

Supreme Court OF Mississippi Court OF Appeals OF The
State OF Mississippi

COPY

NO: 2006-CP-00847

FILED

MAY 02 2007

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

TIMOTHY ROBINSON,

APPELLANT

VERSUS

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S BRIEF

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

ND: 91-3-348 WFC

Respectfully Submitted,
(S) Timothy Robinson
Timothy Robinson

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Supreme Court OF Mississippi Court OF Appeals OF
the State OF Mississippi

NO: 2006-CP-00847

Timothy Robinson

APPELLANT

VERSUS

State OF Mississippi

APPELLEE

CERTIFICATE OF INTERESTED PERSON

The undersigned counsel of record certifies that the following in the outcome of this case. These representations are made in order that the Justices of this court may evaluate possible disqualifications or recusal:

1. Timothy Robinson - - - - - Appellant
2. Henry T. Wingate - - - - - District Judge
3. Hon. James C. Sumner - - - - - Magistrate Judge
4. Hon. William F. Coleman - - - - - Trial Court Judge
5. Mrs. Joan McLeod - - - - - Attorney General

So certified, this the 2th day of
May, 20 07.

Respectfully Submitted,

Timothy Robinson
A-Zone, Cell #15
Unit-29B-Bldg
Parchman, Ms. 38738

TABLE OF AUTHORITIES

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Supreme Court of Mississippi; Court of Appeals of
the State of Mississippi;

NO: 2006-CP-00847

Timothy Robinson
VERSUS

State of Mississippi;
APPELLEE

APPELLANT

STATEMENT OF THE ISSUES

I.

The Appellant asserts respectfully that the following
issues for judicial review:

II.

The trial court denied Appellant substantive due process
when failing to conduct a competency hearing.

A.

Appellant was denied effective assistance representation
at trial and on direct appeal.

B.

Improper Introduction of an Alleged Letter

C.

The court erred in its Additional Instructions to the

Jury denied Appellant's Right to a Fair trial.

SUPREME COURT OF MISSISSIPPI COURT OF
APPEALS OF THE STATE OF MISSISSIPPI

Timothy Robinson

VS.

State OF Mississippi

APPELLANT

NO. 2006-CP-00847

APPELEE

Brief OF Appellant

Comes Now, Timothy Robinson, Pro-se Pursuant to Rule 52(b) OF the Miss. R.C.P. and Filed this motion before this Honorable Court and will Show the Following to-wit:

Statement OF Incarceration

I, Timothy Robinson is presently housed in the Mississippi state Penitentiary, Parchman.

State OF Jurisdiction

This Honorable Court has Jurisdiction OF this case pursuant to Artcal 6 section 146 OF Mississippi Constitution. Miss. Code Ann § 99-39-101(supp. 2001)

Statement OF The Case

I, Timothy Robinson, come before this Honorable Court OF the

State of Mississippi. Seeking the following relief as in all that is pursuant to and under Rule 52(b) of Plain Error. Base on the grounds that as of March 11, 1992. I, Timothy Robinson was sentence to serve two (2) terms of life imprisonment For kidnapping plus twenty (20) years for aggravated assault in the custody of the Mississippi Department of Corrections said sentences to run consecutively. to where I, Timothy Robinson seek to demonstrate that the court erred in overruling defendant objection to the introduction of a letter written by defendant to Brenda Rand, as pursuant to the case citing under Rule 52(b) where as in U.S. v. McClellan 165 F.3d 535, 551 (7th Cir. 1999) that states there was (no plain error in admission of hearsay testimony because defendant was able to cross-examine and rebut the witness testimony.) therefore by means that my objection before the courts was overruled as to the admission of the letter. I was clearly violated of my sixth amendment right. to where it is stated clearly in the sixth amendment that: In all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witness against him. therefore by overruling my objection to the admission of the letter. I was discouraged to speak to cross-examine or to rebut the witness (letter) testimony. therefore as clearly stated in U.S. v. Hardwell. 80 F.3d 1471, 1484 (10th Cir. 1996) which says: Plain error and violation of defendants 5th amendment right against self-incrimination to allow use of defendants Financial affidavit and statements and submitted

