

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
NO. 2006- KA-02160- COA

RANDY LEONARD

**FILED**

**COPY**  
APPELLANT

V

STATE OF MISSISSIPPI

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SUPREME COURT  
COURT OF APPEALS

APPELLEE

SUPPLEMENTAL BRIEF AND FILING Petition For Writ of Habeas Corpus

APPEAL FROM THE FIFTH CIRCUIT COURT DISTRICT  
OF WINSTON COUNTY, MISSISSIPPI

HONORABLE C.E. Morgan III CIRCUIT JUDGE

ORAL ARGUMENT NOT REQUESTED

Randy Leonard # 77533  
PRO-SE - Appellant  
LEAKE County Correctional Facility  
399 C.O. Brooks Street Dorm C-35  
Carthage, MISSISSIPPI 39051

THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI  
NO: 2006-KA-02160-COA

RANDY LEONARD  
V  
STATE OF MISSISSIPPI

APPELLANT  
  
APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned PRO-SE OF record certifies that the Following listed persons have an interest in the outcome of the case. These representations are made in order that the justices of this court may evaluate possible disqualifications or rescusal.

- (1) Hon. C. E. Morgan, III Circuit Judge (5) Demetrius McMillan  
Post office Box 721 114 DEAN AVE  
Kosciusko, MS. 39090 LOUISVILLE, MS. 39339  
(Mother of his three children)
- (2) Hon. Mike Howie, Asst. D.A. (6) MISSISSIPPI OFFICE OF INDIAN  
P.O. Box 1262 APPEALS 301 N. Lamar St. Suite 210  
Grenada, MS. 38902 Jackson, MS. 39201  
Hon. George T. Holmes, MBB, No. 2565
- (3) Hon. Charles Maris JR Asst. Attorney General  
P.O. Box 220  
Jackson, MS 39205
- (4) Randy LEONARD # 77533 Appellant-PROSE  
LEAKE County Correctional Facility  
399 C.O. Brooks Street Dorm-C-35  
Carthage, MS. 39051

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### STATEMENT OF ISSUES

I. THE TRIAL COURT erred because it was without jurisdiction to try and impose sentence according to 97-3-95(1)(2) (Rvol 1 pg 3)  
Discovery violation

II. THE TRIAL COURT erred in Allowing Amendment of Indictment after trial (Rvol 1 pg 24) (1 thru 24) 99-17-15 in violation thereby.

III THE TRIAL COURT erred in overruling his Motion to DISMISS and or Judgment NOV (Rvol 1 pg 40)-40

~~IV~~. That there was prejudicial delay by his Fast & Speedy trial right under his (6) six Amendment rights (14th) Fourteenth Amendment right. (Rvol 1 pg 22) 99-17-1

V Improper selection of Gender natural Jurors more women than men in this particular case (Rvol 1, pg 29)

## STATEMENT OF ISSUES

- I DID THE TRIAL Court err because it was without jurisdiction to try and impose Sentence according to 97-3-95(1)(a) ?
- II DID THE TRIAL Court err in allowing Amendment of Indictment after trial U.R.C.C.R Rule 7.06 ?
- III DID THE TRIAL Court err in overruling his Motion to Dismiss and or Judgment NOV (R vol 1 pg 40-41)
- IV WAS there prejudicial delay by his Fast? Speedy trial right under his (6) SIX Amendment right 14th Fourteenth Amendment right.
- V WAS there Improper Selection of Gender neutral Jurors more women than men in this particular case (R vol 1, pg 29)

# TABLE OF AUTHORITIES STATE AND FEDERAL

## CASES

|                     |                                             |   |
|---------------------|---------------------------------------------|---|
| Carter V STATE      | 524 So. 2d 324, 325 (MISS 1988)             | 3 |
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| M.C.A.R. 3.21               | 5                 |
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| 99-35-107-109               | 4                 |
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## OTHER AUTHORITIES

|                                |              |
|--------------------------------|--------------|
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## STATEMENT OF THE CASE

The Appellant in the case at bar in this appeal proceeds from the Circuit Court of Winston County, Mississippi, and the judgment of conviction after a jury trial held November 2, 2006 the Honorable C.E. Morgan, III, Circuit Judge presiding; PRO-SE, Randy Leonard, was convicted of the crime of sexual battery under M.C.A. 97-3 95(1)(5) (1972); the trial Court Deferred Sentencing (R Vol 1 pg 144) and Appellant Leonard was sentenced to a term of Fifteen years as follows: Five (5) years of incarceration with ten (10) years Post-release supervision. PROSE Appellant Randy Leonard is presently incarcerated with the Mississippi Department of Corrections.

### FACTS part (1)

Jalysa Hardin, age sixteen (16), spent the night at her grandmother's house in Louisville August 12-13, 2006. Jalysa's aunt Demetrius McMillan and the appellant Randy Leonard lived at the same residence as the grandmother with their three children and another child of Demetrius [T. pg 37-47 & 47-56]. Jalysa reported to her mother Brenda Hardin the morning afternoon of August 13th she was awakened at approximately 4:00 AM that morning to find Appellant allegedly inserting his finger into her vagina. Id. Jalysa testified that her four cousins, grandmother and aunt were all asleep in the house when this alleged incident occurred. A transcribed statement of Appellant here Randy Leonard was introduced stating that Jalysa woke up when he was moving her leg and covering her with a towel as she slept on the sofa [R Ex. 5-1; T. 60]. The appellant also presented testimony of other witnesses contradicting certain details and providing a possible motive for Jalysa to fabricate the allegation [T. 65-82]

