COPY

SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS

Michael W. DAVIS — PETITIONER, APPEALLANT

FILED
OCT 03 2007
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

NO. 2007-CP-00264-COA

STATE OF Mississippi — RESPONDENT, APPELLEE

BRIEF OF PETITIONER - APPEALLANT

ON APPEAL FROM the Circuit Court of Gulfport Mississippi First Judicial District of HARRISON County IN THE CAUSE N: B2401-2003-373

PRELIMINARY STATEMENT and JURISDICTION Ruling below:

A MOTION FOR RECONSIDERATION to the HARRISON County, Circuit Court, Gulfport, Mississippi FIRST JUDICIAL DISTRICT, the HONORABLE JERRY O. TERRY presiding Judge, this MOTION WAS Filed by Michael W. DAVIS FEBRUARY 9, 2004 AND DENIED, the 27, th day of FEBRUARY, 2004.

This is A APPEAL FROM A ORDER of the HARRISON County Circuit Court, FIRST JUDICIAL DISTRICT of Gulfport, Mississippi, the HONORABLE Judge JERRY O. TERRY DENYING A MOTION Filed PURSUANT to Mississippi Code ANNOTED SECTION 99-39-1 et. seq. to VACATE DEFENDENT-APPEALLANTS SENTENCE. THE ORD WAS ENTERED JANUARY 11, 2007.

A timely NOTICE of APPEAL was Filed ON FEBRUARY 7, 2007.

TABLE OF CONTENTS

TABLE of Authorities

Constitutional Claims

WE ARE SECURED by the Fifth, Sixth, AND Fourteenth AdMENdments to the CONSTITUTION of the UNITED STATES, AS WELL AS those COMPARABLE Rights SECURED by the 14 AND 26, Article 3 of the Mississippi Constitution of 1890. Eg. Fed. Rules Evid. 404 (A)

STATE

STATE of Mississippi

STATE OF MISSISSIPPI

Hill v. STATE 388 So. 2d. 143 (Miss. 1980)
Hubbard v. STATE 437 So. 2d. 143 (Miss. 1983)
JACKIE Phillips v. STATE NO. 53469 S. Ct. 421 So. 2d 476; 1982 Miss. LEXIS 2254 Oct. 27, 1982
JAMES E. BENNETT JR. V. STATE OF MISS. NO. 54837 S. Ct. Miss. 451 So. 2d 727 1984 Miss. LEXIS 1746 MAY 16, 1984
LEATHERWOOD 539 So. 2d. 1378, 1385-87 (Miss. 1989); GARNER V. STATE 531 So. 2d. 805, 809 (Miss. 1988) COLEMAN V. STATE 483 So. 2d. 680, 682 (Miss. 1986) WILLIAMS V. STATE 473 So. 2d. 974 (Miss. 1985)
LEATHERWOOD V. STATE 473 So. 2d. 964 (Miss. 1985)
LEWIS OSCAR YOUNG V. STATE. NO. 56218 S. Ct. Miss 507 So. 2d. 48 1987 Miss. LEXIS 2442 April 18, 1987
MALONE V. STATE, 407 So. 2d. 530 (Miss. 1981); Miss. 493 So. 2d. 1321; 1986 Miss. LEXIS 2638 SEPT. 10, 1986
MYER V. STATE, 583 So. 2d. 174, 177 (Miss. 1991)
OSBORNE V. STATE 404 So. 2d. 545 (Miss. 1981)
PACE V. STATE 407 So. 2d. 530 (Miss. 1981)
RAYMOND ALEXANDER V. STATE NO. 90-KP-1310; SUPREME COURT OF MISS. 605 So. 2d. 1170; 1992 Miss. LEXIS 573, Sept. 2, 1992; DECIDED.
SCHAEFER, FEDERALISM AND STATE CRIMINAL PROCEDURES 70 HARV. L. REV. 1.8 (1956)
STINSON V. STATE 443 So. 2d 869 (Miss. 1983)
STROMAS V. STATE 443, 618 So. 2d 116, 121 (Miss. 1993)
SYLVESTER SANDERS - APPELLANT V. STATE OF MISSISSIPPI APPELLE NO. 54,210 S. Ct. Miss. 440 So. 2d. 278 Miss. LEXIS 2905 SEPT. 21, 1983
TILLER V. STATE 440 So. 2d. 1001, 1006 (Miss. 1983)
TIMOTHY MYERS V. STATE NO: 89-KP-1272. SUPREME COURT OF MISSISSIPPI. 583 So. 2d. 174; 1991 Miss. LEXIS 388, JUNE 19, 1991 DECIDED
WILLIAM A.C. SMITH V. STATE AKA WILLIAM CHRISTOPHER SMITH 835 So. 2d 927; 2002 Miss. LEXIS 298 OCTOBER 3, 2002
WILSON V. STATE 577 So. 2d. 394, 396-97 (Miss. 1991)
YATES V. STATE 189 So. 2d. 917 (Miss. (1966)

FEDERAL

ADAMS V. UNITED STATES, EX REL MCCANN 317, U.S. 269, 275, 276, (1942)
BOYKIN V. ALABAMA 395 U.S. 238, 89 S. Ct. 1709 23 L. Ed. 2d. 274 (1969)
BURGIN V. STATE 522 S.W. 2d 159 (M.D. App. 1975)
CHAVEZ V. WILSON 417 F. 2d 584 (9th Cir. 1969)
CONSTITUTIONAL CLAIMS 1890
CUYLER V. SULLIVAN 446 U.S. 335, 346-47, 64 L. Ed. 333, 100 S. Ct 1708 (1989)
DUNCAN V. LOUISIANA 391 U.S. 145, 20 L. Ed. 2d. 491, 885 ct. 1444
EVITTS V. LUCEY 469 U.S. 387 (1985)
EVITTS V. LUCEY STRICKLAND STANDARD OF INEFFECTIVE ASST. OF COUNSEL - ALSO APPLIES TO APPEALLANT COUNSEL

FIFTH ADMENDMENT to CONSTITUTION.

GARNER V. LOUISIANA 368 U.S. 157, 173 7 L. Ed. 2d. 207, 219 82 S. Ct. 248

FEDERAL

Gideon v. Wainright 372 U.S. 335, 334 (1963)
Hill v. Lockhart [27] 474 U.S. 52, 106 S.Ct. 366 88 L.Ed. 2d. 203 (1985)
In re Winship 397 U.S. 358, 90 S.Ct. 1068 25 L.Ed. 2d. 368 (1970)
Kaufman v. Does the Judge have a Right to qualified Counsel ?
61. A.B.A. J. 569 (1975) quoting Lord Eldon.
Kimmelman v. Morrison 477 U.S. 356, 377 (1986)
Malloy v. Hogan 378 U.S. 1, 12 L.Ed. 2d. 653, 845 S. Ct. 1489
Matthew v. Diaz 426 U.S. 67, 77 (1976)
Mc Cann 317 U.S. 269, 275, 276 (1942)
Nealy v. Cabana 764 F. 5th Cir. (1985)
Peete v. Rose 381 F. Supp. 1167 (W.D. of TN. 1974)
Polk County v. Dodson 454 21.5. 312, 318, 319 (1981)
Powell v. Alabama 287 U.S. 45 (1932)
Shaughnessy v. Mezel 345 U.S. 206, 212 (1953)
Specht v. Patterson 386 U.S. 605, 610, 18 L. Ed. 2d 326, 330, 87 S. Ct. 1209
Strickland v. Washington 466 U.S. 668, 687-96, 80 L. Ed. 2d 674, 104 S. Ct. (1984)
United States v. Cronic 466 U.S. 648, 654, 365, 377 (1984)
Wrongwind v. U.S. 163 U.S. 228, 238 (1896)
Yick W. v. Young 118 U.S. 356, 369 (1886)

CONSTITUTIONAL CLAIMS

Sixth Admendment

28 U.S.C. 2253 (A)
28 U.S.C. 2253 (C)
28 U.S.C. 2255
41 U.S.C. 51 Et. Seq.

Frederal Rules of Practice Rule 35

MISCELLANEOUS

ABA standard For Criminal Justice ch. 4 pert IV standard 406.2 (3d Ed. 1993)

Cause No. B2401-96-1146 and B2401-97-532

Ms. Code Ann. Section 41-29-139 (A) and 97-3-7 (2) (B)

QUESTIONS PRESENTED

(1.) WHERTHER COUNSEL total FAILURE IN FILING "MOTIONS" WHEN he WAS told to do so, OR otherwise violated DEFENDENTS-APPEALLANT's Rights of FREE AMERICANS, those SECURED by the FIFTH, SIXTH AND FOURTEENTH ADMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, AS WELL AS those COMPARABLE RIGHTS SECURED by the 14 AND 26, ARTICULE 3, of the MISSISSIPPI CONSTITUTION OF 1890.

(2) WHERTHER INEFFECTIVE ASSISTANCE of COUNSEL WAS INDEED INDUCED by AN UNWILLINGNESS to REPRESENT DEFENDENT-APPEALLANT, OR due to CONFLICT.

(3) WHERTHER COUNSEL's ADVICE PREJUDICED, DEFENDENT-APPEALLANT to ENTER Guilty PLEA, (OPEN PLEA)

(4) WHERTHER COUNSEL should of EXPLAINED OR ADVISED DEFENDENT - APPEALLANT of his Rights WHEN NO ONE ELSE had EXPLAINED his Rights IN ANY WAY, NOR did he Fully UNDERSTAND these CHARGES AGAINST HIM OR the Rights that he WAS INTITLE to by LAW.

(5) WHERTHER COUNSEL DENIED DEFENDENT-APPELLANT ANY CONSIDERATION BEFORE the COURTS AS to MITIGATION, EITHER by COUNSEL OR by CALLING CHARACTER WITNESS's that WAS THERE AT TIME OF PLEA AND SENTENCING.

(6) WHERTHER COUNSEL VIOLATED UNIFORM RULES of CIRCUIT COURT AND COURT PRACTICES RULE 8.04 by MEANS of (FEAR, DECEPTION OR IMPROPER INDUCEMENT during ALL COURT HEARING's

(7) WHERTHER COUNSEL is INEFFECTIVE ASSISTANCE OF COUNSEL AFTER A PERIOD of (2) two YEARS. WHEN COUNSEL ADVISED DEFENDENT that he would FILE MOTION to get a TIME REDUCTION, AND that ~~he would~~ All of his good-TIME would BE put towards his NEW SENTENCE AND he would be out IN NO TIME, but FAILED to do so.

(8) WHERTHER COUNSEL WAS WORKING IN DEFENDENT-APPEALLANTS behalf OR WAS NEVER CONCERNED AS to A justly outcome IN the CASE.

SUMMARY OF ARGUMENT

A. INEFFECTIVE ASSISTANCE OF COUNSEL

That COUNSEL WAS told by defendent-APPEALLANT, ON MANY different OCCASSIONS to File the PROPER MOTION's IN his behalF. Yet COUNSEL FAILURE to do so Violated Michael W. DAVIS Rights of FREE AMERICANS, those SECURED UNDER the Fifth, Sixth, AND FOURTEENth ADMENDMENTS to the CONSTITUTION OF the UNITED STATES, AS WELL AS those COMPARABLE Rights SECURED by the 14 AND 26, ARTICLE 3 of the MISSISSIPPI — CONSTITUTION OF 1890.

That COUNSEL having COMMON SENSE, OVER POWERED the will OF defendent -APPEALLANT through out his ENTIRE ASSISTANCE given to Michael W. DAVIS.

That the COUNSEL (MR. Fred LUSK) CORCED defendent-APPEALLANT to giving FALSELY STATEMENTS AS to what OCCURED on July 31, 2002.

That COUNSEL MADE NO PREPRATIONS FOR trail AT ANY TIME, but lead defendent -APPEALLANT to believe that he had.

That COUNSEL ACTED UNDER A CONFLICT OF INTEREST during REPRESENTING de-FENDENT-APPELLANT when IN FACT COUNSEL should HAVE WITHDRAWN FROM CASE. COUNSEL (MR. LUSK stated I CANT WALK AROUND telling other's that the POLICE Shot you while you WERE sitting down (3) three TIMES then putting handcuffs on you, KICKED AND beated you up ON the side OF the ROAD IF TRUE) This WAS A layed out STATEMENT FROM the start by COUNSEL. COUNSEL EXPRESSED his DISCERN to put defendent-APPEALLANT on the trail STAND to give testimony to these IMPORTANT FACTS OF the CASE.

FOR (18) Eighteen MONTHS defendent-APPEALLANT SAT IN the HARRISON County JAIL AS A INMATE WAITING to go to TRAIL AND PROVE his INNOSENSE to the COURT AND PEOPLE OF the JURY AND PEOPLE IN the STATE OF MISSISSIPPI. COUNSEL FOR the defendent-APPEALLANT, MADE NO PREPRATIONS FOR trail what so EVER.

COUNSEL NEVER EXPLAINED to the defendent-APPEALLANT his Rights CONCERNING ANYthing, BEFORE ANY COURT APPEARENCE, during ANY suppost to be COURT APPEARENCE OR AFTER ANY COURT HEARINGS that he WAS NOT Excluded IN.

COUNSEL took his time IN WEARING down the will of the defendent-APPEALLANT About himself AND as to the EVENTS that occured on July 31, 2002.

That COUNSEL CHANGED the outcome with FALSELY STATEMENTS to INCRIMINATE defendent-APPEALLANT saying (that NObody would belive you, AND later ON saying You dont have ANY WITNESS that can BE FOUND) AND with this STATEMENT you DONT HAVE A chance "you" MUST OPEN with A plea of Guilty A OPEN PLEA. COUNSEL COERCED, defendent-APPEALLANT All the WAY INTO (35) YEARS he RECIEVED.

COUNSEL IN NO WAY ACTED IN defendent-APPEALLANT's behalf BEFORE ENTERING A PLEA. The STATE PROSECUTOR AND COUNSEL-Fred LUSK, KNEW VERY WELL of FALSE testimony given, but ALLOWED this ANYWAY without ALLOWING the COURT to INSPECT this testimony AS FALSE.

COUNSEL IN NO WAY GAVE ANY Mitigation CONCERNING defendent-APPEALLANT by himSELF NOR ALLOWED ANY FROM his FRIENDS OR FAMILY that WAS IN the COURTROOM AT the TIME. AND surely did NOT PREPARE FOR ANY Mitigation ON this CASE be HEARD by Michael W. DAVIS, defendent-APPEALLANT.

Involuntary Guilty Plea

That Counsel advised defendent-Appellant several times that if he would plea guilty that he would not recieve anymore than (5) five years on all of the charges together and that after he had (2) two years under his belt that Counsel Mr. Fred Lusk would file a Motion For a sentence reduction and that all of his earned good time would go towards his sentence and that he would be out in no time.

Counsel Failed to inform Michael W. Davis that under the Habitual Offender section 99-19-81 that he was not eligagable for any good time or anything else that the Department of Correction might have to offer.

Altogether Counsel's Failure to do so violated defendent-Appellant, (Michael W. Davis) Right to Free Americans, those secured by the Fifth, Sixth, and Fourteenth Amendments of the Constitution of the United States of America, as well as those comparable Rights secured by 14 and 26, Article 3 of the Mississippi Constitution of 1890.

Counsel never Filed any Motions in a Reduction of Sentence in defendent's-Appellant behalf. Counsel would not recieve any phone calls nor returned any letter written to him by Michael W. Davis and Carol Redmon.

Improper Indictment

Counsel's Failure among other Motions allowed the state the Improper Indictment as charged also did deny Michael W. Davis's Right to Freedom of Americans, those secured by the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States, as well as those comparable Rights secured by 14 and 26, Article 3 of the Mississippi Constitution of 1890.

These Facts are supported by (3) the Affidavits, two by Michael W. Davis and one by Carol Redmon.

Statement of Case

Premlimary Hearing: On or about the month of September of 2002, Michael W. Davis entered a plea of "Not Guilty" in Circuit Court First Judical District, Harrison County, of the foresaid charges of.
Count I Manufacture of a controlled substance section 41-29-139(A)(1), Miss. Code of 1972, and Count II and Count III aggravated Assault on a Peace officer-two Counts, section 97-3-7 (2)(b) Miss. Code of 1972. Michael W. Davis was returned to the Harrison County Jail where he remained. Court proceedings was never understood by defendent-Appellant nor were they explained by his Counsel Mr. Fred Lusk at anytime during the years of 2002, 2003.

March Term, A.D. 2003 Cause No: B2401-2003-373

July 28, 2003 dated, thereafter, Michael W. Davis was served with Multi-Count Indictment From the Circuit Court First Judicial District, Harrison County.

Count I Manufacture of a Controlled substance section 41-29-139 (A)(1) Miss. Code Ann of 1972, as amended as a Habitual offender section 99-19-81 Miss.-Code of 1972 amended.

