

COPY

IN THE SUPREME COURT OF APPEALS

FOR THE STATE OF MISSISSIPPI

2006-^{CP}~~A~~-1249

**Betty W. Sephten, Court Clerk
Supreme Court & Court of Appeals
Post Office Box 249
Jackson, MS 39205-0249**

FILED

JAN 08 2008

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

APPELLANT BRIEF

**CHARLES RUDD #L7678
Unit 29-IBuilding
Parchman, MS 38738**

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

CHARLES RUDD

vs.

CASE NO: 99-0393 & 2002-0229

STATE OF MISSISSIPPI

MEMORANDUM BRIEF IN SUPPORT OF APPEAL

Comes now, Charles Rudd, Petitioner, acting Pro Se, and files this, his Memorandum Brief in Support of Appeal pursuant to Mississippi Code Annotated Section 99-39-1 et. seq. and in support therefore would show unto this Honorable Court the following, to-wit:

PRELIMINARY STATEMENT AND JURISDICTION

RULINGS BELOW

This is an appeal from an order of the Circuit Court of Madison County, the Honorable Judge Richardson, dismissing Writ of Habeas Corpus, which Court elected to treat as Motion for Post Conviction Relief, a motion pursuant to Mississippi Code Annotated Section 99-39-1 et. seq. The order was entered January 25, 2006, and a timely notice of appeal was filed on or about February 6, 2006. On or about March 22, 2006 appellant moved the Circuit Court to for a Certificate of Probable Cause or Appealability, which that failed to respond to. Appellant has applied to this Court for a Certificate pursuant to 28 U.S.C. §2253(c) to proceed.

JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. §2253(a) if it grants a certificate of appealability.

SUMMARY OF CASE

Petitioner was indicted by the Grand Jury of Madison County on or about the 17th day of November, 1999, on the charge of Armed Robbery, Miss. Code Ann. §97-3-79. Thereafter, Petitioner was convicted by a plea of guilty on the said charge of Armed Robbery and the charge of Attempted Escape, and sentenced by the Honorable Judge Richardson, to a total of 30 years, 20 and 5 years for the charges of Armed Robbery, and 6 years for the charge Attempted Escape. The said plea was entered on the 17th day of July, 2002. However, judgment was entered in conviction and sentencing was imposed on 17th day of October, 2003, for (1) TWENTY (20) years to be served in the custody of the Mississippi Department of Corrections. PROVIDED, HOWEVER, that the last TEN (10) years be supervised and released for a term of FIVE (5) years on SUPERVISED PROBATION, and (2), FIVE (5) years to be served consecutively with the imposed TWENTY (20) years in the custody of the Mississippi Department of Corrections.

ISSUES PRESENTED

In the face of this Court's controlling opinion in *Boria v. Keane*, 99 F.3d 492 (2d Cir. 1996):

I. Is Appellant properly time barred when submitting his motion according to Section 99-29-5 which states that a Motion for Post Conviction Relief shall be filed "within three (3) years after entry of the Judgment of Conviction, when motion was first submitted on or about October 2, 2004 and amended and resubmitted on or about November 15, 2005; and

II. Did Trial Court error when it dismissed appellant's motion because of the said time bar; and

III. Does time start when guilty pleas are submitted or when sentence is ordered and adjudged?

PROCEDURAL HISTORY

On or about July 17, 2002, Appellant was said to have entered a plea of guilt to the charges of Armed Robbery and Attempted Escape.

On or about October 2, 2004, Appellant mailed, through the legal library, to the trial court the 28 U.S.C. §2254 motion which gives rise to the appeal, seeking a Writ of Habeas Corpus due to involuntary guilty plea, when plea bargain agreement reached between the prosecutor and defense counsel was unlawfully induced, coerced and a result of ignorance led by defense counsel when appellant was coerced in the acceptance of the plea that was not signed by the appellant and when plea was not carried out as explained by defense counsel; ineffective assistance of trial counsel who failed to file a Motion of Demur to challenge the improper indictment or move for Motion to Dismiss after it was brought to counsels attention, then refused to take appellant to trial because of counsel's fear of losing, counsel's failure to have a compulsory process for obtaining witnesses in favor of the defendant and to subpoena witnesses after it was requested; the trial court erred when it abused its power of discretion by refusing the appellant the right to have a newly appointed counsel after being advised of their conflicting interest or a continuance so the appellant could get properly prepared for trial and when appellant was not taken before an open court to accept his guilty plea; and improper indictment which named the appellant as the victim of the crime.

On or about November 15, 2005 appellant resubmitted Writ of Habeas Corpus in order to amend errors found on prima facie of prior petition submitted.

On or about January 25, 2006, an adjudgment was ordered dismissing appellant's petition stating: The Court finds that Section 99-39-5(2) states that a Motion for Post Conviction Relief shall be filed "within three (3) years after the entry of Judgment of Conviction."

On or about February 6, 2006 appellant mailed, through the legal library, a Notice Appeal and a Designation of the Record in the trial court, yet to date have failed to receive a response.

On or about March 22, 2006 appellant mailed through the law library, a Motion for Certificate of Probable Cause or appealability and Appointment of Counsel, in the trial court, which to this day court has failed to respond to.

On or about April 17, 2006, appellant submitted a letter (via your office) to request information on the status of Appeal. On or about May 16, 2006 there was a response sent (via your office) stating no Notice of Appeal was filed in the name of Charles Rudd, and to contact the trial court clerk.

On or about May 29, 2006 appellant mailed, through the law library, a letter to trial court requesting information on status of case as advised and as of to date court has failed to respond.

SUMMARY ARGUMENT

Appellant argues that he was denied fundamental fairness and due process of law from the very beginning when his indictment was returned with errors on the prima facie and had continued being denied this fairness throughout his pretrial process and has now been subject to the same injustice in challenging his sentence in conviction, when his motion pursuant to 28 U.S.C. §2254, seeking a Writ of Habeas Corpus which court elected to treat as a Motion for Post

Conviction Relief was dismissed on the grounds of being time bar though appellate argues his petition was timely filed. Appellant further argues his petition holds merits and should be heard even though trial court has turned a deaf ear to every attempt he has made to obtain the fundamental fairness he feels he is entitled under the protection of the U.S. Constitution as well as state and federal statutes and rules.

THE UNDISPUTED FACTS

The facts of are essentially uncontested that appellant was said to have entered a plea of guilty for the crime(s) of Armed Robbery and Cause No. 99-0393 and Attempted Escape in Cause No. 2002-0229, on July 17, 2002.

Appellant appeared in open court on October 17, 2003, one (1) year and three (3) months after the plea was said to have been accepted, and at that time sentence was imposed and order was adjudged and order was then filed October 20, 2003.

Appellant submitting his first petition pursuant to 28 U.S.C. §2254, seeking a Writ of Habeas Corpus, on or about October 2, 2004, about fifteen (15) days prior to the one (1) year statute of limitations from the time conviction was final.

Appellant resubmitted a petition pursuant to 28 U.S.C. §2254 to amend errors found on the prima facie of petition on or about November 15, 2005.

Trial Court issued an order dismissing petition pursuant to 28 U.S.C. §2254 which it elected to treat as a Post Conviction Relief. The Court held that the three (3) years granted by Section 99-39-5(2) had expired. Adjudgment was ordered on or about January 25, 2006.

Appellant filed a Notice of Appeal and a Designation of the Record in the trial court on or about February 6, 2006.

Appellant filed a Motion for Certificate of Probable Cause or Appealability and Appointment of Counsel in trial Court on or about March 22, 2006.

THE PORTION OF THE COURT'S RULING AT ISSUE ON THE APPEAL

The Court held that the Appellant petition was filed on December 2, 2005 which is more than three (3) years after the entry of the Judgment of Conviction and the petition should be dismissed with prejudice.

ARGUMENT

A. The Ruling Below:

As the Trial Court it self articulated Appellant's 2254 claim;

Appellant argues that 1) Guilty Plea was entered on July 17, 2002, and a Judgment of Conviction may have been accepted on that date, however, sentencing was not ordered and adjudged until the 17th day of October, 2003, and filed October 20, 2003; 2) that a motion was mailed to the court through the legal library on or about October 2, 2004, which was less than (1) one year after sentencing, for a Writ of Habeas Corpus; and 3) that a motion amending the first motion was submitted through the law library on or about November 15, 2005 and filed in the Court December 2, 2005, after no response was given to the first.

According to the Mississippi Post-Conviction Act, 99-39-1, et. seq., (in which petition was escheated to be treated as), leading authority under which all state prisoners must apply for relief prior to bringing any Federal actions, says if no appeal was failed

there is a limit of three (3) years from the date of sentencing to file for post-conviction.
See Miss. Code Ann. Sec. 99-39-5(2).

Trial Court argues that time for filing Post-Conviction Act started on the day plea was entered which was July 17, 2002. Appellant argues that he first submitted his petition in October 2004, which would fall within the time limit granted in Miss. Code Ann. Sec. 99-39-5(2). See Exhibit A, Mail Log.

Appellant also argues that trial court had not made it clear to him that a plea agreement was accepted until October 17, 2003, and this is the day that he feels and thought that his time granted under Sec. 99-39-5(2) should have started since on that day in October his conviction and sentencing became official. See Exhibit A, Order of Sentence.

CONCLUSION

For all reasons stated herein, Appellant respectfully requests that this Court reversed the order below dismissing his §2254 motion, viewed as Post Conviction Relief, and order the District Court to allow the motion. Specifically, Appellant prays this Court order the District Court to vacate his sentence, impose a sentence of "time served," and order Appellant released forthwith.

Dated: Jan. 8th, 2008

Respectfully submitted,

Charles Rudd #L7678
Unit 29 J Building
Parchman, MS 38738

EXHIBITS

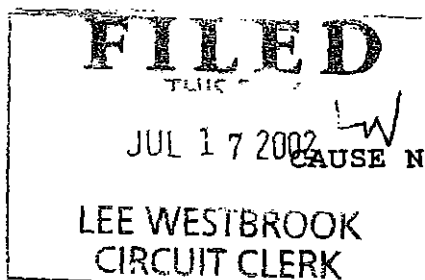
Exhibit A

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CHARLES RUDD



CAUSE NO. 99-0393 & 2002-0229

DEFENDANT

JUDGMENT OF CONVICTION

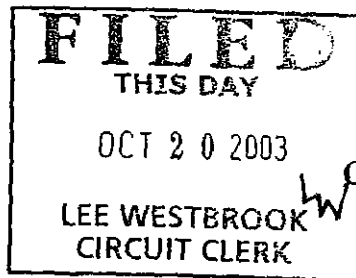
THIS CAUSE came on to be heard on the sworn Petition(s) of the Defendant, whose legal name is CHARLES RUDD, whose date of birth is MAY 25, 1979, whose Social Security No. is 426-39-1293, and whose Attorney of Record is LISA ROSS, to enter a plea(s) of guilty to the crime(s) of ARMED ROBBERY as charged in CAUSE NO. 99-0393 AND ESCAPE IN CAUSE NO. 2002-0229 of the Indictment(s) and/or Bill(s) of Information; and the Court, having heard the Petition(s) in the presence of the Defendant, the Defendant's Attorney, and the State's Attorney, and having considered the evidence, including the testimony of the Defendant, together with the statements and representations of Counsel, is of the opinion and finds that: 1) the allegations contained in the Petition(s) are supported by the evidence and are true and correct as set forth therein; 2) the Defendant's plea(s) of guilty is/are not induced by force, violence, threats, coercion, fear, deception, promises or misrepresentations; 3) the Defendant is competent to understand and does understand the nature of the criminal offense(s) to which the plea(s) of guilty is/are entered and

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CHARLES J. RUDD



CAUSE NO. 99-0393 & 2002-0229

DEFENDANT

ORDER OF SENTENCE

THIS CAUSE came on for hearing in open Court on the matter of sentencing the Defendant, CHARLES J. RUDD, under and pursuant to the Judgment(s) of Conviction for the crime(s) of ARMED ROBBERY IN CAUSE NO. 99-0393 AND ESCAPE IN CAUSE NO. 2002-0229, as charged in the Indictment(s) and/or Bill(s) of Information, and the Defendant having entered a plea(s) of guilty to the said crime(s) on the 17TH DAY OF JULY, 2002, and the Defendant and the Defendant's attorney, WESLEY EVANS, and the State's attorney all being present and the Court, being fully advised in the premises finds and determines that: a) the victim(s) and the investigating officer(s) were notified in advance of these proceedings; b) the defendant's plea(s) of guilty was/were entered WITH a recommendation of sentence from the State; c) questions and comments from all interested parties were invited and those submitted were received and considered; d) the Defendant and Defendant's Attorney were given an opportunity to address the court on all matters relevant to these proceedings including the presentation of circumstances in extenuation and mitigation; e) the recommendation of sentence, if made, by the State is hereby accepted and adopted by the Court as the sentence of the Court; and (f) sentence should now be imposed.

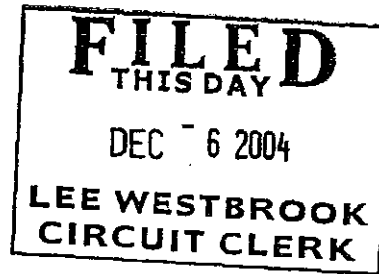
IT IS THEREFORE ORDERED AND ADJUDGED that the Defendant is sentenced as follows:

Ms. Lee Westbrook

Madison County Circuit Court

146 West Center Street

Canton, MS 39046



Dear Ms. Westbrook:

Please find enclosed an original and three copies of the following: Petition for Writ of Habeas Corpus, Motion for Leave to Proceed In Forma Pauperis and Declaration in Support, Motion for Appointment of Counsel, and Proof of Service, for filing.

Once the Petition has been filed please return the copy of each of, the above pleadings marked "Petitioner's File Copy."

Thank you in advance for your time and assistance in this matter.

Sincerely,

Charles Rudd #L7678

Charles Rudd #L7678

Unit 32-D Building

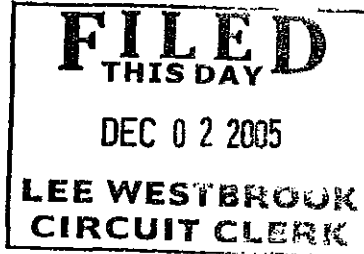
Parchman, MS 38738

MAIL LOG FOR LEGAL MAIL

SENDER	DATE	RECEIVER	POSTAGE
Dorrick Jones 72723 32E	10/5/64	Charles Justice P.O. Box 3708 Jackson, Mo. 39207	.37
n n n	n n	Donald (Barnes) Dept P.O. Box 1057 Preston, Mo. 38728	4 ml.
n n n	n n	Allen B. (Coke) Clerk 911 Jackson Ave. Suite 369 Oxford, Mo. 38655	4.75
Larry Moody 52228 32E	10/5/64	Warden Lee Unit 32 Admin. Preston, Mo.	14 ml.
n n n	n n	Michael Salgan, Clerk P.O. Box 31 Columbia, Mo. 3703	106
William Liberland 84190 32E	10/5/64	Wanda Frazier 118 W. Washington St. Kearnsdale, Mo. 39292	.37
n n n	n n	Supreme Court (Court of Appeals) P.O. Box 247 Jackson, Mo. 39225	1.75
Arthur Williamson 725035 32E	10/5/64	Office of the Clerk P.O. Box 249 Jackson, Mo. 39225	2.21
n n n	n n	Office of Atty. General P.O. Box 222 Jackson, Mo. 39225	1.06
Charles Fudy 27678 32D	10/5/64	Sam Hood, P.G. P.O. Box 220 Jackson, Mo. 39225	.83
n n n	n n	Lee Westbrook 146 West Center St. Center, Mo. 39046	1.98
Jerry Craft 24910 32E	10/5/64	Atty. General P.O. Box 220 Jackson, Mo. 39225	.37
n n n	n n	U.S. District Court P.O. Box 704 Henderson, Mo. 37730	1.52

Charles Rudd #L7678
Unit 32-A Building
Parchman, MS 38738

November 15, 2005



Ms. Lee Westbrook, Clerk
Circuit Court
P.O. Drawer 1626
Canton, MS 39046

RE: Resubmitting of Habeas Corpus Petition

Attn. Clerk:

On or about October 2, 2004, I, Petitioner Charles Rudd L7678, acting Pro Se, submitted a Petition (via your office) for Writ of Habeas Corpus to be filed with the Court.

On or about January 3, 2005, I submitted a letter (via your office) to request information on the status of my petition.

To date, I have received no correspondence regarding said petition or letter from the Court or opposing counsel.

At this time I am requesting that this resubmitted Petition be upheld and the first petition be dismissed due to later found error on the prima facie of the prior petition.

Enclosed, please find a filing with the Court, one original and three copies of the following: Resubmitted Petition for Writ of Habeas Corpus, Memorandum Brief in Support of Writ of Habeas Corpus, Motion for Appointment of Counsel, Brief in Support of Appointment of Counsel, and Affidavit of Poverty.

Once the Petition has been filed please return the copy of each of the above pleadings marked "Petitioner's File Copy."

Thank you in advance for your time and assistance in this matter.

Respectfully Submitted,

Charles Rudd

Charles Rudd #L7678
Unit 32-A Building
Parchman, MS 38738

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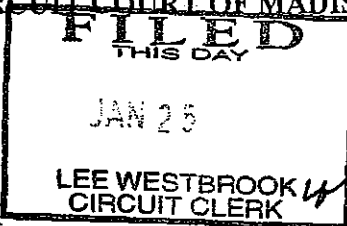
Exhibit F

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

CHARLES RUDD

VS

STATE OF MISSISSIPPI



PETITIONER / MOVANT

CAUSE NUMBER 99-0393 & 2002-229

RESPONDENT

ORDER DISMISSING POST CONVICTION RELIEF

THIS CAUSE HAVING COME on for consideration by the Court on the Petitioner's Pro Se Petition for Writ of Habeas Corpus, which, upon review by the Court, is in truth and fact a Motion for Post Conviction Relief and this Court elects to treat the said pleading as a Motion for Post Conviction Relief.

The Court having reviewed the said petitions/motion finds that the Petitioner/Movant pled guilty to Armed Robbery in Cause Number 99-0395 and Escape in Cause Number 2002-0229 in this Circuit Court on July 17, 2002, and a Judgment of Conviction was entered and filed on that date.

The Court further finds that Section 99-39-5 (2) states that a Motion for Post Conviction Relief shall be filed "within three (3) years after entry of the Judgment of Conviction."

The Court further finds that the Petition/Motion filed herein was filed on December 2, 2005, which is more than three (3) years after the entry of the Judgment of Conviction and the Petition/Motion should be dismissed with prejudice.

IT IS THEREFORE ORDERED AND ADJUDGED that the Petitioner/Movant's Petition for Writ of Habeas Corpus (Motion for Post Conviction Relief) be and the same is hereby dismissed for the aforestated reasons.

SO ORDERED AND ADJUDGED THIS THE 25TH DAY OF JANUARY, 2006.

A handwritten signature in cursive script, appearing to read "Samac J. Richardson". Below the signature is a horizontal line, and underneath that line, the words "CIRCUIT JUDGE" are printed in a bold, sans-serif font.

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129/b1@

IN THE SUPREME COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

CHARLES RUDD

VS

STATE OF MISSISSIPPI

Case No. 2006-15-01249

Supplemental Brief In Support Of Appeal

PETITIONER IN PRO SE:

CHARLES RUDD # L7678

Unit 32-D Bldg.

Parchman, MS 38738

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4	Rule 4.03 of the Criminal Rules
4	Rule 8.01 (A)(3) Entry of Guilty Pleas
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9	9th Cir. Justice Leventhal
9	Henr. Frederic Amiel, Swiss Philosopher, Amiel's Journal (1883)
9	Henry David Thoreau, American Libertarian Writer (1862)
9	Ralph Waldo Emerson, American Poet, Unitarian Minister, Philosopher (1882)

I Issues Presented

In the face of the court's controlling opinion in *Borja v. Heane*, 99 F.3d 992 (2nd Cir. 1996):

I. Does petitioner enter an involuntary guilty plea when record shows that he was not allowed to read plea agreement, when attorney admitted to not including minimum and maximum time for escape, when petitioner stated on record, he did not wish to plea, he wanted to go to trial, he did not want to continue with his attorney and could he set another trial date, only to be denied all, when trial court admitted to knowing petitioner did not want to accept a plea, or when punishment upon motion to plea was misleading as to cause confusion, coercion, and/or deception; and

II. Is petitioner denied effective assistance of counsel when record shows that defendant was not allowed to read plea agreement, when witnesses on his behalf was not notified, when counsel fails to make the petitioner aware of the minimum and maximum punishment; and

III. Whether the trial court abused its power of discretion or erred by allowing prosec~~ution~~ to amend indictment on record the day of trial, when a plea was entered through a Bill of Information where charge was enhanced, when petitioner was denied a new counsel, when plea was accepted when court stated on record that petitioner did not wish to plead guilty, when trial court attempted to disguise its reversible error of denying petitioner another counsel then allowing a new counsel to stand beside him during sentencing, when ~~petitioner~~ was continued to be shown toward petitioner by refusing to timely submit proper documents and/or respond to motions and/or orders submitted by petitioner and/or the Supreme Court; and

IV. Is petitioner denied fundamental fairness and due process of law and notice of charges when indictment was amended to change ~~the name of the victim~~, when changes was disguised as to not show the changes made with what was stated in motion to amend or the order amending?

