2020.

Jennifer R Kelly  
NOTARY PUBLIC



# CERTIFICATE OF SERVICE

I CERTIFY THAT ON JUNE 11<sup>th</sup>, 2024 A COPY OF THE ATTACHED WAS MAILED BY FIRST-CLASS MAIL, POSTAGE PREPAID, TO:

CHEROKEE COUNTY COURTHOUSE  
CIRCUIT COURT CLERK  
100 W. MAIN STREET  
CENTRE, ALABAMA 35960

CHEROKEE COUNTY  
DISTRICT ATTORNEY  
100 W. MAIN STREET  
CENTRE, ALABAMA 35960

Keith Gavim  
SIGNATURE OF PETITIONER



IN THE NINTH JUDICIAL CIRCUIT COURT OF  
ALABAMA CHEROKEE COUNTY CIRCUIT COURT

KEITH EDMUND GAVIN, C

PETITIONER, (PRO SE). C

C CASE NO. CC-98-61

vs.

C CASE NO. CC-98-62

STATE OF ALABAMA, C

RESPONDENT. C

"MOTION TO EXPEDITE PROCEEDINGS"

COMES NOW the petitioner, pro se, KEITH EDMUND GAVIN,  
ASKING this HONORABLE COURT to EXPEDITE the petitioner's  
petition to DISMISS FOR LACK OF JURISDICTION claim Filed  
JUNE 11<sup>th</sup>, 2024.

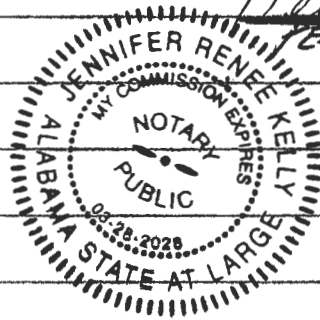
WHEREFORE, the petitioner respectfully requests that  
this COURT GRANT the motion EXPEDITIOUSLY due to the  
petitioner HAS AN EXECUTION date set July 18<sup>th</sup>, 2024.

SWORN AND SUBSCRIBED

BEFORE ME ON this the 1<sup>st</sup>

day of July, 2024.

Jennifer R Kelly  
NOTARY PUBLIC



Keith Gavin  
PETITIONER PRO SE SIGNATURE

# AFFIDAVIT

I, KEITH GAVIN, SOLEMNLY SWEAR THAT THE  
FOLLOWING STATEMENTS ARE TRUE AND CORRECT TO THE  
BEST OF MY KNOWLEDGE.

I UNDERSTAND THAT THIS AFFIDAVIT IS MADE  
UNDER OATH AND THAT FALSE STATEMENTS CAN RESULT  
IN PENALTIES FOR PERJURY.

Keith Gavin  
PETITIONER PRO SE, SIGNATURE

SWORN AND SUBSCRIBED  
BEFORE ME ON THIS THE 1<sup>st</sup>  
DAY OF July, 2024.

Jennifer R. Kelly  
NOTARY PUBLIC



## CERTIFICATE OF SERVICE

I CERTIFY THAT ON July 1<sup>st</sup>, 2024 A COPY OF THE ATTACHED WAS MAILED BY FIRST-CLASS MAIL, POSTAGE PREPAID, to:

CHEROKEE County Courthouse  
Circuit Court Clerk  
100 W. MAIN STREET  
CENTRE, ALABAMA 35960

CHEROKEE County  
District Attorney  
100 W. MAIN STREET  
CENTRE, ALABAMA 35960

Keith Gavin  
SIGNATURE OF PETITIONER



IN THE NINTH JUDICIAL CIRCUIT COURT OF  
ALABAMA CHEROKEE COUNTY CIRCUIT COURT

KEITH EDMUND GAVIN,  
PETITIONER, (PRO SE).

vs.

STATE OF ALABAMA,  
RESPONDENT.

CASE No. CC-98-61

CASE No. CC-98-62

"MOTION FOR STAY OF EXECUTION"

COMES NOW the PETITIONER, PRO SE, Keith Edmund Gavin,  
ASK this Honorable Court to GRANT A STAY OF EXECUTION  
ON MR. GAVIN'S petition FOR RELIEF TO DISMISS  
FOR LACK OF JURISDICTION claim Filed JUNE 11<sup>TH</sup>,  
2024.



