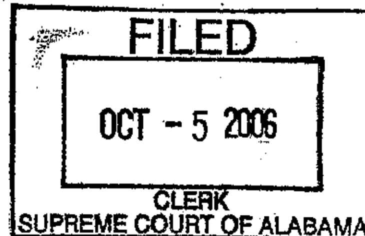
No. 1051315

IN THE SUPREME COURT OF ALABAMA

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| JARROD TAYLOR,<br><br>Petitioner/Appellant,<br><br>v.<br><br>STATE OF ALABAMA,<br><br>Respondent/Appellee. | On Writ of Certiorari to the Court of Criminal Appeals<br>Case No. CR-05-0066<br><br>On Appeal from<br>Mobile County Circuit Court<br>Case No. CC-98-1328.60 |

# AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER JARROD TAYLOR BY THE EQUAL JUSTICE INITIATIVE OF ALABAMA

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## STATEMENT REGARDING ORAL ARGUMENT

Amicus curiae Equal Justice Initiative of Alabama incorporates the Statement Regarding Oral Argument in petitioner/appellant Jarrod Taylor's brief to this Court.

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## STATEMENT OF THE CASE

Jarrod Taylor is a death row inmate who is challenging the constitutionality of his conviction and death sentence under Rule 32 of the Alabama Rules of Criminal Procedure. After Mr. Taylor's case was affirmed on direct appeal, the State of Alabama did not provide counsel to Mr. Taylor and the statute of limitations had begun to run. Consequently, the Equal Justice Initiative of Alabama ("EJI")[1] recruited attorneys from the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP to provide *pro bono* legal assistance to Mr. Taylor in state postconviction proceedings.

On July 31, 2002, Mr. Taylor filed a petition for postconviction relief pursuant to Rule 32 in the Mobile County Circuit Court. On August 1, 2005, the circuit court signed an order summarily dismissing Mr. Taylor's Rule 32 petition. On September 9, 2005, Mr. Taylor filed a timely notice of appeal.

On January 5, 2006, *after* the time for filing a notice of appeal had expired, the State moved to dismiss Mr. Taylor's appeal based only on a question it raised about whether the

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[1]EJI is a small, non-profit organization that attempts to provide legal assistance to death row prisoners in Alabama. It receives no funding from the State of Alabama and relies entirely on private funding for support.

*pro bono* lawyer who signed Mr. Taylor's notice of appeal had complied with administrative technicalities involving his *pro hac vice* application.

On May 10, 2006, the Court of Criminal Appeals summarily dismissed Mr. Taylor's Rule 32 appeal. In doing so, the court adopted the "findings" of the circuit court (without acknowledging that the circuit court merely signed an order prepared by the Attorney General's Office).

On June 14, 2006, Mr. Taylor filed a petition for writ of certiorari with this Court. On June 16, 2006, EJI sought leave to file a brief as amicus curiae. On September 21, 2006, this Court granted certiorari. This Court granted EJI leave to file a brief as amicus curiae.

**STATEMENT OF THE ISSUES**

The Court of Criminal Appeals' dismissal of Mr. Taylor's appeal is due to be reversed for a number of reasons. First, because a notice of appeal is valid even if it does not contain *any* signature, Mr. Taylor's appeal should not have been dismissed regardless of the *pro hac vice* status of the volunteer counsel who signed it. Second, the record in this case shows that the volunteer counsel *was*, in fact, admitted to practice *pro hac vice* in this case and another lawyer, who

*is* a member of the Alabama bar, also was listed as counsel for Mr. Taylor on the notice of appeal.

Finally, dismissal is improper because the forfeiture of all of a death row inmate's rights is not an appropriate remedy for the alleged failure to comply with *pro hac vice* application rules.

## STATEMENT OF THE FACTS

Amicus adopts the Statement of the Facts from the petitioner/appellant's brief.

## STATEMENT OF THE STANDARD OF REVIEW

Questions of law require independent reassessment by this Court. See Ex parte Liberty Nat'l Life Ins. Co., 797 So. 2d 457, 461 (Ala. 2001) ("On certiorari review, this Court accords no presumption of correctness to the legal conclusions of the intermediate appellate court. Therefore, we must apply *de novo* the standard of review"). Mixed questions of fact and law are reviewable *de novo*. See Ornelas v. United States, 517 U.S. 690, 697 (1996). Findings of fact are reviewable for clear error. See Odom v. Hull, 658 So. 2d 442 (Ala. 1995).

