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IN THE

COPY

SUPREME COURT OF THE STATE

OF MISSISSIPPI

FILED

FEB 15 2007

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

*Per COA order
of 2/15/07*

STEVEN SHELTON
PETITIONER, Pro se

VERSUS

STATE OF MISSISSIPPI
Respondent

NO. 2006-TS-02128-COA
2006-TS-02134-COA

BRIEF FOR PETITIONER

STEVEN SHELTON #40281
WILKERSON Co. CORR.
FACILITY
P.O. box 1079
WOODVILLE, MS 39669

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STATEMENT OF THE ISSUES

ISSUE NO. I: whether PETITIONER'S FIRST APPEAL should have been dismissed in the TRIAL COURT?

ISSUE NO. II: whether ORIGINAL POST CONVICTION MOTION should have been TIME BARRED?

ISSUE NO. III: whether COUNSEL WAS ineffective by ADVISING TO PLEA GUILTY before CONDUCTING REASONABLE PRETRIAL INVESTIGATION OF APPLICABLE LAW AND FACTS?

ISSUE NO. IV: whether COUNSEL WAS ineffective TO PRESENT CONDITIONS OF PLEA THAT GO UNFULFILLED?

STATEMENT OF THE CASE

THIS APPEAL PROCEEDS FROM RAVEN COUNTY, MISSISSIPPI AND A JUDGEMENT OF GUILTY FOR TWO OFFENSES OF SALE OF CONTROLLED SUBSTANCE AGAINST STEVEN SHELTON, RESULTING IN CONCURRENT SENTENCES OF 30 YEARS, 18 SUSPENDED 12 TO SERVE WITH 5 POST RELEASE SUPERVISION TO RUN CONCURRENT WITH A PRIOR FEDERAL CONVICTION BY PLEA AGREEMENT ON OCT. 4, 2001. HONORABLE SAMMC RICHARDSON, CIRCUIT JUDGE, PRESIDING. STEVEN SHELTON IS PRESENTLY INCARCERATED WITH MISSISSIPPI DEPARTMENT OF CORRECTIONS.

FACTS

ON OCT. 3, 2005 STEVEN SHELTON THE PETITIONER, PRO SE, DELIVERED HIS MOTION FOR POST CONVICTION RELIEF TO THE PRISON AUTHORITIES FOR MAILING. THE CLERK OF THE CIRCUIT COURT IN RANKIN COUNTY MISSISSIPPI RETURNED THE PETITIONERS MOTION UNFILED WITH A NOTATION OF INCOMPLETE. AFTER FINDING HIS ERROR PETITIONER RETURNED HIS MOTION THAT WAS FILED ON OCT. 21, 2005. ON OCT. 24, 2005 THE TRIAL COURT DENIED THE MOTION AS BEING TIME BARRED PURSUANT TO 99-37-5(2) MISS. CODE ANN. (REV. 2000). SHELTON SENT A MISTITLED MOTION OF APPEAL ON NOV. 3, 2005 AND WAS DENIED ON NOV. 16, 2005 (EX. B) ALTHOUGH THE PETITIONER WAS UNAWARE OF THIS DENIAL UNTIL APPROX. OCT. 25, 2006 (EX. A) WHEN HE RECEIVED A COPY FOR HIS RECORDS. THE PETITIONER FILED A MOTION FOR OUT OF TIME APPEAL TO THE TRIAL COURT ON OCT. 25, 2006 WHICH WAS DENIED ON NOV. 22, 2006.

