

# Alabama's Death Penalty Appeals Process



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*A Guidebook provided by the  
Office of the Attorney General of Alabama*





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This book is meant to guide you through Alabama's death penalty appeals process. The appeals process is a long and often complicated one. As your Attorney General, I am providing you with this guidebook to help you understand the process better, to explain the three tiers of appeal and to assure you my office will do everything we can to ensure justice prevails.

Capital murder cases can be some of the most difficult and complex to prosecute. The task does not become easier on appeal. The appeals process moves at a much slower pace than the trial court process. Many times it will take decades to reach a conclusion. The reasons for this are as complex as the cases. With this booklet you will have the ability to track the process as the appeals advance through the appellate courts.

The cases are assigned to the Capital Litigation Division in the Attorney General's office. The Capital Litigation Division is staffed with many of Alabama's best attorneys. These lawyers are assistant attorneys general. Justice will be well served by their expertise in this special area of law. Additionally, my Victims Services Unit is staffed by qualified professional victim advocates who are available to answer any questions you may have during this process. Please call the Victims Services Unit at 1-800-626-7676 to register your contact information and to let us know if you wish to be kept informed on your case. You may call any time you have concerns or questions.

I hope you find this guidebook helpful. Do not hesitate to seek the assistance of my office because we are here to serve you.

Sincerely,

A handwritten signature in black ink that reads "Luther Strange". The signature is written in a cursive, slightly slanted style.

Luther Strange  
Attorney General

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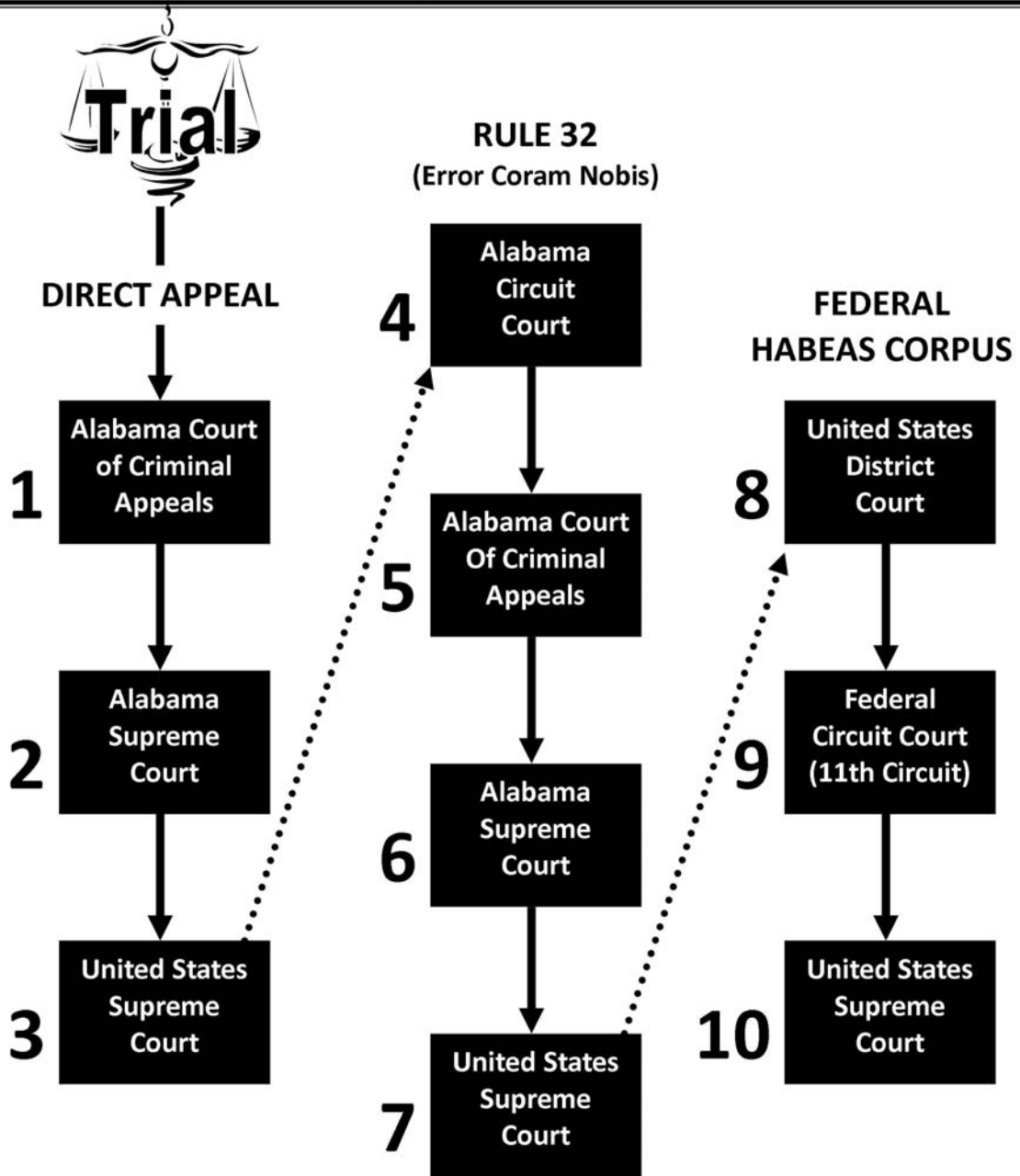
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## Death Penalty Appeals Process in Alabama

