

Herman Prather

Petitioner

VS.

State of Mississippi

Respondents

FILED

JAN 14 2008

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Briefing of Appellant
(Petitioner).

Cause NO: 2007-CP-01452-CoA

Tippah county Circuit court NO:

Tol-244

Pursuant to MRAP 31, Appellant's Brief and
Record EXCERPTS are enclosed.

Petitioner is proceeding as Pro-se.

Respectfully Submitted

/s/ Herman Prather

Herman Prather Kol30
Petitioner Pro-se.

RECEIVED

SI Herman & Prather
Herman Prather K0130

Done this the 11th day of January, 2008

Comes now, Herman Prather, Petitioner, Pro-se,
And moves this honorable Court for leave to proceed in
forma pauperis in appeal, due to he is unable to
afford fees and costs of the proceedings before
the Court.

Motion to proceed in forma pauperis.

Herman Prather
Petitioner
VS.

State of Mississippi
Respondent

Motion to proceed
in forma pauperis.

Cause No: _____

Herman Prather

Petitioner

VS.

State of Mississippi

Respondent

Affidavit of
Poverty.

Cause NO: 2007-LP-01452-COA

Personally appeared before me the undersigned Authority in and for the aforesaid Jurisdiction, Herman Prather, MDOC K0130, who, being duly sworn on his Oath does depose and Sayeth;

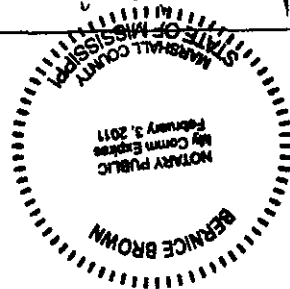
I, Herman Prather, do Solemnly Swear/Affirm that I am incarcerated with the Mississippi Department of Corrections, and because of my poverty I am not able to prepay the docket fees of my appeal or post a bond for them. I believe, to my best of my belief, I am entitled to the redress that I seek by such sort.

I further swear that the responses, which I have made relating to my ability to pay the
I believe, to my best of my belief, I am entitled to the redress that I seek by such sort.

Wherefore, Premises Considered, this honorable Court holds the authority to grant or deny Prather the ability to proceed in this appeal.

SI Herman Prather
Herman Prather Ko130

Sworn to and Subscribed before me, this the
14th day of January, 2008



My Commission Expires

Bernice Brown
Notary Public

Herman Prather
Petitioner

VS.

State of Mississippi
Respondent

Claims upon which
This Appeal is Made.

Cause No: 2007-CF-0145A-CA

Circuit Court NO: TOB-244

Claims upon which This Appeal
is Made.

1. Whether Circuit Court Ruled Correctly in
Ground One "INEffective Assistance of Counsel
When Prather was not Informed of a Mandatory
Sentence.

2. Whether Circuit Court Ruled Correctly in
Ground Two, Prather was not informed of the
Maximum and Minimum Sentence.

3. Whether Prather received INEffective Assistance
Of Counsel in not raising an InSanity defense.

ISI Herman & Prather
Herman Prather

have caused to be mailed, postage prepaid, the original and three copies of this petition to the persons enlisted below.

Herman Prather
Herman Prather K0130
MCCF 833 West St.
Holly Springs, MS 38635
Post Office Box 349
Jackson, MS 39205-0349
Clerk of Supreme Court
Betty W. Septon
Post Office Box 349
Jackson, MS 39205-0349
original and two copies,

Attorney General
Jim Hood
Post Office Box 220
Jackson, MS 39205-0220

Done this the 11th day of January 2008

Herman Prather
Petitioner

VS.

State of Mississippi
Respondents.

MEMORANDUM OF
LAW

Cause NO: 2007-CP-01453-CON

Circuit Court No: Tol-244

Memorandum of Law in Support of Direct
Appeal.

BSI

Herman & Prather

Herman Prather #K0130

M.C.C.F. 833 West St.

Holly Springs, MS

38635,

Drope v. Missouri, 420 U.S. 162 (1975) . . . 10, 11.
 Hansen v. State, 649 So.2d 1256 (Miss. 1994) . . . 2.
 Hall v. State, 800 So.2d 1202 (Miss. App. 2001) . . . 8, 9.
 House v. State, 754 So.2d 1147 (Miss. 1999) . . . 9, 10.
 Hill v. State, 850 So.2d 223 (Miss. Ct. App. 2003) . . . 1.
 Hill v. Lockhart, 474 U.S. 52 (1985) . . . 2.
 Mouldy v. State, 638 So.2d 738 (Miss. 1994) . . . 2.
 McQuarrie v. State, 574 So.2d 685 (Miss. 1990) . . . 2.
 McCray v. State, 758 So.2d 1079 (Miss. 2001) . . . 3.
 Myers v. State, 583 So.2d 174 (Miss. 1991) . . . 3, 5, 7.
 Nelson v. State, 626 So.2d 121 (Miss. 1993) . . . 3.
 Strickland v. Washington, 466 U.S. 668 (1984) . . . 2, 11.
 Triplett v. State, 666 So.2d 1356 (Miss. 1995) . . . 7.
 White v. State, 751 So.2d 481 (Miss. Ct. App. 1999) . . . 5.
 Washington v. State, 620 So.2d 966 (Miss. 1993) . . . 6, 7, 8.
 Williams v. State, 802 So.2d 1058 (Miss. Ct. App. 2001) . . . 8.

On September 19, 2004, Petitioner was picked up by the Tippah County high Sheriff, Petitioner was then informed that he was being picked up cause someone had called Petitioner's probation officer and told him that Petitioner was going to run and not appear for Court,

However, Petitioner had just left court that day and Petitioner's case had been set for a later date in November.

After being arrested, Petitioner had a Doctor's appointment but Tippah County Jail official's refused to Petitioner to keep this appointment, due to Petitioner being locked up as a flight risk. "As stated by Probation officer only."

Tippah County Jail Officials refused Petitioner any Medical treatment for 3 full months, Petitioner was denied any of his psyche medication for his nerve problem during this time.

Petitioner's brother made another appointment to see the psyche doctor but was refused by Tippah County Jail officials.

