

COPY

The Supreme Court  
Court of Appeals of the State of Mississippi

|                      |  |                       |
|----------------------|--|-----------------------|
| Calvin Gordon        | <b>FILED</b>   | Appellant             |
|                      | FEB 17 2006  |                       |
| v.                   | OFFICE OF THE CLERK<br>SUPREME COURT<br>COURT OF APPEALS | NO. 2005-KA-00687 COA |
| State of Mississippi |  | Appellee              |

Trial Court No. 5696

petition For Supplemental Brief pro se

Conviction(s): Four Counts of Capital Rape

Date of Indictment: March 3, 2004

Date of trial: March 3, 2005

Date of Conviction: March 3, 2005

**MOTION#** 

# I

(A) petitioner's indictment consist of a false statement.  
See exhibit #1

(1) petitioner's indictment states Capitol Rape.

(2) Capitol Rape is not an element of the indictment  
for the following reasons:

(A) Capitol Rape has been abolished.

(B) Capitol is no longer used in Statute

(C) Defendant was charged with Capitol Rape; But found  
guilty of rape.

(D) The Defendant was tried for statutory Rape.

(E) On Jury instructions the Court Instructed the Jury,  
if you believe from the evidence in this case beyond a  
reasonable doubt that at the time and place in Count  
I, II, III, IV of the indictment and testified about,  
that the Defendant Colvin Gordon did unlawfully, willfully  
and feloniously have sexual intercourse with Pamela Mc-  
dougol, a female child who is under the age of (14)  
fourteen years and not the spouse of Colvin Gordon, and  
Calvin Gordon who is above the age of eighteen (18) and  
and more then (24) twenty four months older Pamela

McDougal then you shall find the Defendant Calvin Gordon guilty of rape as charged in indictment (there does not exist a statement "Capital Rape") For the above-mentioned Jury instruction see Exhibit #2

(B) The rule ~~7.09~~ 7.09 of uniform rules of Circuit and County Courts institutes: The form of an indictment can be amended, but not the substance. (Also see Longford v. State 239 Miss. at 487, 123 So.2d 616).

(1) The false statement is of the substance of petitioner's indictment not of the form; therefore, by law the false statement (Capital Rape) could not be corrected by an amendment.

(2) The State did not file a "motion to amend indictment," but if one would have been filed by the State, such motion would have been "wholly frivolous" ~~applying~~ applying the principles of rule 7.09 of uniform rules of Circuit and County Court and (Longford v. State, 239 Miss. at 489, 123 So. 2d At 616). For frivolous request to amend indictment See (Transcript pg. 96)

(3) Rather than the State filing a motion to amend the Indictment, the State made ~~made~~ a verbal request during the Jury deliberations in which was frivolous.

(4) Considering the frivolous request to amend indictment possessed a sufficient claim, the request shall still hold no legitimate merits until a motion was filed, approved and authorized.

(5) The Judge did endorse and sustain the request on March 3, 2005; The day petitioner was tried. The day of the ruling of the request, no motion was filed. (see transcript pg. 96)

(6) Considering the above, the request held no validity, even if there is no such rule that render it as frivolous (petitioner was tried under indictment for "Capital Rape")

(A) There was no order to amend indictment, but rather a verbal request by the State the day petitioner was tried and convicted of the alleged offenses in indictment.

(B) Rule 7.09 defeat the motion or request to amend; Instituting amendment can only be of form "not of substance" therefore rendering it invalid.

(C) A notice alone cannot form a sufficient basis to validate a jurisdictionally defective indictment. (United States v. Spinners 180 F. Ed 514.)

(1) The State attempted to correct the false statement by marking through it with a pen marker... Ect.

(2) The false statement in Counts I, II, III, IV stating "Capitol Rape" was presented to the grand Jury; therefore adverse toward petitioner.

(3) The only remedy to correct prejudicial statements on indictment is to reindict in a grand Jury procedure minus the prejudicial statement (in this case false statement and/or charge)

(D) The indictment of petitioner was obtained by a false statement just as well as a prejudured statement.

