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

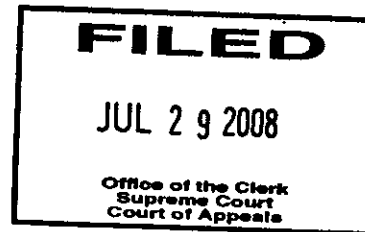
**AZIKIWE KAMBULE**

**APPELLANT**

**VS.**

**NO. 2006-CA-1497-COA**

**STATE OF MISSISSIPPI**



**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: LISA L. BLOUNT  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. [REDACTED]**

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

**AZIKIWE KAMBULE**

**APPELLANT**

**VS.**

**NO. 2006-CA-1497-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE CASE**

**PROCEDURAL HISTORY**

Azikiwe Kambule (hereinafter “Kambule”) was indicted for capital murder with the State seeking the death penalty. After negotiations, Kambule pleaded guilty in the Circuit Court of Madison County to one (1) count of accessory after the fact of murder and one (1) count of armed car jacking. Kambule received five (5) years for the accessory and a consecutive thirty (30) years for the armed car jacking. Nearly three (3) years later, Kambule filed for post conviction relief claiming his guilty pleas were not voluntary. After an evidentiary hearing, the trial court, Honorable Samac Richardson presiding, denied Kambule’s request for post conviction relief. This appeal proceeds from that denial.

## STATEMENT OF THE FACTS

On April 16, 1997, Azikiwe Kambule, age 17, was indicted for the offense of capital murder, in violation of Miss. Code Ann. § 97-3-19(2)(E), for aiding and assisting, Santonio Berry, in the January 25, 1996, death of Pamela McGill during the course of her kidnaping. The State sought the death penalty. ( PCR Transcript Exhibit 7)

Santonio Berry, also indicted for capital murder with the death penalty, entered a guilty plea on February 6, 1997, and received a life sentence without parole. Thereafter, defense counsel, Robert McDuff and Chokwe Lumumba, filed a motion to bar the State from seeking the death penalty against Kambule. The court, in granting the defense motion, reasoned that Kambule should not receive a harsher sentence than Berry, the actual gunman.

As a result of plea negotiations, Kambule pleaded guilty to the lesser offenses of accessory after the fact to murder and armed car jacking; the State agreed to *nolle prosequi* without prejudice the capital murder charge and recommend a sentence of five (5) years on the accessory charge and a consecutive thirty (30) years on the armed car jacking charge. The *nolle prosequi* was without prejudice to re-indict Kambule if he, at any time, collaterally attacked the convictions or sentences. (Exhibit "A"). On June 11, 1997, by way of Bill of Information, Kambule petitioned the court to enter a guilty plea to the charges of accessory after the fact of murder and armed car jacking. (Exhibits "B" and "C"). The court, Honorable John Toney presiding, accepted the plea as voluntarily, knowingly and validly made. (Plea transcript 21).

A sentencing hearing was held June 16, 1997, Honorable Robert Goza presiding. Kambule offered character witnesses in an attempt to persuade the trial court to sentence him to less than the thirty-five (35) years recommended by the State. However, the court followed the State's recommendation and sentenced Kambule to five (5) years in the Department of Corrections on the

accessory charge and thirty (30) years on the armed car jacking charge, with the sentences to run consecutively. (PCR Transcript Ex. 2).

On June 16, 2000, Kambule filed a motion for post conviction relief asking the court to set aside the guilty pleas on the ground that the pleas were not knowing or voluntary. (CP4). Kambule claims he unquestioningly accepted his attorneys' advice to plead guilty because he was seventeen (17) at the time of the crime (almost nineteen at the time of his guilty pleas) and a child from a South African apartheid culture.

A post conviction relief evidentiary hearing was held on May 23, 2005, before Honorable Samac Richardson, who denied the relief requested. (Exhibit "D"). (Part of the hearing transcript is absent from the record before this Court and not available to the State.) Richardson found that Kambule was represented by competent counsel during all pretrial proceedings, the guilty plea and sentencing hearings. Further, the court found that Kambule failed to provide sufficient evidence to prove that his plea was not freely, voluntarily and intelligently made. (CP 34; RE 9). Kambule now appeals and presents the following issue:

Whether the trial court's determination that Kambule's guilty plea was voluntary and knowing was erroneous and should be reversed.

