IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NIGEL O'NEIL DAVIS — APPELLANT

VS. — NO. 2007-CP-0126-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The focal point in this appeal from a denial of post-conviction relief is the duration of the sentence imposed following a plea of guilty to two counts of uttering a forgery. The trial judge imposed the maximum sentence - fifteen (15) years to run concurrently - prescribed by statute. According to appellant, this sentence was based upon illegitimate factors and is disproportionate to the offense of uttering two forgeries.

NIGEL DAVIS, a thirty-one (31) year old African-American male with a high school education and a year of college (C.P. at 6, 24, 32, 41, 66), and a former resident of Los Angeles, California, prosecutes a criminal appeal from the Circuit Court of Adams County, Mississippi, Lillie Blackmon Sanders, Circuit Judge, presiding.

On September 5, 2002, Davis entered a guilty plea to two counts of uttering a forgery - counts I and II - following a four (4) count indictment returned on June 3, 2002, charging him with uttering forgeries on May 14, 2001 (Count I); May 17, 2001 (Count II); May 17, 2001 (Count III), and June

7, 2001 (Count IV). In consideration for the plea, counts III and IV were not prosecuted. (C.P. at 67)

Davis was thereafter sentenced to serve fifteen (15) years on each count with the two sentences to run concurrently.

Three (3) issues are raised on appeal to this Court:

[1.] Prosecutorial misconduct during sentencing.

[2.] Ineffective assistance of counsel.

[3.] Disproportionate sentence.

According to Mr. Davis, a first offender, the trial judge abused her judicial discretion in sentencing Davis to fifteen (15) years because a sentence of this duration was disproportionate considering both the offense and the offender.

STATEMENT OF FACTS

On September 5, 2002, Nigel Davis, a resident of Los Angeles, California, passing through the State of Mississippi, entered a plea of guilty to two counts of uttering a forgery. Counts I and II of a four count indictment charged Davis with passing counterfeit checks to Natchez Supermarket 2. (C.P. at 1)

Following the plea-qualification hearing the trial judge found that Davis's plea " . . . was knowingly, freely, voluntarily, intelligently [and] understandably made," and there is a factual basis to support the charge. . ." (C.P. at 72)

Davis's apology notwithstanding (C.P. at 75), Judge Sanders sentenced Davis to serve fifteen (15) years in the custody of the MDOC. (C.P. at 76)

In sentencing Davis to the maximum of fifteen (15) years, Judge Sanders took into consideration matters developed in the following colloquy:

THE COURT:

Q. How did you get the check from Field Memorial Hospital?

A. Actually a friend of mine from Los Angeles had told me about the process which you can make them yourself, and I learned the process from them; and I basically went through the phone book and picked a hospital. It didn't necessarily have to be Field Memorial; I just picked out Field Memorial. And I used the routing number off of one of my checks when I worked at MCI World Com and changed the numbers around, and I basically used the computers to create them. The program itself can be bought at Staples, you know, any type of store, stationary store, like Office Depot or Staples and the checks themselves, the blank checks themselves.

Q. And how did you happen to get to Natchez?

A. Actually I just came through, and I saw the - - I remembered it when I came through; I had been to the boat, and it's just the first place that I brought them to - - but I don't have any relatives down here. (C.P. at 73-74)

In consideration for Davis's plea of guilty (C.P. at 67), the State did not prosecute counts III and IV of the indictment which involved checks uttered to Piggly Wiggly and One Stop Package Store. (C.P. at 1-2, 67-68)

Three (3) years and two (2) days later, on September 7, 2005, Davis filed a pleading styled "Motion for Post-Conviction Relief via Reconsideration of Sentence." (C.P. at 107-116)

An amendment to Davis's motion for post-conviction relief appears in the record at C.P. 137-154. No filing date is found thereon, but a photocopy of the envelope sent to the circuit clerk reflects a mailing date of September 8, 2006. The actual filing of this amendment is not reflected on the clerk's docket.

A copy of the same amendment, which is beautifully penned and printed in the longhand of either Davis or his writ-writer, is attached to Davis's brief as Exhibit A. A cover letter reflects a filing date of November 15, 2005.

