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Supreme Court of the State of MISSISSIPPI
Court of Appeals

FILED

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SUPREME COURT
COURT OF APPEALS

Micheal W. Davis
Petitioner, Appellant

v

NO: 2007-CP-00264-COA

State of Mississippi
Respondent-Appellee

BREIF OF PETITIONER - APPELLANT

On appeal from the CIRCUIT COURT of Gulfport MISSISSIPPI FIRST Judicial DISTRICT of HARRISON County in the cause NO: B2401-2003-373

Preliminary Statement and Juridiction rulings 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 Micheal W. DAVIS February 9, 2004, and denied, the 27th 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 Terry denying a

Motion filed pursuant to MISSISSIPPI Code Annoted Section 99-39-1 Et. Seq. to vacate defendent's-appeallants Sentence. The order was entered January 11, 2007. A timely NOTICE of Appeal was filed was ON February 7, 2007.

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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)

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Rules 3.03 of the Uniform Criminal Rules of Circuit Court Practice.

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C. Washington v. State of Ms.	No. 91-KP-0571, Supreme Court; 620 So. 2d. 966; 1993. Miss. Lexis 254 June 17, 1993 Decided.
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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

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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 defendent's-Appellant'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, Article 3, of the MISSISSIPPI Constitution of 1890.

2) Wherther ineffective Assistance of Counsel was indeed induced by an unwillingness to represent defendent-Appellant, or due to Conflict.

3) Wherther Counsel's advice prejudiced, defendent-Appellant to enter guilty plea, (open plea)

4) Wherther Counsel should of explained or advised defendent-Appellant of his rights when NO one else had explained his rights in any way, Nor did he fully understand these rights.

5) Wherther Counsel denied Defendent-Appellant any consideration before the Courts as to Migration, either by Counsel or by Calling Chactor witness 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 hearings

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 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-Appellant of his rights behalf, wellfore and simply was never Concerned as to justly outcome in the case.

Summary of ARGUMENT

A. INEFFECTIVE ASSISTance of COUNSel

That Counsel was told by defendent-Appeallant, on many diffrent occassions to file the Proper MOTION'S in his behalf. Yet Counsel failure to do so violated Micheal 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 Micheal W. DAVIS.

That the COUNSEL (Mr. Fred lusk) Coreed defendent-Appeallant to giving falsely statements as to what occured on July 31, 2002

The Counsel made No preprations for trail at any time, but lead defendent-Appeallant to believe that he had.

That the COUNSEL acted under a Conflict of intrest during representing defendent-Appeallant when in fact Counsel should of withdrawn from case. Counsel (Mr. lusk stated I cant walk around telling other's that the police shot you (3) times put 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. He expressed his discern to put defendent-Appeallant on the trail stand to give testimony to these important facts of the case.

For about (18) Months defendents-Appeallant sat in the Harrison County Jail as a inmate waiting to go to trail and prove his innosence to the Court and people of the Jury. Mr. LusK the defendents Counsel made no preprations for trail what so ever.

Counsel never explained to the defendent-Appeallant his Rights concerning anything, before any Court appearence during a 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 about himself and as to the events that occured on July 31, 2002.

The Counsel changed the outcome with falsely statements to incriminate defendent-Appeallant saying in so much (You dont have any witness, that nobody would belive you) and with this statement you dont have a chance you must open with a open plea. Counsel COERCed, defendent Appeallant all the way into (35) years he recived.

Counsel in no way acted in defendent-Appeallant's behalf before entering a plea. The State prosecutor and the Counsel Mr. 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 give any MITigation Concerning defendent-Appeallant by himself nor allowed any form friends and family that was in the courtroom at that time. And surely didn't prepare for any mitigation on this case be heard by Micheal W. DAVIS, defendent-Appeallant.

INVoluntary Guilty Plea

That Counsel told defendent-Appeallant several times that if he would plea guilty that he would not recive anymore than (5) five years on all charges togeather and that after he had two (2) years under his belt that Mr. Fred lusK with file a MOTION for a Sentence reduction and that all of hig earned good time would go towards his sentence. Then he would be out in no time.

Counsel failed to inform Micheal W. DAVIS that under the Habitual Offender Section 99.19-81 that he was not eligable for any good time or anything else that the Mississippi Department might have to offer.

Yet the Counsel's failure to do so violated defendent-Appeallant, (Micheal 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 the 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 - Appeallants behalf. Counsel would not recive any phone calls nor returned any letter written to him by Micheal W. DAVIS and Carol Redmon.

IMPROPER INDICTMENT

Counsel's failure among other MOTIONS allowed the State the Improper Indictment as chorged also did deny Micheal 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) three Affidavits, two by Micheal W. DAVIS and one by Carol Redmon.

Statement of Case

Premliminary Hearing: On or about the month of September of 2002, Micheal W. Davis entered a plea of "Not Guilty" in Circuit Court First Judicial 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. Micheal 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 any time during the years of 2002, 2003.

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

July 28, 2003 dated, thereafter, Micheal W. Davis was served with multi-Count Indictment from the Circuit Court First Judicial District, Harrison County.

Count I Manufactoe 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

Count II and Count III, Aggraveted assualt on Peace officer to 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.

STATEMENT OF CASE

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 of plea, as to Count I, Manufactor of a Controlled Substance (Methamphetamine) Count II, and Count III Aggovated Assualt on a Peace Officer. Count IV was passed out of the indictment and into the files Honorable Jerry O. Terry, sentenced petitioner Micheal 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. Micheal W. Davis seeking reconsideration on February 9, 2004, Cause NO: B2401-03-373C

Micheal W. Davis filed his Motion For Post-Conviction Collateral Forma Paper" Entitled March 15, 2007, and was granted. Cause NO: 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 responce of a letter from Micheal W. Davis requesting a 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

INEFFECtive Assistance of Counsel

Micheal 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 (Micheal 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 did not Know what to say about being faced with another Officer of the law. It is belived at this time that Micheal W. Davis gave a Oral statement to the Harrison County detective and Attorney Fred Lusk, Mr Lusk did write down a statement how ever; this was not the Statement that Mr. Lusk had schooled Micheal 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 didn't Know, or you took part with making 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 prejustice is presumed. Cuyler v. Sullivan, 446 U.S. at [9227] 348-50. SEE also Strickland v. Washington, 466 U.S. 668, 692, 80 L. Ed 2d 674, 104 S. Ct. 2052 (1984)

Apparenty the statement given was unsatistfactory as well. Mr. Lusk Knew that Micheal W. Davis was very venorable to Suggestions. The Officer in the room at the hospitnl (Garden Park-hospitnl, 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 Micheal) Mr. Lusk continued to take advantage of Micheal 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 Micheal W. Davis, you dont have any witnesses for your defence. "ARGUMENT WITH Authority: Defendent who pleads guilty to a crime is prejudged by his Counsel's errourous 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 INSuffective Assistant of Counsel, If Defendent had intended to plead guilty all along. "ARGUMENT WITH Authority" Admend 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)

Micheal W. Davis has been making an actual innocence claim even when he was in the hospital and about the month of September 13, 2002. Micheal W. Davis entered a plea of guilty to 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 Micheal 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 trail.

January 26, 2004, Micheal W. Davis gave a statement that was satisfactory to Mr. Lusk and the Accompanied Detective. Mr. Lusk by way and means used Mental Coerion and over-bearing the will of Micheal 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 waive any of these rights.

Attorney Fred Lusk failed to comply with the rules - and what about the sentencing judge. Much diffrence is placed upon the trail Judge's full discharge of his/her responsibility to make findings of fact or question. Whether MIRANDA RIGHTS have been intentionally, knowning, and voluntarily determines the INAdmissable of the conflicting evidence. His findings becomes a of fact which will not be reversed on appeals unless it manifestly IN ERROR or Contracy 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 findings made.

Micheal W. Davis does not foresay this with any supported Authority of claim, but Micheal W. Davis does insist that his voluntariness of (his Confession) was due to Mr. Lusk's Misrepentation and falsely advising Micheal W. Davis that this was needed for a trail and that, Mr. Lusk Misrepentation and advising Micheal W. Davis that was needed for a trail and that Mr. Lusk (the jury will understand you better if you say that you helped or that you knew about John Cooper making Crystal Meth.) Micheal W. Davis did not waive any of his Rights Knowling.