## **SUMMARY OF ARGUMENT**

Kambule was well informed of the charges against him and the consequences of his guilty plea. No error existed in the taking of Kambule's guilty plea as indicated in the record. Kambule's guilty plea is not rendered involuntary because he is from a different cultural background.

At the post-conviction evidentiary hearing, Judge Sumac Richardson applied the correct legal standard and found as fact that Kambule failed to present evidence which met the burden of proof to show that Kambule did not freely, voluntarily and intelligently enter his guilty plea and that there was no evidence presented that supports his allegation his attorneys' representation fell below an objective standard of reasonableness.

Robert McDuff and Chokwe Lumumba, Kambule's trial counsel, were not deficient in their representation and in relation to entry of his guilty pleas. Counsel could not have rendered ineffective assistance, where the client was indicted for capital murder and facing life imprisonment without parole but was ultimately sentenced to thirty-five (35) years for accessory after the fact of murder and armed car jacking.

The findings of fact by the trial judge that defense counsels' conduct was not constitutionally deficient and that Kambule's plea was voluntary and intelligently made should stand. The trial judge's denial of the motion for post conviction relief should be affirmed.

## ARGUMENT

**THE TRIAL COURT PROPERLY DENIED KAMBULE'S PETITION FOR POST-CONVICTION RELIEF, FINDING THAT KAMBULE'S GUILTY PLEA WAS FREELY, VOLUNTARILY AND INTELLIGENTLY MADE AND THAT HE WAS REPRESENTED BY COMPETENT COUNSEL. KAMBULE FAILED TO SHOW THAT THE TRIAL COURT'S DECISION IN DENYING HIS PETITION FOR POST-CONVICTION RELIEF WAS CLEARLY ERRONEOUS.**

The trial court properly denied Kambule's petition for post-conviction relief, finding that Kambule's guilty plea was freely, voluntarily and intelligently made and that he was represented by competent counsel. Kambule failed to show that the trial court's decision in denying his petition for post-conviction relief was clearly erroneous.

The trial court properly denied Kambule's petition for post-conviction relief, finding that Kambule's guilty plea was freely, voluntarily and intelligently made and that he was represented by competent counsel. Kambule failed to show that the trial court's decision in denying his petition for post conviction relief was clearly erroneous.



A plea of guilty is binding only if it is entered voluntarily and intelligently. *Myers v. State*, 583 So.2d 174, 177 (Miss. 1991). A plea of guilty is voluntary and intelligent when the defendant is informed of the charges against him and the consequences of his guilty plea. *Alexander v. State* 605 So.2d 1170, 1172 (Miss.1992). The standard of review pertaining to voluntariness of guilty pleas is well settled: “this Court will not set aside findings of a trial court sitting without a jury unless such findings are clearly erroneous.” *Roby v. State*, 861 So.2d 368, 369 (citing *Weatherspoon v. State*, 736 So.2d 419, 421 (Miss.Ct.App.199)). The burden of proving that a guilty plea was involuntary is on the defendant and must be proven by a preponderance of the evidence. *Id.*

In making the decision to deny Kambule’s petition for post-conviction relief, the circuit court heard testimony of witnesses and argument from counsel, and reviewed the pleadings from Kambule’s criminal case and post-conviction case. A trial court's denial of post-conviction relief will not be reversed absent a finding that the trial court's decision was clearly erroneous. *Davis v. State*, 973 So.2d 1040, 1042 (Miss.App.2008) citing *Smith v. State*, 806 So.2d 1148, 1150(¶ 3) (Miss.Ct.App.2002). However, when issues of law are raised, the proper standard of review is de novo. *Brown v. State*, 731 So.2d 595, 598(¶ 6) (Miss.1999).

Kambule first implies that his guilty pleas to accessory after the fact to murder and armed car jacking are invalid because they were not knowingly and voluntarily made. Kambule bases his argument on the fact that he was a youth from apartheid-era South Africa who was “culturally conditioned to obey authority unquestionably.”(Appellant’s Brief).

