

COPY

IN THE COURT OF APPEALS OF THE  
STATE OF MISSISSIPPI

**FILED**

MAY 30 2007

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

STEVEN SHELTON  
APPELLANT, PRO SE

VS

STATE OF MISSISSIPPI  
APPELLEE

NO: 2006-CP-2128/2006-CP-2134

REPLY BRIEF FOR APPELLANT

STEVEN SHELTON #40281  
W.C.C.F. B-106  
P.O. bx 1079  
Woodville, MS 39669

## Table of CONTENTS

Table of Authorities	ii
STATEMENT of ISSUES	i
SUMMARY of ARGUMENT	i
ARGUMENT	i
1) The Circuit Court did incorrectly deny APPELLANTS OCT. 25, 2006 MOTION for OUT- OF-TIME APPEAL.	i
2) The Circuit Court did ERR in denying APPELLANTS POST CONVICTION MOTIONS	2
CONCLUSION	4
CERTIFICATE of Service	6

## Table of Authorities

### STATE CASES

Page

Bell v STATE, 759 So.2d 1111 (Miss. 1999)	3, 4
Chaney v STATE, — So.2d — (Miss. Ct. App. Nov. 22, 2005)	4
Ivy v STATE, 731 So.2d 601 (Miss. 1999)	3

### STATE STATUTES

M.C.A. § 99-39-5(2)	3, 4
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### Court Rules

M.R.A.P. 4(n)	2
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### CONST. AMEND.

4th Const. Amend.	4
5th Const. Amend.	4
6th Const. Amend.	4

## STATEMENT OF ISSUES

- 1) Did The Circuit Court Correctly deny Relief on APPELLANTS OCT. 25, 2006 MOTION FOR A OUT-OF-TIME APPEAL?
- 2) Did The Circuit Court ERR in denying APPELLANTS MOTIONS FOR POST CONVICTION Relief?

## SUMMARY OF ARGUMENT

- 1) The Circuit Court did incorrectly deny APPELLANTS OCT. 25, 2006 MOTION FOR A OUT-OF-TIME APPEAL.
- 2) The Circuit Court did ERR in denying APPELLANTS POST CONVICTION MOTIONS.

## ARGUMENT

- 1) The Circuit Court did incorrectly deny APPELLANTS OCT. 25, 2006 MOTION FOR A OUT-OF-TIME APPEAL.

The APPELLANT sent his second motion titled OUT-OF-TIME APPEAL on OCT. 19, 2006

He Received Notice ON OCT. 30, 2006 (EX. A ) THAT THIS MOTION HAD BEEN FILED ON OCT. 25, 2006. (EX B ) WITH THE NOTICE OF MY MOTION BEING FILED ON OCT. 25, 2006 I RECEIVED THE ONLY NOTICE AS TO THE FIRST OUT-OF-TIME APPEAL MOTION THAT WAS DENIED ON NOV. 16, 2005. (EX. C, D) LATER I RECEIVED A LETTER FROM THE CIRCUIT CLERK WHICH HAD COPIES OF THE SAME MOTION I FILED ON OCT. 25, 2006 REFILED ON NOV. 6, 2006. (EX. E ). THE APPELLANT STATES HIS MOTION FOR OUT-OF-TIME APPEAL MET THE CRITERIA SET FORTH IN M.R.A.P. 4(h) (1) HE DID NOT RECEIVE NOTICE OF ENTRY OF ORDER WITHIN 21 DAYS OF ENTRY THEREOF. AND, (2) THAT THE ONLY PERSON THAT WOULD BE PREJUDICED BY REOPENING THE TIME FOR TAKING APPEAL WOULD BE THE APPELLANT.

THE APPELLANT IN FACT FILED HIS OCT. 25, 2006 MOTION 5 DAYS BEFORE RECEIVING NOTICE OF JUDGEMENT FROM DENIAL OF OUT-OF-TIME APPEAL DATED NOV. 16, 2005.

THE APPELLANT WOULD ALSO NOTE THAT BY REFILEING HIS OCT. 25, 2006 MOTION ON NOV. 6, 2006 BY TIME HE RECEIVED NOTICE THROUGH THE MAIL THE FOURTEEN DAY PERIOD FOR REOPENING APPEAL AS SET FORTH IN M.R.A.P. 4(h) WOULD HAVE EXPIRED.