On November 17 or 18, 2006, Davis filed a supplement to the amendment of his original motion for post-conviction relief. (C.P. at 84-101)

On June 11, 2007, Judge Sanders signed an order summarily denying post-conviction relief. *See* appellee's exhibit A, attached. Judge Sanders found as a fact and concluded as a matter of law that Davis's fifteen (15) year sentence was not disproportionate to the offense which involved " . . . a malicious scheme to defraud and injure businesses in Natchez and other areas of Mississippi." (C.P. at 177)

Judge Sanders also found as a fact and concluded as a matter of law that ". . . there was neither prosecutorial misconduct nor ineffective assistance of counsel present during sentencing." (C.P. at 177)

On appeal, Davis invites the appellate court to reverse Judge Sanders's decision denying post-conviction relief and remand the case to the lower court for re-sentencing to a lesser term.

SUMMARY OF THE ARGUMENT

The fact-finding by the circuit judge in summarily denying post-conviction relief was neither clearly erroneous nor manifestly wrong. Accordingly, summary denial of the requested post-conviction relief must be affirmed.

Disproportionate Sentence.

"[T]rial judges may consider all kinds of information when sentencing." **Vaughn v. State,** 964 So.2d 509, 512 (Ct.App.Miss. 2006). Pending charges involving the uttering of similar forgeries were perfectly legitimate factors for sentencing consideration in this case. Davis did not dispute or express any disagreement over those charges which involved a unique *modus operandi, viz.,* Davis was making his own checks and forgeries from a computer program.

The fifteen (15) year sentence imposed by the trial judge was within the limits authorized by

statute at the time of sentencing.

Therefore, this issue is controlled, at least in part, by the well established rule " . . . that a trial court will not be held in error or held to have abused [its judicial] discretion if the sentence imposed is within the limits fixed by statute." **Johnson v. State,** 461 So.2d 1288, 1292 (Miss. 1984), and the cases cited therein. *See also* **Wallace v. State,** 607 So.2d 1184, 1188 (Miss. 1992) [A sentence will not be disturbed so long as it doesn't exceed the statutory maximum.]; **Reynolds v. State**, 585 So.2d 753, 756 (Miss. 1991) ["The imposition of a sentence is within the discretion of the trial court, and this Court will not review the sentence, if it is within the limits prescribed by statute.]; **Barnwell v. State,** 567 So.2d 215, 221 (Miss. 1990) [Save for instances where the sentence is "manifestly disproportionate" to the crime committed, extended proportionality analysis is not required by the Eighth Amendment.]; **Hart v. State,** 639 So.2d 1313 (Miss. 1994); **Edwards v. State,** 615 So.2d 590 (Miss. 1993); **Reed v. State,** 536 So.2d 1336 (Miss. 1988).

"The imposition of a sentence is within the discretion of the trial court, and [the Supreme Court] will not review the sentence, if it is within the limits prescribed by statute." **Reynolds v. State,** *supra,* 585 So.2d 753, 756 (Miss. 1991), and the cases cited therein. *See also* **Alexander v. State,** 979 So.2d 716 (Ct.App.Miss. 2007), reh denied (Sentencing is within the complete discretion of the trial court and is not subject to appellate review if it is within the limits prescribed by statute.]; **Callins v. State,** 975 So.2d 234 (Ct.App.Miss. 2007) [A sentence is not subject to appellate review if within the limits prescribed by statute.]; **Sykes v. State,** 895 So.2d 191, 194 (Ct.App.Miss. 2005) ["The sentence prescribed by the trial court was well within the statutory guidelines and is not subject to review by this Court."]

No abuse of judicial discretion has been demonstrated here. A reviewing Court has no power

to disturb the exercise of that discretion. **Payton v. State,** 897 So.2d 921 (Miss. 2003).

The fact that similarly situated defendants may have received less severe punishment, standing alone, " . . . does not prove that the sentences imposed here are grossly disproportionate to the crime committed." **Vaughn v. State,** *supra,* 964 So.2d 509, 511 (¶9) (Ct.App,.Miss. 2006), quoting from **Womack v. State,** 827 So.2d 55, 59 (¶13) (Ct.App.Miss. 2006). Vaughn, by the way, entered a plea of guilty to the sale of cocaine and got thirty (30) years.

