

**COPY**

IN THE SUPREME COURT OF MISSISSIPPI

**FILED**

**AUG 30 2007**

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SUPREME COURT  
COURT OF APPEALS

HENRY JORDAN

PETITIONER

VS.

CAUSE NO: 2007-CP-00757-CoA

STATE OF MISSISSIPPI

RESPONDENTS

APPEAL BRIEF

RESPECTFULLY SUBMITTED,

*Henry Jordan Prose*

HENRY JORDAN

S.M.C.I. AREA 1 UNIT 10

P.O. BOX 1419

LEAKESVILLE, Ms. 39451

## PLEADINGS

Jordan's Pro se representations is a layman at law and ask this Hon. Court to construe the facts of this case under the authority of WATSON V. AULT, F.2d 886 (5th Cir. 1976); HAINES V. KERNER, 404 U.S. 519, 92 S. Ct. 594, 30 L. ed 2d 652 (1972); FURRETTA V. CALIFORNIA, 422 U.S. 806, 819 N. 15 (1975), In that Pro se pleadings are to be construed with a lenient eye and are not to be held to the standards of lawyers.

Jordan futher ask that this brief be construed upon the doctrie of excuseable error, with-out being scrutinized for the technical excellence of an Attorney.

## STATEMENT OF THE CASE

Henry Jordan comes in contact with \_\_\_\_\_ a drug agent that wanted to buy cocaine from Jordan, who told the agent that he did not sell drugs, but knew someone that would, then left and came back with another person that did sell the agent some cocaine.

Henry Jordan was then arrested for selling the drug agent some cocaine.

Henry Jordan entered a guilty plea cause of the inducement of his attorney. Henry Jordan knew that he was innocent of this charge and when his attorney told him to plead guilty, Jordan wanted to withdraw his guilty plea because he knew that he was innocent and his attorney told him that if he did not plead guilty he would be found guilty anyway because he had prior felony's and this statement placed him in fear of receiving a life sentence and cause him to enter a guilty plea, and was found guilty by the court that accepted his plea of guilty.

#### STATEMENT OF THE ISSUES

1. Petitioner's guilty plea conviction and sentence is in violation of the Constitution of the United States and the Constitution and the laws of Mississippi under §99-39-5 (a) of the Miss. Code Ann. (Supp. 2006).
2. The video tape and the eyewitness account will prove that Petitioner is actually innocent of the charge in the indictment.
3. There was no factual basis for the Court to except the guilty plea under Rule 8.04 of the Uniform Rules Of Circuit and County Court Practice.
4. The drug Agent committed perjury that got the Petitioner arrested and cause his guilty plea conviction and sentence, His conviction and sentence is Illegal.
5. The States evidence was insufficient to support any finding of guilt.
6. Petitioner is entitled to and out-of time Post-conviction under §99-39-5 (f).

#### SUMMARY OF THE ARGUMENT

The video tape where Henry Jordan told the drug agent that he did not sell drugs and the eyewitness account of Saw Brown will prove that Henry Jordan is actually innocent of the charge in the indictment. Petitioner Jordan was arrested because the drug agent got made when Petitioner Jordan told Her that he did not sell drugs and even though someone else actually sold her the drugs, the agent lied and had Jordan arrested and said he sold her the drugs.

Petitioner's conviction and guilty plea sentence can not stand because it is based on perjured testimony.

The perjured testimony of the drug Agent was the only evidence that the State had, therefore the Court did not have a sufficient factual basis to except Jordan's guilty plea that was involuntary due to the induced fear by his attorney that he would receive a life sentence if he did not plead guilty because he had prior felony's, this is in violation of Rule 8.04 of the Uniform Rules of Circuit and County Court Practice.

The asserted proof of Petitioner's actual innocence entitles him to and out-of-time hearing and the relief that he seeks in his motion for post-conviction.

Petitioner's guilty plea conviction and sentence violate Due Process of the 14th Amendment to the United States Constitution.

The issues in the Post-conviction and this appeal are not barred from review because of the assertion of his actual innocence.

The denial of this post-conviction motion has resulted in a miscarriage of justice, because it allowed the guilty plea conviction and sentence to stand of one that is actually innocent.

Jordan's attorney was ineffective for allowing him to plead guilty to a charge that his attorney knew he was not guilty of because of the eyewitness who would have testified at a trial that Petitioner was not the person who actually sold the drug to the drug agent, As well as the video tape shows that Petitioner told the drug agent that he did not sell drugs and this made the drug agent mad and she had the Petitioner arrested for the charge anyway.

## ARGUMENT

The video tape where Henry Jordan, Petitioner told the drug agent that he did not sell drugs and the eyewitness account of Saw Brown will prove that Henry Jordan is actually innocent of charge in the indictment.