to show eligibility for appointed counsel to prove money
laundering.) by means of which the First Judicial District Court
of Hinds County overruled my objection as to the letter written
to the victim Ms. Brenda Rand. I, Timothy Robinson was violated
of my Fifth (5th), Sixth (6th), Eighth (8th) and Fourteenth 14th amendme
rights as pursuant to case citings under Rule 52(b) as in 90
concerns with U.S. v. Cole, 27 F. 3d. 996. 998-999 (4th Cir.
1994.) which says (plain error because court did not adequat
ely defendant right of allocution prior to announcing
sentence and appeared to discourage defendant from
speaking after sentence had been announced. Furthermore
as stated in concerns of U.S. v. Santos - Spinon, 146 F. 3d.
734. 737. n. 4 (9th Cir. 1998.) which say: Because confrontat-
ion clause right implicated court must review for plain
error. Also, as stated in U.S. v. Torres, 901 F. 2d 205. 228
2nd Cir. 1990. says: Errors of constitutional magnitude
more freely noticed under plain error rule than less
serious errors: Also, the court further erred in denying
my motion for a mistrial on the grounds that said
letter was not timely disclosed to the defense. as in
the case citing of U.S. v. McVeigh 153 F. 3d 1166. 1201-02
10th Cir. 1998.) which says: No plain error in admission of testi.

many because the testimony was not prejudicially emotional. therefore by overruling my objection as to the letter to Ms. Brenda Rand being admitted before the First Judicial District of Hinds County at the very last moment during trial proceedings. to which means contents held prejudicially emotional concerns, as stated before this Court, as in reference to case citing pursuant to Rule 52(b) such as stated in U.S. V. Santos-Pinon, 146 F.3d. 734. 737 n. 4 (9th Cir. 1998) and U.S. V. McVeigh, 153 F.3d 1166. 1201-02 (10th Cir. 1998) and U.S. V. Cole, 27 F.3d. 996. 998-999 4th Cir. 1994). Furthermore jury tampering committed by the state tainted the jury's verdict and rendered my conviction reversible. as in reference to case citing U.S. V. Hill, 91 Fd. 1064. 1072 8th Cir. 1996.) as pursuant to and under Rule 52(b). which says that: no plain error if judge did not sua-sponts order new trial after inadvertently letting two alternate jurors deliberate for two hours because no prejudice shown and ~~none~~ none presumed. Yet by the verdict of the jury was against the overwhelming weight of the evidence was contrary to law, and prejudice on the part of the jury. as to where the Jury Foreman made a mistake in writing down the verdict as to count (3) three. to where the court instructed the entire jury to return to the jury

room to correct the mistake. therefore as pursuant to Rule 52(b) which says: Plain errors or defects affecting substantiation rights may be noticed although they were not brought to the attention of the court.

Also see Johnson. V. U.S 520 U.S 461, 465 (1997.) which says: Failure to assert right usually results in Forfeiture but plain error rule mitigate for defense counsel failed not only by refusing to object the Jury Foreman statement made before the court. to where the court erred in denying jury instruction No. D-1. therefore as pursuant to the case citing under Rule U.S.V. Wills, 88 F. 3d. 704, 718 (9th Cir. 1996) which says: Reviewing jury instructions for plain error because at trial defendant objected generally to proposed instructions, but stated no specific ground. Furthermore see U.S.V. Williams:

152 F. 3d 294, 300 (4th Cir. 1998) which says: claim of error in jury instructions reviewable on appeal for plain error even if no objection below. Also see U.S.V. Ellis, 168 F. 3d 558, 561 (1st Cir. 1999). which says: court of appeals reviews for plain error trial court's failure to instruct the jury on a defense when instructions were not objected to at trial. by means of which I seek relief as pursuant to all that is of the "Plain Error" Rule 52(b)." as in concerns to which I seek my terms of incarceration to be terminated based on the aforementioned argument, furthermore I attempt to enter this said motion