STATEMENT OF CASE

Count II and Count III, Aggravated Assualt on Peace officer-two Counts Section 97-3-7 (2)(b) Miss. Code of 1972, as amended as Habitual offender - Section 99-19-81 Miss. Code. 1972 as amended.

Count IV Possession of a controlled substance section 41-29-139(c)(1) Miss. Code of 1972 as amended as a Habitual offender - section 99-19-81 Miss. Code of 1972 as amended.

Thereafter, Petitioner entered a guilty Pea, as to Count I, Manufacture of a controlled Substance (Methamphetomine) Count II and Count III Aggravated Assualt on a Peace officer. Count IV was passed out of the indictment and into the Files. Honorable Jerry O. Terry, sentenced petitioner Michael W. Davis, January 29, 2004 to serve (5) Five years in Count I consecutive with (30) thirty-years each in Count II and Count III (the later to run concurrently with each other), For a total of (35) thirty-Five years to serve as a Habitual offender in the Custody of the Mississippi Department of Corrections. Michael W. Davis seeking Reconsideration on February 9, 2004. Cause no. B2401-03-373 C

Michael W. Davis Filed his Motion For Post-Convection Collateral - Forma Paper "Entitled March 15, 2007, and was granted. Cause No. [redacted] A2401-2006-00478.

Notice of Appeal, was entered January 11, 2007, in lieu of Appeal Bond Miss. Code Ann. section 11-53-17; Cause No: A2401-2006-00478.

In Response of a Letter From Michael W. Davis Requesting an Extention date From May 2, 2007 in Cause No: 2007-CP-00264-COA was granted with a New date of August 2, 2007 in Cause No: 2007-CP-00264
And at this time Now A date due of October 5, 2007.

INEFFECTIVE ASSISTANCE OF COUNSEL

Michael W. DAVis was never warned of his Miranda Rights at any time. Not in the hospital and not during the (18) Eighteen Months he spent in the HARRISON County JAIL. The First time he (Michael W. DAVis) was interrogated (questioned) as to the events that happened July 31, 2002. He was unable to say or make heads or tails out of anything. He (Michael W. DAVis) did not know what to say about being Faced with another officer of the Law. It is believed at this time that Michael W. DAVis gave a oral statement to the HARRISON County detective and Attorney Fred Lusk. Mr. Fred Lusk did write down a statement however; this was not the statement that Mr. Lusk had schooled Michael W. DAVis to say. Mr. Lusk Said (You Must be guilty of Something, EVEN if you didn't know John Cooper was doing in the back, it would be better For you to say you did Know, or you took part with it (Crystal Meth). The jury would understand you better and Forgive you sooner if they understood). Mr. Lusk using Mental coercion overbearing the will of the defendent. "Argument of Authority" Cuyler V. Sullivan, 446 U.S. 335, 346-47, 64 L. Ed. 333, 100 S. Ct. 1708 (1989), when the defense Counsel has breached his duty of loyalty by actively representing Conflicting intrests and the conflict of intrest adversely affects his performance then Prejudice is presumed. Cuyler V. Sullivan, 446 U.S. at [922] 348-50. See also Strickland v. Washington, 466 U.S. 668, 692, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984)

Apparently the statement given was unsatisfactory as well. Mr. Lusk Knew

that Michael W. DAVIS WAS VERY VONORABLE to Suggestions. The OFFICER IN the ROOM at the hospital (GARDEN PARK Hospital, Community Road Gulfport, MS. 39520). Little by little MR. LUSK had only ONE position to WEAR down USING this FRAME of CONVERSATION (AREN'T you guilty of SOMETHING, try AND thINK Michael) MR. LUSK CONTENUED to take ADVANTAGE of Michael W. DAVIS'S MENTAL state of AFFication AND physical PAIN. JANUARY 26, 2004. AFTER being detained IN the HARRISON County JAIL (18) Eighteen MONTHS.

MR. LUSK told Michael W. DAVIS, you dont HAVE ANY WITNESSES FOR your DEFENCE. "ARGUMENT with Authority: DEFENDENT who plead guilty to a CRIME is prejudged by his COUNSEL'S ERRONEOUS advice IF he would HAVE INSISTED ON going to TRAIL, AND if he had CORRECTLY INFORMED his client AMEND # 6 STATE (MISS. 1992) 605 So. 2d 1170 CRIMINAL LAW 641.13 (5). DEFENSE COUNSEL FAILURE to PREPARE ANY DEFENSE would NOT CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL, IF DEFENDENT had INTENDED to PLEAD GUILTY all ALONG." ARGUMENT with Authority" AMEND 6 STATE (MISS. 1990) 560 So. 2d 148 CRIMINAL LAW 641.13 (2.1), BERNARDINI V. STATE 2004, 2004, 872 So. 2d 690 CRIMINAL LAW 1170.5 (1)

Michael W. DAVIS HAS BEEN MAKING AN ACTUAL INNOCENCE CLAIM EVEN WHEN HE WAS IN the HOSPITAL AND About the MONTH of SEPTEBER 13, 2002, Michael W. DAVIS ENTERED a PLEA of NOT Guilty to CHARGES of COUNT I MANUFACTOR OF CONTROLLED SUBSTANCE. SECTION 41-29-139 (A) MISS. CODE of 1972 COUNT II AND COUNT III AGGRAVATED ASSUALT ON A PEACE OFFICER SECTION 97-3-7(2)(b) MISS. CODE 1972. THE ENTIRE TIME Michael W. DAVIS WAS locked-up IN the HARRISON County JAIL HE had CONSTANTLY told his COUNSEL (MR. LUSK) HE WAS INNOCENT OF these CHARGES AND INTENDED ON going to TRAIL.

JANUARY 26, 2004, Michael W. DAVIS GAVE A STATEMENT that WAS SATISFACTORY to MR. LUSK AND the ACCOMPANIED detective. MR. LUSK by WAYS AND MEANS USED MENTAL COERCION AND OVER-BEARING the WILL of Michael W. DAVIS INTO UNCERTAINTY MAKING him guilty of SOMETHING. MR. LUSK (so that the JURY would UNDERSTAND you better IF you said that you did it EVEN IF you didn't.) PRIOR to ANY QUESTIONING, A PERSON MUST be WARNED that:

(1) HE OR she has the RIGHT to REMAIN SILENT
(2) ANY STATEMENT they SAY MAY be USED AS EVIDENCE AGAINST THEM.
(3) HE has A RIGHT to the PRESENCE of A ATTORNEY.
(4) IF he CAN NOT AFFORD ONE, the COURT will APPOINT ONE FOR him.
(5) HE MAY REQUEST QUESTIONING to QUIT AT ANYTIME.
(6) HE MAY WITIVE ANY of these RIGHTS.

ATTORNEY FRED LUSK FAILED to COMPLY with the RULES AND what ABOUT the SENTENCING JUDGE. MUCH DIFFERENCE is PLACED UPON the TRAIL JUDGES FULL discharge of his/her RESPONSIABILITY to MAKE FINDINGS of FACT or QUESTION. WHERTHER MIRANDA RIGHTS HAVE BEEN INTENTIONALLY, KNOWING AND VOLUNTARILY DETERMINES the INADMISSABLE of the CONFLICTING EVIDENCE. His FINDINGS becomes A FACT which will NOT be REVERSED ON APPEALS UNLESS IT MANIFESTLY IN ERROR OR CONTRARY to the OVERWELMING WEIGHT OF EVIDENCE. WHEN A TRAIL JUDGE FAILS to MAKE SPECIFIC FINDINGS AND ONLY MAKES GENERAL FINDINGS THEREBY ALLOWING ADMISSIBILITY OF EVIDENCE, the APPELLATE COURT'S SCOPE OF REVIEW IS CONSIDERABLY BROADER PARTICULARLY, WHEN the TRAIL JUDGES FINDINGS ON the PRECISE POINTS AT ISSUE ON APPEAL ARE NOT CLEARLY INFERABLE FROM the FINDING MADE.

Michael W. DAVIS DOES NOT FORESAY this with ANY Supported Authority OF CLAIM, but Michael W. DAVIS does INSIST that his VOLUNTARINESS OF (his CONFESSION) WAS due to MR. LUSK'S MISREPENTATION AND FALSELY ADVISING Michael W. DAVIS that this WAS NEEDED FOR A TRAIL AND that, MR. LUSK MISREPRENTATION AND ADVISING Michael W. DAVIS (the JURY will UNDERSTAND you better IF you

SAY that you helped OR that you KNEW About JOHN COOPER MAKING - CRYSTAL METH.) MICHAEL W. DAVIS did NOT WAIVE ANY OF his Rights KNOWINGLY.

ON OR About SEPTEMBER 13, 2002 MICHAEL W. DAVIS WAS TAKEN to COURT FROM the HARRISON County JAIL WERE he (MICHAEL W. DAVIS) ENTERED his PLEA of NOT Guilty. AT this point shouldn't there have been A MOTION FOR PRE-TRAIL And DISCOVERY. MADE by MR. LUSK FOR MICHAEL W. DAVIS. MICHAEL W. DAVIS had ALREADY MADE REQUEST FOR these things to be DONE. And would NOT this ALSO be the PROPER TIME FOR MR. LUSK to MAKE A MOTION to HAVE MICHAEL W. DAVIS to HAVE PROCEEDINGS postpond until A psychological EXAMINATION BEFORE ANY FUTURE PROCEEDINGS, BEFORE ANY LINE of QUESTIONING, MR. LUSK NEVER EXPLAINED About STATEMENTS MADE OR EXPLAINED About ANY COURT HEARINGS that WENT ON. WHEN QUESTIONS OR REQUEST WERE given by MICHAEL W. DAVIS, MR. LUSK would say (dont WORRY about it) MICHAEL W. DAVIS ENTERED A PLEA of NOT Guilty WHILE IN the Custody at the HARRISON COUNTY JAIL AND AWAITING TRAIL to show his INNOCENCE BEFORE A JURY. NEALY V. CABANA, 764 F. (5th CIR. 1985) he said he WAS INNOCENT of CHARGES.

MICHAEL W. DAVIS did told MR. LUSK ON SEVERAL OCCASSIONS FOR him to FILE A FAST AND SPEEDY TRAIL, that just could NOT STAY IN JAIL. That he WANTED to get this OVER AND DONE with AS SOON AS POSSIABLE. A MOTION FOR DISCOVERY WAS REQUESTED ON (6) six different OCCASSIONS by the DEFENDENT-APPEALLANT, - MICHAEL W. DAVIS. Throughout MICHAEL W. DAVIS'S (18) EIGHTEEN MONTHS AWAITING to go to TRAIL to PROVE his INNOCENCE, he REPEATEDLY ASK MR. LUSK to BRING to him A COPY of the DISCOVERY. MR. LUSK would ANSWER (dont WORRY about it, I'll BRING it the NEXT TIME). This WAS AMONG other REQUEST that MICHAEL W. DAVIS had INSTRUCTED MR. LUSK to do so. MICHAEL W. DAVIS (What about MY WITNESSES), LISA MAGEE AND Christy BOND, they told ME they HAVE BEEN TRYING to talk to you, but you ARE NEVER IN, MR. LUSK (I LEAVE there A lot), MICHAEL W. DAVIS, but why haven't you RETURNED ANY of there PHONE CALLS. LISA MAGEE AND Christy BOND CAN show you WHERE the bullit's ARE AT. WHERE I FIRED AND EVERYTHING. MR. LUSK- (WE'VE got PLENTY of TIME FOR ALL of that, dont WORRY about it.

MICHAEL W. DAVIS WAS DENIED his RIGHT to CALL WITNESSES IN his BEHALF. At the VERY LEAST MR. LUSK could HAVE listened to the WITNESSES CONCERNING TESTIMONY FOR TRAIL that WAS SET FOR TRAIL. MICHAEL W. DAVIS ENTERED A PLEA of NOT Guilty ON OR About SEPTEMBER 13, 2002, INNOCENT of the CHARGES AND he WAS WAITING to go to TRAIL AND TELL the TRUTH AS to WHAT did HAPPEN ON July 31, 2002.

IT is A good PRACTICE AND GENERAL RULE that WAS INTENTIONAL SPOLIATION OR DESTRUCTION of EVIDENCE RELEVANT to A CASE RAISES PRESUMPTION, OR MORE PROPERLY; AN INFERENCE, that the EVIDENCE would HAVE BEEN UNFAVORABLE to the CASE of the SPOLIATION OR DESTRUCTION WAS INTENTIONAL AND INDICATES FRAUD, AND A DESIRE to SUPRESS the TRUTH, AND it does NOT ARISE WHERE the DESTRUCTION WAS A MATTER of ROUTINE with NO FRAUDULENT INTENT. ARGUMENT with AUTHORITY: DAVIS V. STATE, 743 So. 2d 326, 329 (Miss. 1999) "in which the Court stated: while ATTORNEYS will be GRANTED wide DISCREATION AS to - TRAIL STRATEGY, CHOOSING OFFENCES AND CALLING WITNESSES, A CERTAIN AMOUNT of INVESTIGATION AND PREPARATION is REQUIRED. FAILURE to CALL A WITNESS may be EXCUSSED BASED ON the BELIEF that the TESTIMONY will NOT be SO HELPFUL; Such A BELIEF IN TURN MUST be BASED ON GENUINE EFFORT to LOCATE OR EVALUATE the WITNESS, AND NOT ON A MISTAKEN LEGAL NOTION OR PLAIN INACTION". This COURT GRANTED DAVIS' LEAVE to PROCEED ON that ISSUE WHERE the ATTORNEY WAS CALLED three WITNESSES IN SENTENCING, A FRIEND of DAVIS'S, DAVIS'S SISTER AND MOTHER. DAVIS ALLEGED that his TRAIL ATTORNEY did NOT CALL AVAILABLE CHARACTER WITNESSES AND did NOT PREPARE the ONES he did CALL. AT MICHAEL W. DAVIS'S SENTENCING PHASE, COUNSEL MR. FRED LUSK did NOT MAKE ANY EFFORT to LOCATE OR

PREPARE WITNESSES FOR SENTENCING. TOTAL FAILURE to CALL ANY WITNESSES IN his BEHALF NOR did MR. LUSK SPEAK IN BEHALF OF his CLIENT MICHAEL W. DAVIS MICHAEL W. DAVIS CLAIMS that MR. LUSK NEVER PREPARED FOR TRAIL NOR MADE ANY EFFORT OR ATTEMPT to LOCATE ANY WITNESSES AT ANY TIME OR DURING the (18) EIGHTEEN MONTHS that he WAS IN the HARRISON COUNTY JAIL, AND so this IS also CLAIMED at the TIME OF SENTENCING JANUARY 29th 2004. HOWEVER MR. LUSK did HAVE A CHANCE BECAUSE RIGHT THERE IN the COURT-ROOM THERE WAS LISA MAGEE AND Christy Bonds, MOTHER. Also SEE Authority: LEATHERWOOD V. STATE, 473 So. 2d 964 Miss. 1985), WHERE this Court, ON POST-CONVECTIONS, REMANDED the question of INEFFECTIVE ASSISTANCE of COUNSEL to the COURT CIRCUIT COURT FOR A EVIDENTIARY HEARING. IN both of these CASE it WAS ALLEGED the DEFENCE COUNSEL had FAILED to PROPERLY INVESTIGATE, LOCATE AND PREPARE WITNESS FOR TRAIL. ORIGINALLY IN SEPTEMBER 2002, MICHAEL W. DAVIS plead NOT GUILTY to the COURT AS WELL AS to COUNSEL MR. FRED LUSK. MICHAEL W. DAVIS WAS INSISTING ON going to TRAIL, HE had ASSERTED his INNOCENCE when he PLEAD NOT GUILTY, AND the whole (18) EIGHTEEN MONTHS that he WAS IN JAIL, by telling MR. LUSK to FILE MOTIONS IN his BEHALF. MICHAEL W. DAVIS told COUNSEL of WITNESSES that HE WAS INNOCENT of the CHARGES. To LOOK FURTHER INTO this CONSIDERATION, MICHAEL W. DAVIS WAS IN REACH of LOOSING his LIFE. IF NOT FROM BEING BEATEN, KICKED AND shot (3) THREE SEVERE TIMES. MICHAEL W. DAVIS whole RIGHT shoulder, CHEST, ARM AND HAND MANGLED AND SMALL FINGER cut OFF. DEFORMED LOOKING to the EYES OF ANYONE. THE GARDEN PARK HOSPITAL, UNIVERSITY Road. GULFPORT, MISSISSIPPI, had to FINISH taking OFF his SMALLEST FINGER ON his RIGHT HAND. LEAVING HIM with USELESS body PARTS, to be PARALIZED FOR the REST of his LIFE. NOW MICHAEL W. DAVIS has to RELY ON his LEFT side FOR ALL MATTERS FOR the REST of his LIFE, AND his - MENTAL AND physical abilities ARE VERY limited. UNDER the CIRCUMSTANCES would it NOT be IN the best INTEREST to ALL PERSONS INVOLED, EMPLOYER, EMPLOYMENT, FAMILY, FRIENDS, EX-WIFE (Trudy Bourge) girlFRIEND, AND FRIENDS of EVERYWALK. "LEGALLY - AND otherwise to SENSIBLELY, ASSUME AT NORMAL. YET MR. LUSK IS AN ATTORNEY FOR the COURTS. What about the OFFICERS STATEMENT IN the hospital to MR. LUSK, that MICHAEL W. DAVIS NEEDED SOME PROFFESSIONAL help with his PROMBLEMS. TIME AND time AGAIN MICHAEL W. DAVIS told MR. LUSK OF PROBLEMS he WAS having. EVEN FOR the MOST PART OF this MR. LUSK would ONLY close his EAR'S to the MATTER, AS WELL AS to his OWN EYES to the STATE OF PAIN MICHAEL W. DAVIS WAS having DURING this TIME. THE CONVERSATIONS MR. LUSK had with MICHAEL W. DAVIS AND EVERYTHING ELSE REEKED of SOMETHING SERIOUSLY WRONG. MORESO that MR. LUSK should OF WASTED NO TIME IN ASKING by MOTIONS of the COURTS FOR A COMPLETE MENTAL AND physical EXAMINATION OF MICHAEL W. DAVIS AS SOON AS POSSIABLE. MR. LUSK NOT ONLY closed his EAR'S, but ALSO his EYES NOT to SEE the CONFUSION of PAIN MICHAEL W. DAVIS WAS going THROUGH. A COMPLETE EXAMINATION AS SOON AS MICHAEL W. DAVIS would be ABLE FOR A STRESS TEST APONE HIM. This SURELY should OF BEEN DONE SINSE MICHAEL W. DAVIS WAS IN EVERY RESPECT going to TRAIL. This to be DONE WAS NOT ONLY to ASSURE OURSELVES to COMPETENCY of the - ACCUSSED, but maybe it would of MATTERED in the behalf of MICHAEL W. DAVIS KNOWING he WAS going to TRAIL. AND AS MATTERED to the COURT when HANDING DOWN the SENTENCE. MOST SURELY this EXAMINATION should HAVE BEEN DONE BEFORE ANY LINE OF QUESTIONING? To be COMPLETED by the COURTS OR DETECTIVES, OFFICERS of the COURT, JUDGES OR EXCESSIVE INFLUENCE by ATTORNEY MR. FRED LUSK, YET it WAS NOT EVEN MENTIONED by MR. FRED LUSK, AT ANY TIME OR PLACE

