

IN THE MISSISSIPPI SUPREME COURT
AND COURT OF APPEAL.

COPY

FREDERICK D. LOCKHART

vs.

THE STATE OF MISSISSIPPI

APPELLANT

PETITIONER / PRO, S.
NO # 06-CV-077

2001-CP-523

RESPONDENT

BRIEF OF APPELLANT

FREDERICK D. LOCKHART # 57343
ADDRESS: S.M.C.I. 2 / UNIT C-1, A-ZONE
P.O. BOX 1419
LEAKESVILL, MISS. 39451

IN THE SUPREME COURT OF THE
STATE OF MISSISSIPPI

FREDERICK D. LOCKHART

VS.

THE STATE OF MISSISSIPPI

APPELLANT/PRO, SE
NO# 06-CV-077

APPELLEE (S)

CERTIFICATE OF INTERESTING
PERSONS

THE UNDERSIGNED COUNSEL OF RECORD CERTIFIES THAT THE FOLLOWING LISTED PERSONS HAVE AN INTEREST IN THE OUT COME OF THIS CASE. THESE REPRESENTATION ARE MADE IN ORDER THAT THE JUSTICE OF THIS COURT MAY EVALUATE POSSIBLE DISQUALIFICATION OR RECUSA.

1. STATE OF MISSISSIPPI.
2. ATTORNEY GENERAL, JIM HOOD.
3. DISTRICT ATTORNEY, BILBO MITCHELL.
4. PRESIDING JUSTICE, LARRY E. ROBERTS

SIGNED By Frederick Lockhart

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	pag. i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES	1
STATEMENT OF CASE	2
STATEMENT OF FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT	3
ISSUE ONE	3, 4
ISSUE TWO	
ISSUE THREE	
ISSUE FOUR	
ISSUE FIVE	
ISSUE SIX	
ISSUE SEVEN	
<u>CONCLUSION</u>	
<u>CERTIFICATE OF SERVICE</u>	

TABLE OF AUTHORITIES

CASES

	PAGE
<u>POLSON V. SMITH. 438 F.2d 1075, 1078 (5th CIR. 1971) (CITATION OMITTED)</u>	5
<u>HENDERSON, V. MORGAN 96, S. CT. 2253.</u>	3
<u>GOODWIN V. SMITH. 439 F.2d 1180, 1182 5th CIR. CT. (1971)</u>	4
<u>DAVID V. HOLMAN. 354 F.2d 773, 775-76 5th CIR. (1965)</u>	
<u>CERT. DENIED, 384 U.S. 907, 86, S. CT. 1343, 16 L. ED. 2d. 359, (1966); HARVEY, V. MISSISSIPPI. 340 F.2d 263, 269, 5th CIR. (1965)</u>	
<u>REED, V. UNITED STATES. 354 F.2d 227, 229, 5th CIR. (1965)</u>	
<u>CITED IN DAVID V. UNITED STATES. 376 F.2d 535, 537, 5th CIR. (1967)</u>	
<u>MCGARTH V. LAVALLEE 319 F.2d 308, (1963)</u>	4
<u>STRICKLAND. 466 U.S. AT 688 104 S. CT. AT 2065</u>	5
<u>HERRING. V. ESTELLE, 491 F.2d 125, 128 5th CIR. (1974)</u>	
<u>AVERY. V. ALABAMA. 308 U.S. 444, 446, 60. S. CT. 321, 222, 84, L. ED. 377 (1940)</u>	
<u>CITED IN FULKER V. DAY 969 F.2d 155, 159, 5th CIR. (1992)</u>	

OTHER AUTHORITIES

THE 16th AND 14th U.S.C.A. CONST. AMEND.
THE 4th AND 5th

- ISSUE ONE: WHETHER THE COURT ERROR IN OVERLOOKING THE FACT THAT THE DEFENSE ATTORNEY WAS IN FACT INEFFECTIVE WITH HIS ASSISTANCE AND PERFORMANCE DURING PLEA NEGOTIATIONS.
- ISSUE TWO: WHETHER THE COURT ERROR IN OVERLOOKING THE FACT THAT MR. LOCKHART WAS DENIED DUE PROCESS OF LAW BY NOT KNOWING THE TRUE NATURE OF THE CHARGE AGAINST HIM.
- ISSUE THREE: WHETHER THE COURT ERROR BY OVERLOOKING THE FACT THAT MR. LOCKHART NEVER RECEIVED A COPY OF HIS MOTION OF DISCOVERY.
- ISSUE FOUR: WHETHER THE COURT ERROR BY OVERLOOKING THE FACT THAT THE STATE NEVER HAD PROOF THAT A CRIME HAD BEEN COMMITTED BY MR. LOCKHART / ABUSE OF ~~THE~~ DISCRETION OF JUSTICE.
- ISSUE FIVE: WHETHER THE COURT ERROR BY OVERLOOKING THE FACT THAT THE PROSECUTOR PERFORMANCE SHOWN MISCONDUCT AND VOID DEED.
- ISSUE SIX: WHETHER THE COURT ERROR BY OVERLOOKING THE FACT THAT MR. LOCKHART WAS DENIED A FAST AND SPEEDY TRIAL.
- ISSUE SEVEN: WHETHER THE COURT ERROR BY OVERLOOKING THE FACT THAT THE INDICTMENT IS FACTUALLY DEFECTIVE.

STATEMENT OF CASE

THIS CASE ARRIVED FROM THE CIRCUIT COURT OF LAUDERDALE COUNTY ON OR ABOUT THE 15 DAY OF NOV. 2004. MR. FREDERICK LOCKHART WAS IN FACT SENTENCE AND CONVICTED FOR THE OFFENSE OF BURGLARY OF A DWELLING, BEFORE PRESIDING JUSTICE — LARRY E. ROBERTS, UPON CONVICTION OF AN OPEN PLEA. FREDERICK D. LOCKHART DID RECEIVED A TOTAL OF 25 YEARS UNDER THE 85% LAW TO SERVE WITH THE MISSISSIPPI DEPT. OF CORRECTION AS A NONE-VIOLENCE OFFENSE.

FACTS:

ON OR ABOUT THE 31ST DAY OF SEPT. 03. I OFFENDER FREDERICK D. LOCKHART, WAS IN FACT ARRESTED FOR THE OFFENSE OF BURGLARY OF A DWELLING BY THE CITY OF MERIDIAN POLICE DEPT. MR. FREDERICK D. LOCKHART, WAS IN FACT TRUST PASSING BY BEING INTOXICATED AND ASLEEP WHILE INSIDE OF THE HOUSE OF SAID VICTIM ON THE ABOVE DATE, AND LATER CHARGED WITH THE OFFENSE OF BURGLARY OF A DWELLING.

SUMMARY OF ARGUMENT

TO SUMMARIZE THIS ARGUMENT, IT HAS TO BE SUMMARIZED UPON CONSTITUTIONAL VIOLATIONS, FEDERAL & STATES WHICH / OR / GUARANTEED TO A CITIZEN OF THE UNITED STATES OF AMERICA. WHICH IS THE 6th & 14, DENIED INEFFECTIVE ASSISTANCE OF COUNSEL 4th & 5th VIOLATION OF DUE PROCESS OF LAW, AND THE EIGHT-AMENDMENT, EQUAL PROTECTION OF THE LAW.

ARGUMENT

ISSUE ONE: DENIED INEFFECTIVE ASSISTANCE OF COUNSEL: ONE, TWO, & THREE; ARE TOGETHER. ALSO 4, 5, 6, & 7

STANDARD OF REVIEW

MR. LOCKHART, ADMITS THAT HE WAS IN FACT COERCED BY HIS ATTORNEY, MR. EARL PAT JORDAN JR., TO TAKE AN OPEN PLEA TO A OFFENSE THAT HE NEVER COMMITTED OR NEVER KNEW THE TRUE NATURE OF SAID OFFENSE.