SUMMARY OF ARGUMENT

•
SHELTON STATES HE WAS COERCED INTO

ENTERING GUILTY PLEA'S TO TWO (2) SEPERATE COUNTS OF SALE OF CONTROLLED SUBSTANCE by his RETAINED COUNSEL. He WAS led to believe that REGARDLESS OF his PROCLAIMED INNOCENSE THAT if he TOOK THE CASES TO TRIAL he would be FOUND GUILTY REGARDLESS OF THE EVIDENCE AND SENTENCED TO life WITHOUT PAROLE. SHELTON'S ATTORNEY PROMISED CONCURRENT SENTENCE'S OF 18 YEARS, 16 SUSPENDED, 12 TO SERVE WITH 5 ON POST RELEASE SUPERVISION TO RUN CONCURRENT WITH his PRIOR FEDERAL SENTENCE if he would PLEA GUILTY. SHELTON ARGUES THAT by his ATTORNEY FILING NO PRETRIAL MOTIONS TO EVALUATE THE VALIDITY OF THE EVIDENCE, THE PLEA'S OF 18 YEARS BEING WITHDRAWN DURING THE SENTENCING HEARING AND REPLACED WITH 30 YEAR SENTENCE'S AND his SENTENCE'S HAVING NOT RUN CONCURRENT WITH his PRIOR FEDERAL SENTENCE RENDER'S his COUNSEL INEFFECTIVE AND his PLEA'S UNINTELLIGENT, UNKNOWING, INVOLUNTARY AND THUS CONSTITUTIONALLY INFIRM. PETITIONER STATES his POST CONVICTION MOTIONS SHOULD NOT HAVE BEEN DISMISSED AS TIME BARRED AND THAT his APPEAL SHOULD HAVE BEEN GRANTED OR IT'S DENIAL MADE KNOWN TO him.

ARGUMENTS

ISSUE NO. I: Whether PETITIONER'S FIRST APPEAL should have been dismissed in the TRIAL COURT?

PETITIONER'S POST CONVICTION MOTIONS were denied on Oct. 24, 2005. PETITIONER filed A MOTION Titled "OUT OF TIME" APPEAL on Nov. 3, 2005.

PETITIONER WAS UNAWARE OF THE CORRECT FORMAT AND PROCEDURES TO PERFECT APPEAL due to the INABILITY TO ACCESS RESEARCH MATERIALS during his INCARCERATION. PETITIONER REASONED THAT if his TIME had TOLLED AN "OUT OF TIME" APPEAL WAS his only AVENUE in SEEKING REVIEW OF his CASE. MINNIFIELD v STATE, 585 So.2d 723, MISS. LEXIS 530, MINNIFIELD ATTEMPTED, AS BEST HE COULD, GIVEN his INCARCERATION, TO COMMUNICATE his desire TO APPEAL within the THIRTY DAYS ALLOWED. PETITIONER STATES even though MIS-TITLED his MOTION should have been RECOGNIZED AS his WANT OF APPEAL. MISS. R. APP. P. 3(c) WHICH STATES IN PART... AN APPEAL SHALL NOT be dismissed FOR INFORMALITY OF FORM OR TITLE OF MOTION.

ISSUE NO. II: Whether ORIGINAL POST CONVICTION MOTIONS Should have been TIME BARRED?

PETITIONER SUBMITS UPCCRA Three-year STATUTE OF LIMITATIONS Required IN CASES OF A GUILTY plea, A MOTION FOR POST CONVICTION Relief MUST be filed WITHIN Three (3) YEARS AFTER THE ENTRY OF THE JUDGEMENT OF CONVICTION Id. The LIMITATION FOR STATE PRISONERS TO FILE A "MOTION FOR POST CONVICTION Relief" RUNS, UNLESS TOLLED, AND IN "APPROPRIATE CIRCUMSTANCES" IT CAN BE TOLLED CAMPBELL v STATE, 611 So.2d 201, 210 (1992).

IN ORDER TO COME WITHIN THESE "APPROPRIATE CIRCUMSTANCES," THE PETITIONER MUST SHOW THAT: (1) HE WAS PREVENTED FROM FILING A POST CONVICTION MOTION (2) BY STATE ACTION (3) IN VIOLATION OF THE CONSTITUTION OR FEDERAL LAW, ARGUING THAT HE HAS A CONSTITUTIONAL RIGHT TO MEANINGFUL ACCESS TO THE COURTS THROUGH ADEQUATE LAW LIBRARY OR ASSISTANCE FROM LEGALLY TRAINED PERSONNEL. BY BEING DENIED THESE IS JUST AS MUCH IMPEDIMENT AS IF THE STATE WERE TO TAKE "AFFIRMATIVE STEPS" TO PREVENT THE PETITIONER FROM FILING HIS POST CONVICTION MOTION. THE ABSENCE OF SOME ASSISTANCE FROM LEGALLY TRAINED PERSONNEL VIOLATES THE PETITIONER'S FIRST AMENDMENT RIGHTS THROUGH THE FOURTEENTH AMENDMENT TO ACCESS TO THE COURTS BOUNDS v