## Facts part (2) continue

The indictment alleged the offense occurred on August 14, 2006 [Ex. [Vol 1 pg 3]. The STATE sought to amend the indictment to change the incident date to August 13, 2006 [T. 24]; defense counsel objected [T. 24], the trial court waited until the trial was concluded and granted the amendment [T. 24, 64]. No order amending the indictment pursuant to M.C.A. 99-17-15 (1972) was ever entered. Cf. McKnight v State 738 So. 2d 312, 516 47 (Miss App 1999)

### SUMMARY OF THE ARGUMENT

- I. That the Appellant claims that the trial court erred because it was without jurisdiction to try and impose sentence according to 97-3-95 (1)(2) as an issue presented before this Court?
- II. That the Appellant claims that the trial court erred because it allowed the Amendment of indictment after trial in violation of 99-17-15?
- III. That the Appellant claims that the trial court erred in overruling his Motion For NEW Trial or Judgment Nov?
- IV. That the Appellant claims there was prejudicial delay by his Fast & Speedy trial right under his (6) Six Amendment rights (14th) Fourteenth Amendment right?
- V. That the Appellant claims the Improper selection of Gender natural Jurors more women than men in this particular case?

## Argument

While it is generally known in the instant case for review, As argued by the Appellant Randy Leonard(s) position that the Supreme Court & Court of Appeals basis for jurisdiction of this appeal, and that its basis will be found in the notion that the appellate Courts of this State have jurisdiction of appeals concerning convictions and sentences. MC Powell v State 465 So. 2d 1077; 1985 Miss. Code Ann. Section 99-35-101. And as stated by the record in the instant case for review, the Court has wide discretion when it affects a substantial right and all his issues which he thinks have merit are presented for resolution. And whether he as an appellant have been convicted in violation of law by the record presented M.R.A.P. 28 (3)(3) Carter v State 524 So. 2d 324, 325 (Miss 1988) Smith v State 550 So. 2d (1989).

### Memorandum of Petition For Writ of Habeas Corpus (Part 1)

Randy Leonard the Appellant - PROSE would submit that this Court can find merit and holding under the Mississippi habeas Corpus Statute, Miss. Code Ann. S 11-43-1 (1972). The procedure to obtain a habeas Corpus writ in the Courts of Mississippi is based upon our Mississippi law in which this state has a legitimate state interest. Cf. Henry v Mississippi 379 U.S. 443 85 S.Ct. 564, 13 L Ed 2d 408 rehearing denied 380 U.S. 926, 85 S.Ct. 878, 13 L Ed. 2d 813 (1965); Murdock v Memphis 87 U.S. (20 Wall) 590, 22 L. Ed 429 (1875). pursuant to M.R.A.P. Rule 9(b) which states Release after judgment of conviction of a felony and pending direct appeal shall be governed by Statute and uniform rule, which he would invoke by the Court's Authority.



## Memorandum of Petition For Writ of Habeas Corpus (Part 2)

Appellant Randy Leonard PRO-SE would assert that State and Federal Constitutional issues such as defendant's right to a speedy trial, evidentiary issues such as whether or not confessions are admissible in evidence, and issues as to guilt or innocence, are issues to be determined by the trial court that has jurisdiction to try the charge against the prisoner, and not the habeas corpus court. The function of the habeas corpus court in Mississippi in criminal cases is to release a prisoner who is being unlawfully held or to grant him a bail bond which he can make. Appellant would assert he is entitled to bail pending his appeal under Mississippi practice for release after judgment of convictions provided in Uniform Crim. R. Cr. Ct. Practice 7.02 Miss. Code Ann. § 99-35-105, 107, 109, 1990 MISS. CODE ANN. 99-35-115 Miss Code Ann. 99-35-117 (1994)

### CONCLUSION

WHEREFORE PREMISES CONSIDERED Appellant prays that this Honorable Court would overturn this conviction and sentence and discharge him from custody of the Mississippi Department of Corrections and expunge his record on this conviction. Citing *Trotter v STATE* 554 So.2d 313 (1989)

Respectfully Submitted,  
By: Randy Leonard  
# 77533

40 LEAKE County Correctional Facility  
399 G.O. Brooks Street  
Carthage, MS. 39051

Cynthia Jacobs

Notary Public State of Mississippi At Large  
My Commission Expires: June 25, 2010  
Bonded Thru Helden, Brooks & Garland, Inc.

Executed this 5th day of March, 2007.

(4)

My Commission Expires

## CERTIFICATE OF SERVICE

I the affiant - Petitioner Randy Leonard PRO-SE have caused to be mailed in accordance with the Rules of Mississippi Court Circuit and County Court Practice Rule 2.06 a true and correct copy of this Notice of Supplemental Brief And Filing Petition For Writ of Habeas Corpus by Memorandum of LAW pursuant to M. R. A. P. 28 in assignment of his case in the Court of Appeals, Ms. Const. Art. 3 § 21 11-43-1 on Appeal from a Jury trial entered November 2, 2006. Mississippi Rule of Evidence 103(1). Under his 1st, 5th, 6th, 8th, 14th Amendments rights. A copy of this has been provided to the following persons:  
CC

OFFICE OF CLERK / MS. BETTY WISEPHTON  
Supreme Court & Court of APPEALS  
P.O. Box 249

JACKSON, MS. 39205

Hon. C E Morgan III  
Circuit Judge  
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Hon. Charles Marcus Asst. Atty. Gen.  
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Jackson, MS. 39205

This 5<sup>th</sup> day of March 2007.  
PR-SE Appellant # 77533  
Randy Leonard

(5)