In order for a guilty plea to meet constitutional requirements, it must represent a knowing, intelligent and voluntary waiver of the defendant's constitutional rights. *Bolton v. State*, 831 So.2d 1184 (Miss.App. 2002) (citing *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)). It must be shown that the defendant knew of his right to confront his accusers, his right

to a jury trial, and his right against compulsory self-incrimination. *Id.* at 243, 89 S.Ct. 1709. Moreover, a guilty plea is voluntary when the defendant understands, and is properly informed, of the elements of the charge(s) against him and the possible sentence. *Alexander v. State*, 605 So.2d 1170, 1172 (Miss.1992) (citing *Wilson v. State*, 577 So.2d 394, 396-97 (Miss.1991)).

Kambule intelligently, knowingly, and voluntarily signed the petitions to plead guilty and offered his guilty pleas to the court. A review of the transcript of the June 11, 1997, hearing with the Honorable John Toney presiding, shows the court inquired into Kambule's understanding of the constitutional rights that he was waiving and desire to waive each right. (Plea transcript 4-6). At the plea hearing Kambule denied that he had been threatened or coerced into making the guilty plea, or that, excepting the State's agreement to *nolle prosequere* the capital murder charge and recommendation of thirty-five (35) years, he had been promised favorable treatment in exchange for the plea. (Plea transcript 8). Judge Toney questioned Kambule about his understanding of the charges pending against him and the minimum and maximum sentence he could receive if convicted. (Plea transcript 7).

In short, there is a lack of evidence that Kambule could not or did not understand, or lacked knowledge of the legal proceedings in this case. Judge Toney questioned him extensively regarding the constitutional rights he was giving up, his knowledge of both the crimes charged and the consequences of pleading guilty to those crimes. (Plea transcript 2-13)

After a thorough inquiry, Judge Toney found Kambule's guilty pleas voluntarily and intelligently given and that there was a factual basis to support the charge. (Plea transcript 21). Therefore, Kambule's argument that his guilty plea was not voluntary is totally without merit. Kambule failed to that the trial court's denial of post-conviction relief was clearly erroneous. Kambule next asserts that he was afforded ineffective assistance of counsel. Kambule claims that

the failure of his attorneys and other court personnel to adapt the proceedings to make up for Kambule's cultural deficits rendered his attorneys ineffective and Kambule's resulting pleas involuntary. (Appellant's Brief 6). Kambule also claims Mr. McDuff and Mr. Lumumba told him "they believed that the judge would **not** impose the maximum sentence on him." (*Id.* at 5).

In support of this argument, Kambule cites *United States v. Rumery*, 698 F.2d 764 (5<sup>th</sup> Cir.1983). In *Rumery*, the defendant's guilty plea was vacated after it was determined his counsel erroneously advised him as to the possible sentence. However, in *Rumery*, defense counsel made a misstatement of the law to his client, such is not the case here.

The standard for determining whether or not a defendant was afforded effective assistance of counsel was set out by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). We review claims of ineffective assistance of counsel based upon a two-part inquiry: (1) whether counsel's performance was deficient; and (2) whether that deficiency caused prejudice to the defendant. Deficient performance is evaluated by whether counsel's advice falls outside objective parameters of professional reasonableness. *Id.* at 687-88. Prejudice is measured by whether the result of the proceedings would have been different but for counsel's deficiency. *Cole v. State*, 666 So.2d 767, 775 (Miss.1995)

Kambule fails the first prong of the *Strickland* test. There is no indication in the record that defense counsels' performance fell below the standards as defined by *Strickland*. In fact, the record supports the exact opposite. Defense counsels' representation was more than competent as evidenced in part by the number and content of the pretrial motions they filed and their argument at various hearings.

At his plea hearing, Kambule testified that he was "satisfied with the advice and help" Mr. McDuff and Mr. Lumumba had given him. (Plea transcript 7). In his petitions to enter a plea of

guilty, Kambule expressed complete satisfaction with the advice and help given by his attorneys. (Exhibits B & C paragraph 12).

During the plea hearing, Mr. McDuff told the court there was sufficient evidence for Kambule to be found guilty as charged as a principal in the armed car jacking and also to accessory after the fact. McDuff also felt there was a substantial probability that Kambule would be convicted on both charges. (Plea transcript 11-12).

This Court held in *Blanch v. State*, 760 So.2d 820 (Miss.App.,2000) that counsel for defendant did not render ineffective assistance by advising the client to accept a guilty plea, absent any supporting evidence that the defendant was in some way coerced into taking a plea or had some defense to the crimes charged, and in light of the fact that when questioned by the trial court regarding his representation, defendant stated that he was completely and totally satisfied with his representation.