Smith, 430 U.S. 817 (1977). Additionally, The PETITIONER TOOK ACTION IN THE UNITED STATES DISTRICT COURT THAT he has been denied access to the LAW LIBRARY AND THAT he WAS CONCERNED THAT he would NOT be able to file his POST CONVICTION MOTION before The STATUTE OF LIMITATIONS expired see; MEMORANDUM OPINION AND ORDER (EXC-3) By VIRTUE OF AN INADEQUATE LAW LIBRARY CONSTITUTES A "STATE CREATED IMPEDIMENT" THEREBY TOLLING THE THREE YEAR LIMITATION PERIOD citing BALAWAJDER v JOHNSON, NO. 99-10807, 252 F.3d 1357 (5th CIR 2001) See Also, FIFTH CIRCUIT RULE 47.5.4.

The PETITIONER KNEW THAT THE UPCRRRA EXISTED AND THAT IT IMPOSED A THREE (3) YEAR LIMITATION AND BECAUSE he did THAT "AFFIRMATIVE ACTION" before The STATUTE OF LIMITATIONS expired. GASTON v STATE, 817 So.2d 613, 616 (MISS. CT. APP. 2002). AS The PETITIONER POINTS OUT, he MAILED his POST CONVICTION MOTION TO THE COURT FOR FILING ON OCT. 3, 2005, A day before his deadline expired.

FURTHER, The PETITIONER PRESENTED EVIDENCE TO SUPPORT his POSITION THAT The CLERK OF RANKIN COUNTY RETURNED his POST CONVICTION MOTION "UNFILED." FOR THESE REASONS, TOO, his POST CONVICTION MOTION IS NOT TIME BARRED AND THE CLAIMS ASSERTED HEREIN SHOULD be Addressed ON THE MERITS.

ISSUE No. III: Whether Counsel was ineffective by Advising To plea guilty before Conducting REASONABLE PRETRIAL INVESTIGATION OF APPLICABLE LAW AND FACTS?

PETITIONER ASSERTS AND AFFIDES IN HIS SWORN AFFIDAVIT UNDER PENALTY OF PERJURY, ATTACHED AND INCORPORATED HERE TO BY REFERENCE; THAT HIS RETAINED COUNSEL ADVISED AND PERSUADED HIM TO PLEAD GUILTY TO THE CHARGES (2) OF SALE OF CONTROLLED SUBSTANCE, BEFORE CONDUCTING REASONABLE INVESTIGATION OF THE LAW AND FACTS.

PETITIONER AFFIDES THAT BUT FOR COUNSEL'S CONSTITUTIONALLY DEFICIENT ERRONEOUS ADVISE AND PERSUASION, HE WOULD HAVE MAINTAINED AND PROFESSED HIS ACTUAL INNOCENCE BEFORE A JURY OF HIS PEERS.

PETITIONER ASSERTS THAT COUNSEL'S DEFICIENT PERFORMANCE IN NOT INVESTIGATING APPLICABLE LAW BEFORE ADVISING AND PERSUADING PETITIONER TO PLEAD GUILTY IS WELL OUTSIDE AN OBJECTABLE STANDARD OF A REASONABLE STANDARD OF EFFECTIVE REPRESENTATION THAT PREJUDICE IS PRESUMED, SUPRA.

THE LONG STANDING TEST FOR DETERMINING THE VALIDITY OF A GUILTY PLEA IS WHETHER THE PLEA REPRESENTS A VOLUNTARY AND INTELLIGENT CHOICE AMONG THE ALTERNATIVE COURSES OF

ACTIONS open to the defendant see, Alford v North Carolina, 291 U.S. 82 (1934). When represented by Counsel during a plea, the voluntariness of the plea depends on whether Counsel's advice to plea guilty was within the wide range of competence demanded of attorneys in criminal cases. McMann, supra, 397 U.S. 759 (1970). A defendant has a right to make a reasonably informed decision whether to enter a plea of guilty. see Hill v Lockhart, 474 U.S. 52 (1985). Prior to trial, petitioner was entitled to rely upon his attorney to make an independent examination of the facts, circumstances, pleadings and laws involved and then to offer his informed opinion as to what plea to enter. Van Moltke v Gilles, 332 U.S. 208 (1948). Where the alleged error is failure to investigate or discover exculpatory evidence, the determination of whether the error "prejudiced" the petitioner by causing him to plead guilty rather than elect trial depends on the likelihood that proper investigation or discovery of evidence would have led counsel to change his recommendation as to what plea to enter. Similarly, where the alleged error is failure to advise of a potential affirmative defense to the crime charged, the resolution of the "prejudice"