Neither the Supreme Court of Mississippi nor the Mississippi Court of Appeals will engage in a proportionality analysis discussed in **Solem v. Helm,** 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983), unless a threshold comparison of the crime committed to the sentence imposed leads to an inference of gross disproportionality. **Ford v. State,** 975 So.2d 859 (Miss. 2008); **Phinizee v. State,** 983 So.2d 322 (Ct.App.Miss. 2007), reh denied, cert denied 981 So.2d 298 (2008).

Prosecutorial Misconduct.

The prosecutor was not guilty of prosecutorial misconduct with regard to sentencing because the sentence imposed was within the limits prescribed by statute and cannot be said to have been based upon illegitimate sentencing factors.

A trial court judge is to examine all relevant factors in making a sentencing decision. **Smith v. State,** 973 So.2d 1003 (Ct.App.Miss. 2007), reh denied.

In the federal courts, the commission of other acts may justify a sentence above the advisory guidelines. *See e.g.,* **United States v. Peterson,** 260 Fed. Appx. 753 (5TH Cir. 2008) [unpublished opinion].

"In imposing sentence, the trial court may take into account larger societal concerns, as long as the sentence is particularized to the defendant." **Reynolds v. State,** *supra,* 585 So.2d at 756.

It was. (C.P. at 73-76)

Ineffective Assistance of Counsel.

Defense counsel was not ineffective in failing to object to illegitimate sentencing factors, if any, because the record fails to demonstrate any improper reliance or emphasis by the trial judge upon them in imposing the maximum sentence.

Davis has failed to demonstrate both a deficiency in counsel's performance and that any deficiency prejudiced him in the sentencing process.

ARGUMENT

TWO FIFTEEN (15) YEAR SENTENCES TO RUN CONCURRENTLY WERE NEITHER CRUEL NOR UNUSUAL NOR DISPROPORTIONATE OR EXCESSIVE BECAUSE THEY WERE WITHIN THE LIMITS PRESCRIBED BY STATUTE.

Davis filed a motion for post-conviction relief on September 7, 2005 (C.P. at 107-116), and a belated supplement to an amendment to his original motion on November 17, 2006. (C.P. at 84-105)

As noted previously the amendment appears in the official record at C.P. 137-154 and is not marked "filed." It is also attached to Davis's brief as Exhibit A with a cover sheet reflecting a filing date of November 15, 2005.

Davis's post-conviction claims, in his own words, are expressed as follows: "The Appellant (Davis) argues that his Petition for Post-Conviction Relief on the aforementioned grounds of prosecutorial misconduct, ineffective assistance of counsel, and proportionality of sentence, were improperly denied by the lower court." (Brief in Support of Appellant at 3)

Specifically, Davis argues on appeal (1) the trial judge considered illegitimate factors in the form of pending charges in imposing sentence following his guilty plea; (2) his lawyer was

ineffective for failing to object to the illegitimate factors, and (3) his sentence was disproportionate to the offense(s) charged and violated the cruel and unusual punishment prohibition of the eighth amendment. (Brief in Support of Appellant at 3; appellant's exhibit A attached to his brief)

Assuming these claims are not time-barred for want of timely filing of Davis's original motion and the amendments/supplements thereto, they were properly denied by Judge Sanders as plainly or manifestly without merit.

Disproportionate Sentence.

First, there was no objection, contemporaneous or otherwise, to the allegedly illegitimate factors considered at sentencing. Consequently, review of this issue is procedurally barred by the following language found in **Waldon v. State,** 749 So.2d 262, 268 (Ct.App.Miss. 1999):

> Because Waldon failed to make a specific, contemporaneous objection to the information of the other indictments coming in during his sentencing as aggravating circumstances, any objection he might have had was waived. *Robinson,* 585 So.2d at 737. Further, consideration of the issue on appeal is procedurally barred because of Waldon's failure to provide any authority in support of his assertion that the trial court erred in its consideration of the other indictments. *Holloman v. State,* 656 So.2d 1134, 1141 (Miss. 1995).

