

**COPY**

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TERRANCE GUINN,

APPELLANT,

VS.

CASE NO. 2007-CP-00518-COA

STATE OF MISSISSIPPI,

APPELLEE(S)

APPEAL FROM THE CIRCUIT COURT OF CLAIBORNE COUNTY, MISSISSIPPI

BRIEF OF APPELLANT

ORAL ARGUMENT NOT REQUESTED

**FILED**

**JUN 21 2007**

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

PREPARED BY:  
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CERTIFICATE OF INTERESTED PERSONS

The undersigned Appellant(s) of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Honorable Court may evaluate possible disqualification or recusal.

Terrance Guinn, Prose  
Appellant  
Unit 25, Zone C, Bed #149  
Parchman, Mississippi

Alexander Martin, DA  
P.O. Box 767  
Hazlehurst, Mississippi

Jim Hood, Attorney General  
P.O. Box 220  
Jackson, Mississippi 39205

SO CERTIFIED, this 21 day of June 2007.

Terrance Guinn  
Terrance Guinn

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

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APPELLANT

Vs.

CASE NO. 2007-CP-00518-COA

STATE OF MISSISSIPPI

APPELLEE(S),

STATEMENT OF THE ISSUES ON APPEAL

Appeal to this Honorable Court was taken by Appellant, Terrance Guinn, from the order rendered by the circuit court of Claiborne County on March 12, 2007. The issue presented on appeal to this Honorable Court is:

1. Whether the Trial Court lacks subject matter jurisdiction?

## STATEMENT OF THE CASE

On January 12, 2007, in the Claiborne County Circuit Court, Terrance Guinn entered a guilty plea to one count of possession of cocaine. Guinn was sentenced to serve a term of three years and sentenced into the custody of the Mississippi Department of Corrections.

On February 20, 2007 Guinn filed a motion for post conviction relief, seeking to have his sentenced vacated; see Record Excerpt "A". However, the trial court denied Guinn's motion. See Record Excerpt "B". Aggrieved and disgruntled, Guinn now appeals to this court arguing that the circuit court erred in denying his motion for post-conviction.

## SUMMARY OF THE ARGUMENT

On Appeal, Guinn's argument is that the Honorable Trial Court lacks subject matter jurisdiction to consider the foregoing matter. However, this Honorable Court should considered all the evidence because it is evidence that was presented to the lower courts and is part of the record on appeal. Guinn has shown that the trial court is without subject matter jurisdiction, and the ruling of the trial court should be reversed.

## ARGUMENT

### I. WHETHER THE TRIAL COURT LACKS(S) (SUBJECT MATTER) JURISDICTION?

The decision of whether a circuit court has proper jurisdiction to hear a particular matter is a question of law and is reviewed de novo. *Jensen v. State*, 798 So.2d 383, 385 (Miss.2001) The law provides that once state or federal jurisdiction has been challenged, it must be proven to exist, nor can it be assumed or presumed. *Maine v. Thiboutot*, 448 U.S. (1980) Guinn asserts in viewing the trial court's order denying motion for post conviction relief, the trial court clearly admitted that Guinn "raised numerous issues to which he requested the relief herein, to include, the court's jurisdiction, constitutional issues and others". See Record Excerpt "B". Moreover, the trial court continue by establishing facts "The court being fully advised and aware that on the date of January 12, 2007, at trial and after both parties announcing their intent to proceed and upon the selection of the jury to hear said matter, the Movant herein, announced that he desired to withdraw his plea of not guilty and enter a plea of guilty to the offense of possession of cocaine. The movant then having been fully apprised of the nature of the charges against him and all the facts and circumstances surrounding said charges, and having being placed under oath, did voluntarily and intelligently enter a plea of guilt to possession of cocaine, in Claiborne county circuit court case number CR2006-21". The institution of the guilty plea is well established in our criminal justice process. A guilty plea operates to waive the defendant's privilege against self- incrimination, the right to confront and cross examine the prosecution's witness, *Sansers v. State*, 440 So.2d 278, 283 (Miss 1983), the right to a jury trial, see sixth and fourteenth amendments to the US C constitution ~~411 So.2d~~, *Phillips v. State*, 421 So.2d 476, 479-83 (Mis. 1982) and the right that the prosecution prove each element of the offense beyond a reasonable doubt. *Thomas v. State*, 472 So.2d 425, 426 (Miss 1985). However, it doesn't matter that Guinn pleaded guilty. Guinn did not waive his right to challenge his conviction, because



“(A) plea of guilty does not waive (1) the failure of an indictment to charge a criminal offense or, more specifically, to charge an essential element of a criminal offense (2) subject matter jurisdiction. Kincaid v. State, 711 So2d 873.