will depend largely on whether the Affirmative defense likely would have succeeded at trial. see Hill supra, 474 U.S. 52 (1985). This case does not involve a situation where the defendant was competently advised of the law and simply choose to plead guilty and forego a trial. Rather, in this case, the Petitioner was deprived of the opportunity to make an informed decision based upon adequate legal advice.

Petitioner's position is that he was forced to plea guilty to avoid receiving a life sentence because his lawyer was unprepared citing V.A. v. Superintendent, Powhatan Corr. Ctr., 643 F.2d 167 (4th Cir. 1981); despite the fact that the plea transcript facially demonstrates a voluntary plea.

Throughout these proceedings, from the time of arraignment until he accepted his lawyer's advice to plead guilty, he had insisted on going to trial on a plea of not guilty.

Petitioner retained a second attorney with the understanding he would be afforded adequate representation. Twice, he had rejected the advice that he accept a plea bargain. Petitioner had a right to plead not guilty and go to trial. U.S. Const. Amend. Six as afforded through the fourteenth Amend. So, he was prejudiced because his attorney was

unprepared to represent him effectively.

ISSUE NO. IV : Whether Counsel was ineffective to present conditions of plea that go unfulfilled?

One of the provisions of Petitioner's plea Agreement was that his concurrent state sentences were to run concurrent with his existing federal sentence. There is no record of this provision being implemented and petitioner can find nothing to substantiate this through Mississippi Department of Corrections. Petitioner was misrepresented by Counsel due to Counsel's advising petitioner to enter the plea's of guilty based on the resulting sentences running concurrent with his prior federal sentence, when the federal authorities had not consented to this agreement. Bell v. State, — So.2d — (Miss. 1999). The law is clear that where the defendant receives any such advice of counsel, and relies on it, the plea has not been knowing and intelligently made and is subject to attack. Burgin v. State, 522 S.W. 2d 159 (Mo. App. 1975). Ineffective assistance of counsel may include instances where defendant's attorney misrepresents information regarding the plea to the defendant, thereby inducing him to

plead guilty Myers v STATE, 583 So.2d 174, 177 (Miss. 1991)
guilty pleas induced by promises or assurances
which go unfulfilled may be held involuntary
when defendant relies on such promises
Mowdy v STATE, 638 So.2d 738, 747 (Miss. 1994)
plea induced by fear, deception or improper
inducements is not voluntary UNIFORM CIRCUIT
AND COUNTY COURT Rule 804, Subd. A, PAR. 3.

CONCLUSION

Shelton should not have been time barred
in the trial court and though not so eloquently
state has satisfied both prongs of the
ineffective assistance of counsel test. his
cases should be reviewed on the merits
and remanded to the trial court for a new
trial.

Respectfully Submitted,

Steven Shelton

STEVEN SHELTON

PETITIONER, PRO SE

CERTIFICATE OF SERVICE

This is to CERTIFY THAT I, The Undersigned, have
This day mailed, VIA United States Mail, Postage
pre-paid, A TRUE AND CORRECT COPY of The foregoing
AND ATTACHED INSTRUMENTS 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 29th day of JANUARY, 2007

STEVEN SHELTON

PETITIONER

MDOC # 40281

P.O. bx 1079

Woodville, MS 39669

TO BE SURE I ADDRESSED ALL MY ISSUES AND PRESENTED A COMPETENT ARGUMENT. I COULD NOT GET RESEARCH MATERIALS TO THE POINT OF FILING IN THE FEDERAL COURTS. I KNEW I HAD A THREE YEAR LIMITATION AND REPEATEDLY VOICED THIS TO THE OFFICIALS WHERE I WAS HOUSED AND TO THE COURTS. I CHANGED FACILITIES APPROX. 6 MONTHS BEFORE MY THREE YEAR LIMITATION TOLLED TO A FACILITY THAT HAD A LIMITED LAW LIBRARY AND WAS ABLE TO PUT TOGETHER THE INFORMATION I HAD GATHERED TO THAT POINT INTO A POST CONVICTION MOTION. I MAILED THESE POST CONVICTION MOTIONS ON OCT. 3, 2005.