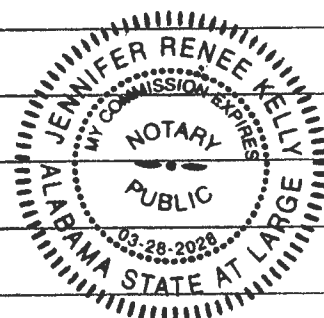
PETITIONER ARGUE THAT HE HAS A VALID CLAIM AND THAT IRREPARABLE INJUSTICE OF LIFE OR LIMB UNDER DUE PROCESS OF LAW WOULD OCCUR IF THIS COURT DOESN'T GRANT THE INJUNCTION FOR STAY OF EXECUTION SET FOR JULY 18<sup>TH</sup>, 2024.

MR. GAVIN PRAY THAT THIS HONORABLE COURT GRANT A STAY OF EXECUTION FOR FACTUAL FINDINGS ON THE SAID PETITION, AND GRANT SUCH OTHER RELIEF AS THIS COURT FINDS PROPER AND JUST.

*Kurt Gavin*  
PETITIONER PRO SE SIGNATURE

SWORN AND SUBSCRIBED

BEFORE ME ON July OF THIS  
DATE 8<sup>TH</sup>, AND YEAR 2024.



*Jennifer R Kelly*  
NOTARY PUBLIC

# AFFIDAVIT

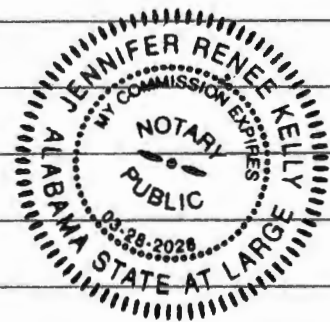
I, Keith Gavin, solemnly swear that the following statements in the attached motion are true and correct to the best of my knowledge.

I understand that this Affidavit is made under oath and that false statements can result in penalties for perjury.

Keith Gavin  
PETITIONER PRO, SE SIGNATURE

SWORN AND SUBSCRIBED  
BEFORE ME ON this the 8<sup>th</sup>  
day of July, 2024.

Jennifer R Kelly  
NOTARY PUBLIC



## CERTIFICATE OF SERVICE

I CERTIFY that on July 8<sup>th</sup>, 2024 a copy of the attached was mailed by First-class mail, postage prepaid, to:

CHEROKEE County Courthouse  
Circuit Court Clerk  
100 W. MAIN STREET  
CENTRE, ALABAMA 35960

CHEROKEE County  
District Attorney  
100 W. MAIN STREET  
CENTRE, ALABAMA 35960

Keith Lavin  
SIGNATURE OF PETITIONER

App. 5

State of Alabama's Response to Motion for Stay of Execution

**IN THE SUPREME COURT OF ALABAMA**

EX PARTE: KEITH GAVIN	)	
	)	
KEITH GAVIN,	)	
	)	
Petitioner,	)	
	)	<b>No. 1030368</b>
v.	)	
	)	
STATE OF ALABAMA,	)	
	)	
Respondent.	)	

**STATE OF ALABAMA’S RESPONSE TO GAVIN’S  
PRO SE MOTION FOR STAY OF EXECUTION**

On July 8, 2024, less than a week before his scheduled execution, Gavin filed a pro se motion with this Court to stay or enjoin his execution so that the Circuit Court of Cherokee County has an opportunity to make factual findings concerning his successive Rule 32 petition,<sup>1</sup> which was filed on June 17, 2024.