MR. LOCKHART ADMITTED THAT HE NEVER SAW HIS MOTION OF - DISCOVERY BEFORE TRIAL, DURING PLEA NEGOTIATION OR AFTER PLEA NEGOTIATIONS.

A PLEA AGREEDMENT CAN NEVER BE VOLUNTARY IN THE SENSE THAT IT CONSTITUTED INTELLIGENT ADMISSION THAT ACCURED COMMITTED OFFENSE UNLESS ACCUSED RECEIVED REAL NOTICE OF THE TRUE NATURE OF CHARGES AGAINST HIM. THE FIRST AND MOST UNIVERSALLY RECOGNIZED REQUIREMENT OF DUE PROCESS.

HENDERSON, V. MORGAN
96. S. Ct. 2253.

IF A PLEA OF GUILTY WAS PRODUCED OF COERCION, EITHER MENTAL OR PHYSICAL OR WAS UNFAIRLY OBTAINED OR GIVEN THROUGH ~~THE~~ — IGNORANCE, FEAR, OR INADVERTANCE JUDGEMENT OF CONVICTION WHICH RESTS UPON IT, IT IS VOID AND IS SUBJECT TO COLLATERAL ATTACK ON FEDERAL HABEAS CORPUS.

MC GRATH, V. LAWALLEE 319 F.2d 308,
(1963)

THE COUNSEL NEVER DID DISCUSS POSSIBLE DEFENSE OR RAISE ANY QUESTIONS INQUIRING OF POSSIBLE GROUNDS FOR THE OFFENSE OF BURGLARY OF A DWELLING.

IN ORDER TO PROVIDE REASONABLY EFFECTIVE ASSISTANCE OF COUNSEL TO THEIR CLIENT, CRIMINAL DEFENSE ATTORNEY MUST INTERVIEW POTENTIAL WITNESSES AND MAKE INDEPENDENT INVESTIGATION OF FACTS AND CIRCUMSTANCES AS WELL AS THE LAW INVOLVED PARTICULAR CASE, U.S.C.A. CONST. AMEND. 6TH § 14.

PRINCIPLES OF LAW.

IT HAVE BEEN REPEATEDLY APPLIED, THE SUPREME COURTS — TEACHING, WE HAVE STATED THAT "ONE OF THE MOST PRECIOUS APPLICATION'S OF THE SIXTH AMENDMENT MAY WELL BE IN AFFORDING COUNSEL TO "ADVISE" A DEFENDANT CONCERNING WHETHER HE SHOULD ENTER A GUILTY PLEA'.

SEE REED, V. UNITED STATES, 354 F.2d 227, 229.
5TH CIR. 1965) CITED IN DAVID, V. UNITED STATES, 376 F.2d 535, 537 5TH CIR. 1967).

SEE ALSO GOODWIN, V. SMITH 439 F.2d 1180, 1182
5TH CIR. 1971); DAVID V. HOLMAN, 354 F.2d 773, 775-76
5TH CIR. 1965) CERT. DENIED, 384 U.S. 907, 86, S. CT.
1343, 16 L. ED. 2d. 359 (1966); HARVEY, V. MISSISSIPPI
346 F.2d 263, 269 (5TH CIR. 1965).

"IT IS CLEAR THAT A DEFENDANT IS ENTITLED TO THE EFFECTIVE ASSISTANCE OF COUNSEL IN DETERMINING HOW TO PLEAD AND IN MAKING HIS PLEA, AND CAN ATTACK HIS CONVICTION COLLATERALLY IF HE IS NOT GIVEN THIS RIGHT"

COLSON, V. SMITH. 438 F.2d 1075, 1078
(5TH CIR. 1971) (CITATIONS OMITTED)

THE SUPREME COURT HAS NOTED: REPRESENTATION OF A CRIMINAL DEFENDANT ENTAILS CERTAIN BASIC DUTIES... [THESE INCLUDE] THE OVERARCHING DUTY TO ADVOCATE THE DEFENDANT'S CAUSE AND THE MORE PARTICULAR DUTIES TO CONSULT WITH THE DEFENDANT ON IMPORTANT DECISIONS AND TO KEEP THE DEFENDANT INFORMED OF IMPORTANT DEVELOPMENT IN THE COURSE OF THE PROSECUTION.

SEE STRICKLAND, 466 U.S. AT 688, 104 S. CT. AT 2065.

ALSO HERRING, V. ESTELLE, 491 F.2d 125, 128
(5TH CIR. 1974); AVERY V. ALABAMA 308
U.S. 444, 446, 60. S. CT. 321, 322, 84
L. ED. 377 (1940) CITED IN TUCKER, V. DAY
969, F.2d 155, 159 (5TH CIR. 1992)

CONCLUSION

PETITIONER ADMITS THAT HE HAS DEMONSTRATED A INEFFECTIVE ASSISTANCE CLAIM, AND REQUEST AN ORAL ARGUMENT FOR FURTHER DISCUSSION, IF THIS MATTER IS NOT REVERSAL AND REMANDED BACK TO THE LOWER COURT, CONCERNING BI-PHASE HEARING WHICH HE WAS INFACD DENIED A MANDATE PHASE.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT I HAVE MAILED FIRST CLASS — POSTAGE OF NOTICE OF APPEAL AND BRIEF OF APPEAL TO THE MISSISSIPPI SUPREME COURT AND COURT OF APPEAL, AT P.O. BOX 249 JACKSON, MS. 39205 ON THE BELOW DATE.

THIS IS THE 12 DAY OF JULY 07.

RESPECTFULLY SUBMITTED BY Frederick Lockhart

EXHIBIT 11

IN THE CIRCUIT COURT OF LAUDERDALE COUNTY
THE STATE OF MISSISSIPPI 2007 MAR -6 PM 2:21

FREDRICK D. LOCKHART

VS.

STATE OF MISSISSIPPI

FILED
Donna Gale Johnson
PETITIONER
CASE NO. 06-CV-077(W)

RESPONDENT

ORDER DENYING MOTION FOR POST-CONVICTION COLLATERAL RELIEF

THIS DAY came to be heard a Motion for Post-Conviction Collateral Relief filed *pro se* by Fredrick D. Lockhart. The Court having made a full examination of the Motion, together with all the files, records, transcripts and correspondence pursuant to §99-39-11, *Miss. Code Ann. (1972)*, as amended, is of the opinion that said Motion is not well-taken and that Petitioner is not entitled to the relief requested in his Motion for the following reasons:

The Petitioner was indicted as a habitual offender pursuant to §99-19-83, *MCA*, on March 31, 2004, on the charge of Burglary of a Dwelling House. Thereafter, on October 11, 2004, the Petitioner filed a Petition to Enter Plea of Guilty to the charge of Burglary of a Dwelling House, not as a habitual offender, and in the blind or as an open plea. A blind or open plea means that the Petitioner did not have a plea bargain agreement with the State as to sentencing other than he would not be sentenced as a habitual offender. On October 11, 2004, the Court conducted a guilty plea hearing, wherein the Petitioner pled guilty to the offense of Burglary of a Dwelling House not as a habitual offender. The Court set the sentencing hearing for November 15, 2004. On that date, the Court conducted a sentencing hearing wherein the Court sentenced the Petitioner to serve a term of twenty five years in the custody of the Mississippi Department of Corrections, a \$10,000 fine, and Court costs of \$269.00.