I, STEVEN RAY SHELTON, do Solemnly SWEAR /AFFIRM THAT I AM A CITIZEN OF THE STATE OF MISSISSIPPI, AND DO HEREBY STATE THAT THE INFORMATION HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I STATE THESE FACTS UNDER THE PENALTY OF PERJURY.

Steven Ray Shelton
STEVEN RAY SHELTON

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 29 DAY OF JANUARY 2007.

Augusta Andrews

My Commission Expires:

NOTARY PUBLIC

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 30, 2009
BONDED THRU STEGALL NOTARY SERVICE

STATE of MISSISSIPPI *

*

COUNTY of WILKINSON *

AFFIDAVIT OF OATH

PERSONALLY APPEARED before me, THE UNDERSIGNED
AUTHORITY IN AND FOR THE AFORESAID JURISDICTION, STEVEN RAY
SHELTON, who AFTER being duly SWORN, did state
under oath as follows:

My FIRST ATTORNEY I HAD WAS RELIEVED OF HIS DUTY
AFTER INSISTING I PLEA GUILTY TO THE CHARGES OF SALE OF
A CONTROLLED SUBSTANCE IN RANKIN COUNTY, MISSISSIPPI. MY
FAMILY HIRED ANOTHER ATTORNEY THAT NEVER CONTACTED ME
BUT ONE TIME PRIOR TO COURT. UPON ARRIVAL AND QUESTIONING
HE KNEW NOTHING ABOUT MY CASES AND HAD FILED NO MOTIONS
OR ANYTHING. I HAD BEEN IN JAIL APPROX. 14 MONTHS WITHOUT
HAVING VISITATION WITH MY CHILDREN AND ALREADY HAD A PRIOR
FEDERAL SENTENCE. WHEN MY ATTORNEY REPRESENTED THE PLEA
AGREEMENT TO RUN CONCURRENT WITH MY FEDERAL SENTENCE
AND MY KNOWLEDGE THAT TO GO TO A JURY TRIAL WITH UNPREPARED
COUNSEL WAS A NO WIN SITUATION. I AGREED TO THE PLEA.

AFTER BEING MOVED TO M.D.O.C. AND REVIEWING MY CASE
AND SEEING TO THE EXTENT I WAS MISREPRESENTED I
STARTED TO WORK ON MY POST CONVICTION. NOT BEING
FAMILIAR WITH LEGAL WORK I SAUGHT RESEARCH MATERIALS



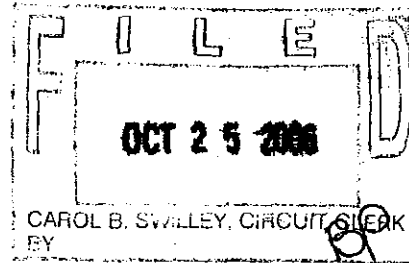
Carol B. Swilley

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 E 055

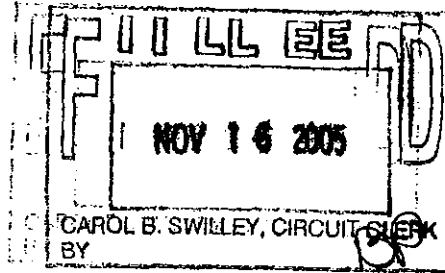
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IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

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 16TH DAY OF NOVEMBER, 2005.

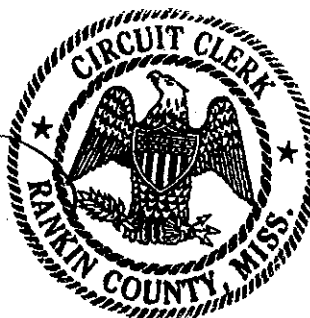
 A handwritten signature in cursive script, appearing to read "Lamar R. Richards", written over a horizontal line.

