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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-CA-348-COA

JAMES RODGERS

VS.

STATE OF MISSISSIPPI

FILED

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SUPREME COURT
COURT OF APPEALS

APPELLANT

APPELLEE

REPLY BRIEF OF THE APPELLANT

APPELLANT REQUESTS ORAL ARGUMENT

SUBMITTED BY:

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TABLE OF CONTENTS

Introduction.....	Page 1
Response	Page 1
Conclusion.....	Page 3
Certificate of Service.....	Page 5

TABLE OF AUTHORITIES

Cases

<i>Pate v. Robinson</i> , 383 U.S. 375 (1966).....	Page 2
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INTRODUCTION

James Rodgers in replying to the brief of the Appellee, submits that the State is attempting to re-characterize the issues raised on appeal by arguing for a different standard of review of the issues. The State's attempt to obfuscate the real issues in this matter should be rejected for the following reasons:

RESPONSE

It was a violation of due process for the lower court to ignore the fact that medical information was withheld from the Court prior to the trial. This failure to inform the Court itself was at least the result of a mistake. (See Page 5 of the Appellee's Brief.)

If you accept the explanation of attorney Weddle that this was not a psychiatric evaluation, this was a mistake. It was the only type of a psychiatric evaluation ever performed on James Rodgers. James Rodgers did not have had his mental capacities evaluated from September 1998, until after the trial in February 2000. Attorney Weddle admitted he was not capable of evaluating James Rodgers' mental capacities. Also,

attorney Weddle admitted that he was informed that James Rodgers had a long standing mental history which might affect his (James Rodgers) ability to use good judgment. (T.26-29.)

Just as a record is required when a defendant wants to waive his right to an attorney, some formal record should be made concerning a waiver of a competency hearing. Measurement of James Rodgers' mental capacities cannot be waived informally. There is nothing in writing, no notes, court records, or other documents that James Rodgers waived his rights to a hearing on his mental capacities in the trial of this case. See Pate v. Robinson, 383 U.S. 375 (1966). The Pate case acknowledged that it is contradictory to argue that a defendant may be incompetent and yet knowingly or intelligently waive his rights to have the Court determine his capacity to stand trial.

The Court's statements prior to the hearing, quoted in Appellee's Brief on Page 3, deserves close analysis. The Court said that the passage of time alone makes it "difficult, possibly impossible to make any real determination of the circumstances." The Court, in an unusual statement stated, "the attack on the system, as I perceive it to be, involved many, many questions." The Court's perception was to the effect there was an attack being made on the system. The Court further acknowledged that the matters complained of were not brought before the Court, and this defendant stands convicted of a murder."

Ordinarily it would be difficult to say how a Court could come to ignore the mistake of the prosecution and the defense in failing to inform the Court in the premises. However, the statement cited above by the Court indicates an ill-conceived concern for James Rodgers' due process rights.

Attorney Weddle admitted in this testimony that the withheld medical information contained a GAF score. (A GAF score of 45 indicates serious mental impairment.) Attorney Weddle knew, or should have known, that James Rodgers' thought processes and ability to use sound judgment were seriously impaired from this report alone. This lack of sound judgment by James Rodgers manifested itself at trial in a failure to substantiate or corroborate his evidence at trial.

It is a mistake to believe that a person must act bizarre before his mental capacities are adversely affected for the purposes of standing trial. The medical records in this case indicate that James Rodgers had numerous mental illnesses, including depression, as acknowledged in the State's brief on page 12. James Rodgers was on medications for a group of things, including major depression. A person suffering from depression does not always visually reflect the degree of impairment to his mental capacities. (See supporting affidavit of Dr. Joe Edd Morris, PhD, listed as Exhibit 7.)

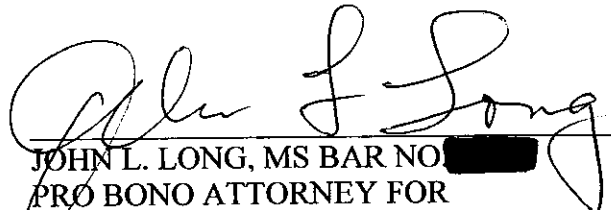
The Court ignored James Rodgers' Motion to determine if it was legally possible to go back and retrospectively determine his mental capacities at or near the time of trial. This is impossible without contemporaneous medical proof. James Rodgers submits that the Court was legally mistaken in the premises.

CONCLUSION

James Rodgers, a 100% disabled veteran, asks this Court only for fair play. James Rodgers submits to this Court that he was denied due process when the trial Court committed legal error in failing to correct the admitted mistake made by the prosecution

and defense attorney. Further, due process was denied when the Court erred in applying the law to the facts of this case. An abuse of discretion is a polite way of saying the trial judge has made a bad mistake. This is not a case which involves discretion. Only with a proper standard of review can due process be achieved in this case. For the reasons herein stated, as well as those previously stated, James Rodgers asks that he be granted a new trial in this case.

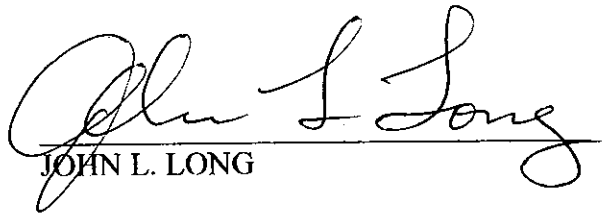
Respectfully Submitted, this the 28 day of November 2007.


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CERTIFICATE OF SERVICE

I, John L. Long, Pro-Bono attorney for James Rodgers, Appellant/Defendant in the above styled and numbered cause, do hereby certify that I have this date mailed a true and correct of the above and foregoing Reply Brief of the Appellant to the following listed persons by United States Mail, postage prepaid:

SO CERTIFIED, this the 28 day of November 2007.


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