(1) Due process Consideration prohibit the government from "obtaining an indictment based on known prejudured testimony" (U.S. v. Hogan 712 F. 2d 757, Sec. Also U.S. v. Basurto, 497 F. 2d 781, 785 (9<sup>th</sup> Cir. 1974)

(A) The statement listed in count I, II, III, IV of petitioner's indictment alleging "Capital Rape" is prejudured testimony.

(2) An indictment must "fully directly and expressly" without any "uncertainty or ambiguity" set forth all the elements necessary to constitute the offenses intended to be punished. (U.S. v. Gote wood 173 F. Ed 983.)

(A) petitioner's indictment does not satisfy this standard above.

(B) It was not the intention of the Court, that petitioner be punished for Capital Rape; Therefore, the allegation alleged on the indictment, specifically in all 4 count: Capital Rape is not an element of the crime intended to Charge.

(C) The false statement institutes petitioner's indictment as not being "fully directly and expressly" without any uncertainty or ambiguity in setting forth all the elements necessary to constitute the offense intended to be punished.

(D) The State exaggerated and over exerted in setting forth the elements to constitute the crime intended to to be punished by: Presenting false statements —

on petitioner's indictment.

(3) If a defendant can show prejudice, a conviction will be reversed.

(A) False statements are prejudicial statements. (Gatewood 173, F3, 983)

(B) In all 4 counts of petitioner's indictment there exist a false statement.

(4) Dismissal of an indictment is to achieve two objectives:

(A) To eliminate prejudice to a defendant; and

(B) To prevent prosecutorial impairment of the grand jury's independent role. (United States v. Hogan, 712 F. 2d 757)

(C) petitioner's ~~indictment~~ satisfy both components.

(5) For an indictment to be sufficient, it must contain all essential elements of the crime charged. (nothing more/nothing less) (Peterson v. State of Miss. 671 So. 2d 647)

(A) Petitioner's indictment exceed the essential elements.

(B) In petitioner's indictment the State enticed the grand Jury by introducing a fictitious statement.

(6) Failure to include all elements of a crime on an indictment institutes the indictment as jurisdictionally defective. (United States v Spinner 180 F. Ed 514).

(E) If the insufficiency of the indictment is due to a defect in which could have been remedied by an amendment, then the point is waived by the accused if the person fail to object, but, if the defect is not able to be remedied by amendment, the defect is not waived. (Langford v. State, 239 Miss At 187, 123 So. 2d At 616)

(1) petitioner's defect was not able to be corrected by amendment of indictment.

(2) Rule 7.09 of the uniform rules of circuit and county court: The form of an indictment is amendable but not the substance.

(3) petitioner's "defect" is of the substance.



(F) On a four count indictment, if one charge or count on the indictment is defective or if on offense fail to state all the elements of one offense, the entire indictment is defected. Like wise if one of the offenses is jurisdictionally defective, the entire indictment is defective. (United States v. Spinner 180 F. Ed 514)

(G) Section 2532, Code of 1942 Rec. established: Who so ever on the trial of an indictment for any offense, there shall appear to be any variance ~~between~~ between the statement in the indictment and the County, City, town, village, division, or any other place mentioned in the indictment. It shall and ~~may~~ may be lawful for the court before which the trial shall be had, if such variance be not material to the merits of the case. And that defendants be prejudiced thereby in his defense on the merits to order such indictment and the records proceedings in the court to be amended if not the substance. Only the form can be amended.

(1) The statement was indeed prejudicial stating "Capitol Rape" when the statement was not an element of the crime intended to be punished.

## III

(A) U.S.C.A. 1001 prohibits any government official from using false statement(s):

(1) The false statement "Capitol Rape" was used in petitioner's indictment.

(2) The false statement was also used in petitioner's grand Jury procedure; presented to the grand Jury to obtain an indictment on petitioner.

(3) The grand Jury considered and contemplated the the false statement in rendering the indictment on petitioner.