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before the State of Mississippi. Due to the fact as to when I had filed multiple other motions of Federal Habeas Corpus before the Supreme courts, they were all dismissed with prejudice and denied a certificate of appealability to appeal this matter to the State of Mississippi. based on the grounds that this matter should have been brought before the trial courts Due to the fact there was no absence of available State corrective process or exhaustion of State remedies available in the courts of the state, and etc. therefore the Supreme court viewed said motion as a form of Post-Conviction. by which means I ~~now~~ enter present motion before this Honorable court seeking correction and reversal of terms of incarceration to be terminated. as in ~~concern~~ concern with all that is pursuant and under the plain Error Doctrine Rule 52(b). I seek to have this matter corrected by means of time served as in all concerns pursuant to and under fore-mentioned of the plain error doctrine Rule 52(b). Further as to my indictment I believe are certain tactical errors as implied and pursuant to Johnson, V. U.S. 520 U.S. 461, 465 (1997), which says that: Failure to assert right usually result in forfeiture, but plain error rule mitigates as pursuant to and pertaining to Fed. Rule Criminal Procedure 52(b). which says: Plain Errors or defects affecting substantial right may be noticed although they were not brought to the attention of the court, therefore I seek terminati

of terms of incarceration as pursuant to Fed. R. crim. P. 52(b)

Ineffective Assistance Of Counsel

when determining whether a defendant was denied effective assistance of counsel so as to violated his or her constitutional rights secure by the purview of the Sixth amendment, this court applies the standard articulated in Strickland vs. Washington 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

this inquiry focuses on two questions, "(1) whether counsel's performance was deficient, and if so, (2) whether the deficient performance was prejudice to the defendant in the sense that Frierson v. State, 606 So. 2d 604 (Miss. 1992), as this court has explained in Waldrop v. State, 506 So. 2d 273 Miss. 1987

"[t]hough there is a strong but rebuttable presumption that counsel's conduct falls within the wide of reasonable professional assistance, this court must determine, based on the totality of the circumstances, whether counsel's efforts were both deficient and prejudicial thus necessitating a reversal." the trial court violated appellant's substantive due process rights secured under the provision of the 6th and 14th amendment to the United States constitution, when the trial

Court Failed to conduct a competency hearing as by Copper v. Oklahoma, — U.S. —, 116 S.Ct. 1373 (1996) Miss. Code Ann. § 99-13-11 of 1972, Miss. Unif. Cir. R. Ct. Prac. Rule 9.06.

Appellant was denied effective representation in violation of Miss. Const. Art. III, § 26 of 1890; and the counterpart clothed with 6th amendment to the United States constitution, when permitting the prosecution to introduce a letter allegedly written by appellant in violation of Rule 901 of the Federal Rule of Evidence: U.S. v. Polk, 56 F.3d 613 (5th Cir. 1995.)

Counsel was ineffective when failing to assert an objection to the prosecution inflammatory prejudicial inference as to the appellant's failure to testify in violation of the 5th amendment: U.S. v. Young, 470 U.S. 14, 105 S.Ct. 1038 (1985); trial Counsel fail to assert an objection to prejudicial and erroneous jury instructions as prescribed by Mississippi Model Jury Instructions Criminal Volume I, Page 50 as determined by the Mississippi State Supreme Court in Sharlin v. State, 330 So.2d 42 (Miss. 1988); Edlin v. State, 523 So.2d 42 (Miss. 1988); Bolton v. State, 643 So.2d 942 (Miss. 1994).

Robinson has met the two-prong test of Strickland Supra, inasmuch as Coleman v. Thompson, 501 U.S. 722 (1991).

