

**COPY**

**IN THE COURT OF APPEALS OF THE STATE  
OF MISSISSIPPI**

Case # 2005-CP-00667-CoA

**James Ramsey**

**Appellant'**

**Vs.**

**FILED**

**Case #**

**State of Mississippi**

**JUL 09 2007**

**Appellee**

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

**BRIEF OF APPELLANT**

Submitted By:

*James Ramsey*

James Ramsey, Pro'se, Petitioner

MDOC # L6811 BCRCF

2792 Hwy. 8, West

Cleveland, MS 38732

**EVIDENTIARY HEARING NOT REQUESTED**

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# I.

## STATEMENT OF THE CASE

The course of the proceedings and disposition of the charges.

Petitioner was indicted by the Grand Jury of Panola County on or about the 3<sup>rd</sup> day of October 2002 on the charges of Sales of a Controlled Substance in violation of MCA 41-29-139(a), on a three (3) count indictment.

Thereafter, the Petitioner entered a guilty plea on the 16<sup>th</sup> day of June 2003 to all three (3) counts of the indictment. The Petitioner was sentenced by the Honorable Judge Anne Lamar to serve a term of five (5) years on each count to run consecutive and an additional ten (10) years to serve on Post-Release Supervision with five (5) years reporting to a Probation Officer and five (5) years non-reporting.

Petitioner, was represented by Honorable Sarah C. Jubb, a member of the Mississippi Bar Association.

Petitioner asserts that there have been only three (3) previously filed proceedings in either State or Federal Court filed on Petitioner's behalf.

The first motion was titled Motion for Reconsideration of Sentence which was filed within the Panola County Circuit Court on or about the 9<sup>th</sup> day of December 2003.

The second motion filed (legal documents are considered FILED when they are turned over to prison personnel) by the Petitioner was mailed from BCRCF on or about the 26<sup>th</sup> day of April 2004. But the Panola County Court did not actually file the Motion for Post-Conviction Relief until much later on the 24<sup>th</sup> day of November 2004 (this can easily be proven by examining the Legal Mail Log here at BCRCF). The Petitioner believes that the Panola County Circuit Court intentionally delayed the FILING of his Post-Conviction for a period of six (6) months.

The third motion filed by the Petitioner was a Notice of Appeal filed on 28 March 2005 with the Panola County Circuit Court.

## II.

### **STATEMENT OF THE FACTS**

See; “Facts Within the Petitioner’s Personal Knowledge,” contained within the Post-Conviction Relief Petition.

#### **ISSUE ONE: THE COURT ERRED IN FINDING RAMSEY DID NOT PROVE INNEFFECTIVE ASSISTANCE OF COUNSEL.**

Counsel was ineffective in not informing Ramsey, prior to advising him to pleas guilty, that the State’s two **confidential informers** were themselves awaiting the out come of pending drug charges against them. These two C.I.’s which were listed on Ramsey’s indictment as, were the State’s witnesses in chief, and unknown to Ramsey, their testimony was subject to impeachment under State Law, and Uniform Circuit and County Court Practices.

Had Ramsey known that a jury instruction would have been issued to the jury, informing the panel to weigh these witnesses testimony with caution, or a “grain of salt,” so to speak, Ramsey most certainly would not have entered a Plea of Guilty, but would have exercised his right to a trial by jury.

As Ramsey pled guilty, Hill v. Lockhart, 474 U.S. 52 (1985) comes into play, which holds that the two part Strickland v. Washington, 466 U.S. 668 (1984) test applies to guilty pleas based on ineffective assistance of counsel. Under Strickland, in conjunction with Hill, a petitioner seeking to establish ineffective assistance of counsel must demonstrate that:

(1) Counsel's advice and performance fell below an objective standard of reasonableness; and (2) The petitioner must show that there is a reasonable probability that, but for Counsel's errors, he would not have plead guilty and would have insisted on going to trial. *Id.* at 474 U.S. 59 (emphasis added)