(4) 18 U.S.C.A. 1001 provides: It is not the Congressional purpose only to protect the government against false pecuniary claims but as well to protect government agencies from using unfairness outside of normal functioning.  
(United States v. Lambert CA, 5(1972, 470 F.2d 354).

(5) 18 U.S.C.A. 1001 was designed to ensure the (whole world) government employees and "general public" alike, that any record document, indictment, or statement made by government official or employee great or small in their official capacity and in the ~~course~~ course of their duties, can be relied upon at any time and by all. C. ~~the~~ United States v. Myers N. D. Cal. 1995 131 F. Supp. 525.

(6) The statement used and/or presented on petitioner's indictment and in petitioner's grand Jury procedure, can not be relied on, specifically the statement alleging: "Capital Rape."

### III

(A). petitioner's Attorney violated mississippi rules of professional Conduct, Rule 2.1 Advisor.

(1) The rule set forth: in representing a client an Attorney shall exercise independent professional judgment and render candid advise.

(2) petitioner's Attorney failed to satisfy the rule by the following Act(s):

(3) Neglecting to advise petitioner that the false-statement alleging "Capital Rape" could not be cured by an amendment of indictment because it was of the substance of the indictment.

(B) petitioner's Attorney violated Mississippi rule of professional conduct rule 1.3 diligence:

(1) Rule 1.3 set forth: A lawyer shall act with reasonable diligence and ~~prompt~~ promptness in representing a client.

~~Rule 1.3~~ Diligence is defined as:

(A) A continuous effort to accomplish something.

(B) Care, caution, the attention and care required from a person in a given situation.

(2) petitioner's Attorney did not fulfill the above requirements of diligence.

(3) Attorney must take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. (Rule 1.3)

(4) An Attorney should act with commitment and dedication to the interest of the client and with zeal in advocacy upon client's behalf (Rule 1.3)

(5) petitioner's Attorney violated the standards of rule 1.3 by not objecting to the defect of the substance of petitioner's indictment being defective with the said false statements in all four (4) counts of the indictment, Nor did Attorney advise petitioner that Rule 7.09 of Circuit and County courts institutes that the substance of an indictment can not be cured by an amendment.

(6) The Attorney left the colossal arguable matter above Challenge.

(7) If the Attorney failed to object to the form of an indictment it is not insufficient Counsel. But, if the Attorney failed to object to the substance of an indictment it is insufficient Counsel. (Jones v. State of Miss. 770 So.2d 578)

(C) A convicted criminal claiming that Counsel was ineffective, and that Counsel assistance was so defective to require reversal of conviction has two components: (Strickland v. Washington 466 U.S. 688, 1984)

(1) The Defendant must show ~~that~~ that the Counsel's performance was deficient, requiring showing that Counsel made errors so serious that Counsel was not-

functioning as Council guaranteed by sixth amendment,

(A) petitioner meet the first component of Strickland v. Washington by showing that Council fail to object to the State amending the substance of petitioner's indictment.

(B) petitioner's Council should have possessed the knowledge that Rule 7.09 of Circuit and County Courts prohibited the substance of petitioner's indictment from being amended.

(2) Defendant must show the deficient performance prejudiced by the defense by showing that errors were so serious as to deprive defendant of a fair trial.

(U.S.C.A. Const. Amend. 6)

(D) The false statement on indictment alleging "Capital Rape" is a sufficient and obvious issue

(1) Rule 7.09 of uniform rules of Circuit and County Courts prohibiting any amendment of the substance of indictment of a sufficient and obvious issue, considering the State tried to recover and cure a defect in the substance of petitioner's indictment by ~~amending~~ amending it. Such rule has been violated.

(E) The most compelling evidence of Counsel's incompetence is the failure to object to serious instance of prosecutorial misconduct. (Gravelu v. Mills 87 F. Ed. 779)

(1) The Attorney failed to object to the following:

(A) The false ~~statement~~ statement being on petitioner's indictment.

(B) The false statements being presented to the Grand Jury.

(C) The court attempting to recover from damage of the substance of petitioner's indictment by amending the indictment, a behavior restricted from occurring by rule 7.09 of uniform rules of circuit and county courts.