Supplemental Brief In Support Of Appeal

Comes now, Charles Rudd, petitioner acting pro se, and files this Supplemental Brief. In Support Of Appeal pursuant to Mississippi Code Annotated Section 99-39-1 et seq. and in support therefore would show unto this Honorable Court the following, to-wit:

Procedural History

On or about July 17, 2002, a plea of guilt was entered on behalf of the petitioner for the Charges of Armed Robbery and Escape. On or about October 17, 2003, petitioner was sentenced to a term of (30) THIRTY years, (10) Ten years suspended, five (5) years on supervised probation and fifteen (15) years to serve in MDOC (Miss. Dept. of Corr.). On or about October 2, 2004, petitioner filed for a writ of Habeas Corpus, which was treated as a Post Conviction, for Armed Robbery

On or about March 1, 2005, petitioner filed a writ of Habeas Corpus for escape On or about April 8, 2005, petitioner was denied his writ of Habeas Corpus for escape On or about November 15, 2005, petitioner resubmitted writ of Habeas Corpus amending errors On or about January 25, 2006, an adjournment was ordered dismissing petitioner's writ as time barred. On or about February 6, 2006, petitioner submitted a Notice of Appeal and a Designation of Record. On or about April 17, 2006, petitioner submitted a letter to Supreme Court, requesting status of appeal. On or about May 16, 2006 there was a Response sent stating no writ was sent, contact lower court. On or about May 29, 2006, petitioner contacted the lower court

Summary Of Supplemental Arguments

On or about September 13, a petitioner resubmitted Notice of Appeal & Designation of Record
On or about September 26, 2006, a copy of Notice of Appeal & Designation of Record was sent to petitioner
On or about October 26, 2006 appellant filed a motion for document in the Court of Appeals
On or about October 31, 2006, Records still had not been sent by lower court
On or about November 27, 2006, petitioner submitted a written Request to Court of Appeals, to compel
the lower court and/or transcriber to send all clerk's papers in this case
On or about December 6, 2006, Court of Appeal sent petitioner copies of letters sent to Court and
the courts transcriber
On or about December 8, 2006, petitioner submitted a letter to Court of Appeals complaining of the
continued burden and injustice the trial court has been placing on him.
On or about December 20, 2006, trial court sent an order obliging motion for counsel
On or about January 10, 2007, petitioner contacted the Court of Appeals about the motion for counsel
On or about July 16, 2007, petitioner again complained about the hindrance by trial court
On or about July 10, 2007, Supreme Court issued a Show Cause Notice to Court Reporter,
lower court Judge, Clerk, and Counsel of Record, advising them to send documents or be sanctioned within 14
days of the order.

On or about August 16, 2007, petitioner received Records from the lower court
On or about August 28, 2007 petitioner filed a motion to correct Records sent by trial court
On or about September 11, 2007 an order was issued ordering the trial court to correct Records
by October 19, 2007 as well as decide whether supplementation was appropriate
On or about October 7, 2007, petitioner filed with lower court a Records Request
On or about October 22, 2007, petitioner filed a motion for Declaration Relief to vacate sentence
On or about November 26, 2007, petitioner filed an Affidavit for Entry of Default Judgment
On or about November 28, 2007, petitioner was allowed to file any supplement based he deems necessary
On or about December 5, 2007, petitioner's motion for Declaratory Relief was denied
On or about December 10, 2007, petitioner received another incorrect copy of Records.

Appellant contends that he was unlawfully induced, coerced and deceived, and as a result an involuntary guilty plea was made on behalf of the petitioner, because he argues he was ignorant to the enhanced charge of escape, that he was not in fact a prisoner at the said Madison County Sheriff's Department as stated in Bill of Information, but a pre-trial detainee at the Madison County Jail and petitioner contends the state used that to enhance the charge, being that he had not yet started trial deeming him still a pre-trial detainee and not in fact a prisoner. See Guilty Plea Hearing pg 2, lines 6+7.

Where petitioner enters an involuntary guilty plea when record shows that he was not allowed to read plea agreement, when attorney admitted to not including minimum and maximum time for escape, when petitioner stated on record, he did not wish to plea, he wanted to go to trial, he did not want to continue with his attorney and could he set another trial date, only to be denied all, when trial court admitted to knowing petitioner did not wish to plea, or when punishment upon motion to plea was so misleading as to cause confusion, coercion, and/or deception and when petitioner admitted to not being aware.

Supplemental Argument And Brief

Petitioner argues that he has denied a fair pretrial process from its very beginning and that unfairness has continued throughout the trial process and still during his appeal process, denying him the fundamental fairness essential for justice to prevail, when trial court showed prejudice by not only improperly dismissing his petition for writ of Habeas Corpus, which was elected to be treated as a Post Conviction Relief, because of a time bar that was met, when defendant was coerced and deceived to accept a plea of guilty even though he did not wish to continue with counsel who he felt was not acting in his favor, where the ineffective assistance of counsel to properly represent the defendant to the best of her ability, by failure to truthfully state the minimum and maximum punishment for the charges pled to, failing to proper notification was presented to witnesses in favor of petitioner, when trial court denied him the right to remove counsel from his case after Verbal Request was made, when court allow indictment to be amended the day of trial, the Bill of Information was used to enhance the change of attempt to escape to escape, and the errors continue as the trial court continue to deny him his due process right.

Petition to Enter Guilty Plea pg. 4; Re. 1 to Proceed By Bill of Information and Verbal Affidavit, where it clearly states Attempted Escape.

Rule 8.04(A)(3) Entry of Guilty Pleas states: Voluntary. Before the trial court may accept a plea of guilty, the court must determine that the plea is voluntarily and intelligently made and that there is "factual" basis for the plea. A guilty plea is not voluntarily if induced by fear, violence, deception or improper inducements. It showing that the plea of guilt was voluntary and intelligently made must appear on record. Petitioner argues that record shows this plea of guilty was in fact involuntary, when court openly admits that petitioner did not want to plead guilty, when petitioner was forced to keep counsel who he felt was not working toward his best interest, and when he stated he did not commit the crime in question, that he wanted to go to trial, and that he had been coerced, confused and deceived plus he did not sign his plea agreement as stated in Rule 8.04(A)(3).

According to Myers v. State, (Miss. 1991) 583 So. 2d 174, failure to inform petitioner of the minimum and maximum sentence is reversible error, because had he known he was being deceived to accept an enhanced charge, referring to the escape, he would not have accepted the plea of guilty. See Strickland v. Washington, 466 US 668, 104 S.Ct. 2052; Walker v. State, 703 So. 3d 266, 268, (Miss. 1992).

Petitioner argues that his plea of guilty and agreement to the Bill of Information are both involuntary according to Rule 4.0 of the Criminal Rules which states: Defense counsel shall not conclude any plea bargaining on behalf of his/her client without his/her clients "full and complete" consent... Defense counsel shall advise defendant of "all" pertinent matters bearing on the choice of the plea to enter and likely result or alternatives. [Emphasis added]. The same was said in Rule 8.04(B)(3) Plea Bargaining. Petitioner contest these very errors occurred when petitioner did not sign his plea agreement or any other document the day of pleading. See signature on petition to plea and Memorandum Brief.

Issue Two

Whether petitioner is denied effective assistance of counsel when record shows that defendant was not allowed to read plea agreement, when witnesses on his behalf was not notified, when counsel fails to make the petitioner aware of the minimum and maximum punishment.

Petitioner contends that defense counsel erred when she did not advise him to read his plea agreement, See (Guilty Plea Hearing pg. 4, Lines 22-29 & pg. 5, Lines 1-2), which he argues was later changed from the plea agreement discussed with counsel. See (Petition to Enter Guilty Plea pg. 4) In doing this, the petitioner argues that counsel should have informed him of the changes in the agreement, yet he was not.

It was said in Cuyler v. Sullivan *supra*, 446 U.S., at 346, 90 S.Ct., at 1717, Representation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. Counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant cause and the more particular duties to consult with the defendant informed of important developments in the course of the prosecution. See Dowell v. Alabama, 287, U.S., at 68-69, 53 S.Ct., at 63-64. This is why petitioner feels counsel erred when plea agreement was altered without his knowledge.

Other errors appeared on the record made by defense counsel when she admitted to not including the minimum and maximum punishment for escape and petitioner admits to not being aware either. See (Guilty Plea Hearing pg. 2, Lines 6-7 and pg. 24, Lines 1-13).

In Myers v. State (1991 Miss.) 583 So.2d 174, which provided a basis for relief. Or is Strickland v. Washington, 466 US 668, 104 S.Ct. 2052; Walker v. State, 703 So. 2d 266, 268 (Miss. 1992), which said that failure of counsel to advise Petitioner of the maximum and minimum penalties provided by law rendered counsel's performance deficient.

Issue Three

Whether the trial court abused in power of discretion or erred by allowing prosecutor, on record, to amend indictment the day of trial, when trial court allowed a plea to be entered through a Bill of Information where charge was up graded to a greater charge, when court denied defendant a new counsel, when court entered a plea of guilt even after it was stated on record that defendant did not wish to plead guilty, when trial court attempted to disguise it's Reversible error of denying defendant another counsel then allowed another counsel to stand beside defendant during sentencing, when trial court continued to show prejudice was continued to be shown toward petitioner by refusing to timely submit proper documents and/or respond to motions and/or orders submitted by petitioner and/or the Supreme Court.

Petitioner contends that trial court abused its power of discretion and is "aid by allowing prosecutor to amend indictment the day of trial, leaving petitioner no time to prepare a defense to the indictment that otherwise should have went back before a grand jury which is a jurisdictional defect. Petitioner also contends prosecutor erred as well as the court when the charges made were disguised. See (Exhibit 1) Hearing pg. 2, Lines 10-21 & pg. 13, Lines 14-18; Indictment; Order Amending Indictment; and Petitioner's Amended Indictment).

In US v. Harris, 344 F.3d 803 (8th Cir. 2003); US v. Clemente, 22 F.3d 783 (8th Cir. 1994); it was said that, 1.) The 5th Amendment requires that defendant be tried only on charges handled down by the grand jury and, thus, after indictment has been returned, its charges may not be broadened through amendment except by grand jury. 2.) Variance raise to the level of reversible error where evidence presented at trial together with jury instructions, raise possibility that defendant was convicted of offense other than that charged in indictment US v. Cline, 378 F.3d 71 (1st Cir. 2004) states: "Amending the indictment is considered pretrial procedure and thus demands reversal."

It was said in US v. Rosario-Diaz, 202 F.3d 84 (1st Cir. 2000) that, if a court permits a jury to convict a defendant on evidence of a crime not included in the indictment, the constitutional right to the grand jury is violated. To be sufficient, an indictment must allege each material element of the offense, if it does not, it fails to charge that offense, because an indictment is jurisdictional, a defect in an indictment is not waived by a guilty plea.

"It is reversible error to amend indictment after grand jury has passed upon it." See US v. Huntsman, 959 F.2d 1429 (8th Cir. 1992). Also, see Ex Parte Brian, 221 US 1, 7 S.Ct. 781, 30 L.Ed. 899 (1887) which stated: "The instant that the court amends the indictment, the court loses jurisdiction. At that point in time, there is nothing that can cure that defect. It is a jurisdictional defect. Upon an indictment so changed, the court can proceed no further. There is nothing for which that prisoner can be held to answer. A trial on such indictment is void."

Petitioner argues that trial court erred by allowing a plea to be entered through a Bill of Information where charge was enhanced. See (General Affidavit) where defendant was charged with attempted escape and see (Bill of Information), where charge was up graded to the charge of escape.

Rule (7)(a) of Criminal Procedure, Indictment and the Information states: "Waiver of indictment, an offense which may be punished by imprisonment for a term exceeding one year or at hard labor may be prosecuted by information if the defendant, after having been advised of the nature of the charge and of the right of the

defendant waive in open court pro. v. by indictment. This was not the case when petitioner was not advised that his charged was being enhanced.

Petitioner contends trial court erred by denying him the right to a new counsel when, he on record, requested another because of conflicting interest, and a continuance to obtain another attorney, forcing the petitioner to go along with the plea that he stated he did not wish to accept, and had it not been for these circumstances he would not have agreed to the plea which he did not sign. Petitioner argues that further error was made by attempting to ^{disguise} [REDACTED] it's reversible error of denying petitioner a new counsel yet allowed another counsel to stand beside him during sentencing. See (Guilty Plea Hearing pg. 19, lines 8-24, pg. 20, lines 1-22 & pg. 12, lines 9-11; and Sentencing Hearing pg. 2, lines 11-13 & 23-29).

It was said in Argersinger v. Hamlin, 407 US 25, 92 S.Ct. 2006, 32 LEd 2d 530 (1972); Gideon v. Wainwright, supra; and Johnson v. Zerbst, supra, that a person who happens to be a lawyer is present alongside the accused is not enough to satisfy the constitutional command. The 6th Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results. "Structural errors" call into question the very accuracy and reliability of the trial process and thus are not amenable to harmless error analysis, but require automatic reversal. See Quintero v. Bell, 286 F.3d 409 (6th Cir. 2001); Showfelt v. Alaska, 228 F.3d 1088 (9th Cir. 2000). If a defendant voices a seemingly substantial complaint about counsel, the court should inquire into the reason for dissatisfaction, see US v. Simeonov 282 F.3d 238 (2nd Cir. 2003). The defendant's 6th Amendment right to be represented by an attorney with undivided loyalty. The same is true is Smith v. State, (Miss. 1998) 666 So. 2d 810. Constitutional Law 268.1(b). It is stated in Universal Acupuncture v. Quadrone and Schwartz, 370 F.3d 259 (2nd Cir. 2004). Under New York law, client may discharge his or her lawyer at any time, with or without cause. I.d., at 1258-1259 (quoting Rummel v. Estell), 590 F.2d 103, 104 CA5 1979.) The court observed that only in cases of outright denial of counsel, of affirmation government interference in the representation process, or of inherently prejudicial conflicts of interest had this court said that no special showing of prejudice need be made. Petitioner contends that this denial of counsel has been shown on record.

Petitioner contends that further errors were shown by trial court's hindering the petitioner by refusing to timely submit proper documents and/or response to motions and/or orders ^{submitted} [REDACTED] by the petitioner and/or Supreme Court, showing more prejudice in the face of justice, thus infringing upon the Due Process right

Petitioner argues that failure of the indictment to appear before grand jury to be amended was in direct violation of indictment of burglary to contain such allegation was finally defective and could not be remedied by amendment. as to the ownership of the building said to have been burglarized being an essential element of an offense. The same was said in Lrosby v. State, 191 Miss. 172, 2 So. 2d 813 (1941), where an allegation of property embezzled is fatally defective, and the defect was not waived by the defendant's failure to which stated, an indictment for embezzlement that does not set out the name of the owner of the concealed. An example of this fatal defect appears in Mayes v. State, 193 So. 2d 728 (Miss. 1967), name is "fatal", and prosecutor, petitioner contend, was aware of this fact and that's why it was victim of an offense, and a failure to state or material variance between statement and proof of the Huges v. State, 207 Miss. 594, 42 So. 2d 805 (1949) states, an indictment "must" state name of

pg. 2, lines 26-26.

that which was shown on the indictment or record. See (Motion to Amend and Guilty Plea Hearing) the reason stated on record as the reason for the amendment to petitioner's indictment did not match (Order Amending Indictment), which does not match the errors stated in motion to amend indictment; intent was disguised to appear to change the spelling and not the actual name of the victim. See to be amended the day of the trial, to change the name of the victim in the indictment, when the petitioner argues that he was denied fundamental fairness of law when trial court allowed his indictment

whether petitioner is denied fundamental fairness and due process of law and notice of charges when indictment was amended to change the name of the victim, when changes was disguised as to not show the changes stated on record with what was in motion to amend or the order amending.

Issue Four

and Receipts of received documents). Show Cause Notice To Court Reporter, and Order. Also, see (Certificate(s) of Clerk; Order from Circuit Court; limits given by Supreme Court to submit these documents. See (1st & 2nd filed Notice of Appeal & Designation; to file proper documents after Notice of Appeal & Designation of Records have been filed and the orders and time in which the petitioner is to be entitled, where MARR only allowed 10 days from date of receipt

of statute that states that overment, indictment as to substance must be made, grand jury. See Hughes v State 665 So.2d 852 (Miss. 1995). Where the Supreme Court has stated that a defendant has a "substantial right to be tried only on charges presented in an indictment returned by a grand jury. Deprivation of such a basic right is for too serious to be treated as nothing more than a variance and then dismissed as harmless error".

Conclusion

In the words of Ralph Waldo Emerson, American poet, Unitarian Minister, Philosopher (1803) as well as those of Henri Frederic Amiel, Swiss Philosopher, Amiel's Journal (1883), Henry David Thoreau, an American Libertarian writer (1849) and the 9th Cir. Justice Levanthal, "Truth is the summit of being."

Justice is the application of it to affairs. Thus, "Truth is not only violated by falsehood; it may be equally outraged by silence". Then, "Whatever the human law may be, neither an individual nor a nation can commit the lest act of injustice against the obscurest individual without having to pay the penalty for it." So, "If the government, police and prosecutors could always be trusted to be right or do the right thing, there would have never been a need for the Bill of Rights."

WHEREFORE, PETITIONERS considered, Petitioner respectfully moves this Honorable Court to grant relief requested, for all the cumulative reasons and evidence stated herein denoting procedure defects in the proceedings leading to this motion, that this Court Reverse, vacate, set aside, or expunge the plea and conviction with prejudice impose a sentence of "time served", ordering the Petitioner's Release forthwith, and/or any other different relief as it may deem just and proper.

This the 7th day of January, 2008

Respectfully Submitted,

Charles Ruud

Charles Ruud # 27678

Unit 32-11 Building

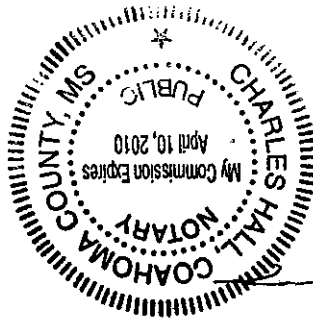
Jarckman, MS 38738

VERIFICATION

PERSONALLY Appeared before me, the undersigned authority in and for said jurisdiction, the within named petitioner, Charles Rudd, who, after first being duly sworn, stated on oath that the statements set forth in the foregoing petition for Supplemental Brief In Support Of Appeal, are true and correct as therein stated.

Charles Rudd
Charles Rudd #17678

SWORN TO AND SUBSCRIBED BEFORE ME, this the 8 day of Jan., 2008



Notary Public

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Exhibit G

INDICTMENT

THIS DAY

NOV 30 1999

LEE WESTBROOK
CIRCUIT CLERK

STATE OF MISSISSIPPI
COUNTY OF MADISON

ARMED ROBBERY,
MISS. CODE ANN. §97-3-79

CAUSE NO. 99-0393

IN THE CIRCUIT COURT OF SAID COUNTY, SEPTEMBER TERM, 1999
RECALLED NOVEMBER 17, 1999

The Grand Jurors of the State of Mississippi, taken from the body of good and lawful citizens of said county, elected, summoned, empaneled, sworn and charged to inquire in and for the body of the said county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oath present that,

CHARLES J. RUDD

late of the county aforesaid, on or about the 9th day of September, 1999, in the county aforesaid and within the jurisdiction of this court,

did willfully, unlawfully, knowingly and feloniously, take from the presence of **WENDY ROUNDTREE** money, the personal property of **SHELL SPRINT MART**, a business, against his will by putting the said, **CHARLES J. RUDD**, in fear of immediate injury to his person by the exhibition of a deadly weapon, a gun, in the City of Madison, Madison County, Mississippi, in violation of Mississippi Code Annotated §97-3-79 (1972), as amended,

against the peace and dignity of the State of Mississippi.

Endorsed : A True Bill


FOREMAN OF THE GRAND JURY


DISTRICT ATTORNEY

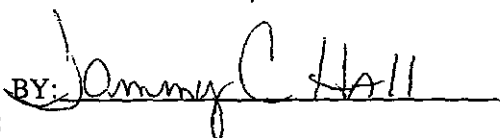
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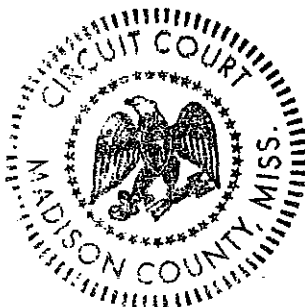
COMES NOW James H. Burns, Foreman of the September, 1999, Madison County Grand Jury, and makes oath that this indictment presented to this Grand Jury was concurred in by twelve (12) or more members of the Grand Jury and that at least fifteen (15) members thereof were present during all deliberations.


