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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2007-CP-0296

ANTHONY ROBINSON — APPELLANT

VS.

STATE OF MISSISSIPPI — APPELLEE

REPLY BRIEF FOR APPELLANT

BY: Anthony Robinson

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APPELLANT'S REPLY BRIEF

The State of Mississippi has filed its brief in this case and has failed to refute Appellant's claims that:

a) Appellant was subjected to denial of due process in court's information as to appeal of sentence;

b) Appellant was subjected to a denial of due process in the trial court where the indictment failed to contain the correct judicial district in which the indictment was filed.

c) Appellant was subjected to plain error and a violation of his fundamental due process rights;

d) The trial court erred in failing to conduct an evidentiary hearing

The state relies upon a catchall argument rather then addressing the claims individually as they were presented. Initially, the state asserts that the plea was an Alford plea. This is incorrect. The plea entered was a plea of guilty to the indictment and under the Miss. Unif. Rules of Circuit Court Practice. However, Appellant never admitted all the

required elements of the plea. Appellant initially advised the Court that he turned away from the Jimmy and Melanie Berry before firing the weapon and that he did not threaten the Berrys with the gun and did not point the weapon at the Berrys. (C.P. 30) Under prosecutorial questioning by the trial court Appellant subsequently admitted to what the Court wanted to hear. It is crystal clear from this record that the defense attorney was performing as a prosecutor. As a matter of fact when the Court asked that the prosecutor read the indictment defense counsel answered for the prosecutor and quickly stated that the defendant would enter a plea. (C. P. 26) In other words, it is clear that the defense counsel was in a rush to get a plea entered as would be consistent with Appellant having been coerced to enter the plea. Moreover, the record demonstrates that the Berrys never gave money to Appellant as a result of the confrontation. Appellant stated that the money was given to Terrell Hopkins. (C.P. 30) If that part is believed, as it must be believed if the actual plea of guilty is believed and accepted, Appellant never received and carried away the Berrys money as the law requires as an element of armed robbery. Miss. Code Ann. Sec. 97-3-79 Terrell Hopkins carried away the money and the state has elected not to prosecute or convict Terrell Hopkins. Appellant should have been prosecuted and convicted as an accomplish to Armed Robbery. The armed robbery conviction should be set aside unless the state convicted Hopkins. While the defense counsel talked about affidavits from witnesses during the plea hearing, none of these affidavits shows up in the record where they should be. All the affidavits in the world are no good unless made a part of the record and here there was no

introduction of such affidavits. Defense counsel acted as a prosecutor and practically admitted in court when he spoke for the prosecutor and neglected to let the prosecutor read the indictment as the court instructed. The indictment is a major part of the claims presented here.

Only one argument should be heard under the same topic. To find otherwise would be allowing the state to enjoy the best of both worlds which this court will never allow Appellant to employ.

While a valid guilty plea waive al non-jurisdictional issues, it cannot waive plain error or an issue of fundamental constitutional nature. Sneed v. State, 722 So.2d 1255, 1257 (Miss. 1998).

In Sneed, the Court held as follows:

> Despite the untimely assertion of this issue, we find that a purported judgment of conviction for a felony not charged in the indictment affects fundamental rights of the defendant that may not be waived or subjected to a procedural bar. Sneed v. State, 722 So.2d 1255, 1257 (¶ 11) (Miss.1998).

The issues which Appellant raise in his brief reaches fundamental constitutional magnitude and should be considered by this Court, as well as should have been considered by the trial court notwithstanding the timeliness of the presentation of the claims.

The state's argument under Brady v. U.S., 397 U.S. 742, 25 L.Ed.2d 747, 90 S.Ct. 1463 (1970) must fail where the challenge to the guilty plea is based upon fundamental constitutional error. Appellant's assertion here is that he was subjected to a denial of due process of law. The question becomes "whether one can plead guilty to an offense without

being fully informed of the elements of the change, and without having admitted such elements, and allow the court to impose an open sentence upon the Appellant without being advised by the court of the right to appeal the sentence to the Supreme Court

Mississippi law requires that the trial court judge advise the defendant of his right to perfect a direct appeal to the Supreme Court on the sentence where the sentence was not one previously obtained or imposed by a plea bargain. Here the sentence was imposed by the court. The Court specifically advised Appellant that there was no plea bargaining in that district and the sentence would be one which the court would make up after considering other elements. Appellant did not, at any time, enter an Alford plea. It is unclear how the state would get this assumption and argue such in their brief. In order to enter an Alford plea it is adequate to assert that the Appellant must first assert this and enter his plea with that understanding. An Alford plea would be to actually not plea at all but to assert to the Court that the defendant is not guilty but enters the plea in his best interest. North Carolina v. Alford, 400 U.S. 25 (1970).[1]This not what occurred in this case.

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[1] Appellant would dispute any assertion by the State that the plea was and Alford plea and would add that an Alford plea would be a nolo contendere plea. Such a plea would be unwise and should be abolished. Such procedures may be constitutional and efficient, but they undermine key values served by admissions of guilt in open court. They undermine the procedural values of accuracy and public confidence in accuracy and fairness, by convicting innocent defendants and creating the perception that innocent defendants are being pressured into pleading guilty. Appellant would continue to assert that what he admitted in Court was not a satisfaction of all the elements of the crime of armed robbery until the trial court pressured and enticed Appellant to admit what the Court wanted to hear. The Court was involved in prosecutorial questioning role during the process in an attempt to elicit admissions to support a plea of guilty when the Court's duty was to allow the Appellant to answer the questions and to accept the initial answer and, if it did not prove to be satisfactory, not accept the plea and to allow petitioner to consult counsel. The trial court never followed this procedure.

Under the law, where Appellant has made out a prima facie case, he was entitled to an evidentiary hearing if the Court was not willing to grant the relief requested on the face of the pleadings. The record alone shows that the trial court improperly became a prosecutor by continuing to question the Appellant in regards to answers which the Court knew would not satisfy the guilty plea process and the admissions in which the Court needed in order for Robinson to incriminate himself.

CONCLUSION

Robinson would respectfully ask this Court to reject the state's argument and find that Appellant suffered a violation of his constitutional rights to due process of law and this court should vacate the trial court ruling. Appellant would ask the Court to find that pleas were not shown to be voluntary and vacate and set aside same or in the alternative to remand this case to the trial court for a proper showing and for hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I, ANTHONY ROBINSON, Appellant pro se, have this date delivered a true and correct copy of the above and foregoing Appellant's Reply Brief, to:

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Honorable R. I. Prichard
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This, the 8th day of October, 2007.

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