(G) Petitioner's Attorney was either intentionally ineffective or he was illiterate to the laws governing the violation (s) of rule 7.09 of the uniform rule of circuit and county courts in which ~~the~~ occurred in petitioner's cause.

(1) whatever the cause maybe or the cause has been for the neglect, the Attorney was insufficient,

(2) A procedural default exist where any right was waived by Counsel's lack of knowledge of a known rule of law by controlling court. (Gravelu v. Mills 87 F. Ed. 778)

(3) If petitioner's Attorney was not ignorant to the rule governing the indictment defect, then Attorney deliberately neglected arguable issue.

#### IV

- (A) The double Jeopardy clause of the fifth amendment guarantees that no person shall be "subject for the same offense" to be twice put in Jeopardy of life or limb. Etc.
- (1) It was double Jeopardy when the court allowed defendant to be tried twice for the same crime as stated in Count 3 and 4 of the indictment in Cause # 5849 (see exhibit #1 Count 3 and 4)
- (2) The defendant was indicted twice for the same offense, and found ~~guilty~~ guilty of both offenses and sentenced for both offenses.
- (3) U.S. Const. amend. V. The prohibition of double Jeopardy applies not only to "life and limb" but prison sentences and Criminal fines as well. (Jeffers v. U.S. 432 U.S. 137, 155 (1997) )



## VI

(D) State fail to prove essential elements of the alleged incidents of in Jury trial as followed:

(1) State failed to prove during Jury trial each element of the offenses of the alleged rape and relied merely on Hearsay Testimony made by child in this case (pamela McDougal) and witnesses for the State (Brenda Blakes and Denise Williams) and opinions and misdiagnosis of Dr. Daisy Thomas and Dr. Wilkinson (Hobcorp) concerning test, diagnosis and treatment of Appellant (Colvin Gordon) and Child's mother (Tracy Blakes). (Neal v. State 451 So.2d 743, 1984 (Miss)) which states: (A) Before a conviction may stand the state must prove each element of the offense, not only this requirement, the law of Mississippi, due process require that the state prove each element of the offense beyond reasonable doubt, just as the state must prove each element of the offense, the Jury must be correctly and fully instructed regarding each element of the offense charged. (B) The Jury is charged with the responsibility for weighting and considering conflicting evidence and credibility of witnesses.

(2) Miss. R. Evid. §03(4) states: Before admitting evidence, a two part test must be met: The declarant's motive in making a statement must be consistent with purposes of promoting treatment, statement by a child sexual abuse victim identifying the perpetrator as a member of his/her household, are ~~not~~ reasonably relied upon by physician in diagnosis and treatment.

(3) State failed to prove the alleged victim in this case (Pomela McDougol) suffered trauma as a result of the alleged sexual assault and to introduce into evidence filed documents showing counselling sessions and results of the counselling. (Doe v. Doe 644 So.2d 1199, (1994 Miss)).

### Conclusion

Miss. Code Ann. 99-1-5 (1972) the statute of limitation provides: A person shall not be prosecuted for any offense: murder, manslaughter, Arson, burglary, forgery, ~~rape~~ rape, Ect... under false pretenses.

## Relief Requested

petitioner's ask that if there exist any of the following violations petitioner be granted the following relief:

(1.) petitioner ask if this Court find there exist a false statement in petitioner's indictment this Court grant:

(A) A dismissal of the indictment; and

(B) A ward petitioner with a new trial

(2) petitioner ask if this Court find that there exist a violation of rule 7.09 by the act of amending the substance of petitioner's indictment which is restricted by U.R.C.C. 7.09 this Court grant:

(A) A dismissal of the indictment; therefore

(B) A new grand Jury proceeding for new indictment, and a new trial.

