

**COPY**

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

**DANIEL LEWIS JONES**

**APPELLANT**

**VS.**

**FILED**

**AUG 20 2007**

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

**NO. 2007-CP-0260-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: LA DONNA C. HOLLAND  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. [REDACTED]**

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## ARGUMENT

- I. THE TRIAL COURT DID NOT ERR IN ALLOWING THE STATE TO AMEND THE INDICTMENT TO CHARGE JONES AS A HABITUAL OFFENDER.
- &
- II. DEFENSE COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO OBJECT TO THE STATE'S MOTION TO AMEND THE INDICTMENT.

“Under URCCC 7.09, indictments may be amended to charge the defendant as a habitual offender only if the defendant is afforded a fair opportunity to present a defense and is not unfairly surprised.” **Troupe v. State**, 922 So.2d 844, 846 (¶ 7) (Miss. Ct. App. 2006). The following facts show that Jones was afforded a fair opportunity to present a defense and was not surprised with the habitual offender amendment. The State moved to amend the indictment to include Jones’ habitual offender status six months prior to the plea hearing. C.P. 5. Jones acknowledged in his plea petition that he would be sentenced as a habitual offender if he pled guilty to Count II possession of a controlled substance in exchange for the State’s recommendation that two charges against him be dropped. C.P. 10, 12. The transcript of the plea colloquy shows that Jones acknowledged the same verbally at the hearing. C.P. 23, 25. The record is clear that Jones had an opportunity to present a defense and was not surprised by the habitual offender amendment. Accordingly, the trial court properly denied Jones’ motion for post-conviction relief.

Because the trial court did not err in allowing the State to amend the indictment, Jones’ claim that counsel was ineffective for failing to object to the motion to amend must necessarily fail.

## CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm the trial court's denial of post-conviction relief.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

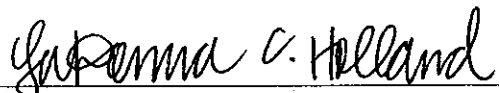
I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Lee J. Howard  
Circuit Court Judge  
Post Office Box 1344  
Starkville, MS 39760

Honorable Forrest Allgood  
District Attorney  
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This the 20th day of August, 2007.

  
\_\_\_\_\_  
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