Petitioner's Attorney knew about Petitioner's psyche Problems, and his need for treatment and medication, The Attorney would not allow any of Petitioner's family testify about his mental condition during the hearings. Petitioner's Attorney was aware that Petitioner could not read or write and gave Petitioner false and misleading information, Such as that Petitioner would be sentenced under the 85% law, but Petitioner got a Mandatory

said it was alright that he could get it reduced.

Petitioner's Attorney stated to him to just go along with the Judge and what the Judge was saying that he would get Petitioner's time cut in an appeal.

Sense Petitioner's sentencing, Attorney has refused any

type of communication with Petitioner or Petitioner's family.

The first Doctor Petitioner has got to see was at Rankin County Prison about Petitioner's psyche problem, Petitioner has

been placed on his medication. However, because of the long period of time "while housed at Tippah County Jail"

without his medication, Petitioner's psyche problem has been

worse. The Doctor's at Marshall County Correctional are

trying to treat him but have failed to provide the right

kind of medication, for the needed help.

I, the Petitioner, Herman Prether, State under the

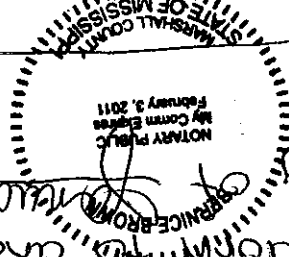
Penalty of Perjury that all Statements and facts in this statement of facts are true and correct to the

best of my ability and knowledge.

Herman Prether

Sworn to and Subscribed before me, this the 11th

day of January, 2008



Debbie Brown

Herman Prather
Petitioner

VS.

State of Mississippi
Respondents

Memorandum of Law
IN Support of Direct
Appeal.

Cause No: 2007-CP-01452-CIT

Comes Now, Herman Prather, Petitioner Pro-se and Moves this Honorable Court for an Order to Vacate and Set aside the Conviction and Sentence in the Cause Number given in this matter which is held in violation of the Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States of America.

IN Support of these Allegation Prather Would Show unto this Honorable Court the error of the Circuit Court Rulings.

Standard of Review is Ineffective

S.Ct. 805, 806, 80 L.Ed. 2d 674 (1984) is well settled. The inquiry under Strickland is two-fold.

- (1) Was defense counsel's performance deficient when measured by the objective standard of reasonable professional competence, and if so,
- (2) Was [the appellant] prejudiced by such failure to meet that standard?

The Strickland test also applies to guilty pleas as set forth in Mouday v. State, 638 So.2d 736, 742 (Miss. 1994). Citing Hill v. Lockhart, 474 U.S. 52, 58 (Miss. 1994), 106 S.Ct. 366, 370, 88 L.Ed. 2d 203 (1985)

whether counsel's efforts were ineffective on the totality of the circumstances surrounding each case. McQuarrie v. State, 574 So.2d 685, 687 (Miss. 1990). The scrutiny of defense counsel's performance is highly deferential. Hansen v. State, 649 So.2d 1256, 1259 (Miss. 1994).

IN Order for Prather to prevail on this issue, he must "allege and openly display that the asserted errors of his Attorney proximately resulted in his guilty plea and, but for these errors, he would not have received the sentence he received."

knows and understands the rights to which he is entitled.

Nelson v. State, 646 So.2d 121, 126 (Miss 1993); Brooks v. State, 573 So.2d 1350, 1353 (Miss 1990).

A trial Court must hold and conduct competency hearings on the defendant's Motion sua sponte if there is sufficient doubt about a defendant's competence.

McGraw v. State, 758 So.2d 1079, 1082 (Miss 2001).

A Plea of Guilty is not binding upon a Criminal defendant unless it is entered voluntarily and intelligently. Myers v. State, 583 So.2d 174, 177 (Miss 1991).

For Tippah County Circuit Court Judge Andrew K. Howarth to rule that Prather is not entitled to the relief requested is to say that the above Cited Authorities and Law does not exist.

GROUND I - A.

Prather was not Made aware of the
Mandatory Sentence

Prather directed the Circuit Court to his Plea hearing

See: Alexander v. State, 605 So.2d 1119, 1175 (Miss. 1992).

Holding: Where a defendant enters a plea on advice "of Counsel", the Attorney's performance is deemed "deficient" for the range of competence demanded

of Attorneys in Criminal Cases.

By Looking further into the Record ["Transcripts"]. The

record does not reflect where "as required by law" that the

trial court discussed with prather all of the consequences

of the guilty plea, including satisfaction with one's attorney,

and the advisement on the Maximum and Minimum

penalties one can acquire for the crime committed.

See: Alexander, 605 So.2d at 1172, [Where defense simply

neglects his client's case or makes negligent fatal

errors in the case, where attorney misrepresents

information regarding the plea to the defendant, thereby

inducing him to plea guilty; purposefully lies to the

defendant or asks the defendant to lie in court proceedings

regarding his plea, is ineffective assistance of Counsel]

Alexander, 605 So.2d at 361-362.

Prather directed the trial court to the [ARE] of

his sentence that he originally agreed to plead. Based

66 Upon the advice of his Attorney was erroneous;

[I]t is the duty of a trial counsel, to advise his client

of the sentence he may receive when pleading guilty.

ut parole, or early release, this advice is the very
consequence of the Counsel's quality advice of mis-
leading his Client. See, Myers, 583 So.2d at 177,
Counsel having never informed Prather that he

would receive a Mandatory Sentence, Plead guilty in
the blind. Even more, Prather was sentenced to a
greater Sentence than his attorney told him he would
receive, Prather was informed that he only serve a
short time before he "Parole out" IN Alexander, 605

So.2d 1172, The Mississippi Supreme Court has

acknowledge that parole eligibility is a consequence
in which Attorney's should advise their Clients in
order to enter a Voluntary Plea. ID. See Also:

White v. State, 751 So.2d 481, 483 (Miss Ct App 1999).

Prather's Counsel held a duty to inform his client

about "ANY" if at all **Mandatory Time**, By Counsel's

Misinformation about the range of the Sentence being
from one (1) to ten (10) years when in fact Prather did

receive an Thirty (30) with fifteen (15) suspended was

an All in All "Promise" which lead Prather to agree

to the Plea, This was the Cause of Prather not

receiving the Sentence agreed to, Prather agreed to the

1 to 10 year Sentence, NOT!!! the 30 year Sentence, And

Another record is no recorded time where Prather was

can be shown the defendant would have plead anyway, in this matter Prather would not.