Second, the sentence imposed, although a fifteen (15) year maximum, was within the limits prescribed by the statute in existence at the time of sentencing and is not subject to review by a reviewing court.

"The imposition of a sentence is within the discretion of the trial court, and [the Supreme Court] will not review the sentence, if it is within the limits prescribed by statute." **Reynolds v. State,** 585 So.2d 753, 756 (Miss. 1991), and the cases cited therein. *See also* **Sykes v. State,** 895 So.2d 191, 194 (Ct.App.Miss. 2005) ["The sentence prescribed by the trial court was well within the statutory guidelines and is not subject to review by this Court."]; **Hart v. State,** 639 So.2d 1313,

1319 (Miss. 1994) [Sentence of twenty-five (25) years for possession of cocaine with intent was not "shockingly excessive" or "manifestly disproportionate" to the crime committed, therefore, extended proportionality analysis was not required by the Eighth Amendment.]

In **Miller v. State,** 973 So.2d 319 (Ct.App.Miss. 2008), cert dismissed 981 So.2d 298, the court held that a sentence of fifteen (15) years for the sale of cocaine was within the statutory limits for the sale of cocaine and thus was not grounds for post-conviction relief.

The same is true here.

No abuse of judicial discretion has been demonstrated in Davis's case. A reviewing Court has no power to disturb the exercise of the trial judge's discretion. **Payton v. State,** 897 So.2d 921 (Miss. 2003).

Third, scrutiny of Davis's Exhibit 9 to his brief (C.P. at 85) demonstrates his fifteen (15) year sentence was not shockingly disproportionate to the sentence imposed upon others in this State for the same offense.

For example, Brenda Bates appears to have been sentenced to fifteen (15) years for two (2) counts; Eric Williams to fourteen (14) years for three (3) counts, and Elvie Williams to seventeen (17) years for three (3) counts. (C.P. at 85, 130) We find no gross disproportionality based upon Davis's own exhibits.

Moreover, the fact that similarly situated defendants may have received less severe punishment, standing alone, " . . . does not prove that the sentences imposed here are grossly disproportionate to the crime committed." **Vaughn v. State,** *supra,* 964 So.2d 509, 511 (¶9) (Ct.App,.Miss. 2006), quoting from **Womack v. State,** 827 So.2d 55, 59 (¶13) (Ct.App.Miss. 2006). Vaughn, by the way, entered a plea of guilty to the sale of cocaine and got thirty (30) years.

Fourth, "[trial judges may consider all kinds of information when sentencing." **Vaughn v.**

State, 964 So.2d 509, 512 (Ct.App.Miss. 2006). Pending charges involving the uttering of similar forgeries were perfectly legitimate factors for sentencing consideration in this case. Davis did not dispute or express any disagreement over those charges which involved a unique *modus operandi, viz.,* Davis was printing his own checks and forgeries using a computer program. Davis explained to Judge Sanders in great detail how he did it all.

Prosecutorial Misconduct.

Davis says the prosecutor was guilty of misconduct because of his " . . . repeated interjection to the court about pending charges against Davis (at that time) during sentencing." (Brief in Support of Appellant at 3)

The following language found in **Waldon v. State,** *supra*, 749 So.2d 262, 268 (Ct.App.Miss. 1999), cited and relied upon by Davis, is dispositive of his own complaint:

> Procedural bar notwithstanding, we find that this issue does not warrant reversal of Waldon's conviction. In sentencing, the trial court has "broad discretion in the things [it is] able to consider" and "may appropriately conduct an inquiry broad in scope, largely unlimited as to the kind of information [it] may consider, or the source from which it may come." *Evans v. State,* 547 So.2d 38, 41 (Miss. 1989). * * * * * * There was no evidence suggesting that the judge placed improper emphasis on the fact that Waldon had several indictments pending against him at the time of his sentencing. Accordingly, we find no abuse of the circuit court's discretion in determining Waldon's sentence."