On or about September 13, 2002 Micheal W. Davis was taken to Court from the Harrison County jail were he (Micheal W. Davis) entered his Plea of Not Guilty. At this point Shouldnt there of been a Motion For Pre-trail and Discovery made by Mr. Lusk for Micheal W. Davis. Micheal W. Davis had all ready 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 Micheal W. Davis to have proceedings a psychological examination before any future proceedings, before any line of questioning, Statements made by Micheal W. Davis - Mr. Lusk never explained Never explained about any Court henrings that went on.

when questions or request were given by Micheal W. DAVIS, Mr. Lusk would say (dont worry about it) Micheal W. DAVIS entered a plea of guilty while in the Custody at the Harrison County Jail and awaiting trail to show his innocent before a jury. Nealy v Cabana, 764 F.(5th Cir 1985) he said he was innocent of chorges.

Micheal W. DAVIS had told Mr. Lusk on several Occassions for him to file a fast and Speedy trail that he just could not stay in jail and that he wanted to get this over and done with as soon as possiable. A MOTION FOR DISCOVERY was requested on (6) six diffrent occassions by the defendent, Appeallant Micheal W. DAVIS on Counsel Visits of Attorney Fred Lusk. Micheal W. DAVIS had told Mr. Lusk on several occassions to file for a speedy trail that he just could not stay in the jail and that he wanted to get this over with just as soon as possiable. Throughout Micheal W. DAVIS's (18) eighteen months awaiting to go to trail to proove his innocent. he repeatedly asked Mr. Lusk to bring trail to proove his innocence. He repeatedly asked 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 Micheal W. DAVIS had instructed Mr. Lusk to do so.

Micheal W. DAVIS (what about my wittness), 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 alot). Micheal W. DAVIS, but why haverit you returned any of there phone calls.

Micheal W. Davis, (what about my Neices as WITTNESS), Lisa MAGEE, and Christy Bond. They told me they had been trying to talk to me, but you are Never in to talk to them Concerning my wittness to prepare a defence in my Micheal W. DAVIS behalf, but you are never in. Mr. Lusk stated (I leave there alot of times. Micheal W. DAVIS, but why haven't you returned any of their calls.

Lisa Magee and Christy Bond can show you where the bullet's are at. Where I fired and everything. Mr. Lusk we've got pleanty of time for all of that dont worry.

Micheal W. DAVIS was denied his right to call wittness in his behalf. At the very least Mr. Lusk could have listened to the wittness concerning testimony for trail that was set for trail. Micheal W. DAVIS entered a plea on September 13, 2002 of not guilty and he is innocent of these charges. Micheal W. DAVIS entered a plea of guilty ON the ADVISE of Mr. Lusk (attorney) Micheal W. DAVIS is not guilty and is Not guilty of the Crimes. Micheal W. DAVIS was awaiting 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 wittness, a certain Amount of investigation and preparation is required. Failue to call a wittness may be excused 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 wittness, 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 wittness in Sentencing, A Friend of Davis's, Davis's Sister and mother. Davis alleged that his trail attorney did not call available character wittness and did not prepare the ones he did call.

At Micheal W. Davis's sentencing phase, Counsel Mr. Fred Lusk did not make any effort to locate or prepare wittness for sentencing. Total failure to call any wittness in his behalf nor did Mr. Lusk speak in behalf of his client Micheal W. DAVIS behalf. Micheal W. Davis claims that Mr. Lusk never prepared nor made any effort or Attempt to locate any wittness at the time during the (18) eighteen months that he was in the Harrison County Jail, and so can the same be said at his sentencing January 29th 2004. However Mr. Lusk did have a chance right there in the Courtroom for there was Lisa MAGEE and Christy Bond's, 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 CIRCUIT COURT for a Evidentiary Hearing.

In both of these cases it was alleged the defence Counsel had failed to properly investigate, locate and prepare witness for trail. Orginally in August 2002, Micheal W. Davis plead Not Guilty to the Court as well as to Counsel Mr. Fred Lusk. Micheal W. Davis was insting on going to trail, He had Asserted his innocentce 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. Micheal W. Davis told Counsel of witness that he was innocent of the charges.

TO look further into this Consideration, Micheal W. Davis was in reach of loosing his life. If not from being beaten, Kicked and shot (3) three severe times. Micheals whole right shoulder, Chest, arm and hand mangled and small finger cut off. Deformed looking to the eyes of anyone. The Garden Park Hospital on University Rd. Gulfport, MISSISSIPPI had to finish taking off his smallest finger on his right hand. Micheal W. Davis was shot Several times by the Officers of the law. Leaving him with useless body parts to be paralized for the rest of his life. Now Micheal W. Davis has to rely on his left side for all matters for the rest of his life, Micheal W. Davis, mental and physical abilities are very limited.

Under the circumstances or even less, would it not be in the best intrest to all persons involved, employer, employment, family, friends, and ex-wife (Trudy Bourge) girlfriend, friends of everywalk. "Legally and otherwise to Sensiblely, Assume at normal. Yet Mr. Lusk is a attorney for the Courts. What about the Officers Statements in the hospital to Mr. Lusk, that

Micheal W. Davis needed some proffessional help with his promblems. Time and time again Micheal W. Davis told Mr. Lusk of promblems he was having. Even for the most part of this Mr. Lusk would only close his ears to the matter, as well as to his own eyes to the state of Confussion Micheal W. Davis was having during this time. The Conversations Mr. Lusk was having with Micheal W. Davis and everything else reeked of something seriously wrong.

Moreso that Mr. Fred Lusk should of wasted no time in asking by MOTIONS OF THE COURTS for a complete mental and physical examination of Micheal W. Davis as soonas possiable. Even for the most part of this Mr. Lusk would have to not only close his ears, but also his eyes not to see the confusion Micheal W. Davis was having The Conserations Mr. Lusk had with Micheal W. Davis and even everything else reeked of something wrong.

Moreso that Mr. Fred Lusk (attorney) should of wasted no time in asking by MOTION to the Courts for a complete mental and physical examination as soon as Micheal W. Davis would be able for a stress test, This surely should of been done sinse Micheal W. Davis was in every respected of going to trail. This to be done was not only to assure ourselves the Competency of the Accussed, but maybe it would of mettered in the behalf of Micheal W. Davis benifit when going to trail. As well as mattered to the Court when handing down the sentence.

Most surely this should of been done before any line of questioning? To be completed by the COURTS OR Detectives.?

Most Surely this should have been done before any line of questioning had to be completed by the Officers of the Court Judges, or excessive infulence by Attorney 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 Micheal 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 heretoforce convicted of a Felony, and the ends of justice and the best intrest 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 three (3) 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 with in 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) 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) months. Micheal W. DAVIS was guilty of Possession of a Controled Substance, but he also at the

said time plead guilty of uttering forgery (two counts) and he (Micheal W. Davis) was not guilty, yet may be part of a point to consider however.