FOREMAN OF THE GRAND JURY

SWORN TO AND SUBSCRIBED BEFORE ME, this the 24th day of November, 1999.

LEE WESTBROOK, CIRCUIT CLERK

BY:  , D.C.



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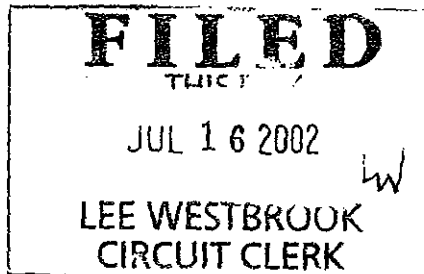
Exhibit H-1

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CHARLES J. RUDD



CAUSE NO. 990393

DEFENDANT

MOTION TO AMEND INDICTMENT

COMES NOW the State of Mississippi and moves that the indictment in Cause No. 990393 be amended to correct a clerical error. Specifically, the State alleges that the name of the victim referred to in the indictment reads "WENDY ROUNDTREE" and that it should read "WENDY ROUNTREE".

The state prays that the Indictment be amended to reflect the above referenced change.

Respectfully submitted, this the 16th day of July, 2002.

STATE OF MISSISSIPPI

BY: 

BRAD WILKINSON

ASSISTANT DISTRICT ATTORNEY


BRAD WILKINSON
DISTRICT ATTORNEY'S OFFICE
POST OFFICE BOX 121
CANTON, MISSISSIPPI 39046
(601)859-7838

000025

CERTIFICATE

This is to certify that I have this day delivered a true and correct copy of the above and foregoing Motion To Amend Indictment via facsimile to the attorney for the Defendant, Honorable Lisa Ross, at 601-981-7917.

This the 16th day of July, 2002.

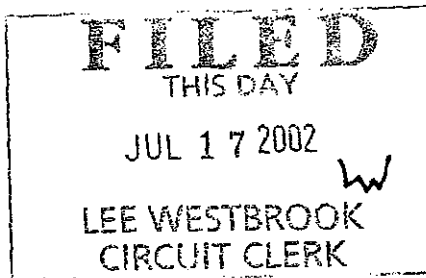

BRAD WILKINSON
ASSISTANT DISTRICT ATTORNEY

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CHARLES J. RUDD



CAUSE NO. 990393

DEFENDANT

ORDER AMENDING INDICTMENT

COMES NOW for consideration, this day the Motion of the State of Mississippi to Amend the Indictment in Cause No. 990393 to correct a clerical error. The Court finds that the State's motion to be well-taken and that the same should be sustained.

IT IS THEREFORE, ORDERED AND ADJUDGED, that "WENDY ROUNDTREE" referred to as the date of the offense in the Indictment is amended to correctly reflect that "WENDY ROUNDTREE" is the date of the offense. Court finds the State's motion to be well-taken and that the same should be sustained.

SO ORDERED AND ADJUDGED, this the 17th day of July 2002.

A handwritten signature in cursive script, appearing to read "James S. Rountree", written over a horizontal line.

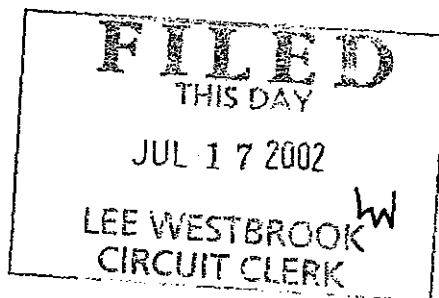
CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CHARLES J. RUDD



CAUSE NO. 990393

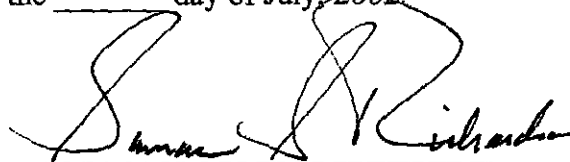
DEFENDANT

ORDER AMENDING INDICTMENT

COMES NOW for consideration, this day the Motion of the State of Mississippi to Amend the Indictment in Cause No. 990393 to make the indictment conform to the evidence. The Court finds that the State's motion to be well-taken and that the same should be sustained.

IT IS THEREFORE, ORDERED AND ADJUDGED, that "SHELL SPRINT MART" referred to in the indictment as the name of the owner of the property be amended to correctly reflect that "MORRIS CORPORATION, DBA SHELL SPRINT MART" is the name of the owner of the property. Court finds the State's motion to be well-taken and that the same should be sustained.

SO ORDERED AND ADJUDGED, this the 17th day of July, 2002


CIRCUIT COURT JUDGE

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Exhibit L

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CHARLES RUDD

FILED

THIS DAY

JUL 17 2002

LW

LEE WESTBROOK
CIRCUIT CLERK

CAUSE NO. 2002-0229

DEFENDANT

PETITION TO PROCEED BY BILL OF INFORMATION

COMES NOW the Defendant in the above-styled and numbered cause and petitions this Court to permit the State of Mississippi to proceed by way of Bill of Information charging him with the crime of **Escape**, without the findings of a Grand Jury Indictment, and would cite in support thereof the following:

1. The Defendant is represented by counsel and has been fully advised by such counsel that the State may not formally charge him for a felony without a Grand Jury Indictment unless the Court permits the State to proceed by Bill of Information by sustaining this Petition.

2. The Defendant, by and through this sworn Petition formally waives Grand Jury Indictment.

3. The Defendant knows that he has a right to require the State to Indict him in order to proceed and knowingly and intelligently waives this Constitutional right under Article 3 Section 27 of the Mississippi Constitution of 1892 and any and all other legal and Constitutional rights relating thereto.

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that this Petition be granted.

Respectfully submitted,

Charles Rudd

PETITIONER

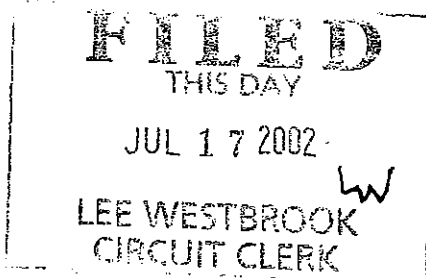
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IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CHARLES RUDD



CAUSE NO. 2002-0229

DEFENDANT

**ORDER ALLOWING THE STATE TO
PROCEED BY BILL OF INFORMATION**

THIS CAUSE having come on to be heard on Petition of the Defendant to allow the State to proceed by way of Bill of Information charging him with the crime(s) of **Escape**, and the Court finding that the Defendant is represented by counsel, the Honorable Lisa Ross, Attorney(s) at Law, and that the Defendant has filed a sworn statement waiving the subject indictment and petitioning the Court to so allow the State to proceed by Bill of Information, and the Court further finding that the Defendant has made a knowing and intelligent waiver of his legal and constitutional rights, Article 3 Section 27 of the Mississippi Constitution of 1892:

IT IS, THEREFORE ORDERED, that the State of Mississippi is hereby granted leave of Court to proceed in this cause by filing a sworn Bill of Information charging the Defendant with the crime(s) of **Escape**.

SO ORDERED, this the 17th day of July, 2002.

A handwritten signature in cursive script, appearing to read "Samuel R. Robinson".

CIRCUIT COURT JUDGE

000004

Exhibit

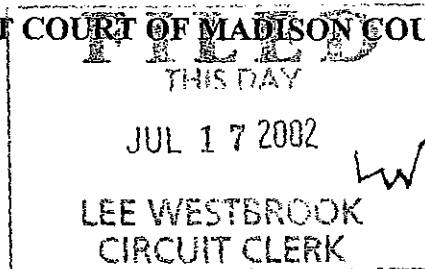
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IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CHARLES RUDD



CAUSE NO. 2002-0229

DEFENDANT

BILL OF INFORMATION

STATE OF MISSISSIPPI
COUNTY OF MADISON

PERSONALLY appeared before me, the undersigned authority in and for the State of County aforesaid, the within named **BRAD D. WILKINSON** who first being duly sworn and deposed, charged in his oath that:

On or about the 3rd day of July, 2002, **CHARLES RUDD**, late of the County aforesaid, did then and there,

willfully, unlawfully, intentionally and feloniously, escape from the custody of the Madison County Sheriff's Department when said prisoner was lawfully in custody for the charge of armed robbery, in violation of Mississippi Code Annotated §97-9-49 (1972), as amended,

against the peace and dignity of the State of Mississippi

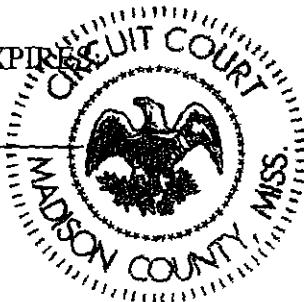
ASSISTANT DISTRICT ATTORNEY

SWORN TO AND SUBSCRIBED BEFORE ME, this the 17 day of July, 2002.

NOTARY PUBLIC

MY COMMISSION EXPIRES

1/1/2004



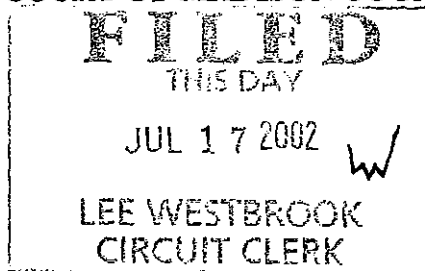
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IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CHARLES RUDD



CAUSE NO. 2002-0229

DEFENDANT

WAIVER OF INDICTMENT

STATE OF MISSISSIPPI
COUNTY OF MADISON

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named **CHARLES RUDD**, who first being duly sworn and deposed, saith on his oath, that he is represented by the Honorable Lisa Ross, Attorney(s) at Law, and that he desires to, and does hereby waive indictment by the Grand Jury, and petitions against him by way of Bill of Information charging him with the crime(s) of **Escape**.

Charles Rudd

DEFENDANT

SWORN TO AND SUBSCRIBED BEFORE ME, this the 17 day of July 2002.

[Signature]

NOTARY PUBLIC

MY COMMISSION EXPIRES:

1/1/2004

APPROVED:

[Signature]

ATTORNEY AT LAW

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

Charles Budd

FILED

THIS DAY

JUL 17 2002

LEE WESTBROOK
CIRCUIT CLERK

CAUSE NO.

99-0393

2002-0229
DEFENDANT

PETITION TO ENTER GUILTY PLEA

COMES NOW YOUR DEFENDANT, and respectfully petitions this Honorable Court to accept his/her plea of guilty to the crime of Armed Robbery & Escape LMR and in support thereof would show unto the Court the following:

1. My true name is Charles Budd, also known as _____ I request that all proceedings against me be had in my true name. I am 23 years of age. My date of birth is 5-25-79 LMR, and my Social Security Number is 426-39-1293. I completed 11 years of school and 0 years of college. I (can) (cannot) read and write. There is nothing wrong with me physically or mentally which might impair my ability to read and understand this petition or to impair my ability to knowingly, willingly, and voluntarily enter this plea of guilty. I have never been treated for a mental or nervous condition, disease, or disorder other than: (if none, state "none") None

Charles Budd

DEFENDANT

(d) the right to have the assistance of an attorney at all critical stages of the proceedings against me;

(e) the presumption of innocence, that is, the State must prove all of the elements of any charge beyond a reasonable doubt that I am guilty;

(f) the right to a unanimous jury verdict of all twelve jurors before I could be found guilty;

(g) the right to take the witness stand and testify in my own behalf if I want to; I further understand that if I do not wish to take the witness stand and testify, this fact cannot be held against me, and that the jury would be instructed that my refusal to testify may not be held against me; I understand that unless I knowingly, willingly, and voluntarily agree to do so, I cannot be compelled to give testimony against myself in violation of my Fifth Amendment rights.

(h) I further understand that should I be convicted in a jury trial, I have the right to appeal my conviction to the Mississippi Supreme Court, and with the assistance of counsel at no cost to me should I be financially unable to pay for an attorney to represent and assist me.

Knowing and understanding the Constitutional and other legal rights and guarantees set forth in this paragraph, I hereby waive each and every one of them and renew my desire to enter a plea of guilty.

6. I have fully informed my attorney of all the facts and circumstances known to me about the charge against me. My attorney has counseled and advised me on the nature and elements

Charles Rudd
DEFENDANT

the custody of Madison County Sheriff's Office. I was fully in custody for the charge of armed robbery in violation of the charge, on any and all lesser-included charges, and on all possible defenses that I might have

in this case. My attorney advises me and I understand that the elements of the charge to which

I am pleading guilty are as follows: that I did willfully, unlawfully, feloniously, knowingly

on or about September 9, 1999
take from the presence of Wendy Purchase
money and personal property of Shell Sprint Mart
against her with out putting the said Wendy Purchase in fear of immediate
injury to her person by the exhibition of a deadly weapon, a gun, in

I wish to plead guilty and request the court to accept my plea of guilty on the basis
of the following: On the date(s) as set forth in the indictment or bill of information, I did, in Madison

County Mississippi, willfully, unlawfully, feloniously take from the presence
of Wendy Purchase money and personal property
of Shell Sprint Mart.

8. I know that if I plead guilty to this charge, the sentence may be ~~3~~ Armed Robbery years

(minimum) to Life years (maximum) incarceration, and/or a fine of \$ 0

(minimum) to \$ 10,000.00 (maximum). I also have been told by my attorney that any sentence

I may receive is up to the Court, that the Court is not required to carry out any understanding made

by me and my attorney with the District Attorney; I understand that the Court is not required to

follow the recommendation of the District Attorney, if any. The District Attorney will take no part

other than providing to the Court, police reports and other factual information which may be

requested by the Court; and the District Attorney shall make no recommendation to the Court

concerning my sentence except as follows: (if none, state "none") 10 years to

Serve Armed Robbery - 20 years, 10 years suspended;
10 years to serve

Charles Rudd

DEFENDANT

Escape - ~~ten years~~ - five
years suspended - five
years to serve

Credit for time served; court costs and
attorney fees

Madison
County
MS.

in
violation
of
Miss.
Code

Armed Robbery
§
91-3-7
1972

Escape
minimum
0 years
maximum
10
years

There are no other criminal prosecutions or charges currently pending against me except: (if none, state "none") None.

The State has made no agreement with me regarding those charges as expressly stated in paragraph 8 above or as stated in a separate guilty plea petition filed by me in that cause(s).

9. I have been convicted of no felonies in this or in any other State of the United States, except as follows: (if none, state "none") None

10. I (am) (am not) presently on probation or parole. I understand that pleading guilty in this case may cause revocation of my probation or parole. I further understand that if my probation or parole is revoked, any sentence in that case may be consecutive to or in addition to any sentence in this case.

11. I understand that no one can assure me of parole or early release from prison. If this conviction is regarded a sex offense, I will likely be required to undergo psychiatric evaluation prior to being paroled, if parole is granted. If I am sentenced as an habitual criminal, I will not be eligible for parole or other early release.

12. I declare that no officer or agent of any branch of government, Federal, State, or Local, has made any promise or suggestion of any kind to me, or within my knowledge, to anyone else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead guilty, and that I have not been threatened, forced, intimidated or coerced in any manner by anyone.

Charles Budd

DEFENDANT

13. I believe that my attorney has done all that anyone could do to counsel and assist me. I AM SATISFIED WITH THE ADVICE AND COUNSEL HE HAS GIVEN ME. I recognize that if I have been told by my attorney that I might receive probation or a light sentence, this representation is merely his opinion and that it is not binding on the Court or the District Attorney.

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

15. I OFFER MY PLEA OF GUILTY FREELY AND VOLUNTARILY AND OF MY OWN ACCORD AND WITH FULL UNDERSTANDING OF ALL THE MATTERS SET FORTH IN THE INDICTMENT OR INFORMATION AND IN THIS PETITION AND WITH UNDERSTANDING OF THE CERTIFICATE OF MY ATTORNEY WHICH IS PART OF THIS PETITION.

16. HABITUAL CRIMINAL PARAGRAPH. If applicable, note the statute under which the plea of guilty is to be taken:

_____ MS. CODE ANN. §99-19-81 (1972); or under

_____ MS. CODE ANN. §99-19-83 (1972);

✓
_____ Neither

I understand that if my plea is accepted to the charge described in paragraph 3 above, the conviction of said crime may later be used against me for the purposes of enhanced sentencing and/or sentencing as an habitual offender, should I later be convicted of another criminal offense.

Charles Rudd

DEFENDANT

WHEREFORE, PREMISES CONSIDERED, the Defendant prays that this petition will be granted, that the plea of guilty will be accepted and that the Defendant will be convicted and sentenced for the crime of Armed Robbery, Escape, just as if the Defendant had been found guilty of that crime by the verdict of a jury.

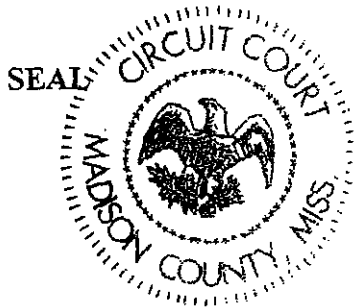
SIGNED AND SWORN TO UNDER OATH on this, the 2nd day of July, A.D., 2002, with full knowledge that if I willfully and corruptly swear, testify, or affirm falsely to any material matter under oath, affirmation or declaration legally administered in this Court I will, upon conviction, be punished additionally for the crime of perjury.

Lisa M. Ross
DEFENDANT'S ATTORNEY

Charles Rudd
DEFENDANT

STATE OF MISSISSIPPI
COUNTY OF MADISON

SWORN TO AND SUBSCRIBED before me on this, the 17th day of July, A.D., 2002.



[Signature]
(OFFICIAL TITLE)

Charles Rudd
DEFENDANT

CERTIFICATE OF ATTORNEY OF RECORD

The undersigned, as attorney and counselor of record for the Defendant in this cause, hereby certifies:

1. I have read and fully explained to the Defendant the allegations contained in the indictment or bill of information in this case;
2. To the best of my knowledge and belief the statements, representations, and declarations made by the Defendant in the foregoing petition are in all respects accurate and true;
3. I have explained the minimum and maximum penalties for each charge or count to the Defendant, and consider him/her competent to understand the charge against him/her and the effect of his/her plea of guilty;
4. The plea of guilty offered by the Defendant in this petition accords with my understanding of the facts he/she has related to me, and is consistent with my advice to the Defendant;
5. In my opinion, the plea of guilty as offered by the Defendant in this petition is voluntarily and knowingly made. I recommend that the Court accept the plea of guilty;
6. Having discussed this matter carefully with the Defendant, I am satisfied that he/she is mentally competent and physically sound; there is no mental or physical condition of which I am aware which would affect his/her ability to understand these proceedings; further, I have no reason to believe that he/she is under the influence of drugs or intoxicants (any exception should be stated by counsel for the Record).

SIGNED BY ME IN THE PRESENCE OF THE DEFENDANT ABOVE NAMED
AFTER FULL DISCUSSION OF THE CONTENTS OF THIS CERTIFICATE WITH THE
DEFENDANT ON THIS, THE 17th DAY OF July, A. D., 2002.

Lisa M. Ross

ATTORNEY FOR DEFENDANT

Charles Rudd

DEFENDANT

Exhibit

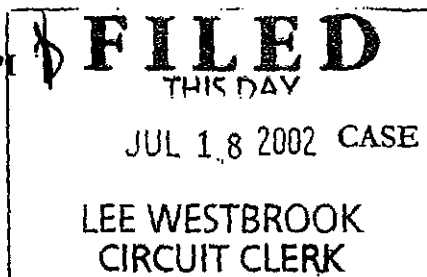
Q-1

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CHARLES RUDD



RECEIVED
This day of July 2002
M. E. McMILLIN, Sheriff, Madison County, MS
By _____

SUBPOENA AD TESTIFICANDUM

TO: CHARLOTTE RUDD
JUST FOR FEET
1061 EAST COUNTY LINE ROAD
JACKSON, MS

YOU ARE HEREBY COMMANDED, in the name of the State of Mississippi,

County of Madison, to appear at the:

Madison County Circuit Court/Administration Building
128 West North Street
Canton, MS. 39046

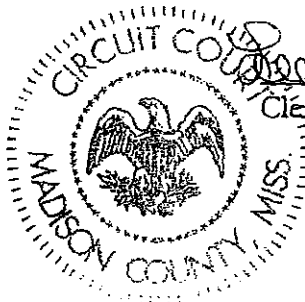
on the 17th day of July, 2002 at 9:00 a.m., to give oral testimony in the above entitled
and numbered cause, and there to remain in attendance until discharged. Failure to appear
as herein directed shall subject you to penalty as prescribed by law.

WITNESS MY SIGNATURE and seal of office, this the 16th day of
July, 2002.

