

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COPY

NIGEL O'NEIL DAVIS

APPELLANT

FILED

VS.

AUG 17 2007

NO. 2007-CP-0224

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

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF FOR THE APPELLANT

APPELLANT DOES NOT REQUEST ORAL ARGUMENT

NIGEL DAVIS, APPELLANT

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

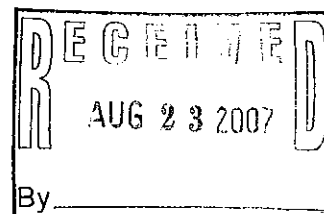


TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	1
STATEMENT OF THE ISSUES.....	2
STATEMENT OF FACTS.....	2
ARGUMENT.....	3-5
CONCLUSION.....	5
CERTIFICATE OF SERVICE.....	7

TABLE OF AUTHORITIES

Mississippi Code Annotated 97-21-33.....

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NIGEL O'NEIL DAVIS

APPELLANT

VS.

NO. 2007-CP-0224

STATE OF MISSISSIPPI

APPELLEE

**REPLY BRIEF FOR THE APPELLANT
STATEMENT OF THE ISSUES**

- I. The trial court erred in denying Davis' Petition to Clarify Sentence.
- II. Davis Re-addresses the ambiguous nature of forgery statute (97-21-33)

:

STATEMENT OF FACTS

On November 7, 2006, Petitioner filed a Petition to Clarify Sentence claiming the sentence imposed is ambiguous; due to the fact that the Mississippi Supreme Court revised the statute regarding the penalty for forgery (97-21-33) in a 2005 legislative session. The trial court denied the petition, which is now being appealed.

ARGUMENT

The trial court (in their reply) believes that it has sole discretion to sentence an individual convicted of forgery to *ANY* sentence (within the statute 97-21-33) regardless of the amount value involved. By interpreting the statute this way; the trial court contends that it was "lenient" when imposing the (two) one year sentences on the Petitioner, and under the OLD statute it *MAY* have been lenient; but such leniency was illegal (statutorily).

Under the new and preceding statute for forgery (97-21-33)...the Mississippi Supreme Court clearly set forth the same misdemeanor and felony standards, under which those convicted are to be punished:

Old Statute	Amount Value	"shall" receive
	\$100.00 or more	2-15 yrs, in prison or not more than \$10,000.00 fine, or both.
	less than \$100.00	"may" receive up to 12 months in county jail, or not more than \$1,000.00 fine or both.

New statute

amount value

“shall”... receive 2-10

\$500.00 or more

yrs. in prison, or not

more than

\$10,000.00 fine, or

both.

less than \$500.00

“may” receive up to 6

months in county jail

or not more than

\$1,000.00 fine, or

both.

The ambiguity in the statute clearly is within the trial courts' assertion that ...”within the discretion of the court’, implies that the trial court can choose ANY range of punishment for ANY amount value involved. The Appellant asserts that this is incorrect. The statute is distinct in its separation of misdemeanor and felony status. The question (which?) status the convicted will be sentenced under is foremost; once established, the trial courts sentencing discretion remains sole...while separated into (2) distinct punishments for (2) distinct statuses...yet each with their own spectrum of “leniency”. Both misdemeanor and felony status CANNOT carry the possibility of the same punishments, and one (status) be considered “lesser” or “lenient” than the other. Such a practice , by legislative definition, would be an “enhancement” of a penalty...(for which there must be a reason for enhancement, and a statutory provision to support its imposition.

Under the new revision of statute (97-21-33), the Appellant can only receive up to 6 months in county jail or not more than a \$1,000.00 fine or both; because the amount value involved (253.81) is less than the required 500.00 or more needed to impose a sentence of 2-10 year, or up to a \$10,000.00 fine. Appellant contends that although it appears minimal and "lenient" ... the (2) one year sentences imposed on him; fall between the two statutes (up to 6 months in county jail, or 2-10 yrs in prison) unsupported by the new statute. This ambiguity however; is still outweighed by the fact that under the new statute appellant cannot have felony status imposed, when the amount value involved is clearly misdemeanor.

CONCLUSION

Accordingly, Appellants' Petition to Clarify Sentence was improperly denied by the trial. The new guidelines set forth by the Mississippi Supreme Court (under statute 97-21-33) were not followed (wholly, nor in retro) by said trial court. As such, the appellant respectfully request that this Honorable Court reverse and remand this case back to the trial court and (wherebeit) clarify the ambiguity of the aforementioned statute (97-21-33) to be applied to this and future applicable cases.

Respectfully Submitted,

Nigel O. Davis

Nigel O. Davis, pro-se appellant

COUNTY OF JEFFERSON

STATE OF MISSISSIPPI

AFFIDAVIT OF OATH

Before me, the undersigned authority for the above captioned county, appeared Nigel O. Davis. After being duly sworn he does affirm under oath that everything included in his foregoing Reply Brief, is true and correct as to his knowledge.

signed before me this the 17th day of August, 2007

Nigel O. Davis

Nigel O. Davis

Notary Brenda K. Hoss

expiration MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT. 11, 2009
BONDED THRU STEGALL NOTARY SERVICE

CERTIFICATE OF SERVICE

This is to certify, that I, Nigelo Davis have this day mailed a true and correct copy of the foregoing and attached Appellant Reply Brief, via the United States Postal Service, first class postage prepaid, to the below listed individuals.

Mississippi Supreme
Court

Clerk of Court

P.O. Box 249

Jackson, MS 39205-0249

Honorable Andrew K. Howarth
Circuit Court Judge

1 Courthouse Sq. Suite 201
Oxford, MS 38655

So certified, this the 20 day of August 2007

Nigelo Davis