## SUMMARY OF THE ARGUMENT

This Court should reverse the Court of Criminal Appeals' summary dismissal of Jarrod Taylor's Rule 32 appeal because

his notice of appeal was valid as a matter of law. This Court also should find that Mr. Taylor's volunteer counsel reasonably complied with the *pro hac vice* admission rules and was, in fact, admitted to practice *pro hac vice* by the circuit court. Lastly, this Court should reject the notion that a death row inmate's rights can be forfeited *in toto* merely because his *pro bono* counsel allegedly failed to comply with the administrative technicalities of the *pro hac vice* application rules, particularly where death row inmates are forced to rely on out-of-state volunteer counsel because the State of Alabama does not provide counsel or other assistance for investigation and filing of Rule 32 petitions.

## ARGUMENT

### I. ALABAMA DEATH ROW PRISONERS ARE FORCED TO RELY ON VOLUNTEER OUT-OF-STATE COUNSEL BECAUSE ALABAMA FAILS UTTERLY TO PROVIDE LEGAL ASSISTANCE FOR POSTCONVICTION INVESTIGATION AND FILING.

There are currently 193 people under death sentences in Alabama. Alabama Dept of Corrs., Alabama Inmates Currently on Death Row, at http://www.doc.state.al.us/deathrow.asp (Sept. 22, 2006). Since 1990, Alabama's death row has doubled; Alabama now has the largest death row per capita in the United States and the seventh largest in raw numbers. See Jay Reeves, Per Capita, Alabama's Death Row Tops South, Huntsville

Times, July 6, 1999, at A1.

Despite the high number of death sentences, the State has implemented no policies or initiatives to manage the growing number of death penalty cases. It does not provide paralegal aid or other assistance to condemned inmates to investigate extra-record factual information relating to their cases, or to help them draft pleadings; it does not have a public defender system, a capital resource center, or any other state-funded agency that tracks the progress of condemned inmates's cases and advises them of filing requirements and deadlines; and it does not recruit volunteer counsel for condemned inmates or provide funding to private organizations that do.

Alabama is the only state in the country with a significant death row population that does not provide counsel or legal assistance to death row prisoners once their convictions and sentences have been upheld on direct appeal.[2]

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[2]For example, the Georgia Resource Center receives hundreds of thousands of dollars to assist a death row population that is about half the size of Alabama's. See Bill Rankin, Death Row Defense Vies for Own Survival, Atlanta Journal-Constitution, May 1, 2003, at JN1 (Georgia Resource Center received nearly $800,000 from state legislature in 2002-2003). In Florida, the Office of the Capital Collateral Representative received $9.4 million in its 2005-2006 legislative appropriation. See Justice Administrative Commission Capital Collateral Regional Counsels (Death Penalty

In addition to declining to provide any assistance to death row prisoners in filing appeals, the State caps compensation for lawyers who are appointed to handle Rule 32 cases at $1000. <u>See</u> Ala. Code § 15-12-23 (1999). While a circuit court is permitted to appoint counsel for an indigent petitioner, this may only occur *after* a Rule 32 petition has been filed and the court has made the determination that "counsel is necessary to assert or protect the rights of the petitioner." Ala. R. Crim. P. 32.7(c).

As a result of the State's failure to provide any assistance to death row inmates, EJI has had no choice but to attempt to recruit and assist *pro bono* lawyers to help respond to the crisis in representation that surrounds death penalty postconviction appeals in Alabama. Because of the great number of cases, much of the *pro bono* assistance has had to come from out of state.

## II. THIS COURT SHOULD REVERSE BECAUSE MR. TAYLOR'S NOTICE OF APPEAL WAS UNQUESTIONABLY VALID.

### A. The Law Does Not Require a Lawyer to Sign a Notice of Appeal.

A notice of appeal is valid even if it does not contain *any* signature. The United States Supreme Court, this Court, and the Court of Criminal Appeals all have held explicitly

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Appeals), at http://www.oppaga.state.fl.us/profiles/1025/.

that a notice of appeal is valid even is it is filed without a signature. See, e.g., Becker v. Montgomery, 532 U.S. 757, 766 (2001) (notice of appeal signature not required); Ex parte Barrows, 892 So. 2d 914, 917 (Ala. 2004)(absence of original signature not defect in notice of appeal); McLin v. State, 840 So. 2d 937, 941-42 (Ala. Crim. App. 2002) (no requirement that appellant or counsel sign notice of appeal). Mr. Taylor's appeal should not have been dismissed regardless of the *pro hac vice* status of the volunteer counsel who signed it.

### B. The State's Punitive Enforcement of the *Pro Hac Vice* Requirements Against Mr. Taylor's Counsel Is Especially Egregious Because the Record Shows That Counsel *Was* Admitted.