IN the CIRCUIT COURT of HARRISON COUNTY MISSISSIPPI ON FEBRUARY 13, 1998, MICHAEL W. DAVIS MADE ONLY ONE PLEA of guilty to CAUSE NO. B2401-96-1146, POSSESSION OF A CONTROLLED SUBSTANCE AND CAUSE NO. B2401-97-532, OF UTTERING - FORGERY (two Counts). The Court AT SENTENCING; PROVIDED HOWEVER, IT HAVING

been known to the Court that the defendent has not been heretofore Convicted of a Felony, and the ends of justice and the best interest of the public and the defendent will be served, the Court hereby stands and the defendent will be served, the Court hereby Suspends the excustion of the above sentence for a period of the (3) three years Post Release Supervision per. Miss. Code Sec. 47-34 Annoted.

On these charges above making his plea of guilty to all of them at the same time and place. The geographic location of each offence within a (2) two miles. The prepetrator's mode of operation in committing each offence (drinking Alchol) wherther each offence involved the same victim (same person) The Number of criminal actors participating in each instance (2) two persons. And wherther the offences in question each involved the use of Firearms (No) The period of time elasped between each of the crimes in question (2) two months. Michael W. Davis was guilty of Possession of a controled Substance, but he also at the same time plead guilty of uttering Forgery (two counts) and he (Michael W. Davis) was not guilty as charged, yet may be part of a point to consider however. Possession of less than one-tenth gram of Scheduled I or II controlled Substance may be charged by indictment as Felony or Misdemeanor", Michael W. Davis did successfully complete three (3) years of Post-Release Supervision in Full. Paying all the cost put before him. Michael W. Davis would contend because of the amount of drug (one-tenth gram) of a controlled substance - may very well have resulted in a misdemeanor charge, however by Michael W. Davis pleading guilty of uttering Forgery it was not. Alone with the amount charged with wouldn't it justly likely be a chance that his possession charge would of been a misaminor charge. Although Michael W. Davis plead guilty of the uttering Forgery charge him (he) and this girlfriend already knew from the start that cash money would run out and there checking account would soon as well, but they would write a check and only hope the money could be would be, placed in the bank so not to bounce. Yet his or this girlfriend had a check that she signed and Michael W. Davis cashed, (2) two checks, but it was she that signed them and not telling Michael W. Davis that the check's were not good because she didn't want to worry him and it was her name on the check's (2) two checks. But this was not know at the time (yet I myself feel that it would not have mattered to Michael W. Davis any way, such as any-kind of a drug is). Altimately getting arrested and then or at the time knowing that he could not allow her to go to jail or what they might do legally to her. Michael W. Davis plead guilty of the uttering Forgery charge because he didn't want his girlfriend to get into any trouble. Under 609 (A)(2) MRE the admission of prior convictions involving dishonestly False statements in is within the discression of the Court. Such convictions are particular probative of credibility and are allways to be admitted Butler 608 So. 2d at 322-24 - (Quoting comments to MRE 609 (A)(2).

On or about the 28th day of July 2003 in the First Judical District, Harrison County. Michael W. Davis was charged in a Multi-count Indictment and received his copy of the indictment a few days later. The indictment was amended with the Habitual Offender section 99-19-81 which carries up to (15) Fifteen years prison term. Miss. Code of 1972 as amended. Thereafter Mr. Lusk came for another visit. Michael W. Davis explained as to what all had occured on the 1997 charges. Michael W. Davis plead guilty but did not understand the charges of uttering a forgery and only plead guilty so his girlfriend would not get into any trouble, but that he was guilty of the possession charge. And that he felt the probation time he got was to much. At that time Michael W. Davis told Mr. Lusk to File a Motion to Supress and Mr. Lusk said you mean

A MOTION OF (DEMURRER) thats what it would be AND Michael W. DAVIS said yes then FILE that MOTION ON his old charges, that he had ALREADY paided FOR these charges AND that he WANTED MR. LUSK to FILE A MOTION to (SQUASH indictMENT) bEFORE they WENT to TRAIL. MR. LUSK said he would AND FOR ME Michael W. DAVIS NOT to WORRY about it. MR. LUSK said (But Michael) if you plead guilty you WANT get MORE than (5) FIVE YEARS, but if you go to TRAIL it will be CAPITAL CHARGES, you will be looking at AND thats OVER (120) ONE hundred AND twenty YEARS AND then MR. LUSK STATED dont WORRY about it. ARGUMENT OF AUTHORITY: EFFECTIVE ASSISTANT OF COUNSEL ENCOMPASSES, AMONG other things, ADVICE to clients, WHERE AS here, "A DEFENDENT IS REPRESENTED by COUNSEL during the plea PROCESS AND ENTERS his plea upon the advice of COUNSEL during plea PROCESS depends upon the COUNSEL ADVICE AS VOLUNTARINESS with in the RANGE OF COMPETENCE demanded of ATTORNEY'S IN CRIMINAL CASES," COLEMAN V. STATE, 483 So. 2d 680, 682 (Miss. 1986) quoting - Hill V. LockHART [27] 474 U.S. 52, 106 S. Ct. 366 88 L. Ed 2d 203 (1985) AND CASES cited therein. SERIOUSLY MISTAKEN advice of the COUNSEL MAY RENDER A guilty plea legally INVOLUNTARY. SEE LEATHERWOOD, 539 So. 2d 1378, 1385-87 (Miss. 1989); GARDNER V. STATE, 531 So. 2d. 805, 809 (Miss. 1988); COLEMAN V. STATE, 483 So. 2d 680, 682 (Miss. 1986); TILLER V. STATE, 440 So. 2d 1001, 1006 (Miss. 1983); SANDERS V. STATE, 440 So. 2d 278, 284 (Miss. 1983); BAKER V. STATE, 358 So. 2d 401, 403 (Miss. 1978).

FAIRLY REPRESENTED AND NOT UNFAIRLY CONVICTED. A FAIR ASSESSMENT OF ATTORNEY PERFORMANCE, FOR PURPOSE OF DETERMINING A SIXTH ADMENDMENT CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL'S REQUIRED that EVERY EFFORT be MADE to ELIMINATE the distorting EFFECTS of hindsights to RECONSTRUCT the CIRCUMSTANCES of COUNSEL'S CHALLENGED CONDUCT, NEED to EVALUATE the CONDUCT FROM COUNSEL PERSPECTIVE at all times. OVER AND OVER Michael W. DAVIS gave his ATTORNEY MR. Fred LUSK INSTRUCTIONS to FILE MOTIONS IN CONDUCTING his DEFENCE. YET to the CONTRARY to his INSTRUCTIONS AND FAILING to ADVANCE VIABLE DEFENSE that he (Michael W. DAVIS) had ASKED MR. LUSK to do AND RAISE. ARGUMENT with AUTHORITY: IT BEARS EMPHASIS that [HNB] the right to be REPRESENTED by COUNSEL IS AMONG the MOST FUNDAMENTAL OF RIGHTS. WE HAVE LONG RECONIZED that "LAWYERS IN CRIMINAL COURTS ARE NECESSITIES, NOT LUXURIES". SEE THAT GIDEON V. WAINWRIGHT, 372 U.S. 335, 334 (1963). AS A GENERAL MATTER, IT IS THROUGH COUNSEL that all the other RIGHTS OF the ACCUSED ARE PROTECTED: "OF all the RIGHTS that AN ACCUSED PERSON has, the right to be REPRESENTED by COUNSEL is by FAR the MOST PERVASIVE, FOR it AFFECTS his ability to ASSERT ANY other RIGHTS he MAY have." SCHAEFER, FEDERALISM, AND STATE CRIMINAL PROCEDURE 70 HARV. L. REW. 1-8 (1956); SEE also KIMMELMAN V. MORRISON, 477 U.S. 356, 377 (1986); UNITED STATES V. CRONIC, 466 U.S. 648, 654, 365, 377 (1984). THE PARMONT OF IMPORTANCE OF VIGOROUS REPRESENTATION FOLLOWS FROM the NATURE OF OUR ADVERSARITAL SYSTEM OF JUSTICE. THE SYSTEM IS PREMISED ON the well-tested PRINCIPLE the truth - AS WELL AS FAIRNESS - is being discovered by POWERFUL STATEMENTS ON both sides of the QUESTION "KAUFMAN V. DOES the judge have A Right to qualified COUNSEL? 61 A.B.A. J. 569 (1975) Quoting LORD ELDON; SEE Also CRONIC 466 U.S. AT 655; POLK COUNTY V. DODSON, 454 U.S. 312, 318, 319 (1981). ABSENT REPRESENTATION, however it is UNLIKELY that A CRIMINAL DEFENDENT will be able ADEQUANLETY to TEST the GOVERMENT'S CASE, FOR AS JUSTICE SUTHERLAND WROTE IN POWELL V. ALABAMA, 287 U.S. 45 (1932) "[E]VEN the INTELLIGENT AND EDUCATED LAYMAN HAS SMALL AND SOMETIMES NO SKILL IN SCIENCE OF LAW Id AT 69. MORE to the POINT: ATTORNEY FOR MICHAEL

W. DAVIS, (MR. FRED LUSK) said that he would NOT allow Michael W. DAVIS to take the stand and testify as to what had occured July 31, 2002, because he did not beleave Michael W. DAVIS, OR was it that MR. LUSK was not willing to allow the truth to be told. ARGUMENT of Authority: Cuyler V. Sullivan, 446 U.S. 335, 346-47 64 L. Ed. 2d 333, 100 S. Ct. 1708 (1989) When the defense counsel has breached his duty of Loyalty by actively representing conflicting intrest and the conflict of interest adversely affects his performance the prejust is presumed. Cuyler, 466 U.S. at [922] 348-50. See also Strickland v. Washington, 466 U.S. 668, 692, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984). Michael W. DAVIS, that was one of the main reasons that he feels that he was denyed his day in Court and prove his innocence. ARGUMENT with Authority: Timothy Myers v. State of Miss. NO. 89-KP-1272, Supreme Court of Mississippi, 583 So. 2d 174; 1991 Miss. Lexis 388 June 19, 1991 Decided. [HN5] Where a defendent's plea of guilty is coerced or otherwise involuntary, any judgement of conviction entered thereon is subject to Collateral attack. To be enforceable, a guilty plea must emanate from the accused's informed consent. The question of whether a plea of guilty was voluntary and knowing one necessarily involves issues of fact. Advice recieved by the defendent from his attorney and relied upon by him in tendering his plea is a major area of factual inquiry.

For example, counsel's representation to a defendent that he will recieve a specified minimal sentence may render a guilty plea involuntary. Where the defendent defense counsel lies to the defendent reguarding the sentence he will receive the plea may be subject to collateral Attack. Where the defense counsel advises the defendent to lie and tell the Court that the guilty plea has not been induced by promises of leniecy of the Court (when in fact it has); The plea may be attacked. Where the defendent receives any such advice of counsel, and relies upon it, the plea has not been knowingly and intelligently made and is subject to attack. Attorney for Michael W. DAVIS, MR. Fred Lusk would not allow defendent-Appeallant, Michael W. DAVIS to testify as to what did occure July 31, 2002. Mr. Lusk was told by Michael W. DAVIS that he wanted to get on the witness stand and tell the jury about the officer's of the Law shooting at him and as to the effect of being shot by another officer of the Law (3) three times, handcuffed beatened and kicked all the way up a hill and side of the road as Michael W. DAVIS was dying from gun shot wounds. That by Michael W. DAVIS taking the stand as a witness the State would also use his prior conviction record against him. That in turn MR. LUSK would not allow Michael W. DAVIS to tell the truth. We are secured by the Fifth, Sixth and Fourteenth Admendments to the Constitution of the United States of America, as well as those comparable Rights secured by 14 and 26, Article 3 of the Mississippi Constitution of 1890. Even aliens whose presense in this country is unlawful, having long been reconized as "persons" guaranteed due process of the Law by the Fifth and Fourteenth Admendments. ARGUMENT of Authority: Shaughnessy V. Mezei, 345 U.S. 206, 212 (1953); Wangwind v. United States, 163 U.S. 228, 238 (1896); Yick W. v. Hopkins, 118 U.S. 356, 369 (1886). Indeed we have clearly held that the Fifth Admendment protects Aliens whose presence in this country is unlawful from invidious discrimation by Federal Goverment. ARGUMENT with Authority: Mathews v. Diaz, 426 U.S. 67, 77 (1976).

5th Admendment to the Constitution

No person shall be held to answer for Capital offences or other infam-

DUS CRIME UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN THE ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT TO THE SAME OFFENCE TO BE PLACED IN JEOPARDY OF TWICE, OF LIMB OR LIFE; NOR SHALL THEY BE COMPELLED IN ANY CRIMINAL CAUSE TO BE A WITNESS AGAINST HIMSELF; NOR BE DEPRIVED OF LIFE, LIBERTY, WITHOUT THE DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE WITHOUT COMPENSATION. MOTION TO SUPPRESS WITNESS TESTIMONY AT SENTENCING, OF BRANDON LADNERS AND MICHELLE CARBINE. SURELY COUNSEL MR. FRED LUSK had been informed as to the statements about to be given would prejudice defendents plea. In open court officer Brandon Ladner 's stated that Michael W. Davis had in his pockets (pockets full of Bullits). This was a clear point that Michael W. Davis was ready for a all out war and could do just that with a pocket full of Bullets. The only time that Brandon Ladner and Michelle Carbine seen the defendent-appellant, Michael W. Davis was at the time that Brandon Ladner started shooting at Michael W. Davis" It was not known to me at this point wherther Michelle Carbine joined in with the shooting or not." I suppose she would have.

To the point is that this was the only time during the shooting and running behind Michael W. Davis that they saw him so how could Brandon-Ladner possiable have seen a pocket full of Bullits on Michael W. Davis?