That, we are under administrative law and they require “promulgated regulations”.

That, the government by and through its District Attorneys are charging citizens with “crimes” for alleged violations of the agency, a.e. “Public Health, “M.B.N.” etc... The law requires that certain criteria be met in order for any ‘Agency’ to institute civil or criminal proceedings against anyone. This is called “due process of law” and is guaranteed by the U.S. Constitution Fifth Amendment. The alleged indictment is a matter of law insufficient on its face, as it doesn’t meet the mandated requirements of the “Administrative Procedures Act”, Title 5, 550 et seq., or the Federal (State) Registration Act” Title 44, section 1500-1510. Statutes, in and of themselves, do not make anyone liable to the government agency has ‘promulgated’, published and given public notice to the aggrieved party of regulation upon which the alleged government indictment is based.

That, “ An agency is to be held to terms of its regulations,” U.S. v. Coleman, 478 F.2d 1372 (C.A.CAL.1973), In addition, “criminal penalties for failure to report currency transaction under reporting act can only attach only upon violations of regulations “promulgated” by the secretary of treasury” U.S. v. Reinis, 794 F2d 506, 508 (9<sup>th</sup> Cir. 1986). If a statute is not published in the Federal or State register, it indicates that the statute has a limited applicability.

Under our system of law, no act is punishable as a crime unless it specifically condemned by the common law or by a statutory enactment of the legislature. Therefore, the Administrative Procedure Act and the Federal (State) Registration Act must be read as a part of every congressional delegation of authority unless specifically accepted. Those acts require publication, irrespective of actual notice, as a prerequisite to the “issuance” of a regulation making

certain acts criminal. If certain acts had not been made crimes by duly enacted law, the knowledge of their contemplated administrative proscription can not subject the informed person to criminal prosecution. While ignorance of the law is no defense, it is conversely true that a law which has not been duly enacted into positive law, is not a law of general applicability and therefore, a person who does not comply with its provisions can not be guilty of any crime.”

Hotch v. U.S., 212 F.2d 280 (9<sup>th</sup> Cir.1954) There is a fundamental maximum of law that, “A law is not obligatory unless it is promulgated,” see Blacks Law Dictionary 2<sup>nd</sup> Ed. P.826. A further maxim holds that, “old age does not sanction error.” Thus, the probable rationale that would be raised would be: “well, it has been on books for so many years, thus it is law. This kind of hind quarter perspective flies in the face of the principals of good faith and fair dealing and the maxims of the law in general... It further breeds contempt for the process of American Law and the men and women who preside over said process. If an error in law has been made, those who have been damaged as result of said error are lawfully entitled to be made whole. Justice demands this, truth proclaims this, and honor sustains this.

There is a further principal which holds “the greater the value of the authentic, the greater the effort to counterfeit it.” Those who try to suppress or make light of the fact that Title 41 was never lawfully enacted into law are voluntary participants in an apparent seditious conspiracy if not outright treasonous act. See 72 stat. 884. Thus Title 41 are not the laws of the State of Mississippi and no civil or criminal cause of action can arise by or upon their innovocation.

Guinn’s factual allegations establish that the government’s charging instrument is and were void from ab initio, where the government lack subject matter jurisdiction and lack the authority and bring such to the attention of the court; However elected to the conceal the truth in order to champion after its “political crusades and personal ambitions.

Furthermore, this entire nightmare is grounded solely on the religious belief system District attorneys and other oath takers politically motivated to impose their religious dogma upon Guinn. However, insane the actions of D.A. and others, it still is totally inexcusable and smacks of seditious conspiracy and institutional treason for a judge to surreptitiously go beyond the expressly jurisdiction at the behest of agents of a state agency. "Ignorance of the law does not excuse misconduct in anyone, least of all in a sworn officer of the law." In re McCowan, (1917) 177 c. 93, 170 p.1100.