The Trial Court Judge failed to apprise the Mandatory Sentence without parole consideration, leaving Prather in the dark. See: Washington V. State, 620 So.2d 966, 970 (Miss 1993).

Therefore the plea is not voluntary, and the Sentence portion must be vacated.

GROUND ONE

I.-B.

Prather was NOT Informed of the Very Maximum and Minimum Sentence.

At the Plea hearing, Circuit Court Judge Howarth brings up that [I Can Sentence you to whatever period of time the law allows me to, as long as its between the Minimum and the Maximum] See: Plea Transcripts Page 10. Lines 16-23.

When the question of the Maximum amount of Sentence was asked, if its known, Everyone answers "yes sir", However the Amount is not said in open

Prather having relied upon counsel's information about receiving an "Normal Sentence", Prather acted in "reliance" on counsel's information about Sentence. The

Trial Court imposed a much harsher Mandatory Minimum Sentence than which Prather was told he receive, OR there was a Misstatement by the Court/defense attorney as to the applicable Minimum Sentence. Washington, 620 So.2d at 916; Alexander, 605 So.2d at 1170. Prather was told he would receive a much lesser severe Sentence. See: Vittito v. State, 556 So.2d 1012 (Miss 1990).

Counsel was ineffective when he told Prather he would be Sentence to (1) one to (10) Ten years Sence he was Pleading Guilty. Seeing this, Prather was therefore, misinformed to the Maximum and Minimum Sentence. This lead to Counsel's errors being the consequence of the Sentence Now being Served. See: Myers, 583 So.2d at 177.

The Overall Matter is that the Law is the

Controlling Law, and when it appears to the Satisfaction of any Circuit Court, or Mississippi Court of Law, or Judge, The Law must be upheld and Control the Matter in which is being question, especially when One's Fundamental Constitutional rights are put in Jeopardy by the Conviction and Sentence, This burden

By Making a Clear View of the Law, the

Original Plea agreement of the potential Sentence he was to receive must be accepted if plea

is to be held valid, and both the Minimum and

Maximum Sentence is applied Correct. See; United

States V. Brewster, 137 F.3d 853, 858 (5th Cir 1998); Hall V. State, 800 So.2d 1202, 1205 (Miss. App. 2001).

Prather was to have been informed by Counsel

and Trial Judge as to what portion of any

Anticipated Sentence that is Mandatory, such

that the Sentence would not be one where Prather

would be ineligible for parole or other potential

early release during the period of Sentence. Washington,
620 So.2d at 970.

Base upon the above facts with Supporting Cite
Authorities, Counsel was ineffective.

GROUND ONE

I.-C.

Counsel was ineffective for Not
raising an Insanity defense.

The benchmark of any law is Clear. When

In any guilty plea, the plea must be made freely and voluntarily entered. And, it is essential

that an accused have knowledge of the critical

elements of the charge against him, and that he

fully understands the charge, how it involves him, the

effects of a guilty plea to the charge, and what

might happen to him in the sentencing phase as a

result of having entered the plea of guilty. House

V. State, 754 So.2d 1147 (1125) (Miss 1999); Hall v. State,

800 So.2d 1202, 1208 (Miss, App 2001).

Under this alleged Cited Law, with Supporting Authorities

the made allegation of ineffectiveness of Counsel exist

with a strong, but rebuttable presumption that Counsel

on the matters of importance and exceptional circumstances,

Only second guess! or just plainly provided a basic case

of ineffectiveness in failure to investigate his clients

"Mental Condition". There is no question that a defendant

is entitled to a basic defense. Triplett v. State, 666 So.

2d 1356 (Miss 1995); Hill v. State, 850 So.2d 223, 226

(Miss. Ct App 2003).

An basic defense in this case required complete

investigation to ascertain every Material fact about the

Case at large, favorable and unfavorable. It required

through Counsel's own resources and process of the

attempt to even consider this matter.
In the plea transcripts, Pages 13 Lines 8-29.
Page 14 Lines 1-2. Prather makes it known before the
Circuit Court there **exist** a need to examine him
and that there is the strong possibility that an
incompetent defendant in the Court Room, Uniform
Circuit and County Court Rules, Rule 9.06 and 9.07
with this made known, The Circuit Court was required
to **stop the plea**, and inquire into Prather's ability
to understand the proceedings. House, 754 So.2d at 1197.
The United States Supreme Court has held that

trial courts are **obligated to conduct a Competency**
hearing, either on the defendant's motion or sua sponte, if
there is sufficient doubt about a defendant's Competence,
Drope v. Missouri, 420 U.S. 116, 180, 95 S.Ct. 896, 908, 43
L.Ed.2d 103 (1975); House, 754 So.2d at 1197-1151 (Miss
1991)

The plea agreement in this case was required to
have been held and discussed ... and determine in a
Face to Face exchange in open Court that the accused knows
and understands the foregoing "invalide of the guilty plea."
The United States Supreme Court has held that an
incompetent person - regardless of whether a competency

the trial court was aware and made aware once

again during the appeal that Counsel being made before-hand aware of the very possibility that Prather had a mental illness, and needed an competent test. Counsel even more allowed Prather to enter a plea of guilty with this knowledge was

an violation of Due process Drope, 430 U.S. at 172, 95 S.Ct. at 904. Needless to say ineffective

assistance. Thus is highly prejudicial to Prather, and Counsel was obligated to sought a insanity defense, when made aware. Had Counsel sought a insanity defense the outcome would have been different, Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. Now Cause of Counsel's errors, Prather

is suffering in Prison.

The overall view shows Counsel to be ineffective for not presenting an insanity defense. The Due process Clause of the Fourteenth Amendment requires the outright reversal of Prather's conviction. Counsel, Deprived his client the right to

enjoyed **EFFECTIVE ASSISTANCE OF COUNSEL**

Simple by his failure to render "adequate legal assistance, Strickland, 466 U.S. at 685, 104 S.Ct. at

2064, Counsel should have made a much better attempt

professional Judgements in support of his Clients Case, rather Counsel Sought the limitations of a quick and easy Plea bargain. A reasonable lawyer would have Made **Some effort** to investigate his Clients Claims. Anderson V. Johnson, 338 F.3d 382, 391 (5th Cir 2003).