In Ramsey's situation his attorney failed to properly investigate into the facts and circumstance of the Prosecutions case against Ramsey, and Ramsey therefore was placed in a position of defenselessness. This in turn left Ramsey no other option other than pleading guilty, or in the alternative, spending the rest of his life in prison. Courts across our land have consistently held that trial counsel's failure to investigate and prepare for trial amounts to ineffective assistance. See generally; Capps v. Sullivan, 921 F. 2d 260 (10<sup>th</sup> Cir. 1990), Kemp v. Leggett, 635 F. 2d 453 (5<sup>th</sup> Cir. 1981), Nealy v. Cabanna, 764 F. 2d 1173 (5<sup>th</sup> Cir. 1981).

Further on the day Ramsey was scheduled for trial, his lead attorney did not show up at Court, but sent another attorney in his place who was totally unfamiliar with Ramsey's case. Such action only served to heighten Ramsey's reluctance to exercise his rights.

Accordingly in the interest of Justice Ramsey ask that this Honorable Court reverse his guilty plea, and remand this case back to Panola County, and set it for trial.

## ISSUE TWO: RAMSEY ENTERED AN UNINTELLIGENT AND INVOLUNTARY PLEA OF GUILTY.

Advice of counsel is a major area of factual inquiry when determining if a guilty plea was intelligently entered. Ramsey was placed in a submissive position on the day of trial, by his lead attorney's failure to show up for court, and sending a representative in his stead who was utterly unfamiliar with the facts, defense, and circumstances of Ramsey's case. On this same day, Ramsey entered an open plea of guilty, on the advice of this attorney. (see; Sanders v. State, 440 So. 2d (Miss. 1982)). Further, Ramsey was not properly advised of his chances at trial, defensive tactics, and the fact of the State's main two witnesses having felonies.

In Myers v. State, 583 So. 2d 174 (Miss.1991) the Mississippi Supreme Court opined: "We think what we said in Sanders bears reiteration:" And further stated.

"The relationship of the accused to his lawyer provides a critical context here. As he stands before the Bar of Justice, the indicted defendant often has few friends. The one person in the world, upon whose judgement and advice, skill and experience, loyalty and integrity, that the defendant must be able to rely upon, is his lawyer. This is as it should be. Any rational defendant is going to rely heavily upon his lawyer's advice as to how he should respond to the trial Judge's questions at the plea hearing. He may also rationally rely on his lawyer's advice as to what the outcome of the plea hearing will be. Yet it is the defendant, not the lawyer, who enters the plea. It is the defendant, not the lawyer, who is going to serve time. It is the defendant, not the lawyer, whose Constitutional Rights are being waived at

the plea hearing. It is the defendant's plea and accompanying waiver of rights, which under established law must be voluntarily and intelligently given, with full appreciation of the consequences to follow." Sanders at 286.

In Kimmelman v. Morrison, 477 U.S. 365, 378, 106 S. Ct. 2574, 2584-85, 91 L. Ed. 2d 305 (1986), the United States Supreme Court stated: "A layman will ordinarily be unable to recognize counsel's errors and to evaluate counsel's professional performance; consequently, a criminal defendant will rarely know that he has not been represented competently until after trial or appeal, usually when he consults another lawyer about his case. Indeed, an accused will often not realize that he has a meritorious ineffective claim until he begins collateral review proceedings. An ineffective assistance claim by its very nature refers to the totality of counsel's pre-trial and trial performance."

It should be considered as a given that Ramsey had no working relationship, and thereby confidence, in this attorney, who until the day of trial, had no prior knowledge, information, trial tactics, or strategy in regard to Ramsey's defense. This attorney certainly could not properly advise Ramsey of the law in relation to the facts and circumstances surrounding his accepting a guilty plea.

Accordingly, Ramsey prays this Honorable Court will enter an Order withdrawing his guilty plea in cause number CR2002-62LP1, in the Circuit Court of Panola County, Mississippi.