Moreover, a judge or court may be in a legal sense immune from any claim that is guilty of wrong because of its improper exercise of jurisdiction. However, it has no such protection where it lacks jurisdiction and the issue has been raised and asserted. When the lack of jurisdiction has been shown, a judgment rendered is not only void, but is also usurpation. Jurisdiction is a fundamental prerequisite, and usurpation thereof is a nullity.<sup>22</sup> Corpus Juris Secundum, Criminal Law, "150, p.183. The excessive exercise of authority has reference to want power over the subject matter; the result is void when challenged directly or collaterally. If it has reference merely to the judicial method of the exercise of power, the result is binding upon the parties to the litigation till reversed ..... The former is usurpation; the latter error in judgment. Voorhees v. The Bank of the U.S., 35 U.S. 449, 474-475 (1836).

In U.S. v. Nevers, 7 F3rd 59 (5<sup>th</sup> Cir.1993), the circuit court stated... "To prosecute applicant for thee conduct alleged under an invalid law, and/or by information... would be a denial of due process. 'The fair notice tests provide in this case et supra, and the due process clause for both state and federal constitutions demonstrates that the government has bluntly disregarded both, while knowingly and intentionally ignoring its superior knowledge of the law, and its high standards of the law electing instead of fraudulently mis represent to a Grand Jury and the trial Court , through its changing instruments and personal averments, that the enumerated statutory

provisions listed on the governments charging instruments were true, correct, and authorized which culminated in a complete miscarriage of justice.

In *Cohens v. Virginia*, 19 US (6Wheat) 264, 404, s L. Ed, 257, 291 (1821), the court stated, "We have no more light to decline the exercise of jurisdiction which is given, than to usurp that which is not given, the one or the other would be treason to the Constitution.

Whereas, Jurisdiction over the "Subject Matter" of action is essential to the power of the court to act, and is conferred by the Constitution or by a valid statute. The court must authorize to hear a crime, and have a valid law that creates a crime. Thus, the crux of subject matter is jurisdiction is always the crime or the offense. If a law is invalid, there is no crime. If there is no crime there is no subject matter jurisdiction. 22 Corpus Juris Secundum, Criminal Law 157, p. 189; citing *people v. Katrina k*, 185 cal. RPTR.869, 136 Cal. App. 3<sup>rd</sup> 145 (1982). If a criminal statute is unconstitutional, the court lacks subject matter jurisdiction and cannot proceed to try the case. Guinn's indictment fails from ab initio to charge a crime by its failure to have the charge base upon a valid or existing law, complaint, or indictment which cites valid law.

### Conclusion

In conclusion, Guinn asserts that he has given Caesar, what is Caesar, Now allow Guinn to give God what is God. Guinn prays that this prestige Honorable court reverse the lower court decision.

CERTIFICATE OF SERVICE

I, Terrance Guinn, do hereby certify that I have this day caused to be delivered via U.S. mail postage prepaid a true and correct copy of the above foregoing documents to:

Judge Lamar Pickard  
P.O. Box 310  
Hazlehurst, Ms 39083

Alexander Martin, D.A.  
P.O. Box 767  
Hazlehurst, Ms 39083

Jim Hood, Attorney General  
P.O. Box 220  
Jackson, Ms 39205

This the 21 day of June 2007.

Terrance Guinn  
Terrance Guinn

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TERRANCE GUINN

APPELLANT,

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APPELLEE(S)

EXCERPTS

Excerpt

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**EXHIBIT "A"**



IN THE CIRCUIT COURT  
OF CALIBORNE COUNTY

TERRANCE GUINN  
PETITIONER,

vs.

Case No. 2006-21

STATE OF MISSISSIPPI,  
RESPONDANT,

NOTICE OF MOTION

To: Honorable Patrick Beasley, Assistant D.A.

Please take notice that the undersigned, the  
Petitioner, Terrance Guinn, has filed a Motion for  
Post-Conviction Relief in accordance with 99-37-1  
which is properly known as the Mississippi  
Uniform Post-Conviction Collateral Relief Act.

