Jesse Robert Furr, Jr. 096099
2501 State Farm Rd.
Tucker, AR 72168

"WRONGFUL CONVICTION ASSISTANCE"

To Whom It May Concern,

My name is, Jesse Robert Furr, Jr., and I write this letter to you with hope that you will assist me. I have been incarcerated in the Arkansas Department of Corrections for the past 33 years. There has been a grave injustice done to me by the Arkansas Judicial System, and I hope that after reading this you will assist me.

The following transpired during my trial, and is supported by the trial transcripts, this is just to show you how unjustly I was done by the Arkansas Court system. ***(Due to postal concerns all "Attachments" and "Exhibits" can only be sent upon request.)***

Lack of Subject Matter Jurisdiction, and Personal Jurisdiction

On December 7, 1990, Prosecuting Attorney Andrew J. Ziser, for Madison County filed a Criminal Information against me for allegedly committing murder in the first degree, with a variance of both ***felonious*** intent, and with ***purpose***, at arraignment on this date, a not guilty plea was entered, and jury trial set for March 12, 1991. **(Exh. A - Felony Information)** There was ***NEVER*** an evidentiary hearing, and I never lawfully plead to the original allegation at an adversarial probable cause hearing.

On January 8, 1991, Prosecuting Attorney Andrew J. Ziser, filed a Motion To Amend Information, **(Exh. B - Motion To Amend Information)** recharging me with a fatal variance with the offense of Capital Murder. This Amendment was ***NEVER*** ruled on by the court, before, or during, the start of the jury trial. **(Exh. C - Criminal Docket Sheet)** However, my charge was changed from first degree murder, to capital felony murder, and on March 12, 1991, I was tried by a jury on this new capital felony murder charge. Being that this motion was never ruled on by the court, the court ***DID NOT*** have jurisdiction to try me for capital felony murder. I was never giving the opportunity to lawfully plead to the amended allegation at an adversarial probable cause hearing. The changing of this charge was a violation of law pursuant to:

- Ark. Code Ann. § 16-85-407 (a) & (b). ***The prosecuting attorney or attorney representing the state with leave of the court may amend an indictment as to matters of form or may file a bill of particulars. However, no indictment shall be amended nor bill of particulars filed so as to change the nature of the crime charged or the degree of the crime charged.***

On March 12, 1991 I was not found guilty of the capital murder charge I was unlawfully being tried for, but, due to the trial court instructing the jury on three other offenses, I was found guilty of murder in the first degree and sentenced to life imprisonment, which is also without parole in Arkansas.

Ineffective Assistance of Counsel & Prosecutor Misconduct

My defense to the charge was that the shooting was an accident and ***NOT*** a premeditated and deliberated act. My appointed defense counsel knew far in advance that the prosecutor intended to subpoena Dr. Malak of the Arkansas State Crime Lab to testify for the state as an expert witness. Counsel was aware that Dr. Malak's autopsy findings and trial testimony in other criminal proceedings were under much suspicion and had been shown to be incorrect and incompetent. Counsel still made no objections nor asked for assistance of other experts to refute Dr. Malak's testimony. Dr. Malak testified that the shooting was at **"POINT BLANK"** range based on the amount of gun powder residue on the entry wound, and in the wound, and not an accident as I claimed. The burden of proof was shifted from the prosecutor, to the defendant to prove that defendant did not shoot the victim, his step-mother, at point blank range like Dr. Malak claimed in his report and testimony.

The defense counsel never asked for expert assistance to aid in my defense and without expert testimony to refute that of Dr. Malak, the defendant was already guilty in the eyes and conscience of the jury. Counsel for defendant was not an expert in forensics evidence of pathology and ballistics, and was ineffective not to move the court with a pretrial motion for appointment of medical expert on gun shot wounds and ballistics, to aid in a trial defense, and to include a cross examination of Dr. Malak's testimony, and not, from a defense attorney that had absolutely NO experience in ballistics forensics. The burden of proof is on the prosecutor, NOT the defense, and without the aid of an expert the defense had the entire burden of proof on his shoulders to prove that Dr. Malak was wrong in his forensic examination. Any reasonable juror, or jury, would believe an expert over a defendant and especially a defendant with a defense counsel, that had no experience in forensic evidence. This is extremely PREJUDICIAL which affected the outcome of the trial.

Counsel was also ineffective and prejudiced at trial when he failed to object to the prosecutor's testifying as an expert in ballistics, ***(TR p. 176)***, and misstating the facts not in evidence regarding how far gun powder residue can travel, and it's effects at a distance of 6 feet, when it was an issue only an expert in ballistics could testify to substantiate the facts in a true gun powder residue examination, and did prejudice the jury on their decision as to weather I murdered the victim at POINT BLANK range or weather it was an accidental shooting as I have claimed pretrial, during trial, and all these years subsequent to the trial.