Possession of less than one-tenth grom of Schuldled I or II Controlled Substance may be charged by indictment as a felony or "Misdemeanor", Micheal W. Davis did successfully complete three (3) year of Post-Release Supervision in full. Paying all the cost put before him, Micheal W. Davis would contented because of the amount of drugs (one-tenth gram) of a controlled substance may very well have resulted in a misdemeonor charge, however by Micheal W. Davis pleading guilty of uttering forgery it was not. Alone with the amount charged with wouldnt it justly likely be a chance that his possession charge would of been a misaminor charge. Micheal W. DAVIS plead guilty of the uttering forgery charge because he didnt want his girlfriend to get into any trouble. Under MRE 609 (A)(2) the admission of prior convections involving dishonestly false statement in is within the discression of the Court. Such convections are particuleir 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, Micheal W. DAVIS was Charged in a Multi-Count INdictment and recived his copy of the indictment a few days later. The indictment was amended with the Habitutal Offender section 99-19-81 which carries a up to 15 year prison term. Miss. Code of 1972 as amended. Thereafter Mr. Lusk came

for another visit. Micheal W. Davis explained as to what all had occured on the 1997 charges. What he was guilty of and what he was not guilty of. Micheal W. Davis told Mr. Lusk that he was not guilty of uttering forgery. However he plead guilty, because he didnt want his girlfriend to get into trouble. And that he was guilty of the possession charge. That he felt the probation time he got was to much. At that time Micheal W. Davis instructed Mr. Lusk to file a MOTION Micheal W. Davis told Mr. Lusk that he was not guilty of uttering forgery, however he plead guilty because he did not want his girlfriend to get into trouble. That he was guilty of possession charge. Micheal W. Davis instructed his Counsel Mr. Lusk to file for a MOTION to Supress and Mr. Lusk said you meon a MOTION of (DEMURRER) thats what it would be and Micheal W. Davis said yes then file that a MOTION on his old charges, that he had already paided for these charges and that I want you to file a MOTION to (squash indictment) before we go to trail. Mr. Lusk said he would and for me not to worry about it. Mr. Lusk said (But Micheal if you plead guilty you want get more than (5) years, but if you go to trail it will be Capitol Charges, you will be looking at thats over (120) One hundred and twenty years. (Mr. Lusk stated again Dont worry about it)

ARGUMENT OF AUTHORITY: Effective Assistant of Counsel Encompasses, among other things, aduice 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 dependo upon the Counsels aduice 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 [277 474 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); Williams v State, 473 So. 2d 974 (Miss 1985); Tiller v State, 440 So. 2d 1001, 1006 (Miss 1983); Sanders v STATE 440 So. 2d 278, 284 (Miss. 1983); BAILEY v STATE, 358 So. 2d. 401, 403 (Miss 1978).

Fairly represented and not fully 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 Counsels perspective at all times. Over and Over Micheal W. Davis gave his attorney Mr. Fred Lusk instructions to FILE Motions in Conducting his defence. Yet the Contrary to his instructions and failing to Advance viable defenses that he (Micheal W. Davis) had asked Mr. Lusk to do raise.

ARGUMENT WITH AUTHORITY: It bears emphasis that [HN8] 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" 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. Rev. 168 (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 qualtified 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 adequalety 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 Micheal W. Davis, (Mr. Fred Lusk) said that he would not allow said he would not allow Micheal W. Davis to take the stand and testify as to what had occured July 31, 2002, because he did not belive Micheal W. Davis, or because he (Mr. Lusk) was unwilling 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 brenched his duty of

of loyalty by actively representing conflicting intrest and the conflict of intrest adversely affect 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).

Micheal W. Davis, that was one of the main reasons that he was denyed his day in trail Court and proves 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 of 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 whether a plea of guilty was voluntary and knowing one necessarily involves issues of fact. Advice recived 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 recive 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 Collater Attack. Where the defence Counsel Advises the defendent to lie and tell the Court that the guilty plea has Not been inducted by promises of leniecy of the Court (when in fact it has); The plea moy attacked. Where the defendent recives 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 Micheal W. Davis, Mr. Fred Lusk would not allow defendent, Appellant, Micheal W. Davis to testify as to what might of occurred July 31, 2002. Mr. Lusk was told by Micheal W. Davis that he wanted to get on the wittness stand and to tell the jury about the Officers of the Law shooting at him and as to the effect of being shot by another Officer three (3) times, handcuffed beatened and kicked all the way up a hill and side of the road. That by Micheal W. Davis taking the stand as a wittness the STATE would also use the prior conviction record against him. Mr. Lusk, attorney for Micheal W. Davis that in turn he (Micheal W. Davis) would not be allowed to tell the whole 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 presence in this county is unlawful, having long been reconized as "persons" guaranteed due Process of law by the Fifth and Fourteenth Admendments. ARGUMENT OF AUTHORITY: Shaughnessy V Mezei, 345 U.S. 206, 212 (1953); Wongwind 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: Matthews V Diaz, 426 U.S. 67, 77 (1976).

5th Admendment to Constitution

No persons shall be held to answer for Capitol offences or other infamous Crime unless on a presentment or indictment of a grandjury, 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 wittness 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 wittness testimony at Sentencing of Officer Brandon Landers and Michelle Carbine. Surley Consed Mr. Fred Lusk had been informed as to the statements about to be given would prejudice defendents plea. In open Court Officer Brandon Landers stated that Micheal W. Davis had in his pockets (pockets full of Bullets). This was a clear point that Micheal W. Davis was ready for a all out war and that he could do just that with a pocket full of Bullets.

The only time that Brandon Landers and Michelle Carbine seen the defendent, Appellant Micheal W. Davis was at the time that Brandon Lander Started Shooting at Micheal W. Davis "It is not Known to me at this point Wherther Michelle Carbine joined in with the shooting or Not." I suppose I would if told to do so. To the point is that this was the only time during the Shooting that they saw Micheal W. Davis so how could Brandon

hander possiably of seen a podlet full of Bullets on Micheal W. Davis? I you was standing right in front of me and all my pockets were filled up with bulletts It wouldnt be able to say what you had or Not.

More to the point surely Mr. Lusk had to Know of all items recovered by police as evidence, After Micheal W. DAVIS was arrestted shot, beaten, and taken to the hospital. That the States case turned more on the credibility of witness thon 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 diffrent version of the facts.

All shots fired by Micheal W. Davis, should of been accountable. Where all shots fired were simply located beneath the ground at his feet. The State failed in producing these in Court, and it is further belived neglect on and of the MISSISSIPPI CRIME. Forensic Scientest lab. Whds job was to retrieve all such evidence. If it would be said otherwise, Then you only had to ask either eye witness Lisa MAGEE or Christy Bond just exactelly where are the Slugs at in the ground. OR was Mr. Lusk doing his job so well that he didnt need his evidence for trail. There was only one "One occassion" that Micheal W. DAVIS did not have the guns aimed towards the ground. When he was in the middle of the road waving his hands. (Guns in hand) (like for a Airplane to land down). So that he (Michael W. Davis) two (2) nelees could see who he clearly was.

Attorney for Micheal W. DAVIS (Mr. Fred Lusk) at no time prior to his plea or before did Mr. Lusk ask the judge about such evidence or the prosection. OFFICER Michelle Carbine never stated she ever saw any pockets full of bullets. Micheal W. DAVIS sate's that this was one more effort to get him again. At Sentencing. "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 wittness 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 wittness on every materiral point relating to the issue to be determined that would have a bearing on the credit of the wittness and the weight and worth of his [87] testimony.

The Constitution grants certain Rights to CRIMINAL defendent 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 defendent guilt 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 defendent's 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). Micheal W. DAVIS was never fully explained any of his Rights by Counsel and it at anytime

Mr. Davis was told by the Courts of his specific Rights Attorney Mr. Fred Lusk never explained any of them to him (Michenl 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 intellgently?

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 against 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 understands the maximum and Minimum penalties

To which he might be sentenced. Attorney Mr. Fred Lusk told Micheal W. Davis and Carol Redmond that if Micheal W. Devis plead guilty that he wouldnt recive more than a (5) years for his crimes, and that the time he did his good time would put against (towords) his sentence After Mr. Fred Lusk filed a MOTION FOR Reduction of Sentence after (2) two years ON the New Reduced Sentence he was 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 Micheal W. Davis said (I can't 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 the jury want beleive 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 diffrent version of the facts. Mr. Lusk would not take or return any phone calls concerning eye witness to the facts that occured ON July 31, 2002. January 29, 2007, Mr Lusk allowed state witness to give false Statements. Mr. Lusk Knowingly Knew that Micheal W. Davis had No such bullets in his pocket by the discovery. Mr. Lusk gave none whats so ever upon inspection as to their testomony. While one of the eyewitness was there in the Court during the plea. Sentencing Lisa MaGee.. Others were also there but none was called to give testomony in behalf of Micheal W. Davis by Counsel Mr. Lusk.

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 involuntar iness, Such as the quality of Advice of Counsel. [HN4] A sentence and Conviction 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 prejudical and Prong of the Attorney's performance. 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.

Micheal W. Davis claim's 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, but on 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 possible sentence. Non Disclosure must be considered prejudicial.