Petitioner Jordan was arrested because the drug agent got made when Petitioner told her that he did not sell drugs, and even though someone else actually sold her the drugs, the agent lied and had Jordan arrested and said that he sold her the drugs. Petitioner has shown evidence of innocence so strong that a Court cannot have confidence in the outcome of trial, unless the Court is also satisfied that trial was free of nonharmless Constitutional error, (such as the case at bar) Petitioner should be allowed to pass through the gateway and argue the merits of his underlying claims in a successive petition, SCHLUP V. DELO, 513 U.S. 289, 115 S. Ct. 851 (1995), In assessing adequacy of successive or abusive petitions Petitioner's showing of actual innocence, Court's are not bound by rules of admissibility that would govern at trial; instead, emphasis on actual innocence allows reviewing tribunal also to consider probative force of relevant evidence that was either excluded or unavailable at trial. SCHLUP, SUPRA, Since this case was a guilty plea proceeding this Hon. Court should review the probative force of the evidence of actual innocence that Petitioner has shown.

Petitioner's conviction and guilty plea sentence cannot stand because it was based on perjured testimony.

The perjured testimony of the drug agent was the only evidence that the State had. Petitioner knew that he was

innocence and told his attorney that he wanted to withdraw his guilty plea, and his attorney told him that if he went to trial that he would be found guilty because he had prior felony's and this fact pleaced him in fear and caused him to plead guilty knowing that he was innocence. The fact that Saw Brown witnessed the fact that petitioner did not sell any drugs to the drug agent. As well as the video tape proved that Petitioner told the drug agent that he didnot sell drugs. The testimony of the drug agent was perjured, and Petitioner's guilty plea conviction and sentence cannot stand. NAPUE V. ILL. 360 U.S. 264, 269 (1959). And since the perjured testimony of the drug agent was the only evidence that the State had, The Court did not have a sufficient factual basis to except Jordan's guilty plea, in violation of Rule 8.04 of the Uniform Rules of County and Circuit Court practice see McCarthy v. U.S. 394, U. S. 459, 467 (1969); U. S. v. TUNNING, 69 F. 3d 107, 114 (6th Cir. 1988).

The proof that the Petitioner has shown of his actual innocence entitles him to this out-of-time post-conviction under §99-39-5 (f) and SCHLUP V. DELO, 513 U.S. 289, 115 S. Ct. 851 (1995).

Petitioner's guilty plea conviction and sentence violates Due Process clause of the 14th Amendment to the United States Constitution as based on the Attorney's error's of presenting the eyewitness of Saw Brown and the video tape that would have caused



the out-come to be different if Petitioner would have went to trial, has resulted in a structural defect that warrants this Hon. Court to reverse the guilty plea conviction and sentence, BRECHT V. ABRAHAMSON, 507 U.S. 619, 623, 629-30 (1993),

The issues in the Post-conviction and this Appeal are not barred from review based on the assertion and evidence of actual innocence claims under §99-39-5 (a) (f) (h) (2) of the Miss. Code Ann. (Supp. 2006); SCHLUP V. DELO, 513 U.S. 289, 115 S. Ct. at 851 (1995).

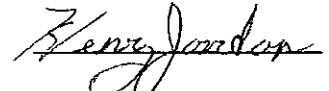
Petitioner asserts that the denial of his post-conviction has resulted in a miscarriage of justice because he has presented strong evidence that he is actual innocence of the charge in the indictment, MURRAY V. CARRIER, 477 U.S. 478, 106 S. Ct. 2639..

Jordan's Attorney was ineffective for allowing him to plead guilty to a charge that his Attorney knew he was not guilty of by failing to present the video tape of the alledged transfer of a controlled substance that would have only shown and heard that Jordan told the drug agent that he did not sell drugs and for failure to call the eyewitness of Saw brown that would have proven that Jordan was innocence as well as proven that the drug agent perjured herself. It was as if he did not have an Attorney. STRICKLAND V. WASHINGTON, 466 U.S. 668; 104 S. Ct. 2052 (1984); UNITED STATES V. CRONIC, 466 U.S. 648, 104 S. Ct. 2039 (1984); and his Attorney's failure to investigate before allowing Jordan to plead guilty was ineffective, BIGNER, III. V. STATE 822 So. 2d 342 (2002); and see WIGGINS V. SMITH, 539 U.S. 510, 123 S.

Ct. 2527, 2535, (2003), Where the Supreme Court reversed for failure to investigate.

Based on the foregoing facts and asserted case law Jordan prays that this Hon. Court will reverse the trial Court's denial of his Post-Conviction with instructions to hold and evidentiary hearing on the merits or reverse and vacate the guilty plea conviction and sentence.

SINCERELY

A handwritten signature in cursive script, appearing to read "Henry Jordan", written in dark ink.

HENRY JORDAN, PRO SE

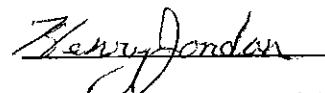
CERTIFICATE OF SERVICE

I, Henry Jordan, hereby certify that I have this day caused to be mailed via United States postal Services Postage prepaid a true and correct copy of my Appeal Brief through the Legal Assistance Program at South Miss. Correctional Ins. to the following person.

Hon. Jim Hood  
Attorney General  
P.O. Box 220  
Jackson, Ms. 29205-0220

THIS THE 30 DAY OF AUG, 2000

SINCERELY,



HENRY JORDAN #38090

PRO SE