If you was standing right in front of someone and there pocket were not see through how do you know what they have? More to the point, surely Mr. Lusk had to know of all items recovered by police as evidence. After Michael W. Davis was shot arrested, beaten, and taken to the hospial. That the states case turned more on the credibility of witness than the evidence. Argument of Authority: Adams v. United States ex rel Mc-Cann, 317 U.S. 269, 275, 276 (1942). To discredit witnesses and effort to establish a different version of the facts. All shots fired by Michael W. Davis, should have been accountable as they were simply located beneath the ground at his feet. The State Failed in producing this in court, and it is further beleaved Neglect on the Mississippi crime. Forensic scientest lab, who's job was to retrieve all such evidence. If it would be said otherwise, then you only had to ask eye witness, Lisa Magee or Christy Bond just exactally where are the slugs at only in the ground they would say.

Was Mr. Lusk doing his job so well that he didnt need his evidence for trail. There was only one "one occassion" that Michael W. Davis did not have the gun's aimed towards the ground and that was when he was in the middle of the road waiving his hands (Guns in hands) (Like for a air-plane to land down) Michael W. Davis knew whos car it was and he knew who was in the car so did Brandon Ladner know too. Attorney for Michael W. Davis (Mr. Fred Lusk) at no time prior to his plea or otherwise did Mr. Lusk ask the judge or prosecution about such stated evidence as having these bullits for the court and counsel Mr. Lusk to see and that for Judge, counsel Mr. Lusk knew very well there were never any such Bullits, but this was used against him at sentencing ianyways.

"Argument with Authority": In Crapps v. State, 221 So. 2d 722, 723 (Miss. 1969), this court stated the Sixth Admendment to the United-States Constitution established the right to confusiontation. In Hubbard v. State, 437 So. 2d 430, 433-34 (Miss. 1983); this court stated that the - Mississippi Constitution Article 3, Section 26, grants and guarantees a criminal defendent the right to confront witnesses against him. See Also Stromas v. State, 618 So. 2d 116, 121 (Miss. 1993). The Right to Confrontation

"EXTENDS to INclude the Right to Fully CROSS-EXAMINATION the WITNESS on EVERY MATERIAL POINT RELATING to the ISSUE to be DETERMINED that would HAVE A BEARING ON the CREDIT of the WITNESS the WEIGHT AND WORTH OF his [87] TESTIMONY. The CONSTITUTION GRANTS CERTAIN RIGHTS to CRIMINAL DEFENDENTS AND IMPOSES SPECIAL LIMITATIONS ON the STATE DESIGNED to PROTECT the INDIVIDUAL FROM OVERREACHING by the DISPROPORTIONATELY POWERFUL STATE. Thus, the STATE MUST PROVIDE A DEFENDENTS guilty BEYOND A REASONABLE doubt. SEE: IN RE WINSHIP, 397 U.S. 358, 90 S. Ct. 1068 25 L. Ed. 2d 368 (1970). RULES OF EVIDENCE ARE ALSO WEIGHED IN the DEFENDENTS FAVOR. FOR EXAMPLE, the PROSECUTION GENERALLY CAN NOT INTRODUCE EVIDENCE OF the DEFENDENT'S CAN INTRODUCE SUCH REPUTATION EVIDENCE to show his LAW-ABIDING NATURE. SEE, eg. Fed Rules Evid. 404 (A). MICHAEL W. DAVIS WAS NEVER Fully EXPLAINED ANY of his RIGHTS by COUNSEL AND IF AT ANYTIME MR. DAVIS WAS told by the COURTS of his SPECIFIC RIGHTS ATTORNEY MR. LUSK NEVER EXPLAINED ANY of THEM to him EITHER to MICHAEL W. DAVIS.

ARGUMENT of AUTHORITY: RAYMOND JAMES ALEXANDER V. STATE OF MISSISSIPPI, NO 90-KP-1310, SUPREME COURT of MISSISSIPPI, 605 So. 2d 1170; 1992 MISS. LEXIS 573, SEPTEMBER 2, 1992 DECIDED.

ANALYSIS

I. WAS ALEXANDERS PLEA MADE KNOWINGLY, VOLUNTARY, AND INTELLIGENTLY?

A PLEA of guilty IS NOT BINDING UPON A CRIMINAL DEFENDENT UNLESS it IS ENTERED VOLUNTARILY AND INTELLIGENTLY SEE: MYERS V. STATE, 583 So. 2d 174, 177 (MISS. 1991) [3] A PLEA IS DEEMED "VOLUNTARY AND INTELLIGENT" ONLY WHERE the DEFENDENT IS ADVISED CONCERNING the NATURE of the CHARGE AGAINST HIM AND the CONSEQUENCES OF the PLEA. SEE: WILSON V. STATE, 577 So. 2d 394, 396-97 (MISS. 1991). SPECIFICALLY, the DEFENDENT MUST BE told THAT A guilty PLEA INVOLVES A WAIVER of the RIGHT to A total TRAIL by JURY, the RIGHT to CONFRONT A ADVERSE WITNESSES AND the RIGHT to PROTECTION AGAIST SELF-INCRIMINATION. BOYKIN V. ALABAMA, 395 U.S. 238 89 S. Ct. 1709, 23 L. Ed 2d 274 (1969). Rule 3.03 of the UNIFORM CRIMINAL RULES of CIRCUIT COURT PRACTICE. ADDITIONALLY REQUIRES, INTER ALIA, that the TRAIL JUDGE "INQUIRE AND DETERMINE" that the ACCUSED UNDSTANDS the MAXIMUM AND MINIMUM PENALTIES to which he MIGHT BE SENTENCED. ATTORNEY MR. LUSK told MICHAEL W. DAVIS AND CAROL REDMOND that IF MICHAEL PLEAD guilty that he WOULD NOT RECIEVE MORE than A(5) FIVE YEARS FOR his CHARGES, AND that the TIME he (MICHAEL) did his good TIME WOULD BE PUT TOWARDS his SENTENCE AFTER (2) two YEARS ON his NEW REDUCED SENTENCE he WOULD BE GIVEN.

ARGUMENT of AUTHORITY: EVITTS V. LUCEY, 469 U.S. 387 (1985) EVITTS V. LUCEY, SUPREME COURT held that STRICKLAND STANDARD of INEFF. ASS. COUNSEL ALSO APPLIES to APPELLATE COUNSEL. MR. LUSK, ATTORNEY FOR MICHAEL W. DAVIS SAID (I CAN NOT TELL the COURT that the POLICE SHOT you HANDCUFFED, BEAT AND KICKED you up A hill AND down the SIDE of the ROAD), AND IF you GET ON the WITNESS STAND AND TELL this to the JURY WANT BELIEVE A WORD you SAY. ARGUMENT of AUTHORITY: ADAMS V. UNITED STATES EX. REL. MCCANN, 317 U.S. 269, 275, 276 (1942). To DISCREDIT WITNESSES AND EFFORT to ESTABLISH A DIFFERENT VERSION of the FACTS. MR. LUSK WOULD NOT TAKE OR RETURN ANY PHONE CALLS CONCERNING EYE WITNESSES to the FACTS that OCCURED ON July 31, 2002. JANUARY 29, 2003, MR. LUSK ALLOWED STATE WITNESS to GIVE FALSE STATEMENTS. MR. LUSK KNOWINGLY KNEW that MICHAEL W. DAVIS HAD NO SUCH bullits IN his POCKETS by the DISCOVERY. MR. LUSK GAVE NONE WHATSOEVER upon this INSPECTION AS to that TESTIMONY.

ONE of the EYEWITNESSES WAS there in the COURTROOM during the PLEA, AND SENTENCING. LISA MAGEE, "EYEWITNESS", OTHERS WERE ALSO THERE, but MR. LUSK CALLED NONE to give TESTOMONY IN BEHALF of MICHAEL W. DAVIS.

ARGUMENT with AUTHORITY: CHARLES WASHINGTON V. STATE OF MISSISSIPPI NO. 91-KP-0571, SUPREME COURT of MISSISSIPPI; 620 So. 2d 966; 1993 Miss. LEXIS 254 JUNE 17, 1993, DECIDED [HN2] PURSUANT to the MISSISSIPPI UNIFORM POST-CONVICTION COLLATERAL RELIEF Act. Miss. Code ANN. 99-39-1 through 99-39-29 (Supp. 1992), A PETITIONER IS ENTITLED to AN IN-COURT OPPORTUNITY to PROVE his CLAIMS IF CLAIMS ARE PROCEDURALLY ALIVE SUBSTANTIALLY showing DENIAL of A STATE OR FEDERAL Right. [HN3] BEFORE A PERSON MAY PLEAD guilty to A FELONY HE MUST BE INFORMED of his - Rights, the NATURE AND CONSEQUENCES of the ACT HE CONTEMPLATES, AND ANY RELEVANT FACTS AND CIRCUMSTANCES, AND THEREAFTER, VOLUNTARILY ENTERS A PLEA. The QUESTION NECESSARILY INVOLVES ISSUES of FACT.

OVER the YEARS the LAW HAS PROVIDED A NUMBER of CRITERIA FOR judging CHARGES of INVOLUNTARYNESS, Such AS the QUALITY of ADVICE of COUNSEL. [HN4] A SENTENCE AND CONVICTION ~~at the time of the plea can be reversed~~ BASED UPON A guilty PLEA WHERE A DEFENDENT WAS NOT MADE AWARE of A MANDATORY MINIMUM - SENTENCE AT the TIME OF the PLEA CAN BE REVERSED. [HN7] WHEN A CRIMINAL DEFENDENT ALLEGES that he PLEAD guilty without BEING ADVISED by his ATTORNEY AS to the MAXIMUM AND MINIMUM SENTENCES he IS SUBJECT to A QUESTION of FACTS ARISES AS to the PROFICIENCY of the ATTORNEY'S PERFORMANCES. REGUARDING the PREJUDICIAL PRONG of STRICKLAND, the SUPREME COURT of MISSISSIPPI the DEFENDENT would HAVE ENTERED the guilty PLEA IF he had been PROPERLY ADVISED. MICHAEL W. DAVIS CLAIMS that he WAS NEVER PROPERLY been ADVISED AT ALL. DURING the TIME he WAS TAKEN to the hospital. July 31, 2002 to the day he RE-ENTERED A PLEA of guilty ON JANUARY 29, 2004. The COURT shall INQUIRE INTO the DEFENDENT'S AGE AND EDUCATION, AWARE of the NATURE OF the CHARGES AND the MINIMUM AND MAXIMUM POSSIABLE SENTENCE. NONE DISCLOSURE MUST BE CONSIDERED PREJUDICIAL. ATTORNEY FRED LUSK HAS NOT FILED A MOTION to the COURT AND OR ANY COURTS ASKING FOR A Reduction of SENTENCE OR ANY thing that REFLECTS A NEW REDUCED SENTENCE. AFFIDAVITS to these STATEMENTS ARE ENCLOSED. The MOVANT IN A Post-CONVICTION RELIEF MOTION MUST MAKE SOME REASONABLE DEMONSTRATION OF the ACTUAL EXISTENCE OF EVIDENSE to RELIEF. DAVIDSON V. STATE, 2003, 850 So. 2d 158. CRIMINAL LAW 1652. POST-CONVICTION RELIEF MOVANT has A burden of showing, by AFFIDAVIT OR otherwise, that there is FACTUAL BASIS to Support their CLAIM FOR RELIEF. COCKRELL V. STATE, 2001, 811 So. 2d 305 CRIMINAL LAW 1613.

ARGUMENT with AUTHORITY: EUGENE MOORE V. B.C. Ruth, Roy[illegible]nd, ET. AL. MISSISSIPPI DEPARTMENT of CORRECTIONS, PAROLE BOARD (STATE OF MISSISSIPPI) 556 So. 2d 1059; 1990 Miss. LEXIS 36, FEBRUARY 7, 1990, DECIDED. [HN1] The MISSISSIPPI UNIFORM POST-CONVICTION COLLATERAL RELIEF ACTS MANDATES that A COURT study A PRISONER'S PLEADINGS AND ASK WHERTHER he MAKES A SUBSTANTIAL showing of DENIAL of A STATE OR FEDERAL Rights. Miss. Code ANN. 99-39-25 (5) (Supp. 1986). TRUE WHERE A PRISONER MERITORIOUS COMPLAINT MAY NOT BE lost BECAUSE INARTFully drafted.

INVOLUNTARY Guilty PLEA

ATTORNEY, FRED LUSK, FOR MICHAEL W. DAVIS, DEFENDENT-APPEALLANT WAS COERCED by his ATTORNEY, MR. FRED LUSK INTO PLENDING guilty.

MR. LUSK Advised DEFENDENT-APPEALLANT Michael W. DAVIS that he did NOT have A choice, but to TAKE A OPEN PLEA BECAUSE IF he WENT to TRAIL that he Michael W. DAVIS WAS SUBJECT to CAPITAL PUNISHMENTS. But IF he would TAKE A OPEN PLEA that he would NOT RECIEVE MORE THAN (5) FIVE YEARS, AND AFTER he Michael W. DAVIS had (2) two YEARS COMPLETED IN ANY INSTITUTION, COUNSEL MR. LUSK would THEREAFTER FILE A APPEAL FOR A REDUCTION of his SENTENCE AND that ALL of his good TIME EARNED - would BE put towards his REDUCED SENTENCE AND would THEN BE RELEASED.

THESE FACTS ARE SUPPORTED by (2) two AFFIDAVITS, ~~TWO~~ by Michael W. DAVIS AND ONE (1) by CAROL REDMOND.

ARGUMENT supported by Authority: Sylvester SANDERS-APPEALLANT V. STATE of Miss., Appelle NO: 54, 210 S. Ct. Miss. 440 So. 2d 278; - 1983 Miss. LEXIS 2905 Sept. 21, 1983.

OVERVIEW: THE INMATE Sylvester SANDERS alleged that his ATTORNEY PERSUADED him to PLEA guilty by PROMISING him that he would RECEIVE A lesser SENTENCE than he would if he PLEAD Notguilty. He FILED his PETITION UNDER Rule 8.07 of the UNIFORM CRIMINAL Rules of Circuit COURT PRACTICE (Miss). AFTER he WAS SENTENCED to longER TERMS than his ATTORNEY had PROMISED. THE TRAIL Courts SUMMARITY dismissed his petition. THE INMATE CONTENDED that he WAS ENTITLED to AN EVIDENTIARY HEARING UNDER Rule 8.07. THE COURT held that the INMATE WAS ENTITLED to RELIEF IF he WAS Able to PROVE his claims. IF he RELIED ON his ATTORNEY's MISTAKEN ADVICE, his guilty PLEAS WERE SUBJECT to COLLATERAL ATTACK BECAUSE he WAS NOT FULLY AWARE of the IMPLICATIONS of the PLEAS OR TRUE CONSEQUENCES of A TRAIL by JURY. HE WAS ENTITLED to A EVIDENTIARY HEARING. IT WAS NOT MANIFEST FROM the TRANSCRIPT AND the PETITIONS that his - PETITION WAS without MERIT. THERE WAS NO PERSE Rule EXCLUDING COLLATERAL ATTACKS ON PLEAS that FACTICALLY WERE CORRECT. THE INMATES ALLEGATIONS WERE NOT CONTRARY to the RECORD of ALLOCUTION IF PROVED, they INDICATED that, IN SPITE of ALL IF PROVED, they INDICATED, IN SPITE of ALL ALLOCUTION, his PLEAS WERE KNOWING AND VOLUNTARY. A PLEA of guilty CONSTITUTES A WAIVER of SOME of the MOST BASIC Rights of FREE AMERICANS, those SECURED by the FIFTH, SIXTH, AND FOURTEENTH ADMENDMENTS of the CONSTITUTION of the UNITED STATES, AS WELL AS those COMPARABLE - Rights SECURED by 14 th AND 26 th, ARTICLE 3 of MISSISSIPPI CONSTITUTION OF 1890. WHEN the COUNSEL ADVISES the DEFENDENT to LIE AND TELL the COURT that the guilty PLEA [10] HAS NOT BEEN INDUCED by PROMISE of LENIENCEY (WHEN IN FACT it HAS), the PLEA MAY be ATTACKED. [N3] THE LAW is CLEAR that WHERE the DEFENDENT RECEIVES ANY SUCH ADVICE of COUNSEL, AND RELIES ON IT, the PLEA HAS NOT BEEN KNOWINGLY AND INTELLIGENTLY MADE AND [284] is thus SUBJECT to ATTACK. Burgin V. STATE, 522 S.W. 2d 159 (MO. APP. 1975).

IT is CRITICAL to KEEP IN MIND that the VERY NATURE of the INVOLUNTARINESS" CLAIM MADE here, TAKE us BEYOND the TRANSCRIPTS of the PLEA HEARING. RELEVANT FACTS ON such VOLUNTARINESS ISSUE will AS MATTER of COMMON - SENSE Not be within the TRANSCRIPT. AS RECONIZED IN CHAVEZ V. Wilson, 417 F. 2d 584 (9 th CIR. 1969): [HN5] "MOST Allegation that the PLEA WAS INDUCTED by LACK of KNOWLEDGE OR by BROKEN PROMISE, OR by SOME other IMPROPER FACTOR, INVOLVE FACT outside the RECORD" 417 F. 2d at 586.

