

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

**COPY**

**NIGEL O'NEIL DAVIS**

**APPELLANT**

**VS.**

**FILED**

**JUL 26 2007**

**NO. 2007-CP-0224**

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: STEPHANIE B. WOOD  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680**

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**NIGEL O'NEIL DAVIS**

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**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE ISSUES**

Nigel O. Davis [hereinafter "Davis"] raised seven issues on appeal. For simplification purposes, the State of Mississippi combined these issues as follows:

- I. THE TRIAL COURT PROPERLY DENIED DAVIS'S PETITION TO CLARIFY SENTENCE.

**STATEMENT OF FACTS**

Davis was indicted for two counts of uttering a forgery by a grand jury in Calhoun County, Mississippi in June of 2002. (Record p. 8 - 9). This indictment was based on Davis's forgery of two checks, each in the amount of \$253.81. (Record p. 8 - 9). On August 9, 2004, Davis pled guilty to both counts of uttering a forgery. (Record p. 16). Davis was sentenced to serve one year in the custody of the Mississippi Department of Corrections for each count along with fees and restitution. (Record p. 16).

On November 7, 2006, Davis filed a Petition to Clarify Sentence claiming that "the sentence imposed is ambiguous in that the Mississippi Supreme Court revised the statute regarding the penalty

for Forgery (97-21-33) in a 2005 legislative session.” (Record p. 1). The trial court denied Davis’s Petition. (Record p. 18). Davis now appeals that decision.

### **SUMMARY OF ARGUMENT**

The trial court properly denied Davis’s Petition to Clarify Sentence as the trial court had discretion in sentencing Davis according to the sentencing statute in question.

### **ARGUMENT**

Davis was sentenced under Mississippi Code Annotated §97-21-33 prior to the 2003 amendment which read as follows:

“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 fifteen (15) years, provided, however, that when the amount of value involved is less than one hundred dollars (\$100.00) 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 twelve (12) months, within the discretion of the court.”

Section 97-21-33 was subsequently amended and now reads as follows:

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.

Davis contends that because this statute was amended and applies to cases from July 1, 2003 and forward, that “the most that [he] could be charged with would be a misdemeanor and/or fines or restitution.” (Appellant’s Brief). He basically argues that because the checks he forged were under \$500.00 that he should be, at most, sentenced to not more than six months in the county jail and a fine. (Appellant’s Brief).

A similar argument was made in *Davis v. State*, in which this Honorable Court held that the

forgery sentencing statute “grants the trial judge discretion in sentencing individuals.” 758 So.2d 463, 467 (Miss. Ct. App. 2000). The Court further held that while the statute does allow for a more lenient sentence for forgeries of lesser amounts, the statute also “allows the trial judge to sentence an individual convicted of uttering a forgery to the maximum” sentence. *Id.* In so holding, the Court noted the legislature’s use of the word “may” in the statute. *Id.* Therefore, the trial court acted within its discretion in sentencing Davis to one year for each count of uttering a forgery as the sentence was within the statutory authority given the court.

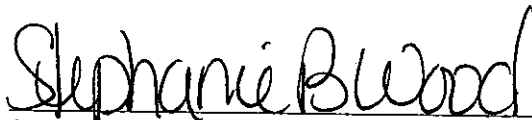
### CONCLUSION

Accordingly, Davis’s Petition to Clarify Sentence was properly denied. As such, the State of Mississippi respectfully requests that this Honorable Court affirm the denial of post-conviction relief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



STEPHANIE B. WOOD

SPECIAL ASSISTANT ATTORNEY GENERAL

MISSISSIPPI BAR NO. [REDACTED]

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680

## CERTIFICATE OF SERVICE

I, Stephanie B. Wood, 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 Andrew K. Howarth  
Circuit Court Judge  
1 Courthouse Square, Suite 201  
Oxford, MS 38655

Honorable Ben Creekmore  
District Attorney  
P. O. Box 1478  
Oxford, MS 38655

Nigel O'Neil Davis, #L2857  
Jefferson/Franklin Correctional Facility (J.F.C.F.)  
279 Hwy. 33  
Fayette, Mississippi 39069

This the 26th day of July, 2007.

  
STEPHANIE B. WOOD  
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MISSISSIPPI 39205-0220  
TELEPHONE: (601) 359-3680