

**IN THE SUPREME COURT OF MISSISSIPPI**

**PATRICK JONES**

**APPELLANT**

**VS.**

**NO. 2007-TS-00133**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR APPELLANT**

**ORAL ARGUMENT REQUESTED**

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**Honorable Paul S. Funderburk  
District 1 Circuit Court Judge  
P.O. Drawer 1100  
Tupelo, MS 38802-1100**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that Justices of this Court may evaluate possible disqualification or recusal.

<b><u>NAME</u></b>	<b><u>POSITION</u></b>
Honorable Paul S. Funderburk	1 <sup>st</sup> Judicial Circuit Court Judge
Patrick Jones	Appellant
Charles E. Miller, Esq.	Counsel for Appellant
Clay Joiner, Esq.	District Attorney
Jim Hood, Esq.	Attorney General

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## **STATEMENT OF ISSUES**

### **ISSUE ONE**

THE ACTIONS OF JONES' LOWER COURT ATTORNEY CONSTITUTES  
INEFFECTIVENESS OF COUNSEL

### **ISSUE TWO**

THE COURT ERRED BY ACCEPTING THE GUILTY PLEA OF PATRICK JONES BASED  
ON THE FACT OF MEDICAL DEFENSE (CHEMICAL DEPENDENCY)

### **ISSUE THREE**

THE COURT ERRED IN NOT GRANTING A HEARING ON ACTUAL INNOCENCE  
BASED ON FACT AND CHEMICAL DEPENDENCY OF PATRICK JONES

### **ISSUE FOUR**

THE LOWER COURT ERRED IN ITS FAILURE TO GRANT AN CHANGE OF VENUE  
EVIDENTIARY HEARING

### **ISSUE FIVE**

WHETHER THE LOWER COURT ERRED IN PATRICK JONES COMPETENCY TO  
STAND TRIAL

### **ISSUE SIX**

WHETHER THE LOWER COURT ERRED IN REVOKING PATRICK JONES PROBATION

### **ISSUE SEVEN**

THE SENTENCE OF PATRICK JONES WAS EXCESSIVE AND UNCONSTITUTIONAL

### **STATEMENT OF THE CASE**

Petitioner, Patrick Jones pled guilty to simple assault on a police officer and was sentenced to five (5) years in the Mississippi Department of Corrections, he was also placed on post conviction relief. Said post conviction relief was revoked and he is now serving time in the Mississippi Department of Corrections.

### **STATEMENT OF FACTS**

Patrick Jones, a black male with a history of chemical and related problems. On or about June, 2003, Patrick Jones was indicted in Monroe County, State of Mississippi on two counts of simple assault on a police officer.

On or about 2004, Patrick Jones pled guilty to simple assault on a police officer and was sentenced to serve a term of five (5) years plus fines and court costs. He received credit for time served and the balance of his term was suspended and Jones placed on four (4) years post release supervision. On July 31, 2006 Circuit court order was signed and filed revoking post release supervision and Jones was ordered to serve five(5) years in the custody of the Mississippi Department of Corrections. Further ordered that Jones must enroll in and successfully complete long term therapeutic drug and alcohol treatment while incarcerated in Mississippi Department of Corrections.

Further, a hearing on the issue of probation revocation was conducted without the benefit of an attorney. Jones had employed an attorney to represent him, however the court ignored said representation and conducted hearing on the issue of probation revocation without said attorney being present.

Additionally, the probation officer filed criminal charges against Jones in Aberdeen City Court. That after a hearing the City Court Judge dismissed the charges. (See attached exhibit).

### **SUMMARY OF THE ARGUMENTS**

The trial judge and Jones's attorneys did not make adequate inquiry concerning Jones's competency and other defense issues. Failure to do so deprived Jones of his basic constitutional rights including his 6<sup>TH</sup> Amendment Right to have effective assistance of counsel and other rights.

The adjudication of guilt was against the overwhelming weight of the evidence.

That the verdict was in violation of Jones's constitutional rights to the 14th Amendment to due process, the 5th Amendment, 6th Amendment right to have effective assistance of counsel and 4<sup>th</sup> Amendment search and seizure rights.

That the sentence of Mr. Jones to serve five (5) was excessive and in violation of the 8th Amendment of the United States Constitution.

### **ARGUMENT**

#### **ISSUE ONE**

#### **THE ACTION OF JONES' LOWER COURT ATTORNEY**

#### **CONSTITUTED INEFFECTIVENESS OF COUNSEL**

Jones's counsel did not address the issues of defenses, changing of venue, probable cause and other issues related to charge of assault of police officer.

The Court in McMillian vs. State, So. 2d (Miss. App. 6-27-2000) held that the two-part test announced in Strickland v. Washington, 4661 U. S. 668 (1984), and adopted by the Mississippi Supreme Court in Stringer v. State, 454 So.2d 468 (Miss. 1984), is our standard

of review for resolving whether counsel was effective. The Court further held that under Strickland, it must be demonstrated (1) that counsel's performance was deficient and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.

The Court held in Conner v. State, 684 So.2d 608 (Miss. 1996) that the application of the Strickland test applied with deference to counsel's performance considering the totality of the circumstances, to determine whether counsel's actions were both deficient and prejudicial. Jones concludes that said counsel's actions were both deficient and prejudicial.