Similarly, nothing in the present record indicates Judge Sanders improperly relied upon the numerous pending charges and "holds" on this defendant; rather, Judge Sanders told Davis that although ". . . this is a rarity for me, but **I think your crime dictates it** - - the Court is going to sentence you to the maximum sentence of fifteen (15) years in the Mississippi Department of Corrections on each count to run concurrent." (C.P. at 31) [emphasis ours]

We note that no restitution was ordered in light of the sentence imposed (C.P. at 31), and the

two (2) sentences were imposed to run concurrently, as opposed to consecutively. It could have been worse.

Judge Sanders appeared to rely largely on the fact that Davis concocted a "malicious scheme" to defraud and injure honest merchants by using a computer program to create his own counterfeit checks which he uttered in the Natchez area as well as in other jurisdictions. (C.P. at 28-29) She opined:

> Mr. Davis, sometimes people jump in with both feet, and that's what you did[;] you just jumped into the water; you didn't test it to see if it was hot or cold; you just jumped in.
>
> The court at this time is going to sentence you - - and this is a rarity for me, but I think your crime dictates it - - the Court is going to sentence you to the maximum sentence of fifteen (15) years in the Mississippi Department of Corrections on each count to run concurrent. (C.P. at 75-76)

These were perfectly legitimate sentencing factors personalized to the defendant.

In **Williamson v. State,** 388 So.2d 168, 170 (Miss. 1980), we find the following language supporting our position:

> In the present case, the record reflects that the trial judge, at the time the lighter sentence was discussed, was unaware that the defendant had committed an unindicted offense, *viz.*, the sale of a controlled substance, Dilaudid. We are of the opinion that, when the trial judge took under consideration that fact, he did not abuse his discretion in imposing a greater sentence after the conviction of appellant.

Ineffective Assistance of Counsel.

In **Waldon v. State,** *supra*, 749 So.2d 262, 268 (Ct.App.Miss. 1999), we note the following:

> "There is a presumption that a trial attorney's performance is competent. To succeed on a claim of ineffective assistance of counsel, therefore, an appellant must prove that counsel's overall performance was deficient and that his defense was prejudiced by his attorney's inadequate performance. *Strickland v. Washington,* 466

> U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Whether the elements of the *Strickland* test are satisfied is determined by looking at the totality of the circumstance. *Cole v. State*, 666 So.2d 767, 775 (Miss. 1995)."

Davis's lawyer had no reason to object to perfectly legitimate sentencing factors and the imposition of a sentence within the limits prescribed by statute. In consideration of the guilty plea to counts I and II, two additional counts, III and IV, were not prosecuted (C.P. at 67); no restitution was ordered (C.P. at 76, and the two fifteen (15) year sentences were ordered to run concurrently, as opposed to consecutively.

Davis has failed to demonstrate his counsel's performance was deficient and that any deficiency would have affected the duration of his sentence or his decision to plead guilty.

A trial judge is to consider all relevant factors when making a sentencing decision. Where, as here the sentence imposed is within the range permitted by statute, this Court generally has no power to disturb the trial court's exercise of judicial discretion. **Payton v. State,** 897 So.2d 921 (Miss. 2003). *See also* **Johnson v. State,** 908 So.2d 900 (Ct.App.Miss. 2005) [Although defendant argued he was a first-time offender, sentences within statutory guidelines were not excessive.]

The sentence(s) imposed in the case at bar were within the limits prescribed by statute for the offenses committed. The sentences were imposed to run concurrently, as opposed to consecutively. Davis's sentence was not excessive, and despite his clean record, was neither cruel nor unusual. **Cook v. State,** 728 So.2d 117 (Ct.App.Miss. 1998) [Imposition of thirty (30) year sentence for sale of cocaine was not unconstitutionally disproportionate despite defendant's previous clean criminal record and the modest amount of cocaine involved]. *See also* **Stromas v. State,** 618 So.2d 116 (Miss. 1993); **Boyd v. State,** 767 So.2d 1032 (Ct.App.Miss. 2000).

Has an abuse of judicial discretion been demonstrated here?

By virtue of Miss.Code Ann. §97-21-59, the maximum penalty for uttering a forgery at the time of Davis's offense was fifteen (15) years in the MDOC.