A defense attorney has a duty to fairly, even if that means pessimistically, inform his client of the likely outcome of a trial based upon the facts of the case. If, after assessing the case, counsel believes that his client's best interest would be served by accepting a plea, he is obliged to inform the client. *Polk County v. Dodson*, 454 U.S. 312, 318, 102 S.Ct. 445, 70 L.Ed.2d 509 (1981). Such was the case here, McDuff and Lumumba made Kambule aware of the likelihood of the State's success at trial. Knowing the applicable law and the facts the prosecution could prove at trial, defense counsel advised their client to plead guilty to lesser offenses instead of risking being convicted of capital murder by a jury and serving the rest of his life in prison without any possibility of parole. That is not ineffective assistance of counsel, that is representing the client as they are obligated to do and falls within the range of reasonable professional assistance.

This court and the Mississippi Supreme Court have previously held:

Great weight is given to statements made under oath and in open court during sentencing. The trial court is right to place great emphasis upon the statements under oath made..in open court during the taking of ...guilty pleas and sentencing. There should be a strong presumption of validity of anyone's statement under oath. *Sanchez v. State*, 913 So.2d 1024, 1027 (¶8) (Miss.Ct.App.2005) (internal citations omitted); *Mowdy v. State*, 638 So.2d 738, 743 (Miss.1994) (affirmed trial court's denial of petitioner's motion for post-conviction relief without a hearing because petitioners' claims were contradicted by previous sworn statements).

Kambule acknowledged under oath that he was aware of the possibility that he could receive up to thirty-five (35) years; that he was satisfied with his attorneys, and that any promises by his attorneys of a lighter sentence were not binding on the court. (Plea transcript 2-13).

Mr. McDuff and Mr. Lumumba did not give Kambule erroneous information regarding his potential sentence. Defense counsel only expressed their opinion as to the length of sentence Judge Goza might give; that defense counsels' opinion turned out to be incorrect does not make an otherwise valid plea involuntary.

Kambule's pleas were both knowing and voluntary. He was not denied the effective assistance of counsel because counsels' performances, contrary to Kambule's present position, were neither deficient nor did any deficiency prejudice Kambule.

## CONCLUSION

The record and transcript from Kambule's plea hearing show a careful inquiry by the trial court into Kambule's understanding of his constitutional rights, his desire to waive those rights in order to plead guilty as well as his satisfaction with the services and advice rendered by his counsel.

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the judgment of the Circuit Court of Madison County denying Kambule's motion for post conviction relief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



LISA L. BLOUNT

SPECIAL ASSISTANT ATTORNEY GENERAL

MISSISSIPPI BAR NO. [REDACTED]

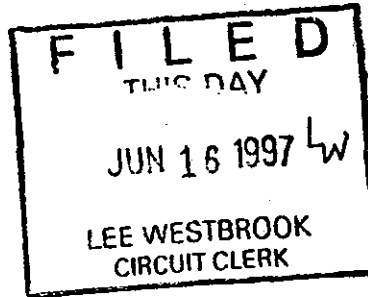
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IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

AZIKIWE KAMBULE



CAUSE NO. 2798


DEFENDANT

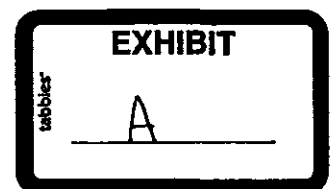
ORDER TO NOLLE PROSEQUI

THIS CAUSE came before this Court on *ore tenus* motion of the District Attorney of Madison County, Mississippi, that the charge in this cause be nolle prosequi based upon negotiations between the Defendant and the State resulting in a guilty plea to the crimes of Armed Carjacking and Accessory After the Fact to Murder.

The Court finds that said motion is well taken and should be granted. Therefore, this cause be nolle prosequi without prejudice to reindictment should the Defendant, at any time, collaterally attack the convictions and/or sentences in Madison County Circuit Court Cause Nos. 3192 and 3193.

SO ORDERED AND ADJUDGED this the 16<sup>th</sup> day of June, 1997.