Gavin is not entitled to a stay of execution. The circuit court dismissed his successive petition on July 10 because Gavin failed to pay the filing fee and was not entitled to proceed in form pauperis. (Ex. A.) The circuit court also properly found that it had no jurisdiction to address

---

<sup>1</sup> Gavin did not serve the Respondent with the successive Rule 32 petition. Respondent only learned through Gavin’s attorneys on July 10 that Gavin had filed a successive Rule 32 petition.

the other issues in the successive petition. (*Id.*) In so holding, the circuit court noted that Gavin had received at least \$130 for the last twelve months and that his gross deposits for that time totaled exactly \$2,811.00. (*Id.* at 2; Ex. B.) Quoting the Court of Criminal Appeals’ decision in *Cloud v. State*, 234 So. 3d 538 (Ala. Crim. App. 2016) (quoting *Ex parte Wyre*, 74 So. 3d 479, 482 (2011)), the circuit court stated:

“[A]n inmate who has appreciably more than the amount necessary to pay a filing fee deposited in his inmate account in the 12 months preceding the filing of [In Forma Pauperis] request is not indigent as that term is defined in Rule 6.3(a), Ala. R. Crim. P. Wyre has \$876.52 deposited to his account in that period—more than twice the amount necessary to pay the filing fee. Thus, he is not indigent.”

(Ex. A at 2.) The circuit court then found that Mr. Gavin has “appreciably more than the amount necessary to pay the filing fee.” Based on these facts, the circuit court dismissed the successive petition and found it had no jurisdiction to address the other issues raised therein. (*Id.*)

The circuit court properly dismissed Gavin’s successive Rule 32 petition, as Gavin is not indigent as that term is defined in Rule 6.3(a) of the Alabama Rules of Criminal Procedure. It also properly found, based on this fact, that it lacked jurisdiction to address his claims. “Absent the payment of a filing fee required by § 12-19-70, Ala. Code 1975, or the granting of a request to proceed in forma pauperis, the trial court fails to

obtain subject matter jurisdiction to consider a postconviction petition.” *Smith v. State*, 840 So. 2d 943, 945 (Ala. Crim. App. 2002) (internal citations and quotation omitted). Where these conditions are not present, a circuit court’s dismissal of a Rule 32 petition is “void because that court did not have jurisdiction to entertain the petition.” *Madden v. State*, 885 So. 2d 841, 844 (Ala. Crim. App. 2003).<sup>2</sup>

Because the circuit court properly dismissed Gavin’s successive Rule 32 petition and found it was without jurisdiction to address the issues raised therein, Gavin is not entitled to a stay of execution to give the circuit court time to make factual findings concerning his Rule 32 claims. Therefore, Gavin’s motion for stay of execution should be denied.

Respectfully submitted,

Steve Marshall  
*Attorney General*

**/s Beth Jackson Hughes**  
**Beth Jackson Hughes**  
*Assistant Attorney General*  
Counsel of Record \*

---

<sup>2</sup> As of the time of filing this response, Gavin had not attempted to appeal the denial of his successive Rule 32 petition, nor could he, because “[a] void judgment will not support an appeal.” *Madden*, 885 So. 2d at 844.

## CERTIFICATE OF COMPLIANCE

I certify that this reply complies with the word limitation set forth in ALA. R. APP. P. 27. This motion contains 575 words, including all headings, footnotes, and quotations, and excluding the parts of the motion exempted under ALA. R. APP. P. 32(c).

I further certify that this motion complies with the font requirements set forth in ALA. R. APP. P. 32(a)(7). This motion was prepared in 14-point Century Schoolbook font.

**/s Beth Jackson Hughes**

**Beth Jackson Hughes**

*Assistant Attorney General*



## CERTIFICATE OF SERVICE

I hereby certify that on this, the 15th day of July 2024, I served a copy of the foregoing on Keith Gavin by hand delivery and by mail, addressed as follows:

Keith Gavin  
AIS # Z665  
1240 Ross Road  
Atmore, Alabama 36502

**/s Beth Jackson Hughes**  
**Beth Jackson Hughes**  
*Assistant Attorney General*  
Counsel of Record \*  
State of Alabama  
Office of the Attorney General  
501 Washington Avenue  
Montgomery, Alabama 36130-0152  
Telephone: (334) 242-7300  
Email: Beth.Hughes@AlabamaAG.gov

# Exhibit A

ELECTRONICALLY FILED  
7/10/2024 12:01 PM  
13-CC-1998-000061.61  
CIRCUIT COURT OF  
CHEROKEE COUNTY, ALABAMA  
DWAYNE AMOS, CLERK

**IN THE CIRCUIT COURT OF CHEROKEE COUNTY, ALABAMA**

STATE OF ALABAMA

V.