ISSUED AT THE REQUEST OF:

(SEAL)

LISA M. ROSS, ESQ.
MSB# 9755
P.O. BOX 11264
JACKSON, MS 39283-1264
(601) 981-7900 TELEPHONE
(601) 981-7917 FACSIMILE



Clerk of Court

000040

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing instrument was served upon the attorneys
of record of all parties to the above cause as follows:

Brad Wilkinson, ADA
Office of the District Attorney
P.O. Box 121
Canton, MS 39046

SO CERTIFIED, this the 15th day of July, 2002.

Lisa M. Ross
LISA M. ROSS

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI THIS DAY

VS.

CHARLES RUDD

LEE WESTBROOK
CIRCUIT CLERK

CASE NO. 99-0393

SUBPOENA AD TESTIFICANDUM

RECEIVED
JUL 11 2002
M. E. WILLIAMS, CLERK
By: [Signature]

TO: TWAIN WILLIAMS
3404 MARTIN LUTHER KING DRIVE
JACKSON, MS 39213

YOU ARE HEREBY COMMANDED, in the name of the State of Mississippi,

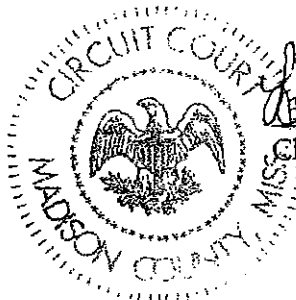
County of Madison, to appear at the:

Madison County Circuit Court/Administration Building
128 West North Street
Canton, MS. 39046

on the 17th day of July, 2002 at 9:00 a.m., to give oral testimony in the above entitled
and numbered cause, and there to remain in attendance until discharged. Failure to appear
as herein directed shall subject you to penalty as prescribed by law.

WITNESS MY SIGNATURE and seal of office, this the 16th day of

July, 2002.



[Signature]
Clerk of Court

ISSUED AT THE REQUEST OF:

(SEAL)

LISA M. ROSS, ESQ.
MSB# 9755
P.O. BOX 11264
JACKSON, MS 39283-1264
(601) 981-7900 TELEPHONE
(601) 981-7917 FACSIMILE

000038

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing instrument was served upon the attorneys
of record of all parties to the above cause as follows:

Brad Wilkinson, ADA
Office of the District Attorney
P.O. Box 121
Canton, MS 39046

SO CERTIFIED, this the 15th day of July, 2002.



LISA M. ROSS

D#3111

Exhibit S-1

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

FILED

THIS DAY

JUL 18 2002

LEE WESTBROOK
CIRCUIT CLERK

STATE OF MISSISSIPPI

VS.

CHARLES RUDD

RECEIVED IN OFFICE
This day of July 2002
M. E. McMILLIN, Sheriff, Madison County, MS
By _____ D.S.
CASE NO. 99-0393

SUBPOENA AD TESTIFICANDUM

TO: NIKKI QUINN
4125 SUNSET DRIVE APT. 505
JACKSON, MS 39213

YOU ARE HEREBY COMMANDED, in the name of the State of Mississippi,

County of Madison, to appear at the:

Madison County Circuit Court/Administration Building
128 West North Street
Canton, MS. 39046

on the 17th day of July, 2002 at 9:00 a.m., to give oral testimony in the above entitled
and numbered cause, and there to remain in attendance until discharged. Failure to appear
as herein directed shall subject you to penalty as prescribed by law.

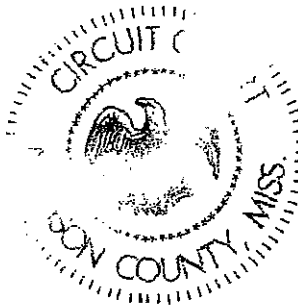
WITNESS MY SIGNATURE and seal of office, this the 16th day of

July, 2002.

ISSUED AT THE REQUEST OF:

(SEAL)

LISA M. ROSS, ESQ.
MSB# 9755
P.O. BOX 11264
JACKSON, MS 39283-1264
(601) 981-7900 TELEPHONE
(601) 981-7917 FACSIMILE



Lee Westbrook
Clerk of Court

000042

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing instrument was served upon the attorneys
of record of all parties to the above cause as follows:

Brad Wilkinson, ADA
Office of the District Attorney
P.O. Box 121
Canton, MS 39046

SO CERTIFIED, this the 15th day of July, 2002.

Lisa M. Ross

LISA M. ROSS

10#3743

Exhibit T-1

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CHARLES RUDD

RECEIVED IN OFFICE
This 16th day of July, 2002
M. B. McMILLIN, Sheriff, Madison County, MS
By [Signature] CASE NO. 99-0393
D.S.

SUBPOENA AD TESTIFICANDUM

FILED
THIS DAY
JUL 19 2002
LEE WESTBROOK
CIRCUIT CLERK

TO: NIKKI QUINN
4125 SUNSET DRIVE APT. 505
JACKSON, MS 39213

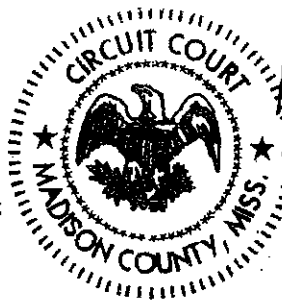
YOU ARE HEREBY COMMANDED, in the name of the State of Mississippi,

County of Madison, to appear at the:

Madison County Circuit Court/Administration Building
128 West North Street
Canton, MS. 39046

on the 17th day of July, 2002 at 9:00 a.m., to give oral testimony in the above entitled
and numbered cause, and there to remain in attendance until discharged. Failure to appear
as herein directed shall subject you to penalty as prescribed by law.

WITNESS MY SIGNATURE and seal of office, this the 15th day of
July, 2002.



[Signature]
Clerk of Court

ISSUED AT THE REQUEST OF:

(SEAL)

LISA M. ROSS, ESQ.
MSB# 9755
P.O. BOX 11264
JACKSON, MS 39283-1264
(601) 981-7900 TELEPHONE
(601) 981-7917 FACSIMILE

000044

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing instrument was served upon the attorneys
of record of all parties to the above cause as follows:

Brad Wilkinson, ADA
Jimmy Dixon, ADA
Office of the District Attorney
P.O. Box 121
Canton, MS 39046

SO CERTIFIED, this the 12th day of July, 2002.



LISA M. ROSS

Exhibit *U*

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

COPY

CAUSE NO. 99-0393 and
CAUSE NO. 2002-0229

CHARLES J. RUDD

DEFENDANT

TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE SAMAC S.
RICHARDSON, CIRCUIT COURT JUDGE, ON THE 17TH DAY OF JULY,
2002.

APPEARANCES:

BRADLEY D. WILKINSON, ESQ.
Office of the District Attorney
Post Office Box 121
Canton, Mississippi 39046

(REPRESENTING THE STATE OF MISSISSIPPI)

LISA M. ROSS, ESQ.
Ross Law Firm
760 N. West Street
Jackson, Mississippi 39202

(REPRESENTING THE DEFENDANT)

(JULY 17, 2002)

THE COURT: This is Criminal Cause No. 1999-0393 and 2002-0229, State of Mississippi vs. Charles Rudd.

Is that correct?

THE DEFENDANT: Yes, sir.

MS. ROSS: Excuse me, Judge. I didn't put in the minimum and maximums on that escape charge.

THE COURT: Okay.

MS. ROSS: Let me put that in there.

MR. WILKINSON: Your Honor, before we get started, we had a motion to amend the indictment. There were some typographical errors in it.

THE COURT: Okay.

MR. WILKINSON: It's actually two errors.

THE COURT: What's the motion?

MR. WILKINSON: One, Your Honor, in the indictment it reads, "The personal property was that of Shell Sprint Mart." The proper corporate name of the business that was robbed is Morris Corporation d/b/a Shell Sprint Mart.

THE COURT: Okay. That amendment will be allowed.

MR. WILKINSON: Okay. And the second amendment was "the victim, whose name is Wendy Roundtree," R-o-u-n-d-t-r-e-e. The correct spelling of her last name is R-o-u-n-t-r-e-e.

THE COURT: No d?

MR. WILKINSON: No d.

THE COURT: Is there any objection to that,

1 offered by the State of Mississippi? Is that why you're
2 pleading guilty to the armed robbery?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Well, now, on the escape,
5 are you pleading guilty to the escape because you are
6 guilty of that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is your plea of guilty freely
9 and voluntarily made and entered?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Who made the decision to enter
12 the pleas of guilty today?

13 THE DEFENDANT: Me.

14 THE COURT: All right. Now, Mr. Rudd, in
15 order for the State of Mississippi to be entitled to a
16 verdict of guilty, they would have to prove the following
17 elements in the armed robbery case: That this crime was
18 committed in Madison County, Mississippi on or about
19 September 9, 1999, that you did willfully, unlawfully,
20 knowingly and feloniously take from the presence of Wendy
21 Rountree money, or U. S. currency or coin, being the
22 personal property of--what's the name of that corporation?

23 MR. WILKINSON: Morris Corporation, d/b/a
24 Shell Sprint Mart.

25 THE COURT: All right. --against her will,
26 by putting--

27 MR. WILKINSON: Your Honor, that's already
28 been amended.

29 THE COURT: Okay. --by putting the said

1 you understand the difference?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Do you wish to waive
4 presentment of this matter to the grand jury and proceed?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Now, do you understand
7 that once you enter your plea of guilty in each of these
8 cases and it has been accepted by the Court that you
9 cannot withdraw your plea of guilty nor can you appeal
10 your plea of guilty? Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, you can appeal your
13 sentence that's imposed, but you can't appeal the plea
14 itself. Do you understand the nature of the charges to
15 which you're pleading guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In reviewing your Petition to
18 Plead Guilty, I see that it consists of some eight pages,
19 and there's a signature on each page that reads Charles
20 Rudd. Are those in fact your signatures?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you read your Petition to
23 Plead Guilty?

24 THE DEFENDANT: It was read to me.

25 THE COURT: Okay. You didn't read it
26 yourself?

27 THE DEFENDANT: No, sir.

28 THE COURT: Did you go over the Petition to
29 Plead Guilty with your attorney and did your attorney read

1 the petition to you?

2 THE DEFENDANT: She read it to me.

3 THE COURT: Do you have any questions about
4 anything in the petition?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you understand everything
7 that's contained in your Petition to Plead Guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is every statement or
10 representation made by you in each paragraph of your
11 Petition to Plead Guilty true and correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You've been represented in this
14 matter by an attorney whose name is Lisa Ross. Are you
15 satisfied with the services, advice, counsel and
16 assistance of your attorney?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any complaints you'd
19 like to make about your attorney at this time?

20 THE DEFENDANT: No, sir.

21 THE COURT: When you enter your plea of
22 guilty, Mr. Rudd, it is necessary that you must waive or
23 give up certain very valuable constitutional rights that
24 are guaranteed and afforded you under the federal and
25 state constitutions. Those constitutional rights are set
26 out and stated in very specific detail in paragraph 5 of
27 your Petition to Plead Guilty. Do you understand your
28 constitutional rights as they're specifically set out and
29 stated in paragraph 5 of your Petition to Plead Guilty?

1 accept that recommendation? I can sentence you to
2 anything up to life in the armed robbery and I can
3 sentence you to five years maximum in the escape charge,
4 and that is the recommendation, is the maximum in the
5 escape charge. Do you understand that?

6 THE DEFENDANT: I wondered why that the
7 maximum for escape was five years and that was what I was
8 accepting.

9 THE COURT: Well, that's the maximum
10 sentence, and that's what they've offered. The concession
11 that they've given you is that they're offering you 20
12 with 10 suspended, 10 to serve on the armed robbery.

13 THE DEFENDANT: I was aware of that one.

14 THE COURT: Okay. But it's not as much as
15 you could get. You could get about twice that. Do you
16 understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: But what my question to you is,
19 did you understand that that's just a recommendation of
20 the State and I don't have to accept it? I could give you
21 the maximum sentence, which would be, I don't know what,
22 without looking at the life expectancy tables, but you're
23 23 now?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Between 40 and 45 years on the
26 armed robbery is what I could give you, plus five on the
27 escape. Do you understand that?

28 THE DEFENDANT: Yes, sir.

29 THE COURT: All right. How do you plead to

1 THE DEFENDANT: No, sir.

2 THE COURT: Okay. Has anybody promised you
3 anything to get you to plead guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you think anybody's put any
6 undue influence or pressure on you to plead guilty?

7 THE DEFENDANT: No, sir.

8 THE COURT: Okay. Now, here's the next
9 question. Are you pleading guilty, Mr. Rudd, because you
10 are guilty?

11 THE DEFENDANT: No, sir.

12 THE COURT: Well, why are you pleading
13 guilty if you didn't commit this crime?

14 THE DEFENDANT: Because I don't really
15 remember what happened because at that point in my life I
16 used to, you know, do drugs and stuff, and it was a lot of
17 times where I would wake up and not have no recollection
18 of the day before. I'm not using it as a means of
19 justifying what took place because I feel that there is no
20 justification for holding someone at gunpoint; however, I
21 can't take the chance of, you know, going and losing my
22 life over a mistake.

23 THE COURT: All right. So would it be a
24 fair statement or question to ask you this way? Are you
25 pleading guilty because that you believe that based upon
26 the evidence that the State would present at your trial
27 that your chance or possibility or probability of
28 conviction is more likely or greater than acquittal and
29 you wish to take advantage of the plea bargain offer

1 THE COURT: I'm sorry?

2 MR. WILKINSON: Both of them have a
3 recommendation.

4 THE COURT: Oh, okay. I misunderstood
5 earlier, then.

6 MS. ROSS: That's right.

7 THE COURT: All right. What is the
8 recommendation of the State?

9 MR. WILKINSON: Your Honor, prior to making
10 a recommendation, we would like to ask Mr. Rudd some
11 questions.

12 THE COURT: Okay.

13 MR. WILKINSON: Mr. Rudd, the night that you
14 robbed the Shell Station in Madison, who was with you?

15 THE DEFENDANT: I don't recall.

16 MR. WILKINSON: You don't remember who was
17 with you that night?

18 THE DEFENDANT: I don't remember that night
19 period.

20 MR. WILKINSON: Your Honor, we withdraw the
21 recommendation. It was our understanding that the
22 defendant knew the two individuals that were with him and
23 he was willing to divulge their names.

24 THE DEFENDANT: I told them I was willing to
25 watch the tape and see do I recognize the person upon
26 there, but I didn't say I remembered who was there because
27 I really don't even recall that night.

28 THE COURT: I'm going to have to let the
29 jury go to lunch and come back. Looks like this one is

1 going to go into tomorrow by the time we get a jury
2 picked. Do you want a few minutes to talk with him?

3 MS. ROSS: Yes, sir, Your Honor.

4 (BRIEF RECESS)

5 THE COURT: All right. I think where we
6 were in the plea is that Mr. Wilkinson was asking
7 questions, and the last question I heard was, Who was with
8 you during the armed robbery? Can you answer that
9 question now, Mr. Rudd?

10 THE DEFENDANT: At this point, Your Honor,
11 I would like to get a new lawyer.

12 THE COURT: No, sir. That's not going to
13 happen. You're going to trial or you're going to enter a
14 plea of guilty today, and it does not matter to me which
15 one you do, but you're going to do one of the two, and you
16 can go with a lawyer or without a lawyer.

17 THE DEFENDANT: I feel I'm being improperly
18 represented.

19 THE COURT: Why?

20 THE DEFENDANT: Because she's not working in
21 my best interest.

22 THE COURT: Well, I'm not discharging her
23 from representing you. You're not going to jerk this
24 Court around, Mr. Rudd.

25 THE DEFENDANT: I'm not working to jerk the
26 Court around, Your Honor.

27 THE COURT: Yes, sir.

28 THE DEFENDANT: Y'all are trying to make me
29 know something which I don't know, and I--

1 THE COURT: No, sir. Nobody's trying to
2 make you do anything. Now, if you know who was with you,
3 you know. If you don't, you don't. Now, if you don't
4 know, they're withdrawing the offer. If they withdraw the
5 offer, here's your options: You can plead open or you can
6 go to trial. That's your decision. Now, which one are
7 you going to do?

8 THE DEFENDANT: I want to file for a new
9 court date.

10 THE COURT: No, I will not grant a
11 continuance.

12 THE DEFENDANT: I'm trying to find out the
13 people who committed the crime so that I can answer the
14 question, and at this point I don't know, so, therefore,
15 I'm trying to find another outcome in order so I can
16 figure out who it was. At this point I just don't know
17 who it was.

18 THE COURT: You're going to plead guilty or
19 go to trial. That's what I want to know.

20 THE DEFENDANT: Go to trial.

21 THE COURT: Okay. Here's your plea
22 petition.

23 (RECESS)

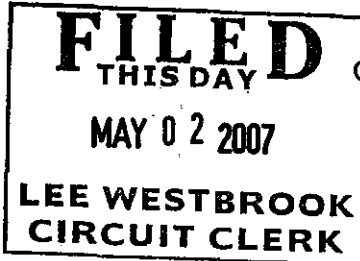
24 THE COURT: Okay. Now, are we going to try
25 the question again?

26 MR. WILKINSON: Back on the record. Mr.
27 Rudd, do you remember who was with you that night?

28 THE DEFENDANT: I think that was Ced.

29 MR. WILKINSON: Ced?

1 IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI
2 STATE OF MISSISSIPPI
3 VERSUS



CAUSE NO: 1999-0393

2002-0229

5 CHARLES RUDD

7 SENTENCING HEARING

8 BEFORE THE HONORABLE SAMAC RICHARDSON, CIRCUIT JUDGE,
9 IN THE MADISON COUNTY COURTHOUSE, CANTON, MISSISSIPPI,
10 ON OCTOBER 17, 2003.

12 —
13 APPEARANCES:

RANDY HARRIS, ESQUIRE
Assistant District Attorney
Post Office Box 121
Canton, Mississippi 39046

18 REPRESENTING THE STATE

21 WESLEY EVANS, ESQUIRE
Attorney at Law
Post Office Box 528
Canton, Mississippi 39046

26 REPRESENTING THE DEFENDANT

28 COPY

THE COURT: Cause numbers 1999-0393 and 2002-0229, State versus Charles Rudd on a charge of armed robbery and escape. This matter is before the Court today on sentencing.

Okay. Do you have anything you want to say prior to imposition of sentence, Mr. Rudd?

MR. RUDD: Yes. I will -- I would like to say I -- I admit to being wrong for what I've done that day. And I -- I'm just asking for the mercy of the Court to forgive me for the wrong that I have committed, and impose a lighter -- a lighter sentence on me.

MR. EVANS: Your Honor, I'd just like to clarify for the record, I was not the attorney at trial. It's my understanding that, on the morning of trial, Mr. Rudd pled and there was a recommendation.

I've reviewed the court file and looked at the plea petition, and it appears that he agreed to the recommendation. And I confirm the recommendation with the Judge and prosecutor.

THE COURT: Mr. Harris, do you have anything?

MR. HARRIS: No, sir.

THE COURT: Anyone else in the courtroom?

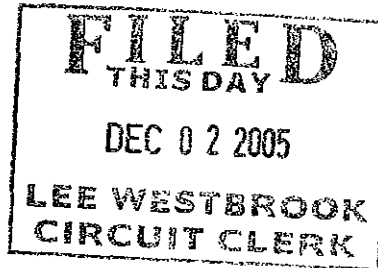
(NO RESPONSE)

THE COURT: All right. Mr. Rudd, if I remember correctly, you appeared before the Court on the morning of your trial, and you were offered an opportunity to enter a plea of guilty the day before your trial. You, for some reason, refused to do that. And a plea bargain offer was made. It was subsequently withdrawn because you didn't want to plead guilty the day before the trial.

Exhibit W

Charles Rudd #L7678
Unit 32-A Building
Parchman, MS 38738

November 15, 2005



Ms. Lee Westbrook, Clerk
Circuit Court
P.O. Drawer 1626
Canton, MS 39046

RE: Resubmitting of Habeas Corpus Petition

Attn. Clerk:

On or about October 2, 2004, I, Petitioner Charles Rudd L7678, acting Pro Se, submitted a Petition (via your office) for Writ of Habeas Corpus to be filed with the Court.

On or about January 3, 2005, I submitted a letter (via your office) to request information on the status of my petition.

To date, I have received no correspondence regarding said petition or letter from the Court or opposing counsel.

At this time I am requesting that this resubmitted Petition be upheld and the first petition be dismissed due to later found error on the prima facie of the prior petition.

Enclosed, please find a filing with the Court, one original and three copies of the following: Resubmitted Petition for Writ of Habeas Corpus, Memorandum Brief in Support of Writ of Habeas Corpus, Motion for Appointment of Counsel, Brief in Support of Appointment of Counsel, and Affidavit of Poverty.

Once the Petition has been filed please return the copy of each of the above pleadings marked "Petitioner's File Copy."