The Petitioner has now filed a Motion for Post Conviction Collateral Relief, seeking to attack his conviction and sentence by the Court to serve twenty five years in the custody of the Mississippi Department of Corrections. He asserts that he did enter a guilty plea to the offense of Burglary of a Dwelling and that he was sentenced by the Court to serve the maximum term for that offense in the Mississippi Department of Corrections. He alleges that at no time was he indicted on the offense of Burglary of a Dwelling, nor does he have any knowledge of any waiver to said indictment.

The Petitioner asserts that he was represented by Honorable Earl P. Jordan, who did not afford him the proper representation guaranteed by the U.S. Constitution under the Sixth Amendment. He alleges that counsel was ineffective during the pre-trial proceedings for his failure to recognize that this Petitioner was not indicted for the offense, per warrant as exhibit B, on a charge of Burglary of a Dwelling, and that he did not make a proper objection. He alleges that counsel was further ineffective by not informing Petitioner of what rights he would be giving up upon a plea of guilty, other than tricking the Petitioner into signing a plea agreement on a charge that carries a maximum penalty of twenty five years in which the Petitioner did receive.

The Petitioner also asserts that he was denied his Constitutional rights under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article 3, §26, of the Mississippi Constitution to due process of law, when the trial Court committed plain error by accepting Petitioner's guilty plea in the blind when the trial Court failed to adequately determine if the Petitioner's plea was knowingly, voluntarily and intelligently entered in accordance with Rule 3.03 of the Mississippi Uniform Rules of Circuit Court Practice and the mandates of *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). He asserts that this claim is one which must be heard in the

victim's residence and stole all of these items. The Court also found that the Petitioner had received the advice of competent legal counsel and that there was a sufficient factual basis in the record to justify acceptance of his plea. Transcript p. 30.

The Court is of the opinion that the Petitioner did receive the advice of competent counsel, that his counsel did inform him of the rights he would be waiving by entering a plea of guilty, that no one coerced him into pleading guilty and that there was a factual basis for the Court to enter the Petitioner's plea of guilty. Therefore, the Court finds that the assertion that the Petitioner received ineffective assistance of counsel is without merit.

INVOLUNTARY PLEA OF GUILTY

The Petitioner also asserts that the Court committed error in accepting his involuntary plea of guilty. "Several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial." *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 1712 (1969). "First, is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth." *Id.*, citing *Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653. "Second, is the right to trial by jury." *Id.*, citing *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491. "Third, is the right to confront one's accusers." *Id.*, citing *Pointer v. Texas*, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923. The *Boykin* Court stated that the court could not "presume a waiver of these three important federal rights from a silent record." *Id.*

"A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment." *Boykin*, 395 U.S. at 242. "Ignorance, incomprehension, coercion, terror or other inducements, both subtle

and blatant, threaten the constitutionality of a guilty plea.” *Hannah v. State*, 943 So. 2d 20, 25 (Miss. 2006), citing *Boykin*, 395 U.S. at 242-43. The Mississippi Supreme Court has dictated that a series of warnings must be provided to the Defendant to ensure that the guilty plea is voluntary. “A defendant must be advised concerning the nature of the charge against her and the consequences of her plea including the minimum and maximum sentences that may be imposed.” *Id.*, citing *Alexander v. State*, 605 So.2d 1170, 1172 (Miss. 1992). And the defendant must be told that his or her guilty plea “waives several constitutional rights including [his or] her right to trial by jury, the right to confront adverse witnesses and the right to protection against self-incrimination.” *Id.*, citing *Boykin*, 395 U.S. at 243-44.

The Mississippi Supreme Court has stated that “[i]t is not enough to ask an accused whether counsel has explained his constitutional rights. Nor is a standardized petition to enter a plea sufficient standing alone.” *Nelson v. State*, 626 So.2d 121, 126 (1993), citing *Wilson v. State*, 577 So.2d at 397-398. The Supreme Court stated that the trial court “must go further and determine in a face-to-face exchange in open court that the accused knows and understands the rights to which he is entitled.” *Id.* “A plea is considered ‘voluntary and intelligent’ if the defendant is advised about the nature of the charge and the consequences of the entry of the plea.” *Alexander v. State*, 605 So.2d 1170, 1172 (Miss.1992). The defendant must be instructed in this face-to-face colloquy that a guilty plea waives the Constitutional rights to a jury trial, to confront adverse witnesses, and to protection against self-incrimination. *Id.*

This court explained to the Petitioner that he was waiving these Constitutional rights upon entry of his guilty plea. Transcript p. 7-9. The Court plainly told the Petitioner that he was waiving his Constitutional rights. The Petitioner stated that he understood. The Court explained to the

interest of justice and pursuant to the inherent powers of the Court. *Section 99-29-21, MCA*, and *Read v. State*, 430 So.2d 832 (Miss. 1983).

He alleges that guilty plea was not made voluntarily due to the fact that he was ignorant of all rights to be afforded to him upon a plea of not guilty and at no time did his attorney notify him of the factual basis of entering a guilty plea in the blind, which is self evident on the merits that the Petitioner did plea guilty to the maximum penalty of twenty five years for the crime of burglary of a dwelling. He argues that his attorney was ineffective by coercing him to plea guilty without informing him of all of the rights he would be waiving and the consequences of his plea. Further, he argues that the failure to object to an indictment to be had upon the charge of burglary of a dwelling is obviously plain error that requires vacation of his sentence. He argues that he should be brought before the Court to adequately determine the validity of his guilty plea in the blind. He argues that had it not been for his counsel's oversights, he would not have pled guilty and the definite plain error of not being indicted would have been addressed by this court. He argues that his counsel's conduct did not fall within the wide range of reasonable professional assistance. He argues that another well known attorney in Northeast Mississippi by the name of Richard Burdine provided ineffective assistance of counsel in *Triplett v. State*, 666 So.2d 1356 (Miss. 1995). He argues that an attorney should represent a client zealously within the bounds of the law. He argues that the basic duty of a lawyer for a Defendant is to serve as the accused's counsel and advocate with courage, devotion and to the utmost of his learning ability and according to the law. He argues that his counsel did not provide him with the level of legal representation to which he was entitled under the Sixth Amendment of the U.S. Constitution.

Petitioner the consequences of his guilty plea and the factual basis for the plea was stated into the record by the Petitioner, his attorney and the Assistance District Attorney. This Court does not know what other questions could have been posed to the Petitioner to ensure that the guilty plea was voluntary and intelligent. The Court finds that this assignment of error is without merit.

The Petitioner also asserts that he is entitled to an evidentiary hearing to prove his claims. When asserting a claim of ineffective assistance of counsel in a post conviction collateral relief motion, a prima facie claim must be stated by the Petitioner in order to obtain an evidentiary hearing on the merits of the claim. *Brooks v. State*, 573 So.2d at 1353, citing *Read v. State*, 430 So.2d 832, 841 (Miss.1983). A petition for post conviction relief which meets the basic pleading requirements is sufficient to require an evidentiary hearing unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Id.*, citing *Harveston v. State*, 597 So.2d 641, 643 (Miss.1992). "A post-conviction claim of ineffective assistance of counsel is properly dismissed without the benefit of an evidentiary hearing where it is manifestly without merit." *Sanders v. State*, 440 So.2d 278, 284 (Miss.1983). "Such is the case where the defendant fails to allege with 'specificity and detail' that his counsel's performance was deficient and prejudicial to his defense." *Brooks*, 573 So.2d at 1354; *Perkins v. State*, 487 So.2d 791, 793 (Miss.1986).