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# HOW A CAPITAL MURDER IS PROSECUTED

## PHASE 1:

### THE TRIAL PHASE

In the TRIAL Phase, the case of an individual charged with Capital Murder by the State of Alabama is heard (or tried) in an Alabama Circuit Court.

## PHASE 2:

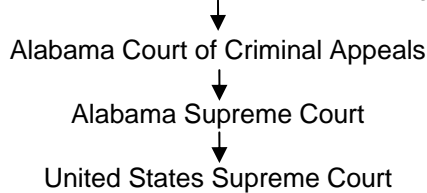
### THE CAPITAL APPEAL PROCESS

The Capital Appeal Process has three tiers: The Direct Appeal, The State Post-Conviction (or Rule 32) Appeal, and the Federal Appeal.

### TIER ONE:

#### THE DIRECT APPEAL

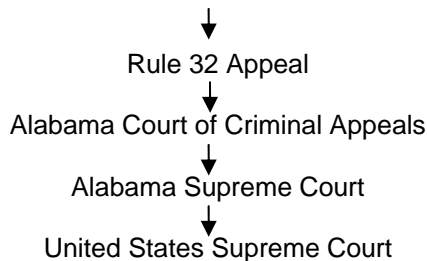
There are three (3) courts that an individual convicted of Capital Murder may have review their conviction: Alabama Court of Criminal Appeals; Alabama Supreme Court and the United States Supreme Court. The Alabama Court of Criminal Appeals automatically hears the appeal, and the other two courts may or may not choose to hear the appeal, if they are petitioned by the defendant/appellant. (For a detailed explanation of this tier, please see page 6.)



### TIER TWO:

#### THE STATE POST-CONVICTION APPEAL

A defendant sentenced to death is entitled, under Rule 32 of the Alabama Rules of Criminal Procedure, to file a state post-conviction, or "Rule 32", Appeal. The courts which may be involved in this process are the Alabama Circuit Court where the defendant was convicted, Alabama Court of Criminal Appeals, the Alabama Supreme Court, and the United States Supreme Court. (For a detailed explanation of this tier, please see page 7.)

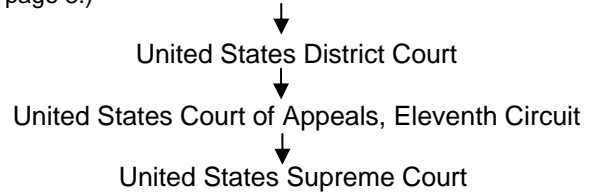


### TIER THREE:

#### FEDERAL HABEAS CORPUS

After the state post-conviction appeal is completed, the capital defendant may appeal to the United States Federal Courts. These courts include the United States District Court, the United States Court of Appeals, the Eleventh Circuit, and the United States Supreme Court.

The defendant must comply with strict federal time requirements in order to appeal to the federal courts. (For a detailed explanation of this tier, please see page 8.)



## PHASE 3:

### CLEMENCY

The Alabama Constitution gives the Governor the authority to grant reprieves to persons sentenced to death, and to commute a death sentence to a sentence of life imprisonment. The Governor does not have the power to grant a pardon or parole, or any other form of clemency, to a condemned person.

### EXECUTION

There can be more than one execution date set in each case. Once a tier in the appellate process is completed, an execution date may be set by the Alabama Supreme Court. If the defendant files the next appeal in a timely manner, the execution date could be delayed (or "stayed") by the court with jurisdiction over the next appeal.