Counsel Action have **proven** that he was ineffective, that he allowed a Due process violation in his Clients Case, even more allowed a incompetent defendant to be Convicted.

(Conclusion)

Wherefore Premises Considered, Prather prays that this court will take all points and facts into consideration and Grant the relief Sought in this appeal.

SI Herman & Prather
Herman Prather K-0130
M.C.C.F. 833 West St.
Holly Springs, MS
38635

Herman Feather

REFERENCE

VS.

Cause No: 2007-CR-01459-COM

State of Mississippi

Respondent

Record Excerpts.

Contains Original Post Conviction
Transcripts.

IS/ Herman Feather
Herman Feather
K0130

Mississippi

Herman Prather vs State of Mississippi

Cause No: TK-2005-066

Petition for Post-Conviction Collateral Relief Act.

15/ Herman Prather

Herman Prather K-0130

M.C.C.F. 833 West St

Holly Springs, MS

38635

Herman Prather

VS.

State of Mississippi

Petitioner

Cause NO: 106-244

Respondent

Motion of Withdrawal of Guilty Plea.

Comes Now, Herman Prather, Petitioner Pro-se and Moves this Honorable Court Pursuant to the uniform Circuit and County Court Rules, Rule 8.04(5) for an order to allow Petitioner to Withdraw his Guilty Plea Pursuant to Rule 8.04(3) & (4)(a).

That Petitioner is not/was not competent to understand

the nature of the charges. That Petitioner Plea is not and cannot be held with Voluntariness and intelligently Made Due to need of competency hearing See: Transcripts page 13 Lines 8-29 When Prather Made Know to Court h's

Mental Condition. House V. State, 754 So.2d 1147 (7/25) (Miss

1999). uniform circuit and county court Rule 9.06

151 Herman Prather
Herman Prather K-4330

HERMAN PRATHER
Petitioner
VS.
STATE of MISSISSIPPI
Respondents

Petition for Post-Conviction
Collateral Relief.

Miss. Code Ann. Sec. § 99-39-1

Case NO: TK-2005-066

Comes Now, Herman Prather, Petitioner Pro-se, and files this, His Petition for Post-Conviction Collateral Relief Pursuant to Miss. Code Ann. Sec. § 99-39-1 and 99-39-5 (a)(e) and moves this Honorable Court for an Order Vacating and Setting Aside the Sentence imposed and would show unto this Honorable Court the following facts to-wit:

Jurisdiction.

This Court holds Jurisdiction over this Petition, because

Was Convicted.

Pursuant to § 99-39-9 (1)(a) Prather Plead Guilty in the Circuit Court of Tippah County to one (1) Count of Sexual Battery under Miss. Code Ann § 97-3-95 (1994).
The Honorable Jim Pannell Attorney for the Defendant.

②

The Date of the Entry of the Judgment of
Conviction and Sentence of which Complaint
is made.

Pursuant to § 99-39-9 (1)(b). Prather was Sentence to Serve a term of (30) thirty years; with (15) fifteen of those years be suspended leaving (15) fifteen to Serve, And be placed on (5) five years of Post-release Supervision upon his release from the penitentiary.

The Honorable Andrew K. Howorth Circuit Judge.

③

A Concise Statement of the Claims/grounds upon
which this motion is based. § 99-39-9 (1)(c).

1. Counsel and Circuit Court Judge failed to inform Prather

minimum time penalties provided by law, uniform criminal and county court rules, Rule 8.04 (4) (b).
3. Counsel was ineffective for not raising an Insanity Defense when Prather informed him of the need of Mental Health treatment.

4. Judge was required to send Prather for a Competence Examination in accordance with Miss. Code Ann § 99-13-11 when Prather informed the Court of Need for Mental Health Treatment. See Transcripts Page 13, Lines 8-29.

(4)

Specific Statement of Facts which are within the Personal Knowledge of Herman Prather.

Pursuant to § 99-39-9 (1) (d) Prather states the following facts which are within his personal knowledge.

Prather States that he is not educated and above a few words he can not read or write. Prather states that he did not receive any advice from his attorney other than to plea guilty. Prather states that his attorney never investigated his case, Prather's past on mental condition nor did counsel interview any witnesses to try on Prather a defense.

Prather States that he was entitled to a Insanity

treated and Cured will be up because the prison does not offer the help needed.

Prather states he held no knowledge of the procedures and his rights, Nor did he understand them. Counsel only informed him on what to say at the Plea hearing and to tell the Judge about his need for Mental Examination. Counsel was Authorized to Consent, on behalf of Prather and commit the proper papers before the Court and have Prather Sent to the Mississippi State Hospital or other appropriate mental Health facility to consider that Prather was Competent to Stand trial. Uniform Circuit and County Court Rules, Rule 9.06 (B)



▲ Specific Statement made by Herman Prather. ○

Sworn to and Subscribed before me this the 30th
day of October, 2006

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES FEB. 3, 2007
BONDED THRU STEGALL NOTARY SERVICE

My Commission Expires

Bernice Brown
Notary Public

Prather states that there exist many facts which he does not hold any knowledge about. Prather is not challenging his plea, only the constitutionality of the sentence he has received. Prather only states that he was entitled to an insanity defense.

Prather does not wish to withdraw his plea of guilty and admits his guilt. Prather is only challenging his sentence. Prather followed the advice made by his attorney to openly before the court make known of his need for mental treatment. See; Sanders v. State, 440 So.2d 278, 283-284 (Miss 1983). The constitutionality of this conviction and sentence is subject to attack because prather was not aware of its consequences. However, prather is only challenging the sentence and did not hold knowledge it could be attacked.

S/ Herman Prather
Herman prather,

or State Courts.

Pursuant to §99-39-9 (1)(f), Prather has made No attempts in any State or Federal Courts.

⑦

Motion for Appointment of Counsel.

Prather Now moves this Honorable Court to appoint him Counsel pursuant to the Rules of Appellate procedure La. (b) (1), to represent him in the matters being raised in this appeal. Prather is certifiably indigent and illiterate to law.

Sworn Oath of Herman Prather.