THE RELATIONSHIP of the ACCUSED to his LAWYER PROVIDES A CRITICAL FACTUAL CONTEXT HERE. AS he STANDS BEFORE the BAR of JUSTICE, the INDICTED DEFENDENT OFTEN HAS FEW FRIENDS. THE ONE PERSON IN the WORLD, UPON, WHOSE JUDGEMENT AND ADVISE, SKILL, AND EXPERIENCE, LOYALTY AND INTEGRITY that MUST BE RELIED UPON is his LAWYER. This is AS it should BE.

ANY RATIONAL DEFENDENT is going to RELY HEAVILY UPON his LAWYERS ADVICE AS to how he should RESPOND to the TRAIL judges QUESTIONS AT the PLEA HEARINGS. HE MAY ALSO RATIONALLY RELY ON his LAWYER'S ADVICE AS to WHAT the OUTCOME of the HEARING will be. YET it is the DEFENDENT, NOT the LAWYER, who ENTERS the PLEA. IT is the DEFENDENT, NOT the LAWYER, who is going to SERVE the TIME. IT is the [19] DEFENDENT, NOT the LAWYER, whose CONstitutional RIGHTS ARE being WAIVED AT the PLEA HEARING. IT is the DEFENDENT's PLEA and ACCOMPANYING WAIVER of RIGHTS which UNDER ESTABlished LAW MUST be VOLUNTARILY and INTELLIGENTLY given with FULL APPRECIATION of the CONSEQUENCES to FOLLOW.

A. AT the EVENDENTIARY HEARING the CIRCUIT COURT'S CENTRAL CONCERN will be the QUESTION of WHETHER UNDER APPLICABLE SUBSTANTIVE CONSTITUTIONAL STANDARDS. SANDERS two PLEAS of GUILTY WERE VOLUNTARILY and KNOWINGLY ENTERED with FULL APPRECIATION of the CONSEQUENCES of EACH PLEA. WE EMPHASIZE that [HN16] A MERE EXPECTATION OR HOPE, HOWEVER REASONABLE, OF A LESSER SENTENCE the [22] might be METED out AFTER CONVICTIONS UPON TRAIL by JURY will GENERALLY NOT be SUFFICIENT to ENTITLE A PETITIONER to RELIEF IN CASES such AS this YATES V. STATE, 189 So. 2d 917 (Miss. 1966).

B. LIKEWISE, the GENERAL PREDICTION of DEFENSE COUNSEL that A LESSER SENTENCE IS likely UPON A PLEA of GUILTY IS IN AND of ITSELF INSUFFICIENT to ENTITLE PETITIONER to RELIEF [6].

C. FURTHERMORE, the MERE REPRESENTATION by DEFENSE COUNSEL that IN his EXPERIENCE SENTENCES IMPOSED UPON A PERSON who PLEAD GUILTY ARE SOMEwhat less than those CUSTOMARILLY given to PERSONS CONVICTED of COMPARABLE OFFENSES AFTER the TRAIL by JURY is NOT ENOUGH N7, N6, AS being ILLUSTRATIVE of the DISTINCTION BETWEEN such A "GENERALIZED PREDICTION AND A FIRM REPRESENTATION" of such LESSER SENTENCE, COMPARE HILL V. STATE, 388 So. 2d 143 (Miss. 1980) with PEETE V. ROSE, 381 F. Supp. 1167 (W.D. TENN. 1974).

IMPROPER INDICTMENT

MICHAEL W. DAVIS, CLAIMS that the PORTION of the INDICTMENT charging him AS A HABITUAL OFFENDER AND ALLEGING A SENTENCE OF (1) ONE YEAR OR MORE HAD BEEN COMPLETED OR SERVED. WHEN IN FACT he HAS NEVER SERVED ANY CONFINMENT TIME ON ANY of the SAID CHARGES. "MORE to the POINT" MICHAEL W. DAVIS WOULD ARGUE that he PLEAD GUILTY ONE TIME. ONE the SAME DAY AND SENTENCED ON the SAME DAY. IT WAS UNDERSTOOD that THEN CASH MONEY RAN OUT AND SELLTHERE BELONGING they DIDNT REALLY NEED AS MUCH THERE WERE PLAN'S to WRITE CHECKS AND PAY THEM LATER AS LATE PAYMENTS MIGHT OCCURE. IT WAS the STATE that the CONSOLIDATED these CHARGES to ONE AND the SAME PLEA ONE CONVICTION.

MULTI-COUNT INDICTMENT

FIRST JUDICIAL DISTRICT, HARRISON COUNTY CIRCUIT COURT, MARCH TERM A.D. 2003 NO: B2401-2003-373.

(1) ON FEBRUARY 13, 1998, THE COURT SAID to MICHAEL W. DAVIS WAS CONVICTED

in the Circuit Court of HARRISON County Mississippi, First Judicial - District in CAUSE NO: B2401-96-1146, of the Felony of possession of a Controlled Substance, and on February 13, 1998, in the said Court was sentenced to a term of (3) three years in the Custody of the Mississippi Department of Corrections.

(2) On February 13, 1998, Michael W. Davis was convicted in the Circuit Court of Harrison County, in CAUSE NO: B2401-97-532 of the Felony, of Uttering Forgery (2) two counts and on February 13, 1998 in the said SAME Court was sentenced to (7) seven years for each - count in the Custody of Mississippi Department of Corrections; and, These above said charges CAUSE NO. B2401-96-1146 and CAUSE NO. B2401-97-532, the sentencing were in Fact set aside and suspended. On February 13, 1998, Michael W. Davis was sentenced to (3) three years probation and all charges run concurrent.

The statements made by District Attorney Cono Caranna, in the Multi-Count Indictment Failed to show, as to Michael J. Pickish, Foreman of the aforesaid Grand Jury, as to the Fact that these sentences were in Fact suspended and that the EXECUTION of the SENTENCES were indeed set aside, and probation was administrated by the Court for charges of (1) one count of Possession of a controlled Substance CAUSE NO. B2401-96-1146 and (2) two counts of uttering Forgery to run concurrent, and (3) three years probation was the Fact of the outcome and the Relevance of the sentence.

The District Attorney for the State of Mississippi, only used that portion of his (1) one previous Felony charge, but Failed in the completion as to the sentence that had been ruled on, had in Fact been - suspended to a probation sentence which expells judgement and conviction in that they become (demurrer). Also, the Multi-Count Indictment First Judical District, HARRISON County did not state When Michael W. Davis, was released under Miss. Code Ann. 99-19-81 (1972) Michael W. Davis has never served any kind of sentenced locked-up, Not a year or more on any of the aforesaid charges herein or elsewhere there are none, In Ernest Lee Atkins Sr. v. State of Miss. No. 56-392 S. Ct. Miss. 493 So. 2d 1321; 1986 Miss. Lexis 2638 Sept. 10, 1986, Decided and Filed, it states the primary difference in the language of these (2) two code sections, pertinent to this appeal, is that 99-19-81 requires that a defendent have been twice convicted and sentence to serve seperate terms of one year or more in prison while 99-19-83 requires that a defendent have been twice convicted, sentence, and served seperate terms of one year or more in prison, and one of the Felonies must have been a crime of violence. Lewis Oscar Young v. State of Miss. No. 56218 S. Ct. Miss. 507 So. 2d 48; 1987 Miss. Lexis-2442 April 8, 1987 Decided.

Malloy v. Hogan, 378 U.S. 1, 12 L. Ed 2d 653, 84 S. Ct. 1489, second, is the Right by trail by jury. Duncan v. Louisianna, 391 U.S. 145, 20 L. Ed 2d 491, 88 S. Ct. 1444. Third, is the Right to confront one's accusers. Pointer v. Texas, 380 U.S. 400, 13 L. Ed 2d 923, 85 S. Ct. 1065. We can not presume a waiver of these three important Federal Rights from a silent record. What is at stake for an accused facing death or imprisonment, demands the utmost with the Accused solicitude of which the courts are capable in demands the utmost CARVASSING [11] the matter with the accused to make sure he has Full understanding of what a plea connotes and of its consequences. When the Judge discharges

that FUNCTION, he LEAVES A RECORD ADEQUATE FOR REVIEW that MAY LATTER be sought. GARNER V. LOUISIANNA, 368 U.S. 157, 173, 7 L. Ed 2d 207, 219, 82 S. Ct. 248; SPECHT V. PATTERSON, 386 U.S. 605, 610, 18 L. Ed 2d 326, 330, 87 S. Ct. 1209, AND FORESTALLS the SPIN OFF of COLLATERAL PROCEEDINGS that SEEK PROBE MURKY MEMORIES. DEFENDENT Phillips ASSERTS that READING BOYKIN AND BURGETT together LEAD to the CONCLUSION that ANY PRIOR CONVICTION which IS CONSTITUTIONALLY DEFECTIVE AS A RESULT OF INVOLUNTARY PLEA OF guilty CANNOT be USED to SUPPORT ENHANCED PUNISHMENT UNDER A HABITUAL OFFENDER STATUTE such AS MISS. CODE ANN. 99-19-81 (SUPP. 1981). PRIOR to ANY EXAMINATION of the MERITS of the DEFENDENTS CONTENTION that his guilty PLEA to the 1971 KENTUCKY ESCAPE CHARGE WAS NEITHER KNOWING OR VOLUNTARY, the THRESHOLD ISSUE MUST BE ADDRESSED, IT IS the NATURE AND EXTENT OF the TRAIL COURT'S ROLE IN EXAMINING the PRIOR CONVICTIONS SOUGHT to BE USED FOR IMPOSITION OF ENHANCED PUNISHMENT UNDER 99-19-81, SUPRA. The IMPORTANCE of this ISSUE CAN BE SEEN by the EXAMINATION of the REQUIREMENTS which COULD BE IMPOSED by the TRAIL COURT by the ADOPTION OF the APPELLANT ARGUMENT, ANYTIME A COUNT IS SEEKING to APPLY ENHANCED PUNISHMENT PROVISIONS OF OUR HABITUAL OFFENDER STATUTES, that the COURT WOULD BE REQUIRED (ACCORDING to ARGUMENT) to IN EFFECT held EVIDENTIARY HEARING FOR the PURPOSE OF ASCERTAINING AND PASSING UPON CONSTITUTIONALITY FOR ANY AND ALL PRIOR [14] CONVICTIONS SOUGHT to BE UTILIZED by the PROSECUTION IN DETERMINING A DEFENDENT'S HABITUAL OFFENDER STATUS.

The difficulties which would be thereby IMPOSED UPON TRAIL COURTS ARE STARKLY OUTLINED by the FACTS of the PRESENT CASE. Phillips REASONS that IN ORDER to USE his PRIOR KENTUCKY CONVICTIONS the TRAIL COURT MUST HOLD A EVIDENTIARY HEARING AND DETERMINE the CONSTITUTIONALLY OF EVENT TRANSPIRING OVER [10] TEN YEARS AGO, IN JURISDICTION HUNDRED of MILES AWAY. WITNESS AND TRANSCRIPTS MUST BE OBTAINED. A high PRICE IN TERMS OF TIME AND MONEY WOULD BE EXPECTED FROM both SIDES, the STATE AND the DEFENDENT, CULMINATING IN A RESULT which WOULD BE BASED IN MOST CASES UPON FINDING FADING MEMORIES AND INCOMPLETE TESTIMONY. IF the TRAIL COURT'S duty EXTENDS to SUCH LENGTHS, WOULD NOT PRIOR CONVICTIONS ALSO be SUBJECT to CONSTITUTIONAL ATTACKS ON SUCH GROUNDS AS ALLEGED ILLEGAL SEARCH AND SEIZURES ? The POTENTIAL DIFFICULTIES INHERENT IN the DEFENDENTS POSITION BECOME READILY APPARENT WHEN VIEWED IN the CONTEXT OF SUCH FACTORS. NONETHELESS, WE ADDRESS the NATURE AND EXTENT OF DUTIES OF the TRAIL COURT IN EXAMINING the DEFENDENT'S PRIOR CONVICTION BEING USED to ESTABLISH HABITUAL OFFENDER [15] STATUS. IN ADDRESSING the ISSUE WE NOTE that both BOYKIN AND BURGETT with the SITUATION WHERE the RECORD OF PRIOR CONVICTIONS WERE SILENT with RESPECT to the QUESTION OF WHETHER the DEFENDENTS IN those CASES HAVE BEEN AFFORDED their RESPECTIVE CONSTITIONAL PROTECTIONS. PRIOR to these DECISIONS, COURTS IN VARIOUS JURISDICTIONS, including MISSISSIPPI, WHEN REVIEWING the RECORD OF A TRAIL COURT OPERATED UNDER the ASSUMPTION that. ABSENT EVIDENCE to the CONTRARY, the TRAIL COURT WAS PRESUMED to HAVE DONE that which IT SHOULD OF HAVE DONE. Both BOYKIN AND BURGETT held that the RIGHTS OF DEFENDENT'S, which ARE ADDRESSED by those CASES WERE of such BASIC IMPORTANCE to the VATALITY of the AMERICA SYSTEM of CRIMINAL JUSTICE, that A PRESUMPTION OF the SAFEGUARDING OF those RIGHTS could NOT ARISE FROM A SILENT RECORD. The ELIMINATION OF this PRESUMPTION WAS NOTED IN by U.S. OSBORNE V. STATE, 404 So. 2d 545 (Miss. 1981). The COURT HAS LONG REQUIRED that the TRAIL JUDGE WAS to DETERMINE that guilty PLEAS WERE VOLUNTARILY

MADE. CARLTON V. STATE, 254 So. 2d 770 (Miss. 1971). UNTIL BOYKIN, THE DETERMINATION by the judge WAS NOT REQUIRED to be PART of the RECORD. [16] A. [481] JUDGEMENT RAISED A PRESUMPTION that "what ought to BEEN DONE by the TRAIL JUDGE with RESPECT to RECIVING such A PLEA WAS DONE." BULLOCK V. HARPOLE, 233 MISS. 486, 495, 102 So. 2d 687, 691 (1958); OSBORNE, 404 So. 2d at 545 [HN 4] AT A HEARING conducted by A TRAIL COURT PURSUANT to MISS. UNIFORM CRIMINAL RULES OF CIRCUIT COURT 6.04, FOR DETERMINING the DEFENDENTS STATUS AS HABITUAL OFFENDER, the PROSECUTION MUST SHOW AND the TRAIL COURT MUST SHOW DETERMINE that the RECORDS OF PRIOR CONVICTIONS ARE ACCURATE, that they FULFILL the REQUIREMENTS OF 99-19-81, SUPRA, AND that the DEFENDENT SOUGHT to BE SENTENCED IS INDEED the PERSON who WAS PREVIOUSLY CONVICTED. SEE PACE V. STATE, 407 So. 2d 530 (Miss. 1981); MALONE V. STATE, 406 So. 2d 37 (1981); BAKER V. STATE, 394 So. 2d 1376 (Miss. 1981).

IN FULFILLING its MISSION to DETERMINE WHETHER A PRIOR CONVICTION IS CONSTITUTIONALLY VALID FOR the PURPOSE OF ENHANCING A DEFENDENT'S SENTENCE, the TRAIL COURT MUST NOT be PLACED IN A POSITION OF "RETRYING" the PRIOR CASE. CERTANLY ANY SUCH FORMAL ASSAULT upon the CONSTITUTIONALITY OF A PRIOR CONVICTION should be CONDUCTED IN the FORM OF AN ENTIRELY SEPERATE PROCEDURE SOLELY CONCERNED with ATTACKING that CONVICTION. This ROLE IS NEITHER the FUNCTION NOR the duty of [482] The TRAIL JUDGE IN A HEARING to DETERMINE HABITUAL OFFENDER STATUS. "LIKEWISE, ANY SUCH PROCEEDINGS should be BROUGHT IN the STATE IN which SAID CONVICTION'S OCCURRED, PURSUANT to the STATES ESTABLISHED PROCEDURES.

Should such PROCEDINGS IN A FOREIGN STATE SUCEED IN OVERTURNING the CONVICTION, then the RELIEF should be sought IN MISSISSIPPI by PETITION, ~~THEN the RELIEF should be~~ FOR WRIT OF ERROR CORAM NOBIS.