## **ISSUE TWO**

### **THE COURT ERRED BY ACCEPTING THE**

### **GUILTY PLEA OF PATRICK JONES**

URCC Rule 8.04(a) (3) requires that in order for the trial court to accept a guilty plea there must be a factual basis for the guilty plea. In this case, there was no evidence that Jones committed the crime of simple assault on a police officer, and therefore no factual basis existed for a guilty plea. In reviewing this issue the court looks to the entire record. Corley v. State, 585 So. 2d 765, 768 (Miss. 1991).

## **ISSUE THREE**

### **REVOCATION OF PROBATION**

### **ACTUAL INNOCENCE**

The appellant argues that his constitutional rights have been violated, which resulted in his



guilty plea. Jones further argues that he is innocent.

The court in United States vs. Torres (163 F 3d 909) (5<sup>th</sup> Cir. 1999), held that, to establish “actual innocence” for the purpose of bringing a motion to vacate despite procedural default, the petitioner must demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him. “Actual innocence” means factual innocence, not mere legal sufficiency. Further the court held that in essence, then, Torres can only overcome his procedural default if he established that he was, “actually innocent” of his conviction. This standard imposes a heavy burden on a petitioner, it is more likely than not that no reasonable juror would have convicted him. “Indeed” actual innocence means factual innocence, not mere legal insufficiency. Consequently, we will reverse Torres’s firearm conviction only if he can demonstrate, based on all of the evidence, that, it is more likely than not that no reasonable juror would have convicted Tores.”

That in light of the fact and the chemical dependency of Jones their should have been a hearing on this matter to determine actual innocence.

#### **ISSUE FOUR**

##### **THE LOWER COURT ERRED IN ITS**

##### **FAILURE TO GRANT AN EVIDENTIARY HEARING**

##### **ON POST CONVICTION RELIEF**

The State Supreme Court has held that a post-conviction petitioner is entitled to an evidentiary hearing if he has filed a post-conviction motion which states a claim upon which relief may be granted, if proven. Myers v. State, 583 So.2d 174, 176 (Miss. 1991), relying on Neal v. State, 525 So.2d 1279, 1280-1281 (Miss. 1987).

## **ISSUE FIVE**

### **THE LOWER COURT ERRED IN PATRICK JONES**

#### **COMPETENCY TO STAND TRIAL**

The evidence shows that Mr. Jones had a pre- existing medical condition that affected his mental ability. That there was never an examination to determine whether Mr. Jones was competent to stand trial in accordance with Mississippi Code Annotated § 99-13-11.

## **ISSUE SIX**

### **THE LOWER COURT ERRED IN**

#### **REVOKING PATRICK JONES PROBATION**

That the adjudication of guilt for the crime of simple assault on a police officer as to Mr. Jones was against the overwhelming weight of evidence.

That Patrick Jones probation was revoked without the benefit of notice, attorney and reasonable cause for arrest. Further, the revocation was in violation of his 14<sup>th</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> Amendments to the United States Constitution and State Claims.

## **ISSUE SEVEN**

### **THE SENTENCE OF PATRICK JONES WAS**

#### **EXCESSIVE AND UNCONSTITUTIONAL**

Patrick Jones was sentenced to serve five (5) years in the Mississippi Department of Corrections. The sentence of Patrick Jones constitutes cruel and unusual punishment and is

disproportionate under the Eighth Amendment to the United States Constitution.

In Williams v. State, 784 So. 2<sup>nd</sup> 230 (Miss. App. 2000), the Court held that a sentence is subject to review, however, when it is alleged that the penalty imposed is disproportionate to the crime charged. Fleming v. State, 604 So. 2<sup>nd</sup> 280 (Miss. 1992); ***Davis v. State***, 510 So. 2<sup>nd</sup> 794, 797 (Miss. 1987); Presley v. State, 474 So. 2<sup>nd</sup> 612, 618 (Miss. 1985).

The Circuit Court judge ignored all available options and sentenced Jones to what amounts to an excessive sentence in the Mississippi Department of Corrections. Thus, such sentencing by the lower court judge constituted cruel and unusual punishment and was disproportionate under the Eighth Amendment and therefore should be reversed and dismissed, alternatively, a more appropriate sentence should be imposed.

Additionally, see the following case: Hutto v. Davis, 454 U.S. 370, 102 S. Ct. 703, 70 L. Ed. 2<sup>nd</sup> 556 (1982) Federal District Court's holding that a 40-year sentence for possessing less than nine ounces of marijuana was grossly disproportionate and in violation of Eighth Amendment, reversed, and Solemn v. Helmn, 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed. 2<sup>nd</sup> 637 (1983) sentences must be proportionate to the crime but reviewing courts should grant substantial deference. No penalty is per se constitutional. Considerations are gravity of the offense, sentences imposed on others in the same and other jurisdictions. Five (5) years sentence based on simple assault constitutes the violation of the Eighth Amendment.

### **CONCLUSION**

Appellant, Patrick Jones concludes that the lower court should have granted his request for Post Conviction Relief and that based on the foregoing arguments that the conviction against the petitioner should be set aside and vacated, alternatively a more appropriate sentence should


be imposed, alternatively an evidentiary hearing should be granted.

**DATED** this the 7<sup>th</sup> day of August, 2007.

**Respectively submitted,  
Patrick Jones**

By: 

**CHARLES E. MILLER  
His Attorney**

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**CERTIFICATE OF SERVICE**

I, Charles E. Miller, counsel for appellant, do hereby certify that I have this day mailed by United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief for Appellant to:

**Honorable Paul S. Funderburk  
District 1 Circuit Court Judge  
P.O. Drawer 1100  
Tupelo, MS 38802-1100**

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**DATED** this the 7<sup>th</sup> day of August, 2007.



**CHARLES E. MILLER**