I submit that counsel rendered ineffective assistance at trial with the prosecutor's cross examination of me where my counsel failed to object to prosecutor's reading to me, ***and the jury***, putting fourth for all practical purpose into evidence, a ***HEARSAY*** inadmissible statement by a Midland, Texas police officer, in which the prosecutor said I had giving him at the time of my arrest in Texas. The prosecutor read out loud in court, ***"I know what he was stopping me for but want to say Randy knew nothing about Ruth being murdered." (TR p. 153)*** This was extremely ***prejudicial***, and ***hearsay,*** by the prosecutor reading this statement in open court, that was giving by a witness not in court, and subject to cross examination, was in violation of Arkansas Rules of Evidence. This extremely prejudiced statement unchallenged, and inadmissible, was such to cause the jury to infer that had I made such a statement to the police officer in Texas that I had murdered my step-mother in cold blood, and not an accidental shooting as I claim. Once again the prosecutor placed the burden of proof on the shoulder's of the defense. A competent defense lawyer would have objected to the reading of this hearsay statement in open court to the jury. (The definition of **Hearsay** taken from the American Heritage Dictionary of the English Language, Fourth Edition, reads as follows):

- **hearsay** - ***Unverified information heard or received from another; rumor. 2. Law Evidence based on the reports of others rather than the personal knowledge of a witness and therefore generally not admissible as testimony.***

Counsel was also ineffective by falling asleep when the selection of the jury was commenced at times and had to be addressed by the trial court when it was his turn to question potential jurors. The Judge had to call counsel's name at which time counsel stated, "***oh, have y'all finished.***" ***(TR p. 58)*** This was a critical stage of *voir dire* selection of jurors and counsel's sleeping at this critical time is a grave injustice to the full fairness of my trial. Trial counsel was so ineffective that he failed to make a single objection, to anything, during trial, he failed to preserve any of the crucial objections for appeal purposes.

Bias Statements by the Trial Judge

First, in selecting the jury, the trial judge had made bias statements that could, and did, affect the outcome of the trial. In questioning juror #6, ***Claude Whiteley*** counsel asked, ***If you were setting where Robert is now, would you not want -- would you want a person, just like you, just your frame of mind, to be on this jury. This juror answered, No Sir.*** Defense counsel had asked to have juror Whiteley ***removed (TR p. 61-63)*** The trial judge asked, ***Mr. Whiteley, let me ask you this, and I don't mean to signal you out, but by virtue of that response -- I realize that this is a serious case obviously. It weighs heavily on everyone's mind. My question is simply this: If selected to sit on this jury, can you be fair and impartial? Juror Whiteley stated, "I will try, sir."*** The trial judge's response was, ***"well, I suspect that's really all that any of us can ask is that you try."*** Juror Whiteley was selected as a juror. ***(TR p. 61-63)*** Counsel was ineffective by accepting this juror after first asking that he be removed. ***(TR p. 61-63)***
Second, the trial judge asked all potential jurors, ***"does anybody for any reason other than when we have discussed up until now, have a problem serving on this jury if by chance your selected?"*** Potential juror ***Jim Scott*** told the judge that, ***the timetable might cause him a problem if selected because he needs to be in Atlanta, Georgia by Friday at***

eleven o'clock (11:00)" The judge responded; ***well Mr. Scott, I am in complete sympathy with you. I would love to be in Atlanta, Georgia at eleven o'clock (11:00) on Friday morning" and "I can assure you one thing, I am going to be in front of a television set come eleven o'clock Friday morning." (TR. p. 37&38)*** With this statement by the trial judge, only assured the jurors that this capital murder case would be over with by Friday morning. This alone was prejudicial, and the prejudgment to the facts and evidence not yet presented.

Counsel was also ineffective, and trial judge further demonstrated his unfair bias, when potential juror ***McCristian*** informed the court that he was ***"a friend of the victims family. (TR. p. 37). Jerry McCristian was selected as juror #8. (TR. p. 69&70)*** This was extremely prejudicial to the defendant's trial outcome, for the court to allow a family friend of the victim to set as a juror member, defendant's fate was set in stone before his trial began. Defense counsel **challenged for cause** juror McChristian because of his relationship, as a close friend to the victims brother, but motion was overruled by the trial judge. Counsel also **challenged for cause** juror's Whiteley, and Ramirez for their inability to be impartial, but trial judge also overruled these motions as well. Because of trial judge's bias, I was denied the right to an **impartial jury trial**, thus violating, **Arkansas Constitution Article 2 Section 10, and the 5th Amendment of the U. S. Constitution.**

Erroneous Testimony of Doctor Fahmy Malak

The prosecution relied solely on the expert testimony of Dr. Malak to prove his case against me. Malak testified that, ***the examination by the microscope revealed the powder on the surface and infiltrating the wound tract." (TR. p. 132&139)*** Microscopic examinations are used to enlarge a substance that can not be seen by the eye alone. (The definition of ***Microscope & Microscopic*** taken from the American Heritage Dictionary of the English Language, Fourth Edition.)

