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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NIGEL ONEIL DAVIS

FILED

APPELLANT

VS.

MAR 16 2009

NO. 2007-CP-0126-COA

STATE OF MISSISSIPPI

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

APPELLEE

FINAL BRIEF FOR THE APPELLANT

APPELLANT DOES NOT REQUEST ORAL ARGUMENT

**BY: NIGEL ONEIL DAVIS
APPELLANT**

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STATEMENT OF THE CASE

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THE TRIAL JUDGE IMPOSED THE MAXIMUM SENTENCE - FIFTEEN (15) YEARS TO RUN CONCURRENTLY - PRESCRIBED BY STATUE. 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, 2008, 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 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 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.

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SUMMARY OF ARGUMENT

The focal point in this appeal from a denial of post-conviction relief is the basis upon which the Duration of the sentenced was reached (and imposed) following a plea of guilty to two (2) count of Uttering A Forgery (Statute 97-21-59). The trial judge imposed the maximum time to serve (15 years- Under the statute) on each of the two counts (run concurrently). The Appellant argues that the sentences Imposed were based on illegitimate, non-factual factors admitted into record (by the court) and highly considered during sentencing; and not solely on facts regarding the charges to which Davis pled guilty. This (lack of) or abuse of discretion (by the court) by way of A) Prosecutorial Misconduct and B) Ineffective Assistance of Counsel resulted in the C) Disproportionality of the sentence imposed; the Appellant's three (3) grounds on which he seeks relief unto this honorable court.

PROSECUTORIAL MISCONDUCT

The Appellee (The State) in their reply brief fail to show that remarks made by the State during Sentencing in this cause were legitimate and non-prejudicial to the defendant's (Davis') case. "Prosecutions Are limited to the particular offense as charged in the indictment. The interjection of information (or evidence) tending to show guilt of another crime...unrelated to the offense charged, is inadmissible." (Campbell v. State 750 So. 2d. 1280 (Miss. 1999). Davis was charged with four (4) counts of Uttering A Forgery in Natchez (Adams County). He (Davis) pled guilty to two of the four counts (by blind plea Agreement); therefore the fact that other jurisdictions wanted Davis (for similar charges) not only was an Unrelated issue to Davis' case (then at hand), nor was that fact necessary to prove him (Davis) guilty of The crime(s) in Adams County simply because Davis had already pled guilty.

The Appellant also contends that this misconduct by the prosecution influenced the court's Decision to impose a sentence greater than what would have been. (See Proportionality). On appeal... Davis has proven that "...the natural and probable effect of the prosecutions improper statements created Unjust prejudice against the accused, resulting in a decision influenced by prejudice." (Ford vs. State 975

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So. 2d. 859 (Miss 2008). The Appellee further claims that Davis' argument is procedurally barred because No objection (of any kind) was made during sentencing. However...the Appellant preserves his claim on Appeal as "plain error" regarding the issue. (Waldon vs. State 749 So.2d 262 (Miss 1999). Also in Waldon; the trial judge made it CLEAR on the record that Waldon "...is presumed innocent of those (any) Pending chrges, and is only being sentenced for the charges he pled guilty to today." The same discretion Should have been used in this (Davis') case as well. Contrary to the Appellee's inference in their reply Brief...of course Davis had no problem explaining how he uttered the checks (in Adams County) during Sentencing, because he (Davis) had accepted responsibility for THOSE actions. However...there was No reason to dispute or express disagreement over (unrelated) charges. And for which Davis was not Being prosecuted for (assumptively). Because "...local jurisdiction of all offenses...is in county where Committed." (Smith vs. State 646 So. 2d 538); the presumption of guilt or innocence on any pending Charge(s) was the (other) jurisdiction(s) to adjudicate; NOT Adams County. The trial judge abused her Discretion when sentencing Davis for what she (Judge Sanders) later opined "...was a scheme to defraud And injure businesses in Natchez and other areas of Mississippi." (C.P. pg,177). The trial judge had no Power to takw away Davis' presumption of innocence on pending charges of another jurisdiction; nor the Authority to impose a sentence based on Davis' plea of guilt (to the Adams County charges), and her (the trial judge's) "belief of guilt" on the forementioned (other) pending charges. This improper legal standard applied by the court; prejudiced the accused (Davis) and warrants reversal. (Ford).

The Appellant notes that the trial judge seems to have relied also on a written police statement (by Davis); detailing how his crime(s) in were committed, in the decision to impose the two (2) 15 year sentences. (C.P, pg.192). In that written police statement Davis (voluntarily) alleges to have passed checks (as charged) in Adams county (later being indicted for); and to have passed checks in other jurisdictions in Mississippi as well. However... the Appellant argues that under **Mirands Rights**; the presumption of innocence (on a charge) remains with the accused until guilt is established in A

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COURT OF LAW; either by a jury trial or by a plea of guilty (as did Davis). The only charges prosecutable By the Court of Adams County were their own. Miranda preserved Davis' presumption of innocence on Pending charges (even of a similar nature); until the reached the COURT OF LAW in (an-) other Jurisdiction(s).

INNEFFECTIVE ASSISTANCE OF COUNSEL

In the case of Waldon (as cited by the Appellee in their reply brief) "... There is a presumption That a trial attorney's performance is competent." However; in the present case on appeal, Davis applies A test which determines that his counsel (then Pamela A. Ferrington) was indeed deficient in her Pereformance as counsel and had she acted in reverse mode, the outcome would have been different (favorable to her client-Davis). (Strickland vs, Washington 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed 2d 674 (1984). Davis argues that had his attorney objected to the state's misconduct (at sentencing); perhaps the trial court would have been made mindful of the irrelevancy of the information being interjected (by the state), the actual prejudice it would create, and that Davis was to be sentenced only for what he has pled guilty to ONLY. Davis' attorney failed to protect her client's fundamental right to due process (at sentencing) under the 6th Amendment of the U.S. Constitution and Article 3 Section 26 of the Mississippi Constitution...a failure which resulted in the imposition of a sentence based (greatly) on Illegitimate factors. In her order denying post-conviction relief...Judge Sanders clearly words (what was Vaguely stated at sentencing) that " it was...a scheme to defraud and injure businesses in Narchez AND OTHER AREAS OF MISSISSIPPI ". (C.P. Vol. 2 pg.177) .

PROPORTIONALITY

While the Appellee ^{cites numerous} ✓ cases which support the well established rule that " a sentence Is not subject to review if it is imposed within the limits prescribed by statute..." (Callins vs. State 975 So. 2d 234 (Miss 2009); the Appellant abides therein. However...Davis contends that the factors (or Basis) used to comprise (or arrange) his sentence are (in part) what renders his 15 year sentences To be disproportionate. Under an analysis by (Solem vs. Helm 463 U.S. 277, 108 S. Ct. 3001, 77 L.Ed So. 2d 647 (1983), Davis provides proof of the ^{vast} ✓ difference in his sentence compared to others

With the same offense (C.P. Vol. 1 pg. 129-130). Davis acknowledges that first-time offense status

Does not preclude a lesser sentence; nor are similarly situated cases entitled to like sentences. However...

The fact that Davis was sentenced for more (pending charges) as well as on the Adams County charges

He pled guilty to (which was improper), thus the result is a disproportionate sentence. The State

Claims Davis' sentence is proportionate by citing cases which are a far cry from this case on appeal:

Payton v. State 897 So.2d 821 (Miss 2003)	Violent Offense
Johnson v. State 908 So. 2d 900 (Miss 2005)	Violent Offense
Williamson v. State 388 So. 2d 168,170 (Miss 1980)	Repeat Offender
Presley v. State 474 So. 2d 612, 621 (Miss 1985)	Habitual Offender
Ford v. State 975 So. 2d 859 (Miss 2008)	Violent Offense
Womack v. State 827 So. 2d 55 (Miss 2002)	Violent Offense
Vaughn v. State 964 So. 2d 509 (Miss 2006)	Repeat Offender

Appellant resolves that to accept responsibility for a crime(s) committed and charged for (by plea Agreement **but** be sentenced on the factual basis of that plea of guilt **AND** for alleged crime(s) committed Elsewhere (under the cover of said plea) violated Davis' 6th Amendment Right to due process.

CONCLUSION

Every jurisdiction (or county) in the State of Mississippi has sole authority to prosecute any Crime(s) that occur within their prospective limits, and cannot overstep those limits without legal Cause and/or procedure. The legislators intended such a law to prevent the accused of potentially being Prosecuted in two (different) jurisdictions for the same offense charged (which will incite double Jeopardy). Unfortunately...the plea bargain process (when improperly applied, as in this Davis' cause) May actually cause such an occurrence... rendering a sense of justice for society but injustice to the Accused. In this cause; a sentence (although within the limits of the statute) but exceeding the norm of what the trial court "usually" would impose.

Now...seven years later; the Davis is at a loss to wonder what his sentence would have been (absent the time included for pending charges in other jurisdictions); but Davis is hopeful that upon review

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of this appeal, this court will find merit in his grounds and relief be granted (by mean of sentence reduction), due ro the (well proven reversible error which took place during sentencing.

Respectfully Submitted By:

Nigel O. Davis

Nigel Oneil Davis
Appellant

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CERTIFICATE OF SERVICE

I, Nigel O. Davis The Appellant to hereby certify, that I have this day mailed postage paid, a true
And correct copy of the above and foregoing **FINAL BRIEF FOR THE APPELLANT** to the following:

Honorable Judge Lillie Sanders
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This the 16th day of March, 2009

Nigel O. Davis

Nigel Oneil Davis
Appellant

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