## PHASE ONE: THE TRIAL

A capital murder prosecution begins when the grand jury hands down an indictment charging a defendant with capital murder. The trial, which occurs in an Alabama Circuit Court, proceeds in two phases.

**During the first phase, called the *GUILT / INNOCENCE PHASE***, the jury must decide whether the prosecution has proved beyond a reasonable doubt that the defendant is guilty of capital murder.

**If the jury finds the defendant guilty, the trial proceeds to the second phase, the *PUNISHMENT PHASE***. In the punishment phase, the jury weighs the aggravating circumstances of the case against any mitigating circumstances. The weighing of these competing circumstances determines whether the jury recommends the defendant be sentenced to death or to life imprisonment without parole.

After receiving the jury's punishment recommendation, the trial judge holds a separate sentencing hearing, goes through a similar weighing process, considers the jury's recommended sentence along with other factors, and imposes the death sentence or a sentence to life imprisonment without parole. The trial judge may abide by the jury's recommended sentence, but is not required to do so.

## PHASE TWO: THE CAPITAL APPEALS PROCESS

After a defendant is convicted of capital murder and sentenced to death, the APPEAL (or APPELLATE) PROCESS begins. In Alabama, the Death Penalty "Capital Appeal" process consists of three tiers. The Capital Litigation Division of the Office of Attorney General represents the State of Alabama and the victim's interests throughout the appellate process before these courts.

**In the first tier, called the *DIRECT APPEAL***, a capital defendant who has been sentenced to death automatically has an appeal to the Alabama Court of Criminal Appeals, the Alabama Supreme Court and the United States Supreme Court.

**In the second tier, called the *STATE POST-CONVICTION/RULE 32 APPEAL***, the case returns to the circuit court where the original trial was held for a review of issues not appealable in a direct appeal. The trial court's decision can then be appealed by the capital defendant to the Alabama Court of Criminal Appeals, to the Alabama Supreme Court, and to the United States Supreme Court. These appeals, however, are not automatic.

**In the third tier, the capital case is then appealed to the *FEDERAL COURTS*.**

The following pages will give you further details and an explanation of the steps in the Appellate Process. If, at any stage of the appeal, either the conviction or the sentence is reversed, a new trial or a resentencing may be required.

***The explanations on the following pages are based on the assumption that the conviction and death sentence are affirmed at each stage of the process.***

## TIER 1: THE DIRECT APPEAL

**A defendant who is sentenced to death is entitled to an automatic appeal to the ALABAMA COURT OF CRIMINAL APPEALS. At this point, the defendant is called “the appellant.”**

The record of the trial, including all of the papers filed in the trial court, the evidence presented at trial, and the written record of all the trial testimony and arguments, is compiled and filed in the Court of Criminal Appeals. The appellant’s attorney files a brief in which it is argued that error occurred during the trial and the appellant’s conviction and/or death sentence should be reversed.

The Capital Litigation Division of the Office of the Attorney General responds to the appellant’s allegations in a brief filed on the behalf of the State. In most capital cases, there is an oral argument before the Court of Criminal Appeals. These arguments are open to the public, but the appellant is not present. Additionally, the families of the victim may attend the oral argument but their presence is not required.

The Alabama Court of Criminal Appeals reviews the record on appeal, reviews the briefs, considers the arguments of the lawyers, and issues an opinion that addresses each of the appellant’s allegations of error. The court’s decision is not made at the oral argument, but at a later date in the form of a written opinion.

The court affirms or reverses the conviction, the sentence, or both.

- **If the Alabama Court of Criminal Appeals affirms the conviction and the sentence**, the defendant files a petition with the Alabama Supreme Court to hear the case. This is not an automatic appeal. The Alabama Supreme Court chooses the cases it wishes to hear, accepting some, rejecting others.
- **If the Alabama Supreme Court *does not* hear the case**, then the appellant may file a petition in the United States Supreme Court. This is not an automatic appeal. The United States Supreme Court chooses the cases it wishes to hear, accepting some, rejecting others.
- **If the Alabama Supreme Court *does* hear the case**, then both sides file briefs, oral arguments might be held, and the Alabama Supreme Court issues an opinion. If the Alabama Supreme Court affirms the conviction and the sentence, the appellant may file a petition asking the United States Supreme Court to review the case. This is not an automatic appeal. The United States Supreme Court chooses the cases it wishes to hear, accepting some, rejecting others.

