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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2007-2008

CR-06-2246

Jamie Ray Mills

v.

State of Alabama

Appeal from Marion Circuit Court
(CC-04-402)

On Return to Remand

BASCHAB, PRESIDING JUDGE

On June 27, 2008, we remanded this case with instructions that the trial court amend its sentencing order to comply with the requirements of §13A-5-47(d), Ala. Code 1975. On remand,

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the trial court complied with our instructions. We now address the propriety of the appellant's convictions and sentence of death.

Pursuant to §13A-5-53, Ala. Code 1975, we are required to address the propriety of the appellant's convictions and sentence of death. The appellant was indicted for and convicted of three counts of capital murder -- two counts because he committed the murders during the course of a robbery, see §13A-5-40(a)(2), Ala. Code 1975, and one count because he committed the murders by one act or pursuant to one scheme or course of conduct, see §13A-5-40(a)(10), Ala. Code 1975.

The record does not reflect that the sentence of death was imposed as the result of the influence of passion, prejudice, or any other arbitrary factor. See §13A-5-53(b)(1), Ala. Code 1975.

The trial court found that the aggravating circumstances outweighed the mitigating circumstances. It found that the State proved four aggravating circumstances -- 1) the appellant committed the capital offenses while he was under a sentence of imprisonment, see §13A-5-49(1), Ala. Code 1975; 2)

the appellant committed the capital offenses while he was engaged in or was an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit, robbery, see §13A-5-49(4), Ala. Code 1975; 3) the capital offenses were especially heinous, atrocious, or cruel compared to other capital offenses, see §13A-5-49(8), Ala. Code 1975; and 4) the appellant intentionally caused the death of two or more people by one act or pursuant to one scheme or course of conduct, see §13A-5-49(9), Ala. Code 1975. The trial court found that three statutory mitigating circumstance existed -- 1) the appellant did not have a significant history of prior criminal activity, see §13A-5-51(1), Ala. Code 1975; 2) the appellant committed the capital offenses while he was under the influence of extreme mental or emotional disturbance, see §13A-5-51(2); and 3) the age of the appellant at the time of the offenses, see §13A-5-51(7), Ala. Code 1975. It also appears to have made the following findings as to nonstatutory mitigating circumstances:

"The defendant experienced a failed marriage nine to ten years before the murders. This marriage yielded two sons who, at the time of trial, were 15 and 14 years old, lived with their mother, and were described by the defendant's sister as 'good kids.' Defense counsel suggested to the jury that by giving

the defendant life without parole, perhaps he would have a positive influence on his two boys and could guide them away from life's pitfalls that he had experienced.

"The pre-sentence report notes and court files confirm that Mills was charged in 2001 for non-support of his two children. At the time of the murders, he was \$10,318.67 in arrears on his child support payments. There is little, if any, basis for mitigation that the defendant would be any more supportive of his sons than he was been in the past. To argue that perhaps if he received life without the possibility of parole he could have any positive influence on his children is an extremely weak mitigator at best.

"The defendant grew up in Haleyville, Alabama, in what his sister described as a 'good home.' After dropping out of high school in the eleventh grade, he worked as a truck driver and mechanic at various local establishments. His last employment was as a mechanic at Hightower's Amoco in Guin, Alabama, until he quit his job complaining of tendonitis shortly before the murders. Ben Hightower, the owner of the service station, rented a house to the Mills and described Jamie as 'no trouble' and 'a hard worker.'"

(C.R. 133.) The sentencing order shows that the trial court weighed the aggravating and mitigating circumstances and correctly sentenced the appellant to death. The record supports its decision, and we agree with its findings.

Section 13A-5-53(b)(2), Ala. Code 1975, requires us to weigh the aggravating and mitigating circumstances independently to determine the propriety of the appellant's

sentence of death. After independently weighing the aggravating and mitigating circumstances, we find that the death sentence is appropriate.

As required by §13A-5-53(b)(3), Ala. Code 1975, we must determine whether the appellant's sentence was disproportionate or excessive when compared to the penalty imposed in similar cases. The appellant committed two murders during two robberies and killed two people pursuant to one scheme or course of conduct. Similar crimes are being punished by death throughout this state. See Gaddy v. State, 698 So. 2d 1100 (Ala. Crim. App. 1995), aff'd, 698 So. 2d 1150 (Ala. 1997); Brooks v. State, 695 So. 2d 176 (Ala. Crim. App. 1996), aff'd, 695 So. 2d 184 (Ala. 1997); Bush v. State, 695 So. 2d 70 (Ala. Crim. App. 1995), aff'd, 695 So. 2d 138 (Ala. 1997); Taylor v. State, 666 So. 2d 36 (Ala. Crim. App.), opinion extended after remand, 666 So. 2d 71 (Ala. Crim. App. 1994), aff'd, 666 So. 2d 73 (Ala. 1995); Holladay v. State, 549 So. 2d 122 (Ala. Crim. App. 1988), aff'd, 549 So. 2d 135 (Ala. 1989); Siebert v. State, 555 So. 2d 772 (Ala. Crim. App.), aff'd, 555 So. 2d 780 (Ala. 1989); Peoples v. State, 510 So. 2d 554 (Ala. Crim. App. 1986), aff'd, 510 So. 2d 574

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(Ala. 1987). Therefore, we find that the sentence was neither disproportionate nor excessive.

Finally, we have searched the entire record for any error that may have adversely affected the appellant's substantial rights, and we have not found any. See Rule 45A, Ala. R. App. P.

Accordingly, we affirm the appellant's convictions and sentence of death.

AFFIRMED.

McMillan, Shaw, Wise, and Welch, JJ., concur.