  
\_\_\_\_\_  
CIRCUIT COURT JUDGE

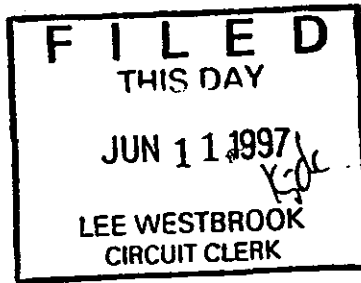


IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

AZIKIWE KAMBULE



CAUSE NO. 3193

DEFENDANT

PETITION TO ENTER PLEA OF GUILTY

THE DEFENDANT HEREIN, being duly sworn, states in open Court under oath that:

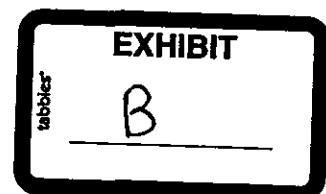
1. My full name is Azikiwe Kambule, my age is 18 years, and I completed 9 years in high school, and 0 years in college. I can/cannot read and write. I am mentally competent to make this Petition. I understand, should the plea of guilty herein tendered not be accepted and a trial follow, that admissions made herein or during any hearing on this petition would not be admissible against me at any trial.

2. I am represented by two (2) lawyers, whose names are Robert B. McDuff and Chokwe Lumumba and who are Retained.

3. I plead guilty to the charge of: Armed Carjacking as set forth in the bill of information in cause number \_\_\_\_\_.

4. I have told my lawyer all of the facts and circumstances known to me about the charge asserted in the bill of information. I believe that my lawyer is fully informed on all such matters. My lawyer has advised me of the nature of the charge and the possible defenses that I may have to the charge.

5. I understand that the Constitution guarantees me all of the following rights, and that I am waiving each of these rights by pleading guilty: (a) the right to a speedy and public trial by jury;



*Azikiwe Kambule*



(b) the right to see, hear and cross-examine all witnesses called to testify; (c) the right to use the power and process of the Court to compel the production of evidence, including the attendance of any witness in my favor; (d) the right to have the presence and assistance of a lawyer at all stages of the trial and any appeal; (e) the right to challenge the composition of the Petit Jury which would try me; (f) the right to testify in my own defense if I chose to do so, or the right to remain silent without any adverse inferences drawn from my refusal to testify; (g) the right to a unanimous jury verdict of all jurors before I could be found guilty; (h) the right to be presumed innocent and to have the prosecution prove every element of the crime beyond a reasonable doubt before I could be found guilty.

6. I understand that if I do not have funds to employ an attorney, the Court will appoint an attorney to represent me; that I do not have to testify against myself; that if I should be convicted after a jury trial, I would have an absolute right to an appeal of this case with assistance of counsel, and at no cost to me should I be determined to be financially unable to pay for same. I understand that by pleading guilty I am admitting that I did commit the crime of armed carjacking as charged in the bill of information, and that I am waiving all of the rights set forth in paragraph number five (5) of this Petition.

7. At the time of the crime referred to herein, I was not under the influence of alcohol or drugs; at this time, I am not under the influence of drugs nor alcohol, nor suffering from any mental disease.

8. I declare that no officer or agent of any branch of government, nor any other person has made any promise or inducement of any kind to me, or within my knowledge, to anyone else, that I will receive a lighter sentence, probation, early release, or any other form of leniency if I plead "Guilty." I have not been beaten, threatened, mentally or physically forced, intimidated or coerced

O. L. L. L. L.

in any manner to plead guilty to the crime charged against me. I offer my plea of "Guilty" freely and voluntarily and of my own accord and with fully understanding of all the matters set forth in the herein and in this Petition, and this plea is with the advice and consent of my lawyer.

9. My lawyer has informed me as to the maximum and minimum punishments which the law provides for the offenses charged in the . The maximum punishment which the Court may impose for the crimes of Armed Carjacking is 30 years and \$10,000.00 fine. The minimum punishment which the Court may impose for this crime is 0 years and \$0.00 fine.

10. I understand that the prosecutor handling this case will make a recommendation to the Court as to a sentence in the event my guilty plea is accepted and in the event it is determined that I have made full and truthful responses to each and every paragraph in this Petition. The recommendation as to sentence will be as follows: thirty (30) years to serve in the custody of the Mississippi Department of Corrections ; all court costs, assessments, and statutory fees within the time prescribed by the Court in my sentencing order.