GAVIN KEITH EDMUND #Z-665  
Defendant.

)  
)  
)  
)  
)  
)

Case No.: CC-1998-61.61-62.61

**ORDER**

The Petitioner, Keith Edmund Gavin, (Pro Se), requests relief from conviction for Capital Murder and sentence of Death pursuant to **Alabama Rule of Criminal Procedure 32**.

On June 17, 2024, Mr. Gavin submitted an In Forma Pauperis Declaration to the Court. In the Motion, Mr. Gavin executed the following declaration:

“I, Keith Gavin, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.”

He stated in his declaration that he is not presently employed. Mr. Gavin is not self-employed and does not own any type of business. He does not pay rent, interest, or dividends. He has no pensions, annuities, or life insurance payments. He has no gifts or inheritance. However, he did state that he has received money from another source that was not listed on the declaration within the last twelve months.

Mr. Gavin listed that he received payment from an unnamed relative in the form of eighty dollars. He received fifty dollars from an unnamed friend and eighty-five dollars from his brother. The amounts listed total two hundred and fifteen dollars. In addition, he stated that he did not own any cash or have any money in a checking/savings account.

Lastly, he stated in the declaration that he does not own real estate, stocks, bonds, notes, automobiles, or other valuable property.

However, the Court received an Average Inmate Deposit Balance Sheet for Keith Gavin. The Inmate Deposit Balance Sheet shows that Mr. Gavin has been receiving at least one hundred and thirty dollars per month for the last twelve months consecutively. His gross deposits total exactly \$2,811.00.

“[A]n inmate who has appreciably more than the amount necessary to pay a filing fee deposited in his inmate account in the 12 months preceding the filing of an [In Forma Pauperis] request is not indigent as that term is defined in Rule 6.3(a), Ala. R. Crim. P. Wyre has \$876.52 deposited to his account in that period-more than twice the amount necessary to pay the filing fee. Thus, he is not indigent.” **Cloud v. State**, 234 So. 3d 538 (Ala. Crim. App. 2016) *citing Ex Parte Wyre*, 74 So. 479 (Ala. Crim. App. 2011).

As stated in the quote above, Mr. Gavin has appreciably more than the amount necessary to pay the filing fee.

Based upon the petition, arguments, evidence, and applicable law, it is hereby

**ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

1. That the Petition for Relief from conviction for Capital Murder and sentence of Death filed pursuant to **Alabama Rule of Criminal Procedure 32** is **DISMISSED**.
2. That due to the dismissal this Court has no jurisdiction to address the other issues raised in the petition.

**Done this 9<sup>th</sup> day of July, 2024.**

**/s/ SHAUNATHAN C. BELL**  
**CIRCUIT JUDGE**

# Exhibit B



AFFIDAVIT

I, KEITH GARVIN, SOLEMNLY SWEAR THAT  
THE FOLLOWING STATEMENTS ARE TRUE AND  
CORRECT TO THE BEST OF MY KNOWLEDGE.

I UNDERSTAND THAT THIS AFFIDAVIT IS  
MADE UNDER OATH AND THAT FALSE STATEMENTS  
CAN RESULT IN PENALTIES FOR PERJURY.

**FILED**

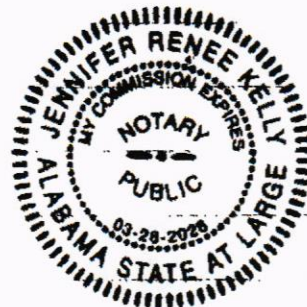
JUN 17 2024

*Cheryle Prince*  
CIRCUIT CLERK, CHEROKEE COUNTY, AL

*Keith Garvin*  
PETITIONER SIGNATURE

SWORN AND SUBSCRIBED  
BEFORE ME ON THIS THE 11<sup>th</sup>  
day of June, 2024.