Attorney Fred Lusk has Not filed a Motion to the Court and that all of the earned good time would go towords his new sentence and that Micheal W. Davis would be out in No time. Affidavits to these Statements are enclosed.

The movant in a Post-Convection Relief Motion must make some reasonable demonstration of the Actual Existense of Evidense to Relief. Davidson v State, 2003 850 So. 2d 158. Criminal Law 1652. Post Convection 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, Roylong, 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-Convection Collateral Relief Acts mandates that a Court study a prisioner's pleadings and ask whether 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 prisioner meritorious complaint may not be lost because inartfully drafted.

INVOLUNTARY GUILTY PLEA

Attorney, Fred Lusk, For Micheal W. Davis, appeallant was corced by his Counsel, Fred Lusk into pleading guilty. Mr. Lusk advised defendent, appeallant Micheal W. Davis to take a open plea because if he went to Court (trail) he was subject to Capitol punishments. But if he would to take a open plea that he would Not recive more than (5) Five years, and after he (Micheal W. DAVIS) had (2) two years completed in any institution. Counsel Fred Lusk would at anytime file a appeal for 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, one by Micheal W. Davis and one by Carol Redmond.

ARGUEMENT 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 recive a lesser sentence than he would if he plead Not guilty. He filed his petition under RULE 8.07 of the UNI-Form Criminal Rules of Circuit Court Practice (Miss.) After he was sentenced to longer terms than his attorney had promised. The trail Courts summarily 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 the true consequences of a third trail by jury. He was entitled to a evidentiory 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 Factially 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 14th and 26th, Article 3 of Mississippi Constitution of 1890.

We the counsel advises the defendent to Lie and tell the court that the guilty plea [10] has not been induced by promise of Leniency (when in fact it has), the plea may be attacked. N3 The law is clear that where the defendent RECIVES 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 hearings. 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 (9th 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 advice, SKILL, and experience, loyalty and integrity that must be relied upon is the 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 [191 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 Appereciation of the Consequences of each plea. We emphasize that [HN 16] a mere expectation or hope, however Reasonoble, of a lesser Sentence than [22] Might be meted out after convections upon trail by jury will generally not be sufficient to entitle a petitioner to relief in cases such as this Yates v State, 189 S.O. 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 defence Counsel that in his experience sentences imposed upon a person who pled guilty are somewhat less than those customarilly given to persons Convicted of comparcble offences 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 Sentense, Compare Hill v State, 388 So. 2d 143 (Miss 1980) with PEETE v ROSE, 381 F. Supp 1167 (W.D. Tenn 1974).

Improper Indictment

Micheal 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 confined time on any of the said Charges. "More to the point" Micheal W. Davis would argue that he plead guilty one time. On the Same day as sentenced on the same day. It was the State that the Consolidated these Charges to one and the same plea on 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, he said to Micheal W. Davis was Convicted in the Circuit Court of Harrison County Mississippi, First Judical District in Cause NO: B2 401-96-1146, 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 Mississippi Department of Corrections.

(2) On February 13, 1998, Micheal W. Davis was Convicted in the Circuit Court of Harrison County in cause NO: B2 401-97-532 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, Micheal W. Davis was sentenced to (3) three years probation and all charges run concurrent.

The Statements (about statements) made by District Attorney Cono Caranna in the multi-Count Indictment failed to show, as well Micheal 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 Micheal W. Davis, was released under Miss. Code Ann. 99-19-81 (1972) Micheal W. Davis has Never Served any Kind

Of Sentence 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. 56392 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 sentenced to serve seperate terms of one year or more in prison. while 99-19-83 requires that a defendent have been twice convicted, sentenced, and served seperate terms of one year or more in prison, and one of the Felonies must of 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 right to confront one's accusers, Pointer V Texas, 380 U.S. 400, 13 L. Ed. 2d 923, 85 S. Ct. 1065. We Cannot 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 Consequenes. When the Judge discharges that Function, he leaves a record adequate for review that may latter be sought. (Garner V. Louisiana, 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 to probe murky memories.

Defendent Phillips Asserts that reading Boykin and Burgett togeather lead to the Conclusion that ANY prior Convection 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 Convections 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 Court is seeking to apply enhanced punishment provisions of our Habitual Offender statutes, that the Court would be required (According to Argument) to in effect hold evidentiary hearings for the purpose of ascertaining and passing upon Constitutionality for any and all prior [14] Convections Sought to be utilized by the prosecution in determing 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 CONVECTIONS the trail COURT must hold a EVIdentiary hearing and determine the CONSTITUTIONALLY of events transpiring over [10] ten years ago, iN juridiction 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 CONVECTIONS 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 CONVECTIONS 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 CONVECTIONS Were silent WITH respect to the question Of whether the defendents iN those cases have been afforded their respective CONSTITUTIONAL protections. Prior to these decisions, Courts iN Various juridictions, 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 defendents, which are addressed by those cases were of such basic importance to the vatality of the American 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 [HN4] 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 convections 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 conVection 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 fornal Assault upon the Constitutionality of a prior Convection should be Conducted in the form of an entirely seperate procedure solely Concerned with attacking thet Convection. 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 proceeding should be brought in the State in which said Convections occurred, pursuant to the State's estcblished procedures.

Should such procedings in a Foreign state sueeed in Overturning the Convection, then the relief should be Sought in MISSISSIPPI by petition 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 on appeal from the CIRCUIT COURT of Tishomingo County, wherther the Appeallant, James E Bennett Jr. was indited 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) years charge of Aggravated assualt and [14] with [7] suspended on the charge of ARmed Robbery.

On his appeal, Bennett agues that his defence was impermissibly Bennett argues that his defence was prejudged because he was [2] tried on charges of "Armed Robbery" and "aggravated assuelt" at the same time. We

agree and therefore reverse the conviction of Aggravated Assualt.

This case, above is controlled by our recent decisions 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 low 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.

[HN2]. 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 documentation of prior offences and for trail court to perfunctorily find the defendent an Habitual OFFENDER, than routinely pass out the sentence mandated 99-18-81 (MISSISSIPPI).

A bifurcated trail means a full two-port phase trail prior to any findings that the defendent is a Habitual OFFENDER and subject to enhanced punishment. Attorney for Micheal W. Davis made No objection to the multi-Count indictment. Micheal W. DAVIS Attorney, Fred LUSK well below effiectiveness and Fred Lusk's performance was nothing less than prejudged 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 intentionnal Spoliation or destruction of evidence relevant to a case raises a presumption, or more properly, and inference, that this evidence would have been unfavorable to the case of the spotiator. 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, 687-96, 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; 1982 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. Indictments and Consolidation of offences for trail

To Sum 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 juridicationce 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

446/156-158

Statement OF Facts

I, Micheal W. Davis, under penality of perjury swear under perjury 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 and to meet him at Laura Carmony's trailer. By the time I arrived there John Cooper was all ready there. After entering the trailer I sat down and occupied myself watching TV., I like to watch TV. I guess John knows that. John kept running around outside and to the bathroom, or in the back yard. After sometime he called back to the backroom. The he took off again as he was leaving from the room he told me to wait here. A minute later he came back and gave me a folded up peaice of foil. I rubbed the foil, but it was just foil. John told me to keep it for him and he wanted 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 howe I killed a deer and was I ready to go hunting then he started laughing. John said he forgot 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 at least who one of them belonged to and started out the front door. Once out front I saw John running away from the police officer. Then the police was running at me, and I started running away and over the fence I went and across the road and running down beside the road. Not long afer 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 Brendon hander and OFFICER Michelle Corbine opened fire on me. I didnt have time to give the gun to my neices like I wanted to do, we never got close enough to one another. I didnt rightly Know at that point what I should of done. I WAS holding the gun pointed towords the ground and Shot at the ground only two times. And yelling at OFFICERS Brandon hander and Michelle Corbine to Stop Shooting at me, but they CONTINUED to fire. They must of gotten close to my neices car as well as to myself, they (my Neices) took off very fast and so did I. OFFICERS was Still Shooting at me bullets racing by my head. I ducked behind a tree and still bullets was hitting the tree. I took off running again. I didnt 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 Lander had all ready made statements that he had to get me out of the way because he wanted my girlfriend (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. By the time I heard and seen the dog it was real close with a red blinking light on its neck. I didn't want it to jump on me so I hollered (get your dog I don't want it to 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 don't know why. The officer also dragged and 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, Micheal W. Davis, UNder penality 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. Lusk) came to see me. Mr. Lusk told me that I was charged with shooting a Police Officers and drugs (Micheal W. Davis) I 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's when Mr. Lusk was told I wanted to see the Discovery. That I was Not guilty of the Crimes. Mr. Lusk said (and if you go to trail you are facing Capitol Charges and will get more time, than if you didnit), I, (Micheal W. Davis) told Mr. Lusk I was innocent and would plead Not Guilty. to all Charges. I told Mr. Lusk that I wanted him to file for a fast and Speedy Trail as Soon as he could. Because I (Micheal W. Davis) 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 meking Statements, Saying Mr. Davis has been talking alot of Crazy Stuff and that he needs Sometype of help) later this was a repeat. When Mr. Davis awoke jumping on the hospital bed in severe pain. Doctor's had to finish teking off Micheal Davis's small finger on his right hand.