I understand that there are no side agreements or other promises. I understand that this agreement is not binding on the Court, and that if my guilty plea is accepted by the Court, the Court may impose the same sentence as if I had pled "Not Guilty" and had been found guilty by a jury.

As a part of the plea bargain negotiations, Defendant has represented to the prosecutor and now represents to the Court his entire prior criminal record involving incidents where he has been convicted and/or charged with criminal offenses either against the State of Mississippi, any other state, or the United States or foreign territory or country, is as follows: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I understand that in considering whether to accept any recommendation as to sentence made

O. J. K. [Signature]

by the prosecutor and in considering an appropriate sentence, the Court will consider any misrepresentation made through this Petition to the prosecutor and to the Court regarding any prior criminal record.

11. I understand that if I am not eligible for parole I will not receive "good time credits." I also understand that "earned time" will not be applied to reduce my parole eligibility date.

12. I believe that my lawyer is competent and has done all that anyone could do to counsel and assist me, and I am fully satisfied with the advice and help he has given me.

13. My lawyer advises me and I understand that the elements of the charge to which I am pleading guilty are as follows: Azikiwe Kambule, did in Madison County, Mississippi, on or about the 25th day of January, 1996, willfully, unlawfully and feloniously aid, assist and encourage Santonio Berry in the armed carjacking of another, Pamela McGill, by taking a motor vehicle from Pamela McGill's immediate actual possession by force and violence by the exhibition and use of a deadly weapon, a firearm, against the resistance of Pamela McGill and by putting her in fear of imminent bodily harm in violation of Mississippi Code Annotated Section 97-3-117 (1972).

I state the above facts to be true and feel that all of the above elements are proven by the facts:

Therefore, I am guilty and ask the Court to accept my plea of guilty.

14. I understand that I am presenting this Petition under oath and under penalty of perjury for any false statements contained herein.

15. I understand that my plea of guilty may be withdrawn at any time during a hearing on this Petition prior to the acceptance of the plea by the Court.

*Azikiwe Kambule*

SIGNED by me, in the presence of my lawyer, this the 11 day of June,  
1997.

Azi Kambule  
DEFENDANT

STATE OF MISSISSIPPI  
COUNTY OF MADISON

1997 SWORN TO and subscribed before me, this the 11 day of June

[Signature]  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

1/1/2000

As attorney for Azi Kiwe Kambule, I certify that I have on the above date, discussed all the contents of the foregoing Petition with said Defendant, and I am satisfied that the Defendant fully understands same and that the Defendant executed said Petition knowingly and voluntarily.

[Signature]  
ATTORNEY FOR DEFENDANT

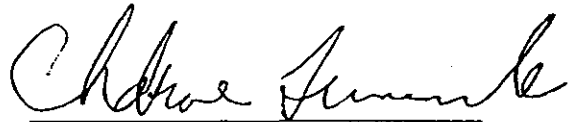
Azi Kambule

**ATTORNEY'S CERTIFICATE**

As attorney for Azikiwe Kambule, I certify that I have on the above date, discussed and carefully explained the contents, purpose and effect of the foregoing Petition with my client, who I am fully satisfied fully understands these matters and has knowingly, voluntarily and intelligently executed the Petition.

WITNESS MY SIGNATURE on the

14th day of June, 1997



ATTORNEY FOR DEFENDANT

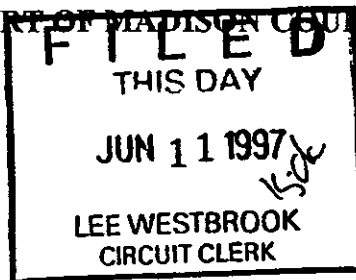
Azikiwe Kambule

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

AZIKIWE KAMBULE



CAUSE NO. 3192

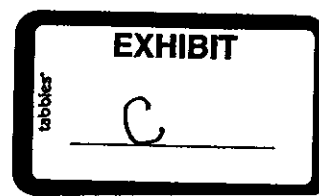
DEFENDANT

PETITION TO ENTER PLEA OF GUILTY

THE DEFENDANT HEREIN, being duly sworn, states in open Court under oath that:

1. My full name is Azikiwe Kambule, my age is 18 years, and I completed 9 years in high school, and 0 years in college. I can/cannot read and write. I am mentally competent to make this Petition. I understand, should the plea of guilty herein tendered not be accepted and a trial follow, that admissions made herein or during any hearing on this petition would not be admissible against me at any trial.
2. I am represented by two (2) lawyers, whose names are Robert B. McDuff and Chokwe Lumumba and who are Retained.
3. I plead guilty to the charges of: Accessory after the Fact to Murder as set forth in the bill of information in cause number \_\_\_\_\_.
4. I have told my lawyer all of the facts and circumstances known to me about the charge asserted in the bill of information. I believe that my lawyer is fully informed on all such matters. My lawyer has advised me of the nature of the charge and the possible defenses that I may have to the charge.
5. I understand that the Constitution guarantees me all of the following rights, and that I am waiving each of these rights by pleading guilty: (a) the right to a speedy and public trial by jury; (b) the right to see, hear and cross-examine all witnesses called to testify; (c) the right to

*Azikiwe Kambule*



use the power and process of the Court to compel the production of evidence, including the attendance of any witness in my favor; (d) the right to have the presence and assistance of a lawyer at all stages of the trial and any appeal; (e) the right to challenge the composition of the Petit Jury which would try me; (f) the right to testify in my own defense if I chose to do so, or the right to remain silent without any adverse inferences drawn from my refusal to testify; (g) the right to a unanimous jury verdict of all jurors before I could be found guilty; (h) the right to be presumed innocent and to have the prosecution prove every element of the crime beyond a reasonable doubt before I could be found guilty.

6. I understand that if I do not have funds to employ an attorney, the Court will appoint an attorney to represent me; that I do not have to testify against myself; that if I should be convicted after a jury trial, I would have an absolute right to an appeal of this case with assistance of counsel, and at no cost to me should I be determined to be financially unable to pay for same. I understand that by pleading guilty I am admitting that I did commit the crime of accessory after the fact to murder as charged in the bill of information, and that I am waiving all of the rights set forth in paragraph number five (5) of this Petition.

7. At the time of the crime referred to herein, I was not under the influence of alcohol or drugs; at this time, I am not under the influence of drugs nor alcohol, nor suffering from any mental disease.

8. I declare that no officer or agent of any branch of government, nor any other person has made any promise or inducement of any kind to me, or within my knowledge, to anyone else, that I will receive a lighter sentence, probation, early release, or any other form of leniency if I plead "Guilty." I have not been beaten, threatened, mentally or physically forced, intimidated or coerced in any manner to plead guilty to the crime charged against me. I offer my

*Qc L...*

plea of "Guilty" freely and voluntarily and of my own accord and with fully understanding of all the matters set forth in the herein and in this Petition, and this plea is with the advice and consent of my lawyer.

9. My lawyer has informed me as to the maximum and minimum punishments which the law provides for the offenses charged in the . The maximum punishment which the Court may impose for the crimes of Accessory after the Fact to Murder is 5 years and \$1,000.00 fine. The minimum punishment which the Court may impose for this crime is 0 years and \$0.00 fine.

10. I understand that the prosecutor handling this case will make a recommendation to the Court as to a sentence in the event my guilty plea is accepted and in the event it is determined that I have made full and truthful responses to each and every paragraph in this Petition. The recommendation as to sentence will be as follows: five (5) years to serve in the custody of the Mississippi Department of Corrections, said sentence to begin after and run consecutive to that sentence imposed in Madison County, Cause No. \_\_\_\_\_; all court costs, assessments, and statutory fees within the time prescribed by the Court in my sentencing order.

I understand that there are no side agreements or other promises. I understand that this agreement is not binding on the Court, and that if my guilty plea is accepted by the Court, the Court may impose the same sentence as if I had pled "Not Guilty" and had been found guilty by a jury.

As a part of the plea bargain negotiations, Defendant has represented to the prosecutor and now represents to the Court his entire prior criminal record involving incidents where he has been convicted and/or charged with criminal offenses either against the State of Mississippi, any other state, or the United States, or foreign territory or country, is as follows: \_\_\_\_\_

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Bikn...



I understand that in considering whether to accept any recommendation as to sentence made by the prosecutor and in considering an appropriate sentence, the Court will consider any misrepresentation made through this Petition to the prosecutor and to the Court regarding any prior criminal record.