Thank you in advance for your time and assistance in this matter.

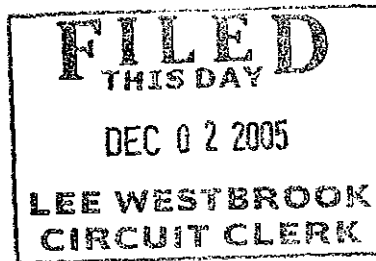
Respectfully Submitted,



Charles Rudd #L7678
Unit 32-A Building
Parchman, MS 38738

IN THE CIRCUIT COURT OF MADISON COUNTY

Ms. Lee Westbrook, Circuit Clerk
Madison County Circuit Court
P.O. Drawer 1626
Canton, MS 39046



PETITION FOR WRIT OF HABEAS CORPUS

CHARLES RUDD #L7678
UNIT 32-A BLDG.
PARCHMAN, MS 38738

IN THE CIRCUIT COURT OF MADISON COUNTY

CHARLES RUDD #L7678

vs.

CASE NO: 99-0393 & 2002-0229

STATE OF MISSISSIPPI

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Pro Se, Charles Rudd, pursuant to 28 U.S.C. §2254, seeks a Writ of Habeas Corpus and state:

1) Petitioner is presently in the custody of the Mississippi Department of Corrections and is confined at the State Penitentiary of Parchman, Mississippi (M.S.P.).

2) Petitioner is presently unconstitutionally detained and imprisoned at Mississippi State Penitentiary by Donald Canaba, Superintendent, by virtue of a judgment and sentence of 30 years pronounced by the Honorable Judge Richardson, Circuit Court Judge of Madison County, Canton, Mississippi, on October 17, 2003, for the conviction by guilty plea of Armed Robbery, IN CAUSE NO.: 99-0393 AND ESCAPE IN CAUSE NO.: 2002-0229.

3) Petitioner is imprisoned pursuant to an illegal and void sentence because his guilty plea was constitutionally defective for the following reasons:

GROUND ONE: Involuntary Guilty Plea

a) The trial court committed reversible error when it decided not to carry out the plea bargain agreement reached between the prosecutor and defense counsel, when the petitioner was told that he would received "only" a maximum of 10 years on the exception of the plea.

b) The guilty plea was unlawfully induced and a result of ignorance of the petitioner, who did not fully understand the effects and elements of the charge and plea, yet was coerced by counsel to accept a plea of guilty.

c) The trial court committed reversible error when it failed to take the petitioner before the court to accept the guilty plea.

d) The trial court committed reversible error when it admitted a plea of guilty that was fraudulently obtained, when the signature for the petitioner was not signed by the petitioner.

GROUND TWO: Ineffective Assistance of Counsel

a) Counsel for the petitioner failed to file a Motion of Demur to challenge the improper indictment, after it was brought to the attention of the counsel.

b) Counsel for the petitioner refused to take the petitioner to trial because of fear of losing, denied the petitioner his right to trial.

c) Counsel's failure to have a compulsory process for obtaining witnesses in favor of petitioner and failure to subpoena the witnesses after a request was made weeks in advance is reversible error.

d) Counsel for petitioner submitted a plea agreement to the court that was not signed by the petitioner.

e) Counsel performance was deficient causing reversible error when the petitioner was misled, confused, coerced, and forced to accept a plea of guilty.

GROUND THREE: Abuse of Discretion and Error by Trial Court

- a) The trial court abused his power of discretion by refusing to grant a continuance so that the petitioner could get properly prepared for trial.
- b) The trial court abused his power of discretion when he denied the petitioner his right to have a newly appointed attorney after being advised of the conflict of interest he, the petitioner, was having with counsel, which violated the petitioner's Fourteenth Amendment of the U.S. Constitution under Due Process.
- c) The petitioner was not taken before the court for the exception of his plea of guilty.

GROUND FOUR: Improper Indictment

- a) On the Prima Facie of indictment in which the conviction made, errored when named petitioner as a victim of the crime in question.
- 4) Petitioner argues his innocence for the crime for which he was charged, and to which he pled guilty.
- 5) Petitioner is imprisoned pursuant to a sentence that is illegal and void for the reasons presented above.

WHEREFORE, Petitioner respectfully requests:

- A) The Respondent(s) be required to appear and answer the allegations of this petition.
- B) That after full consideration this Court relieve Petitioner of the unconstitutional restraint on his liberty by issuing a Writ of Habeas Corpus.
- C) That this Court declare Petitioner's guilty plea and conviction void.

D) That this Court vacate, set aside, or expunge the plea and conviction with prejudice.

E) Or that this court re-enter a sentence of "time served" ordering the Petitioner release forthwith.

F) That this Court, if necessary, grant an evidentiary hearing.

G) That the Court, if necessary, grant reasonable bond so that Petitioner does not have to remain confined under illegal sentence.

H) That this Court grant such other, further and different relief as it may deem just and proper.

Signed this 29th day of November, 2005.

Respectfully Submitted,

Charles Rudd
Charles Rudd L7678

**IN THE CIRCUIT COURT OF MADISON COUNTY
FOR THE STATE OF MISSISSIPPI**

CHARLES RUDD

PETITIONER

vs.

CASE NO: 99-0393 & 2002-0229

STATE OF MISSISSIPPI

RESPONDENT

MEMORANDUM BRIEF IN SUPPORT OF WRIT OF HABEAS CORPUS

PETITIONER IN PRO SE:

**CHARLES RUDD #L7678
Unit 32-A Building
Parchman, MS 38738**

CERTIFICATE OF INTERESTED PARTIES

The undersigned Petitioner certifies the following listed persons have an interest in the outcome of the case. This is made in order that the Judge of this Honorable Court may evaluate possible disqualifications or recusals:

Walter Kelly
Superintendent
P.O. Box 36
Parchman, MS 38738

Honorable Judge Richardson
Madison County Circuit Court
146 West Center Street
Canton, MS 39046

District Attorney for Madison County
P.O. Box 121
Canton, MS 39046

Mr. Charles Rudd L7678
Petitioner Pro Se
Unit 32-A Building
Parchman, MS 38738

Mr. Jim Hood
Attorney General
P.O. Box 220
Jackson, MS 39205

Charlotte Rudd
Petitioner's Sister
2207 Colony Park Drive
Pearl, MS 39208

Ms. Lee Westbrook
Madison County Circuit Court Clerk
P.O. Drawer Street
Canton, MS 39046

Ruth Rudd
Petitioner's Mother
6222 Broad Oak
Jackson, MS 39211

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ISSUES PRESENTED

In the face of this court's controlling opinion in *Boria v. Keane*, 99 F.3d 492 (2d Cir. 1996):

I. Does a defendant enter an involuntary guilty plea, when plea bargain agreement reached between the prosecutor and defense counsel was unlawfully induced, coerced, and a result of ignorance, when defense counsel coerced to the acceptance of the plea, when signature on the plea was not that of the Petitioner or when the trial court decided not to carry out the plea bargain as explained by defense counsel; and

II. Is a defendant denied effective assistance of counsel when trial counsel failed to file a Motion of Demur to challenge the improper indictment or move for Motion to Dismiss after it was brought to counsel's attention; when refusing to take a defendant to trial because of counsel's fear of losing; when counsel failed to have a compulsory process for obtaining witnesses in favor of the defendant, and failed to subpoena witnesses after it it was requested weeks in advance; further deficientness took place when counsel submitted a plea agreement that was not signed by the defendant; and when defendant was misled, confused, coerced, and overall forced to accept a plea of guilty; and

III. Whether the trial court abused its power of discretion in errored by refusing the defendant a continuance so that the defendant could get properly prepared for trial; when court denied the defendant the right to have a newly appointed counsel even after being advised of their conflicting interest; and errored when defendant was not allowed to accept his plea of guilty before an open court; and

IV. Is a defendant denied fundamental fairness and due process of law and notice of charges when indictment failed to include an essential element when it named the defendant as the victim of the crime?

IN THE CIRCUIT COURT OF THE STATE OF MISSISSIPPI

CHARLES RUDD

PETITIONER

vs.

CASE NO: 99-0393 & 2002-0229

STATE OF MISSISSIPPI

RESPONDENT

MEMORANDUM BRIEF IN SUPPORT
OF WRIT OF HABEAS CORPUS

Comes Now, Charles Rudd, Petitioner, Pro-Se, and files this, his Memorandum Brief in Support of Writ of Habeas Corpus pursuant to Mississippi Code Annotated Section 99-39-1 et. seq., and in support thereof would show unto this Honorable Court the following, to-wit:

SUMMARY OF CASE

Petitioner was indicted by the Grand Jury of Madison County on or about the 17th day of November, 1999, on the charge of Armed Robbery, Miss. Code Ann. §97-3-79. Thereafter, Petitioner was convicted by a plea of guilty on the said charge of Armed Robbery and the charge of Attempted Escape, and sentenced by the Honorable Judge Richardson, to a total of 30 years, 20 and 5 years for the charge of Armed Robbery, and 5 years for the Attempted Escape. Judgment was entered in conviction and sentencing was imposed on the 17th day of October, 2003, for (1) **TWENTY (20)** years to be served in the custody of the Mississippi Department of Corrections. **PROVIDED, HOWEVER**, that the last **TEN (10)** years be suspended and released a for a term of **FIVE (5)** years on **SUPERVISED PROBATION**, and (2), **FIVE (5)** years to be served consecutively with the imposed **TWENTY (20)** years in the custody of the Mississippi Department of Corrections.

STATEMENT OF CASE

On or about the 17th day of November, 1999, Charles Rudd, the Petitioner, Pro Se, was indicted by the Grand Jury of Madison County, Mississippi, on the charge of Armed Robbery under Section 97-3-79 of Mississippi Code Annotated (MCA).

Public Defender, Ms. Lisa Ross, of Madison County, was appointed to represent Petitioner at trial. Trial was set for on or about May 22, 2000.

On May 30, 2000, a bench warrant was issued for the Petitioner for failure to appear or contact the Court after being released on a \$50,000 bond from Madison County Jail, which Petitioner argues that he was not advised about the day of his trial, or his counsel.

On or about the 5th day of February, 2002 the Petitioner was detained by the Sheriff Department of Madison County and placed in the Madison County Jail with no bond, to await trial.

On or about April 10, 2002, Petitioner Charles Rudd contacted the Mississippi Bar in writing, requesting to hear from his attorney because it had been over 30 days prior to the day he was detained, and he had not yet heard from his counsel.

On or about April 15, 2002, Mr. Robert Glen Waddle, Director Consumer Assistance Program, responded inquiring the name, address, and/or phone number of Petitioner's counsel. However, the Petitioner was unaware of either.

On or about April 22, 2002, Petitioner Charles Rudd again contacted Mr. Waddle in writing to inform him, he, Charles Rudd, did not have the information he, Mr. Waddle, had requested.

On or about April 25, 2002, Mr. Waddle, informed Petitioner to contact Mr. Ben Conner, who is the attorney that assists in assignments of court appointed attorneys and Madison County.

On or about May 6, 2002, Petitioner contacted Mr. Conner, in a writing requesting representation, yet Mr. Conner did not respond.

On or about May 20, 2002, Charles Rudd, the Petitioner submitted another letter to Mr. Ben Conner, and again, Petitioner got no response.

On or about the same day of May 20, 2002, Petitioner submitted a follow-up letter to Mr. Waddle, to inform the Mississippi Bar that he, the Petitioner, had not yet received a response from Mr. Ben Conner concerning his, the Petitioner's request for counsel.

On or about May 24, 2002, Mr. Waddle informed the Petitioner that he, Mr. Waddle, had requested that the Petitioner's counsel contact him immediately.

After still not receiving a response from counsel, Petitioner contacted the Circuit Court Clerk, Ms. Lee Westbrook, of Madison County, in writing, on or about June 19, 2002, informing her of the growing concern that he was having not being able to obtain an appointed counsel.

Shortly thereafter, Petitioner was called to court, on or about June 28, 2002, to meet with his counsel. Ms. Lisa Ross, and on speaking with her, he was informed that she had failed to locate his file, and that she would be by the jail later to review his case with him.

On or about June 30, 2002, counsel appeared at the jail and she said, but not to review the Petitioner's case, but to offer a guilty plea. Upon refusal, counsel then inquired as to what the Petitioner had previously been charged with and then departed.

On or about July 2, 2002, the Petitioner, was called back to court to be offered another plea agreement, which the Petitioner again declined.

On or about July 3, 2002, the Petitioner allegedly attempted to escape from Madison County Jail, by scaling the wall onto the roof of the said Madison County Jail, and jumping off onto the outside yard where he was caught and brought upon the charge of Attempted Escape of a

Prisoner under Section 97-9-29 of MS Code Annotated, in the presence of The Honorable Judge, Tommy Faulkner.

Petitioner was set to have trial on the 19th of July on the charge of Armed Robbery, but counsel informed him that she had it reset for the 17th of July, which at that point Petitioner argues that counsel still had not reviewed his case with him. At that time Petitioner requested a copy of his Discovery so he could assist in his defense, which the Petitioner argues the counsel denied by stating she did not get paid to run off copies.

On or about July 8, 2002, counsel finally reviewed the case with the Petitioner, yet still failed to furnish him a copy of his Motion of Discovery, nor did counsel give him an ample amount of time to read the one she had.

Petitioner also contest, that on the same day, which was on or about July 8, he presented counsel with a list of witnesses and addresses he wanted to have subpoenaed on his behalf.

Petitioner further argues that on or about July 12, 2002, counsel for the Petitioner, made it very clear that she believed him to be a participant in the alleged crime, regardless that there was no evidence in support of accusation, when counsel allegedly stated "I would have called the police on you a** if I had been the victim." Then went on to state that she refused to take the Petitioner to trial.

On or about July 17, 2002, the day reset for trial, Petitioner was taken to the courthouse, where counsel again worked to coerce him to accept a plea. Petitioner also contends that counsel had failed to subpoenae his witnesses, her reason being that they should want to come on their own. Counsel then stated that she was going to get the Petitioner 10 years total for both charges combined. Counsel also stated that was the best she could do because Armed Robbery carried life, and Attempted Escape carried 10 years. Counsel further argued that Petitioner would only

have to serve 85% of the imposed sentence. Yet after hearing this Petitioner again refused. Counsel then asked if anyone had showed up on the Petitioner's behalf as she left the holding area. On her return, counsel was accompanied by Charlotte Rudd, the Petitioner's sister. The Petitioner was exhilarated at the sight of his sister, but soon thereafter he became discontent and emotionally unstable, which he also worked to convince him to accept a guilty plea.

After being coerced by both, counsel and sister, the Petitioner stated that he would reconsider the plea agreement. On hearing this, counsel asked Petitioner's sister to wait out front while she got the papers in order. Counsel then escorted Petitioner's sister out and returned with a stack of papers which ~~she~~ briefly read to the Petitioner, then she left again and returned with a guard to escort the Petitioner to a room which Petitioner thought of as a conference room.

While in this room, Petitioner advised Honorable Judge Richard, that he no longer wanted Ms. Lisa Ross as his counsel, because she had not represented him to what he felt like were her best abilities nor worked in his best interest. His request was said to be denied unless he could obtain an attorney with an hour for trial that day. This left the Petitioner with two choices: 1) keep Ms. Lisa Ross as his counsel and go to trial, which counsel was unwilling to do, or 2) accept a plea of guilty. Petitioner then moved for a continuance, which was also denied. As a result Petitioner agreed to the plea of guilty

SUMMARY OF ARGUMENTS

Petitioner, Mr. Rudd, argues that he was denied a fair pretrial process and due process from the very beginning, when the indictment was returned but without the essential element, when it named the Petitioner as a victim of the crime, then during pretrial proceedings his appointed defense counsel failed to file paper motions to the such after it was brought to the

attention of counsel. Mr. Rudd's attorney failed to have a compulsory process and subpoena his witnesses after a request was made by Mr. *Rudd*. Also, counsel was deficient when she refused to take the Petitioner to trial, ~~he~~ misled and coerced him to accept a plea of guilty. Further arguments by the Petitioner came when trial court refused to allow him a newly appointed counsel after being advised of their conflict of interest. Petitioner also argues that trial court erred by not allowing him, Mr. Rudd, a continuance so that he could obtain a new defense attorney, and properly prepare for trial. He argues that he was not taken before the court to accept his plea of guilt and that he did not sign, nor did he fully understand his plea agreement.

ARGUMENT AND BRIEF

Issue One

Where a defendant entered an involuntary guilty plea, when plea bargain agreement reached between the prosecutor and defense counsel was unlawfully induced, coerced, and a result of ignorance, when defense counsel coerced the acceptance of the plea, when signature on the plea was not that of the Petitioner, or when the trial court decided not to carry out the plea bargain as explained by defense counsel.

Petitioner contends that the prosecutor and defense counsel unlawfully induced, coerced his plea of guilty and the result was an involuntary guilty plea on the behalf of the Petitioner, due to ignorance, when the Petitioner did not fully understand the effects and elements of the charge and plea. **Rule 8.04 (A)(3) Entry of Guilty Pleas** states: voluntariness. Before the trial court may accept a plea of guilty, the court must determine that the plea is voluntarily and intelligently made and that there is factual basis for the plea. A plea of guilty is not voluntarily if induced by fear, violence, deception, or improper inducements. A showing that the plea of guilt was

voluntary and intelligently made must appear in the record...In stating this, the Petitioner wants to point out that his counsel deceived him by stating that he would not receive more than 10 years, and that he could get paroled after serving 85 percent of his sentence. The same was said to be true in *Myers v. State*, (Miss. 1991) 583 So. 2d 174, when the defendant alleged that his attorney told him that he would receive a sentence of less than 12 years if he entered a guilty plea, and defendant entered a plea of guilty whereupon he was sentenced to 16 years imprisonment...The same was done to the Petitioner, when he was informed, by counsel, that he would receive a total of 10 years, yet he received a total of 30 years...Also, the Petitioner argues that his counsel informed him that if he were to enter trial he would receive a life sentence, but on the entry of guilty he would receive parole after serving 85 percent of his time, initially misinforming the Petitioner about eligibility for parole and misrepresenting, by failure to inform him of the minimum sentence, when he was not informed that the first 10 years of an Armed Robbery charge is mandatory, and by not informing him that he could have received a minimum of 3 years if found guilty at trial. Had it not been for this the Petitioner would not have accepted the plea of guilty. See: *Strickland v. Washington*, 466 US 668, 104 S.Ct. 2052; *Walker v. State*, 703 So. 3d 266, 268, (Miss. 1992).

Petitioner argues that his plea of guilty was involuntary when he failed to sign the plea agreement... In **Rule 4.0 of the Criminal Rules** states: The prosecuting attorney is encouraged to discuss and agree on pleas which may be entered by the defendant. Such agreement and discussion must be conducted with defendants counsel, or if unrepresented, it may be conducted with the defendant...Defense counsel shall not conclude any plea bargaining on behalf of his/her client without his/her clients "full and complete" consent,...Defense Council shall advise defendant of "all" pertinent matters bearing on the choice of plea to enter and likely results or

alternatives. [Emphasis added]. The same as said in **Rule 8.04(B)(3) Plea Bargaining** which states: Defense attorneys shall not conclude any plea bargaining on behalf of the defendant without the defendant's "full" and "complete" consent, being that the decision to plead is made by defendant. Defense attorneys must advise defendant of "all" pertinent matters bearing on the choice of plea, including likely results or alternatives.

Petitioner further argues that plea bargain was not carried out as explained by defense counsel, in quoting *U.S. v. Maddox*, 48 F.3d 555 (D.C. Cir. 1995).

- 1) Fact that it is left to district court's discretion whether to accept or reject a guilty plea does not allow court to reject plea on arbitrary basis.
- 2) District court's exercise of discretion in deciding whether to accept or reject guilty plea is not unfettered.
- 3) Trial judge must provide reasoned exercise of discretion in order to justify rejecting guilty plea which has been agreed to by prosecution and defense, *Dickerson v. U.S.*, 530 U.S. 428, 147 L.Ed 2d 405, 120 S.Ct. 2326 (2000). Due process test for evaluating voluntariness of defendant's confession requires inquiry into whether defendant's will was overborne by the circumstances surrounding the giving of confession...Petitioner contends that he agreed to the plea, due to unjust circumstances surrounding his confession.

Issue Two

Whether a defendant is denied effective assistance of counsel, when trial counsel failed to file Motion of Demur to challenge the improper indictment or move for motion to dismiss after it was brought to counsel's attention; when refusing to take the defendant to trial because of counsel's fear of losing; when counsel failed to have a compulsory process

for obtaining witnesses in favor of the defendant, and failed to subpoena his witnesses after it was requested weeks in advance; if further deficientness took place when counsel submitted a plea agreement that was not signed by the defendant; and whether defendant was misled, confused, coerced, and overall forced to accept a plea of guilty.