SUMMARY OF THE ARGUMENT

Appellant is mindful of the requirement that the trial court, our Mississippi Supreme court, District Court of Jackson Division, and this most Noble court, when considering an ineffective assistance of counsel claim appellant must make a prima Facie demonstration that the trial counsel performance was deficient and prejudicial to the defendant defense. In this instant case, Robinson will show through argument that counsel was ineffective when failing to assert a timely objection to the trial court making an on the record determination of Robinson's competency to stand trial before the actual adjudication as prescribed by Mississippi Statute and Constitutional Laws. Defense counsel was ineffective for permitting the prosecution to introduce inadmissible evidence of a letter purported to have been prepared by the defendant prior to the trial. absence proving the authentic or identification Notwithstanding, counsel was ineffective after failing to assert to objection to the prosecution inference of appellant's Failure to testify on his behalf in violation of the Fifth 5th and Fourteenth 14th amendment rights. The trial counsel was ineffective for not challenging the validity of the additional erroneous instructions and definition of Appellant's parole eligibility. Thus, the State court committed reversible

error when erroneously providing the Allen charge.

Also, this court committed reversible error when returning the jury back into the deliberating room to correct a verdict already announce in open court. The trial court conducted an reversible error when previously issuing an Order to have perform a psychological evaluation upon appellant as prescribed by Mississippi Rules of Circuit Court Practice. Rule 9.06. provides: Pursuant to Mississippi Code Annotated, § 99-13-11 (1972), as provides:

In this instances, Petitioner contends that this case before the bar, is identical to the Pate's claims inasmuch as there was prima facie evidence that warranted an evidentiary hearing as to the competency of Robinson, however, the First Judicial District Tribunal relied upon inaccurate data deriving from Petitioner's court appointed counsel that the examination had been finalized. When in all actuality, the court had not examine the same, nor were any preliminary hearing conducted to view the validity of Robinson's competency, nor permitted any additional testimonial evidence of family members and a medical personnel as to whether or not petitioner was competent to stand trial as charged. Petitioner contends respectfully,

based on the allegations of actual incompetency quoted
herewith; that petitioner has presented a clear and
convincing evidence raising a substantial doubts as
to his competency to stand trial and the trial court
Failure to conduct a sua sponte due process hearing,
therefore, Petitioner prays respectfully that this Honorable
Court will vacate and Remand this case for a new
trial and/or discharge petitioner as prescribed by
Mississippi Law.

Supreme Court OF Mississippi Court OF Appeals OF The
State OF Mississippi

AFFIDAVIT OF POVERTY

Personally appeared before me the undersigned authority in and For
the aforesaid jurisdiction, Timothy Robinson, M.D.O.C. # 49090,
who, being duly sworn on his/her oath, does depose and sayeth:

I, Timothy Robinson, do solemnly swear/affirm that I am
a citizen of the State OF Mississippi, and because of my poverty I am
not able to pay the same in the suits, the brief of appellant which
I am (or has been commenced) about to commence, and that, to the
best of my belief, I am entitled to the redress which I seek by such
sort.

RespectFully Submitted,

Petitioner

SWORN TO AND SUBSCRIBED BEFORE ME, this the _____ day
_____, 20__.

Notary Public

Conclusion

wherefore this Honorable Court Should Grant Petitioners Motion and dismiss his term of incarceration.

This The 2th day of May 2007.

Sworn before me this the _____ day of _____, 20____.

Notary Public

CERTIFICATE OF SERVICE

This is to certify that I, the undersigned, have this date as reflected below, caused to be mailed, via United States Postal Service, postage prepaid, by placing a true and correct copy of the foregoing and attached pleading and/or instrument in the states mail address to the following listed person(s):

Hon. Betty W. Sephton
State OF Mississippi
Post Office Box 249
Jackson, Ms. 39205

Hon. Barbara Dunn
Hinds County Circuit Court Clerk
P. O. Box 327
Jackson, Ms. 39205

Hon. Judge W. Swon Yerger
Hinds County Circuit Court Judge
P. O. Box 327
Jackson, Ms. 39205

Hon. James B. Luckey Dir.
Administrative Office of the Court
P. O. Box 117
Jackson, Ms 39201

Done This The 2th day of May, 2007.

(s) Timothy Robinson
Register Number 49090
Unit Number Unit-29B-Bldg
Parchman, Mississippi, 38738