

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

*

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v.

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Case No. CC-00-0000

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JOE CLIENT.

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**MOTION TO BAR THE DEATH PENALTY BECAUSE ALABAMA
CONDUCTS NO MEANINGFUL PROPORTIONALITY REVIEW**

Joe Client respectfully moves this Court to bar imposition of the death penalty because Alabama fails to conduct meaningful proportionality review. In support of this motion, Mr. Client submits the following:

1. Mr. Client has been charged with capital murder and the State is seeking the death penalty.

2. “Because of the uniqueness of the death penalty, . . . it [may] not be imposed under sentencing procedures that creat[e] a substantial risk that it would be inflicted in an arbitrary and capricious manner.” Gregg v. Georgia, 428 U.S. 153, 188 (1976). In considering the constitutional requirements necessary to ensure that capital punishment is “imposed fairly, and with reasonable consistency,” Eddings v. Oklahoma, 455 U.S. 104, 112 (1982), the Supreme Court has recognized that proportionality review, as distinct from the narrowing function served by designating aggravating circumstances, is a vital component of the capital sentencing system. Gregg, 428 U.S. at 204-06.

3. Central to the Supreme Court’s conclusion in Gregg that Georgia’s revised capital sentencing scheme sufficiently “check[s] against the random or arbitrary imposition of the death penalty” and “substantially eliminates the possibility that a person will be sentenced to die by the action of an aberrant jury” is the Court’s determination that Georgia’s appellate courts carefully conduct statutory proportionality review by determining whether “past practice among juries faced with similar factual situations and like aggravating circumstances” resulted in similar outcomes. Id. at 205-06.

4. Recognizing the critical importance of proportionality review to a constitutionally compliant capital sentencing scheme, the Alabama legislature included proportionality review in the statute that reenacted the death penalty in this state. See Ala. Code 13A-5-53(b)(3). When reviewing the propriety of each death sentence, the Alabama Court of Criminal Appeals must determine “[w]hether the sentence of death is excessive or

disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.” Id.

5. Alabama courts have adhered only superficially to this statutory requirement, rendering proportionality review meaningless. In applying Alabama Code section 13A-5-53(b)(3), Alabama courts have failed to consider the unique circumstances of each individual case when determining whether a death sentence is proportionate to the offense; rather, proportionality review is limited to determining whether the aggravating circumstance that elevates the crime to a capital offense has been applied in other cases. See, e.g., Wiggins v. State, 193 So. 3d 765, 823 (Ala. Crim. App. 2014) (concluding that death sentence not disproportionate in case of robbery-murder because “two-thirds of the death sentences imposed in Alabama involve cases of robbery/murder”); Henderson v. State, No. CR-12-0043, 2017 WL 543134, at *44 (Ala. Crim. App. Feb. 10, 2017) (where aggravating circumstance was intentional murder of on-duty police officer, court found sentence proportionate because other defendants convicted of killing on-duty police officers have been sentenced to death); Largin v. State, No. CR-09-0439, 2015 WL 9263783, at *48 (Ala. Crim. App. Dec. 18, 2015) (where aggravating circumstances were killing two or more people and robbery, court found sentence proportionate because other defendants with the same aggravating circumstances had been sentenced to death); Washington v. State, 922 So. 2d 145, 178-79 (Ala. Crim. App. 2005) (where aggravating circumstances were robbery, burglary, and killing of two or more people, court found sentence proportionate because other defendants convicted of killing two or more people or of murder during the course of a robbery or burglary have been sentenced to death); Minor v. State, 914 So. 2d 372, 444 (Ala. Crim. App. 2004) (finding death sentence in case involving death of infant proportionate because other individuals have been sentenced to death for murder of child under fourteen).

6. In fact, no Alabama court has ever found a death sentence to be disproportionate because a death sentence will not be found disproportionate as long as the defendant was found guilty of a capital offense and at least one other person has been found guilty of the same offense.

7. To satisfy the Constitution, meaningful proportionality review must include comparisons between the appellant’s case and factually similar cases in which both death sentences and life sentences were imposed. See Walker v. Georgia, 555 U.S. 979 (2008) (mem.) (Stevens, J., respecting denial of cert.); see also Zant v. Stephens, 462 U.S. 862, 879 n.19 (1983) (in approving capital sentencing scheme, noting that Georgia “uses for comparison purposes not only similar cases in which death was imposed, but similar cases in which death was not imposed” in conducting proportionality review). Alabama courts do not consider unique individual circumstances and do not compare the case under review with similar cases where the defendants were *not* sentenced to death. Accordingly, Alabama

courts fail to conduct the meaningful proportionality review that the Constitution requires.

8. The Eighth Amendment requires that a capital statute must narrow the class of people who may be sentenced to death to include only the most culpable individuals, Zant, 462 U.S. at 876-77, *and* that state appellate courts must engage in meaningful proportionality review. See, e.g., Gregg, 428 U.S. at 198, 204-06. The Alabama legislature codified a list of aggravating circumstances to meet the narrowing requirement and required proportionality review. But Alabama courts have conflated these separate provisions by reducing proportionality review to a mere checking off of aggravating circumstances on the list. Alabama's failure to conduct meaningful proportionality review violates the Fifth, Sixth, Eighth, and Fourteenth Amendment to the United States Constitution and Alabama law.

For these reasons, Mr. Client respectfully petitions this Court to bar the imposition of a sentence of death in Mr. Client's case.

Respectfully submitted,

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/17/17]