While still in the hospital Micheal W. Davis recived another visit from his Attorney Mr. Lusk. Mr. Lusk Said Some Detectives would talk to me (Micheal W. Davis) Sooner or Later. Mr. Lusk (My Attorney) looked at me and said (Aren't you guilty of Something). I did Not ANSWER

I didnt understand Mr. Lusk, I replied (Micheal W. Davis) Then Mr. Lusk stated 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 (Micheal 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 Know I awoke Kicking on the 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. Fred Luck) (3) three diffrent times, but Mr. Lusk would not return my calls.

I was trying to get help because I was in so much pain and I (Micheal W. Davis) could Not even walk stright, and I did Not even Know where I was at, Even to where I was suppost to do or go. I did see a nurse or Doctor and they gave me some I.B.U. I dont Know if it helped with me with my headaches, I'm Not sure. About a week later Mr. Lusk came to see me (Micheal W. Davis) at the Harrison County Jail. Mr. Lusk would come by every (2) two or (3) three times 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 wasnt trying to walk and talk. That I was Confused all of the time, and the pain that it caused his entire body. Mr. Lusk Stated there was nothing

Nothing he could do for me and I would have to bear the situtation out. Mr. Lusk said I would have to give the Dectivies a statement. Mr. Lusk said it would be better at trail if I said I aimed the gun at the officer and that I knew John Cooper was making Crystal Meth. I told Mr. Lusk this was Not true. Mr Lusk (My attorney) said I Can't help you if you don't come halfway with me. I know what I was talking about and you've got to trust me. I (Micheal W. Davis) told Mr. Lusk that I had WITTNESS that would be calling him. Mr. Lusk stated he would be waiting for them to call him, as well as be doing some work himself. I told Mr. Lusk that I could Not stay in jail like this. That I was Not guilty and wanted him (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 the next time.

On or about August 29, 2002, I (Micheal W. Davis) 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 here". Somewhere about a week later or so my attorney (Mr. Lusk) came to see me. Mr. Lusk told me there was nothing he could do about that. I, (Micheal W. Davis) told Mr. Lusk, that I didn't feel that I should be here anyways that I, (Micheal W. Davis) haven't done anything wrong and that I was having trouble dealing with all of this, and that I (Micheal

W. Davis) Should of been released from the hospital So. Soon.

I was having flashbacks and flashes of lights, that I (Micheal W. Davis) could Not Sleep normally like I did before all of this happened, and that when I would sleep, I would have dreams of police shooting at me and then would wake up screaming and Kicking in pain. Mr. Lusk (my attorney) told me I had to get myself and mind off the pain, 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 stated "Don't worry about it" I told Mr Lusk Sense you have already filed for a Fast and Speedy Trail it Shouldn't take to long. Mr Lusk stated "Don't worry about it".

Mr. Lusk (my attorney) said he had looked at the Discovery and using both of his hands to indicate how thick it was, maybe (2) two foot. I told Mr. Lusk, I wanted to see the Discovery, and wanted a copy of it. Mr. Lusk stated don't worry about it I'll bring it the next time. Maybe a week later a Dective with Mr. Lusk wanted me to give a statement, but I'm pretty sure that Mr. Lusk was mad at me because I just didn't say what he wanted me to say. Though I don't Know what he wrote down on paper, because I'm not sure. I'm not able to write anything at all 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 the good time earned would be put toward my new Sentence, After, Mr. Lusk filed for a MOTION for Reduction Of

Sentence, on about Sept 13, 2002, I entered a not guilty Plea of manufactoring of Controlled Substance and two-Counts of Aggavated 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 Nero-Surgeon Doctor. At the hospital the Doctor told me I was having Surgery No doubt about it. If I ever wanted to have any use of what I had left, or I would have no control of my right side or feeling in my right side.

After the visit with the Nero-Sergion Doctor, I (Micheal W. Davis) was returned to the Harrison County Jail. Maybe (1) week later Mr. Lusk came by to see me. The first thing I asked him was did he bring the Discovery or a copy of it. That I, (Micheal W. Davis) that I wanted a copy of the Discovery. Mr. Lusk stated he would bring it the next time. Mr. Lusk stated he was working on my Witness for trail. I told Mr. Lusk that my (2) two Neices should have already called him. That they were there and could also show him where the Shots was fired into the ground only. Mr. Lusk said he would wait for them to call him. I told Mr. Lusk to draw up some petitions. 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 couldnit stay in jail. I wanted him to File for a Fast and Speedy Trail and prove my innocentce. Then Mr. Lusk told me that I missed (Michenl' W. Davis) could Not get on the Witness stand because the State would bring up my prior Convections. and that I wouldnt have a Chance.

Then I told Mr. Lusk No one has ever read me my Miranda Rights. Mr. Lusk stated don't worry about things like that.

In February or March of 2003 the Harrison County Jail took me to what I thought was a trail, but was only placed in a holding cell or room. Mr. Lusk told me that everything was looking good and for me not to worry. I asked for Mr. Lusk if he had spoken to my wittnesses. Mr. Lusk said he had not talked to anyone, and nobody had 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 wittness 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. What about my wittnesses, 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 would not accept their calls. Mr. Lusk stated (I leave out alot of times) But why don't you return their phone calls? Because they are eyewittnesses that was there when this happened. Lisa Magee and Christy Bond can show you where the bullets are at. Mr. Lusk stated (We've got pleanty of time for 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 asked me what

happened on July 31, 2002 and I said that about the police officers shooting at me and that after that I was shot I was handcuffed, beat, and kicked. Mr. Lusk said that the jury would not belive a word of it Micheal W. Davis, but I'm telling you the truth thats all that I can do. I cant go around telling people this type of stuff. Because I wouldnt have a job and people would say I'm crazy. I just cant put you on the witness stand if your going to say this. When we go to trail I'm going to put you on the stand, you dont need to go on the stand to prove your guilty.

Sometime in February or March 2003 I (Micheal W. Davis) was taken back to Jackson, MS. Hospital for a Nerve Condition Test and the Doctor told me that I would have to have Surgery for sure. The Doctor could see that I (Micheal W. Davis) was in severe pain. I told the Doctor they would Not allow me any pain medication in Harrison County Jail that they would take it and throw it away. The Doctor set a date for me to have Surgery. Then I was returned to 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 Officers made a Statement to the effect that the Harrison County Jail was not going to pay for my Surgery. After being returned to the Harrison County Jail. A few days later Mr Lusk had me called out.

I, (Micheal W. Davis) told Mr. Lusk that I was still having promblems with alot of diffrent things. I asked Mr. Lusk why can't you say something to the Doctor? IN HARRISON County JAIL. Mr. Lusk said there was nothing he could do. for me just not to worry about it. I asked Mr. Lusk about my copy of the Discovery and Mr. Lusk said he would bring it back to me the next time and Don't worry about it. I asked Mr. Lusk when are we going to trail? He said it wouldn't be to much longer, but he was still working on it with the DISTRICT ATTORNEY and for me not to worry about it I asked him if he has heard from my wittnesses called him, but he said NO- One has called him to be my wittnesses.