### **ISSUE THREE: THE LOWER COURT ERRED IN FINDING THAT RAMSEY DID NOT SHOW ANY CONSTITUTIONAL VIOLATIONS.**

As demonstrated within ISSUES ONE and TWO , Ramsey certainly made a showing of Constitutional Violations, although as he is untrained in the law, said showing lacked all of the “Bells and Whistles,” in which a legal expert would have presented on his behalf, had he been able to afford one.

As it happens Ramsey was forced to present his appeal Pro’Se, and he respectfully ask that this Court consider same, and construe his pleadings liberally. See generally, Moore v. Ruth, 556 So. 2d 1059 (Miss. 1990).

#### **Statement of Facts that are Within the Petitioner’s Personal Knowledge**

Petitioner was arrested in Memphis, Tennessee on the 12<sup>th</sup> day of December 2002 and then extradited back to Panola County Mississippi on the 23<sup>rd</sup> day of December 2002. The Petitioner thereafter remained in the Panola County Jail until the 28<sup>th</sup> day of February 2003 when for the first time in **73** days or incarceration as a **Pretrial Detainee** the Petitioner was taken before a Judge to have a Bail Hearing.

*The Petitioner’s detention pursuant to a valid warrant and after a lapse of significant time, without a Bail Hearing, did in fact amount to a violation of Constitutionally Protected Civil Rights of DUE PROCESS OF LAW under the Fourteenth Amendment.* (see; Armstrong v. Squadrito, 152 F.3d 564, 576 (7<sup>th</sup> Cir. 1998) the 7<sup>th</sup> U.S. Circuit Court of Appeals stated, “**57-day delay before initial appearance violates due process.**”

The Petitioner posted Bail within thirty (30) minutes of leaving his Bail Hearing. If the Petitioner would have been allowed to have a Bail Hearing sooner than the 73 days that it took Panola County to arrange such a Bail Hearing then the Petitioner could have been in a better position to seek Legal Counsel.

Panola County Violated the Petitioner's Constitutional Civil Rights of Due Process of Law under the United States Constitutions Fifth Amendment and Fourteenth Amendment and also Article 3 Section 14 of the Mississippi Constitution.

***The Due Process clause of the Fourteenth Amendment guarantees a person who is arrested the Constitutional Right of a Preliminary Hearing, an Initial Appearance, and Preliminary Examination. The Petitioner had a Liberty Interest to remain out of jail until he was proven guilty in a Court of Law.***

Due Process of Law was violated when Panola County purposely failed to have a Bail Hearing within a REASONABLE AMOUNT OF TIME (see; Uniform Circuit and County Court Rules 6.03 & 6.04 and Federal Rules of Criminal Procedure, rule 5(c)). ***At no time did this Petitioner sign a Waiver of Initial Appearance or Preliminary Hearing*** and the Petitioner had not been indicted prior to his arrest and detention. The Petitioner believes the Petitioner was purposely kept confined in the Panola County Jail to damage the Petitioner's ability to have a successful defense at trial.

There can be no doubt that there existed **not** one IOTA of a justifiable factual reason why Panola County denied the Petitioner a Bail Hearing for such a long period of time. It is very clear that the Petitioner was not a flight risk because the Petitioner showed up on his Court date and the Petitioner caused absolutely no problems within the community.

In *Gerstein V. Pugh*, 420 U.S.103, 119 (1975) the Supreme Court held that "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest."

The Panola County Law Enforcement Authorities repeatedly questioned the Petitioner about a homicide that the Petitioner knew absolutely nothing about. The person that was later convicted for that homicide told the Panola County Law Enforcement Authorities that the Petitioner had nothing to do with the homicide. The homicide that Petitioner had nothing to do with is the only reason that Panola County held the Petitioner without bail.

Also, the two (2) Confidential Informants named on the Petitioner's indictment were themselves awaiting the outcome of pending Drug Related Charges against them. The Petitioner is confident that the Narcotic Police made promises of leniency in exchange for the Confidential Informants buying drugs from other drug USERS, therefore entrapping other drug USERS like myself.