- ***Mi•cro•scope - 1. An optical interment that uses a lens or a combination of lenses to produce magnified images of small objects, expecially of objects too small to be seen by the unaided eye. 2. An instrument, such as an electron microscope, that uses electronic or other processes to magnify objects.***

- ***Mi•cro•scop•ic also Mi•cro•scop•i•cal adj. 1a. - To small to be seen by the unaided eye but large enough to be studied under a microscope. b. of, relating to, or concerned with a microscope. 2. Exceedingly small; minute. 3. Characterized by or done with extreme attention to detail; a microscopic investigation. - Mi•cro•scop•i•cally adv.***

Dr. Malak could not have a picture that shows gun powder residue if he had to use a microscope to find the residue in the first place. Dr. Malak testified to being a firearms expert testifying to the jury on how far gun powder travels on hand guns and rifels. ***(TR. p. 128)*** The jury was lead to believe that Dr. Malak was an expert witness in firearms and giving his gun powder residue on the wound theory substantiated credit with the jury. Dr. Malak later testified that he ***was not an expert*** in guns or pistol ballistics. ***(TR. p. 135)*** but the seed had already been planted in the jury's minds that he was an expert on firearms because the testimony went unchallenged by defense counsel.

Dr. Malak also testified to ***making mistakes*** in his autopsy report and reported it to the prosecution pre-trial. ***(TR. p. 138)*** On Dr. Malak's autopsy report, he has the date of autopsy as November 11, 1990, which was two (2) weeks before the crime was committed. ***(Autopsy Report p. 1)*** Also in this autopsy report, Dr. Malak states that the hight of the victim was 76" inches, which is six (6) feet four (4) inches. ***(Autopsy Report p. 2)*** The actual hight of the victim was 67" inches, which is five (5) feet seven (7) inches. ***(TR. p. 138)*** One must ask at this point; Who did Dr. Malak perform the autopsy on? Dr. Malak was ***FORCED TO RESIGN*** as Chief Medical Examiner for the state, due to the ***BOTCHING AND MALFEASANCE*** in his duties as Medical Examiner on numerous autopsies and reports, for changing his positions and opinions to fit that of the investigating officers, for the soul purpose of getting a conviction for the state, and he used the same practice in my case.

All of this herein was uncontested by defense attorney. In fact, defense attorney did not make a single objection to anything in this capital murder trial. Had defense attorney motioned the court for an expert, in the field of forensic pathology and ballistic's to aid in the defense, Dr. Malak's testimony and autopsy report could have been contested and refuted by someone qualified to do so. Had the defense attorney requested the assistance in these fields, the outcome of this trial would of had a different ending. The prosecution was giving free reign, by the trial judge, and defense counsel, to paint any picture he pleased, and was allowed to shift the burden of proof to the defendant, to prove his innocence, because of defense attorney's ineffectiveness.

Other filings you might need to know;

1. Filed notice of Direct Appeal on: April 5, 1991
2. Filed Direct Appeal to the Supreme Court of Arkansas on: November 1, 1991
3. Supreme Court Affirmed Direct Appeal on: January 21, 1992
4. Filed Rule 37 in Circuit Court of Conviction on: March 18, 1992
5. Rule 37 Affirmed on: July 7, 1992
6. Filed Notice of Appeal on Rule 37 to Ark. Sup. Court on: July 29, 1992
7. Filed Petition with Clerk Ark. Sup. Court on: October 23, 1992
8. Ark. Sup. Court Affirmed Rule 37 on: March 8, 1993
9. Filed Habeas Corpus in U.S. Dist. Court, Western Dist. of Ark. on: April 1, 1996
10. Habeas Corpus Denied on: July 9, 1996

When I filed my Rule 37 in the Circuit Court, I did not have an attorney to represent me at this stage, unless it was my trial counsel Billy Allred, who I filed Ineffective Assistance of Counsel on in my Rule 37 petition. Billy Allred filed a motion on September 2, 1992, after my Rule 37 was affirmed, to be released as counsel, and asked that Blake Clardy be substituted for me for appeal purposes.

Conclusion

In closing, I respectfully ask for your assistance in the above matter. I ask that you assist me, ***Pro Bono,*** due to me being an indigent inmate, or without a fee until I am released from prison, or by writing a support letter, on my behalf, supporting my release from prison, by the Governor of Arkansas. ***All letters of support can be mailed to me at the name and address listed above.***

I thank you in advance for your time, consideration, and assistance, in this matter.

Sincerely,

Jesse R. Furr Jr.

Jesse Robert Furr, Jr. #096099