Personally appeared before me, the undersigned Authority in and for the aforesaid Jurisdiction the within named Herman Prather, who after being Sworn on his Oath, did State that he has read and signed, the above petition, and to the best of his belief all Statements are true and Correct to the best of his Knowledge,

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES FEB. 3, 2007
BONDED THRU STEGALL NOTARY SERVICE

My Commission Expires

151 Herman Prather
Herman Prather

Bernice Brown
Notary Public.

Motion to Proceed in forma Pauperis.

James Nau, Herman Prather, Petitioner Pro-se, and
Moves for leave to proceed in forma Pauperis, due to he
is unable to afford the fees and cost of the proceedings
in which are before the court.

Signed this the 30 day of October, 2006

151 Herman Prather

Wherefore, Premises Considered, Prather prays
for this Honorable Court to grant relief sought in one
of the following requests.

1) Enter an order vacating the Sentence because Prather was not
made known he was pleading to Mandatory time... a)
And/or, Vacate the Sentence because Prather was not
made known of the Maximum and Minimum time
and/or... 3.) Vacate the Sentence because Prather
was not afforded his right to an INsanity Defense.
And any other Just grounds this Court deem
as Just and True

SL/Erving Prather
Herman Prather K-0130
M.C.C.F. 833 West St
Holly Springs, MS
38635

Done this the 30 day of October 2006

Herman Prather
vs.
State of Mississippi

Petitioner:
Cause No. TR 2005-016
Respondents.

Memorandum of Law in Support
of Post-Conviction Collateral
Relief.

151 Herman Prather
Herman Prather #
M.C.C.F. 833 West St.
Holly Springs, MS
38635

I.
INEFFECTIVE ASSISTANCE OF
COUNSEL.

James Now, Herman Prather, Petitioner Pro-se
and moves this Honorable Court for and Order Vacating
and Setting aside the Sentence which is in Violation
of the fifth, sixth and fourteenth Amendments of
the Constitution of the United States.
IN Support of this allegation Prather would show
unto this Court the following facts to-wit:

Memorandum of law

State of Mississippi
Respondent.

Petitioner
VS.

Herman Prather

Cause NO: IR-2005-066

674 (1984), and is well-settled;

The inquiry under Strickland is two fold:

- (1) Was defense counsel's performance deficient when measured by the objective standard of reasonable professional competence, and if so

- (2) Was [the appellant] prejudiced by such failure to meet that standard?

This test applies to guilty pleas. Moldy v. State, 638 So.2d 738, 742 (Miss 1994). (Citing Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985)).

Whether counsel's efforts were effective on the totality of the circumstances surrounding each case, McQuar v. State, 574 So.2d 685, 687 (Miss 1990) The scrutiny of defense counsel's performance is highly deferential. Hansen v. State, 649 So.2d 1256, 1259 (Miss 1994).

In order to prevail on this issue Prather must allege that the asserted errors of his attorney proximately resulted in his guilty plea and, but for these errors, he would not have received the sentence he received.

"This Court must hold... and determine in a face-to-face exchange in open court that the accused knows and understands the rights to which he is entitled." Nelson v. State, 626 So.2d 121, 126 (Miss. 1993); Brooks v. State, 573 So.2d 1350, 1353 (Miss 1990).

not binding upon a criminal defendant unless it is entered voluntarily and intelligently. Myers v. State, 583 So.2d 174, 177 (Miss 1991).

I.

Prather was not aware of Mandatory Sentence.

As shown via transcript of Prather's plea hearing does not reflect that he was advised concerning the rights of being advised by his attorney and Circuit Court Judge about the Mandatory Incarceration Statute, And, where a defendant enters a plea on advice of Counsel, the attorney's performance is deemed "deficient" for the range of competence demanded of attorneys in Criminal Cases. Alexander v. State, 605 So.2d 1170, 1173 (Miss 1992).

Further, the record does not reflect that the trial court

discussed with Prather all of the consequences of the guilty plea, including satisfaction with one's attorney, And the

advisement on the Maximum and Minimum penalties

one can acquire for the Crime Committed. Alexander,

605 So.2d at 1172, where defense Counsel simply

neglects his client's case or makes negligent fatal

errors in the case. Alexander, Miss 1992.

Court proceedings regarding his plea, is ineffective assistance of Counsel. Alexander, 605 So.2d 361-362.

Prather points this Court to the [area] of his sentence that he originally agreed to plead, based upon the advice of his attorney was erroneous; "[I]t is the duty of a trial Counsel, to advise his client of the sentence he may receive when pleading guilty. Brooks v. State, 573 So.2d 1350, 1353 (Miss. 1990). Therefore when Counsel told Prather that he be sentenced under the 85% Law, with parole eligibility, all which are the consequence of the quality of advice from Counsel, and, Mistaken advice of Counsel may also vitiate a guilty plea in some cases. Myers, 583 So.2d at 177.

The matters, Counsel never informed Prather that he be pleading to a Mandatory Sentence, even more Prather received a greater time to serve than his attorney told him about, that he only serve a short time before he "parole out". The Mississippi Supreme Court has acknowledged that parole eligibility is a consequence in which attorneys should advise their clients in order to enter a Voluntary Plea. Alexander, 605 So.2d 1173; White v. State, 751 So.2d 481, 483 (Miss. Ct App 1999).

Counsel held a duty to inform Prather about any, if any Mandatory time, Counsel misinformed his client as to the range of sentence for (one) to Ten (10), Prather

Original plea, Prather did not receive or hear, and at no time or point was any Mandatory time brought up. "The failure to be told correctly the Mandatory Minimum Sentence renders a plea involuntary unless it can be shown the defendant would have pled anyway. Alexander, 605 So.2d 1172.

(Prather was never told of an Mandatory fifteen year prison term). The Circuit Court Judge failed to apprise of the "Mandatory Sentence without parole Consideration", Washington v. State, 620 So.2d 966, 970 (Miss 1993).

Therefore Prather States that the Sentence Portion of his Conviction must be vacated, because it was done while the use of deceit was made, not that in which Prather had agreed.

II

Prather was not informed of the Maximum and
Minimum of Sentence.

During the Plea hearing, Circuit Judge Howarth brings up that (I can sentence to you whatever period of time the law allows me to, as long as it's between the minimum and the maximum.) Plea Transcript Page 10 lines 16-23.

