

IN THE SUPREME COURT OF MISSISSIPPI

PAUL TAYLOR

**COPY**  
APPELLANT

VS.

**FILED**

JUL 13 2007

CAUSE NO. 2007-<sup>CA</sup>TS-00213

STATE OF MISSISSIPPI

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COURT OF APPEALS

APPELLEE

**BRIEF FOR APPELLANT**

**ORAL ARGUMENT REQUESTED**

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Honorable Andrew Baker  
Circuit Court Judge  
P. O. Drawer 368  
Charleston, MS 38921

Charles E. Miller, MSB [REDACTED]  
Miller & Miller  
Attorney for Appellant  
Post Office Box 1303  
McComb, MS 39648-1303  
Telephone: (601) 249-0017

John W. Chapman, Esq.  
District Attorney  
365 Loshier St., Ste. #210  
Hernando, Mississippi 38632

Jim Hood, Esq.  
Attorney General  
Post Office Box 220  
Jackson, Mississippi 39205-0220

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**CAUSE NO. 2007-TS-00213**

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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 Andrew Baker	7 <sup>th</sup> Judicial Circuit Court Judge
Paul Taylor	Appellant
Charles E. Miller, Esq.	Counsel for Appellant
John W. Champion, Esq.	District Attorney
Jim Hood, Esq.	Attorney General

  
**CHARLES E. MILLER**

**CHARLES E. MILLER, MSB [REDACTED]  
MILLER & MILLER  
ATTORNEY FOR APPELLANT  
POST OFFICE BOX 1303  
MCCOMB, MS 39648-1303  
TELEPHONE: (601) 249-0017**

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**STATEMENT OF ISSUES**

**ISSUE ONE**

THE ACTIONS OF TAYLOR'S LOWER COURT ATTORNEY CONSTITUTES  
INEFFECTIVENESS OF COUNSEL

**ISSUE TWO**

THE COURT ERRED BY ACCEPTING THE GUILTY PLEA OF PAUL TAYLOR

**ISSUE THREE**

THE COURT ERRED IN NOT GRANTING A HEARING ON ACTUAL INNOCENCE  
BASED ON FACT AND MENTAL CONDITION OF PAUL TAYLOR

**ISSUE FOUR**

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

**ISSUE FIVE**

THE SENTENCE OF PAUL TAYLOR WAS EXCESSIVE AND UNCONSTITUTIONAL

### **STATEMENT OF THE CASE**

Petitioner, Paul Taylor pled guilty to sale of morphine. Defendant was sentenced to nineteen (19) years in the Mississippi Department of Corrections with ten (10) years suspended to run concurrently.

### **STATEMENT OF FACTS**

Paul Taylor is a 50-year-old black male. Mr. Taylor has a physical disability that requires the use of morphine.

Mr. Taylor was arrested and charged with the sale of morphine in Tate and Panola counties. The record reflects that Mr. Taylor was approached by an undercover agent to sell morphine. Mr. Taylor has no history of the sale of morphine.

Paul Taylor was indicted in Tate County Criminal Cause CR2004-129BT on August 17, 2004 for sale of morphine; indicted on August 25, 2004 in Panola County Criminal Cause CR2004-14BP2 for sale of morphine; indicted in Panola County Criminal Cause CR2004-36LP1 on October 1, 2004 for sale of morphine; and in Panola County Criminal Cause CR2004-47BP1 on December 3, 2004 for sale of morphine. On March 24, 2005, Taylor entered pleas of guilty to CR2004-129BT, CR2004-143BP2 And CR2004-47BP1. On June 10, 2005, the Court sentenced Taylor to nineteen(19) years in the Mississippi Department of Corrections with nine (9) years to serve and ten (10) years suspended in each case with the sentences to run concurrently. The State agree to remand CR2004-34LP1. Taylor, by counsel Charles E. Miller filed identical petitions in Tate County and in the Second Judicial District of Panola County.

## **SUMMARY OF THE ARGUMENTS**

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

The verdict was against the overwhelming weight of the evidence, and a verdict in favor of Mr. Taylor should have been granted.

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

That at the time of the indictment, plea and sentence, Taylor was mentally incompetent and thus this court had no jurisdiction.

That the sentence of Mr. Taylor in Tate and Panola counties was excessive and in violation of the 8<sup>th</sup> Amendment of the United States Constitution.

## **ARGUMENT**

### **ISSUE ONE**

#### **THE ACTION OF TAYLOR'S LOWER COURT ATTORNEY**

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

Taylor's counsel did not address the issue of jurisdiction, issue of mental condition, severance, and other issues.

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, McMillian must demonstrate (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 6008 (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. Taylor concludes that said counsel's actions were both deficient and prejudicial.

## ISSUE TWO

### THE COURT ERRED BY ACCEPTING THE GUILTY PLEA OF PAUL TAYLOR

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 Taylor committed the crime of sale of morphine, 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

### ACTUAL INNOCENCE

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



guilty plea. Taylor 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 Torres."

That in light of the fact and the mental condition of Taylor a hearing should been had on this matter to determine actual innocence.

#### **ISSUE FOUR**

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

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

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 SENTENCE OF PAUL TAYLOR WAS EXCESSIVE AND UNCONSTITUTIONAL

Paul Taylor was sentenced to serve nineteen (19) years in the custody of Mississippi Department of Corrections with ten (10) years suspended. The sentence of Paul Taylor constitutes cruel and unusual punishment and is disproportionate under the Eighth Amendment to the United States Constitution.

In Williams v. State, 784 So. 2d 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 Taylor 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. Life without parole for uttering a \$100 bad check under recidivist statute based on six prior nonviolent convictions violates Eighth Amendment.

**CONCLUSION**

Appellant, Paul Taylor 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 13<sup>th</sup> day of July, 2007.

**Respectively submitted,  
Paul Taylor**

By:   
**CHARLES E. MILLER**  
His Attorney

**CHARLES E. MILLER, MSB [REDACTED]  
MILLER & MILLER  
ATTORNEY FOR APPELLANT  
POST OFFICE BOX 1303  
MCCOMB, MS 39648-1303  
TELEPHONE: (601) 249-0017**

**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 Andrew Baker  
Circuit Court Judge  
P. O. Drawer 368  
Charleston, MS 38921**

**John W. Chapman, Esq.  
District Attorney  
365 Loshier St., Ste. #210  
Hernando, Mississippi 38632**

**Jim Hood, Esq.  
Attorney General  
Post Office Box 220  
Jackson, Mississippi 39205-0220**

**DATED** this the 13<sup>th</sup> day of July, 2007.

  
\_\_\_\_\_  
**CHARLES E. MILLER**