Section 99-39-11, MCA, reads, in part, as follows:

- (1) The original motion, together with all the files, records, transcripts and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned.
- (2) If it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief, the judge may make an order for its dismissal and cause the prisoner to be notified

INEFFECTIVE ASSISTANCE OF COUNSEL

"Counsel is presumed to be competent." *Brooks v. State*, 573 So.2d 1350, 1353 (Miss. 1990), quoting *Johnson v. State*, 476 So.2d 1195, 1204 (Miss. 1985). Thus, counsel meets the constitutional standards if said counsel is reasonably effective in the defense of an accused. *Id.* This is so regardless of that client's evaluation of his representation. *Id.* "An indigent criminal defendant is not entitled to expert counsel, or to counsel of his own choosing, but only to reasonably effective assistance of counsel." *Id.*, *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Morris v. Slappy*, 461 U.S. 1, 103 S.Ct. 1610, 75 L.Ed.2d 610 (1983).

In order to establish an ineffective assistance of counsel claim, the Petitioner must show "that his counsel's performance was deficient and second, that the deficient performance prejudiced the defense so as to deprive him of a fair trial." *Brooks*, 573 So.2d at 1353, quoting *Perkins v. State*, 487 So.2d 791, 793 (Miss. 1986), see also, *Walker v. State*, 703 So.2d 266, 268 (Miss. 1997). "The burden is upon the defendant to make 'a showing of both.'" *Id.*, citing *Wilcher v. State*, 479 So.2d 710, 713 (Miss. 1985). The Defendant must allege with specificity and detail that the performance of his counsel was deficient and that the deficiency prejudiced his defense. *Id.* Phrased differently, the Petitioner must show that but for the deficient performance of his counsel, he would not have entered a plea of guilty.

In this case, during the guilty plea hearing, the Court conducted the following colloquy with the Petitioner:

Q. Okay. Let met talk to all three of you at the same time just for a moment. First is and very importantly, you don't have to plead guilty to anything. If you want to, you have the right to have trial. When you decide to plead guilty, you waive or give up your right to a speedy

Thus, this Court may dismiss a Motion for Post Conviction Collateral Relief if it determines upon examination of the record that the Petitioner is not entitled to any relief. See also *Houston v. State*, 461 So.2d 720, 723 (Miss. 1984) ("The circuit court may dismiss a petition for writ of habeas corpus summarily, without an evidentiary hearing, if an examination of the petitioner's papers reveals that the claims are manifestly without merit."); *Garlotte v. State*, 530 So.2d 693, 694 (Miss. 1988) ("This case presents an excellent example of the appropriate use of the summary disposition provision of §99-39-11(2), *Miss. Code Ann.*"); *Tiller v. State*, 440 So.2d 1001 (Miss. 1983) (A petitioner seeking to withdraw a plea of guilty is entitled to an evidentiary hearing unless the application submitted by him is so lacking in merit as to justify summary dismissal under Rule 8.07.)

In *Brooks*, a prisoner claimed that his attorney was ineffective in failing to object to allegedly defective indictments and in advising him to plead guilty. In rejecting the prisoner's claims, the Supreme Court held:

Brooks failed to allege with the "specificity and detail" required that his counsel's performance was deficient and that the deficient performance prejudiced the defense. *Perkins v. State*, supra, 487 So.2d at 793. Put another way, the petitioner's showing was not in proper form. The facts he alleged in his proposed motion and the brief submitted in support thereof were not supported by any affidavits other than his own. See *Smith v. State*, 490 So.2d 860 (Miss. 1986) (Defendant seeking post-conviction relief based on contention he was deprived of right to effective assistance of counsel, failed to meet the pleading requirements of §99-39-9(1)(e), *Miss. Code 1972 Ann.* Brooks' complaint concerning his lawyer is without merit for this reason if for no other.

In this case, the following colloquy took place between the Court and the Petitioner during the guilty plea hearing:

Q. Okay. This petition says this is called an open or blind plea except at your sentencing hearing, the State's not requesting that you be sentenced as a habitual offender. In other words, you're looking at anywhere from three up to a 25 year possible prison sentence and

public trial by a jury. If you did have a trial, at the beginning of your trial, by law, you would be presumed innocent. The burden would be on the District Attorney's Office to prove you guilty before a jury beyond a reasonable doubt. You would have a right during trial to confront and question any accusing witness. You could subpoena witnesses up here to Court. If you wanted to, you could testify, take the witness stand, tell the jury your version of the story. However, in a trial, you have the right to remain silent. You don't have to testify if you did not want to. You'd also have a right to have your attorney with you to represent you throughout your trial; and if you were to get convicted by a jury and sentenced, your lawyer could appeal your case to the State Supreme Court. When you plead guilty, by necessity, you give up those protections. You waive all those rights. There would not be a trial by a jury. There would not be an appeal to the Supreme Court. It's my intention at least as far as Mr. Childs and Mr. Hayden are concerned is to sentence you in accordance with your plea bargain agreements.

And, Mr. Lockhart, in your case, there would be a sentencing date set for November the 15th at 1:30. We'd have a sentencing hearing at that time, and it would be my responsibility to decide on an appropriate sentence, but it would not be as a habitual offender. Do y'all all three understand that?

A. (By Defendant Childs): Yes, sir.

A. (By Defendant Hayden): Yes, sir.

A. (By Defendant Lockhart): Yes, sir. (Transcript p.7-9.)

The following colloquy also took place during the guilty plea hearing:

Q. Finally, Mr. Lockhart, let me ask you some similar questions. I know you've been through this process before of pleading guilty; right?

A. (By Defendant Lockhart) Yes, sir.

Q. You're familiar with it?

A. Yes, sir.

Q. You're 43 years of age now; is that right?

A. Yes, sir. (Transcript p.19)

The Court is of the opinion that the Petitioner's claim that his counsel was ineffective for failing to recognize that he was not indicted is totally without merit. The Petitioner seems to believe that he pled guilty merely on the basis of the Warrant issued by Honorable Lester Williamson¹, Municipal Court Judge, which is attached hereto and made a part hereof by reference. The Warrant was issued on October 1, 2003, for the arrest of the Petitioner for the offense of Burglary of a Dwelling House, in violation of §97-17-23, *MCA*. Thereafter, on March 31, 2004, the Grand Jury of Lauderdale County indicted the Petitioner for the offense of Burglary of a Dwelling House as a habitual offender pursuant to §99-19-83, *MCA*. A copy of the indictment is attached hereto and made a part hereof by reference. The indictment issued by the Grand Jury is the indictment to which the Petitioner pled guilty. Therefore, the Court finds that the Petitioner was indicted by the Grand Jury and that the assertion by the Petitioner that he received ineffective assistance of counsel because he was not indicted for the offense of Burglary of a Dwelling is totally without merit.

¹Honorable Lester F. Williamson was the Municipal Court Judge who signed the Warrant for the arrest of the Petitioner. Judge Williamson is now the Circuit Court Judge for the Tenth Circuit Court District, which includes Lauderdale County, Mississippi.

up to a \$10,000 fine at a sentencing, but it would be my responsibility at that time to hear evidence and make a decision about what sentence to give you, and that date is November 15th. Is that your understanding of your circumstances?

A. Yes, sir. (Transcript p.21).

Q. Frederick, has anybody tried to force you into pleading guilty or make you do this in any way?

A. (By Defendant Lockhart) No, sir.

Q. Is this what you want to do under all the circumstances?

A. Yes, sir.

Q. Has anybody promised you anything to get you to plead guilty other than this what I call a quasi plea bargain where the State's agreed to drop the habitual part of the charge and you would be looking at anywhere from three to 25? Has anybody promised you anything other than that to get you to plead guilty?

