

Supreme Court of Mississippi  
Court of Appeal of the State of Mississippi

**COPY**

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**FILED**

AUG 20 2007

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

Carlos D. Moore  
VS  
State of Mississippi

Appellant

Appellee

In Re: Show Cause Motion,  
Notarized By ILAP

2007-CP-00434-COA  
Benton County # B2006-021

In reference to this Court's claim that I've failed to prosecute this appeal, I shall show cause to this court in accordance with Rule 2(b) MRAP. Let it be brought to this Court's attention that I'm no longer in Parchman, MS, I'm currently in Wilkinson County. And, every piece of mail that this court sends to Parchman, MS goes there and transferred to me here at W.C.C.F. which could take a matter of days. By the time I receive the mail it's already two (2) to three weeks old. Once I get it, I'm at a private facility who happens to have limited security, so sometimes even though we may have deadlines it's difficult to get to the law library. But, I'm apologizing to the court, my brief is inside.

Respectfully

Carlos Moore

Sworn to and subscribed before me  
This the 20 day of August, 2007.

MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES JAN. 30, 2009  
BONDED THRU STEGALL NOTARY SERVICE

My Commission Expires \_\_\_\_\_

Notary Public Angela Andrews

Supreme Court of Mississippi  
Court of Appeal of the State of Mississippi

Carlos D. Moore  
VS  
State of Mississippi

Appellant

Appellee

2007-CP-00434-COA  
Benton County, Case # B2006-21

Motion of Appeal Brief

Come now Appellant, Carlos Moore (herein after "Moore"), pro se, and files this motion of Appeal, from a dated time in Benton County Circuit Court. In support thereof says the following to wit:

- 1) Moore's instant Motion of Appeal is base upon the preponderance of evidence shown in the copy of the transcript that this Court should have a copy of from Moore's Court date Feb'6, 2007, that Moore alleges Ineffective assistant of Counsel. Also citing that the Circuit Court of Benton County summarily dismissing his motion for Post Conviction relief, which is in support thereof as asserted that it was mentally incorrect for the Circuit Court to dismiss his motion. Be advised, the order nor the transcript cited any legal cases or reasons as to why they were dismissing Moore's Motion, Post-Conviction Relief.
- 2) Accordingly, the Benton County Circuit Court in summarily dismissing Moore's motion has nor afforded the petitioner at the time of Feb, 6, 2007 his due process rights as required by the Constitution

under Mississippi Code, and Moore urges this instant court to determine true justice was served in the hearing held on Feb. 8<sup>th</sup>, 2007, the dismissal of Moore's motion, and allow him to proceed as dictated in M.C.A. 99-39-1

Appeal Case Citings of Argument  
Ineffective Assistance of Counsel  
Evitts v. Lucey 469 U.S. 387 (1985)

A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." During cross examination by Moore, he advised that Attorney Kent Smith does ~~also~~ to Moore's claim of the conflict of interest by admitting that he (Kent Smith) or his firm does represent John Cash, the individual house that Moore was arrested arising from a phone call that John Cash made to law enforcement. See page 31 of the transcript, at the 28<sup>th</sup> line, the answer given by Mr. Kent Smith.

Cronic Vs Washington 1985

- 1) In any instant, if the Benton County Circuit Court would have conducted its prompt inquiry according to Rule 44(c) of the Federal Rules, it would've been determined that Kent Smith was representing John Cash at the time that he represented me. In revealing facts Mr. Kent Smith states at the hearing on Feb. 6, 2007 that he wasn't there to represent me, that he had other business with the court. He was appointed by the court at the last minute with no actual knowledge of my case.

## Grounds of Argument

In all instances when co-defendants or one knowing or obtaining the information leading to a defendant's arrest are represented by the same counsel in federal court or circuit court, Rule 44(C) of the federal rules of criminal Procedure expressly requires courts to conduct a prompt inquiry into potential conflict of interest and advise each defendant of the right to separate representation. This rule requires the courts to take action to protect each defendant's right to effective assistance of counsel unless, after inquiry, the court has "good cause to believe no conflict of interest is likely to arise. See Rule 44(C) - The obligation placed upon courts are a continuing one, and thus further inquiry and action may be necessary if new development suggest a potential conflict of interest. See, e.g., us vs Hernandez-Lebron 23 F.3d 600, 605-06 (1st Cir 1994).

(1) If this honorable court will see U.S. v Taylor, 139 F.3 924, 930 (D.C. Cir 1998) No waiver of right to conflict-free representation because defendant unaware of counsels actions which created conflict.. At the hands of the court of Benton County Judge Henry L. Lacky should've complied with the rule set forth by the Federal court, yet he failed follow the steps to approach of inquiry.

