

THOMAS LITTLETON

APPELLANT

FILED

VS.

OCT 29 2007

CAUSE NO: 2006-CA-01545

STATE OF MISSISSIPPI

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

APPELLEE

REBUTTAL BRIEF OF THE APPELLANT

COURT APPEALED FROM: CIRCUIT COURT

COUNTY: YAZOO

TRIAL JUDGE: MIKE SMITH

TRIAL COURT #: 25-9702

GUY N. ROGERS, JR.
ATTORNEY FOR APPELLANT
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THOMAS LITTLETON, DO HEREBY CERTIFY THAT THE
FOLLOWING PERSONS HAVE AN INTEREST IN THIS CASE:

1. ATTORNEY GENERAL JIM HOOD
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JACKSON, MISSISSIPPI 39201
2. HONORABLE JUDGE MIKE SMITH
P.O. BOX 108
YAZOO CITY, MISSISSIPPI 39194
3. HONORABLE JAMES H. POWELL III,
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4. THOMAS LITTLETON, APPELLANT
MDOC # 49627
UNIT 42 R217-A
PARCHMAN, MISSISSIPPI 38738

I FURTHER CERTIFY THAT I HAVE THIS DAY MAILED BY U.S.
MAIL, POSTAGE PREPAID, AND A TRUE AND CORRECT COPY
OF APPELLANT'S BRIEF TO THE INDIVIDUALS LISTED
HEREIN.

THIS, THE 29 DAY OF OCTOBER, 2007.

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1. Davis vs State, 124 So. 2d 342 (Miss. 1998)

2. Solem vs. Helm, 463 U.S. 277 S. CT. 3001, 77 L.Ed.2d 637 (1983)

Appellant adopts and incorporates herein by reference the Issues on Appeal as previously set forth in the original Brief of Appellant.

Appellant adopts and incorporates herein by reference the Facts and Procedural History as previously set forth in the original Brief of Appellant.

Appellant adopts and incorporates herein by reference the

Summary of the Argument as previously set forth in the original Brief
of Appellant.

Appellant adopts and incorporates herein by reference the
Argument and Law Applied to the Facts as previously set forth in the
original Brief of Appellant.

Appellant would show that during the time that Judge Mike Smith was on the bench in the Circuit Court of Yazoo County, he conducted many guilty plea hearings and sentenced many Defendants for drug crimes.

In nearly every case that involved the crime of possession of cocaine, possession of cocaine with the intent to distribute, sale of cocaine, and other controlled substance crimes such as possession of precursors, manufacture of methamphetamine, possession of marijuana, these Defendants received suspended sentence. The Appellant Thomas Littleton is the only Defendant that received eight (8) years, two (2) years suspended, and six (6) years to serve. Nearly every case of possession of cocaine with intent to distribute was reduced to possession only by the District Attorney.

See RECORD EXCERPTS, pp. 1-45, which are copies of all sentencing orders that involved a drug crime during Judge Smith's term in Yazoo County.

Littleton was grossly disproportionate to the sentences received by other Defendants with the same or similar charges.

This documentation refutes the State's argument that the Court "cannot act upon statements in briefs or arguments of counsel which are not reflected by the record." BRIEF OF STATE, P. 4-5, citing Porter vs. State, 749 So2d, 256 (Miss.App. 1999), in Triggs vs. State 803 So2d, 1229, 1238 (Miss. App. 2002).

Appellant would specifically direct the Court to the following Sentencing Orders, copies of which are found in RECORD EXCERPTS (REBUTTAL):

1. State vs. Louisa Littleton, Cause No: 25-9702-Louisa Littleton is the Co-Defendant in the initial case and she received eight (8) years, SUSPENDED sentence. RE, P.1-2.
2. State vs. Tossidy Jackson, Cause No. 25-9893-Possession of Cocaine, five (5) years SUSPENDED. RE, P.7-8.
3. State vs. Cornelius Peoples, Cause No. 25-9668-Fondling, three (3) years SUSPENDED. RE, P.11-12.

Cocaine, seven (7) years SUSPENDED. RE, P.14-15.

5. State vs. Jonathan Dees, Cause No. 25-9904A-Possession of Oxycontin, NON-ADJUDICATED. RE, P.18.
6. State vs. Michael David Patterson, Cause No. 25-9908-Manufacture of Methamphetamine, twenty (20) years, SUSPENDED. RE, P.19-20.
7. State vs. Jason Crosby, Cause No. 25-9965-Gratification of Lust, One (1) year to serve. RE, P.21.
8. State vs. Yarvin Little, Cause No. 24-9528-Sale of Marijuana, NON-ADJUDICATED. RE, P.33.
9. State vs. Daniel “Danny” Lee Tyer, Cause No. 25-9910C-Possession of Precursors, five (5) years SUSPENDED. RE. P.37-38.

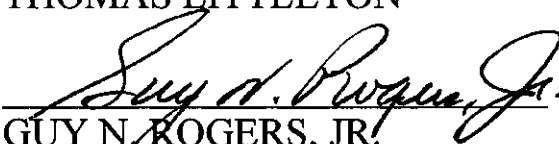
Based on these sentences and the other sentencing orders that are included in the Record Excerpts, it is clear that the Appellant’s sentence is grossly disproportionate to other Defendants charged with the same or similar crimes and that this sentence was the result of bias

The sentence of Appellant violates the criteria of Helm, 463 U.S. 277, S. CT. 3001, 77 L. Ed.2d 637 (1983). The sentence further falls within the purview of the holding in Davis vs. State, 724 So. 2d 342 (Miss. 1998) wherein the sentence is so severe that on the record it is inexplicable and justifies remanding the matter to the trial court for further consideration. Id @ 345.

Appellant would respectfully request that this case be remanded to the trial court for imposition of the sentence recommended by the State or at least for re-sentencing in conformity with the sentences received by other Yazoo County defendants meted out by the trial court under Special Circuit Judge Mike Smith.

RESPECTFULLY SUBMITTED:
THOMAS LITTLETON

BY:


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I, Guy N. Rogers, Jr., Attorney for Appellant Thomas Littleton, do hereby certify that I have this day mailed via United States mail, postage prepaid, a true and correct copy of the foregoing Rebuttal Brief of Appellant to the following:

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THIS, the 29 day of October, 2007.


GUY N. ROGERS, JR.