It is ask of the maximum is known from

Prather relied upon the information supplied by his "attorney" as to a "Normal Sentence." Prather acted in "reliance" on the information supplied by attorney, but the Mandatory Minimum Sentence which was imposed was Much harsher than that which was told to Prather, (or there was a Misstatement by the Court or the defense attorney as to the applicable minimum Sentence. [Washington, 600 So.2d at 966; Alexander, 605 So.2d 1170.] (Prather "expected" a much less severe Sentence) White v. State, 556 So.2d 1068 (Miss 1990). Prather was misinformed of the Maximum and minimum Sentence; Counsel was ineffective in telling Prather he would be Sentence to (1) one to (2) (Ten) years since he was pleading guilty. Thus are Counsel's errors which is the consequence of the Sentence Prather now serves. See: Myers, 583 So.2d at 177

The Overall Matter is that the law is the law, and

When it appears to the Satisfaction of any Circuit Court, or any Court of Law in the State of Mississippi, or to the Judge, After an Conviction or Plea of guilty when one's Fundamental Constitutional Rights are put in Jeopardy by the applied Sentence, The Proper and Just Judgment is to undue the burden of a final Judgment and dismissing the Original Sentence.

the potential sentence he faces if his plea of guilty is accepted - both the Minimum and Maximum Sentence. United States v. Brewster, 137 F.3d 853, 858 (5th Cir. 1998); Hall v. State, 800 So.2d 1202, 1205 (Miss. App. 2001).

Prather must be informed as to what portion of any **Anticipated** sentence is **Mandatory**. Such that the Prather would be ineligible for parole or other potential early release during the period. Washington, 620 So.2d at 970.

Counsel was ineffective in his failure to ensure Prather was afforded the Minimum and Maximum of Sentence imposed.

III

Whether Counsel was ineffective for not raising an Insanity defense.

◦ The Benchmark of the law is clear, in order to meet the Constitutional Standards, a guilty plea must be freely and voluntarily entered. It is essential that an accused have knowledge of the critical elements of the charge against him, that he fully understand the charge, how it involves him, the effects of a guilty plea to the

a strong, but rebuttable presumption that counsel on matters of importance and exceptional circumstances, second guess or just point blank provided a basic case of ineffectiveness in failure to investigate his client's Mental Condition. There is no question that a defendant is entitled to a basic defense. Triplett v. State, 666 So. 2d 1356 (Miss 1995); Hill v. State, 850 So. 2d 223, 226 (Miss. Ct App 2003).

Basic defense in this case required complete investigation to ascertain every material fact about this case, favorable and unfavorable. It required thorough Counsel's own resources and process of the Court learning the names of, and interviewing every possible eyewitness, and getting statements from each.

IN Plea Transcripts page 13 lines 8-29 page 14 lines

1-2. Prather Let's the Court become aware that **There is**

the strong possibility that an incompetent defendant in

the Court room, Uniform Circuit and County Court Rules, Rule

9.06 and 9.07 Required the Circuit Judge to **STOP!!**

The plea hearing and Inquire into MR Prather's ability

to understand the proceedings.

The United States Supreme Court has held that

trial Courts are obligated to Conduct a Competency hearing, either on the defendant's Motion or Sua Sponte, if there

have been held... and determine in a ~~face~~ to ~~face~~ exchange in open Court that the accused knows and understands the foregoing "invalidate of guilty plea."

The United States Supreme Court has held that an incompetent person - regardless of whether a Competency hearing was held - has a due process right **Not to be Convicted**, Drope, 420 U.S. at 172, 95 S.Ct. at 904; Hause, 754 So.2d at 1152.

Counsel being made before-hand aware of the very possibility that Prather had a mental illness, Then allow Mr Prather to enter a plea of guilty is in the violation of **Due process**, Drope, 420 U.S. at 172, 95 S.Ct. at 904. Thus, is prejudicial to Prather, and had Counsel sought a Insanity Defense this question would have been resolved, the outcome would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. And Prather would not be suffering in an prison.

Therefore Counsel was ineffective for not presenting and Insanity defense. The **Due Process Clause** of the Fourteenth Amendment requires the outright reversal of petitioner's Conviction. Counsel, deprived Prather of the right to effective assistance, simply by failing to render "adequate legal assistance." Strickland, 466 U.S. at 685

Support the limitations on investigation of a Client's Case. And, a reasonable lawyer would have made **Some effort** to investigate. See; *Anderson v. Johnson* 338 F.3d 382, 391 (5th Cir 2003).

Counsel Could not have properly Advised Prather to enter into a plea without first investigation and interviewing Prather's family to see whether or not Prather was Mentally ill. The issue was raised and presented during trial. Therefore it must be addressed that Due process of Law is upheld.

(Conclusion)

Wherefore premises Considered, Prather pray's that this Court will honor the request being made and vacate the Sentence imposed upon Prather. and any other Just Consideration.

(S) Herman Prather
Herman Prather K-0130
M.C.C.F. 833 West St.
Holly Springs, MS
38635.

IN THE CIRCUIT COURT OF TIPPAAH COUNTY, MISSISSIPPI

NOVEMBER TERM, 2005

STATE OF MISSISSIPPI

VERSUS

NO. TK2005-066

HERMAN PRATHER

DEFENDANT

TRANSCRIPT OF CHRISTY M. LITTLEJOHN, CSR

OFFICIAL COURT REPORTER

FILED THIS 6th DAY OF
Feb 2006
JAMES E. DEES, CIRCUIT CLERK
BY [Signature] DC

STATE OF MISSISSIPPI

VERSUS

NO. TK2005-66

HERMAN PRATHER

DEFENDANT

* * * * *

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE
GUILTY PLEA HEARING OF THE ABOVE STYLED AND NUMBERED
CAUSE, BEFORE THE HONORABLE ANDREW K. HOWORTH, CIRCUIT
JUDGE, IN TIPPAAH COUNTY ON THE 1ST DAY OF DECEMBER,
2005.

* * * * *

APPEARANCES:

Present and Representing the State:

Honorable Kelly Luther
Assistant District Attorney
Post Office Box 1378
Oxford, Mississippi 38655

Present and Representing the Defendant:

Honorable Jim Pannell
Attorney at Law, Public Defender
Post Office Box 521
Ripley, Mississippi 38663

1 A. Yes, sir.

2
3 BY THE COURT: Raise your right hand and let
4 us get you sworn in, please.