CIRCUIT JUDGE

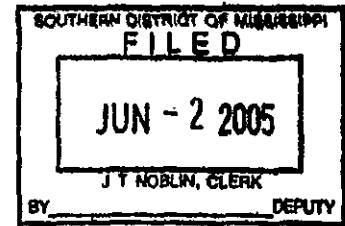
STATE OF MISSISSIPPI
COUNTY OF RANKIN

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

BY Becky Bracey, D.C.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION



STEVEN RAY SHELTON

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:04CV79-RHW

RICHARD STRINGER

DEFENDANT

MEMORANDUM OPINION AND ORDER

This cause came before the Court for a screening hearing on April 12, 2005, to explore the allegations in Plaintiff's complaint pursuant to the provisions of the Prison Litigation Reform Act, 28 U.S.C. § 1915. Pursuant to § 1915(e)(2)(B)(ii), the Court "shall dismiss the case at any time" if the action "fails to state a claim on which relief may be granted." Furthermore, pursuant to § 1915A(b)(1), the Court after conducting a screening hearing, shall dismiss a complaint if it "is frivolous, malicious, or fails to state a claim upon which relief may be granted."

Plaintiff alleges that he has been denied access to the law library and that he is concerned that he will not be able to file his habeas petition before the statute of limitations expires. In essence he has stated a claim for denial of access to the courts by virtue of an inadequate law library. At the hearing, Plaintiff stated that while incarcerated at the Marion Walthall Correctional Facility, he had access to legal research through the Inmate Legal Assistance Program (ILAP). He complained, however, that the ILAP would provide only specific not general legal information. Also, Plaintiff stated that six months remain on the statute of limitations for his habeas petition, that he has been moved to a new jail facility, and that he now has access to a law library at this new facility.

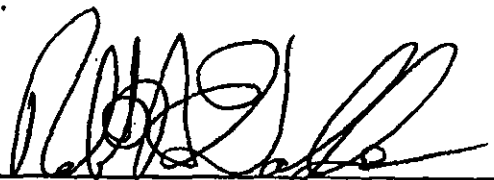
Prisoners have a constitutional right of meaningful access to the courts through adequate

law libraries or assistance from legally trained personnel. *Degrate v. Godwin*, 84 F.3d 768, 768-69 (5th Cir. 1996). This constitutional right does not afford prisoners unlimited access to prison law libraries. Additionally, before a prisoner may prevail on a claim that his constitutional right of access to the courts was violated, he must demonstrate that his position as a litigant was prejudiced by his denial of access to the courts. *McDonald v. Steward*, 132 F.3d 225, 230 (5th Cir. 1998). In order to state a cause of action under § 1983 for denial of access to a law library, Plaintiff must demonstrate prejudice. *Id.* at 230-31.

By Plaintiff's own admission the statute of limitations has not yet run and he now has had access to a law library with approximately six months in which to complete his habeas petition. Accordingly, Plaintiff has failed to demonstrate prejudice. Accordingly, his § 1983 petition should be dismissed pursuant to § 1915(e)(2)(B)(ii) and § 1915A(b)(1) for failure to state a claim. The dismissal of Plaintiff's complaint shall count as a strike. See 28 U.S.C. § 1915(g). Plaintiff is cautioned that if he acquires three or more strikes, he shall be barred from proceeding IFP unless he is under imminent danger of serious physical injury.

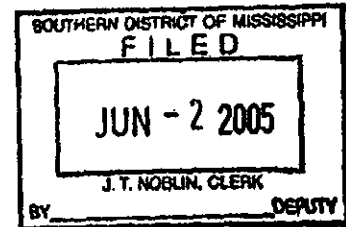
IT IS THEREFORE ORDERED that Plaintiff's complaint is DISMISSED WITH PREJUDICE, and all pending motions are dismissed as moot.

SO ORDERED, this the 31st day of May, 2005.



ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION



STEVEN RAY SHELTON

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:04CV79-RHW


RICHARD STRINGER

DEFENDANT

FINAL JUDGMENT

Based on the findings and conclusions outlined in the Court's Memorandum Opinion and Order in this cause, this case is hereby DISMISSED WITH PREJUDICE, and a separate judgment of dismissal entered in accordance with Fed. R. Civ. P. 58. The dismissal of Plaintiff's complaint counts as a strike in accordance with 28 U.S.C. § 1915(g).

SO ORDERED, this the 31st day of May, 2005.



ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE