

**IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI**

*Copy*

**NIGEL ONEIL DAVIS**

**APPELLANT**

**VS.**

**NO. 2007-01-00126-USA**

**STATE OF MISSISSIPPI**

**FILED**

**APPELLEE**

**OCT 02 2007**

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

**BRIEF IN SUPPORT OF APPELLANT**

**(Appellant does not request oral argument)**

**NIGEL ONEIL DAVIS  
APPELLANT**

**JEFFERSON/FRANKLIN CORRECTIONAL FACILITY  
279 HWY 33  
FAYETTE, MS 39069**

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	(1)
STATEMENT OF FACTS.....	(2)
ARGUMENT.....	(3 - 5)
SUMMARY OF ARGUMENT.....	(6)
CONCLUSION.....	(7)
AFFIDAVIT OF OATH.....	(8)
CERTIFICATE OF SERVICE.....	(9)

## TABLE OF AUTHORITIES

### STATE CASES

Waldon v. State 749 So 2d 262.....	(3)
Hurns v. State 616 So 2d, 313,321 Miss 1993.....	(3)
Campbell v. State 750 So 2d 1280 Miss 1999.....	(3)
Smith v. State 646 So 2d 538.....	(3)
Hoops v. State 681 So 2d 521 Miss 1996.....	(4)
Clowers v. State 522 So 2d 762 Miss 1988.....	(5)
Towner v. State 837 So 2d 221 Miss 2003.....	(5)

### U. S. CASES

U. S. v. Tooker 747 F 2d, 975,978 5th circuit 1984.....	(3)
Solem v. Helm 463 U.S. 277,292, 103 S. Ct. 3001 77 L. Ed. 2d. 637 1983.....	(4)
Harmelin v. Michigan 501 U. S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 1991....	(4)

### STATE STATUTES

UTTERING A FORGERY (97-21-59).....	(2)(4)(5)
PENALTY FOR FORGERY (97-21-33).....	(5)

### MISSISSIPPI COURT RULES

RULES OF EVIDENCE 404 (B).....	(3)
--------------------------------	-----

### U. S. CONSTITUTION

AMENDMENT 8.....	(6)
AMENDMENT 14.....	(6)

## STATEMENT OF FACTS

On September 11, 2002, Nigel O. Davis was convicted on two (2) counts for Uttering a Forgery (97-21-59) in the Circuit Court of Adams County; and sentenced to serve the maximum time of fifteen (15) years on each count (to run concurrently) in the custody of the Mississippi Department of Corrections. (MDOC).

On September 14, 2005 filed a Petition for Post Conviction Collateral Relief in the Circuit Court of Adams county, which was later amended (on November 15, 2005) and supplemented on November 16, 2006), seeking relief from this maximum sentence by means of a sentence reduction (see ex. A, B). Davis' grounds for relief were prosecutorial misconduct, ineffective assistance of counsel, and proportionality.

On June 6, 2007, the Mississippi Supreme Court issued a writ of Mandamus (see ex C) compelling the lower court to answer Davis' petition; and on June 11, 2007 the lower court (Under Judge Lillie Blackmon Sanders) denied Davis' petition. Davis is now appealing the lower courts' decision in this his Brief in Support of Appeal.

## ARGUMENT

The Appellant (Davis) argues that his Petition for Post Conviction Collateral Relief on the aforementioned grounds of prosecutorial misconduct, ineffective assistance of counsel, and proportionality of sentence; were improperly denied by the lower court. In his petition, Davis contends that the maximum sentence to serve (which was imposed) was influenced by the States repeated interjection to the court about pending charges against Davis (at that time) during sentencing (see ex. A-22 and ex. <sup>A 26-</sup>29). In *Waldon vs. State* 749 So 2d 262, *Hurns vs. State* 616 So 2d. 313, 321 (Miss 1993), *Campbell vs. State* 750 So 2d 1280 (Miss 1999) and *U. S. vs. Tooker* 747 F 2d. 975,978 5th cir. 1984)...The Mississippi Supreme Court and U. S. Supreme Court ruled that although a trial court ha a broad discretion in the things it may consider during sentencing; evidence of other crimes cannot be admitted if its' probative value is substantially outweighed by the risk of undue prejudice (Rules of Evidence MS Rule 404 (b)), and prosecutions (including sentencing) are only limited to the particular offense as charged in the indictment (as in Adams County). The Mississippi Supreme Court has also ruled that local jurisdiction of all offenses, unless otherwise provided by law, is in county where committed. (*Smith v. State* 646 So. 2d 538); therefore Appellant argues that having plead guilty to two (2) counts of Uttering a Forgery in Adams County, those two (2) counts were all that Davis should have been sentenced on. In the lower courts denial of Davis' petition...Judge Sanders admits that she relied heavily and solely on the States information

regarding pending charges, and that she sentenced Davis according to just that (see ex. D ).

The Appellant also challenges the lower courts denial of his claim of ineffective assistance of counsel. Pamela S. Ferrington (attorney for Davis) was deficient in her duty during the sentencing phase. In Davis' petition he cites several crucial moments during sentencing where counsel should have acted; thus informing the court and the state, of their improper conduct, and potentially diverting the outcome of a sentence based on prejudicial information supplied by the state (see ex. A-10, 11 )

Finally...the lower court (Adams County) denied Davis' contention that the fifteen (15) year sentence imposed was disproportionate:

Judge Sanders, in her own words, on the record; stated how "rare" her sentencing of Davis was in this cause (see ex. A-31 ) so rare that in research; the Appellant has found no persons convicted (in Adams county or the State of Mississippi) with time to serve for Uttering a Forgery (97-21-59) in custody of MDOC; who is serving a maximum penalty of fifteen (15) years. (See ex. B-3 ) This research is based on (Solem v. Helm 463 U. S. 277, 292, 103 S. Ct. 3001, 77 L. Ed. 2d 637 [1983]) (Harmelin v. Michigan 501 U. S. 957, 111 S. Ct. 2680, 115 L. Ed 2d 836 [1991]) and (Hoops v. State 681 So 2d 521 Miss 1996). Davis reminds this court (as he did the lower court) that at the time of sentencing in this cause Davis had:

- a) No prior criminal record (felony or misdemeanor)
- b) An excellent work history
- c) A good social history

These mitigating attributes still yielded a sentence grossly disproportionate to others

similarly situated to Davis, and to many whose documented backgrounds are worse.

The Mississippi Supreme Court itself recognized that the gravity of Forgery (97-21-59) did not warrant such a harsh maximum sentence (Clowers v. State 522 So 2d 762, Miss 1988) (Towner v. State 837 So 2d 221 Miss 2003), and in 2005 lowered the time to serve to 2-10 years (97-21-33); noting that Clowers was an habitual offender with documented conviction in his record at sentencing.

## SUMMARY

The Mississippi Supreme Court has ruled that one trial court does not have the authority to single handedly prosecute the criminal charges of another; and that should such action occur, (if requested, as does Davis) it must be closely examined. For an individual to be charged and prosecuted for a crime in one place, admit to that crime (by plea agreement), but then be sentenced in one place on that single crime and on the allegations of similar crimes elsewhere violates the individual Constitutional rights (8th and 14th amendment) and Mississippi Constitutional rights (as Davis has argued). The trial court in this cause indeed created a domino effect ranging from prosecutorial misconduct to ineffective assistance of counsel, to lack of judicial discretion and disproportionate sentencing; (all of which Davis contended by Post Conviction, but was yet denied) that resulted in a sentence which was prejudicially imposed.



## CONCLUSION

The Appellant (Davis) asks this Honorable Court to review this cause on appeal; and remand it back to the lower court, that the sentence currently imposed may be reduced as requested by Nigel O. Davis (by petition for Post Conviction Collateral Relief) which was improperly and unconstitutionally denied by the lower court.

Respectfully submitted,

Nigel O. Davis

Nigel O. Davis, pro-se-Appellant

COUNTY OF JEFFERSON

STATE OF MISSISSIPPI

AFFIDAVIT OF OATH

I the undersigned authority for the above captioned county, do affirm that on this day  
Nigel O. Davis appeared before me, and after being duly sworn does affirm that everything  
included in this, his Brief in Support of Appellant, is true and correct as best of his  
knowledge.

Nigel O. Davis

Signed before me, this the 2<sup>nd</sup> day of October, 2007

Notary Beverly D. Attkins

expiration MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES MAY 17, 2008  
BONDED THRU STEGALL NOTARY SERVICE

**CERTIFICATE OF SERVICE**

On this the 2<sup>nd</sup> day of October 2007. I Nigel O. Davis caused to be mailed via U. S. mail, first class postage prepaid, the original, and two copies of my Brief in Support of Appellant, to the following addresses:

MS Supreme Court  
Attn: Clerk of Court  
P.O. Box 249  
Jackson, MS 39205

Attorney General  
Jim Hood  
P.O. Box 220  
Jackson, MS 39205-0220

Nigel O. Davis

Nigel O. Davis, pro-se

Exhibit A

Appellant Brief

# 2007-M-00126

Nigel O. Davis L2857  
J.F.C.C.F.  
279 Hwy 33  
Fayette, MS 39069

RECEIVED  
AND FILED  
NOV 15 2005  
BY M.L. VINES CIRCUIT CLERK D.C.

November 10, 2005

Cause# : 02-KR-0120-S

Dear Mr. Vines:

Please find an enclosed original document of my Amendment to Post-Conviction Collateral Relief in the above cause.

Please file and respond in your usual manner.

Thanking you in advance.

Respectfully,

Nigel O. Davis

Nigel O. Davis  
Petitioner

IN THE CIRCUIT COURT OF ADAMS COUNTY, MISS.

NIGEL O. DAVIS

VS.

STATE OF MISSISSIPPI

PETITIONER

CAUSE NO. 02-KR-0120-

RESPONDENT

AMENDMENT TO MOTION FOR POST-  
CONVICTION COLLATERAL RELIEF

The Petitioner; Nigel O. Davis, Pro Se and in Forma Pauperis comes before this court of Adams County to hereby File the following amendment to previously Filed Motion For Post-conviction Collateral Relief. (in accordance with Miss. Code Ann. 99-39-1, et. seq. code of 1972). (Supp. 1972). By amendment; Petitioner extends, and/or clarifies grounds for seeking relief unto this court, with the following Facts to wit:

- 1) Prosecutorial misconduct During Sentencing (clarified)
- 2) Ineffective Assistance of Counsel (clarified)
- 3) Proportionality of Sentence.

Petitioner contends (through clarification) that during the sentencing phase of this cause; the State was allowed to admitt onto record... improper

statements, comments, and questioning in a successful attempt to influence the court to impose a "harsher" penalty on the two counts of Uttering A Forgery (to which Petitioner had plead guilty).

Petitioner also contends (through clarification) that the aforementioned misconduct by the State was neglectfully unobjected to by defense counsel; an error that allowed the sentencing court to place improper emphasis on the information, and in the court doing so... a disproportionately excessive sentence was imposed on Petitioner.

### Facts:

In sentencing the trial court has a 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 and the source(s) from which it may come (Waldon vs. State 749 So.2d. 262).

Even where evidence of other crimes is admissible as an exception to rule prohibiting admission of evidence of other crimes, wrongs, or acts; it CANNOT be admitted if its' probative value is substantially out-weighted by the risk of undue prejudice (Rules

of Evidence - rule 404(B) / Duplantis vs. State 644 So.2d. 1235). Evidence of such is also NOT admissable to prove character of a person, in order to show that (s)he acted in conformity therewith (Hurns vs. State 616 So.2d. 313, 321 Miss. 1993).

It is clearly stated that prosecutions are only limited to the particular offense as charged in the indictment. The interjection of evidence intending to show guilt of another crime; unrelated to the offense charged is inadmissable. (Campbell vs. State 750 So.2d. 1280 Miss. 1999) As in U.S. vs. Tooker 747 F.2d. 975, 978 (5th Cir. 1984); Petitioner will show that prosecutorial misconduct (by way of improper statements and questioning) along with ineffective assistance of counsel (both) violated Petitioner's right to a "prejudice-free" due process, by influencing the sentencing court to impose a statutory yet disproportionate sentence.

#### PROSECUTORIAL MISCONDUCT DURING SENTENCING

During sentencing in this cause; Petitioner contends the State intentionally misled court regarding pending charges (of a similar nature) in other jurisdictions, in attempt



to create a "pseudo" criminal background (or history) on the Petitioner. State referred to other charges as "forgeries passed \*by this defendant..."; when in fact the said other charges were alleged to have been forgeries passed by said defendant (see transcripts pg. 9 lines 14-21). The "motion" the State referred to (pg. 9 lines 15-16) was made by Petitioner at arraignment proceedings (in this cause) in rebuttal to prior attempt to introduce the fact that there were charges pending against Petitioner. Petitioner sought by motion to have any charges or accusations brought forth to Adams County, to be answered to in one venue. Petitioner's motion implied neither guilt nor innocence, and none of said pending charges had been adjudicated at the time of arraignment nor sentencing in this cause. Motion was properly denied because local jurisdiction of all offenses unless otherwise provided by law, is in County where committed. (Smith vs. State 646 So.2d, 538). This interjection of misleading, improper, and irrelevant information was intentionally presented by the State (prior to sentencing) to portray Petitioner as a "career criminal" deserving of a harsh sentence. The State did not provide (and could not)

proof of any such criminal history (except allegations), and the NCIC report (in discovery) confirmed no prior criminal history as well. Still... the information was admitted into record, being considered by the court.

Furthermore... the State was permitted to question Petitioner about "alleged" involvement of (an) other person(s) supposedly in the Petitioner's cause (in Adams County); and also an "alleged" possible connection between Petitioner and Alcorn State University as part of an on-going investigation, but gave court no proof of the questions' relevancy to Petitioner's cause in Adams County (see transcripts pg. 9 lines 24-29 and pg. 10 lines 1-5).

Sentencing court (as well as defense counsel) allowed questioning with no instruction nor advisement to Petitioner as to his right against self-incrimination in possible subsequent prosecutions (including any causes unaffiliated with then present Adams County cause) under the U.S. Constitution 5th Amendment. If the State had any questions regarding investigation(s) unrelated to the present cause; that interrogation should have taken place before or after the entire

preceeding, not interjected between the plea acceptance and sentencing phases. This misconduct by the State was a direct violation of Petitioner's right to due process by creating an "actual" prejudice to Petitioner at a point (post-plea acceptance) where guilty plea could not be withdrawn. The irrelevant information presented by state (through state's misconduct) so contaminated the sentencing proceedings; in that sentencing court exhibited improper emphasis (and interest) in the State's information, by engaging in a one-on-one discussion (between court and state) regarding pending charges against Petitioner and jurisdictional transfer.

One such discussion regarding post-sentence transfer (see transcripts pg. 11 lines 7-23); was calculatively raised by the state just prior to sentencing. The state used this opportunity to interject to the court that... it will be up to the other jurisdictions to decide if it's worth while to bring (Petitioner) back, or " ... that his punishment has already been meted out to him" (see transcripts pg. 11 lines 15-23). Petitioner strongly contends that this statement

by the prosecution caused "actual prejudice" to petitioner; by suggesting (or inferring) that if this court (Adams County) imposes a severe enough penalty (on Petitioner), other jurisdictions (in aggravation) may feel his (Petitioner's) punishment is already strong enough not to transport him (Petitioner) back to their jurisdiction for prosecution.

In addition... sentencing court allowed an "unknown Gentleman" to render (aggravating) information on the State's behalf, (see transcripts pg. 11 lines 13-14). This individual did not address the court, nor received permission to proceed in rendering his information. Although irrelevant to Petitioner's sentencing; sentencing court nor defense counsel objected to this individuals' blatant contempt of court, seemingly as if the State, sentencing court, and defense counsel knew the individual. Needless to say that this gentleman's information was entered into record (on the State's behalf) and considered by the sentencing court.

In Waldon vs. State it is clear that matters in aggravation may be noted during sentencing; however, the pending charges in Waldon's case

were actual indictments within the same (Lowndes) County, and to which the State (local prosecutor) had first-hand knowledge. Even so... the court properly informed the State and Waldon; of Waldon's presumption of innocence regarding the pending charge(s), and that Waldon was only being sentenced for the offense(s) he was presently convicted of.

In Petitioner's cause... where pending charges are un-related (Campbell vs. State) and are in (an) other jurisdiction(s) (Smith vs. State); improper emphasis was indeed placed on the information by sentencing court where the probative value of the information was greatly out-weighted by the prejudice its' interjection created (Rules of Evidence). And unlike Waldon... sentencing court in Petitioner's cause never acknowledged the presumption of Petitioner's innocence on the pending charge(s) (by objection or otherwise stating); nor the courts' (of Adams County) inability to adjudicate the charge(s) of (an) other jurisdiction(s). Instead... sentencing court in Petitioner's cause rendered a proverbial phrase (see transcripts

pg. 12 line 29 and pg. 13 line 1) which Petitioner contends is confirmation that sentencing court had not only accepted the State's improper conduct, but also relied on the inadmissible and irrelevant information (presented within the scope of State's misconduct) in its' (the court's) determination and decision to impose the maximum sentence in this cause.

#### INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner contends (through clarification) that appointed counsel (Pamela S. Ferrington) was ineffective during sentencing in this cause. Moments before sentencing (during plea-hearing); the court questioned Petitioner as to his understanding and voluntariness of the guilty plea entered, and Petitioner's satisfaction with counsels' performance. Petitioner responded favorably to both inquiries. However; after plea was accepted... counsel failed to continue her service during sentencing by repeatedly neglecting to (the aforementioned) misconduct by the State. Counsel's neglect to perform an attorney's

standard courtroom function in defense of her client's (the Petitioner) right to "Fairness" in Due Process from beginning to the end of prosecution; allowed the court to erroneously accept the State's misconduct (and the inadmissible information presented therein), ultimately contributing to the prosecution of her client (the Petitioner)... which resulted in the imposition of two maximum sentences on Petitioner. Petitioner briefly indicates the following areas (supported by transcripts) where counsel's objections should have occurred:

a) At State's insistence that its' questioning take place after plea acceptance, but prior to sentencing. Counsel should have inquired as to the nature of State's inquiry; to assess the probable prejudice and/or damage that may be caused to the defense.

b) Objection should have been raised to State's misleading portrayal of Defendant's (Petitioner's) background and/or criminal history, based on non-adjudicated and un-related charge(s) in other jurisdictions. Objections should also have been raised to the State's subtle

interrogation of Petitioner regarding a "supposed" on-going investigation, which was un-related to the present cause.

c) The intense discussion regarding jurisdictional transfer should have been met by objection; in addition to the unsolicited interjection of an "unknown Gentleman" on the States' behalf.

Counsel's neglect to object in the aforementioned areas violated Petitioner's right to "prejudice-free" sentencing proceedings and to Due Process under the Constitution's 14th Amendment. This neglect also violated Petitioner's Constitutional Right (under the 5th Amendment) against self-incrimination in subsequent prosecutions by the State. While neglecting to object to States' misconduct; defense counsel actually "joined" the prosecution in presenting aggravating (although still irrelevant) information to sentencing court against her client (the Petitioner). Petitioner argues that Counsel's silence up to this point (see transcripts pg. 11 lines 24-29); should have been broken by positive and/or mitigating information on Petitioner's behalf, not by aggravating information



supporting the State's agenda.

Petitioner's overall contention is that had counsel not been deficient; in what is considered in the legal realm as "common practice" within an attorney's duty (to protect the rights of; and dilligently assist his/hers client, from the moment of counsel's appointment through the disposition or adjudication of the cause); a maximum penalty would not have resulted from undue prejudice caused by the State, accepted by the sentencing court, at the hands of ineffective counsel. Petitioner has satisfied both prongs of the Strickland Test (Strickland vs. Washington 466 U.S. 668, 104 S.Ct. 2052, 80 Ed. 2d. 674 (1984) proving ineffective assistance of counsel.

#### PROPORTIONALITY OF SENTENCE

The punishment for the crime of Uttering A Forgery is 2-15 years or up to 12 months in County jail if utterance is less than 100.00, for individuals convicted of this offense. In Jackson vs. State 740 So. 2d. 832 (99 13-15) (Miss. 1999); the Mississippi Supreme Court holds that no sentence that is within

statutory limits will be held to be per se cruel and unusual punishment, absent some viable constitutional challenge to the statute under which the sentence was imposed. Petitioner contends that under *Solem vs. Helm* 463 U.S. 277, 292, 103 S.Ct. 3001, 77 L.Ed. 2d. 637 (1983)... the 15 year sentence imposed by court, was extremely disproportionate to the crime and warrants a "Proportionality Review".

Both the U.S. Supreme Court (*Harmelin vs. Michigan* 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed. 2d. 836 (1991))... and the Mississippi Supreme Court (*Hoops vs. State* 681 So.2d. 521 (Miss. 1996); acknowledge "Solem", and apply the following factors when determining a sentences' proportionality:

Prong 1: The gravity of the offense and the harshness of the penalty.

Prong 2: The sentence(s) imposed on other criminals for the same crime in the same jurisdiction.

Prong 3: The sentence(s) imposed on other criminals for the same crime in other jurisdictions.

In the First prong of "Solem"; the Petitioner recognizes that ANY offense committed against a person(s) carries some gravity simply on the commission of an offense alone; however, the nature of the offense (be it violent or non-violent) and the extent of harm and/or damage caused (to victim) must also be considered in the scope of gravity. Once these factors have been weighed; a proportionate penalty can be more fairly determined.

Petitioner argues that his non-violent crime of Uttering A Forgery was against an insured corporation (for such occurrences). Petitioner does not negate the fact that harm (if primarily monetary) was inflicted; however, under a plea agreement with the State (which was never mentioned by the State, defense counsel, nor the sentencing court during plea and sentencing proceedings), Petitioner agreed to pay full restitution to victims (in conjunction with the blind, but fair sentence he hoped to receive from the court). The maximum sentence imposed on Petitioner for this non-violent crime; and who accepted Full

responsibility for the harm and/or damage incurred, is grossly disproportionate to the offense or crime itself.

In prong 2 of "Solem"... the Petitioner; though hard-pressed, was unable to locate a single cause adjudicated in Adams County (which was similar to Petitioner's cause) that resulted in a maximum sentence. No case was found of:

- a) A First-time offender...
- b) With no prior criminal history...
- c) Convicted of a non-violent offense...
- d) Under a plea agreement...
- e) And having a satisfactory educational, employment, and social background...

...having ever received a maximum sentence in the jurisdiction of Adams County; nor intra-jurisdictionally as well. Being mindful that no 2 causes are identical; Petitioner did find numerous causes inter/intra-jurisdictionally for uttering A Forgery, where criminal received a lesser sentence(s) than Petitioner (regardless of the criminal background). Petitioner contends that the criminals

(in the said researched cause(s)) had,

By complete analysis of the  
sentence imposed in this cause  
under "Solem"; Petitioner contends  
by satisfying all 3 Prongs, that  
the 15 year maximum sentence  
imposed was indeed disproportionate-  
ate to the crime... warranting  
review and reconsideration.

End of Document.

Respectfully Submitted  
by,

Nigel E. Owens

Petitioner

To the Circuit Court of Adams County  
Honorable Judge Lillie B. Sanders,

Petitioner has included the document Following this memorandum (which is a photocopied, signed, and dated legal envelope face; in which Post-Conviction documents were mailed) as verification under the "Prison Mailbox Rule"; that documents were logged out-going from facility housing Petitioner before time barring deadline.

Respectfully,

Nigel O. Davis

Nigel O. Davis  
Petitioner

Nigel D. Davis

#L2857

S. F. C. F.

279 Hwy. 33

Fayette, MS 39069



37

YOU

YOU

YOU

POST - CONVICTION

Legal  
Documents  
Enclosed

JEFFERSON FRANKLIN CO. CORR. FACILITY  
HAS NEITHER CENSORED NOR INSPECTED  
THIS ITEM, THEREFORE, THE  
DEPARTMENT DOES NOT ASSUME  
RESPONSIBILITY OF ITS CONTENT.

M. L. (Binky) Vines  
Circuit Court Clerk  
P. O. Box 1224  
Natchez, MS 39121

Date mailed: 09-08-06

Envelope Face Copied: 09-08-06

Beverly D. Stephens  
Secretary to Warden

(18)

IN THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

Cause Number 02-KR-0120-S

NIGEL O. DAVIS,  
Defendant

RECEIVED  
AND FILED  
OCT 10 2005  
ML VIMS CIRCUIT CLERK  
BY *[Signature]* D.C.

\*\*\*\*\*

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE ENTRY OF A  
PLEA OF GUILTY IN THE ABOVE STYLED AND NUMBERED CAUSE, BEFORE  
THE HONORABLE LILLIE BLACKMON SANDERS, CIRCUIT JUDGE, SOLE  
PRESIDING ON THE 5TH DAY OF SEPTEMBER, 2002; SAID HEARING BEING  
HELD IN THE ADAMS COUNTY, MISSISSIPPI, COURTHOUSE.

\*\*\*\*\*

APPEARANCES:

Present and Representing the State:

HONORABLE THOMAS ROSENBLATT  
Assistant District Attorney  
Sixth Circuit Court District  
Natchez, Mississippi

Present and Representing the Defendant:

HONORABLE PAMELA FERRINGTON  
Attorney at Law  
Natchez, Mississippi

\*\*\*\*\*

JUDITH W. BROWN  
OFFICIAL COURT REPORTER  
SIXTH CIRCUIT COURT DISTRICT  
48 MELANIE ROAD  
NATCHEZ, MISSISSIPPI 39120



1                    THE COURT: Call State of Mississippi Versus  
2                    Nigel O. Davis, Cause Number 02-KR-0120.  
3                    (Ms. Ferrington and defendant approach bench.)

4                    Would you raise your right hand and be sworn  
5                    please?

6                    NIGEL O. DAVIS, having been duly and legally sworn,  
7                    answered questions on his oath as follows, to-wit:

8                    THE COURT:

9                    Q. You are Nigel O. Davis?

10                  A. Yes, ma'am.

11                  Q. And, Mr. Davis, you're present here with your  
12                  attorney, Ms. Ferrington?

13                  A. Yes, ma'am.

14                  Q. You've indicated that you desire to enter a plea of  
15                  guilty to the charge of Uttering a Forgery, two counts in Cause  
16                  Number 02-KR-0120?

17                  A. Yes, ma'am.

18                  Q. In the Circuit Court of Adams County, Mississippi?

19                  A. Yes, ma'am.

20                  Q. Before I can accept your plea of guilty, it is  
21                  necessary that I determine that your plea of guilty is  
22                  knowingly, understandably, freely, and voluntarily made?

23                  A. Yes, ma'am.

24                  Q. In order to make this determination, I'm going to need  
25                  to ask you some questions.

26                  A. Yes, ma'am.

27                  Q. Your attorney, Ms. Ferrington, is standing with you;  
28                  you may consult with her at any time about any question I ask  
29                  you; do you understand that?

1 A. Yes, ma'am.

2 Q. You've presented to the Court a Petition to Enter a  
3 Plea of Guilty; do you realize that under penalties of perjury  
4 that you've given sworn answers and statements in that  
5 petition?

6 A. Yes, ma'am.

7 Q. Did you go over this entire petition with your  
8 attorney and did she explain everything in the petition to you?

9 A. Yes, she did.

10 Q. Did you understand everything that was in the  
11 petition?

12 A. Yes, ma'am.

13 Q. Is everything in the petition true and correct?

14 A. Yes, ma'am.

15 Q. And is this your signature at the bottom of the  
16 petition?

17 A. Yes, ma'am.

18 Q. How old are you, Mr. Davis?

19 A. Thirty-one.

20 Q. How much education have you had?

21 A. Thirteen years.

22 Q. And you also went to college somewhere for a year?

23 A. For a year.

24 Q. And where did you go to college and what did you major  
25 in?

26 A. Southern Technical College majoring in Paralegal in  
27 Jackson. But I didn't complete it.

28 Q. What business or employment experiences have you had?

29 A. I was recently employed with MCI World Com; just last

1 year I stopped when this happened here in Natchez. I was  
2 employed with them for a year, and before that I resided in Los  
3 Angeles, California, where I worked for a research company for  
4 two years.

5 Q. Are you at the present time under the influence of any  
6 drugs or other intoxicants?

7 A. No, ma'am.

8 Q. And do you understand that at this time and in these  
9 proceedings that the Court is seeking to determine whether or  
10 not your plea of guilty is knowingly, understandably, freely,  
11 and voluntarily made in order to determine whether or not to  
12 accept your plea of guilty to the charge of two counts of  
13 Uttering a Forgery. At this time I'm going to ask Mr.  
14 Rosenblatt to read and explain the charges to you. Mr.  
15 Rosenblatt.

16 MR. ROSENBLATT: Your Honor, the indictment in  
17 Cause Number 02-KR-0120 alleges that Nigel Davis on  
18 four different dates -- May 14th, May 17th, May 17th,  
19 and June 7th -- passed counterfeit checks. These  
20 were checks made out to appear to be checks from  
21 Field Memorial Community Hospital and passed them at  
22 Natchez Market Number II, Piggly Wiggly, and One Stop  
23 Package Store.

24 Your Honor, in consideration for this plea, the  
25 State consented to allow Mr. Davis to plead guilty  
26 just to Counts I and II involving checks passed at  
27 Natchez Market I and II.

28 Your Honor, either now or sometime prior to  
29 sentencing, with the Court's permission, I would like

1 to ask Mr Davis one or two questions.

2 THE COURT: I've got some questions to ask him  
3 too. I may let you ask yours first. We may have the  
4 same questions.

5 MR. ROSENBLATT: At this time?

6 THE COURT: Why don't you ask him at this time.

7 MR. ROSENBLATT: And again as the Court wants to  
8 inform him, he may consult with his attorney.

9 THE COURT: Let me ask him this first off. Why  
10 don't you just wait until the end.

11 MR. ROSENBLATT: I'll just wait. That's fine.

12 THE COURT:

13 Q. Do you understand the charges against you?

14 A. Yes, ma'am.

15 Q. And did you commit these crimes?

16 A. Yes, ma'am.

17 Q. And do you understand that once you enter a plea of  
18 guilty that this Court could sentence you to a maximum sentence  
19 of fifteen years and a \$10,000.00 fine on each count?

20 A. Yes, ma'am.

21 Q. Do you understand if the Court desired to do so that  
22 the Court could run those sentences consecutive?

23 A. Yes, ma'am.

24 Q. Which means that you would serve -- this Court could  
25 give you a maximum of thirty (30) years on these two counts.

26 A. I'm aware of that.

27 Q. And the minimum sentence would be two (2) years or  
28 something along those lines?

29 A. Yes, ma'am.

1 Q. Knowing these things, do you still wish to enter a  
2 plea of guilty?

3 A. Yes, ma'am.

4 Q. If you entered a plea of not guilty and a jury  
5 convicted you, you would have a right to appeal to the  
6 Mississippi Supreme Court; but when you enter a plea of guilty,  
7 you're waiving these rights; do you understand that?

8 A. Yes, ma'am.

9 Q. Has anybody threatened you in order to make you plead  
10 guilty?

11 A. No, Your Honor.

12 Q. Has anybody promised you anything in order to get you  
13 to plead guilty?

14 A. No, ma'am.

15 Q. And do you realize that you're waiving your rights  
16 under the Constitution that protects you against self  
17 incrimination?

18 A. Yes, ma'am.

19 Q. Do you realize that you're waiving your rights to a  
20 trial by jury?

21 A. Yes, ma'am.

22 Q. And do you understand that if you do not plead guilty  
23 that you're entitled to a jury trial and that in order for you  
24 to be convicted, all twelve jurors must agree on a verdict of  
25 guilty?

26 A. Yes, ma'am.

27 Q. Do you realize that the burden is on the State of  
28 Mississippi to prove you guilty beyond a reasonable doubt in  
29 case you have a jury trial, but that when you plead guilty,

1 you're waiving this requirement, and the State is not required  
2 to prove it?

3 A. Yes, ma'am.

4 Q. Under the Constitution, you have a right to be  
5 confronted by the witnesses against you. That is, if you plead  
6 not guilty and go to trial, the State would have to put on all  
7 their witnesses; and you or you through your attorney would be  
8 entitled to ask them questions and cross examine them.  
9 However, if you enter a plea of guilty, you're waiving your  
10 rights to be confronted by the witnesses against you; and  
11 you're waiving your rights to cross examine them; do you  
12 understand that?

13 A. Yes, ma'am.

14 Q. Do you realize that you're waiving any rights that you  
15 have to object to the composition of the grand jury that  
16 indicted you or any petit jury that would try your case?

17 A. Yes, ma'am.

18 THE COURT: Ms. Ferrington, you're the attorney  
19 for this defendant; have you spoken with him today?

20 MS. FERRINGTON: Yes, Your Honor.

21 THE COURT: From your observation of him today,  
22 did you see anything that would lead you to believe  
23 that he is presently intoxicated or under the  
24 influence of any drugs or other intoxicants?

25 MS. FERRINGTON: No, Your Honor.

26 THE COURT: Have you advised the defendant of  
27 all his Constitutional rights?

28 MS. FERRINGTON: I have.

29 THE COURT: And from your conversation with him,

1 do you think he fully understands what he's doing at  
2 this time?

3 MS. FERRINGTON: Yes, I do.

4 THE COURT:

5 Q. Mr. Davis, are you satisfied with the services of your  
6 attorney?

7 A. Yes, ma'am.

8 Q. Has she threatened you in any manner or promised you  
9 anything in order to get you to plead guilty?

10 A. No, ma'am.

11 Q. Do you believe that your attorney has properly advised  
12 you on this plea?

13 A. Yes, ma'am.

14 Q. Do you believe that your attorney has properly  
15 represented you in this case?

16 A. Yes, ma'am.

17 Q. Now, Mr. Davis, the Court has attempted to question  
18 you thoroughly about your plea of guilty to be satisfied that  
19 you are fully acquainted with all of your rights; having  
20 advised you of all this, I ask you at this time how do you  
21 plead to the charge of two counts of Uttering a Forgery?

22 A. Guilty.

23 Q. And why are you pleading guilty?

24 A. Because I did commit that crime of Uttering a Forgery.

25 THE COURT: Okay, Mr. Rosenblatt, you may ask  
26 your questions at this time.

27 MR. ROSENBLATT: Okay, would the Court like to  
28 go ahead and accept the guilty plea, and I'll do this  
29 just prior to sentencing?

1                   THE COURT: Okay, I'll do that.

2                   Ms. Ferrington, do you know of any reason why  
3                   the Court should not accept this defendant's plea of  
4                   guilty?

5                   MS. FERRINGTON: No, ma'am.

6                   THE COURT: The Court finds that the plea of  
7                   guilty of defendant was knowingly, freely,  
8                   voluntarily, intelligently, understandably made; and  
9                   there is a factual basis to support the charge, and  
10                  the plea of guilty will be accepted.

11                  Q. Have you ever been convicted of a felony crime before?

12                  A. No.

13                  THE COURT: Mr. Rosenblatt?

14                  MR. ROSENBLATT: Your Honor, by way of  
15                  background, as the Court is aware based on a previous  
16                  motion that this defendant made before the Court,  
17                  there are a large number of charges, all of a similar  
18                  nature, forgeries passed by this defendant in a  
19                  number of jurisdictions across the state; and there  
20                  is something of an on-going investigation in this  
21                  matter. With the Court's permission, I would like to  
22                  ask him:

23                  MR. ROSENBLATT:

24                  Q. It's come to light that there has been involvement by  
25                  a Jamie Thomas in this case; it's been alleged that there's  
26                  another woman involved in the case who may have either some of  
27                  the checks or have knowledge of some of the checks. Do you  
28                  know who that might be or wish to tell us who that might be at  
29                  this time?



1 A. I'm not familiar with that.

2 Q. In other words, someone other than Jamie Thomas, you  
3 don't know of another name that you would like to let us know  
4 about?

5 A. No, I don't know.

6 Q. The checks that you passed that you created from the  
7 Field Memorial Community Hospital bear a striking resemblance  
8 to some checks also issued by Alcorn State University. Do you  
9 know of any connection between what you have done, any link at  
10 all between what you have done and Alcorn State University?

11 A. No, I don't; no, sir.

12 MR. ROSENBLATT: That's all I have, Your Honor.

13 THE COURT:

14 Q. How did you get checks from Field Memorial Hospital?

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

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

27 A. Actually I just came through, and I saw the -- I  
28 remembered it when I came through; I had been to the boat, and  
29 it's just the first place that I brought them to -- but I don't

1 have any relatives down here.

2 THE COURT: Anything further, Mr. Rosenblatt?

3 MR. ROSENBLATT: No, Your Honor.

4 THE COURT: Mr. Rosenblatt, do you know how many  
5 other jurisdictions right now are waiting on this  
6 defendant?

7 MR. ROSENBLATT: Your Honor, either after  
8 sentencing or now, I was going to ask the Court for  
9 some guidance. There are a number of other counties  
10 that are wanting Mr. Davis, and I would -- at least  
11 in our proximity are Jefferson, Pike, are going to  
12 want him -- Amite County.

13 UNKNOWN GENTLEMAN: There's a total that I know  
14 of twenty-six cities -- twenty-six towns.

15 MR. ROSENBLATT: And there's at least ten or  
16 twelve different counties. At some point it's up to  
17 them to decide it's not worth their while to bring  
18 him back; that his punishment has already been meted  
19 out to him, but that's something for them to decide,  
20 I suppose. It's just going to be up to them to see  
21 about getting Mr. Davis back from the DOC and having  
22 had him or order him transferred to another  
23 particular jurisdiction.

24 MS. FERRINGTON: Judge, to shed some light on  
25 that, on July the 15th I wrote him a letter; I had  
26 tried to gather up all the different holds; and at  
27 that time there were seven different holds on him  
28 from Tupelo, Amory, Madison -- just all over the  
29 state. And those were the actual jurisdictions that

1 had notified Adams County and said put a hold on him;  
2 we want him next.

3 THE COURT: Okay, but I think we're going to  
4 transfer him to another jurisdiction -- no, I'm going  
5 to transfer him to the DOC, and they can get him back  
6 from there; that way the DOC can do whatever.

7 MR. ROSENBLATT: Let them make the decision.

8 THE COURT: DOC will transport him to where he  
9 needs to go, because once I sentence him, he's a  
10 state inmate, so I don't have the authority to tell  
11 him where to go.

12 MR. ROSENBLATT: That was our understanding.

13 MS. FERRINGTON:

14 Q. Is there anything you would like to say before she  
15 passes sentence?

16 A. If I may at this time, Your Honor?

17 THE COURT:

18 Q. Yes.

19 A. I would just like to apologize to the Natchez  
20 community and Adams County citizens and residents for the crime  
21 that's been committed. I wish that the actual victims were  
22 here today that I might be able to apologize to them  
23 personally. The last six months I spent here in Adams County  
24 being detained, it was an awakening experience for me; and I  
25 can do nothing today but to ask that the Court show mercy if it  
26 be in their will to do so. And even though I haven't been a  
27 criminal before this, I do understand that what I did was  
28 wrong.

29 Q. Mr. Davis, sometimes people jump in with both feet,

1 and that's what you did you just jumped into the water; you  
2 didn't test it to see if it was hot or cold; you just jumped  
3 in.

4 The Court at this time is going to sentence you -- and  
5 this is a rarity for me, but I think your crime dictates it --  
6 the Court is going to sentence you to the maximum sentence of  
7 fifteen (15) years in the Mississippi Department of Corrections  
8 on each count to run concurrent.

9 That's going to be the order of the Court.

10 Did you understand?

11 MS. FERRINGTON; He has a letter for the Judge;  
12 do you want him to read it?

13 THE COURT:

14 Q. Did you want to read it or did you want me to read it?

15 A. No, you can read it. Thank you, Your Honor.

16 Q. Okay.

17 THE COURT: He'll get credit for time served.

18 MR. ROSENBLATT: Your Honor, in this case, I  
19 would request restitution in this case alone in the  
20 amount of \$1400.

21 THE COURT: The Court is not going to order any  
22 restitution in light of the sentence.

23 MR. ROSENBLATT: Thank you, Your Honor.

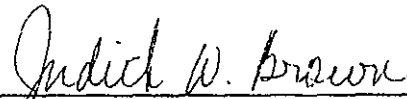
24  
25 COURT REPORTER'S CERTIFICATE

26 I, Judith W. Brown, Official Court Reporter in and for the  
27 Sixth Circuit Court District of Mississippi at the time of the  
28 hearing, do hereby certify that the within and foregoing  
29 thirteen (13) pages contain a full, true, and correct

1 transcription of my notes and tape, to the best of my ability,  
2 of the proceedings had and done in the aforesayed and numbered  
3 cause heard in the Circuit Court of Adams County, Mississippi,  
4 on September 5, 2002.

5 I do further certify that my certificate annexed hereto  
6 applies only to the original transcript. The undersigned  
7 assumes no responsibility for the accuracy of any reproduced  
8 copies not made under my control or direction.

9 WITNESS my signature, this the 6th day of October, 2005.


10  
11 

12 Judith W. Brown, CSR 1015  
13 Official Court Reporter  
14 Seventeenth Chancery District  
15 48 Melanie Road  
16 Natchez, MS 39120

Exhibit B

Appellant Brief  
# 2007-M-00126

Nigel O. Davis #L2857  
Jefferson Franklin Correctional Facility  
279 Hwy 33  
Fayette, Mississippi 39069

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November 14, 2006

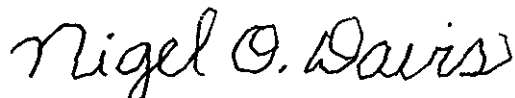
M.L. Binkey Vines  
Adams County Circuit Clerk  
P.O. Box 1224  
Natchez, Mississippi 39121

RE: Filing of Supplement Pages to Post-Conviction (Cause # 02-KR0120-S)

Dear Mr. Vines:

Enclosed are supplement pages to be filed with my Post Conviction for Collateral Relief under Cause # 02-KR0120-S. Also enclosed is a copy of the new statute for Forgery (97-21-33), to be be filed with these pages. Please file these as expeditiously as you can and in your usual manner (having these pages immediately placed with my original Post Conviction for review); and send me a copy of these pages marked "filed" to the address heading this letter.

Respectfully,



Nigel O. Davis - Petitioner

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IN THE CIRCUIT COURT OF ADAMS COUNTY MISSISSIPPI

NIGEL O. DAVIS  
VS  
STATE OF MISSISSIPPI

PETITIONER  
CAUSE NO. 02-KR0120-S  
RESPONDENT

SUPPLEMENT TO AMENDMENT FOR POST-CONVICTION COLLATERAL RELIEF

Comes now the Petitioner; Nigel O. Davis, Pro-Se and Informa Pauperis comes before this court of Adams County to hereby file the following Supplement for previously file Amendment to Motion for Post Conviction Collateral Relief cause no. 02-KR0120-S) (in accordance with Miss. Code Ann. 99-39-1, et. Seq. Code of 1972). By supplement; Petitioner solidifies grounds for seeking relief unto this court with the following facts to wit:

I.

Petitioner completes proportionality grounds under Solem v. Helm, by satisfying both prong two and three of analysis.

II.

Petitioner introduces (under Article 99-39-5 / paragraph 2) an intervening Mississippi Supreme Court decision which lowered the penalty for Uttering A Forgery (97-21-33) in regards to the U.S. Constitutions' Eighth Amendment.

FACTS:

Petitioner has successfully completed research (on the grounds of proportionality) to include additional information necessary in satisfying prongs two and three of the "Solem" analysis. The chart included (exhibit 9) shows individuals who have been convicted of and serve(d) (ing) time for Uttering A Forgery (97-21-59) in the State of Mississippi.

NOTE: Individuals listed are first-time and repeat offenders whose convictions are a result of plea bargain negotiations (except shaded individuals who are repeat offenders).

In reviewing this chart; Petitioner reiterates that each case IS different. However; it is clear that (in this cause) as a first-time offender, the Petitioner received a penalty maximally harsher than the offenders similarly situated and listed. And while first-time offender status does NOT have to be considered (within the



scope of judicial discretion); the court in Petitioners' cause fails to justify on the face of court record, reason(s) for imposing the maximum sentence to serve. See (White vs. State 742 So. 2d. 1126; Miss 1999) (Davis vs. State 724 So. 2d 342; Miss 1998).

Petitioner also includes (in this supplement) an intervening decision by the Mississippi Supreme Court, which lowered the penalty for Uttering A Forgery (97-21-33) from 2-15 years to 2-10 years (See Exhibit 10). This law was passed during a 2005 legislative session, and made retro-active back to July 1, 2003. The Mississippi Legislature realized the under the U.S. Constitutions' Eighth Amendment; the maximum period of incarcerated for Uttering A Forgery (15 years) was too great for this non-violent crime, and borderlined cruel and unusual punishment. Clowers vs. State 522 So. 2d. 762; Miss 1988 and Towner vs. State 837 So. 2d. 221 Miss 2003 are examples of such. Although Cloer was convicted under habitual status; the court expressed that a 15 year sentence was too harsh for a \$35 check utterance, thus sentencing Clowers to a more proportional 5 year mandatory sentence. In the reviewing and changing of this law (97-21-33) the Mississippi Supreme Court also extended the value of a forged check to over \$500.00 (rather than the previous \$100.00) in order to constitute a felony offense.

Unfortunately...Petitioners' conviction came nine months prior to the July 1, 2003 retro-active date of the new law. This decision by the Mississippi Supreme Court would indeed have adversely affected the outcome of this cause, and forded the Petitioner a deserved second chance at liberty. Petitioner does feel that this court (of Adams County) will agree with the Mississippi Supreme Courts' decision; and in its' (the courts') discretion and power...show mercy and leniency by ordering a rehearing (for review and reduction of sentence) for the Petitioner in this cause.

Respectfully Submitted By:

*Nigel O. Davis*

Nigel O. Davis  
Petitioner

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BY *[Signature]* D.C.

# EXHIBIT 9

State of Mississippi v. —	MDOC Number	Number of Counts	Number of Years Sentenced To	County of Conviction	Date of Conviction
Jackson, Christopher	N9903	2	6	Adams	08-11-06
Brooks, Sarah	T5394	2	5	Oktibbeha	
Davis, Rodney	109840	2	8 Months	Rankin	
Johnson, Joey	M7269	2	2	Carroll	
Jackson, Nathaniel	07561	2	4 years 6 months	Hinds	07-18-05
Green, Cammie	L0351	3	3	Jackson	02-28-06
Robinson, Xavier	N1834	1	5	Union	09-18-02
Davis, Douglas	R1629	2	2	Clay	
Allen, Jerry	112745	2	6	Tishomingo	
Jackson, Kenneth	K0745	2	11	Hinds	01-21-2000
Robinson, Joshua	119391	2	4	Pike	04-27-06
Earl, James	CR2006- 14	1	6	Copiah	09-05-06
Williams, Jason	71565	3	7	Humphreys	08-22-01
Robinson, Gregory	101842	6	2	Union	01-25-05
Davis, Patrick	53039	2	3 years 6 months	Harrison	
Bates, Brenda	85120	2	15	Lowndes	
Williams, James	54701	1	10	Lowndes	10-26-05
Williams, Eric	M1270	3	14	Monroe	09-23-02
Durward, Clifford	CR-2006- 15	1	6	Copiah	09-05-06
Williams, Elvie	59019	3	17	Coahoma	10-14-96
Tidwell, David	91170	4	5 years probation	Desoto	2004

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## Exhibit 10

1 of 1 DOCUMENT

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 Copyright; 2006 by The State of Mississippi  
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 D.C.

\*\*\* CURRENT THROUGH THE 2005 REGULAR SESSION \*\*\*  
 \*\*\* AND 1ST THROUGH 5TH EXTRAORDINARY SESSIONS \*\*\*  
 \*\*\* STATE COURT ANNOTATIONS CURRENT THROUGH APRIL 13, 2006 \*\*\*

TITLE 97. CRIMES  
 CHAPTER 21. FORGERY AND COUNTERFEITING

## GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

*Miss. Code Ann. § 97-21-33 (2006)*

## § 97-21-33. Penalty for forgery

Persons convicted of forgery shall be punished by imprisonment in the Penitentiary for a term of not less than two (2) years nor more than ten (10) years, or by a fine of not more than Ten Thousand Dollars (\$ 10,000.00), or both; provided, however, that when the amount of value involved is less than Five Hundred Dollars (\$ 500.00) in lieu of the punishment above provided for, the person convicted may be punished by imprisonment in the county jail for a term of not more than six (6) months, or by a fine of not more than One Thousand Dollars (\$ 1,000.00), or both, within the discretion of the court.

**HISTORY:** SOURCES: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(42); 1857, ch. 64, art. 124; 1871, § 2588; 1880, § 2840; 1892, § 1119; Laws, 1906, § 1200; Hemingway's 1917, § 930; Laws, 1930, § 957; Laws, 1942, § 2187; Laws, 1928, ch. 38; Laws, 1970, ch. 343, § 1; Laws, 2003, ch. 499, § 6, eff from and after July 1, 2003.

**NOTES:**

**CROSS REFERENCES.** --Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Limitations of prosecutions, generally, see § 99-1-5.

**JUDICIAL DECISIONS****1. IN GENERAL.**

Defendant argued that his sentence was contrary to the dictates of *Miss. Code Ann. § 47-7-34* because by failing to comply with the terms and conditions of postrelease supervision he could be required to serve a term exceeding the maximum allowed under the statute; defendant's sentence totaling 15 years, specifically 10 years to serve with 5 years of postrelease supervision, was unquestionably in accord with *Miss. Code Ann. § 97-21-33* as it was at the time of his sentencing, and therefore, his sentence did not conflict with *Miss. Code Ann. § 47-7-34*. *Kemp v. State*, 904 So. 2d 1162 (*Miss. Ct. App.* 2004).

Sentencing defendant to 15 years without possibility of parole, the maximum penalty for forgery, upon conviction for uttering a \$35 forged check, was not unconstitutionally disproportionate in violation of Federal Constitution's Eighth Amendment's cruel and unusual punishment clause, where sentence was imposed under habitual offender statute and defendant's 2 prior burglary convictions were not "truly non-violent" offenses; court noted that defendant's sentence was for 15 years, not life. *Burt v. Puckett*, 933 F.2d 350 (5th Cir. 1991).

A defendant convicted of uttering a forgery, who was also indicted as, and proven to be, a recidivist, was properly sentenced to 15 years in prison pursuant to *Mississippi Code § 99-19-81*. *Burt v. State*, 493 So. 2d 1325 (*Miss.* 1986), habeas corpus dismissed, 933 F.2d 350 (5th Cir. Miss. 1991).

The indictment in a forgery prosecution was not defective for failing to identify the defrauded party where it was obvious that the persons defrauded were those who had signed the forged deed at issue, a copy of which was attached to and made a part of the indictment; the sentence of one year in the county jail was not an abuse of discretion where it was within the limitations of the sentencing statute, even though the statute under which the defendant had been prosecuted did not require a criminal intent. *Sherman v. State*, 359 So. 2d 1366 (Miss. 1978).

In a prosecution for uttering a forgery, the case would be remanded to determine whether the maximum sentence had been improperly imposed pursuant to the habitual criminal statute, which was not part of the indictment, as required, or whether it had been properly imposed pursuant to the general sentencing statute for this crime. *Bell v. State*, 355 So. 2d 1106 (Miss. 1978).

In a forgery prosecution, where the face of each check or warrant involved was copied in exact detail in the indictment and each warrant as copied showed not only the payee and his address but the check numbers and other numbers and symbols used by the departments involved, the indictment was not defective on the ground that it did not protect the defendant from prosecution by others because it did not name all the parties involved. *Langston v. State*, 245 So. 2d 579 (Miss. 1971).

Judgments of conviction of forgery were not void because the court was without authority to suspend sentence, since, even if the court did lack such authority, the judgment of conviction would not be affected but only the suspension of sentence. *Langston v. State*, 245 So. 2d 579 (Miss. 1971).

Failure of proof to show where the alleged crime was committed required a reversal and remand of case. *Brownlee v. State*, 15 So. 2d 209 (Miss. 1943).

#### RESEARCH REFERENCES

ALR. Forgery: use of fictitious or assumed name. 49 A.L.R.2d 852.


Procuring signature by fraud as forgery. 11 A.L.R.3d 1074.

Embezzlement, larceny, false pretenses or allied criminal fraud by a partner. 82 A.L.R.3d 822.

AM JUR. 36 Am. Jur. 2d, Forgery § 68, 69.

2 Am. Jur. Trials, Investigating Particular Crimes § 23-31 (forgery).

CJS. 37 C.J.S., Forgery § 98.

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STATE OF MISSISSIPPI

COUNTY OF Jefferson

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BY [Signature] D.C.

AFFIDAVIT OF OATH

PERSONALLY APPEARED, Before me the undersigned authority, in and for the aforesaid jurisdiction, the within named, Nigel O. Davis, who after being duly sworn on his oath, do state that he has signed the above prepared sworn statement, and the statement stated therein are true and correct.

Nigel O. Davis

SUBSCRIBED AND SWORN TO BEFORE ME THIS THE, 14th DAY OF November, 2006.

Brenda K. Davis  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES SEPT. 11, 2009  
BONDED THROUGH STELLAR NOTARY SERVICE

STATE OF MISSISSIPPI

COUNTY OF Jefferson

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BY [Signature] D.C.

AFFIDAVIT OF POVERTY

PERSONALLY APPEARED, before me the undersigned in and for the aforesaid jurisdiction,  
Nigel O. Davis, who being duly sworn on his/her oath does depose  
and sayeth:

I, Nigel O. Davis, do solemnly swear that I am a citizen of  
the State of Mississippi, and that because of my poverty I am unable to pay the cost  
or give security for the same in the suit that I am about to commence, and that to  
the best of my knowledge and belief, I am entitled to the relief which I seek by suit.

Nigel O. Davis

SWORN AND SUBSCRIBED to before me this the 14<sup>th</sup> day of  
November, 2006.

Brenda K. Pless  
NOTARY PUBLIC

MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES SEPT. 11, 2009  
BONDED FOR CREDIT ADVISORY SERVICE

CERTIFICATE OF SERVICE

I, Nigel O. Davis, do hereby certify that I have, on this date, caused to be mailed via U.S. Postal Service, and postage prepaid, a true and correct copy of the above and foregoing document identified as: Post Conviction Collateral Relief Amendment  
Supplement Pages

To the following <sup>att</sup>addressee(s):

M.L. Binky Vines  
Circuit Ct. Clerk  
P.O. Box 1224  
Natchez, MS 39121

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AND FILED  
NOV 17 2006  
M.L. VINES CIRCUIT CLERK  
BY (signature) D.C.

This, the 14<sup>th</sup> day of November 2006

x Nigel O. Davis

\_\_\_\_\_  
Pro. Sec. Petitioner

# Exhibit C

Appellant Brief  
# 2007-M-00126



**Supreme Court of Mississippi**  
**Court of Appeals of the State of Mississippi**  
*Office of the Clerk*

Betty W. Sephton  
Post Office Box 249  
Jackson, Mississippi 39205-0249  
Telephone: (601) 359-3694  
Facsimile: (601) 359-2407

*(Street Address)*  
450 High Street  
Jackson, Mississippi 39201-1082  
e-mail: [sctclerk@mssc.state.ms.us](mailto:sctclerk@mssc.state.ms.us)

06/01/2007

Hon. Lillie Blackmon Sanders  
Judge, Circuit Court District 6  
P O Box 1384  
Natchez, MS 39121.

In Re: Nigel O. Davis

Case # 2007-M-00126  
Adams County Circuit 02-KR-0120-5

Dear Judge Sanders:

A petition for writ of mandamus has been filed in this matter, and the Court seeks your response to the petition. A copy of the petition is enclosed.

A previous petition for writ of mandamus was denied by this Court on March 1, 2007. Davis has now filed another petition, which includes a document stamped RECEIVED AND FILED NOV. 17, 2006.

Your response should be filed on or before 06/15/2007.

Sincerely,

  
CLERK

enc.  
jgm

Exhibit D

Appellant Brief  
# 2007-M-00126

Exhibit

A

Office of the Circuit Judge

SIXTH CIRCUIT COURT DISTRICT

CIRCUIT JUDGE  
LILLIE BLACKMON SANDERS  
P. O. BOX 1384  
TELEPHONE 601-445-7933  
FACSIMILE 601-445-2369



NATCHEZ, MISSISSIPPI 39121

SERVING:  
ADAMS  
AMITE  
FRANKLIN  
WILKINSON  
COUNTIES

June 11, 2007

VIA US MAIL:

Nigel Davis #L2857  
J.F.C. F.  
279 Highway 33  
Fayette, MS 39069

RE: IN THE CIRCUIT COURT OF ADAMS COUNTY, MS  
Nigel Davis v. State of Mississippi  
Cause #02-KR-0120-S  
Supreme Court Cause #2007-M-00126

Dear Mr. Davis,

After careful review and consideration;

Enclosed herein is the Court's response to the writ of mandamus filed herein in  
the above styled and numbered cause.

Very truly yours,

Pershuna Turnbull  
Judicial Secretary III

## IN THE CIRCUIT COURT OF ADAMS COUNTY, MS

NIGEL DAVIS

RECEIVED  
AND FILED

PETITIONER

02-KR-0120-S

JUN 11 2007

RESPONDENT

M.L. VINES CIRCUIT CLERK

BY \_\_\_\_\_ D.C.

ORDER

CERTIFIED  
TRUE COPYJUN 22 2007  
M.L. VINES, CIRCUIT CLERK  
DEPUTY CLERK

STATE OF MISSISSIPPI

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 September 14, 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;

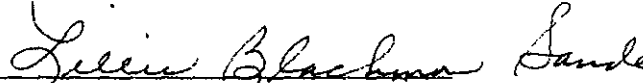
While this crime was non-violent, it was part of a malicious scheme to defraud and injure businesses in Natchez and other areas of Mississippi. In a written statement provided by Petitioner Davis, he states a demonstration in which he researched and created a series of false information and fraudulent 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 11<sup>th</sup> day of June, 2007.

  
LILLIE BLACKMON SANDERS  
CIRCUIT COURT JUDGE