5 (DEFENDANT DULY SWORN BY OFFICIAL COURT REPORTER)

6 BY THE COURT: In Cause Number TK05-066, the
7 State of Mississippi versus Herman Prather, the
8 Court has before it a petition to enter a plea of
9 guilty to the crime of sexual battery. Is that
10 correct, Mr. Prather?

11 A. Yes, sir.

12 BY THE COURT:

13 Q. I'm going to ask the five of you a series of
14 questions here today about these petitions that you've
15 caused to be filed with the Court. While we go through
16 this process, I want to make sure that all five of you
17 understand some things about the process. First of
18 all, if you have any questions about anything at all
19 that's going on here today, you don't understand words
20 that I'm using, anything at all comes to your mind that
21 you want to share with me, be sure to let me know.
22 Also, if you'd rather, you can confer with your
23 attorney at any time, either here or privately. Just
24 let me know if you want to stop at any time for any
25 reason and I will stop, because when we get through, I
26 want to be satisfied that all of your questions have
27 been answered; that you understand what you're doing,

2 reporter here taking down every-
3 which will include each one of your individual
4 responses, so when you speak, be sure to speak up
5 clearly and loudly where you can be heard and
6 understood for the purpose of the record; and finally,
7 understand that unless I address you individually,
8 which I will do from time to time, you should otherwise
9 assume that I'm asking all five of you the same
10 question, but I still need each one of you to respond
11 individually out loud where I can hear you. Does each
12 one of you understand everything I've said thus far?

13 A. Yes, sir.

14 Q. Good. On the last page of each one of these
15 petitions, or in some cases it may be the next to the
16 last page, there's a signature line and each one of
17 them purports to bear your signature. Did each one of
18 you, in fact, sign your petition?

19 A. Yes, sir.

20 Q. Before you signed your petition, did you go
21 over it with your attorney?

22 A. Yes, sir.

23 Q. Did your attorney explain the contents of
24 your petition to you and explain it to you in a way
25 that you could understand?

26 A. Yes, sir.

27 Q. Did your attorney explain to you what rights

2 Q. Did your attorney
3 you had for him, if any?

4 A. Yes, sir.

5 Q. Did you tell your attorney everything about
6 the facts and circumstances that gave rise to these
7 charges being brought against you?

8 A. Yes, sir.

9 Q. In other words, you have not withheld
10 anything from your attorney?

11 A. No, sir.

12 Q. Is each one of you satisfied with the
13 services of your attorney?

14 A. Yes, sir.

15 Q. I want to make sure that all five of you
16 understand that you have the right to plead not guilty
17 to any crime that you're charged with. No one can
18 force you to plead guilty. If you plead not guilty,
19 you're entitled to a speedy public trial by a jury made
20 up of twelve people from either Tippah or Benton
21 County, as the case may be. Two of you have cases from
22 Benton County and three of you have cases from Tippah
23 County. A jury would be impaneled made up of twelve
24 people from the county that you've been charged in.
25 That jury would determine your guilt or innocence. In
26 addition to that, the State of Mississippi, who is
27 represented in most criminal prosecutions in this court

2 the Court accepts your plea of guilty, you
3 waive or give up these rights. Does each one of you
4 understand what I'm telling you?

5 A. Yes, sir.

6 Q. If you decided you wanted to go to trial, not
7 only would the State have to prove you guilty beyond a
8 reasonable doubt, but it would also be necessary that
9 all twelve jurors vote guilty for you to be convicted.
10 If any one or more of those jurors refuses to vote to
11 find you guilty, then that particular jury cannot
12 convict you. Even if you were convicted, you have the
13 right to appeal that conviction to a higher court. If
14 you can't afford to hire an attorney to represent you
15 in that appeal, this Court would appoint an attorney to
16 represent you at no cost to you; but if the Court
17 accepts your plea of guilty here today, except for some
18 very limited circumstances, you waive or give up your
19 right to an appeal. Does each one of you understand
20 what I'm telling you?

21 A. Yes, sir.

22 Q. If you decided that you wanted to go to
23 trial, you have the right to the aid and assistance of
24 an attorney at trial. Some of you have lawyers that
25 you've retained yourselves and some of you have lawyers
26 that have been appointed by the Court. For those of
27 you who have retained your own attorney, although I

2 don't want him to represent you anymore, but you can
3 afford to hire another attorney, all you have to do is
4 demonstrate to the Court that you can't afford a lawyer
5 and I will appoint one for you and it won't cost you
6 anything.

7 There are a number of things your attorney will do
8 to assist you if you decide to go to trial, whether
9 he's been retained by you or appointed by the Court.
10 I'm going to go over some of the things your attorney
11 would do and some of the procedural rights that you
12 have. Your attorney would meet with you before the
13 trial and help you prepare your case for trial. Your
14 attorney would attend any court hearings along with you
15 that might be held in connection your case before the
16 trial. Your attorney would sit with you during the
17 trial of your case and advise you and consult with
18 you.

19 Among other things, you and your attorney would be
20 in a position to cross-examine witnesses who will come
21 to court to testify against you, if appropriate to
22 cross-examine them. You would also examine any
23 witnesses that you might want to bring to trial to
24 testify on your behalf. If you had witnesses you
25 wanted to bring to trial, but they didn't want to come
26 voluntarily, the Court would issue subpoenas at your
27 request and these subpoenas would force or compel the

2 silent as to any charges that are being

3 Whether or not you testify is entirely up to you. If
4 the Court accepts your plea of guilty here today, you
5 waive or give up all of these rights. Does each one of
6 you understand what I'm telling you?

7 A. Yes, sir.

8 Q. Now, in each one of your cases, does each one
9 of you understand that in pleading guilty to the crime
10 listed or crimes listed in your petition you're
11 admitting that you're guilty of that offense?