2) THE CIRCUIT COURT DID ERR IN DENYING APPELLANTS MOTIONS FOR POST CONVICTION RELIEF.

The APPELLANT STATES THAT IN ADDITION TO THE ARGUMENT IN HIS FIRST BRIEF, HE WOULD NOTE THAT NOT ALL HIS GROUNDS FOR RELIEF ARE SUBJECT TO THE TIME BAR ESTABLISHED BY M.C.A. §99-39-5(2).

The APPELLANT STATES HE WAS COERCED BY COUNSEL INTO HIS PLEA BY IMPROPER INDUCEMENTS WHICH WAS THAT HIS STATE SENTENCES WOULD RUN CONCURRENT WITH HIS PRIOR FEDERAL SENTENCE. (EX. F) THIS NOT BEING THE CASE AS SET OUT IN A LETTER FROM THE FEDERAL PUBLIC DEFENDERS DATED MARCH 7, 2007 (EX G). THE TRIAL COURT ERRONEOUSLY DENIED APPELLANTS MOTION FOR POST CONVICTION RELIEF AS TIME BARRED. SINCE, ALTHOUGH THE APPELLANT FILED HIS PETITION 10 YEARS AFTER THE APPLICABLE STATUTE OF LIMITATIONS HAD EXPIRED, PETITION ALLEGING AN ILLEGAL SENTENCE ARE NOT SUBJECT TO THE TIME BAR. *IVY v STATE*, 731 So.2d 601 (MISS, 1999)

THE PETITIONER WAS ENTITLED TO AN EVIDENCIARY HEARING TO DETERMINE (1) WHETHER HIS MOTION WAS EXCEPTED FROM THE THREE YEAR STATUTE OF LIMITATIONS PERIOD ON THE BASIS OF A LETTER WHICH WAS DATED AFTER THE THREE YEAR STATUTE OF LIMITATIONS HAD RUN, AND WHICH STATED THAT HIS FEDERAL SENTENCE WOULD RUN CONSECUTIVELY TO HIS STATE SENTENCE, NOTWITHSTANDING THAT THE TRIAL JUDGE INTENDED HIS STATE SENTENCE TO RUN CONCURRENTLY

with his Federal Sentence, and (2) The Status of his Federal and State Sentences. Bell v State, 759 So. 2d 1111 (Miss. 1999)

The Appellant also states that Review of his Post Conviction Motions will show that the illegal sentence was the end product of his Counsel's ineffectiveness and that he was denied effective Counsel throughout their professional relationship. This caused the Appellants Fourth, Fifth and Sixth Amendment Constitutional Rights to be violated. The Mississippi Supreme Court holds that the Three-year Statute of Limitations in M.C.A. §99-39-5(2) may be waived when a Fundamental Constitutional Right is implicated. Chauncy v State, — So.2d — (Miss. Ct. App. Nov. 22, 2005).

### Conclusion

The Appellant states the Circuit Court erred in denying his out-of-time Appeal and his motions for Post Conviction Relief. He was denied his most basic Constitutional Rights and his motions should be reviewed on the merits and remanded to the Trial Court for a new trial or whatever relief this Court deems appropriate in this matter.

Respectfully Submitted,

*Steve Sheiton*

STEVEN SHEITON

APPELLANT, PRO SE




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 instrument To The following:

ATTORNEY General  
Jim Hood  
P.O. bx 220  
JACKSON, MS 39204

Supreme Court Clerk  
Betty W. Sephton  
P.O. bx 249  
JACKSON, MS 39205

This The 30<sup>th</sup> day of MAY, 2007

  
STEVEN SHEITON  
APPELLANT, Pro se

W.C.C.F. B-106  
P.O. bx 1079  
Woodville, MS 39669

143

Date Received 10-30-06  
Accepted ✓ Relined  
Inmate Signature De Juan  
Date/Time 10/30/06 14:50  
Inspected by James On

[illegible]

Date Received 10-30-06  
Accepted [initials]  
Inmate Signature [signature]  
Date/Time 10-30-06 6:50  
Inspected by [signature]

[illegible]

**Pennsylvania**

IN The CIRCUIT COURT of RANKIN COUNTY, MISSISSIPPI

STEVEN SHELTON

FILE

PETITIONER

VS.