Petitioner contends that defense counsel erred when she failed to file a Motion of Demur to challenge the improper indictment, even after it was brought to her attention, which charged the Petitioner as a victim of the crime. The same is true in *Anselom v. State*, 312 So. 3d 712 (Miss. 1975). In another case of ineffective assistance of counsel, which was based on allegations that the defendants counsel failed to object to allegedly defective indictment and erroneously advising the defendant to plead guilty is seen in *Brooks v. State*, (1990, Miss) 573 So.2d 1350. Petitioner contends that his defense counsel stated the defect in his indictment did not matter. In *Mason v. Hanks*, 97 F.3d 887 (7th Cir. 1996), counsel's failure to make objections in light of the essential elements render counsel's ability to defend Petitioner effective, thus causing defendant hindrance in having a fair and impartial trial. Counsel's performance in this issue was deficient in prejudicial to Petitioner.

Also, Petitioner argues that counsel erred when failed to advise him of all conditions of waving his indictment for escape when it was not accepted in open court like stated in **Federal Rule 7(a) of Criminal Procedure. Indictment and the Information** states: Waiver of indictment, an offense which may be punished by imprisonment for a term exceeding one year or at hard labor may be prosecuted by information if the defendant, after having been advised of the nature of the charge and of the right of the defendant waive in open court prosecution by indictment.

The Petitioner contends that counsel's refusal to proceed in trial process because of fear of losing, denied the Petitioner the right to trial, which is a violation of his **Sixth Constitutional Right**, which states: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime(s) shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. See: *Edwards v. State*, 2001, 796 So.3d 1040....The court in *Payton v. State*, 708 So.2d 559, at 561 (Miss. 1998) said "Some Sixth Amendment violations, however, are so flagrant that no punctilious calibration of prejudice is necessary...Even an obviously guilty defendant is entitled to a fair trial." (citing *Ferguson v. State*, 507 So.2d 94, at 97 (Miss. 1987).) It was said in *Quintero v. Bell*, 256 F.3d 409 (6th Cir. 2001), *Shewfelt v. Alaska*, 228 F.3d 1088 (9th Cir. 2000).

1) "Structural errors" call into question the very accuracy and reliability of the trial process and thus are not amendable to harmless error analysis, but require automatic reversal.

2) Denial of jury trial is a structural error subject to automatic reversal. *Brown v. Artuz*, 283 F.3d 492 (2nd Cir. 2002) states: The right of public trial is of such importance that any error affecting it is deemed "structural," making the denial of the right one of the "limited class of cases" where reversal is automatic.

Petitioner argues that counsel's failure to have a compulsory process for obtaining witnesses in favor of the Petitioner and failure to subpoena his witnesses after a request was made weeks in advance, resulting in a deficient performance by counsel, and but for the deficiency the result of the proceedings would have been different. See: *Taylor v. Illinois*, U.S.

Ill 1998, 108 S.Ct. 646, 484 U.S. 400, 98 L.Ed. 2d 798, also see *Edwards v. State*, 2001, 797 So.3d 1049; *McCuisten v. State*, 2001, 791 So.2d 315; and *Cole v. State* (Miss. 1995) 666 So.2d 767, **Criminal Law 641.13(1)**. The Constitution guarantees a fair trial through *685 the **Due Process Clause**, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the Counsel Clause:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses in his favor, and to have the assistance of counsel for his defense.”

See *Argersinger v. Hamlin*, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed. 2d 530 (1972); *Gideon v. Wainwright*, *supra*; *Johnson v. Zerbst*, *supra*. In these cases it is said that a person who happens to be a lawyer is present alongside the accused is not enough to satisfy the constitutional command. The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel’s playing a role that is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair. In *Cuyler v. Sullivan*, 466 U.S. at 344, 100 S. Ct., at 1716, *Id.*, at 345-350, 100 S.Ct. at 1716-1719 (actual conflict of interest adversely affecting lawyer’s performance renders assistance ineffective.) It was later said in *Cuyler v. Sullivan*, *supra*, 446 U.S., at 346, 90 S.Ct., at 1717. Representation of a criminal defendant entails certain basic duties. Counsel’s function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. Counsel’s function as assistant to the defendant derive the overarching duty to advocate the defendant cause

and the more particular duties to consult with the defendant informed of important developments in the course of the prosecution. See *Powell v. Alabama*, 287, U.S., at 68-69, 53 S.Ct., at 63-64.

Petitioner argues that counsel's performance was deficient causing reversible error when the Petitioner was misled, confused, coerced, and forced to accept a plea of guilty when counsel told him he would receive no more than 10 years including probation, and that his charges would be ran concurrent on acceptance of the plea of guilty. However, the Petitioner received a total of 30 years including probation, and he was not eligible to serve only 85%, plus his charges are being ran consecutively. See *Alexander v. State*, (Miss. 1992) 605 So.2d 1170. Criminal Law. In which a defendant who was convicted of armed robbery was entitled to an evidentiary hearing pursuant to §§ 99-39-13 through 99-39-23 on the issue of whether he was afforded ineffective counsel during the plea process, where the defendant alleged that his attorney erroneously informed him that if he accepted the prosecution's plea bargain offer of 15 years imprisonment he would be eligible for parole after serving 3 years and 9 months of his sentence and that he would not have accepted the prosecutor's plea bargain offer had he known that he would be ineligible for parole for 10 years pursuant to §47-7-3(1)(d) which provides that a person convicted and sentenced to more than 10 years imprisonment shall be eligible for parole after serving 10 years of sentence...The same is true in the Petitioner's case, and also in *Myers v. State*, (1991, Miss.) 583 So.2d 174, which provided a basis for relief. It was said in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052; *Walker v. State*, 703 So.2d 266, 268, (Miss. 1992), that, failure of counsel to advise Petitioner of the maximum and minimum penalties provided by law rendered counsel's performance deficient.

Petitioner also contends that counsel was further deficient when counsel submitted a plea agreement that was not signed by the Petitioner himself. It was said in *Grabowski v. Jackson*

County Public Defender's Office, 47 F.3d 1386 (5th Cir. 1995) to be valid, guilty plea must be knowingly, intelligently and involuntarily entered; defendant must be shown to understand nature of charge and consequences of plea. **Rule 4.03 of the Criminal Rules** states: The prosecuting attorney is encouraged to discuss and agree on plea which may be entered by the defendant. Such agreements discussion must be conducted with the counsel, or if on represented, it may be conducted with the defendant...Defense counsel shall not conclude any plea bargaining on behalf of his client without his clients "full and complete" consent,...Defense counsel shall advise defendant of "all" pertinent matters bearing on the choice of plea to enter and likely results or alternatives. [Emphasis added].

In *Perry v. State*, 682 So.2d 1027, at 682 So. 1029, (Miss. 1996), the Court outlined the considerations in a claim of effectiveness of counsel as follows: The benchmark for judging any claim of ineffectiveness [of counsel] must do whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Strickland v. State*, 466 U.S. 668, 686, 104 S.Ct. 2052, 206364, 80 L.Ed. 2d 674 (1984). The test is two pronged: The defendant must demonstrate that the counsel's performance was deficient, and that the deficiency prejudiced the defense of the case.

Strickland, 466 U.S. at 687, 104 S.Ct. at 2064; *Washington v. State*, 620 So.2d 966, (Miss. 1993). This requires a showing that the counsel's errors was so serious as to deprive the conviction or death sentence resulted from a breakdown in the adversary process that renders the results unreliable. *Stringer v. State*, 454 So.2d 468, 477 (Miss. 1984), citing *Strickland v. Washington*, 466 U.S. at 687, 104 S.Ct. at 2064. In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was "reasonable

considering all the circumstances." *Stringer* at 477, citing *Strickland*, 466 U.S. at 688, 104 S.Ct. at 2064-65; *State v. Tokman*, 564 So.2d 1339, 1343 (Miss. 1990).

The Court in *Payton v. State*, 708 So.2d 559, at 561 (Miss. 1998), said "Some Sixth Amendment violations, however, are so flagrant that no punctilious calibration of prejudice is necessary...Even an obviously guilty defendant is entitled to a fair trial." (citing *Ferguson v. State*, 507 So.2d 94, at 97 (Miss. 1987).)

Issue Three

Whether the trial court abused its power of discretion and erred by refusing the defendant a continuance so that the defendant could get properly prepared for trial; when court denied the defendant the right to have a newly appointed counsel even after being advised of their conflicting interest; and erred when defendant was not allowed to accept his plea of guilty before an open court.

Petitioner contends that trial court abused its power of discretion and erred by refusing the Petitioner a continuance so that the Petitioner could get properly prepared for trial. It was said that, a State must provide an indigent defendant with the basic tools to present an adequate defense or appeal. *Hawkins v. Mullin*, 291 F.3d 658 (10th Cir. 2002).

Petitioner also contends that the trial court erred when it denied the Petitioner the right to have a newly appointed counsel after being advised of their conflict of interest. When a defendant voices a seemingly substantial complaint about counsel, the court should inquire into the reason for dissatisfaction. *U.S. v. Simeonov*, 252 F.3d 238 (2nd Cir. 2003). In *Lockhart v. Terhune*, 250 F.3d 1223 (9th Cir. 2001). Defendants Sixth Amendment right to counsel includes the right to be represented by an attorney with undivided loyalty. The same is true in

Smith v. State, (Miss. 1995) 666 So.2d 810. **Constitutional Law 268.1(b)**. It is stated in *Universal Acupuncture V. Quadrine and Schwartz*, 370 F.3d 259 (2nd Cir. 2004). Under New York Law, client may discharge his or her a lawyer at any time, with or without cause. **I.d.**, at 1258-1259 (quoting *Rummel v. Estell*, 590 F.2d 103, 104 CA5 1979).) The court observed that only in cases of outright denial of counsel, of affirmative government interference in the representation process, or of inherently prejudicial conflicts of interest had this court said that no special showing of prejudice need be made.

Petitioner argues that trial court erred when it did not accept the Petitioner's plea of guilty before the open court. **Rule 11. Pleas (a)(2)(c)** states: Before accepting a plea of guilty or nole contendere, the court must address the defendant personally "in an open court" and inform the defendant of and determine that the defendant understands...**(b)(d) Ensuring That the Plea Is Voluntary**. The court shall not accept a plea of guilty or nole contendere without first, by addressing the defendant personally "in an open court," determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant willingness to plead guilty or nole conetendere results from prior discussions between the attorney for the government and the defendant or the defendant's attorney. Statutes involving criminal procedure should also be examined. **Miss. Code Ann. §99-19-3 (1972) In *1024 §99-19-3. Convictions Obtained Only by Verdict or Guilty Plea - No Punishment without Legal Conviction** states: A person indicted for a criminal offense shall not be convicted thereof, unless by confession of his guilt "in open court." Now ***1025 Miss. Code Ann. §99-19-3**, provides that a person shall not be convicted for criminal offense for which he has been indicted unless by a confession of his guilt "in open court" or by the verdict of a jury.

The government has a special responsibility to ensure the integrity of the criminal judicial process by living up to the code of professional ethics and fair play at all times. *U.S. v. White*, 222 F.3d (7th Cir. 2000); *U.S. v. Walker*, 234 F.3d 780 (1st Cir. 2000). District courts have an independent duty to ensure fairness of criminal trials. *Haupt v. Dillard*, 17 F.3d 285 (9th Cir. 1994); *Liljerberg v. Health Serv. Corp.*, 486 US 847, 100 L.Ed. 2d 855, 108 S.Ct. 2194 (1988). Right to a fair trial is basic requirement of due process and includes right of unbiased judge. *U.S. v. Fuchs*, 218 F.3d 957 (9th Cir. 2000) states: A trial court commits plain error when (1) there is error, (2) that is plain, and (3) the error affects substantial rights, which the Petitioner has been subject to all three.

Issue Four

Whether a defendant is denied fundamental fairness and due process of law and notice of charges when indictment failed to include an essential element when it named the defendant as the victim of the crime?

Petitioner contends that the prime facie of his indictment for Armed Robbery erred when it named him as the victim of the crime. *Huges v. State*, 207 Miss. 594, 42 So.2d 805 (1949) states, an indictment “must” state name of victim of an offense, and a failure to state or material variance between statement and proof of the name is “fatal.” An example of this is in *Mayes v. State*, 193 So.2d 728 (Miss. 1967), which stated, an indictment for embezzlement that does not set out the name of the owner of the property embezzled is fatally defective, and the defect was not waived by the defendant’s failure to demur. The same was said in *Crosby v. State*, 191 Miss. 172, 2 So.2d 813 (1941), where an allegation as to the ownership of the building said to have been burglarized being an essential element of an indictment of burglary to

contain such allegation was finally defective, and could not be remedied by amendment. It was said in *U.S. v. Loayza*, 107 F.3d 257 (4th Cir. 1997).

1) If indictment does not contain every essential element of offense, it is invalid, and bill of particulars cannot cure the defect.

2) To be legally sufficient, indictment must contain elements of offense charged, fairly informing defendant of charge, and enable defendant to plead double jeopardy as defense and future prosecution of the same offense.

Also in *United States v. Santeramo*, 45 F.3d 622, 624 (2nd Cir. 1995) (pre curiam). The requirement that an indictment is to contain all of the elements of the offense provides a defendant with notice and protection from double jeopardy. See **Const. Amend V** ("nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb"); (**Const. Amend VI** ("the accused shall enjoy the right... to be informed of the nature and cause of the accusation"). An indictment also "limit[s] [the defendant's] jeopardy to offense(s) charged by a group of his fellow citizens acting independently of either prosecuting attorney or judge." *Stirone v. United States*, 361 U.S. 212, 218, 80 S.Ct. 270, 4 L.Ed 2d 252 (1960). Happily, the rule that the indictment, to be sufficient, must contain all the elements of the crime... is still a vital part of our federal criminal jurisprudence." *United States v. Wander*, 601 F.2d 1251, 1259 (3d Cir. 1979) quoting *United States v. Knox Coal Co.*, 347 F.2d 33, 37 (3d Cir. 1965)).

Petitioner also contends that failure of the indictment to be amended by grand jury was in direct violation of statute that states that amendments to indictments as to substance of charge must be made by grand jury. *Hughes v. State*, 665 So.2d 852 (Miss. 1995). The Supreme Court has stated that a defendant has a "substantial right to be tried only on charge(s) presented in an indictment returned by a grand jury. Deprivation of such a basic right is far too serious to be

treated as nothing more than a variance and then dismissed as harmless error." *Stirone v. United States*, 361, U.S. 212, 217, 80 S.Ct. 270, 4 L.Ed. 2d 252 (1960). Indictment may only be amended for matters of form and not of substance, and trial court cannot amend indictment to change charge therein to another crime except by action of grand jury which returned indictment *Shive v. State*, 507 So.2d 898 (Miss. 1987). The same as said in *U.S. v. Ohinsa*, 243 F.3d 635 (2nd Cir. 2001), which states: in indictment may not be amended except by resubmission to the grand jury, unless the charge is merely a matter of form. *U.S. v. Chay*, 309 F.3d 602 (9th Cir. 2002) states, even under plain error review, if constructive amendment to indictment prejudiced defendant, the conviction must be reversed. In *U.S. v. Harris*, 344 F.3d 803 (8th Cir. 2003) *U.S. v. Clemente*, 22 F.3d 783 (8th Cir. 1994), it was said that,

1) The Fifth Amendment requires that defendant be tried only on charge handed down by grand jury and, thus, after indictment has been returned, its charges may not be broadened through amendment except by grand jury.

2) Variance rise to the level of reversible error where evidence presented at trial, together with jury instructions, raises possibility that defendant was convicted of offense other than that charged in indictment. *U.S. v. Cianci*, 378 F.3d 71 (1st Cir. 2004) states: Amending the indictment is considered prejudicial pro se and thus demands reversal.

It was said in *U.S. v. Rosario-Díaz*, 202 F.3d 54 (1st Cir. 2000) that, if a court permits a jury to convict a defendant on evidence of a crime not included in the indictment, the constitutional right to the grand jury is violated. To be sufficient, an indictment must allege each material element of the offense, if it does not, it fails to charge that offense, because an indictment is jurisdictional, a defect in an indictment is not waived by a guilty plea. *U.S. v. Berries-Centone*, 250 F.3d 294 (5th Cir. 2001) (1), (2). It is said that an omission in an

indictment for a felony to the very essence of the offense renders it void and subject to attack at any time notwithstanding this section [code 1942, §2449] *Cook v. State*, 72 Miss. 517, 17 So. 228 (1895), *Taylor v. State*, 74 Miss. 544, 21 So. 124 (1897). Pleading guilty does not waive a defendant rights to indictment by a grand jury U.S.C.A. Const. Amend. 5.

A) The defect in the **Section 924(c)** Counts of the Indictment. [1] The Grand Jury Clause of United States Constitution provides that “[n]o person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.” U.S. Const. Amend. V. We have said that [t]o comport with the Fifth and Sixth Amendments, a criminal indictment must (1) containe all of the elements of the offense so as to fairly inform the defendant of the charge(s) against him and (2) enable the defendant to plead double jeopardy in defense of future prosecutions for the same offense.

CONCLUSION

For all the reasons stated herein, Petitioner Charles Rudd, Pro Se, respectfully requests that this Court to reverse, vacate, set aside, or expunge the plea and conviction with prejudice, impose a sentence of "time served," ordering the Petitioner release forthwith, and/or any other different relief as it may deem just and proper.

This the 29th day of November, 2005.

Respectfully submitted,

Charles Rudd

Charles Rudd #L7678
Unit 32-E Building
Parchman, MS 38738

VERIFICATION

I, Charles Rudd #L7678, hereby declare under penalty of perjury that the facts stated in the foregoing brief are true and correct.

This the 29th day of November, 2005.

By: Charles Rudd
Charles Rudd #L7678

STATE OF MISSISSIPPI

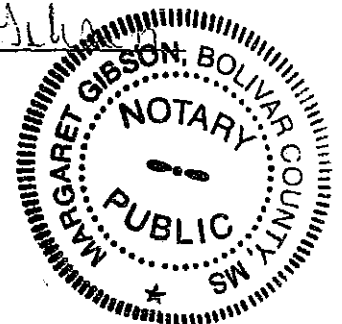
COUNTY OF SUNFLOWER

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said jurisdiction, the within named Petitioner, who after first being by me duly sworn, stated on oath that the statements set forth in the above forgoing are true and correct as therein stated.

SWORN TO AND SUBSCRIBE before me, this the 29 day of November, 2005.

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 31, 2010
BONDED THRU STEGALL NOTARY SERVICE

Margaret Gibson
Notary Public



IN THE CIRCUIT COURT OF MADISON COUNTY

CHARLES RUDD #L7678

vs.

CASE NO: 99-0393 & 2002-0229

STATE OF MISSISSIPPI

MOTION FOR APPOINTMENT OF COUNSEL

Petitioner Charles Rudd, pursuant to 18 U.S.C. §3006A(g), requests this Court to appoint counsel to represent him in this Habeas Petition for the following reasons:

- 1) Petitioner is not able to afford counsel, see the Motion to Proceed in Forma Pauperis and Affidavit in support filed with this Court.
- 2) The issues involved in this case are complete.
- 3) The issues involved in this case will require investigation.
- 4) The prison limits the hours that the petitioner may have access to the law library and the law materials contained there are very limited.
- 5) Petitioner has a very limited knowledge of the law.
- 6) The end of justice would best be served in this case if an attorney was appointed to represent the petitioner.

Signed this 29th day of November, 2005.

Respectfully Submitted,

Charles Rudd

Charles Rudd #L7678
Unit 32-D Building
Parchman, MS 38738

IN THE CIRCUIT COURT OF MADISON COUNTY

CHARLES RUDD #L7678

vs.

CASE NO: 99-0393 & 2002-0229

STATE OF MISSISSIPPI

BRIEF IN SUPPORT OF APPOINTMENT OF COUNSEL

Petitioner has requested this Court to appoint counsel to represent him concerning the attached Petition for Writ of Habeas Corpus. The Court has discretion pursuant to 18 U.S.C. §3006A(g) to appoint counsel concerning matters brought pursuant to 28 U.S.C. §§2241, 2254, 2255. For the reasons stated in petitioner's Motion for Appointment of Counsel and based on the allegations contained in his petition this Court should appoint counsel.

Signed this 29th day of November, 2005.

Respectfully Submitted,

Charles Rudd
Charles Rudd #L7678

STATE OF MISSISSIPPI }
 }
COUNTY OF SUNFLOWER } SS:

AFFIDAVIT OF POVERTY

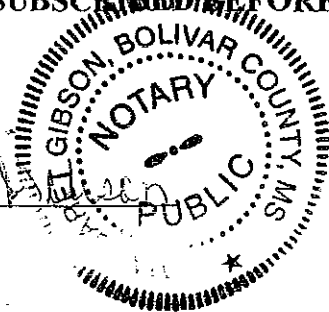
Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, Charles Rudd, M.D.O.L. #L7678, who, being first duly sworn on his oath, does depose and sayeth:

I, Charles Rudd, do solemnly swear that I am a citizen of the State of Mississippi, and because of my poverty I am not able to pay the costs for this Petition for Writ of Habeas Corpus, which I am about to commence, and that, to the best of my belief, I am entitled to the redress which I seek by such sort.