Davis received fifteen (15) years, clearly within the maximum.

We respectfully submit the sentence imposed in the case at bar is not subject to appellate review. **Boggan v. State,** 894 So.2d 581 (Ct.App.Miss. 2004), cert. denied 896 So.2d 373 [Where, as here, sentence is within the limits prescribed by statute, sentence is not subject to appellate review.]

Assuming, on the other hand, it is, the sentence imposed in Davis's case was based upon legitimate factors. Judge Sanders gave her reasons for denying post-conviction. (C.P. at 176-77; appellee's exhibit A attached.

Obviously, Davis did not receive the harshest penalty allowable which would have been having the two sentences run consecutively as opposed to concurrently.

In **Hopson v. State,** 625 So.2d 395, 404 (Miss. 1993), this Court, citing **Harmelin v. Michigan,** 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991), observed that the Supreme Court of the United States questioned the proportionality analysis created by **Solem v. Helm,** 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983). Nevertheless, this Court concluded: "[E]ven though **Harmelin** questions the proportionality analysis, there is language in the case to indicate that a 'gross proportionality' analysis is still in order." 625 So.2d at 404.

The sentence imposed here was neither cruel nor unusual nor manifestly disproportionate to the crime of uttering two forgeries. The imposition of two fifteen (15) year sentences, under the circumstances, was neither "grossly" nor "manifestly" disproportionate nor shockingly excessive.

More importantly perhaps, the sentence, as noted, was within the limits prescribed by statute for uttering a forgery at the time of the offense.

We eschew Davis's invitation for a proportionality analysis because the sentence, under the facts presented here, was not grossly or manifestly disproportionate to the crime committed. *See e.g.*, **Ashley v. State,** 538 So.2d 1181 (Miss. 1989) [Life imprisonment under recidivist statute for in-store consumption of two cans of sardines and breaking into house to pay for them was unduly harsh and warranted re-sentencing]; **Presley v. State**, 474 So.2d 612, 621 (Miss. 1985) ["(F)orty (40) years without parole for what in essence is a petty criminal's stealing a steak."] This type of "undue harshness" does not exist here.

The cases cited by Davis do not help his cause.

In **Clowers v. State,** 522 So.2d 762 (Miss.1988), Clowers was convicted of uttering a forgery as a habitual offender and sentenced to fifteen (15) years without the benefit of probation or parole. The Supreme Court held that despite Mississippi's habitual offender statute requiring a defendant to be sentenced to the maximum of fifteen (15) years, the trial judge still had the authority to review the habitual sentence in light of the constitutional principles of proportionality. The Court opined: "What we hold today - and all we hold - is that the trial court did not commit reversible error in reducing what it found to be a disproportionate sentence under the facts of this case." 522 So.2d at 765.

Davis, of course, was not sentenced as a habitual offender.

In **Towner v. State,** 837 So.2d 221 (Ct.App.Miss. 2003), the Court held simply that the trial judge had the authority to review a thirty (30) year sentence imposed for the sale of cocaine by a first time offender, especially in light of the fact that the prosecutor did not object to a re-sentencing hearing.

We perceive no reversible error involving the imposition and length of Davis's sentence in the case at bar. Under the circumstances and considering all factors, fifteen (15) years fails to shock

the conscience.

CONCLUSION

The trial judge considered legitimate factors in imposing the maximum sentence allowed by statute.

A sentence within the limits of the applicable statute will generally not be reviewed where, as here, it is within the limits prescribed by statute.

Finally, there is no evidence here - not one whit - the judge placed improper emphasis on the fact that Davis, at the time of his sentencing, had passed forged checks in several other counties.

Appellee respectfully submits no reversible error took place during the taking of Davis's guilty pleas. Accordingly, summary denial as plainly without merit of Davis's motion for post-conviction relief as well as affirmation of the two fifteen (15) year sentences to run concurrently originally imposed by the trial court should be forthwith affirmed.