(3) If this Court find that there exist a prejudice statement in petitioner's indictment and in petitioner's grand Jury proceeding, petitioner ask that this Court grant:

(A) A reversal of conviction

(4) petitioner ask that if this court find that petitioners indictment is jurisdictionally defective this court grant:

(A) A reversal of conviction

(5) petitioner ask that if this court find there exist a ~~violation~~ violation of (18 U.S.C. A 1001) in the grand Jury proceeding or on petitioner's indictment this court grant:

(A) reversal of conviction

(6) petitioner ask that if this court find there exist ineffective assistance of Counsel at Jury trial Stage this court grant:

(A) reversal of conviction

(7) petitioner ask if this court find that the state failed to meet the standards of (Miss. U.R.C.C. Rule 7.06 (specifically by failing to prove every essential element of the indictment as drafted) this Court grant:

(A) A reversal and render conviction

(8) petitioner ask that if this court find that State  
erred in granting a request (Verbally) to amend  
the substance of petitioner's indictment which is  
prohibited under (U.R.C.C. 7.09) that this Court grant:  
(A) Dismissal of indictment, and  
(B) new trial

This the 14<sup>th</sup> day of February 2006

Calvin Gordon  
Signature

IN THE CIRCUIT COURT OF HUMPHREYS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NO.: 5849

CALVIN GORDON

DEFENDANT

INDICTMENT

COUNT I  
CAPITOL RAPE

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful men and women of Humphreys County, Mississippi, being duly selected, empaneled, sworn and charged in the Circuit Court of Humphreys County, Mississippi, upon their oaths, present that: CALVIN GORDON, did, on or about November 17, 2003, in Humphreys County, Mississippi, unlawfully, willfully and feloniously, have sexual intercourse with Pamela McDougal, a female child, who is under the age of fourteen (14) years, and CALVIN GORDON, who is above the age of eighteen (18), in violation of Section 97-3-65(1)(b) of the Mississippi Code of 1972, as amended, against the peace and dignity of the State of Mississippi.

COUNT II  
CAPITOL RAPE

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful men and women of Humphreys County, Mississippi, being duly selected, empaneled, sworn and charged in the Circuit Court of Humphreys County, Mississippi, upon their oaths, present that: CALVIN GORDON, did, between January 21, 2002, and January 20, 2003, in Humphreys County, Mississippi, unlawfully, willfully and feloniously, have sexual intercourse with Pamela McDougal, a female child, who is under the age of fourteen (14) years, and CALVIN GORDON, who is above the age of eighteen (18), in violation of Section 97-3-65(1)(b) of the Mississippi Code of 1972, as amended, against the peace and dignity of the State of Mississippi.

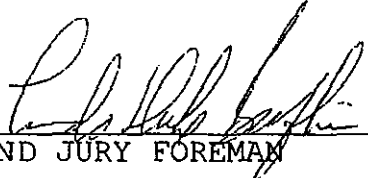
COUNT III  
CAPITOL RAPE


THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful men and women of Humphreys County, Mississippi, being duly selected, empaneled, sworn and charged in the Circuit Court of Humphreys County, Mississippi, upon their oaths, present that: CALVIN GORDON, did, between January 21, 2003, and November 16, 2003, in Humphreys County, Mississippi, unlawfully, willfully and feloniously, have sexual intercourse with Pamela McDougal, a female child, who is under the age of fourteen (14) years, and CALVIN GORDON, who is above the age of eighteen (18), in violation of Section 97-3-65(1)(b) of the Mississippi Code of 1972, as amended, against the peace and dignity of the State of Mississippi.

COUNT IV  
CAPITOL RAPE

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful men and women of Humphreys County, Mississippi, being duly selected, empaneled, sworn and charged in the Circuit Court of Humphreys County, Mississippi, upon their oaths, present that: CALVIN GORDON, did, between January 21, 2003, and November 16, 2003, in Humphreys County, Mississippi, unlawfully, willfully and feloniously, have sexual intercourse with Pamela McDougal, a female child, who is under the age of fourteen (14) years, and CALVIN GORDON, who is above the age of eighteen (18), in violation of Section 97-3-65(1)(b) of the Mississippi Code of 1972, as amended, against the peace and dignity of the State of Mississippi.