*Jennifer R Kelly*  
NOTARY PUBLIC



Case Number

ID YR NUMBER

(To be Completed by Court Clerk)

IN FORMA PAUPERIS DECLARATION

NINTH CIRCUIT COURT CHEROKEE COUNTY  
[Insert appropriate court]

KEITH EDWARD GAVIN  
(Petitioner)

v.  
STATE OF ALABAMA  
(Respondent(s))

DECLARATION IN SUPPORT OF REQUEST TO  
PROCEED IN FORMA PAUPERIS

I, KEITH GAVIN, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed Yes [ ] No []
  - a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.  
\_\_\_\_\_
  - b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.  
\_\_\_\_\_
2. Have you received within the past twelve months any money from any of the following sources?
  - a. Business, profession, or other form of self-employment?  
Yes [ ] No []
  - b. Rent payments, interest, or dividends?  
Yes [ ] No []
  - c. Pensions, annuities, or life insurance payments?  
Yes [ ] No []
  - d. Gifts or inheritances?  
Yes [ ] No []
  - e. Any other sources?  
Yes [] No [ ]

**FILED**

JUN 17 2024

*Oliver Amos*  
CIRCUIT CLERK, CHEROKEE COUNTY, AL



If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

RELATIVE: \$ 80  
FRIEND: \$ 50  
BROTHER: \$ 85

3. Do you own cash, or do you have money in a checking or savings account?

Yes [ ] No [x]

(Include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes [ ] No [x]

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on JUNE 11<sup>th</sup>, 2024 (date)

*Kurt Lavin*

Signature of Petitioner

Certificate

I hereby certify that the petitioner herein has the sum of \$ 28.00 on account to his credit at the Sumner institution where he is confined. I further certify that petitioner likewise has the foregoing securities to his credit according to the records of said Sumner institution:

**FILED**

JUN 17 2024

*Debrae Cross*  
CIRCUIT CLERK, CHEROKEE COUNTY, AL

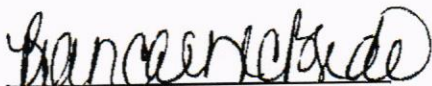
6/11/2024  
DATE

*Diana McBride*  
AUTHORIZED OFFICER OF INSTITUTION

Alabama Department of Corrections  
Average Inmate Deposit Balances for GAVIN, KEITH EDMUND AIS# 0000Z665

	Average Balance	Gross Deposits
05/31/2024	\$72.54	\$290.00
04/30/2024	\$97.43	\$275.00
03/31/2024	\$76.94	\$325.00
02/29/2024	\$70.40	\$139.00
01/31/2024	\$104.12	\$149.00
12/31/2023	\$139.25	\$335.00
11/30/2023	\$148.26	\$320.00
10/31/2023	\$110.06	\$195.00
09/30/2023	\$93.89	\$320.00
08/31/2023	\$52.08	\$219.00
07/31/2023	\$28.46	\$144.00
06/30/2023	\$27.93	\$100.00
	\$85.11	\$2,811.00

I certify that this is a true and correct copy of inmate Gavin's average balance and gross deposits.



Bianca McBride

**FILED**

JUN 17 2024

*Cheryl Arnes*  
CIRCUIT CLERK, CHEROKEE COUNTY, AL

App. 6

Order denying Motion for Stay of Execution in the Alabama  
Supreme Court



# IN THE SUPREME COURT OF ALABAMA

July 16, 2024

1030368

Ex parte Keith Edmund Gavin PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Keith Edmund Gavin v. State of Alabama) (Cherokee Circuit Court: CC-98-61 and CC-98-62; Criminal Appeals: CR-99-1127).

## ORDER

The “Motion to Stay of Execution or Grant Injunction of Execution” filed by Keith Edmund Gavin on July 8, 2024; and

The “State of Alabama’s Response to Gavin’s Pro Se Motion for Stay of Execution” filed on July 15, 2024, having been submitted to this Court,

IT IS ORDERED that the Motion is DENIED.

**Parker, C.J., and Wise, Bryan, Sellers, Mendheim, Stewart, Mitchell, and Cook, JJ., concur.**

Witness my hand and seal this 16th day of July, 2024.

*Megan B. Rhodelseck*

**Clerk of Court,  
Supreme Court of Alabama**

**FILED  
July 16, 2024**

**Clerk of Court  
Supreme Court of Alabama**