

DEATH PENALTY/LIFE WITHOUT PAROLE CASE

IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

~~FILED
Clerk Superior Ct., Gordon County
MAR 19 2005
Brian Brannon
Clerk~~

STATE OF GEORGIA,)
)
)
)
)
v.)
)
)
JERRY WILLIAM JONES,)
)
_____)

Indictment No. 16471

FILED
Clerk Superior Ct., Gordon County
MAY 19 2005
Brian Brannon
Clerk

GENERAL DEMURRER TO THE INDICTMENT

JERRY WILLIAM JONES, through undersigned counsel, respectfully files this general demurrer to the indictment, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, § I, ¶¶ I, II, IV, V, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XVIII, XXIV and XXVIII of the Constitution of the State of Georgia, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10 1984, Art 14 and 16, 23 I.L.M. 1027 (Entry into force for the United States November 20, 1994), Inter-American Convention on Human Rights, November 22 1969, Art 4 and 7, 1144 UNTS 123, 9 I.L.M. 673 (Entry into force July 18, 1978), International Covenant of Civil and Political Rights, December 19 1966, Art 2(3) and 6 -7, 999 UNTS 171, 6 I.L.M. 368 (Entry into force for the United States September 8, 1992), Second Optional Protocol to the International Covenant on Civil and Political Rights, December 15 1989, UN GAOR Supp. (No. 49) at 207, UN Doc. A/44/49 (1989) (Entry into force July 11, 1991), Article 18, Vienna Convention on the Law of Treaties, May 23 1969, Art 18, 1155 UNTS 331; 8 ILM 679 (Entry

into force January 27, 1980), as well as statutory and jurisprudential authorities cited below, and all other applicable constitutional, statutory, treaty, customary international law, evolving international standards, and jurisprudential authority.

In support of this motion, counsel states:

1. Jerry Jones files this General Demurrer with the express reservation of his right to a full and formal arraignment. Jerry Jones, by demurring generally to the indictment in this case, does not waive his demand for a formal arraignment. *Baskin v. State*, 137 Ga. App. 840, 841, 225 S.E.2d 77 (1976); *Kincade v. State*, 14 Ga. App. 544, 81 S.E. 910 (1914).

2. “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 the determination that death is the appropriate punishment’ in any capital case.” *Johnson v. Mississippi*, 486 U.S. 578, 584 (1988) (citations omitted). It is well established that when a defendant’s life is at stake, a court must be “particularly sensitive to insure that every safeguard is observed.” *Gregg v. Georgia*, 428 U.S. 153, 187 (1976). This heightened standard of reliability is “a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties; that death is different.” *Ford v. Wainwright*, 477 U.S. 399, 41 (1986).

Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

Woodson v. North Carolina, 428 U.S. 280, 305 (1976).

3. The United States Supreme Court has repeatedly emphasized the principle that because of the exceptional and irrevocable nature of the death penalty, “extraordinary measures” are required by the Eighth and Fourteenth Amendments to ensure the reliability of decisions

regarding both guilt and punishment in a capital trial. Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring). See also Beck v. Alabama, 447 U.S. 625, 637-38 (1980); Lockett v. Ohio, 438 U.S. 586, 604 (1978); and Gardner v. Florida, 430 U.S. 349, 357-58 (1977).

4. Jerry Jones demurs generally to said indictment on the ground that the indictment fails to adequately charge him with any offense against the laws of the State of Georgia.

5. Jerry Jones demurs generally to said indictment on the ground that the indictment fails to sufficiently set out charges of felony murder against him.

6. Jerry Jones demurs generally to said indictment on the ground that the indictment fails to sufficiently set out a charges of malice murder against him.

7. Jerry Jones demurs generally to said indictment on the ground that the indictment fails to sufficiently set out a charge of false imprisonment against him.

8. Jerry Jones demurs generally to said indictment on the ground that the indictment fails to sufficiently set out a charge of kidnapping against him.

9. Jerry Jones demurs generally to said indictment on the ground that the indictment fails to sufficiently set out a charge of cruelty to children in the first degree against him.

10. Jerry Jones demurs generally to said indictment on the ground that the indictment fails to sufficiently set out a charge of cruelty to children in the second degree against him.

11. Jerry Jones demurs generally to said indictment on the ground that the indictment fails to sufficiently set out a charge of burglary against him.

12. Jerry Jones demurs generally to said indictment on the ground that the indictment fails to sufficiently set out a charge of concealing the death of another person against him.

13. Jerry Jones demurs generally to said indictment on the ground that the indictment fails to sufficiently set out a charge of possession of a firearm during commission of a crime

against him.

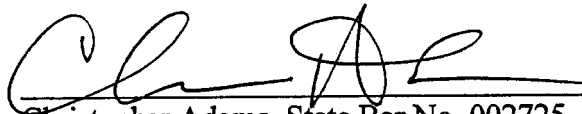
14. Jerry Jones demurs generally to said indictment on the ground that the indictment fails to sufficiently set out a charge of use of a firearm by a convicted felon against him.

5. The entire indictment is fatally defective and must be quashed as a result of the fatal defects.

WHEREFORE, for the foregoing reasons and any others that may appear to this Court after a hearing, counsel for Jerry Jones, respectfully requests this Court to dismiss and quash the entire indictment in this case.

DATED this 19th day of May, 2005.

Respectfully Submitted,



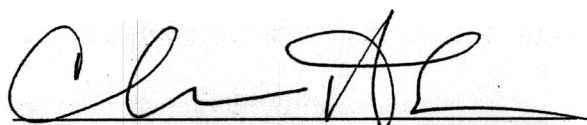
Christopher Adams, State Bar No. 002725
Georgia Capital Defender
225 Peachtree Street NE Suite 900
Atlanta, Georgia 30303
(404) 739-5172

E. Michelle Drake, State Bar No. 229202
Georgia Capital Defender
225 Peachtree Street NE Suite 900
Atlanta, Georgia 30303
(404) 739-5168

Counsel for Jerry Jones

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been mailed to The Office of the District Attorney for Gordon County via first-class United States Postal Service this 19th day of May, 2005.



Christopher Adams, State Bar No. 002725
Georgia Capital Defender
225 Peachtree Street NE Suite 900
Atlanta, Georgia 30303
(404) 739-5172

IN THE SUPERIOR COURT OF GORDON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,

Indictment No. 16471

v.

JERRY WILLIAM JONES,

)
)
)
)
)
)

ORDER

Upon consideration of Jerry Jones's *General Demurrer to the Indictment*, the Court being otherwise sufficiently advised, and good grounds appearing therefore,

IT IS HEREBY ORDERED AND DECREED, that the motion is **GRANTED** and the indictment against JERRY WILLIAM JONES is QUASHED.

SO ORDERED this day of _____, 20.

The Honorable G. Carey Nelson
Judge, Gordon County Superior Court
State of Georgia

Prepared by:
Christopher Adams, State Bar No. 002725
E. Michelle Drake, State Bar No. 229202
Counsel for Jerry Jones