Respectfully submitted,

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IN THE CIRCUIT COURT OF ADAMS COUNTY, MS

NIGEL DAVIS — PETITIONER

VS. — 02-KR-0120-S

STATE OF MISSISSIPPI — RESPONDENT

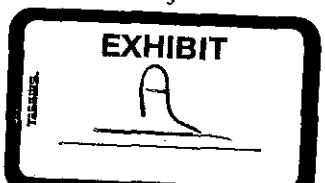
ORDER

THIS CAUSE came before this Court on a Petition for Writ of Mandamus filed May 1, 2007 and an Amended Motion for Post-Conviction Relief via Reconsideration of Sentence filed September14, 2005 by the Petitioner Nigel Davis, Pro Se in the above styled and numbered cause;

Petitioner Davis states in his Amended Motion for Post Conviction Relief the grounds in which he seek Post Conviction Relief from this Court. He alleges Prosecutorial Misconduct during Sentencing, Ineffective Assistance of Counsel, and Proportionality of Sentence;

On September 11, 2002, the Petitioner Nigel Davis in the presence of counsel Honorable Pamela Ferrington and the State of Mississippi being represented by its District Attorney for the Sixth Circuit Court District; and after being thoroughly examined and questioned by the court, the Petitioner withdrew his plea of **Not Guilty** and entered a plea of **Guilty** to Counts I and II of the four (4) count indictment in CAUSE # 02-KR-0120-S; for the offenses of Uttering a Forgery. The Petitioner, Nigel Davis, was sentenced to serve a period of fifteen (15) years on each count in the custody of the Mississippi Department of Corrections; said sentences were ordered to run concurrent; and credit given for time already served;

The record reflects that there were a number of charges all of a similar nature in a number of jurisdictions across the State; and that there were seven (7) different



jurisdictions that had notified Adams County authorities to have a hold placed on the defendant;

While this crime was non-violent, it was part of a malicious scheme to defraud and injure businesses in Natchez and other areas of Mississippi. In a written statement provided by Petitioner Davis, he states a demonstration in which he researched and created a series of false information and fraudulent checks throughout the state which made this an even greater scheme;

The Court finds that there was neither prosecutorial misconduct nor ineffective assistance of counsel present during sentencing;

IT IS THEREFORE ORDERED AND ADJUDGED that the aforementioned Petition for Writ of Mandamus and Petition for Post Conviction Relief via Reconsideration of Sentence filed by the Petitioner Nigel Davis in the above styled and numbered cause is not well taken and is hereby and shall be denied;

IT IS FURTHER ORDERED that the Circuit Clerk of Adams County, Mississippi forward a certified copy of the Court's ruling herein to Nigel O. Davis #L2857, J.F.C.F., 279 Hwy 33, Fayette, MS, 39069 and to the Clerk of the Mississippi Supreme Court.

SO ORDERED AND ADJUDGED this the 11th day of June, 2007.

Lillie Blackmon Sanders

LILLIE BLACKMON SANDERS
CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

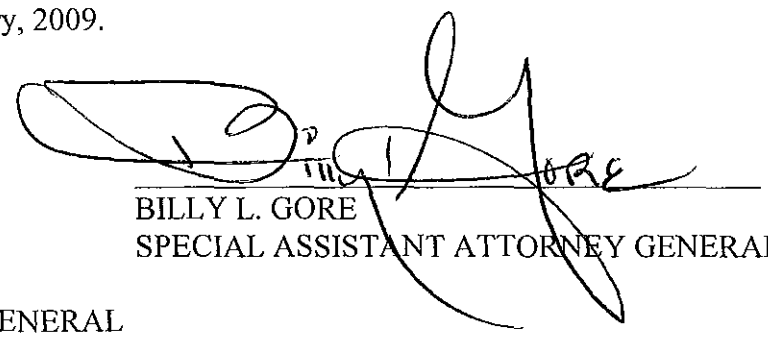
I, Billy L. Gore, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Lillie Blackmon Sanders
Circuit Court Judge, District 6
Post Office Box 1348
Natchez, MS 39121

Honorable Ronnie Harper
District Attorney, District 6
Post Office Box 1148
Natchez, MS 39121

Nigel O'Neil Davis, # L2857
Post Office Box 218
Fayette, MS 39069

This the 30th day of January, 2009.



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