JAMES E. BENNETT, JR. V. STATE of MISS. NO. 54837 S. Ct. Miss. 451 So. 2d 727; 1984 Miss. LEXIS 1746. MAY 16, 1984, OPINION [728] This IS AN APPEAL FROM the CIRCUIT COURT OF TISHOMINGO COUNTY, WHERTHER the APPEALLANT, JAMES E. BENNETT JR. WAS INDICTED IN A TWO COUNT INDICTMENT which CHARGED HIM with AGGRAVATED ASSUALT AND ARMED ROBBERY. BENNETT WAS TRIED ON these CHARGES IN A SINGLE TRAIL AND WAS FOUND guilty ON both COUNTS. HE WAS SENTENCED to SERVE (7) SEVEN YEARS ON CHARGE OF AGGRAVATED ASSUALT AND [14] with [7] SUSPENDED ON the CHARGE OF ARMED ROBBERY. ON his APPEAL, BENNETT ARGUES that his DEFENSE WAS ~~PREJUDGED~~ "IMPERMISSIBLY BENNETT ARGES that his DEFENSE WAS PREJUDGED BECAUSE HE WAS [2] TRIED ON CHARGES of "ARMED ROBBERY" AND "AGGRAVATED ASSUALT" AT the SAME TIME. WE AGREE AND THEREFORE REVERSE the COVICTION OF AGGRAVATED ASSUALT. THIS CASE, ABOVE IS CONTROLLED by OUR RECENT DECISION IN FRIDAY V. STATE, NO. 54039, Decided JANUARY 25, 1984 (Not yet REPORTED) AND SHORTLY BEFORE, STINSON V. STATE, 443 So. 2d 869 (Miss. 1983)" IN STINSON WAS TRIED IN THREE SEPERATE COUNTS OF AN INDICTMENT, AGGRAVATED ASSUALT upon LAW ENFORCEMENT OFFICER, KIDNAPPING AND ATTEMPTED ESCAPE FROM the DEPARTMENT of CORRECTIONS by VIOLENCE. IN ADDRESSING the TRIPLE COUNT INDICTMENT WE EXAMINE the history OF MISSISSIPPI CRIMINAL JURISPRUDENCE AS IT RELATES to Multi-Count [HN 2]. the STATE HAS the SAME BURDEN of PROOF AS the HABITUAL-OFFENDER PORTION of the INDICTMENT AS IT HAS the PRINCIPLE CHARGE. The DEFENDENT ALSO HAS the SAME RIGHTS AT both STAGES of TRAIL. THERE APPEARS SOME TENDENCY to ROUTINELY ALLOW the STATE to PRODUCE SOME DOCKCUMENTATION OF PRIOR OFFENSES AND FOR TRAIL COURT to PERFUNTORILY FIND the DEFENDENT AN HABITUAL OFFENDER, THAN ROUTINELY PASS OUT the

SENTENCE MANDATED 99-19-81 (Mississippi). A bifurcated trail means a Full two-part phase trail prior to ANY Findings that the defendent is a Habitual OFFender and subject to ENHANCED punishment. Attorney For Michael W. DAVIS made no objection to the Multi-Count Indictment. Attorney For Michael W. DAVIS Mr. Lusk was well below INEFECTIVENESS And Mr. Lusk PERFORMANCE was nothing less than prejudiced by Counsel's deficient mistakes. IN William A.C. Smith AKA William Christopher Smith V. STATE of Mississippi Supreme Court of Mississippi, 835 So. 2d 927; 2002 Miss. LEXIS 298 October 3, 2002 Decided. Said in part [HN10] it is general rule that the intentional spoliation or destruction of EVIDEN RELEVANT to a case raises a presumption, or more properly, and inference, that this evidence would have been unfavorable to the case of the spoliator. Such a presumption or destruction was intentional and indicates Fraud and the desire to supress the truth, and it does not arise where the destruction was a matter of routine with no Fraudulent intent. STRICKLAND V. WASHINGTON, 466 U.S. 668, 687-90, 80 L. Ed. 2d 674, 104 S. Ct. (1984). IN JACKIE LEE Phillips V. STATE of Miss. No. 53469 S. Ct. Miss. 421 So. 2d 476; Miss. LEXIS 2254, Oct. 27, 1982 [HN2] SEVERAL FEDERAL CONSTITUTIONAL Rights ARE INVOLVED IN A WAVIER that takes place when a plea of guilty is ENTERED IN A STATE CRIMINAL COURT, First is the privilege against self-incrimination guaranteed by the Fifth Admendment and applicable to the state by reason of the Fourteenth Admendment. Indictments and consolidation of offences for trail.

To sume up our holdings, we quoted Fondren, Mississippi Criminal Trail practice 26-11 (1980), which reads: [HN1] unlike the practice of the Federal Courts, and many state Courts, Mississippi Law does not require provide for Multiple counts or charges in one indictment. Our holding in Stinson, was intended to make it plain that under our state criminal jurisdicationce a Multi-Count Indictment is inherently defective.

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

MICHAEL WAYNE DAVIS

VERSUS CAUSE NO. A2401-2006-00478

STATE OF MISSISSIPPI

ORDER

This cause is before the Court on Michael Wayne Davis' *pro se* Petition for Post-Conviction Collateral Relief. This Court, having reviewed the petition as well as the applicable law, finds the petition is not well taken and should be denied.

Michael Wayne Davis was indicted July 28, 2003 in a multi-count indictment charging him with Count I - manufacture of a controlled substance (methamphetamine), Counts II and III - aggravated assault on police officers and Count IV - possession of a controlled substance (methamphetamine). Davis was charged as a habitual offender based upon the 1998 felony convictions of possession of a controlled substance and two counts of uttering forgery. On January 29, 2004, Davis filed a petition to enter an open plea of guilty to Counts I, II and III, in exchange for the State passing to the files Count IV. The Court accepted Davis' guilty plea, ascertained that he was a habitual offender and sentenced him to five years in Count I, thirty years in Count II and thirty years in Count III, with Counts II and III to run concurrently with one another but consecutive with Count I, for a total of thirty-five years to serve as a habitual offender in the custody of the Mississippi Department of Corrections. Davis now files a petition for post-conviction collateral relief and argues he received ineffective assistance of counsel, his guilty plea was involuntary and the indictment was improper.

I. Ineffective Assistance of Counsel

In *Strickland v. Washington*, 466 U.S. 668 (1984), the United States Supreme Court adopted a two-

prong standard for evaluating claims of ineffective assistance of counsel. First, the convicted defendant must show that counsel's representation fell below an objective standard of reasonableness. *Id.* at 687-88. Second, the defendant must show there is reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 694. This test applies with equal validity to challenges to guilty pleas. *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). As applied to the plea process, the focus of the first prong remains the same, while the second prong focuses on whether counsel's unprofessional performance affected the outcome. *Id.*

Davis first argues he was coerced by his attorney to plead guilty and was told he would not receive more than five years. However, in the petition to enter plea of guilty, Davis clearly acknowledged that his sentence was up to the Court and that he could receive zero to ninety years imprisonment. Moreover, Davis indicated his satisfaction with his attorney's advice and recognized that if he had been told by his lawyer that he might receive a lighter sentence this was merely a prediction and not binding on the Court. Upon review, there is no indication Davis' counsel's representation fell below an objective standard of reasonableness nor is there evidence that, but for counsel's errors, Davis would not have pled guilty. Thus, this issue is without merit.

II. Involuntary Plea

Davis next argues his plea was not voluntary since he was coerced by his attorney to plead guilty. As discussed above, there is no evidence of coercion and no indication that Davis' plea was involuntary. Additionally, in his petition to enter plea of guilty, Davis indicated he was not under the influence of any drugs or intoxicants and stated, "I offer my plea of guilty freely and voluntarily and of my own accord and with full understanding of all the matters set forth in the indictment and in this petition and in the certificate of my lawyer which follows." Upon review, this Court finds Davis' plea was voluntarily entered.

III. Improper Indictment

Davis last argues the portion of the indictment charging him as a habitual offender is improper since he "has never served any confined time." The indictment states as follows:

> And we, the aforesaid GRAND JURORS, upon our oaths do further present, that he, the said Michael Wayne Davis, is a habitual criminal who is subject to being sentenced as such pursuant to Section 99-19-81, Miss. Code of 1972, as amended, in that he, the said Michael Wayne Davis, has been convicted at least twice previously of felonies or federal crimes upon charges separately brought and arising out of separate incidents at different times and **has been sentenced thereon to separate terms of imprisonment of one year or more**, to-wit:"

(Emphasis added).

The indictment states Davis was convicted of possession of a controlled substance and sentenced to three years in cause number B2401-1996-01146. The indictment further states Davis was convicted of two counts of uttering forgery and sentenced to serve seven years for each count in cause number B2401-1997-00532. Thus, Davis "has been convicted at least twice previously of felonies or federal crimes upon charges separately brought and arising out of separate incidents at different times and has been sentenced thereon to separate terms of imprisonment of one year or more" as stated in the indictment. The fact that Davis may not have served any time is irrelevant. Upon review, this Court finds the indictment was proper. It is therefore,

ORDERED AND ADJUDGED that Michael Wayne Davis' *pro se* Petition for Post-Conviction Collateral Relief is hereby **DENIED**.

ORDERED AND ADJUDGED this the 11th day of January, 2007.

JERRY O. TERRY
CIRCUIT COURT JUDGE

FILED
JAN 11 2007
GAYLE PARKER
CIRCUIT CLERK
BY

[18]

446/156-158

STATEMENT OF FACTS

I, MichaelW. DAVis, UNDER PENALITY of PERJURY SWEAR UNDERPERJURY OR AFFIRM that All the FOREGOING STATEMENTS MADE ARE TRUE AND CORRECT to the best of My KNOWLEDGE. ON OR About July 31, 2002, I RECIVED A PHONE CALL. IT WAS JOHN COOPER, HE SAID thAT he NEEDED A RIDE LATER ON that day AND to MEET hiM AT LAURA CARMONY's TRAILER, By the TIME I ARRIVED there JOHN COOPER WAS AlREady there. AFTER ENTERING the TRAILER I SAT down AND OCCUPIED MYSELF WATCHING TV. I LIKE to WATCH TV. I GUESS JOHN COOPER KNOWS that. JOHN KEPT RUNNING ARound outside AND to the bathROOM, OR IN the BACK YARD. AFTER SOMETIME he CALLED ME back to the BACKROOM. THEN he LEFT AGAIN AND AS he WAS LEAVING FROME the ROOM he told ME to WAIT HERE. A MINUTE LATER he CAME BACK AND GAVE ME A Folded up PEICE of Foil. I Rubbed ON the Foil, but FELT NOTHING IN IT AT All. JOHN told ME to KEEP it FOR hiM AND he WOULD WANT it BACK WHEN he ASKED FOR it. JOHN told ME to put it IN MY SHOE OR SOCK SO I WOULDNT LOOSE it, BECAUSE I WAS AlWAYS going IN MY POCKETS FOR MONEY giVING it to MY GIRLFRIEND AND buying THINGS FOR family MEMBERS. AFTER JOHN SAID that he left AGAIN. A couple of MINUTES LATER he RETURNED putting SOME GUNS ON the bed ASKING ME HAVE I KILLED A DEER AND WAS I READY to go HUNTING THEN he STARTED LAUGHING. JOHN SAID he FOREGOT to TURN OFF SOMETHING AND WALKED out of the ROOM. AS he did I TOOK A CLOSER LOOK AT the GUNS ON the bED AND I RECONIZED ONE of THEM belONGING to LISA MAGEE. THEN JOHN JUMPED IN the DOORWAY SCREAMING AND SOMEbody to get out ACTING AND LOOKING TERRIFIED, AT LEAST I could SEE that SOMETHING WAS VERY WRONG. JOHN WAS RUNNING AROUND the HALLWAY AND out the BACKDOOR of the TRAILER. THEN I REACHED down AND PICKED up ONE of the GUNS. I KNEW that ONE of the GUNS belONGED to AND picked the OTHER ONE up AS WELL AND STARTED WALKING out the FRONT DOOR. ONCE out FRONT I SAW JOHN COOPER RUNNING AWAY FROM the POLICE OFFICER. THEN the POLICE WAS RUNNING AT ME, AND I STARTED RUNNING AWAY AND jumped OVER A FENCE I WENT AND ACROSS the ROAD AND down BESIDE the ROAD. NOT LONG AFTER I SAW MY NEICES CAR. EVERYONE KNOWS MY NEICES CAR AND MY NEICES. I WAS WAVING FOR THEM to STOP, LIKE you would WAVE down A AIRPLANE IN the OPEN SO you could SEE ME CLEARLY, AND KNOW who I WAS. THEN the CAR stopped 200 FEET OR SO. MY NEICES SAW the POLICE AND without delAY OFFICER BRANDON LADNER AND officer Michelle CARBINE opened FIRE ON ME. I didNT HAVE TIME to give the GUNS to MY NEICES like I WANTED to do, CAUSE WE NEVER got CLOSE ENough to ONE ANOTHER. I didNT RIGHTLY KNOW AT that POINT what I should of dONE. I WAS holding the GUNS POINTED TOWARDS the GROUND AND shot AT the GROUND ONLY TWICE, AND YELLING AT officERS BRANDON LADNER AND - MichelLE CARBINE to STOP shooting AT ME, but they CONTINUED to FIRE. They MUST of AlSO gotTEN CLOSE to MY NEICES CAR AS WELL AS to MYSELF. They (MY NEICES) TOOK OFF VERY FAST AND so did I. The OFFICERS WERE STILL SHOOTING AT ME, bullits RACING by MY HEAD. I ducked behiND A TREE AND STILL Bullits WERE hitting the TREE. I TOOK OFF RUNNING AGAIN. I did NOT KNOW what to do. I MADE IT to SOME WOODS SOMEhow AND it WAS getting DARK. I HEARD the helicopter AND watched it FOR AWHILE, then I WALKED downSTREAM thinking about what this WAS All About, OFFICER BRANDON LADNER had AlREady MADE STATEMENTS that he HAD to get ME out of the WAY BECAUSE he WANTED MY girlFRIED (TRUDY BORQUE). I CAME to the MAIN ROAD AND SAW A TRUCK PASS by then I HEARD A dog BARKING SO I JUMPED BACK into the WOODS. IT WAS then I NOTICED the dog IN the BACK of the TRUCK. AS it WENT by, AND thats WHEN SOMEbody LET the

dog out of the truck. I tried to hide behind some bushes and a log in a ditch, I tried to get under the log. The time I heard and seen the dog it was real close with a red blinking light on its neck. I didn't want the dog to jump on me so I hollered (get your dog I dont want it to [redacted], bite me). Then I saw a light, as I turned to see it better thats when I got shot up pretty bad. Then the officer came out of nowhere and put the handcuffs on me. I didn't know why, and then dragged and beat, kicked me all the way to the road. My mind was blinking and I was going out then everything was gone.

STATEMENT OF FACTS

I, Michael W. Davis, under penalty of perjury or affirm that all the foregoing statements made are true and correct to the best of my knowledge. On or about August 1, 2002, I arrived at Garden Park hospital, Community Road, Gulfport, MS. 39503. When I came out of it for a little while the officer in the room said to me (Your Attorney has been here 2 or 3 times). Soon after my Attorney (Mr. Fred Lusk) came to see me. Mr. Lusk told me that I was charged with shooting a police officers and drugs I Michael W. Davis told Mr Lusk that I did not shoot anyone, and was not messing with any drugs either. Mr. Lusk said he would have to see the discovery. That was the first time that I told Mr. Lusk that I wanted to also see the discovery. And that I was not guilty of the crimes, Mr. Lusk said (if you go to trail you are facing Capital Charges and will get more time, than if you didn't). I, Michael W. Davis, told Mr. Lusk I was innocent and would plead Not Guilty to all charges. I told Mr. Lusk that that I wanted him to file for a fast and speedy trail as soon as he could. Because I wanted to get this mix up over and done with and out of the way. Mr. Lusk said he would make a plea of not guilty to all charges and conduct a pre-trail discovery. It was about the same time "The officer in the room started making statements, saying Mr. Davis has been talking a-lot of crazy stuff and that he needs some type of help with his mind) later this was a repeat. When Mr. Davis, (Michael W. Davis) awoke jumping on the hospital bed in sever pain. Doctor's had to finish taking off Mr. Davis's small finger on his right hand. While still in the hospital Mr. Davis recived a-nother visit from his Attorney Mr. Lusk, Mr. Lusk said some detectives - would talk to me (Michael W. Davis) sooner or later. Mr. Lusk looked at me and said (Care'nt you guilty of something), I did not answer cause I did not understand Mr. Lusk, I replyed I don't think so. Then Mr. Lusk said Let me put it this way "Are you sure your not guilty of something out of all of these crimes?" Thats when I said I was not guilty and wanted to go to trail. The officer in the room at the hospital was still making statements to Mr. Lusk, that something was seriously wrong with me (Michael W. Davis), After that visit the nurses told me that I was being moved to another room and gave me some shots. August 22, 2002 or about that date. The next thing I knew I awoke kicking on top or bottom bed in my cell at Harrison County Jail - 10451 Larkin Smith Dr. Gulfport, MS. 39503. I was scared and screaming for help. I tried to call my Attorney (Mr. Lusk) three different times, but Mr. Lusk could not, I supose, return my phone call or assume that

help was needed. I was trying to get help because I was in so much pain and I (Michael W. Davis) could not even hardly walk and didn't understand why or how I was where I was. I did not know so much as to just what was going on. I did see a nurse or doctor and they gave me some I. B. U. I don't know if it helped with any of my pain I couldn't say, but my headaches would not go away. About a week later Mr. Lusk came to see me (Michael W. Davis), at the Harrison County Jail. Mr. Lusk (my Attorney) would come by every (2) two or (3) three times a a month maybe I'm not really sure, because Mr. Lusk came to see other inmates there also. I told Mr. Lusk about all the pain I was having and that the pain was down right unbearable. Even when I wasn't trying to talk. And that I kept getting confused all of the time. Mr. Lusk said there was nothing he could do for me and I would have to bear the situation out. Then Mr. Lusk said I would have to give the detectives a statement. He (Mr. Lusk) said it would be better at trail if I said that I aimed the gun at the officers and that I knew John Cooper was making crystal meth. I told Mr. Lusk this was not true, Mr. Lusk said (I can't help you if you don't come halfway with me on this), Mr. Lusk, I know what I'm talking about and you've got to trust me. I (Michael W. Davis) told Mr. Lusk that I had witnesses that would be calling him and Mr. Lusk said I'll be waiting for them to call. Then Mr. Lusk stated that he as well would be doing some work himself. I told Mr. Lusk I couldn't stay in jail like this. That I was not guilty and wanted Mr. Lusk to file for a fast and speedy trail. Also that I wanted a copy of the discovery. Mr. Lusk said don't worry I'll bring it next time.