OCT 25 2006

Case No. 2005-0251

STATE of MISSISSIPPI

Respondent

CHARLES B. SWILEY, CIRCUIT CLERK

MOTION FOR PERMISSION TO PROCEED OUT OF TIME

COMES NOW, STEVEN SHELTON, PETITIONER, Pro Se,  
and Files This his MOTION for PERMISSION TO PROCEED  
OUT OF TIME AND IN SUPPORT THEREOF, WOULD SHOW  
UNTO THIS HONORABLE COURT THE FOLLOWING TO-WIT:

I.

That The PETITIONER WAS SENTENCED ON OR ABOUT  
The 4th day of October, 2002, for the CRIMES of  
SALE of CONTROLLED SUBSTANCE, by This COURT AND  
PLACED IN THE CUSTODY of MISSISSIPPI DEPARTMENT OF  
CORRECTIONS TO SERVE A TERM of 30 YEARS.

II.

The PETITIONER filed A PAST CONVICTION  
PETITION AND IT WAS DENIED ON OR ABOUT The  
24th day of October, 2005 (EXHIBIT 3a,b)



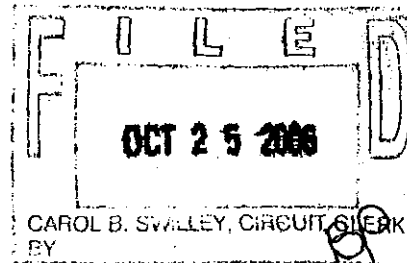
***Carol B. Swilley***

CIRCUIT CLERK  
RANKIN COUNTY

215 East Government Street  
P.O. Drawer 1599  
Brandon, Mississippi 39043

(601) 825-1466  
(601) 355-0527  
Fax (601) 825-1465

STEVE SHELTON #40281  
UNIT 29-K B-143  
PARCHMAN, MS. 38738



DEAR MR. SHELTON,

THE RANKIN COUNTY CIRCUIT CLERK'S OFFICE HAS RECEIVED YOUR PAPERWORK FOR AN OUT OF TIME APPEAL FOR CASE NUMBER 2005-251. THIS PAPERWORK WAS FILED ON 10-25-06. FOR YOUR RECORDS, WE ARE ENCLOSING A TRUE AND CORRECT COPY OF AN ORDER DENYING MOTION FOR OUT OF TIME APPEAL THAT WAS SIGNED BY THE CIRCUIT JUDGE ON 11-16-05.

RANKIN COUNTY CIRCUIT CLERK

BOOK 0224-055

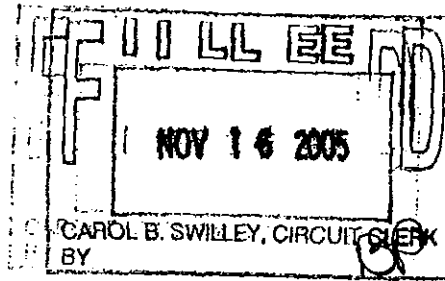
**COPY**

## IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STEVEN SHELTON

VS.

STATE OF MISSISSIPPI



MOVANT

CAUSE NO. 2005-0251  
+ 2005-0252

RESPONDENT

**ORDER DENYING MOTION FOR OUT OF TIME APPEAL**

THIS CAUSE HAVING COME ON FOR CONSIDERATION by the Court on the pro se Motion For Out Of Time Appeal and the Court having reviewed the said Motion finds that the said motion is moot and/or prematurely filed for the reason that the time for filing an appeal of the court's ruling on the Movant's Motion For Post Conviction Relief was not and has not expired as of the date of the filing of said motion for out of time appeal; the Movant's Motion should be and the same is hereby dismissed.

IT IS THEREFORE ORDERED THAT the Movant's Motion For Out Of Time Appeal be dismissed for the reason hereinbefore stated.

SO ORDERED AND ADJUDGED THIS THE 16<sup>TH</sup> DAY OF NOVEMBER, 2005.