It was about the end of July 2003 or IN the first week of August that I recived 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 to do anything with. And that I didn't want my girlfriend to go to jail so I plead guilty of Uttering forgery and I recived (3) three years probation. I told Mr. Lusk that I wanted him to file a MOTION TO Supress the Charges in 1998. Mr. Lusk said you mean (demurrer).

Then I told Mr. Lusk that I wanted him to file a MOTION TO Squash INDICTMENT' Cause it was all wrong and that I wanted him to do this as Soon as possiable. Mr. Lusk asked me (Micheal W. Davis) if there was anything else I wanted him to do. I told Mr. Lusk he needed to return phone calls where people have called him also that he wouldn't accept or return phone calls where

People have called him. I told Mr. Lusk that I needed my witness.

Mr. Lusk stated, Micheal if you want to go to trail and face Capitol Charges, you will get over one hundred and twenty years (120) and I'm not going to tell anyone that the police shot you. A whole bunch of times while handcuffed, then beat and Kicked you all the way back up a hill and on the side of the road. And you need to think about what I'm telling you. Now take all of all of the aduise I hove given you and think about it what I am telling you. Now get all of this stuff off your mind and to put you on the witness stand and make a fool of yourself and me Also.

If you take a plea bargin you want get more than (5) five years, and after you do (2) two years. I'll file a MOTION to Appeal for a sentence reduction, and the time you have Already done with good time youll be out in No time and this will be over and done with Just let me handle things with the DISTRICT ATTORNEY. Dont worry about it.

In August or September 2003. Mr. Lusk came to visit me (Micheal W. DAVIS). I asked Mr. Lusk about my witness and his responce was that nobody had called him or came by to see him or anything. I told Mr. Lusk that I hnd witnesses about what my (2) two neices saw that day. Mr. Lusk then stated dont worry about it. I asked him (Mr. Lusk) did he bring the Discovery. He then stated he would bring it the next time.

Then Mr. Lusk asked me (Micheal W. Davis) if I had been thinking about it what he had said to me. I told him that I rember and I don't Know. Mr. Lusk said to me (arent you guilty of something). I replied nothing and I don't Know what you are talking about. Mr Lusk then stated "Let me explain it to you like this Mr. Davis," If you and someone else is in a car riding down the road and you pull over in front of a Store, and your passenger in the car with you get out of the car and goes inside of the store, walks out of the store and Commits robbery while in the store. Walks out of the store and gets back into the store of the car parked there, 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 you and him did it togather. people would understand that much better.

Then Mr. Lusk said "its the same thing" even if you didn't Know John Cooper was making Crystal Meth you are just as guilty of being there. He (Mr. Lusk) told me "the next time I talk to a Dective or make any statements, that it would be in my best intrest to say that I, (Micheal W. Davis) was making Crystal Meth and it would look better, that everyone would understand what I was saying and would understand me (Micheal W. Davis) better.

Then Mr. Lusk said "its the same thing, even if you didn't Know that John Cooper was making Crystal Meth

You are just as guilty for being there, He (Mr. Lusk) told me "The Next time you talk to a Detective or make Statements, that it would be in my (Micheal W. DAVIS) best intrest to SAY I was making Crystal Meth and that it would look better, that everyone would understand me better. I asked Mr. Lusk about talking to the doctor that I was still having Nightmares and was still in pain. Mr. Lusk stated you shouldn't talk about that anymore for me just to put it out of my mind. That he was still working with the Attorney General. Don't worry about it. I (Micheal W. DAVIS) had Not forgotten about what I had asked him to do and Mr. Lusk said Don't worry about it.

In October OR November 2003, at the Harrison County Jail a jailer called me out (Micheal 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 asked Mr. Lusk are we going to trail today OR what. Mr Lusk said for me not to worry about it that everything has been taken care of. For me not to worry about anything, for me to remember what he told me before 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 out of my cell to go to a cell upstairs. My. attorney (Mr. Lusk) had all ready

instructed me (Micheal W. Davis) as to what type of Statement to give. I didn't feel as if it was right. But I'm No lawyer. I Knew I had No choice in the matter, and I (Micheal W. Davis) had to trust Mr. Lusk. Mr. Lusk told me that this Statement will get me a good deal and we want have to go to trail. Then I told Mr. Lusk 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.

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 all right. Mr. Lusk said ("just go with the open plea") and you want get anymore than (5) Five years. Then after (2) two years I will file for a Sentence Reduction. Also all of my good time earned would apply towards my new Sentence then I (Micheal W. Davis) would be out in No time. I wasn't going to plea bargin guilty because I was not guilty. Mr. Lusk told me that I didn't have a choice because you don't have any witnesses. I told Mr. Lusk oh yes I do but you want talk to them. I then asked Mr. Lusk why has he Not brought me a Copy of the Discovery (Investigation Report) Mr. Lusk again stated Don't worry about it I'll bring it the Next time. Mr. Lusk stated just do like I Say and everything will be All right. Because if you go to trail you will be facing Capitol OFFENCES over (120) One Hundred and Twenty yeers if you go to trail. Mr. Lusk told me A open plea is Not the Same as a guilty plea ON Admission of guilt.

[illegible]

January 29, 2004, while I (Micheal W. Davis) was in the Harrison County Jail 10451 Larkin Smith Drive, Gulfport, MS. 39503. A jailer called me (Micheal W. Davis) out of the cell to take me to the Harrison County Courthouse P.O. Box 998 Gulfport, MS. 39502 Soon after I was called before the court stand. While listening to Mr. Brandon Lander for the most part talking. While Michelle Carbine seemed Not to really be saying much on this account. Brandon Lander made statements in Court, before a plea was entered by Micheal W. Davis. While Attorney for Micheal W. Davis, Mr. Fred Lusk was sitting with the rest of the public in the Courtroom. I (Micheal W. Davis) had to find Mr. Lusk because he should be up here with me because Micheal W. Davis does Not Know does or what he Should Say.

I looked over in the Courtroom and asked Mr. Lusk what he was doing? Mr. Lusk came before the courtroom while officer Brandon Lander was still talking and give his side of the Story. Mr Lander was saying that, I Micheal W. Davis had pockets full of bullets. I asked Mr. Lusk to object to the lies, but Mr. Lusk Said I didn't want to make the judge mad at me. Then Mr. Lusk said "I'll handle it later, and don't worry about it" I wanted to speak, but was denied that right because Mr. Lusk told me Not to say anything. Mr. Brandon Lander and Michelle Carbine said that the "Sun" was in their eyes. Yet the "Sun" was behind them.

Then the judge asked me how did I plea. Mr. Lusk told me what to tell the judge. Micheal W. Davis (open

plea). The next thing I Knew I had (35) Thirty-Five years mandantory, to the MISSISSIPPI Department Of Corrections.

Letter Requesting Court To Request Grant Excuse

Please excuse Micheal W. Davis, for not being able to show this Court and Others hearings or preliminary hearings or other specific court dates. When I filed notice I belived all of the papers from the Clerks Office would show and include all the important dates and pages. That Micheal W. Davis has not recived as of todays date.

I have filed more than (1) one Motion trying to obtain materials from the Circuit Court Clerk. I am doing my best to try and help Micheal W. Davis but have been unable to obtain the above mentioned important papers from the Court.

Micheal W. Davis has tried to obtain the two Affidavits from Lisa Magee and Christy Bond. He has written them several letters but have not been able to contact them as they move around alot. Mr. Davis would ask this Court to have them brought to the Court in his behalf to testify to the Court in his behalf.

However they are more scared than willing to face the law again. I have not recived any materials from the Circuit Court on the Motion last filed pertaining to the materials in the Discovery needed.

Because of being granted and extention on the "brief" I have spent all of my time on. Please excuse Micheal W. Davis for what is Not in the "BREIF" as he was unable to obtain the information

Signed this 02 day of Aug, 2007

Sincerly,
Michael W. Davis
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 Habitual OFFender section 99-19-81. MY Attorney Mr. Fred LusK, Advised me saying if I went to trial that I would be Facing Capital Punishment.