2-19-07

**FILED**

FEB 20 2007

Mrs. Samantha L. Good, Circuit Clerk

By *[Signature]* D.C.

*Terrance Guinn*

1033 Holt Dr

Port Gibson, MS 39150

IN THE CIRCUIT COURT  
OF CLAIBORNE COUNTY

TERRANCE GUINN,  
PETITIONER,

VS.

Case No. 2006-21

STATE OF MISSISSIPPI,  
RESPONDANT,

**FILED**

FEB 20 2007

Mrs. Sammie L. Good, Circuit Clerk

By *[Signature]* D.C.

MOTION FOR POST-CONVICTION  
RELIEF

1. Whereas, Petitioner brings this Honorable Court  
under the jurisdiction of 99-39-1

2. Whereas, Petitioner-pleaded guilty to possession of  
cocaine,

3. Whereas, Judgment was entered on January 13, 2007  
and a sentence of three (3) years in the Mississippi  
Department of Corrections

4. Petitioner asserts that this/the Prestige Honorable  
Court lack(s) (subject-matter) Jurisdiction

5. That, this Motion is invoked by and through Public Law 94-112 (50 U.S.C.A. 1601), Thus reaffirming the superiority of the Constitution for the United States of America and the governmental oath to support and defend the Constitution are the Supreme Law of the Land, and are indeed above mere statutes.

6. That, the government acts and/or authorizations of acts have cause Terrance Gunn grievous, harm, damage and injury under pretence and color of law, Laws and Titles and are in breach of numerous legal duties, and by law are barred, estopped and precluded under the "Clean Hands Doctrine" and "Public Policy" from making any claim, right, title or interest therein. 18 U.S.C.A. 1001

7. That, we are under administrative law and they require "promulgated regulations".

8. "An agency is to be held to terms of its regulations." U.S. v. Coleman, 478 F.2d 1372.

9. "The administrative Procedures Act, Title 5 section 551, and this chapter ~~44~~ 44 U.S.C.A. 1505 requires publication irrespective of actual notice, as a prerequisite to issuance of a regulation making certain acts criminal." Hatch v. U.S. 215 F.2d 250.

10. "Mere fact that parties stipulated to jurisdiction does not automatically vest authority in district court to adjudicate all issues presented, for subject-matter jurisdiction cannot be assumed by the court, nor can it be waived by parties." Bush v U.S., 703 F.2d 491

11. "to prosecute applicant for the conduct alleged under an invalid law, and/or by an information ... would be a denial of due process." U.S. v Nevers 7 F.3d 59 (5th Cir)

12. If a judgment is void, it is a nullity from the outset, and when a rule providing for relief from a void judgment is applicable, relief is not a discretionary matter, it is mandatory, Orner v. Shalala, 30 F.3d 1307, 1310

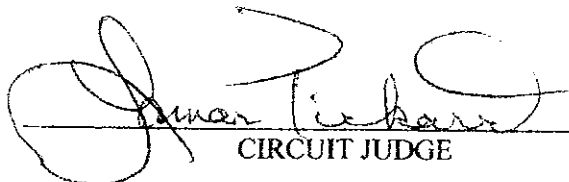
13. That, the petitioner has stated or by whom said facts will be proven through irrefutable and undeniable authorities, that this instant Motion must be granted.

14. That, the petitioner regards it as just and necessary to invoke formal notice, with no intent toward repugnance, of this Honorable Courts Oath of Office [28 USC 453] to uphold and support

**EXHIBIT "B"**

IT IS, THEREFORE, ORDERED AND ADJUDGED, that the Movant, Terrance Guinn's, Motion for Post Conviction Relief, is hereby denied.

SO, ORDERED AND ADJUDGED, this the 12<sup>th</sup> day of March, 2007.

  
CIRCUIT JUDGE

**A COPY OF THE ORDER HEREIN TO BE MAILED VIA U.S. MAIL, FROM  
THE CIRCUIT CLERK OF THIS COUNTY, TO THE FOLLOWING:**

**Mr. Terrance Carvell Guinn  
MDOC #W0981  
1033 Holt Drive  
Port Gibson, MS 39150  
Defendant, Pro Se**