**The appellant, now called “the petitioner,” files the petition for a “writ of certiorari” (see *Glossary, pg. 12*) in the United States Supreme Court in Washington, D.C., asking the Court to review the case and arguing that federal constitutional rights were violated by the trial court or the Alabama appellate courts.**

- The Capital Litigation Division of the Office of the Attorney General again represents the State at this level. The State usually files a “brief in opposition,” arguing there is no reason for the United States Supreme Court to grant a writ of certiorari because the case does not meet the requirements for review.

In the majority of cases, the United States Supreme Court refuses to hear the case and denies the petition for a writ of certiorari. At this point, the defendant’s direct appeal is completed.



## TIER 2: THE STATE POST-CONVICTION APPEAL or “RULE 32 APPEAL”

A defendant sentenced to death is also entitled to seek an appeal under Rule 32 of the Alabama Rules of Criminal Procedure. Under Rule 32, the defendant may not dispute the sentence or conviction directly, but may dispute some important but collateral issues, such as whether the trial counsel put on an effective defense. You will often hear lawyers refer to this additional appeal as a “state post-conviction appeal,” a “Rule 32 appeal,” or an “error coram nobis” appeal (see *Glossary*, pg. 12).

- **An important limitation of this state post-conviction appeal** is that issues raised at trial or during the direct appeal, or which could have been raised at trial or on direct appeal, are barred from review at this point and cannot be considered. A second or successive state post-conviction appeal by the same defendant under Rule 32 is also barred and cannot be considered.
- **Most of the issues commonly raised at the post-conviction appeal stage** involve the allegations of ineffective assistance of the defense lawyers at the trial and direct appeal stage. **The Rule 32 appeal starts with the defendant, now called “the petitioner,” submitting a petition for relief to the circuit court where the original trial was held.**
- The Capital Litigation Division and the District Attorney’s Office will represent the State, writing a response to the petitioner’s request for relief.
- Often the circuit court judge will pare down the issues raised by the petitioner to those not barred from review at this stage, and then hold an evidentiary hearing on those issues.
- This hearing is open to the public **and the petitioner will attend this hearing.**
- After the hearing, the lawyers will submit briefs for the trial judge to consider, and the judge will issue a written order, either denying the petition for relief or granting it. The judge, in granting relief, could order a new trial, a new sentence hearing, or both.
- If the trial judge denies the petition, that decision may be appealed to the Alabama Court of Criminal Appeals. Like the direct appeal, the “appellant” will submit a brief to the court, and the Capital Litigation Division will submit a brief in response. The Court of Criminal Appeals may order oral arguments, but usually renders an opinion without them. Appeals to the Court of Criminal Appeals are not granted automatically, as they were on direct appeal.
- The appellant may appeal the decision to the Alabama Supreme Court. If the Alabama Supreme Court decides to hear the case (which is not automatic), the Court may uphold the decision of the Court of Criminal Appeals. The appellant may then (as in direct appeal) petition the United States Supreme Court for review on a writ of certiorari. As in direct appeal, the majority of the petitions for review by the United States Supreme Court are denied. If denied review by the United States Supreme Court, the state post-conviction appeal is completed.

## TIER3: FEDERAL HABEAS CORPUS PROCEEDINGS

After the state post-conviction appeal is completed, the capital defendant may file an appeal in the UNITED STATES FEDERAL COURTS. The defendant must comply with strict federal time requirements in order to appeal to the federal courts.

### UNITED STATES DISTRICT COURT

The first federal court to which the defendant may appeal is the United States District Court. In Alabama, there are three district courts each serving particular counties. These districts include the Northern District Court in Birmingham, the Middle District Court in Montgomery, and the Southern District Court in Mobile. The case will be heard before a single federal district judge or a federal magistrate from the district that the original trial was held.

**In the petition filed in the United States District Court, the defendant, now called the “petitioner,” argues that the conviction and/or sentence should be overturned because the conviction was obtained in violation of the defendant’s federal constitutional rights.**

In its answer, the State, represented by the Capital Litigation Division of the Office of the Attorney General, responds to each of the allegations, arguing that relief should be denied and the conviction and sentence upheld. The record of all the previous state court proceedings, including the trial, direct appeal, and state post-conviction appeal, are filed in the United States District Court.