Mr. Fred LusK said that if I plead, go with an open plea, that its like a plea of guilty, to these charges that I would not receive any more than Five (5) Years. And that after two (2) Years, Mr. Fred 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. Fred Lusk said that I Lied to the Court in 1998 For my girlFriend so she wouldn't get put in jail. So I did lie to the Court, but only cause Mr. Fred LusK told me to do so. I wanted to go to trial and Mr. Fred LusK knew that, but he wouldn't Let me, Saying I would get more time than if I go with an open plea.

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 what to say.

I did NOT WANT to tell these lie's, but MR. FRED LUSK WAS MY LAWYER AND I KNEW that I had to do what EVER he said. WHEN the COURT SENTENCED ME I WAS completely CONFUSED AS to All that WAS said by the judge, but the part of thirty FIVE (35) YEARS in the DEPARTMENT of CORRECTIONS, just KEPT RINGING IN MY head.

I will SWEAR OR AFFIRM to stand before A COURT AND tell the truth like I WANTED, NEEDED to FROM the START. IT would be VERY good to take the STAND AND tell the whole truth to A jury AND EVERYONE ELS to.

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 W. Davis M.D.O.C. T5929
PETITIONER

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

PAGE 2 OF 2.

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

LaTasha Clay
NOTARY PUBLIC

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 WRITEN LETTER'S to ATTORNEY MR. FRED LUSK, but he will NOT RESPOND to ANY of MY LETTER'S. I HAVE CALLED MR. FRED LUSK, but he will NOT EXCEPT ANY of MY PHONE CALLS NOR ANY KIND of COMMUNICATION HAS he RESPONDED to.

CAROL REDMOND HAS ALSO TRYED to TALK with MR. FREDLUSK, but he will NOT. ATTORNEY MR. FRED LUSK told ME that AFTER I got two (2) YEARS IN, that he would FILE A "MOTION" FOR A SENTENCE REDUCTION. I WAITED ALMOST three (3) YEAR'S BEARLY ENOUGH TIME BEFORE the TIME STATUE WAS ABOUT to RUN OUT. I had ABOUT A WEEK OR SO left FOR that TIME. I HAVENOT RECEIVE ANY CORRESPONDENCE what SO EVER FROM ~~ATTORNEY~~ FRED LUSK.

Michael W. Davis MDOC# T5929
SIGNATURE

PERSONALLY APPEARED 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 02 day of Augest, 2007.

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

NOTARY PUBLIC

AFFIDAVIT

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

I had a conversation with Michael Davis Attorney, Fred Lusk, June of 2003. Mr. Lusk told me that Michael would not receive any more than (5) Five years for his charges, and he would get him back into court within (2) Two years for a sentence reduction and all of his good time would be put on his new reduced sentence.

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 therein stated.

Sworn to and Subscribed before me, this the 9th day of August 2006.

Rigantte M. Gray
NOTARY PUBLIC

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

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.

Brigitte M. Gee

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 COUNTY, MS NOTARY PUBLIC My Commission Expires April 30, 2011

LaTasha Clay

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.
INCLOSED 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

OFFICE of the CLERK,
Ms. Betty W. Sephton,

DATE: 06-07, 2007.

NO. 2007-CP-00264-COA-Michael W. DAVIS v. State of Miss.

You will Find inclosed paper (pages) of copies concerning our previous correspondence concerning my ATEMPS to obtain what I deem nessary in Michael DAVIS's CAUSE. He does not have any knowledge about the LAW. I myself AM Limited in every way and detail. THE Legal Law inmate Assistance PROGRAM is very poor with help. Legal RESEARCH by other inmates is no better.

I AM also inclosing a copy of a Motion that I have just had Michael DAVIS File back into the Circuit Court in HARRISON County.

I FEEL that it CONTAINS in the Motion, a much MORE of being Specific of Request in what I NEED in Michael's BRIEF.

I myself suffer from INSOMNIA, short and long term MEMERIE lost, but I will do my best in helping Michael DAVIS.

Again, please give him an EXTENISON for PREPARING this (his) BRIEF. Any and All help is APPRECIATED very much. Written by JACK K. Pitts #105268.

Signed by
Michael W. Davis
Michael W. DAVIS - MDOC # T5929
S.M.C.I. II D-2 Bed-9
P.O. Box 1419
LEAKESVILLE MS. 39451-1419

CERTIFICATE of SERVICE

This is to CERTIFY that I, Michae 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 02 day of August, 2007.

Michael W. Davis M.D.O.C. NO. T5929
PETITIONER
S.M.C.I.
Address
P.O. BOX 1419
Address
LEAKESVILLE, MS. 39451

CONCLUSION

FOR ALL REASONS stated HEREIN, APPEALLANT 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 the Circuit Court of HARRISON COUNTY, Mississippi FIRST JUDICIAL DISTRICT, to ALLOW this MOTION.

SPECIALLY, APPEALLANT 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 to BE given IN A REASONABLE PERIOD of TIME. OR ANY OTHER ACTIONS this COURT DEEMS FAIR AND just

SIGNED this 02 day of Augest, 2007.

RESPECTFULLY Submitted

Michael W. Davis

DEFENDENT - APPEALLANT

Appendix

Cuyler V. Sullivan 446 U.S. 335, 346-47, 64 L. Ed. 333 100 S.Ct. 1708 (1989) "Mental coercion, overbearing the will.

Cuyler v. Sullivan 446 U.S. at [922] 348-50 SEE also Strickland V. Washington, 446 U.S. 668, 692, 80 L. Ed. 2d 674, 104 S.Ct. 2052 (1984) "Conflict of Intrest.

Page 2 Amend. 6 State (Miss. 1992) 605 So. 2d. 1170 CRIMINAL Law. 641.13 (5) "If defendent had intended to plead guilty all along.

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 11.70.5 (1) "ERROUROUS ADVICE"

Page 3 Nealy v Cabana 764 F. (5th CIR. 1985) "He said he was innocent"

Page 4 Davis v. State 743 So. 2d. 326, 329 (Miss 1999) "genuine effort to locate and evaulate witness.

Page 6 Leatherwood v State 473 So. 2d. 964 (Miss. 1985) "Evidentiary Hearing" February 13, 1998 Cause NO. B2401-96-1146

Page 8 Miss. Code Ann. 47734 "Post Release Supervision

MRE 609 (A) (2) discression of the Court.

Butler 608 So. 2d. at 322-24 (quoting Comments to MRE 609 (A)(2)

Page 9 Probative of creditibality always to be Admitted.

Habitual Offender 99-19-81 upto 15 years "Ms. Code 1972"

Coleman v State 482 So. 2d. 680, 682 (Miss 1986) Range of Competence

Hill V. Lockhart. [27] 474 U.S. 52 106 S.Ct. 366 88 L. Ed. 2d. 203 (1985) "Seriously mistaken Advice"

Page 10 Leatherwood 539 So. 2d. 1378, 1385-87 (Miss. 1989); Gardner v. STATE (Miss 1986) WILLIAMS V. State 473 So. 2d. 974 (MS. 1985) Coleman V. State 483 So. 2d. 680, 682

Page 11 (MS. 1996) Tiller v. State 440 So. 2d. 1001, 1006 (MS. 1983)

Sanders v State 440 So. 2d. 278, 284 (Miss. 1983)
Baker v State 358 So. 2d. 401, 403 (Miss. 1978) Rendering a guilty plea legally involuntery,
Gideon v. Wainwright 372 U.S. 335, 334 (1963) through Counsel rights protected.
Schaefer, Federalism and State CRIMINAL Procedure, 70 Harv. L. Rev. 1.8 (1956) SEE also Kimmelmen v Morrison 477 U.S. 356, 379 (1986); United States v Cronic 466 U.S. 648, 654, 365, 377 (1984) Vigorous representation nature of our Adversarital system of Justice,
Kaufman v Does the judge hove a right to qualtified 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) "Well tested principle the truth and fairness, Adequalety to test the goverments case," Powell v Alabama 287 U.S. 45 (1932) "Small Sometimes no skills of the Science of Law."