A. No, sir.

Q. Have you had a chance to go over your case with your attorney, Pat Jordan?

A. Yes, sir.

Q. Are you satisfied with the help and assistance he's given you?

A. Yes, sir.

By the Court: Pat, are you satisfied your client's making this decision freely and voluntarily?

By Mr. Jordan: Yes, sir. He's been very --

The Petitioner claims that he was provided ineffective assistance of counsel by his counsel not informing him of the rights he would be giving up upon an entry of a plea of guilty. He asserts that his counsel tricked him into signing a plea agreement to the charge of Burglary of a Dwelling, that carried a maximum penalty of twenty five years. The Petitioner also alleges that he received ineffective assistance of counsel by his counsel failing to notify him of the factual basis of entering a plea of guilty in the blind. He alleges that his counsel coerced him into pleading guilty without informing him of all of the rights he would be waiving and the consequences of his plea.

The Court is of the opinion that the assertion by the Petitioner that he received ineffective assistance of counsel is totally without merit. Prior to entering his guilty plea, the Petitioner signed a Petition to Enter Plea of Guilty, which was filed with the Court on October 11, 2004. The Constitutional rights that are associated with trial are set out in paragraph five of the Petition to Enter Plea of Guilty. The Petitioner initialed a space next to paragraph five which indicates that he either read paragraph five or that his attorney read it to him. The Petition to Enter Plea of Guilty states in paragraph five that the Petitioner "knowing and understanding the Constitutional guarantees set forth in this paragraph, I hereby waive them and renew my desire to enter a plea of guilty."

Furthermore, the Court took great pains to explain these Constitutional rights to the Petitioner during the guilty plea hearing. The Court explained that he was waiving all of his Constitutional rights associated with trial by entering a guilty plea. Transcript p. 7-9. The Court explained that the Petitioner was waiving the right to remain silent, the right to a public trial before a jury, the right to confront and question witnesses and the right to have an attorney present during the trial to represent him. Transcript p. 8. The Petitioner stated that he understood. Therefore, the Court find that the Petitioner's allegation that he received ineffective assistance of counsel for failing

to inform him of his rights is without merit and that the Petitioner's own sworn testimony belies his assertions.

The Court is also of the opinion that the Petitioner's allegation that he received ineffective assistance of counsel by his counsel coercing him into pleading guilty and that his counsel did not inform him of the factual basis for his plea of guilty. Again, the Transcript of the Guilty Plea hearing belies the Petitioner's assertions. As shown in the colloquy below, the Court inquired of the Petitioner whether he was satisfied with the legal assistance provided by his attorney. Transcript p. 23. The Petitioner stated that he was. The Court also asked the Petitioner if anyone had promised him anything or coerced him into entering a plea of guilty. Transcript p. 23. The Petitioner stated that no one had promised him anything or coerced him into pleading guilty.

The Court also went to great pains to ascertain the factual basis for the entry of the Petitioner's plea of guilty. The Court questioned the Petitioner at length regarding his acts and intent on the night of the burglary. Transcript p. 24-27. The Petitioner stated that all he did was climb in through an open window and pass out from being intoxicated. He did admit that he stole some money that was laying on some clothes on a dresser. Transcript p. 27. He also admitted that he did have to raise the window to enter the house. Transcript p. 27.

The Court then questioned his attorney and the Assistant District Attorney. Transcript p. 27-29. The Court learned that the victim arrived at his house and discovered a lawn mower under a rear window of the house and a bicycle. The victim called the police. When they arrived, they found the Petitioner passed out in the house. The Assistant District Attorney stated into the record that numerous items of personal property were missing from the victim's residence. She attested that the prosecution would seek to prove that the Petitioner was the perpetrator who burglarized the

By the Court: The plea - -

By Mr. Jordan: He's been very cooperative.

By the Court: The plea arrangement that I just went over, is that your understanding?

By Mr. Jordan: Yes, sir.

Q. Frederick, this petition says you've been in jail, locked up for over a year, total of 375 days on this charge. Is that true?

A. (By Defendant Lockhart) Yes, sir.

Q. Mr. Lockhart, Paragraph 16 says, and I'm going to read it here. It says, On or about the 30th day of September, 2003; that you, Frederick Dean Lockhart, did then and there unlawfully and burglariously and feloniously break into and enter a dwelling house of a Wayne Whitehead wherein valuable things were kept for use here in Lauderdale County, Mississippi. Is that true?

A. Yes, sir.

Q. Where was Mr. Whitehead's house, whereabouts?

A. I'm not familiar with the address, the location.

Q. What area?

A. I was under the influence at the time it happened and - -

Q. Influence of oxygen or water or what?

A. Alcohol, alcohol.

Q. You were intoxicated from alcohol?

A. Yes, sir.

Q. Was it inside the city limits of Meridian? Was it out in Whynot or Vimville or where?

- A. No. It was here in Meridian over by - - behind the employment office.
- Q. Okay. Not too far from the Courthouse here?
- A. Yes, sir.
- Q. How did you get into the house?
- A. Through a window.
- Q. Did you open it and go in or bust it out or what?
- A. Well, apparently it was already open. Someone had been there before me, and I crawled in and laid down and went to sleep there, and that's where the police found me, right there.
- Q. Did you have to open the window any to get in?
- A. No, sir, it was already open.
- Q. So you did not break anything?
- A. No, sir, I just entered.
- Q. You just crawled into an already open window?
- A. Someone apparently had already been there already before me.
- Q. Sir?
- A. Someone must have been there before me.
- Q. So somebody came in there ahead of you?
- A. Yes, sir, had to.
- Q. What crime did you intend to commit once you got inside?
- A. Well, I was looking for a place to lay down and rest because I was drunk. I was riding a bicycle, and I needed a place to lay down and rest, try to sober up and - -
- Q. Okay.

- A. And that's when I went behind the house looking for a place to lay down and went inside.
- Q. Do you understand that burglary of a dwelling requires - -
- A. Yes, sir.
- Q. Listen to me a minute - - requires the State to prove two elements; number one, that you broke into, forcibly entered a dwelling house. That means you either kicked the door in or you opened the door by turning the knob or you lifted up the window or you busted out the window or you did something by force to get inside. And number two, that once you got in there, you intended to commit some crime once inside. It might be stealing property. It might be vandalizing the place. It might be assaulting an occupant or fighting with an occupant once you get in. But those are the two elements of burglary. Do you understand that?
- A. Yes, sir.
- Q. From what I hear you saying, you didn't do either one.
- A. Well, I lifted the window up, yeah.
- Q. You lifted the window?
- A. Yes, sir. It had bars on it.
- Q. Okay.
- A. And the bars were tookin (sic) off of it.
- Q. Okay. But you had to actually lift the window up to open it to get in?
- A. Yes, sir.
- Q. Did you intend on committing any crime once you got inside?

- A. At the time, no, sir. I was under the influence. I was heavily intoxicated. I just wanted to rest, lay down. I didn't take anything out of it other than some money that was laying around.
- Q. You didn't take anything other than some money that was laying around?
- A. Yeah, that was it.
- Q. Where did you find the money?
- A. It was laid up on the dresser.
- Q. So you took - -
- A. On a pile of clothes, so....
- Q. Excuse me?
- A. It was on a pile of clothes.
- Q. You found some money inside the house laying on a pile of clothes, and you took the money?

By the Court: Pat, is that consistent with your understanding of the facts of this situation?