On or about August 29, 2002, I had a follow up on my hand where they had finished cutting off my small finger on my Right hand. The doctor at Garden Park Hospital Community Road Gulfport, MS. 39520 gave me some medication for my pain and all, but when I got back to the Harrison County Jail the doctor laughed and threw my medication away and stated "You can't have this in here". About a week later Mr. Lusk came to see me. I told Mr Lusk what the said and did, but Mr. Lusk replyed that was nothing he could do.

I told Mr. Lusk that I shouldn't be here and that I haven't done anything wrong and that I was having trouble dealing with all of this, I (Michael W. Davis) should have not been released from the hospital so soon. That I was having Flashes of Lights, that I couldn't sleep normally like I did before all of this happened and all of what I felt like before seemed not Right either sure of. That when I did go to sleep I was having dreams of police shooting at me and then I would wake up screaming and kicking in pain. Mr. Lusk told me to get my mind off of the pain and it wan't be so bad that I was having and don't worry about it. I asked Mr. Lusk how long it would take for us to go to trail. Mr. Lusk "don't worry about it" I told Mr. Lusk sense you have already filed for a fast and speedy trail it should'nt take to long Mr. Lusk said (don't worry about it).

Mr. Lusk (Attorney) said he had looked at the Discovery, and with both of his hands to indicate how thick it was, maybe two-foot. Again I told Mr. Lusk I wanted to see the Discovery, and that I wanted a copy of it. Mr. Lusk said, (don't worry about it I'll bring it the next time). Maybe a week later a detective with Mr. Lusk wanted me to give a statement, but I'm pretty sure that Mr. Lusk was mad at me because I'm not able to write with my Right hand. Mr. Lusk said if I plead guilty that I would not get more than (5) Five years, and that all of my good time earned would be put towards my new sentence, after, I, Mr Lusk files a motion for a reduction of sentence and you will be out in no time either way (5) Five year sentence don't mean you will have to

SERVE (5) FIVE YEARS, you'll be out in NO time. ON About Sept. 13, 2002 I ENTERED A Not guilty plea of MANUFACTORING of CONTROLLED SUBSTANCE AND (2) two COUNTS of AGGRAVATED ASSUALT ON A police OFFICER. IN NOVEMBER OR DECEMBER OF 2002. The HARRISON County JAIL took ME to the UNIVERSITY MEDICAL CENTER hospital of JACKSON, 2500 North STATE St. JACKSON, MS. 39205. TO SEE A NEO-SURGON (Doctor). At the hospital the doctor told ME I would have to have SURGERY No doubt about it. IF I EVER WANTED to have ANY use of My Right SIDE AND ALL AND that IF I didn't, I would NOT HAVE ANY USE OR FEELING throughout MY ENTIRE Right Chest, Shoulder AND ARM, hand. AFTER the visit with NERO-SERGION doctor. I, (Michael W. DAVIS) WAS RETURNED to the HARRISON County JAIL. MAYBE (1) ONE WEEK later MR. LUSK CAME by to SEE ME OR CALLED ME out to SEE him. The FIRST thing I ASKED him WAS did he bring the DISCOERY OR A COPY of it, that I (Michael W. DAVIS) WANTED A COPY of the DISCOVERY. MR. LUSK SAID he would BRING it the NEXT TIME AND that he WAS WORK-ING ON MY WITNESSES FOR TRAIL. I told MR. LUSK that my (2) two NEICES Should have ALREADY CALLED him by NOW. AND that they WERE there AND could ALSO show him WHERE the SHOTS WERE FIRED into the GROUND ONLY. MR. LUSK SAID that he would WAIT FOR them to CALL him. I told MR. LUSK to DRAW up SOME PETITION that the POLICE had NO REASON to SHOOT AT ME. THEY NEVER READ ME ANY MIRANDA Rights, AND that I WANTED to get this OVER with. I just couldn't STAY in JAIL, thats why I WANTED him to FILE FOR A FAST AND SPEEDY TRAIL AND PROVE MY INNOCENSE. THEN MR. LUSK SAID to ME that I could NOT get on the WITNESS STAND BECAUSE the STATE would BRING up MY PRIOR CONVICTIONS AND that I would NOT HAVE A CHANCE.

IN FEBRUARY OR MARCH of 2003., the HARRISON County JAIL took ME to what I thought WAS TRAIL, but WAS ONLY put IN A holding CELL OR ROOM. AFTER AWHILE MR. LUSK CAME AND told ME that EVERYthing WAS looking good AND FOR ME NOT to WORRY. I ASKED MR. LUSK IF he had SPOKEN to MY WITNESSES, MR. LUSK SAID he had NOT talked to ANYONE, AND that NOBODY HAS CALLED him that he WAS STILL WORKING ON IT, but FOR ME NOT to WORRY About ANYTHING. I told MR. LUSK that I WANTED to get ON the WITNESS STAND AND TELL EVERYONE what HAPPENED. But MR. LUSK SHOOK his head AND told ME that the STATE would USE MY STATEMENTS AGAINST ME, AND don't WORRY about it. I SAID to MR. LUSK what About MY WITNESSES, LISA MAGEE AND Christy BOND, They told ME that they had BEEN TRYING to CALL you AND talk with you, but you ARE NEVER IN OR that you would NOT ACCEPT their CALLS. MR. LUSK SAID (I LEAVE out A lot of TIMES) But why don't you RETURN their PHONE CALLS? MR. LUSK SAID WE'VE got PLENTY of-TIME FOR All that), don't WORRY about it. THEN I ASKED MR. LUSK, how CAN the STATE USE MY OWN STATEMENT AGAINST ME, AND MR. LUSK SAID FROM MY CONVICTION of 1998 would BE USED AGAINST ME. MR. LUSK SAID that he WORKED FOR the STATE AND he would NOT go to TRAIL AND ASK ME what HAPPENED ON July 31, 2002., CONCERNING why the POLICE SHOT ME AND did the REST of that STUFF to ME. MR. LUSK SAID that the JURY would NOT BELIEVE A WORD of it. Michael W. DAVIS, but I'M telling you the TRUTH thats All I CAN do. MR. LUSK I CAN't go AROUND telling PEOPLE this TYPE of STUFF, BECAUSE I WOULDN'T HAVE A JOB AND-PEOPLE would SAY I WAS CRAZY, I just CAN't put you ON the STAND IF you ARE going to TELL this, I don't HAVE to put you ON the STAND AND you don't HAVE to get ON the STAND FOR the TRUTH to be told.

SOMETIME IN FEBRUARY OR MARCH 2003 I, (Michael W. DAVIS) WAS TAKEN BACK to JACKSON, MS. hospital FOR A NERVE CONDICTION TEST AND the doctor told ME that I would HAVE to HAVE SURGERY FOR SURE.

THE Doctor could tell that I,(Michael W. DAVIS) WAS IN SEVER PAIN. I told the doctor they at HARRISON County JAIL would NOT ALLOW ME ANY MEDICATION UNLESS they give it out. The Doctor said that he didn't think that was right AND that he,(Doctor) was setting up A date FOR ME to have surgery. THEN I WAS RETURNED back to the HARRISON County JAIL.

IN MAY OR JUNE of 2003, the HARRISON County JAIL, took ME back to the hospital IN JACKSON, MS. FOR ANOTHER NERVE condition test to be done AGAIN. ONE of the OFFICER'S MADE A STATEMENT to the EFFECT that the HARRISON County JAIL WAS NOT going to PAY FOR my SURGERY.

A FEW days later MR. LUSK haded ME called out. I, told MR. LUSK, that I was still having problems with alot of different things. I ASK MR. LUSK, (Why CAN't you say something to the Doctor)? But MR. LUSK said there WAS Nothing he could do AND FOR ME NOT to WORRY about it. I, (Michael W. DAVIS) then ASKED MR. LUSK about my copy of the discovery AND MR. LUSK said that he would bring it NEXT AND don't WORRY about it. I ASKED MR. LUSK WHEN ARE WE going to trail?, he, MR. LUSK said it WANT BE MUCH LONGER, but that he was still WORKING ON it with the District ATTORNEY AND FOR ME NOT to WORRY about it. I ASK MR. LUSK [redacted] IF he has heard FROM my WITNESSES, but he said MR. LUSK said NO ONE has called him to be A WITNESS.

IT WAS about the END OF July 2003 OR the FIRST WEEK of August that I RECEIVED A Multi-Count INDICTMENT and to wit attached A Habitual OFFENDER STATUS. I EXPLAINED to MR. LUSK, that it WAS only, RESIDUE ON SOME-PAPER AND NOT ENOUGH FOR ANYTHING. AND that didn't WANT my girlFRIEND to go to JAIL so I plead guilty of UTTERING FORGERY AND POSESSEN OF A CONTROLLED-SUBSTANCE. AND that I plead guilty AND RECEIVED (3) THREE YEARS PROBATION. I told MR. LUSK (my ATTORNEY) that I WANTED him to FILE A MOTION to SUPRESS the CHARGES IN 1998. MR. LUSK said you MEAN (DEMURRER) then Michael W. DAVIS said YES thats what I WANT you to FILE. Then I WANT you to FILE A MOTION to (SQUASH INDICTMENT) CAUSE it WAS all WRONG, AND that I WANTED him to do this AS SOON AS possiable. Then MR. LUSK ASK ME, (Michael W. DAVIS IF there WAS anything ELSE I WANTED him to FILE OR do. I told MR-LUSK he NEEDED to RETURN his PHONE CALLS WHEN PEOPLE HAVE called him, ALSO that he should ACCEPT ANY PHONE CALLS CONCERNING this CASE. MR. LUSK said, (Michael IF you WANT to go to trail AND FACE CAPITAL CHARGES, you will get OVER A hundred YEARS. AND I'M NOT going to TELL ANYONE that the POLICE shot you while you WERE sitting down, HANDCUFFED you, then BEAT AND KICKED you ALL the WAY BACK UP A hill AND on SIDE of the ROAD. AND you, (Michael W. DAVIS) NEED to think ABOUT what I'M telling you. Now TAKE ALL of the ADVICE I've given you AND think ABOUT it. IF I put you on the WITNESS STAND you'll MAKE A FOOL of yourself AND ME ALSO.

IF you TAKE A PLEA BARGAIN you WANT get MORE than (5) FIVE YEARS, AND AFTER you've got (2) two YEARS IN UNDER your BELT, I'll, (MR. LUSK) FILE A MOTION to APPEAL FOR A SENTENCE REDUCTION, AND time you HAVE ALREADY done with good-time you'll be out IN NO time AND this will be OVER AND done with., JUST let ME HANDLE things with the DISTRICT ATTORNEY, AND don't WORRY about it.

IN AUGUST OR SEPTEMBER 2003., MR. LUSK, had ME called out. I, (Michael W. DAVIS) ASKED MR. LUSK about My WITNESSES AND his RESPONSE WAS that NOBODY had called him OR come by to SEE him OR ANYTHING. I THEN ASKED MR. LUSK IF he BRUNG my COPY of the discovery. MR. LUSK, said he would BRING it NEXT time. Then MR. LUSK ASK ME IF I had been thinking about what he SAID LAST time he CAME AND talked.

I,(Michael W. DAVIS) REMEMBER and I don't KNOW if I do, I think of what you SAY, but it hurts when I try to MAKE any SENSE of it. Then MR. Lusk said to ME, (MICHAEL ARE'NT you guilty of SOMEthing)? I, Michael W. DAVIS. REPLIED NOTHING and I don't KNOW what you ARE talking about. Then MR. Lusk then said "LET ME EXPLAIN it to you like this, if you and SOMEONE ELSE IS IN A CAR Ridding down the ROAD and you pull OVER in FRONT of A STORE, and your passenger in the CAR with you gets out of the CAR and goes INSIDE of the STORE, and commits ROBBERY while in the STORE, walks out of the STORE and gets back into your CAR, then your also guilty of ROBBERY". It DOESN'T MATTER if you KNEW what he WAS going to do or NOT, you WAS with him and you would be just as guilty then if you yourself had robbed the STORE. You would be better off if you said you had done the Robbery yourself. The JURY would believe you and Forgive you SOONER, or that you and the PASSENGER WERE together and done it, the people would understand thats much better.

And MR. Lusk said "its the SAME thing" EVEN if you didn't KNOW what John-Cooper WAS doing in the back of the trailer, you are just as guilty of being there. MR. Lusk said "the NEXT time I talked to a detective or MAKE any STATEMENTS, that it would be in my best interest to say that I, (Michael W. DAVIS) WAS MAKING (CRYSTAL METH) and it would look better and that EVERYONE would understand what I was saying and it would be much better CAUSE its the SAME thing EVEN if you, (Michael W. DAVIS) didn't KNOW that John Cooper was doing, you are just as guilty for being around it. I told MR. Lusk that I was still having NIGHTMARES and was still in PAIN. MR. Lusk said don't WORRY about it. I ASK MR. Lusk did he bring a COPY of the discovery and MR. Lusk, said I'll bring it NEXT time don't WORRY about it.

IN OCTOBER OR NOVEMBER 2003, at the HARRISON County JAIL A jailer called ME out (Michael W. DAVIS) of MY CELL and said you ARE going to the Courthouse, which is in HARRISON County. AFTER WE ARRIVED I WAS PLACED IN A holding CELL. SOMETIME LATER MR. Lusk, (MY ATTORNEY) CAME to SEE ME IN the holding CELL. I, (Michael W. DAVIS) ASK MR. Lusk ARE WE going to TRAIL today or what. MR. Lusk said FOR ME NOT to WORRY about if that EVERYthing has been TAKEN CARE of. FOR ME NOT to WORRY about ANYthing, and FOR ME to REMEMBER what HE, (MR. Lusk) told ME before and FOR ME to SAY and that EVERYthing will WORK out FOR the best and FOR ME NOT to WORRY about ANYthing.

