

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 DISMISS THE INDICTMENT BECAUSE IT  
FAILS TO SPECIFY AN AGGRAVATING CIRCUMSTANCE**

Joe Client respectfully moves this Court to dismiss each count of the indictment on the grounds that the indictment violates the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law. In support of this motion, Mr. Client submits the following:

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

2. Mr. Client is entitled to an indictment that sets forth “fully, directly, and expressly, without any uncertainty or ambiguity” each essential element necessary to constitute the offense intended to be punished. Russell v. United States, 369 U.S. 749, 765 (1962) (quoting United States v. Carll, 105 U.S. 611, 612 (1882)); see also Hamling v. United States, 418 U.S. 87, 117-18 (1974); Hagner v. United States, 285 U.S. 427, 432-33 (1932).

3. In Alabama, a defendant cannot be sentenced to death unless an aggravating circumstance (as defined in Alabama Code section 13A-5-49) is found to exist beyond a reasonable doubt at the sentencing phase of trial, Ala. Code § 13A-5-45(f) (1975), and aggravating circumstances are found to outweigh mitigating circumstances, Ala. Code § 13A-5-46(e)(2). Accordingly, aggravating circumstances are elements that must be charged in the indictment. Ring v. Arizona, 536 U.S. 584, 589 (2002) (element in death penalty case is “any fact on which the legislature conditions an increase in their maximum punishment”); Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) (element is “any fact that increases the penalty for a crime beyond the prescribed statutory maximum”); Jones v. United States, 526 U.S. 227, 243 n.6 (1999) (“any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt”); see also United States v. Cotton, 535 U.S. 625, 627 (2002).

4. The April 13, 2011, indictment charging Joe Client with capital murder of Vicky Victim on January 13, 2011, contains no aggravating circumstances as defined in Alabama Code section 13A-5-49 (1975). The factfindings necessary to subject Mr. Client to a death sentence have not been pleaded in the indictment. No aggravating circumstances have been identified, nor does the indictment allege that the aggravating circumstance(s) outweighs any mitigating circumstance(s).

5. The indictment must be dismissed because it is defective and deprives this Court of jurisdiction to hear the case. Poole v. State, 846 So. 2d 370, 387 (Ala. Crim. App. 2001) (overruled on other grounds) (citing Ex parte Harper, 594 So. 2d 1181 (Ala. 1991)). While the Alabama Court of Criminal Appeals in Stallworth v. State, 868 So. 2d 1128, 1186 (Ala. Crim. App. 2001), has held that facts increasing a defendant's statutory maximum sentence need not be alleged in the indictment, this holding is contrary to Ring and to the holdings of federal courts around the country. See, e.g., United States v. Fell, 531 F.3d 197, 237 (2d Cir. 2008); United States v. Barnette, 390 F.3d 775, 784 (4th Cir. 2004); United States v. Robinson, 367 F.3d 278, 285 (5th Cir. 2004); United States v. Mikos, 539 F.3d 706, 715 (7th Cir. 2008); United States v. Allen, 406 F.3d 940, 949 (8th Cir. 2005). In light of these rulings, this Court should dismiss the indictment against Mr. Client.

6. "The fundamental respect for humanity" underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special need for reliability in determining whether the death penalty is appropriate. Johnson v. Mississippi, 486 U.S. 578, 584 (1988); see also Ex parte Monk, 557 So. 2d 832, 836-37 (Ala. 1989) (death penalty is "special circumstance" that justifies expansion of constitutional rights). If the indictment is not dismissed, Mr. Client will be deprived of a fair trial by an impartial jury, reliable sentencing proceeding, effective assistance of counsel, due process, and the right to present a defense, as protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law.

For these reasons, Mr. Client respectfully moves this Court to enter an order dismissing the indictment and causing new grand jury proceedings to commence.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/04/17]