TRUE BILL

  
GRAND JURY FOREMAN

  
ATTORNEY FOR STATE

FILED May 3<sup>rd</sup>, 2004  
TIMAKA JONES, CIRCUIT CLERK

RECORDED May 3<sup>rd</sup>, 2004  
TIMAKA JONES, CIRCUIT CLERK

BY: Jimmie James Jones

BY: Jimmie James Jones

IN THE CIRCUIT COURT OF HUMPHREYS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NO. 5849

CALVIN GORDON

DEFENDANT

INSTRUCTION NO. 3

CALVIN GORDON has been charged in Count I of the Indictment with the offense of [REDACTED]  
Rape.

If you find from the evidence in this Cause beyond a reasonable doubt that:

1. CALVIN GORDON, did, on or about November 17, 2003, in Humphreys County, Mississippi,
2. unlawfully, willfully and feloniously, have sexual intercourse,
3. with Pamela McDougal, a female child, who is under the age of fourteen (14) years, and not the spouse of CALVIN GORDON, and
4. CALVIN GORDON, who is above the age of eighteen (18), and more than twenty-four (24) months older than Pamela McDougal,

then you shall find the Defendant, CALVIN GORDON, guilty of [REDACTED] Rape as charged in Count I of the Indictment.

If the prosecution has failed to prove any one or more of the above listed elements beyond a reasonable doubt, then you shall find CALVIN GORDON not guilty of [REDACTED] Rape as charged in Count I of the Indictment.

*gms*



IN THE CIRCUIT COURT OF HUMPHREYS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NO. 5849

CALVIN GORDON

DEFENDANT

INSTRUCTION NO. 4

CALVIN GORDON has been charged in Count II of the Indictment with the offense of [REDACTED]

Rape.

If you find from the evidence in this Cause beyond a reasonable doubt that:

1. CALVIN GORDON, did, between January 21, 2002, and January 20, 2003, in Humphreys County, Mississippi,
2. unlawfully, willfully and feloniously, have sexual intercourse,
3. with Pamela McDougal, a female child, who is under the age of fourteen (14) years, and not the spouse of CALVIN GORDON, and
4. CALVIN GORDON, who is above the age of eighteen (18), and more than twenty-four (24) months older than Pamela McDougal,

then you shall find the Defendant, CALVIN GORDON, guilty of [REDACTED] Rape as charged in Count II of the Indictment.

If the prosecution has failed to prove any one or more of the above listed elements beyond a reasonable doubt, then you shall find CALVIN GORDON not guilty of [REDACTED] Rape as charged in Count II of the Indictment.

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IN THE CIRCUIT COURT OF HUMPHREYS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NO. 5849

CALVIN GORDON

DEFENDANT

INSTRUCTION NO. 5

CALVIN GORDON has been charged in Count III of the Indictment with the offense of [REDACTED] Rape.

If you find from the evidence in this Cause beyond a reasonable doubt that:

1. CALVIN GORDON, did, between January 21, 2003, and November 17, 2003, in Humphreys County, Mississippi,
2. unlawfully, willfully and feloniously, have sexual intercourse,
3. with Pamela McDougal, a female child, who is under the age of fourteen (14) years, and not the spouse of CALVIN GORDON, and
4. CALVIN GORDON, who is above the age of eighteen (18), and more than twenty-four (24) months older than Pamela McDougal,

then you shall find the Defendant, CALVIN GORDON, guilty of [REDACTED] Rape as charged in Count III of the Indictment.

If the prosecution has failed to prove any one or more of the above listed elements beyond a reasonable doubt, then you shall find CALVIN GORDON not guilty of [REDACTED] Rape as charged in Count III of the Indictment.

S-3

IN THE CIRCUIT COURT OF HUMPHREYS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NO. 5849

CALVIN GORDON

DEFENDANT

INSTRUCTION NO. 6

CALVIN GORDON has been charged in Count IV of the Indictment with the offense of **[REDACTED]** Rape.