- Sometimes, the district court holds a hearing to resolve some or all of the petitioner’s allegations. These hearings are open to the public, and the petitioner will be present. The court reviews the briefs of the lawyers, the records from all the state proceedings, and the record of the federal hearing.
- The district court will then render an opinion, addressing each allegation of error in a written decision.
- If the court denies relief, the petitioner may appeal the district court’s decision to the United States Court of Appeals for the Eleventh Circuit.

### UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The United States Court of Appeals for the Eleventh Circuit is located in Atlanta, Georgia. This Court hears federal cases from Alabama, Georgia, and Florida. Normally, a three judge panel will hear any appeal granted by the United States Court of Appeals for the Eleventh Circuit, although the entire court (with as many as nine or more judges) sitting together (called en banc) may hear a case.

- The appellant files a brief alleging the district court was wrong to deny relief.
- The State, represented by the Capital Litigation Division, files a brief arguing that the district court was correct to deny relief.
- The Court of Appeals will usually order an oral argument, which is open to the public. The appellant will not be present.
- Afterwards, the Court of Appeals considers the briefs, the arguments of the lawyers, and the record from the district court and issues a written opinion either affirming or reversing the district court’s decision.
- If the Eleventh Circuit Court of Appeals affirms the district court’s decision, the appellant may petition the United States Supreme Court to review the case.

## UNITED STATES SUPREME COURT

**At this point, the defendant, again called the ‘petitioner,’ may file a petition for a writ of certiorari in the United States Supreme Court in Washington, D.C., asking the Court to review the case and arguing that the decision of the Eleventh Circuit Court of Appeals is incorrect.**

- The State, represented by the Attorney General’s Capital Litigation Division, files a brief in opposition to the defendant’s brief arguing that the Eleventh Circuit’s decision is correct and that there is no reason for the United States Supreme Court to review the case.
- In most cases, the United States Supreme Court denies the petition for a writ of certiorari with a short written order.

## **CLEMENCY**

The Alabama Constitution grants the Governor the authority to grant reprieves to persons sentenced to death and to commute a death sentence to a sentence of life imprisonment. The Governor does not have the power to grant a pardon or parole, or any other form of clemency, to a condemned person.

If the Governor were to commute a death sentence to life imprisonment, that person would not be eligible for parole until at least fifteen years of the life sentence had been served. A person whose death sentence had been commuted to life imprisonment would not be eligible for a pardon unless the Board of Pardons and Paroles was satisfied that evidence showed the person was innocent of the crime, the board voted unanimously to grant a pardon, and the governor concurred in and approved the granting of the pardon.

## **EXECUTION**

There can be more than one execution date set in each case. Once a tier in the appellate procedure is complete, the Alabama Supreme Court could set an execution date. If the defendant files the next appeal in a timely manner, the Court before which this new appeal is pending could then stay the execution date.

Once the appeals are exhausted, however, and the defendant has exercised all rights to appeal with no relief, the Alabama Supreme Court sets an execution date no earlier than thirty days from the date of the order.

It is your right as a surviving family member to request to view the execution at Holman Prison. The Attorney General's Office of Victim Assistance (AGOVA) will make arrangements with the commissioner of the Alabama Department of Corrections and the warden of Holman Prison for approval of a request for up to eight (8) members of the victim's immediate family to attend the execution. An AGOVA representative will accompany the family members to Holman Prison should they choose to attend. The immediate family members who choose to attend the execution must call AGOVA at 1-800-626-7676 or 334-242-7342 to make appropriate arrangements in advance of the execution date.

## **AFTERWARD**

Once the sentence of execution has been carried out, individuals may have diverse reactions. Despite feeling relieved, closure, or that justice has been served, one can also feel very empty and depressed. The execution may trigger new emotions, especially to members of the victim's family who may have been present to observe it. Ideally, you already have a support group with whom you can share your feelings. If you do not, the Victims Assistance Office will be glad to refer you to a grief counselor or a support group in your area.