By Mr. Jordan: Yes, sir. It appears that the owner of the house came home and he noticed that - - he'd been home earlier and he noticed his lawn mower positioned, and he went around to the back of the house, and he found a bicycle which my client was riding. As he said, he was totally intoxicated. And it does appear from what we understand that the restitution is allegedly over \$3,000, and supposedly the victim didn't - - wanted the very minimum sentence. He just wanted some antiques. What we're supposing, your Honor, is maybe the house had already been burglarized earlier because the burglar bars were beside the house. When the victim came home, he asked a neighbor to call the police. The police

came. They brought the K-9 dog. Mr. Lockhart was inside. He had \$13 and some change. He had some sardines, and he also had a letter from some music company in Hattiesburg on his person. He was passed out.

By the Court: How does the State intend to prove that he intended to commit a larceny?

By Ms. Young: Well, your Honor, if he just - - he just admitted, first of all, that when he got there, he stole money. But, your Honor, it is our contention - - this man had a lot of things missing out of his home. He had clothes missing. He had a whole lot of things missing; furniture, electronics from my understanding, small electronics. And it is the State's contention that he went in and burglarized it one time and then he came back. And the second time he was there was when he passed out.

By the Court: Okay.

By Ms. Young: He has by his own admission, Judge, admitted that he went in and stole some money, so he - - if he didn't have the intent when he went in to do anything else but trespass, he had an intent to commit a crime once he got therein, you Honor. Restitution is going to be an issue in this particular case, though.

By the Court: Okay.

Q. Frederick, do you have any questions of me or anything you don't understand?

A. No, sir. I just want to state that I didn't come and leave and come back again. That's where I was. That's where the police found me. I was laid there asleep. I was drunk.

Q. Okay. I understand that, but you understand the District Attorney claims the victim - -

A. Yes, sir.

Q. - - believes that you - - you or somebody else came in the house earlier and stole a whole bunch of his stuff and that you were found in the house passed out drunk with some of his money in your pockets, so - - do you understand that?

A. Yes, sir. (Transcript p. 23-30).

The Court then found on the record beyond a reasonable doubt that the Petitioner had offered a free, voluntary and intelligent plea of guilty. Transcript p.30. The Court also found that the Petitioner had the advice of competent legal counsel and that there was a sufficient factual basis in the record to justify acceptance of his guilty plea. Transcript p.30. The Court then set the sentencing hearing for November 15, 2004, at 1:30 p.m. Transcript p.30.

The Court is of the opinion that the claim that the Court erred in accepting the Petitioner's plea of guilty is without merit. The Petitioner was fully advised about the nature of the charge and the consequences of his entry of the guilty plea to the charge of Burglary of a Dwelling. In his plea petition, the Petitioner affirmed that his lawyer fully advised him of the nature of the charge and the possible defenses he might have. The Petitioner acknowledged that he understood that by pleading guilty he was waiving his right to a jury trial, to cross-examine witnesses, and to protection against self-incrimination. During the plea hearing, this Court questioned the Petitioner regarding his age, his ability to read and write, and whether it was his signature on his plea petition. The Petitioner stated that his lawyer reviewed the petition with him and that he was satisfied with his lawyer's performance. The Petitioner stated that he understood the maximum penalty the court could impose on him was twenty five years. He stated that he did not know of any reason why the judge should not accept his pleas. He acknowledged that he was pleading guilty for the sole reason that he was in fact guilty of committing the crimes. The court accepted the Petitioner's plea, finding

that he understood the circumstances and the consequences of offering his pleas, and offered the pleas freely and voluntarily after having been advised by competent counsel. Based on the Court's review of the file, pleadings and transcripts, the Court finds that the Petitioner entered his guilty plea knowingly, voluntarily, and intelligently.

Finally, the Court is of the opinion that this case should be dismissed as frivolous. "In determining whether a case brought in forma pauperis should be dismissed as frivolous, the courts have a three-part test: (1) does the complaint have a realistic chance of success; (2) does it present an arguably sound basis in fact and law; and (3) can the complainant prove any set of facts that would warrant relief." *Dock v. State*, 802 So. 2d 1051, 1056 (Miss. 2001). The Supreme Court has stated that "Sections 47-5-138(3)(a) and (b), are fully applicable against pro se litigants who seek post-conviction relief." *Id.*, citing *Retherford v. State*, 749 So.2d 269, 275 (Miss. Ct. App.1999) (affirming sanctions against pro se petition for post-conviction relief). The Court finds that the Petitioner's Motion has no realistic chance of success, has no arguable basis in fact or law, and does not warrant relief. Therefore, the Court finds that the Petitioner's Motion is totally without merit and is hereby dismissed as frivolous.

IT IS THEREFORE ORDERED AND ADJUDGED that the Motion for Post Conviction Collateral Relief be and hereby is dismissed. The Mississippi Department of Corrections is ordered that sixty (60) days of accrued earned time shall be forfeited by Fredrick D. Lockhart within the parameters of §47-5-138, MCA. The Law Clerk is directed to mail a copy of this Order to the Petitioner Fredrick D. Lockhart, to the Director of Records at Parchman Penitentiary, and to Honorable Bilbo Mitchell, District Attorney.

SO ORDERED AND ADJUDGED, this the 6 day of March, 2007.


CIRCUIT JUDGE

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Betty W. Sephton
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082
e-mail: sctclerk@mssc.state.ms.us

April 3, 2007

Frederick D. Lockhart

v.

State of Mississippi

Case # 2007-TS-00523
Lauderdale County Circuit Court 1st District # 06-CV-077

NOTICE

The notice of appeal has been filed in the above styled case, and we have not received a copy of the certificate of compliance in accordance with M.R.A.P. 11(b)(1) which states:

Within seven (7) days after filing the notice of appeal, the appellant shall estimate the cost of preparation of the record on appeal, including, but not limited to, the cost of the preparation of the transcript, and shall deposit that sum with the clerk of the court whose judgment or order has been appealed. The appellant shall simultaneously file with the clerk of the trial court a certificate setting forth the fact of the compliance with this subparagraph and shall serve a copy of the certificate upon all other parties, upon the court reporter, and upon the Supreme Court Clerk.

Please provide us with our copy. If either the clerk or court reporter(s) do not provide estimates, M.R.A.P. 11(b)(1) provides for alternative methods. Thank you.


CLERK

IN THE CIRCUIT COURT OF LAUDERDALE COUNTY
MISSISSIPPI.

Fredrick Lockhart
V.
State of Mississippi

Movant
#06-CV-077(W)
Respondent

Motion for Leave to Appeal IN Forma Pauperis

Comes now, Fredrick Lockhart, Movant, pro se, and moves this court for leave to appeal in forma pauperis, and as grounds would show the following facts to wit:

FACTS THAT ARE WITHIN THE MOVANT'S
PERSONAL KNOWLEDGE

The movant is indigent, and is attaching an affidavit that affirms this fact.

The movant was afforded in forma pauperis status by the Lauderdale Circuit court at the time the movant made his first appearance, in this court.

The movant was and is still indigent as is contemplated by law.

FACTS THAT ARE NOT WITHIN THE MOVANT'S
PERSONAL KNOWLEDGE

The movant would show that there exists material evidence that supports the claims asserted in the post conviction that was denied by this court.

RELIEF SOUGHT

The Movant would show that he seeks leave to appeal, in forma pauperis, as per rule 6 of the Miss. rules of App. procedure.

This and any other relief this court deems just and equitable in this matter.

State of Mississippi } Affidavit of Frederick Lockhart
George County }

I, Frederick Lockhart, affiant herein, do hereby affirm that I am unable to pay the costs of appeal in this cause, and that I am indigent and have no real estate, bank accounts, stocks or bonds or other negotiable instruments, and should be allowed to proceed, in forma pauperis.