JANUARY 26, 2004, while in HARRISON County jail A jailer called ME (Michael W. DAVIS) out of MY CELL to go to A CELL upstairs. MR. Lusk (MY ATTORNEY) had ALREADY INSTRUCTED ME, (Michael W. DAVIS) AS to what type of STATEMENT to give. I didn't FEEL AS if it WAS Right and EVERYthing, but I'M NO LAWYER. I KNEW I had NO choice IN the MATTER, and I, (Michael W. DAVIS) had to trust-MR. Lusk. MR. Lusk told ME that the STATEMENT will get ME A good deal and WE WANT have to go to TRAIL. MR. Lusk said that the PAPER I WAS SIGNING SAYS, but he stopped ME and said don't WORRY about what the PAPER SAYS it DOESN'T MEAN A thing to you and don't WORRY about it OR READING the REST of it. MR. Lusk said I would have ANOTHER COURT date of JANUARY 29, 2004, and FOR ME NOT to WORRY about it, that EVERYthing was going to be ALRight. MR. Lusk said (I just go with AN OPEN PLEA) and you WON'T get ANYMORE THAN (5) FIVE YEARS. THEN AFTER (2) TWO YEARS I, (MR. Lusk) will FILE FOR MOTION of A SENTENCE REDUCTION, and that ALL of my good-time EARNED would APPLY towards my NEW SENTENCE then I, (Michael W. DAVIS) would BE out IN NO TIME. I didn't UNDERSTAND what AN OPEN PLEA MENT AND when I ASK MR. Lusk, he didn't WANT to talk About it. THEN MR.-Lusk told ME that I didn't HAVE A CHOICE BECAUSE you don't HAVE ANY

WITNESSES. I,(Michael W. DAVIS) told MR. LUSK, oh yes I do, but you WANT talk to them. I then ASKED MR. LUSK why he has NOT brought ME A COPY OF the DISCOVERY (INVESTIGATION REPORT), MR. LUSK said don't WORRY About it I'll BRING IT NEXT TIME. MR. LUSK said, "just do like I SAY AND EVERYTHING will be ALright. BECAUSE IF you go to TRAIL you will be FACING CAPITAL OFFENSES OVER A HUNDRED (100) YEARS IF you go to TRAIL. MR. LUSK then said (go with AN OPEN PLEA its NOT the SAME AS A guilty PLEA ON (admission of guilt.) JANUARY 29, 2004., WHILE I, (MICHAEL W. DAVIS) WAS IN the HARRISON COUNTY JAIL 10451 LARKIN SMITH DRIVE, GULFPORT, MS. 39503. A JAILER CALLED ME, (Michael W. DAVIS) OUT OF the CELL to TAKE ME to the HARRISON COUNTY COURTHOUSE P.O. Box 998 GULFPORT, MS. 39502. THEREAFTER I, WAS CALLED BEFORE the COURT to STAND up FRONT. While listening to MR. BRANDON LADNER FOR the MOST PART talking to the COURT, while MICHELLE-CARBINE NOT to READY to be SAYING MUCH ON this ACCOUNT OF (July 31, 2002). MR. BRANDON LADNER MAKING STATEMENTS to the COURT, while (my ATTORNEY), MR. LUSK WAS SITTING with the REST OF the public BACK IN the COURTROOM. I thought it WAS NOT RIGHT, AND that MR. LUSK should BE up HERE with ME, BECAUSE I don't KNOW what I, (Michael W. DAVIS) should do About whats going ON. I looked OVER the COURT ROOM AND FOUND MR. LUSK laughing with SOME OTHER PEOPLE IN the COURTROOM AND I MOTIONED FOR MR. LUSK to COME HERE to WHERE I WAS AT. OFFICER BRANDON LADNER WAS STILL talking, "giving his SIDE OF A STORY", while MR. LADNER WAS SAYING that I, (Michael. W. DAVIS) had POCKETS FULL OF bullits, I, ASKED MR. LUSK to object to the LIES, but MR. LUSK said I, didn't WANT to MAKE the Judge MADE AT ME, AND then MR. LUSK said, (I'll HANDLE IT LATER, AND don't WORRY about it). I, WANTED to SPEAK, but WAS told NOT to by MR. LUSK. OFFICERS BRANDON LADNER AND MICHELLE CARBINE GAVE TESTIMONY that the "SUN" WAS IN THEIR EYES. YET the "SUN" WAS BEHIND THEM.

THEN the Judge ASKED ME how did I PLEA. MICHAEL W. DAVIS (OPEN PLEA). The NEXT thing I, KNEW I had (35) thirty-FIVE MANDANTORY YEARS, to the MISSISSIPPI DEPARTMENT OF CORRECTIONS.

LETTER REQUESTING COURT TO REQUEST GRANT EXCUSE

PLEAS EXCUSE Michael W. DAVIS, FOR NOT BEING ABLE to show this COURT All othe hearings (dates) PRELIMINARY HEARING OR other SPECIFIC COURT DATES. Michael W. DAVIS has Filed SEVERAL MOTION'S FOR Court docket-MENTS AND is still IS AWAITING such INFORMATION..

Michael W. DAVIS is AWAITING FROM MOTION'S Filed IN the CIRCUIT-COURT. AN EFFORT to ABTAIN MATERIAL'S HE, (Michael W. DAVIS) that ARE IMPORTANT to his APPEAL.

Michael W. DAVIS has TRIED AND is AT this TIME still trying to get IN touch with LISA MAGEE, AND Christy Bond. HE he has, (Michael W. DAVIS) has WRITTEN SEVERAL LETTER'S trying to CONTACK THEM AN EFFORT to obtain AFFIDAVIT'S FROM THEM CONCERNING July 31, 2002. AS they both SEEM to MOVE AROUND ALOT. Michael W. DAVIS would ASK the COURT, UNLESS he is (Michael W. DAVIS) is ABLE to CONTACT THEM BEFORE such A REQUEST IS NEED FOR them to APPEAR BEFORE A COURT HEARINGS AND OR A TRAIL. I, (Michael W. DAVIS) FEEL that its possible that they MAY BE MORE SCARED than WILLING to FACE the LAW AGAIN AS I NEED NOT MENTION SOME PERSONAL ALTERCATION with Michael W. DAVIS'S FAMILY AND OFFICER BRANDON LADNER.

AT this point it APPEARS that the CIRCUIT COURT is UNWILLING to RELEASE MATERIAL FROM the DISCOVERY NEEDED.

PLEASE EXCUSE MICHAEL W. DAVIS FOR what is NOT IN the BRIEF, AND NOT ABLE to OBTAIN AT this TIME.

SIGNED this 03 day of Oct., 2007

SINCERELY,

Michael Davis T5929

PETITIONER

AFFIDAVIT

I Michael W. Davis, under penalty of perjury, swear or affirm that the foregoing statements are true and to the best of my knowledge. On or about July 28, 2003., I was charged in a Multi-Count Indictment, Count I - manufacture of Controlled Substance., - Count II and Count III Aggravated Assault on Police officer, two-counts and Count IV Possession of Controlled substance, as ammended as Habilual offender section 99-19-81. My Attorney Mr. Fred Lusk, advised me saying if I went to trail that I would be facing Capital Punishment. Mr. Lusk said that if I plead with an open plea, that its like almost a plea of guilty to these charges. And that I, (Michael W. Dais) would not receive anymore tha (5) Five years. And that after I had (2) two years under my belt he, (Mr. Lusk) would File a Motion for a reduction of my sentence and that all of my earned good time would be put towards my new reduced sentence.

MY Attorney Mr. Fred Lusk told me to lie to the Court when I was asked, if I had my Rights explained to me and that no one has promised me anything concerning the sentence I was about to receive.

I told Mr. Fred Lusk, that he was my lawyer, and that he should be the one to tell that to the Court and Mr. Lusk said that I lied to the Court in 1998 for my girlfriend so she wouldn't go to jail. So I lied to the, but only cause Mr. Lusk told me to do so. I wanted to go to trail and Mr. Lusk knew that, but he wouldn't let me some how and telling me that I would get more time than if I plead guilty of some-kind. I told Mr. Lusk that I felt that it was just wrong and Mr. Lusk said don't worry about its alright to do what I tell you to do.

AFFIDAVIT

So that on JANUARY 29, 2004, I ANSWERED the COURTS questions by lying to the COURT, but I only done this because MR. FRED LUSK told ME to do AND what to SAY. I had to do what MY LAWYER said CAUSE I, (MICHAEL W. DAVIS) had NO CHOICE IN the MATTER AS the WAY MR. LUSK put it to ME. WHEN the COURT SENTENCED ME I WAS COMPLETELY CONFUSED AS to ALL that WAS SAID by the Judge, but the (35) thirty-FIVE YEARS IN the DEPARTMENT of CORRECTIONS, just KEPT RINGING IN MY HEAD.

I, MICHAEL W. DAVIS, will SWEAR OR AFFIRM to STAND BEFORE A COURT AND tell the truth like I WANTED to AND WAS SUPPOSE to do, AND NEEDED to do FROM the START. It would be NOTHING short than FOR the truth to be told AS it should be done.

PERSONALLY APPEARED BEFORE ME, the UNDERSIGNED IN AND FOR SAID JURISDICTION, the WITHIN NAMED PETITIONER, who, AFTER FIRST BEING by ME duly SWORN, STATED ON OATH that the STATEMENTS SET FORTH IN the ABOVE AND FOREGOING ARE TRUE AND CORRECT AS THEREIN STATED.

SIGNED: Michael Davis MDOC # T5929
PETITIONER

SWORN to AND SUBSCRIBED BEFORE ME, this the 03 day of Oct., 2007.

LAURA STEWART NOTARY PUBLIC GREENE COUNTY, MS

Laura Stewart
NOTARY PUBLIC

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE
MY COMMISSION EXPIRES: June 2, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

PAGE 2 of 2

AFFIDAVIT

I, Michael W. DAVIS, UNDER PENALTY OF PURGERY SWEAR OR AFFIRM that the FOREGOING STATEMENTS ARE TRUE AND to the best of my KNOWledge. I HAVE WRITTEN LETTER'S to ATTORNEY MR. FRED LUSK, but HE will NOT RESPOND to ANY of my LETTER'S. I HAVE CALLED HIM, (MR. FRED LUSK), but he will NOT EXCEPT ANY of my phone CALL'S NOR ANY KIND of COMMUNICATION has he RESPONDED to.

CAROL REDMOND has also tryed to talk with MR. FRED LUSK, but he will NOT. MY ATTORNEY MR. FRED LUSK told ME that AFTER I got (2) two YEAR'S UNDER my belt, that he would FILE A "MOTION" FOR A SENTENCE REDUCTION. I waited ALMOST (3) three YEARS BEARLY ENOUGH TIME BEFORE the TIME STATUE WAS ABOUT to RUN out. While trying to get MR. LUSK to RESPOND by MAIL OR phone. I have NOT RECEIVED ANY CORRESPONDENCE what so EVER FROM ATTORNEY MR. FRED LUSK.

Michael Davis M.D.O.C. # T5929.
PETITIONER

PERSONALLY APPARED BEFORE ME, the UNDERSIGNED Authority IN AND FOR Said jurisdiction, the within NAME PETITIONER, who, AFTER being by ME duly SWORN, stated on Oath that the STATEMENTS set FORTH IN the ABOVE AND FOREGOING ARE TRUE AND CORRECT AS THEREIN STATED.

SWORN to AND Subscribed before me, this the 03 day of Oct., 2007.

LAURA STEWART NOTARY PUBLIC GREENE COUNTY, MS

Laura Stewart
NOTARY PUBLIC

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE
MY COMMISSION EXPIRES: June 2, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

AFFIDAVIT

I Carol Redmond, under penalty of perjury swear or affirm that all of the foregoing statements made herein are true and to the best of my knowledge.

I had a conversation with Michael W. Davis's attorney - Mr. Fred Lusk, on or about the month of June of 2003. Mr. Lusk told me that Michael W. Davis would not receive any more than (5) years for his charges, and Mr. Lusk would file a motion for sentence reduction within (2) two years, and all of his good time would be put on his new reduced sentence.

Mr. Lusk said, "but if Michael W. Davis wants to go ahead with a trial, then he will be facing capital charges and we will need all the witnesses there in court".

In or on about May or June 2005, I did call Mr. Lusk, but he would not take any of my calls. Mr. Lusk knew that I wanted to ask him about that sentence reduction Motion that Mr. Lusk said that he was going to file if Michael W. Davis did plea guilty.

Personally appeared before me, the undersigned authority in and for jurisdiction, the within named petitioner, who, after first being by me duly sworn, stated on oath that the statements set forth in the above and foregoing are true and correct as there in stated.

Signature Carol Redmond

Sworn to and Subscribed before me, this the 25th day of July,2007.

Lynette M. Cox

NOTARY PUBLIC

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES FEB. 12, 2008
BONDED THRU STEGALL NOTARY SERVICE

"AFFIDAVIT"

I Michael W. DAVIS, UNDER PENALTY of PURGERY SWEAR OR AFFIRM that the FOREGOING STATEMENTS ARE TRUE AND to the best of my KNOWLEDGE.

IN the MONTH of JUNE, 2007, did WRITE, OR did give PERMISSION FOR SOMEONE to help WRITE A letter to the GARDEN PARK hospital COMMUNITY ROAD, GULFPORT MS. 39503. Requesting hospital RECORDS ON the MONTH of August, 2002. WHEN I WAS THERE AND what I WAS being TREATED FOR. The GARDEN PARK hospital has NOT RESPONDED to the LETTER that I MAILED CONCERNING this OR ANY INFORMATION.

IN the MONTH of JUNE, 2007, I did ALSO WRITE OR did give PERMISSION FOR SOMEONE to help WRITE to the UNIVERSITY MEDICAL CENTER hospital of JACKSON 2500 NORTH STATE ST. JACKSON MS. 39205. Requesting hospital RECORDS FOR the TREATMENTS done, MONTH, day AND YEAR. The UNIVERSITY MEDICAL CENTER hospital has NOT RESPONDED to the LETTER that I MAILED CONCERNING this INFORMATION.

IN the MONTH of MAY, 2007. I did WRITE OR did give PERMISSION FOR SOMEONE to help WRITE to the "CLERK" at the HARRISON COUNTY JAIL, 10451 LARKIN SMITH DR, GULFPORT MS. 39503, FOR the TIME that I WAS IN JAIL AND my (ATTORNEY) MR. FRED LUSK, CAME TO SEE ME. I REQUESTED the DAY, MONTH AND YEAR MR. FRED LUSK CAME to JAIL to visit other INMATES. The CLERK has NOT RESPONDED to my LETTER SENT. I do have A HANDWRITEN COPY of that LETTER.

Signed by Michael W. Davis

PERSONALLY APPEARED BEFORE ME, the UNDERSIGNED AUTHORITY IN AND FOR said JURISDICTION, the with NAME PETITIONER, who, AFTER being by ME duly SWORN, STATED ON OATH that the STATEMENTS SET FOURTH IN the ABOVE AND FOREGOING ARE TRUE AND CORRECT AS THEREIN STATED.

SWORN TO AND SUBSCRIBED BEFORE ME, this the 02 day of August, 2007.

LATASHA CLAY JONES NOTARY PUBLIC HARRISON COUNTY, MS My Commission Expires April 30, 2011

[31] NOTARY PUBLIC

DEAR CLERK, MAILING date 5/7/07

I NEED help CONCERNING the YEAR AND day AND MONTHS MR. FRED LUSK COMES to visit with INMATES IN jail CONCERNING My ARREST. I CAME FROM the hospital SOMETIME IN I believe DECEMBER of 2003 FOR gun shots AND later placed IN your jail FOR about 18 MONTHS. DURING which time MR. FRED LUSK CAME AND talKED with ME, but CAN you AT least the DAY WHEN did COME FOR the PERIOD I WAS THERE ?

THANK you FOR your help IN this MATTER, its APPRECIATED.
ENCLOSED is A SELF addressed
ENVELOPE AND STAMP
THANK You

PLEASE NOTICE CORRECTION
ON YEAR to date AND I D # 234372

FROM: Aug. 2002
to: Feb. 2004

SINCERLY
SIGNED Michael W. Davis
Michael W. DAVIS
S.M.C.I. II D-2-A-18
P.O. Box 1419
LEAKESVILLE, MS.
39451-1419

ORIGINAL Copy of LETTER SENT to CLERK of County JAIL HARRISON County.
MAILING DATE: 5-7-07
MAILED TO: CLERK of County JAIL
10451 LARKIN SMITH DR.
GULFPORT MS. 39503 [32.]

CERTIFICATE OF SERVICE

This is to CERTIFY that I, Michael W. DAVIS, the UNDERSIGNED, have this day AND dated Mail via UNITED STATES - MAIL, postage PRE-PAID A TRUE AND CORRECT Copies, ATTACHED INSTRUCTIONS to the Following:

SUPREME COURT CLERK
P.O. Box 249
JACKSON, MS. 39205-0249

SUPREME COURT OF APPEALS
P.O. Box 249
JACKSON, MS. 39205-0249

JIM Hood
ATTORNEY GENERAL of Mississippi
P.O. BOX 220
JACKSON, MS. 39205

This 03 day of Oct., 2007.

Michael Davis M.D.O.C.#T5929
PETITIONER
S.M.C.I. II
Address
P.O. Box 1419
LEAKESVILLE MS. 39451
Address

Conclusion

For all reason stated herein, Appellant respectfully request that this Court reverse the order below denying his pro-se Petition for Post-Conviction Collateral Relief, pursuant to Mississippi Code Annotated section 99-39-1 et seq. And the Order to the Circuit Court of Harrison County, Mississippi First Judicial District, to allow this motion.

Specially, Appellant prays this Court orders the Circuit Court of Harrison County to vacate his sentence to-wit withdraw his guilty plea, and enter a new plea of Not Guilty and a trail date be given in a reasonable period of time. Or giving this and having this Authority, any other actions this Court deems fair and just.

Signed this 03 day of Oct., 2007

Respectfully submitted

Michael Davis M.D.O.C.# T5929

Defendent - Appellant