Charles Rudd
Charles Rudd #L7678

SWORN TO AND SUBSCRIBED BEFORE ME, this the 29 day of November, 2005.

Margaret Hansen
Notary Public



My Commission Expires: _____

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 31, 2009
BONDED THROUGH STATE TREASURY

STATE OF MISSISSIPPI

COUNTY OF SUNFLOWER

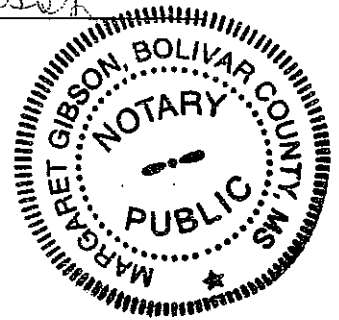
PERSONALLY APPEARED BEFORE ME, the under signed authority in and foresaid jurisdiction, the within named Petitioner, who after first being by me duly sworn, stated on oath that the statements set forth in the above and foregoing are true and correct as therein stated.

SWORN TO AND SUBSCRIBED before me, this the 29 day of November, 2005.

Margaret Gibson
NOTARY PUBLIC

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 31, 2009
BONDED THRU STEGALL NOTARY SERVICE

My Commission Expires: _____



CERTIFICATE OF SERVICE

This is to certify that I, Charles Rudd, M.D.O.C. #L7678, have this day and date mailed,
via United States Mail, postage prepaid, a true and correct copy to the following:

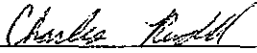
Ms. Lee Westbrook
Madison County Circuit Court Clerk
P.O. Drawer Street
Canton, MS 39046

Madison County, District Attorney
P.O. Box 121
Canton, MS 39046

Mr. Jim Hood
Attorney General
P.O. Box 220
Jackson, MS 39205

Mr. Charles Rudd
Petitioner Pro Se
Unit 32-A Building
Parchman, MS 38738

This the 29th day of November, 2005.



Charles Rudd #L7678
Unit 32-A Building
Parchman, MS 38738

Exhibit X

Charles Ruedel #L7678
Unit 29-J Building
Parchman, MS 38738

January 3, 2006

Ms. Lee Westbrook, Clerk
Circuit Court
P.O. Drawer 1626
Canton, MS 39046

RE: Submitting Of Exhibits In Support Of Habeas Corpus Petition

Attn. Clerk:

Enclosed, please find a filing with the Court, one original and three copies of the following Exhibits: Affidavit In Support of; Letters & Responses.

Once the Exhibits has been filed, please return a copy of each of the above Exhibits for the Petitioner's file, stamped "Filed".

Thank you in advance for your time and assistance in this matter.

Respectfully Submitted,

Charles Ruedel - Pro Se

IN THE CIRCUIT COURT OF MADISON COUNTY
FOR THE STATE OF MISSISSIPPI

CHARLES RUDD
VS.

STATE OF MISSISSIPPI

RESPONDENT

PETITIONER

CASE NO: 99-0393, 99-0394

EXHIBITS IN SUPPORT OF HABEAS CORPUS

PETITIONER IN PRO SE:

CHARLES RUDD L7678
Unit 32-A Building
Parchman, MS 38738

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On or about July 17, 2002, I Charlotte Rudd, entered Madison County Circuit Courthouse about 9:00 a.m. Minutes later I was approached by a black woman that asked if I was Charlotte. I said "Yes." She then proceeded to tell me that she was Lisa Ross. I was then asked by Ms Ross to come to the back. She explained to me that the case against Charles did not look good and she needed my help in convincing him to take a plea of guilty. When I asked why she said things such as, she didn't feel she could win in Madison County and they would convict him "just because". She said that's why they have such a high conviction rate. She then stated she was not taking him to trial under those conditions because she watched three others get a lot of time for the same crime weeks prior to that day. She stated that it was in Charles's best interest to except the guilty plea.

After Ms Ross convinced me that a plea was the best thing for Charles, I was showed to the holding cell where Charles was being held. I did what Ms Ross asked me to do and talked to Charles about accepting the plea. As I worked on convincing Charles to accept the plea, Ms Ross left the room. Minutes later, Ms Ross re-entered the room stating that she could have gotten Charles eight years had he not got an escape charge. However, she could get him a total of ten years, which would include his escape charge. Ms Ross stressed how that was a good deal considering the robbery by itself carries life and the escape charge carries ten years.⁴ So even though Charles didn't want to accept the plea because he didn't remember committing the crime, he agreed to at least think about it after I asked him to do it for me or not for himself.

After a few minutes of convincing Charles to accept the plea and it seemed that he would do it for me, Ms Lisa Ross asked me to leave the room so she could get the papers in order and signed. I was then showed back up front. Shortly thereafter, I was again called to the back, but this time we all went in another room with a T.V. and a VCR showing a tape of the crime. In my own personal opinion, the person that was being viewed did not resemble Charles, but it was a poor quality film, which made it hard to tell who the two men were.

As Charles and I viewed the tape, he informed me that he still did not remember that night because he was under the influence of alcohol and drugs. I in turned asked him to at least make an attempt to come up with a name of a person that may have been in the store or even come close to the other person on tape, because that was the only way that Ms Ross said they would accept the his plea. Charles did what he was asked even though he was very emotional, unstable and not fully willing to accept his plea of guilt. This caused the judge to get very upset, stopping the recorder on several occasions.

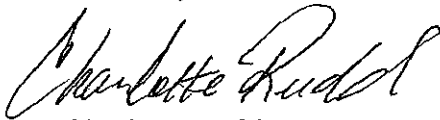
Meanwhile, as we listened to the judge explain the plea agreement both, Charles and I, realized that Ms Ross had told us one thing yet the judge said another. That was the breaking point for Charles and he told the judge that he no longer wanted Ms Ross as his attorney because he felt she was not representing him to the best of her ability and he wanted a continuance to obtain new representation. He was denied both. He was then told either he accept the plea or go to trial that day. I then begged Charles to go ahead and accept the plea because I could not see how he would get a fair trial under these circumstances. I told him that if he accepted the plea I would try to get him a lawyer and help him as much as I could, so he did what I asked.

After being told by Ms Lisa Ross to simply answer "yes" to all the questions, whether he understood or them not, Charles was taken back to the Madison County Jail to await his

sentencing. On October 17, 2003, one year and three months after going before the judge to accept his plea, Charles was sentenced twenty years for robbery, five years for escape and five years of supervised probation, which is a total of thirty years instead of the ten Ms Lisa Ross had originally promised.

I feel that I was totally wrong in persuading Charles to accept a plea. I also feel that the court appointed public defender, Ms Lisa Ross, showed very poor representation of Charles Rudd and the courts. Do to her unconcern and preparation for the case and do to the lack of witnesses and information collected on Charles's behalf, resulted in the misleading and dishonest counsel of Ms Lisa Ross. I feel that Ms Ross was wrong for misleading Charles and my self, causing Charles to accept a plea. Had it not been for me and the position Charles was placed in, he would not have accepted the plea. If the court could, please give Charles Rudd another chance to a fair pre-trial or simply the ten years he was originally promised.

Sincerely,

A handwritten signature in cursive script that reads "Charlotte Rudd". The signature is written in dark ink and is positioned above the printed name.

Charlotte Rudd

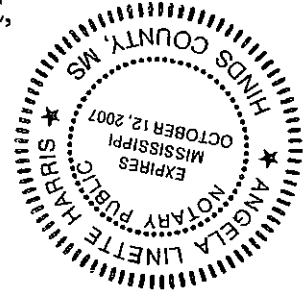
County of Hinds)


Personally Appeared Before Me, the undersigned authority in and for said jurisdiction, the within named person, who, after first being by me duly sworn, stated on oath that the statement set forth in the above and foregoing are true and correct as therein stated.

Charlotte Rudd
Charlotte Rudd

SWORN TO AND SUBSCRIBED BEFORE ME,

This 9 day of February 2005.




Notary Public

COPY

April 10, 2002

To Whomever This May Concern,

I, Charles Ridd, an inmate at Madison County Jail, have been held for well over 90 days, and yet, have failed to be contacted by my court appointed lawyer, and urgently need to see him. Furthermore, I feel my rights are being infringed upon. I am being held on a contempt of court charge, in which I did not receive a court date, in order to appear, written or otherwise. I was only informed previously that I would be contacted when my court date was set. Since then, I have not changed my address, nor my home phone number, yet I was not notified. Meanwhile, a contempt of court only carries 30 to 60 days depending on the judge. In my case, I have not been to court, not even once since my being rearrested. If possible, could I please receive some assistance concerning these matters? I would be very much obliged.

Sincerely,

Charles Ridd



THE MISSISSIPPI BAR

April 15, 2002

Mr. Charles Rudd
Madison County Jail
2935 Hwy 51 South
Canton, MS 39046

Post Office Box 2168
Jackson, Mississippi 39225-2168
Telephone (601) 948-4471
Fax (601) 355-8635
E-Mail msbar@msbar.org
Website www.msbar.org

Dear Mr. Rudd:

Your Request for Assistance has been received and reviewed. In response to your Request, you did not mention the name, address, or phone number of your attorney. Without this information, we cannot provide you with any type of assistance.

If I do not hear from you regarding this matter within 30 days from the date of this letter, I will consider this matter to be concluded as far as the Consumer Assistance Program is concerned, and I will permanently close this file and the contents will be destroyed.

If you have any questions regarding this letter, please do not hesitate to give me a call at the above number or toll free at 1-800-682-6423, ext 229.

Sincerely,



ROBERT GLEN WADDLE, Director
Consumer Assistance Program

RGW

YOUR DOCUMENTS ARE LOCATED IN FILE NO. 02-438
OF THE CONSUMER ASSISTANCE PROGRAM FILES

COPY

April 22, 2002

Dear Mr. Waddle,

I, Charles Rudel, am responding to the letter I was sent concerning the name, address, or phone number of my attorney. The fact of the matter is that I am unable to provide any of the above information because my previous attorney never informed me on any of that information. I was only told he was only to fill in that day and that I would be contacted, but I never was. I am also unaware of how to obtain this information, but if you would, please be so kind as to inform me on how to obtain this info, or obtain it for me and again, I would be very much obliged.

Sincerely,

Charles Rudel



THE MISSISSIPPI BAR

April 25, 2002

Mr. Charles Rudd
Madison County Jail
2935 Hwy 51 South
Canton, MS 39046

Post Office Box 2168
Jackson, Mississippi 39225-2168
Telephone (601) 948-4471
Fax (601) 355-8635
E-Mail msbar@msbar.org
Website www.msbar.org

Dear Mr. Rudd:

Your letter dated April 22, 2002, has been received and reviewed. In response to your letter, I am confused as to why you did not keep or retain the name or address of your attorney.

Since you are apparently having difficulty obtaining a court appointed attorney, I am sending a copy of this letter to Mr. Ben Conner, who is the attorney that assists in assignments of court appointed attorneys in Madison County. For your information, Mr. Conner's address is 164 East Center Street, P. O. Box 563, Canton, MS 39046-0563. *948-2989 ph.*

If I do not hear from you regarding this matter within 30 days from the date of this letter, then I will consider this matter to be concluded as far as the Consumer Assistance Program is concerned, and I will permanently close this file and the contents will be destroyed.

If you have any questions regarding this letter, please do not hesitate to give me a call at the above number or toll free at 1-800-682-6423, ext. 229.

Sincerely,


ROBERT GLEN WADDLE, Director
Consumer Assistance Program

RGW

cc: Ben Conner, Esq.

YOUR DOCUMENTS ARE LOCATED IN FILE NO. 02-438
OF THE CONSUMER ASSISTANCE PROGRAM FILES

COPY

May 6, 2002

Dear Mr. Cooper,

I, Charles Ruhl, an inmate at Madison County Jail, am in need of legal representation. Being that your reputation precedes you as being an outstanding attorney, I would be honored and very much obliged if I may retain you for the duration of my case.

Sincerely,

Charles Ruhl

copy

May 20, 2002

Dear Mr. Connor,

I, Charles Ruckl, an inmate at Madison County Jail, am still in need of legal representation. In the previous letter I stated, "I would be honored and very much obliged if I may retain you for the duration of my case." Yet, I failed to receive a response. Therefore, I am sending this follow up letter to request legal representation. If for some reason you yourself are unable to oversee my case, would you please send someone other than yourself to see me? Thank you in advance.

Sincerely,

Charles Ruckl

COPY

May 20, 2002

Dear Mr. Waddle,

I, Charles Rudd, am sending this follow up letter, to be put on record that I too, have sent Mr. Ben Conner a letter stating that I need a court appointed attorney, on May 6, 2002. Today, I have sent a second letter addressing the same, because I failed to get a response from Mr. Ben Conner, or anyone else at the court house on this matter. Therefore I am still in need of your assistance, do to the fact that I feel my rights are continuing to be infringed upon.

Sincerely,

Charles Rudd



THE MISSISSIPPI BAR

May 24, 2002

Mr. Charles Rudd
Madison County Jail
2935 Hwy 51 South
Canton, MS 39046

Post Office Box 2168
Jackson, Mississippi 39225-2168
Telephone (601) 948-4471
Fax (601) 355-8635
E-Mail msbar@msbar.org
Website www.msbar.org

Dear Mr. Rudd:

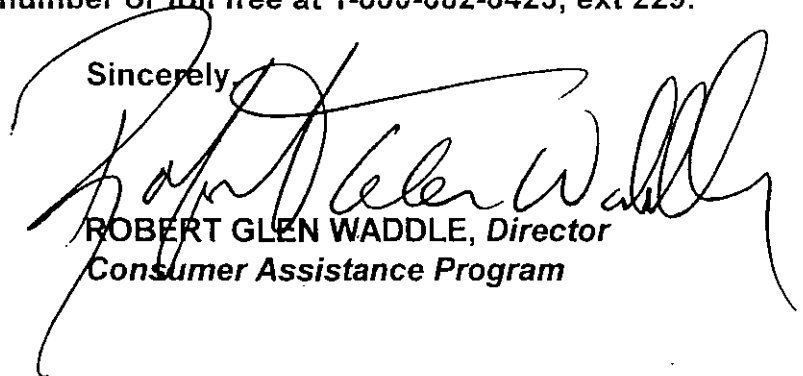
Your Request for Assistance has been received and carefully reviewed by the Consumer Assistance Program of The Mississippi Bar.

After examining your information, it is the determination of the Consumer Assistance Program that this matter is a communication situation between a client and an attorney. By copy of this letter to Mr. Ben Conner, I am requesting that your attorney contact you immediately and provide you in writing with any information you may require regarding your case.

If I do not hear from you regarding this matter within 30 days from the date of this letter, then I will consider this matter to be concluded as far as the Consumer Assistance Program is concerned, and I will permanently close this file and the contents will be destroyed.

If you have any questions regarding this letter, please do not hesitate to give me a call at the above number or toll free at 1-800-682-6423, ext 229.

Sincerely,



ROBERT GLEN WADDLE, Director
Consumer Assistance Program

RGW

cc: Ben Conner, Esq.

**YOUR DOCUMENTS ARE LOCATED IN FILE NO. 02-438
OF THE CONSUMER ASSISTANCE PROGRAM FILES**

SECOND LETTER SENT AT REQUEST OF CONSUMER!!!!!!

COPY

June 19, 2002

Dear Ms. Lee Westbrook,

I, Charles Rudd, an inmate at Madison County Jail, am writing to obtain the name of my appointed attorney and my court date. I am being detained for a contempt of court charge, from a charge in "99. I was unaware of my court date because I had not received one written or otherwise. Furthermore, I was previously informed that I would be contacted when my court date was set. Since then, I have not changed my address my phone number, yet I was failed to be notified. Meanwhile, I have been detained for over 4 months. However, a contempt of court charge carries 30 to 90 days depending on the judge. In my case, I have not yet been to court, not even once since my re-arrest. If possible, could I please receive some assistance concerning these matters. I would be very much obliged, because I truly feel that my rights are being infringed upon. Thank you.

Sincerely,

Charles Rudd

COPY

Aug. 6, 2002

Dear Mr. Waddle,

I, Charles Rudel, am once again writing you do to the fact

that my rights are still being infringed upon having written you previously about failure to be seen by my lawyer and for judge.

In which you were so gracious enough to send me the address of

Mr. Ben Conner, whom I intuned wrote and still have failed to

get a response from. However, after writing Ms. Lee Westbrook, an

June 19, 2002, a Wednesday, I was called to court to see my attorney

Ms. Lisa Riss, on Friday, the 28th of June. On speaking to Ms. Lisa

Riss that day, she had not yet located my file and was unaware

of my charge. I was then told, by Mr. Riss, that she would be to

visit me in order to review my case that day. "She finally came, two

days later", on Sunday, June 30, but not to review my case, but "to

after me same time". Once I refused, she then asked what I had

been charged with as she departed. I was later called back to the

court house on Tuesday, June 2nd, to once again be offered a

plea. Again, I refused and signed a statement stating my refusal

I was then told, by Ms. Lisa Riss, my attorney, that my trial date

had been set for July 19th, but she had it pushed up to the 17th

yet she still had not reviewed my case with me. At that point I

requested a copy of my motion of discovery, to which she stated, "I

don't get paid to run you off copies, you would have to pay for them.

On July 8, Ms. Lisa Riss finally came to review my case with me, as

she still did not give me a copy of my discovery neither did she

give me enough time to look over the copy she had. After rushing me

COPY

to glance over my discovery, she asked me for the address of any

witnesses I had "if any", that I wanted to have subpoenaed. The

names and addresses were given, and no more than TEN (10) minutes

after her arrival, she had gone. On July 12th, 2002, Ms. Lisa Ross

made it perfectly clear that she believed me to be the person who

committed the crime regardless that there was no evidence in

support, and after being told several times that I did not commit

the crime Furthermore, she refused to take me to trial stating, "If that

was me, I would have been called the police on your ass, and I'm

not taking you to trial and allow you to get thrown away. This is

Madison County and you don't have a chance in trial."

That was just part of the reason I feel my rights have been infringed upon.

Others took place on July 17th, 2002, when I advised the judge that I

no longer wanted Ms. Lisa Ross as my attorney because I felt she was

not representing me to what I thought was the best of her abilities,

not was she working in my best interest. However, the judge stated

I could not let her go as my attorney unless I could get another

attorney to represent me within an hour, because I was set for

trial that day. I then asked for a continuance, which was also denied.

This only left me with two choices, which were go to trial knowing

Ms. Lisa Ross was unprepared to do so or except a plea. All

this was done on tape, which is proof.

Furthermore, I have been indicted for armed robbery, and my indictment

states: Charles J. Ruff late of the County of Jefferson, on or about

the 9th day of September, 1999... did willfully, knowingly and feloniously

take from the presence of Wendy Renthire... "against his will by putting

the said, Charles J. Ruff, in fear of immediate injury to his person

by the exhibition of a deadly weapon, a gun, in the City of Madison,

Madison County, Mississippi. I also bring that to the attention of my attorney and she said it did not matter cause they would and could reindict me, which I don't believe to be true. However, I totally feel that I have been railroaded and forced to plead guilty to a crime I did not commit because of lack of proper representation. I could not afford a paid lawyer and I do not feel that it is fair on my behalf that I have to accept time because I do not have the funds to get a paid lawyer and the appointed attorneys seem to not care one way or another whether they win or lose, because they get paid regardless. So most of them want on people to accept a plea so they can get paid quicker and to me it seems that they don't really care if the person is guilty or not. That's not how it should be, yet this is how it is and I really need some help because I have not been given a fair chance. If you would, could you please give me some assistance. I would be very much obliged -

Sincerely,

Charles Smith



THE MISSISSIPPI BAR

COPY

August 9, 2002

Mr. Charles Rudd
Madison County Jail
2935 Hwy 51 South
Canton, MS 39046

Post Office Box 2168
Jackson, Mississippi 39225-2168
Telephone (601) 948-4471
Fax (601) 355-8635
E-Mail msbar@msbar.org
Website www.msbar.org

Dear Mr. Rudd:

Your Request for Assistance has been received and carefully reviewed by the Consumer Assistance Program of The Mississippi Bar.

After examining your information, it is the determination of the Consumer Assistance Program that this matter is a communication situation between a client and an attorney. By copy of this letter to Ms. Lisa Ross, I am requesting that your attorney contact you immediately and provide you in writing with any information you may require regarding your case.

If I do not hear from you regarding this matter within 30 days from the date of this letter, then I will consider this matter to be concluded as far as the Consumer Assistance Program is concerned, and I will permanently close this file and the contents will be destroyed.

If you have any questions regarding this letter, please do not hesitate to give me a call at the above number or toll free at 1-800-682-6423, ext 229.