If you find from the evidence in this Cause beyond a reasonable doubt that:

1. CALVIN GORDON, did, between January 21, 2003, and November 16, 2003, in Humphreys County, Mississippi,
2. unlawfully, willfully and feloniously, have sexual intercourse,
3. with Pamela McDougal, a female child, who is under the age of fourteen (14) years, and not the spouse of CALVIN GORDON, and
4. CALVIN GORDON, who is above the age of eighteen (18), and more than twenty-four (24) months older than Pamela McDougal,

then you shall find the Defendant, CALVIN GORDON, guilty of **[REDACTED]** Rape as charged in Count IV of the Indictment.

If the prosecution has failed to prove any one or more of the above listed elements beyond a reasonable doubt, then you shall find CALVIN GORDON not guilty of **[REDACTED]** Rape as charged in Count IV of the Indictment.

IN THE CIRCUIT COURT OF HUMPHREYS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

CAUSE NO. 5849

CALVIN GORDON

DEFENDANT

JURY VERDICT AND SENTENCE

THIS CAUSE came on to be heard on the 03<sup>rd</sup> day of March, 2005, on the Indictment filed in this Cause, charging the Defendant, CALVIN GORDON, with the crimes of, Count I, II, III and IV - Capitol Rape, in violation of Section 97-3-65(1)(b), of the Mississippi Code of 1972, as amended, against the peace and dignity of the State of Mississippi. The Court finds as follows:

- (1) The Defendant, CALVIN GORDON, on a previous date, appeared before this Court with his Attorney, W. C. Trotter, and was duly arraigned on said charges and entered a plea of not guilty to said Indictment in this Cause.
- (2) That on said date of March 03, 2005, the District Attorney who prosecutes for the State of Mississippi, and the Defendant, CALVIN GORDON, together with his said attorney present, appeared in Court and announced ready for trial on the charges of the said Indictment.
- (3) That a jury, consisting of twelve (12) adult residents and citizens of Humphreys County, Mississippi, was duly empaneled and lawfully sworn, and said jury has heard and considered all of the evidence presented, both documentary and oral, and the arguments of counsel retired, and after deliberations, returned into open court the following verdict, "We, the Jury, find the Defendant guilty on all four (4) Counts".

IT IS THEREFORE, ORDERED AND ADJUDGED, by the Court, that CALVIN GORDON, should be, and hereby is, sentenced to serve twenty (20) years, each Count, in the Mississippi Department of Corrections, with the sentence in Counts I and II to run concurrent and the sentence in Counts III and IV to run concurrent, and the sentence in Counts I and II to run consecutive to the sentence in Counts III and IV, for a total of forty (40) years to serve.

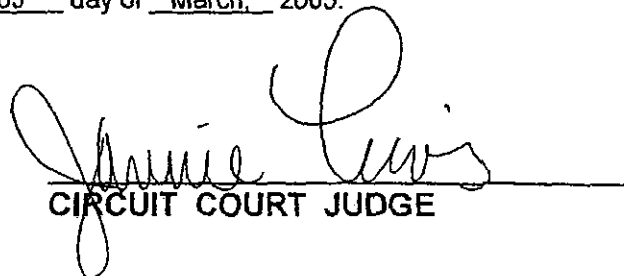
SO ORDERED AND ADJUDGED, this the 03<sup>rd</sup> day of March, 2005.

**FILED**  
TIMAKA J. JONES, CIRCUIT CLERK

MAR 15 2005

BY

 J.C.

  
CIRCUIT COURT JUDGE

## Certificate of service

I Calvin Gordon do this day listed below that I have forwarded copies of enclosed document(s) to below listed person(s) via United States postal service and a self-addressed stamped envelope to be returned to Appellant with stamped filed copy(s) to inform Appellant documents have been received, by this office(s).

Office of the Clerk  
Supreme Court & Court of Appeals  
post office ~~Box~~ Box 249  
Jackson, ms. 39205-0249

Honorable Jim Hood: Attorney General  
post office Box 220  
Jackson, ms. 39205

This the 14<sup>th</sup> day of February, 2006

Calvin Gordon  
signature

MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES JAN. 30, 2008  
BONDED THRU STEGALL NOTARY SERVICE

Augusta Cadogan