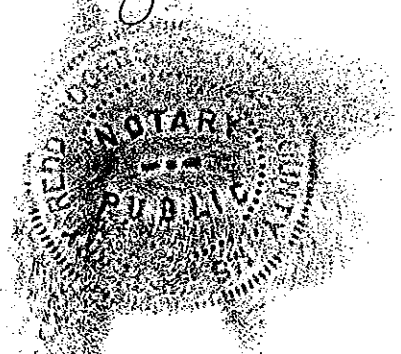
Witness my hand this 18 day of April 2007.

Frederick Lockhart
Frederick Lockhart, Affiant

Subscribed and sworn to before me this 18 day of April 2007.

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 11, 2008
BONDED THRU STEGALL NOTARY SERVICE

Jerry Redd Rogers
Notary Public



CERTIFICATE OF SERVICE

This is to certify that I, Fredrick Lockhart, Marant, prose,
have this day caused to be delivered, 1st class postage
pre paid, the original and true copies of the attached instruments
via U.S. postage, to the below listed persons, to wit:

Clerk, Lauderdale Circuit Ct.
P.O. Box 1005, Meridian Ms. 39302-1005

D.A. P.O. Box 845
Meridian Ms. 39302

So certified this 18 day of April 2007.

Fredrick Lockhart
Fredrick Lockhart
#57343 GCRCF
154 Industrial Park Rd.
Lucedale Ms. 39452

IN THE CIRCUIT COURT OF LAUDERDALE COUNTY
THE STATE OF MISSISSIPPI

FREDRICK D. LOCKHART

PETITIONER

VS.

CAUSE NUMBER 06-CV-007(W)

STATE OF MISSISSIPPI

RESPONDENT

ORDER GRANTING PETITIONER LEAVE TO PROCEED *IN FORMA PAUPERIS*

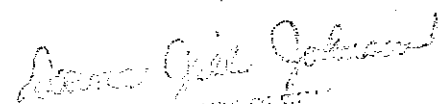
CAME ON for hearing this date for the Court to consider whether to allow the Petitioner to proceed *in forma pauperis* on his appeal of the denial by this Court of his Motion to Vacate and Set Aside Sentence to the Supreme Court. The Petitioner has attached an affidavit of poverty to said Motion. The Court having considered the status of the Petitioner, finds that the Petitioner is a pauper and may proceed with his appeal *in forma pauperis*. Therefore, the Court hereby orders that the Petitioner is granted leave to proceed with the appeal of this matter *in forma pauperis*.

SO ORDERED, this the 9 day of May, 2007.


CIRCUIT JUDGE

FILED

MAY - 9 2007


CLERK OF COURT

In The Circuit Court Of Lauderdale County,
For The State Of Mississippi

Frederick D. Lockhart

Petitioner

Versus

Cause Number: 085-04

State Of Mississippi

Respondent

Motion For Production Of Documents

Comes Now, the Petitioner, Frederick D. Lockhart, Pro' Se, and moves this Honorable Court for production of documents pursuant to the Freedom Of Information Act (FOIA) under Miss. Code Ann §25-61-1, cited as the "Mississippi Public Records Act 1983."

The Petitioner requests this Court to produce any and all document and/or records pertaining to the above casue number, styled, Frederick D. Lockhart vs. State Of Mississippi, Cause Number 085-04, in the Circuit Court Of Lauderdale County, Mississippi, the requested documents and/or records are as following:

1. A certified copy of the State's Motion Of Discovery in cause number 085-04.

2. A certified copy of the Certificate Of Initial Appearance Form, Affidavit Of Financial Eligibility Form (and) Order Adjudging Defendant To Be Financially Eligable And Appointing Of Attorney Form in cause number 085-04, and Affidavit To Accompany Motion For Appointment Of Attorney.

3. A certified copy of the Order Binding Over To Grand Jury for the offense of Burglary Of A Dwelling (MCA 97-17-23) in cause number ⁰⁸⁵⁻⁰⁴~~084-04~~.

4. A certified copy of the Grand Jury's Indictment in cause number 085-04 charging Burglary Of A Dwelling pursuant to MCA 97-17-23.

5. A certified copy of Plea Acceptance Hearing Transcript and a copy of the Pre-sentencing Report in cause number 085-04.

6. A certified copy of the Sentencing Order in cause number 085-04.

A certified copy of any and all Documents and/or Records pertaining to cause number 085-04.

Wherefore, Premises Considered, the Petitioner prays that this Honorable Court will grant his Motion For Production Of Documents pursuant to (FOIA) Miss. Code Ann. §25-61-1, and any other relief this Court deems to be just and proper.

Respectfully Submitted,

Frederick Lockhart

Frederick D. Lockhart

#57343 Unit 29-D-Building

Parchman , Miss. 38738

Certificate Of Service

This is to certify that I, Frederick D. Lockhart, have this day caused to be mailed, postage prepaid, a true and correct copy of my Motion For Production Of Documents, via United States Mails to the following listed person(s):

Donna Jill Johnson, Clerk
Lauderdale County Circuit Court
500 Constitution Ave.
Meridian, Miss. 39301

Herein witness my signiture this the 17 day of MAY,
2005, A.D..

Frederick Lockhart

Frederick D. Lockhart

#57343 Unit 29-D-Building

Parchman , Miss. 38738

FILED
IN THE CIRCUIT COURT OF LAUDERDALE COUNTY
THE STATE OF MISSISSIPPI
2005 MAY 26 AM 9:08

STATE OF MISSISSIPPI

VS.

Donna Gill Johnson
CIRCUIT CLERK

NO. 058-04

FREDERICK D. LOCKHART

ORDER DENYING MOTION FOR PRODUCTION OF RECORDS

This cause came before the Court on a Motion filed *pro se* by the defendant requesting a free copy of all records on file in the above styled and numbered cause. The Motion contains an affidavit of poverty signed by the defendant. It is obvious from the Motion that the defendant is attempting to obtain his Court records free of charge to search for possible defects which may permit a collateral attack on his conviction.

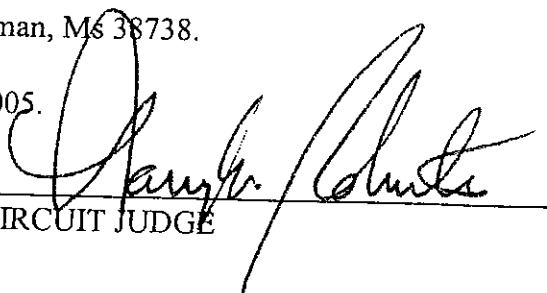
The defendant was convicted on October 11, 2004, of the charge of Burglary of a Dwelling. The conviction was the result of a guilty plea in the blind. The court sentenced the Defendant to serve twenty five years in the custody of the Mississippi Department of Corrections.

This Court does not have jurisdiction over a request for records that is not part of a post-conviction collateral relief proceeding or a direct appeal to the Supreme Court. It is the opinion of the Court that the Motion is without merit and is frivolous, and therefore, should be dismissed. See *Ladd v. State of Mississippi*, 434 F. Supp. 11 (1977), *Cowan v. United States*, 445 F.2d 855 (5th Cir. 1972), and *Griffin v. Illinois*, 351 U.S. 12 (1956), *Fleming v. State*, 553 So.2d 505 (Miss 1989); *Walton v. State*, 752 So.2d 452 (Miss.Ct.App. 1999).

IT IS THEREFORE ORDERED AND ADJUDGED that the Motion be and hereby is dismissed. The Court further finds that this Order is not a final judgment which may be appealed. The Petitioner may not appeal this Order *in forma pauperis* without first obtaining written

permission of this Court. The Law Clerk shall mail a certified copy of this order to the defendant,
Frederick D. Lockhart, #57343, P.O. Box 880, Parchman, Ms 38738.