Page 12 Cuyler v. Sullivan 446 U.S. 335, 346,-47 64 L. Ed. 2d. 333, 100 S. Ct. 1708 (1989) "Breach his duty of loyalty" 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) "Conflict of Intrest"

Timothy Myers v State of Miss. No. 89-KP-1272 Supreme Court Miss. 583 So. 2d. 174; 1991 Miss Lexis 388 June 19, 1991 Decided "plea of guilty" Coerced introduced by promise"

Fifth, SIXTH, and FOURTEENTH Admendments of the Constution of the United States of America, as well as the Comporable Rights Secured by 14, 26, Article 3 of the MISSISSIPPI CONSTITUTION of 1890 "Persons guarnteed due process of law."

Shaughnessy V Mezei 345 U.S. 206, 212 (1953); Wongwind v. United States 163 U.S. 228, 238 (1896); Yick W. V Hopkins, 118 U.S. 356, 369 (1886) "Individous DISCRIMINATION.

Matthews V Diaz 426 U.S. 67, 77 (1976) FIFTH and Fourteenth Admendments

Page 14 5th Admendment to the Constitution "Compelled to be a wittness againist self, or deprived of Life, Liberty without due process of LAW.

Page 15 Adams v United States Ex Rel McCann 317 U.S. 269, 275, 276 (1942) "To discredit wittness and effort to establish a diffrent version of the facts.

Page 16 Crapps v State 221 So.2d. 722, 723 (Miss. 1969) "the right to Confrontation

Hubbard V STATE 473 So.2d. 430, 433-34 (Miss 1983) Confront WITTNESS againist him.

Stromas V. STATE 618 So.2d. 116, 121 (Miss. 1993) "MATERIAL point relating to issue.

IN RE WINship 397 U.S. 358, 90 S. Ct. 1068 25 L. Ed. 2d. 368 (1970] "The Constitution grants certain rights by dispropertionately powerful STATE.

Page 17 Rules of Evidence 404 (A) "Reputation evidence, lAW-abiding nature."

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 "Voluntarily and intelligently.

Myers V STATE 583 So.2d. 174, 177 (MISS. 1991) "that a guilty plea, waiver of your rights.

Wilson V STATE 577 So. 2d. 394, 396-97 (Miss 1991) that a waiver of your rights.

Boykin V. Alabama 395 U.S. 238, 89 S. Ct. 1709 23 L. Ed. 2d. 274 (1969) "inquire and determine that the Accussed understands the maximum and Minumin penalties.

Page 18 Evitts V Lucey 469 U.S. 387 (1985) Evitts V Lucey Supreme Court held that STRICKLAND Standard of Ineff. Asst. Counsel also applies to Appellant Counsel. Adams V. United States ex rel. McCann, 317 U.S. 269 275, 276 (1942) to discredit witness in a effort to establish a diffrent version of the facts.

Page 19. 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 guilty "quality of Counsel."

MISSISSIPPI Code Ann. 94-39-1 through 99-39-29 (Supp 1992) "a petitioner is entitled to a in court opportunity to Prove his Claims.

Page 20 Davidson V. State 2003 850 So. 2d. 158 CRIMINAL LAW 1652 "By AFFIDAVIT OR OTherwise that there is factual BASIS to Support,

Cockrill V. State 2001 811 So 2d 305 CRIMINAL LAW 1613 "EVIDENCE to REUSE."

Eugene Moore V B.C. Ruth Rayland Et Al MISSISSIPPI Depaitmt of Corrections, Parole Board (State of MISSISSIPPI) 556 So. 2d. 1059; 1990 Miss. Lexis 36 February 7, 1990 Decided. "that the Court studies a prisoner pleadings; whether a State OR Federal Rights have been denied.

Page 21 Mississippi Code Ann. 99-39-25 (5) (Supp. 1986) "Meritorious Complaint may not be lost because inartfully drafted.

Page 22 Sylvester Sanders Appellant v. STATE OF MISSISSIPPI Appelle NO. 54 210 S.Ct. Miss 440 So. 2d. 278; 1983 Miss. Lexis 2905 Sept. 21, 1983 "promising a lesser Sentence than if he had plead guilty.
Under Rule 8.07 of the Uniform CRIMINAL Rules OF CIRCUIT COURT Practice (MISS.) "Contended a right to a evidentary HEARING.

Page 23 Fifth, SIXTH and Fourteenth Admendments of the Constitution of the United States, as well as those Comporable Rights secured by 14 and 26th. Article 3 of the MISSISSIPPI Constitution of 1890. "promising a lesser Sentence than if he had plead guilty".
Under Role 8.07 of the Uniform CRIMINAL Rules of CIRCUIT COURT Practices (MISS) contended entitled evidentary hearing.

Page 24 Burgin V. STATE 522 S.W. 2d. 159 (MD App. 1975) "Involuntariness claim"
Chavez v. Wilson 417, F. 2d. 584 (9th CIR. 1969) "Improper Factor off Record"
Yates v. STATE 189 So. 2d. 917 (MISS. 1966) Volunerary and Knowingly.
Hill v. State 388 So. 2d. 143 (MISS. 1980) Firm Representation
Peete V Rose 381 F. Supp. 1167 (W.D. of TN.) as being illustrative of distincution between a lesser Sentence.

Page 26 Ernest Lee Atkins SR. V. STATE OF MISSISSIPPI NO: 56392 S. Ct. MISS. 493 So. 2d. 1321; 1986 MISS. Lexis 2638 Sept. 10, 1986 Decided (Two code section primery diff.)
Lewis Oscor Young v. STATE OF MISSISSIPPI NO: 56218 S. Ct. Miss. 507 So. 2d. 48; 1987 Miss Lexis 2442 April 8, 1987 Decided "Pertinent to this Appeal."

Malloy V. Hogan, 378 U.S. 1, 12 L. Ed. 2d. 653, 84 S. Ct. 1489 "The right by trail"

Duncan v. Louisianna 391 U.S. 145 50. L. Ed. 2d. 491, 88 S. Ct. 1444 "Right to confront one accuser's

Pointer V. Texas 380 U.S. 400 13. L. Ed, 2d. 923, 85 S.ct "Cannot presume a waiver from a silent record"

Page 29 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 "When a judge dischorges the function."

MISSISSIPPI Code Ann 99-18-81 (Supp. 1981) Involuncary plea used to support enhenced punishment.

Page 30. Osborne V State 404 So. 2d. 545 (MISS 1981) "long required, Elimination of presumption.

Carlton V. STATE 254 So. 2d 770 (MS. 1971) that guilty pleas was voluntarily made.

Bullock V. Harpole 233 Miss 486, 495, 102 So. 2d. 687 691 (1958)

Osborne 404 So. 2d. at 545 "Judge Not required as part of the record.

Pace V. STATE 407 So. 2d 530 (MS. 1981); Malone V State 406 So. 2d. 37 (1981) Baker V State 394 So. 2d. 1376 (MS. 1981) Prior Convections is constitutionally Valid evidence of enhancing Sentence.

Page 32 James E. Bennett Jr. V. State of MISS, No: 54837 S.Ct. Miss. 451 So. 2d. 727; 1984 Miss Levis 1746 May 16, 1984

Page 33 Friday V. STATE 443 So. 2d. 869 (Miss. 1986) Chersed in three seperete Courts of an indictment.

Stinson V. State 443 So. 2d 869 (Miss. 1983) Multi-Count indictment

William A.C. Smith AKA William Christopher Smith V. State of Mississippi 835 So. 2d 927; 2002 Miss, Lexis 298 October 3, 2002 Decided "Intentional spoiliation or Destruction of evidence.

Strickland V. Washington 466 U.S. 668, 687-96, 80 L. Ed 2d. 674, 104 S.Ct. (1984) "Routine or Fraudulent intent."

Jackie Lee Phillips v State of Mississippi No: 53469 S.Ct. Miss 421 So.2d. 476; 1982 Miss Lexis 2254, Oct. 29, 1982 "Consolidation of offences to trail.

Mississippi Criminal Trail Practice 26-11 (1980) "State Criminal Juridicationce a multi-count Indictment is hereby defective.