## GLOSSARY

**Aggravating Circumstances:** Those circumstances present in a capital murder, which make the death penalty the more appropriate sentence. The jury and the judge must find at least one aggravating circumstance before a death sentence can be considered as a punishment. The Code of Alabama specifies ten aggravating circumstances:

1. If the murder committed by a person under sentence of imprisonment;
2. If the defendant previously convicted of another capital offense or a felony involving the use or threat of violence to the person;
3. If the defendant knowingly created a great risk of death to many persons;
4. If the murder was committed while defendant was committing or trying to commit, helping commit, or fleeing after committing or trying to commit, a rape, robbery, burglary, and/or kidnapping;
5. If the murder was committed to avoid or prevent a lawful arrest or while trying to escape from custody;
6. If the murder was committed for money;
7. If the murder was committed to disrupt or hinder the lawful exercise of any government function (such as a trial, or a session of the Legislature), or to disrupt or hinder the enforcement of laws;
8. If the murder was especially heinous, atrocious, or cruel compared to other murders.
9. If the defendant intentionally caused the death of two or more persons by one act or pursuant to one scheme or course of conduct; or
10. If the capital offense was one of a series of intentional killings committed by the defendant.

**Brief:** A written document prepared by the lawyer arguing the case before the appellate court. It contains a summary of the facts, the pertinent laws, and an argument of how the law applies to the facts supporting the lawyer's position.

**Capital Litigation Division:** The group of lawyers within the Office of the Attorney General representing the State of Alabama in the appeal of all death penalty cases, and thus protecting the interests of the victims' families.

**Capital Murder:** Murder punishable by death or life imprisonment without parole. The Code of Alabama limits this offense to murder under 18 specific circumstances, ranging from murder of a child under the age of 14 to murder committed during the hijacking of an aircraft.

**Commutation:** The act of substituting a punishment (i.e. death penalty), with a lesser form of punishment (i.e. life in prison). In Alabama, the governor can commute a death sentence to life imprisonment.

**Execution:** In the law, an "execution" is carrying out some act to its completion. (You may hear lawyers talking about "executing" a will or some other legal document.) In a capital case, an execution is carrying out the sentence of death.

**En banc:** Literally, "full bench." This refers to a court session where all the judges of the court participate in the decision. The Circuit Courts of Appeal usually sit in panels of only a few judges, but for important cases, all the judges may hear the case.

**Habeas Corpus:** A writ of habeas corpus is an order from a court used to release a person from unlawful imprisonment. In a capital murder appeal, the words refer to the appeal of a state conviction in the federal court system. It is not technically an appeal of the defendant's guilt or innocence, but an appellate review to determine whether there were any constitutional rights violated in the State's conviction or sentencing of the defendant. The United States Constitution guarantees this procedure.

**Mitigating Circumstances:** Those circumstances present in a capital murder, which make life imprisonment without parole the more appropriate sentence. The Code of Alabama states that any part of a person's character or record, or any of the circumstances surrounding the murder, may be considered as mitigating. The Code also specifies seven mitigating circumstances:

1. The defendant has no significant history of prior criminal activity;
2. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;
3. The victim was a participant in the defendant's conduct, or consented to it;
4. The defendant was an accomplice in the murder committed by another and his participation was relatively minor;
5. The defendant acted under extreme duress or under the strong domination of another person;
6. The defendant's ability to understand his conduct was a crime, or ability to act lawfully, was greatly impaired (in other words, person was mentally ill, but not so ill as to be found not guilty because of insanity);
7. The age of the defendant at the time of the murder.

**Reprieve:** Temporary relief from or postponement of the execution of a criminal punishment. It does no more than postpone the execution for a time, and it is ordinarily an act of clemency extended to a prisoner to afford an opportunity to pursue another relief from the sentence.

**Stay:** The act of stopping a judicial proceeding by the order of a court. A "stay" does not reverse, annul, or undo what already had been done, but merely suspends the time required for the performance of a particular act. Thus, when a court "stays" an execution, it merely suspends the time in which the execution should have been carried out, until another appeal can be considered.

**Writ of Certiorari:** An order by an appellate court that is used by that court when it has discretion over whether to hear an appeal from a lower court. If the request or petition for the writ is denied, the court refuses to hear the appeal and the lower court's decision stands unchanged. If the request is granted, the lower court is ordered to send the case up to the higher court to hear the appeal. The United States Supreme Court grants a request for a writ of certiorari review only when there are special and important reasons to hear the appeal.

**Writ of Error Coram Nobis:** In English common law (on which American law is based), a writ of error coram nobis was a procedural tool used to bring a case back to the court which handed down the verdict (coram nobis is Latin for "our court") where, if certain facts had been known at the time the verdict was rendered, the result would have been different. This specific procedure has been replaced with the state post-conviction appeal process under Rule 32 of the Alabama Rules of Criminal Procedure. ( You may still hear older lawyers and judges talking about "error coram nobis" when they mean an appeal under Rule 32.)