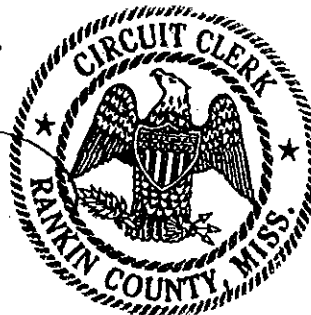
 A handwritten signature in cursive script, appearing to read "Daniel S. Rahnke".
 

CIRCUIT JUDGE

STATE OF MISSISSIPPI  
COUNTY OF RANKIN

A true and correct copy, I hereby certify.  
CAROL B. SWILLEY, CIRCUIT CLERK

BY Bebe B. Boney, C.



COPY

IN The CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

STEVEN SHELTON

PETITIONER

VS.

NOV 6 2006

CAUSE NO. 2005-0251

STATE OF MISSISSIPPI

RESPONDENT

MOTION FOR PERMISSION TO PROCEED OUT OF TIME

COMES NOW, STEVEN SHELTON, PETITIONER, Pro Se,  
And Files This his MOTION FOR PERMISSION TO PROCEED  
OUT OF TIME AND IN SUPPORT THEREOF, WOULD SHOW  
UNTO THIS HONORABLE COURT THE FOLLOWING TO-WIT:

I.

THAT THE PETITIONER WAS SENTENCED ON OR ABOUT  
THE 4TH DAY OF OCTOBER, 2002, FOR THE CRIMES OF  
SALE OF CONTROLLED SUBSTANCE, BY THIS COURT AND  
PLACED IN THE CUSTODY OF MISSISSIPPI DEPARTMENT OF  
CORRECTIONS TO SERVE A TERM OF 30 YEARS.

II

THE PETITIONER FILED A POST CONVICTION  
PETITION AND IT WAS DENIED ON OR ABOUT THE  
24TH DAY OF OCTOBER, 2005 (EXHIBIT 3a,b)

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:

(1) To serve a term of 30 year(s) in the custody of the Mississippi Department of Corrections in cause number 13,720; to serve a term of 30 years in the custody of the Mississippi Department of Corrections in cause number 13,721. The sentence imposed in cause number 13,721 shall run concurrently with the sentence imposed in cause number 13,720. The Rankin County sentences imposed in cause numbers 13,720 and 13,721 shall run concurrently with the Federal conviction for possession of a firearm by a convicted felon. Pursuant to Section 47-7-34 of The Mississippi Code of 1972, after the Defendant has served 12 years in the custody of MDOC the Defendant shall be released on Post-Release supervision for a period or term of 5 year(s) on

FEDERAL PUBLIC DEFENDER

SOUTHERN DISTRICT OF MISSISSIPPI

200 SOUTH LAMAR STREET - SUITE 100-S  
JACKSON, MISSISSIPPI 39201  
(601) 948-4284 FACSIMILE (601) 948-5510

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Federal Public Defender

GEORGE L. LUCAS  
Senior Litigator

TOM TURNER  
Research & Writing Specialist

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Asst. Federal Public Defenders  
OMODARE B. JUPITER  
KATHRYN N. NESTER  
ABBY BRUMLEY

Gulfport  
JOHN W. WEBER III  
ELLEN ALLRED

March 7, 2007

Mr. Steven Shelton  
MDOC Number 40281  
Post Office Box 1079  
Woodville, MS 39669

Dear Mr. Shelton:

In response to your letter dated February 25, 2007, Gary Silberman, Esq. has never worked for the Federal Public Defender office. In private practice, he did receive appointments by the Court to represent indigent defendants.

When you say "returned to state custody," that means the State had you first and you were merely borrowed by the Federal Prosecutor to process your federal charges. Once you were sentenced, you were returned to the State.

Although your state judgment may say it is to run concurrent with the federal sentence, there is no ruling that the federal sentence run concurrent with the state. So once you finish doing your state time, you will still owe the federal time.

I do not know how to get the detainer removed, or get you to the BOP since the state had you first.

I am sorry that I cannot be of more help.

Sincerely yours,



S. Dennis Joiner  
Federal Public Defender

SDJ:jj