11. I understand that if I am not eligible for parole I will not receive "good time credits." I also understand that "earned time" will not be applied to reduce my parole eligibility date.

12. I believe that my lawyer is competent and has done all that anyone could do to counsel and assist me, and I am fully satisfied with the advice and help he has given me.

13. My lawyer advises me and I understand that the elements of the charge to which I am pleading guilty are as follows: Azikiwe Kambule, did in Madison County, Mississippi, on or about the 25th day of January, 1996, with the intent to enable a felon, Santonio Berry, to avoid lawful arrest for the crime of murder, aid and assist Santonio Berry, knowing that Santonio Berry had committed the crime of murder, in violation of Mississippi Code Annotated Section 97-1-5 (1972)

I state the following facts which I state to be true and feel that all of the above elements are proven by the facts:

Therefore, I am guilty and ask the Court to accept my plea of guilty.

14. I understand that I am presenting this Petition under oath and under penalty of perjury for any false statements contained herein.

15. I understand that my plea of guilty may be withdrawn at any time during a hearing on this Petition prior to the acceptance of the plea by the Court.

*Orlando*

SIGNED by me, in the presence of my lawyer, this the 11 day of June,  
19 97.

Azikiwe Kambule  
DEFENDANT

STATE OF MISSISSIPPI  
COUNTY OF MADISON

19 97 SWORN TO and subscribed before me, this the 11 day of June.

[Signature]  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

1/1/2000

As attorney for Azikiwe Kambule, I certify that I have on the above date, discussed all the contents of the foregoing Petition with said Defendant, and I am satisfied that the Defendant fully understands same and that the Defendant executed said Petition knowingly and voluntarily.

Chobwe Sumamba  
ATTORNEY FOR DEFENDANT

**ATTORNEY'S CERTIFICATE**

As attorney for Azikiwe Kambule, I certify that I have on the above date, discussed and carefully explained the contents, purpose and effect of the foregoing Petition with my client, who I am fully satisfied fully understands these matters and has knowingly, voluntarily and intelligently executed the Petition.

WITNESS MY SIGNATURE on the 11<sup>th</sup> day of June, 1997

Azikiwe Kambule  
ATTORNEY FOR DEFENDANT

*Azikiwe Kambule*

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

AZIKIWE KAMBULE

MOVANT

VS.

CAUSE NO. 2000-0133

STATE OF MISSISSIPPI

RESPONDENT



ORDER DENYING MOTION FOR POST CONVICTION RELIEF

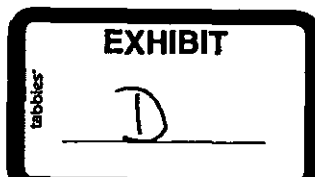
On May 23, 2005, there came on for final hearing and consideration the motion of the Defendant/Movant, Azikiwe Kambule, for post conviction relief. Having heard the testimony of the witnesses and arguments of counsel for the Defendant and for the State, and having reviewed the criminal court file, the Court finds that Defendant's/Movant's motion for post conviction relief is without merit and should be denied for the following reasons:

1. The Defendant was represented by competent Counsel during all pretrial proceedings and the guilty plea and sentencing hearings; no evidence was presented which meets the burden of proof to show that the Defendant/Movant did not freely, voluntarily and intelligently enter his plea of guilty in this case.
2. There was no evidence presented that supports the allegations of ineffective assistance of counsel in this matter.

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that the Defendant's/Movant's Motion for Post Conviction Relief is hereby denied.

**SO ORDERED AND ADJUDGED** on this the 30th day of December, 2005.

  
CIRCUIT JUDGE



000034

128/890

## CERTIFICATE OF SERVICE

I, Lisa L. Blount, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Samac S. Richardson  
Circuit Court Judge  
Post Office Box 1662  
Canton, MS 39046

Honorable Michael Guest  
District Attorney  
Post Office Box 121  
Canton, MS 39046

Julie Ann Epps, Esquire  
Attorney At Law  
504 East Peace Street  
Canton, MS 39046

This the 29th day of July, 2008.

  
\_\_\_\_\_  
LISA L. BLOUNT  
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MISSISSIPPI 39205-0220  
TELEPHONE: (601) 359-3680