Mr. Taylor's volunteer counsel reasonably complied with the extremely burdensome and gratuitously complicated *pro hac vice* admission requirements. Out-of-state volunteer counsel associated local counsel, who submitted an application for *pro hac vice* admission on their behalf. On September 9, 2002, the docket sheet shows that the circuit court granted the *pro hac vice* application. The circuit judge assured volunteer counsel on the record that their *pro hac vice* status was proper. Reporter's Official Transcript, CC-98-1328, at 72-73 (Mobile Co. Cir. Ct. Feb. 23, 2003). The State never asserted in the circuit court any question about counsel's *pro hac vice* status.

Notwithstanding these facts, the State waited until nearly four months after Mr. Taylor's notice of appeal was filed to move for dismissal of his entire appeal, alleging that the out-of-state lawyer who signed the notice of appeal had not been admitted *pro hac vice*. As discussed above, there is no legal basis for the State's motion to dismiss Mr. Taylor's appeal because a notice of appeal is valid without any signature at all and therefore cannot be invalidated even if signed by a lawyer not admitted to the Alabama bar. Moreover, the State should not benefit from untimely objections relating to *pro hac vice* status. If the State had objections to *pro hac vice* status, it was obligated to object when this issue was addressed in the circuit court and counsel could have responded to any concerns raised by the State.

This Court should not sanction the State's inconsistent, untimely, and punitive invocation of the *pro hac vice* requirements against lawyers assisting death row prisoners who have reasonably complied with the rules. The State's conduct is solely intended to frustrate and eliminate the ability of death row prisoners to obtain review of their convictions and death sentences.

**III ALABAMA'S *PRO HAC VICE* ADMISSION RULES ARE BURDENSOME AND NONCOMPLIANCE WITH THEM SHOULD NOT BE A BASIS FOR TERMINATING DEATH ROW PRISONERS' RIGHTS TO POSTCONVICTION REVIEW.**

Alabama's *pro hac vice* admission rules are unreasonably and needlessly complex. Out-of-state attorneys must associate local counsel willing to comply with Alabama's "full participation" rule, which requires local counsel to personally appear in all proceedings unless specifically excused by the court and accept responsibility for all matters arising from the particular case. Alabama is alone among her sister states in requiring a hearing on the *pro hac vice* application and requiring the application itself to state the hearing date. Rule VII of the Rules Governing Admission to the Alabama State Bar, available at http://www.alabar.org/members/rule7.cfm (last visited Oct. 4, 2006). The requirement that the application state a hearing date is particularly onerous because no lawyer has authority to set such a date and nonresident counsel is not in a position to manage the court's calendar.

Moreover, *requiring* a hearing on every *pro hac vice* motion imposes unnecessary burdens on Alabama courts. The court must assign a hearing date on the application, give notice of the hearing at least twenty-one days prior to it, wait until it receives a statement from the Bar, hold a

hearing, make findings about whether the applicant is reputable and will observe Alabama's ethical standards, issue an order granting or denying admission, and mail the order to local counsel, who must send a copy to the Bar within thirty days of the hearing. Unlike a number of states of neighboring states that avoid complicated procedures and employ a presumptive admission standard, Alabama judges' discretion to grant or deny admission is constricted by the hearing requirement and other procedural hurdles described above.

EJI's efforts to recruit *pro bono* counsel to represent Alabama death row prisoners are hampered by these rules, which place additional burdens on EJI to find local lawyers willing to fully participate in these cases and to assist out-of-state volunteer counsel to navigate the complexities of applying for *pro hac vice* admission.

## IV. DISMISSAL OF MR. TAYLOR'S APPEAL IS NOT AN APPROPRIATE REMEDY FOR THE ALLEGED FAILURE TO COMPLY WITH THE *PRO HAC VICE* ADMISSIONS RULES.

The Court of Criminal Appeals' inaccurate and unreasonable interpretation of the rules governing notices of appeal and *pro hac vice* admission threatens to exacerbate the already dire situation of Alabama death row prisoners. Mr. Taylor's case highlights the burdens the state places on out-of-state lawyers who seek to provide *pro bono* assistance to death row prisoners.

The Court of Criminal Appeals' dismissal of Mr. Taylor's appeal is improper because the forfeiture of all of a death row inmate's rights is not an appropriate remedy for the alleged failure to comply with *pro hac vice* application rules, an administrative technicality unrelated to the inmate or his case. In addition, the lower court's suggestion that Mr. Taylor file a second Rule 32 petition fails to appreciate the multitude of collateral injuries in state and federal court that result from the dismissal of a state postconviction petition for which there is no recovery on a second petition. See 28 U.S.C. § 2254.

The lower court's determination in this case represents a gross injustice for indigent condemned prisoners who cannot obtain adequate legal assistance without *pro bono* aid.

**CONCLUSION**

For these reasons, this Court should reverse the Court of Criminal Appeals' decision.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on October 5, 2006, a copy of the attached pleading was served by first class mail, postage pre-paid and properly addressed to:

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