Sincerely,



ROBERT GLEN WADDLE, Director
Consumer Assistance Program

RGW

cc: Lisa Ross, Esq.

YOUR DOCUMENTS ARE LOCATED IN FILE NO. 02-918
OF THE CONSUMER ASSISTANCE PROGRAM FILES

COPY

Aug 21, 2004

Dear Mr. Waddle,

Do to an ineffective counsel, as an individual, I, Charles Rudd, am seeking information as to how and where to obtain certain forms and documents to file such as: Motion of discovery, Motion of demeanor, Motion to quash, writ of habeas corpus, and writ of coram nobis? Outside of those, I also need the address to the Federal Building, in which to file a criminal suit and obtain a 1983 form, not having to go through my attorney. If you would be so kind as to assist me in these matters I would be very much obliged.

Respectfully,

Charles Rudd



THE MISSISSIPPI BAR

August 23, 2002

Mr. Charles Rudd
Madison County Jail
2935 Hwy 51 South
Canton, MS 39046

Post Office Box 2168
Jackson, Mississippi 39225-2168
Telephone (601) 948-4471
Fax (601) 355-8635
E-Mail msbar@msbar.org
Website www.msbar.org

Dear Mr. Rudd:

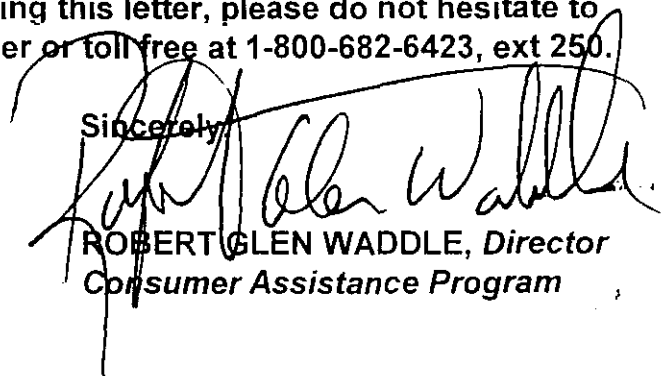
Your Request for Assistance has been received and reviewed. In response to your Request, The Mississippi Bar is the licensing agency for attorneys practicing law in the state of Mississippi. The Mississippi Bar is not a court of law, and only handles ethical problems between attorneys and their clients in violation of the Bar's Rules of Professional Conduct.

The Mississippi Bar does not appoint, assign, refer, or recommend attorneys to anyone in any manner. The Mississippi Bar does not provide legal advice or legal representation in any manner whatsoever. Further, The Mississippi Bar is not a law library, court of law, or court clerk, and does not provide case information, cites, or any other legal research items of any type. The Bar does not handle any complaints regarding judges as this is the function of the Mississippi Commission on Judicial Performance. At this time, there is no further assistance The Mississippi Bar can provide to you based on your request unless you have a **specific ethical complaint** regarding an attorney.

If I do not hear from you regarding this matter within 30 days from the date of this letter, then I will consider this matter to be concluded as far as the Consumer Assistance Program is concerned, and I will permanently close this file and the contents will be destroyed.

If you have any questions regarding this letter, please do not hesitate to give me a call at the above number or toll free at 1-800-682-6423, ext 250.

Sincerely,



ROBERT GLEN WADDLE, Director
Consumer Assistance Program

RGW

cc: Lisa Ross, Esq.

YOUR DOCUMENTS ARE LOCATED IN FILE NO. 02-918
OF THE CONSUMER ASSISTANCE PROGRAM FILES

Exhibit F
COPY

FILED
THIS DAY

NOV 30 1999

LEE WESTBROOK
CIRCUIT CLERK

INDICTMENT

STATE OF MISSISSIPPI
COUNTY OF MADISON

ARMED ROBBERY,
MISS. CODE ANN. §97-3-79

CAUSE NO. _____

IN THE CIRCUIT COURT OF SAID COUNTY, SEPTEMBER TERM, 1999
RECALLED NOVEMBER 17, 1999

The Grand Jurors of the State of Mississippi, taken from the body of good and lawful citizens of said county, elected, summoned, empaneled, sworn and charged to inquire in and for the body of the said county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oath present that,

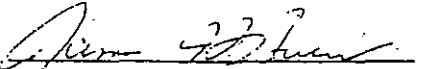
CHARLES J. RUDD


late of the county aforesaid, on or about the 9th day of September, 1999, in the county aforesaid and within the jurisdiction of this court,

did willfully, unlawfully, knowingly and feloniously, take from the presence of WENDY ROUNDTREE money, the personal property of SHELL SPRINT MART, a business, against his will by putting the said, CHARLES J. RUDD, in fear of immediate injury to his person by the exhibition of a deadly weapon, a gun, in the City of Madison, Madison County, Mississippi, in violation of Mississippi Code Annotated §97-3-79 (1972), as amended,

against the peace and dignity of the State of Mississippi.

Endorsed : A True Bill


FOREMAN OF THE GRAND JURY


DISTRICT ATTORNEY

AFFIDAVIT

COMES NOW James H. Burns, Foreman of the September, 1999, Madison County Grand Jury, and makes oath that this indictment presented to this Grand Jury was concurred in by twelve (12) or more members of the Grand Jury and that at least fifteen (15) members thereof were present during all deliberations.


FOREMAN OF THE GRAND JURY

SWORN TO AND SUBSCRIBED BEFORE ME, this the 24th day of November, 1999.

LEE WESTBROOK, CIRCUIT CLERK

BY: , D.C.



STATE OF MISSISSIPPI
COUNTY OF SUNFLOWER

PERSONALLY APPEARED BEFORE ME, the under signed authority
in and for said jurisdiction, the within named petitioner, who
after first being by me duly sworn, stated on oath that the
statements set forth in the above and foregoing are true and
correct as therein stated.

SWORN TO AND SUBSCRIBED before me, this the _____ day of _____ 2006.

NOTARY PUBLIC

My Commission Expires: _____

CERTIFICATE OF SERVICE

This is to certify that I, Charles Rudd, M.D.C. #17678, have
this day and date mailed, via United States Mail, postage prepaid,
a true and correct copy to the following:

Ms. Lee Westbrook

Madison County Circuit Court Clerk

P.O. Beaver Street

Lanton, MS 39046

Madison County, District Attorney

P.O. Box 121

Lanton, MS 39046

Mr. Jim Hood

Attorney General

P.O. Box 220

Jackson, MS 39208

This the _____ day of _____, 2006.

Charles Rudd

Charles Rudd #17678

Unit 29-5 Building

Larchmont, MS 38738

Exhibit

Y

Charles Rudd #L 7678

Unit 29-J Building

Parchman, MS 38738

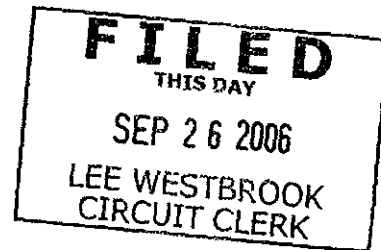
September 13, 2006

Ms. Lee Westbrook, Clerk

Circuit Court

P.O. Drawer 1626

Canton, MS 39046



RE: Resubmitting Notice of Appeal & Designation of Record

Attn. Clerk,

I hereby resubmit my notice of appeal & Designation of Record. I submitted the first on or about Feb. 6, 2006. To date no file has been made in the Court of Appeals. Copies of previously filed notice has been attached. Also, please find and file with the Court, Resubmitted Notice & Designation of Record. Once the petitions has been filed, please return a copy of each marked "Filed".

Thank you in advance for your time and assistance.

Respectfully Submitted,

Charles Rudd

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

Charles Rudd

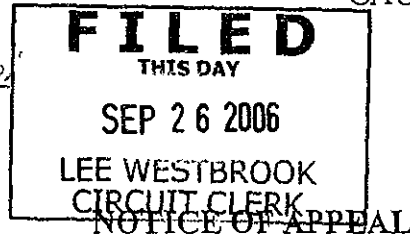
PETITIONER

VS.

CAUSE NO. 99-0393 & 2002-0229

State of Mississippi

RESPONDENT(S)



Comes now, Charles Rudd, Pro Se, being aggrieved by the Order of this Court entered on January 25, 2006, in the above numbered cause and does desire to appeal this decision to the Mississippi Supreme Court.

The clerk of this Court is hereby requested to send up to the Mississippi Supreme Court the complete record in this cause.

In Lieu of Appeal Bond petitioner attaches hereto an Affidavit of Poverty as provided by Mississippi Code Annotated, Section 11-53-17.

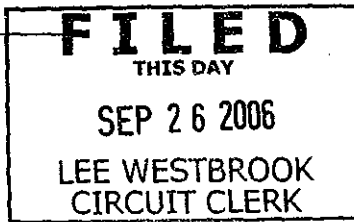
Charles Rudd
PETITIONER
MDOC# L7678

Unit 29 - I Building
Address

Parchman, MS 38738
Address

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

Charles Rudd
VS.
STATE OF MISSISSIPPI



PETITIONER
CAUSE NO. 99-0393, 2002-0229
RESPONDENT(S)

DESIGNATION OF RECORDS

I, Charles Rudd, Appellant, Pro Se, pursuant to Mississippi Supreme Court Rule, 10(b)(1), designates the following parts of the record as being necessary to be included on appeal.

1. All Clerk's papers, trial transcripts and exhibits filed, taken or offered in this case.
2. The order entered on the 25th day of January, denying Petitioner Post Conviction Motion.

This the 13 day of September, 2006.

Respectfully Submitted,

Charles Rudd
PETITIONER
MDOC# L7678

Unit 29 - J Building
Address

Parham, MS 38738
Address

IN THE CIRCUIT COURT OF Madison COUNTY, MISSISSIPPI

Charles Rudd

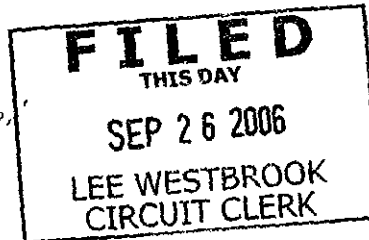
PETITIONER

VERSUS

State of Mississippi

NO. 99-0393 3 2002-0229

RESPONDENT(S)



CERTIFICATE OF COMPLIANCE

I, Charles Rudd, Petitioner, Pro Se, pursuant to MRAP 11(b)(1), certify that I am unable to obtain the cost of preparing the designated record on appeal because I am incarcerated in Mississippi Department of Corrections and cannot freely contact the court reporter for this information. Therefore, according to Mississippi Rules of Appellate Procedure 11, cost is estimated at the statutory rate per page for the clerk's papers and at \$300.00 per day of proceedings to be transcribed, totaling approximately \$_____.

This the 13th day of September, 20 06.

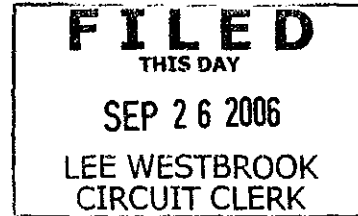
Charles Rudd
PETITIONER
MDOC# 27678

Unit 29-J Building
Address

Parchman, MS 38738
Address

STATE OF MISSISSIPPI
COUNTY OF SUNFLOWER

}
} SS:
}



AFFIDAVIT OF POVERTY

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, Charles Rudd, M.D.O.C. #L7678, who being first duly sworn on his oath, does depose and sayeth:

I, Charles Rudd, do solemnly swear that I am a citizen of the State of Mississippi, and because of my poverty I am not able to pay the cost for this Appeal, which I am about to commence, and that, to the best of my belief, I am entitled to the relief which I seek by such sort.

Charles Rudd

Charles Rudd #L7678
Unit 29-H Building
Parchman, MS 38738

SWORN TO AND SUBSCRIBED BEFORE ME, this 14th ~~15th~~ day of Sept., 2006.

Kathryn McIntyre
Notary Public

My Commission Expires:

CERTIFICATE OF SERVICE

This is to certify that I, the undersigned, have this day and date mailed, via United States Mail, postage pre-paid, a true and correct copy of the foregoing and attached instruments to the following:

<u>Ms. Lee Westbrook Clerk</u>	<u>MR. Jim Hood</u>
<u>Madison County Circuit Court</u>	<u>Attorney General</u>
<u>P.O. Drawer # 1626</u>	<u>P.O. Box 220</u>
<u>Canton, MS 39046</u>	<u>Jackson, MS 39205</u>

<u>Ms. Betty W. Sexton Clerk</u>	<u>Court Reporter & Transcriber</u>
<u>Seymour Court</u>	<u>Madison Circuit Court</u>
<u>P.O. Box 249</u>	<u>P.O. Drawer 1626</u>
<u>Jackson, MS 39205</u>	<u>Canton, MS 39046</u>

This the 13th day of September, 2006.

Charles Hood
PETITIONER
MDOC# L 7678

Unit 29-J Building
Address

Parchman, MS 38738
Address

Charles Rudd #L7678
Unit 29-J Building
Parchman, MS 38738

February 6, 2006

Ms. Lee Westbrock Clerk
Circuit Court
P.O. Box 1626
Lanton, MS 39046

RE: Submitting Notice of Appeal & Designation of Record

Attn. Clerk,

Enclosed, please find and file with the Court, Notice of Appeal & Designation of Record. Once the petitions has been filed, please return a copy of each of the above pleadings marked "Petitioner's File Copy."

Thank you in advance for your time and assistance in this matter

Respectfully Submitted,

Charles Rudd
Charles Rudd #L7678
Unit 29-J Building
Parchman, MS 38738

In The Circuit Court of Madison County
In The State of Mississippi

Charles Rudd
vs.
State of Mississippi

Plaintiff
Case No 99-0393 § 2005-2024
Defendant

Notice of Appeal
Notice is hereby given that Charles Rudd, Defendant in the
above named case, appeals from the order or judgment entered
on January 8th, 2005.
This appeal follows Post Conviction Relief

Dated: Feb. 6, 2005
Signed: Charles Rudd 17678
Address: Unit 29-J Building
Parchman, MS 38738

Charles Budd

vs

State of Washington

Designation of the Record

Charles Budd, petitioner, pro se, pursuant to M.R.A.P.

to (b)(1), designation is for the following parts of the Record

as being necessary to be included on appeal: All Clerk's

papers, transcript of plea, and exhibits filed, taken or offered

in this case and the following to wit:

1) The Complaint in Case,

2) Motion to Compel Discovery,

3) Arrest warrants,

4) Plea Agreements,

5) Appointment of Counsel,

6) All papers, books, notes,

7) Victims impact statements,

8) Police Reports, and or any evidence in Cause No: 99-0393 & 2002 & a.

This the 8th day of Feb. 2006

Respectfully Submitted,
Charles Budd

Certificate of Service

This is to certify that I Charles Radd, MDOL # L7678, have this day and date mailed via United States Mail, postage prepaid, a true and correct copy to the following:

Ms. Lee Westbrook

Madison County Circuit Court Clerk
P.O. Drawer Street 1626

Canton, MS 39046

Ms. Sarah Ratcliff

Madison County Court Reporter
P.O. Drawer 1626

Canton, MS 39046

Mr. Charles Radd

Refitiner Pro-Se

Unit 29-J Building

Fachman, MS 38738

This 8th day of Feb., 2006.

Charles Radd
Charles Radd L7678
Unit 29-J Building
Fachman, MS 38738

Exhibit 4  *Z*

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Charles Rudd

v.

State of Mississippi

Case No. 2006-TS-01249 in the
Madison County Circuit Court Case No. 99-0393 - 2002-0229

To: Gina Rozlyn Miller
Court Reporter
P.O. Box 39

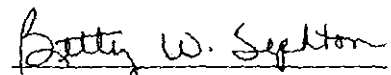
D'Lo, MS 39062

SHOW CAUSE NOTICE TO COURT REPORTER

You are hereby directed to show cause in accordance with Rule 2(b) of the Mississippi Rules of Appellate Procedure why sanctions should not be imposed on you by the Supreme Court for failing to file the transcript of proceedings in the above styled cause within the time allowed under the Rules of Appellate Procedure and any extensions which you may have received.

A written response to this notice must be filed within 14 days following the date of this notice to the address below and with the above caption. If the default is cured within 14 days, a separate response to the show cause will not be required.

Executed this the 10th day of July, 2007.


CLERK

MISSISSIPPI SUPREME COURT
Post Office Box 249
Jackson, Mississippi 39205-0249

/MBE

cc: Lower Court Judge
Lower Court Clerk
Counsel of Record

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

CHARLES RUDD

PLAINTIFF

VS

CAUSE# 2005- 0120

2002-0229

1999- 0393

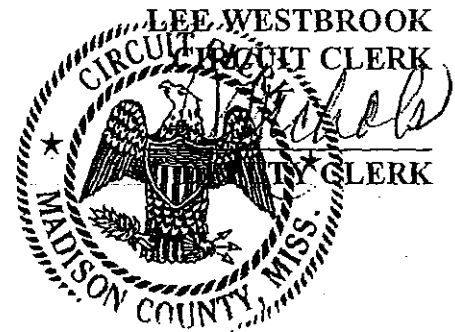
STATE OF MISSISSIPPI

DEFENDANT

CERTIFICATE OF CLERK

I, LEE WESTBROOK, Circuit Clerk of Madison County, Mississippi, do hereby certify that the above enclosed instrument of writing is a true and correct copy of the papers filed in the cause of CHARLES RUDD vs STATE OF MISSISSIPPI and is a matter of record in the Circuit Clerk's Office in Madison County, Mississippi.

THE, the 15th day of August, 2007.



000057

Exhibit BB

Serial: 142499

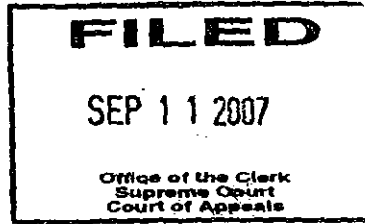
IN THE SUPREME COURT OF MISSISSIPPI

No. 2006-TS-01249

CHARLES RUDD

v.

STATE OF MISSISSIPPI



Appellant

Appellee

ORDER

This matter is before the undersigned Justice on the Motion to Correct Records filed pro se by Appellant. Appellant asks that the appeal record be supplemented. After due consideration the undersigned Justice finds that the Motion to Correct Records should be remanded to the Madison County Circuit Court for decision and entry of an order on the content of the appeal record and whether supplementation is appropriate. The undersigned Justice further finds that proceedings in the appeal should be suspended.

IT IS THEREFORE ORDERED that the Motion to Correct Records filed pro se by Appellant is remanded to the Madison County Circuit Court until October 19, 2007, for decision and entry of an order on the content of the appeal record and whether supplementation is appropriate. Proceedings in the appeal are suspended pending further order of this Court.

SO ORDERED, this the 11th day of September, 2007.


GEORGE C. CARLSON, JR., JUSTICE

Exhibit

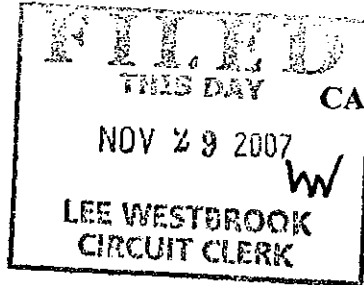
CC

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

CHARLES RUDD

MOVANT

VS.



CAUSE NOS. 99-0393, 2002-0229 and
CIVIL ACTION NO.: 2005-0120

STATE OF MISSISSIPPI

RESPONDENT

ORDER

THIS MATTER having come on for consideration by the Court pursuant to an order from the Supreme Court of Mississippi remanding this cause to the trial court for consideration of the Appellant's *pro se* Motion to Correct Records originally filed in the Supreme Court (#2006-TS-01249) with no notice of said Motion being given to the trial court.

The trial court after reviewing a copy of said motion finds that the clerk of the trial court shall have thirty (30) day(s) from the date of this order to copy all documents in Criminal Cause Numbers 2002-0229 and 99-0393 and Civil Cause Number 2005-0120 and forward same to the Appellant. By First Class United States Mail, postage prepaid. The Court can not determine the exact nature of the documents requested by the Appellant since some documents exist in one but not all of the files; it is not possible to decipher the Appellant's short hand in items 13 & 14 and item 15 is over broad and not specific as stated in said Motion. The Appellant shall have thirty (30) day(s) after the date of mailing all of the court files to file any supplemental brief he deems necessary.

SO ORDERED AND ADJUDGED this 28th day of November, 2007.


CIRCUIT JUDGE

LEE WESTBROOK
Circuit Clerk Madison County
P. O. Drawer 1626
CANTON, MISSISSIPPI 39046

Date Received 12-10-07
Accepted / Refused _____
Inmate Signature [Signature]
Date/Time 12/10/07
Inspected by [Signature]

43-D

INMATE CHARLES RUDD #L7678
UNIT 32-D BUILDING
PARCHMAN MS 38738

ATTENTION

REMOVE METAL
FASTNER WHEN
INSPECTING

DD

Exhibit