SO ORDERED, this the 26 day of May, 2005.



CIRCUIT JUDGE

The State of Mississippi

1

Frederick D. Lockhart

Versus

State of Mississippi

Petitioner
Cause No 085-04
Respondents

Circuit Court
Tenth Circuit District of Miss.

DANA D. Wedgworth,
Court Administrator

P.O. Box 1262

Meridian, Miss. 39302

Dear Clerk:

Please find enclosed, the original and three (3) copies of my Motion To Vacate And Set Aside Sentence to be filed in your jurisdiction.

Your acknowledgement of receipt of this Motion would be greatly appreciated.

Frederick Lockhart
Frederick D. Lockhart
#57343 - G.C. R.C. F.
154 Industrial Park Rd.
Lucedale, Miss. 39452

Dated: 4/26/06

Frederick D. Lockhart
Versus
State of Mississippi

Petitioner
Cause No. 085-04
Respondents

Motion To Vacate And Set Aside Sentence

Comes Now, the Petitioner, Frederick D. Lockhart, pro se, and moves this Circuit Court, pursuant to Miss. Code Ann., Section 99-39-1, to vacate and set aside sentence pursuant to the Mississippi Post-Conviction Collateral Relief Act, and in support of this Motion, Petitioner states the following, to-wit:

I.
Jurisdiction

Petitioner Frederick D. Lockhart states that this Circuit Court has the exclusive jurisdiction over this Petitioner and subject matters, because Petitioner came with counsel of record, Hon. Earl P. Jordan, Jr. to offer a plea of guilty in the blind to the charge of Burglary of a Dwelling, M.C.A. 97-17-23, in the Circuit Court of Lauderdale County with Judge Larry Roberts presiding on the fifteenth day of November, 2004, and said Petitioner was sentenced to a term of twenty-five (25) years in the custody of the Mississippi Department of Corrections with credit of 410 days jail time served. See Exhibit "A".

~~IDENTITY OF PROSECUTOR~~
Which Petitioner Lockhart Was Convicted

Petitioner Frederick D. Lockhart, states that on October 01, 2003, he was arrested and charged per WARRANT (Exhibit "B") with the crime of Burglary of Dwelling House in violation of Miss. Code Ann., Section 97-17-23 in front of Municipal Justice Court Judge.

Petitioner was appointed Hon. Earl P. Jordan, Jr. to represent him on said charge and did arrange for this Petitioner to enter a plea of guilty per negotiations (Exhibit "C"), in the blind, in which said Petitioner comply to plea guilty to the maximum penalty for said charge of Burglary of a Dwelling House and on November 15, 2004, Petitioner did receive a sentence of twenty-five (25) years.

No Appeal was taken by Petitioner Frederick Lockhart.

Petitioner has only filed a Motion For Production of Documents on or about May 17, 2005, and no other Motions have been filed in Cause Number 085-04

It is this Petitioner's contention that at no time was he indicted on the offense of Burglary of a Dwelling, nor has this Petitioner have any knowledge of any waiver to said indictment.

... : Petitioner Frederick D. Lockhart was represented by Hon. Earl P. Jordan, Jr. of Lauderdale County Circuit Court. Petitioner asserts that he was not afforded proper representation guaranteed by the U.S. Constitution under the Sixth Amendment. Counsel was ineffective during Pre-trial proceedings for his failure to recognize that this Petitioner was not indicted for the offense per Warrant (Exhibit "B") on a charge of Burglary of a Dwelling, and make the proper objection. Counsel was further denied effective assistance of counsel by not informing Petitioner of what rights he would be giving up upon a plea of guilty, -- other than tricking this Petitioner into signing a Plea Agreement on a charge that carry a maximum penalty of twenty-five (25) years and in which this Petitioner did receive.

Petitioner contends that that he was denied his constitutional rights under the Fifth and Fourteenth Amendments to the U.S. Constitution, and Art. 3, Sec. 26 of the Mississippi Constitution to "due process" of Law, when the trial court

committed plain error by accepting Petitioner's guilty plea in the blind, when said trial court fail to adequately determine if this Petitioner's plea was knowingly, and voluntarily or intelligently entered in accordance with Rule 3.03 of the Mississippi Uniform Criminal Rules of Circuit Court Practice and the mandates of Boykin vs. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. 2d. 274 (1969). This claim is one which must be heard in the interests of justice and pursuant to the inherent powers of this Court. See Miss. Code of 1972, Annotated -- Section 99-39-21 (5) (Supp. 2001); Reed vs. State, 430 So. 2d. 832 (Miss. 1983).

Petitioner contends that his plea of guilty was not made voluntary, due to the facts that he was ignorant of all rights to be afforded him upon a plea of Not Guilty and at no time did his Attorney notify him of the factual basis of entering a plea of guilty in the blind, which is self-evident on the merits that this Petitioner did plea guilty to the maximum penalty of twenty-five (25) years for the crime of Burglary of a Dwelling.

Petitioner submits that his Attorney of Record, Hon. Earl P. Jordan, Jr. was ineffective by coercing him to plea guilty without informing him of all the rights he would be waiving and the consequences of his plea. Further, the failure of objection to an indictment to be had upon the charge of Burglary of a Dwelling is obvious plain error that requires vacation of this Petitioner's sentence and that Petitioner be brought before this Circuit Court to adequately determine the validity of this Petitioner's guilty plea in the blind. Had it not been for Counsel's oversights of these violations, this Petitioner would not have plead guilty and the definite plain error of not being indicted would have been addressed by this Court.

Finally, this Petitioner states that pursuant to Miss. Code Ann., Sec. 99-39-1 (d), he swears that the foregoing specific statement of Facts are true and correct.

THE OFFICE OF THE ATTORNEY GENERAL
effective assistance of counsel, and in support, Petitioner
brings this Court's attention to the following citations on
"effective assistance"; Stringer vs. State, 454 So. 2d. 468,
(1984); Leatherwood vs. State, 473 So. 2d. 964 (1985);
Cabell vs. State, 524 So. 2d. 313 (1988); Johnson vs. State,
476 So. 2d. 1195 (1985); Irving vs. State, 498 So. 2d. 305,
(1986); Perkins vs. State, 487 So. 2d. 791 (1986).

In accordance with the Rubrics of the above-mentioned
citations, the Hon. Earl P. Jordan, Jr., conduct fails
within the wide range of reasonable professional assistance.
In the most recent cases decided on the issue of
ineffective assistance of counsel, see Triplett vs. State,
666 So. 2d. 1356 (1995), where Prather, P.J. Sullivan, Banks,
Pittman, and Dan M. Lee, P.J. decided that another well
known attorney in Northeast Mississippi (Richard Burdine)
was a failure.

THE NOTARY PUBLIC REPRESENTS IN GREAT CERNITY WITHIN

the bounds of the Law Code of Professional Responsibility
Canon 7. The basic duty of the lawyer for the accused
owes to the administration of justice is to serve as the
accuse's counsel and advocate with courage, devotion,
and to the utmost of his learning ability and according
to Law. A.R.A. standards, the Defense Functions standard
4-1(b) the Petitioner's counsel Hon. Earl P. Jordan, Jr.
did not provide him with the level of legal representation
to which he was entitled under the Sixth Amendment of the
U.S. Constitution.

Frederick Lockhart
Frederick D. Lockhart
#57343 - G.C.R.C.F.

Sworn And Subscribed to before me, this 26 day of April, 2006

Jerry Ridd Rogers
Notary Public

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 11, 2008
BONDED THRU STEGALL NOTARY SERVICE

My Commission Expires