(2) On July 8<sup>th</sup>, 2005 Kent Smith, Esq of Holly Springs, Ms was appointed to represent Moore on felony charges, Simple Robbery reduced from Armed Robbery, Vehicle theft, Jail escaped. Note that Kent Smith was representing Moore as a public defender, which means irregardless to the outcome of Moore's hearing the said Kent Smith would still receive equal salary as a public defender. When it's clear that defendants have the right of effective assistance of counsel, according to the sixth Amendment right defendant have the right to enjoy Assistant of Counsel, See, Gideon v Wainwright, 372 U.S. 335, 342 (1963).

(3). Be advised that Attorney Kent Smith represent John Cash on a different Robbery charge, yet John Cash was the individual that informed Law Authority of the where about of the defendant (Moore) of this said Motion. To wit John Cash calls Authority and informed them of Moore's where abouts in hope to collect reward money. Be advised that Moore's apprehension took place at John Cash's residents in Pied Bank, Ms. However, Moore learned of Kent Smith's (Attorney) actions of Conflict of interest during Moore's sentencing, Attorney Kent Smith and Detective Falando Marion discussing John Cash owe-ing Attorney Kent Smith some more money on a charge of Robbery at that present time. U.S. V. Swartz, 975 F.2d 1042, 1049 (4th Cir. 1992). By Attorney Kent Smith representing John Cash at the same time of Moore's, his actions bordered significant acts which Violates Moore's right to Effective Assistance of Counsel, Holding grounds of Ineffective Assistance of Counsel, by reasons of conflict of interest.

(4). Instead of Attorney Kent Smith didn't steer Moore in any other route of choices in the Court other than to plead guilty. Which arises question, if Attorney Kent Smith wasn't representing John Cash would Attorney Kent Smith took a better defense in Moore's behalf, rather than leading Moore directly into a plea of guilty before fully researching Moore's case. Attorney Kent Smith never even asked Moore "What actually happened", he only spoke of guilty plea. Therefore a single error may in some cases or circumstances render counsel's performance ineffective. See Murray V. Carrier, 477 U.S. 478, 496 (1986) (dictum).  
\* The right to effective assistance of counsel \*

## Motion of Claims

1) On common claims, there was a potential conflict of interest with Moore's Counsel: On July 8, 2005 Moore was appointed attorney Kent Smith, Esq. of Holly Springs, Ms to represent him as counsel on the current felony charges. During the same time, said attorney Smith was also providing representation to one John Cash (hereinafter "Cash"). While at large on his felony escape, Moore had resided at the home of Cash in Red Banks, Ms. In hopes of receiving reward, Cash called authorities and informed them of Moore's whereabouts. It may also be concluded that Cash was expecting leniency for his cooperation, for his own pending robbery charges. A charge in which Cash was being represented by Attorney Kent Smith. Being unaware of potential conflict Moore was unable to raise the issue. Still he should be afforded the right to conflict free assistance of counsel, as required in the sixth Amendment, and Rule 44(c) of the Federal Rules of Criminal Procedure, which places the obligation upon Courts to avoid potential conflict of interest. Therefore, Moore petitions this Court to reconsider his motion of Feb, 2007, and allow him to proceed accordingly.

2) Moore received ineffective assistance of counsel due to potential conflict of interest: Moore's right to effective assistance of counsel was vividly impaired when his defense counsel operated under a potential conflict of interest, because counsel breached the duty of loyalty, which is perhaps the most basic of counsel's duties. And there is a reasonable probability that the potential conflict had an adverse effect on specific instances of counsel's performance, as shown by the fact that attorney Smith never conducted a pre-trial investigation or properly familiarized himself with Moore's case. Instead, counsel dissuaded Moore from seeking any plausible defenses other than a guilty plea, therefore destroying Moore's ability to balance the risks and benefits of going to trial. Due to the deficiency of attorney Smith's performance, along with

the potential conflict of interest. Petitioner Moore clearly shows that he was denied Effective Assistance of counsel as guaranteed by the Sixth Amendment. Therefore, Petitioner prays that this court will Vacate and set aside Sentence, as deemed appropriate.

Respectfully I remain,  
Carlos Moore  
Carlos Moore

Sworn to and subscribed before me  
This the 20 day of August 2007.

My Commission Expires

MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES JAN. 30, 2009  
BONDED THRU STEGALL NOTARY SERVICE

Augusta Andrews  
Notary public

Wherefore, Premises considered, the petitioner respectfully requests this honorable court to exonerate this court's business. Noting that Mr. Moore made verbal amends to the court about his issue pertaining to Ineffective assistance of Counsel, conflict of interest on Feb. 6, 2007, however Benton County Circuit Court failed to serve justice in their defaults. Therefore, Moore is now in the venue of supreme and hope to gain justice.

Respectfully Submitted,  
Carlos Moore

Sworn to and Subscribed before me  
This the 20 day of August, 2007.

My Commission Expires

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