12 A. Yes, sir.

13 Q. Herman Prather, are you telling the Court
14 that you are, in fact, guilty of the crime of sexual
15 battery?

16 A. Yes, sir.

17 Q. While I'm thinking about it, Mr. Prather, in
18 addition to the other things that I haven't gone over
19 yet and the things that I have gone over, you need to
20 understand that if the Court accepts your guilty plea
21 to this offense, sexual battery, you will be required
22 by law to register as a sex offender upon your release
23 from the penitentiary for the rest of your life. Do
24 you understand that?

25 A. Yes, sir.

26 Q. Now, back to all five of you. Is any one of
27 you under the influence of alcohol or drugs or any

2 Q. Any one of you suffer from --
3 disability -- physical, mental, or otherwise -- that
4 might impair or affect your ability to understand
5 what's going on here today?

6 A. No, sir.

7 Q. Has anybody promised you anything -- money, a
8 reward, a lighter sentence -- any other kind of
9 inducement to try to convince you or persuade you to
10 plead guilty?

11 A. No, sir.

12 Q. Has anybody done anything to threaten you,
13 intimidate you, coerce you, or otherwise force you to
14 plead guilty?

15 A. No, sir.

16 Q. All right. In each of your cases, the crime
17 that you're pleading guilty to will go on your record
18 as a felony. Each one of you needs to be aware that we
19 have a law in Mississippi called the Habitual Offender
20 Act. It's also referred to as the three strikes law or
21 the three time loser law. There are similar laws on
22 the books in many other states and in other
23 jurisdictions. Under this particular law, if you're
24 charged with a third or subsequent felony in your life
25 time, if you're indicted as a habitual offender, and if
26 you're then convicted and the Court finds that you are
27 a habitual offender, you would be sentenced to serve

2 indicted and convicted as a habitual
3 would then be sentenced to serve the remainder of your
4 life in the penitentiary without the possibility of
5 early release, probation, or parole. In other words,
6 for a third or subsequent felony, the punishment can be
7 enhanced or made much worse. Does each one of you
8 understand what I'm telling you?

9 A. Yes, sir.

10 Q. In each one of your cases, I expect to
11 receive a recommendation from the District Attorney's
12 office as to a sentence that this Court might impose in
13 exchange for your plea of guilty. I want to make sure
14 that all of you are aware that the Court is not
15 obligated or required to follow a recommendation, but
16 if I accept your plea of guilty, I can sentence to you
17 whatever period of time the law allows me to, as long
18 as it's between the minimum and the maximum. Do all
19 five of you understand this?

20 A. Yes, sir.

21 Q. Does each one of you know that the minimum
22 and maximum are for the crime that you're pleading
23 guilty to?

24 A. Yes, sir.

25 Q. Mr. Prather, do you have any questions?

26 A. No, sir.

27 BY THE COURT: The Court is of the opinion

2 further opinion and that the
3 individuals has freely and voluntarily offered his
4 or her plea of guilty. It's the observation of
5 the Court that as these defendants stand before
6 the bench they are each capable and competent to
7 offer a plea of guilty, and the Court having
8 determined that each one of them has freely and
9 voluntarily done so accepts each one of these
10 pleas of guilty on that basis. As to Herman
11 Prather, what's the recommendation of the State?

12 BY MR. LUTHER: The State would recommend
13 that he be sentenced to serve a term of 30 years;
14 that 15 of those years be suspended leaving 15
15 years to serve; and that he be placed on five
16 years of post-release supervision. Upon his
17 release from the penitentiary, that he pay all
18 court costs in this matter and that those court
19 costs be paid at a rate to be determined between
20 him and his probation officer at no less than
21 monthly payments. It's also a part of this
22 agreement the State would recommend that he be
23 discharged from probation on a charge here in
24 Tippah County that he is currently on probation
25 for; but those court costs, if any, that remain in
26 that case be rolled over and added to this cause
27 number, your Honor.

2 does hereby sentence you to
3 an institution to be designated by the Department
4 of Corrections. The Court is going to suspend 15
5 of those years leaving you 15 years to serve. The
6 Court is going to place you on five years'
7 post-release supervision upon your release from
8 the penitentiary. The Court orders that you pay
9 all court costs, fees, and assessments in this
10 case and any other cases that you have that you
11 owe costs on within a reasonable period of time
12 upon your release from the penitentiary as
13 directed by your probation officer. The Court is
14 going to otherwise dismiss or discharge you from
15 probation on your other case because you will have
16 five years post-release supervision in this case
17 when you get out of the penitentiary. If you
18 violate your probation when you get out, you can
19 get the 15 years that have been suspended. Do you
20 understand that?

21 A. Yes, sir. I've got a question.

22 BY THE COURT: All right. Ask me.

23 A. I've got my brother getting old and I got 15
24 years. Could I serve my time in Marshall County, sir?

25 BY THE COURT: It's not up to me. It will be
26 up only to the Department of Corrections. They
27 will be the ones that decide where you serve it.

3 Corrections where you serve your sentence. I
4 think they are at least somewhat sensitive to
5 trying to place you in a reasonable proximity to
6 your home. They may very well do that, but I
7 don't control that.

8 A. One more question. When I get out or while
9 I'm in there, could I ask for some kind of medical?
10 This is not me doing it. You know what I'm saying? I
11 never did nothing like this before and I want to have
12 some kind of -- I don't want to get out and --

13 BY THE COURT: -- You think you need some
14 mental health treatment; is that what you're
15 saying?

16 A. Yes, sir.

17 BY THE COURT: Well, I hope if you need it,
18 you'll get it. I don't have -- I don't want to
19 make you any false promises about what kind of
20 treatment you will receive while you're in the
21 penitentiary.

22 A. Yes, sir.

23 BY THE COURT: I can only say to you that
24 when you get out, please take it upon yourself to
25 go to the mental health center and tell them that
26 you need help and that you need drug therapy or
27 psychotherapy or whatever you think you need or

whatever they think you need. Make it available

3 All of you are either going to do some time
4 or are going to go straight on to probation from
5 here, and all of you have some suspended time.
6 Understand this about being on probation. It
7 doesn't give me any pleasure to send anybody to
8 the penitentiary; but if you decide to violate
9 your probation, I'm not going to feel guilty if I
10 consider it my responsibility to send you back to
11 the penitentiary or to the penitentiary for a
12 probation violation because you're the one that
13 controls whether or not you violate your
14 probation. All I do is if it's determined that
15 you have violated your probation, I'm just the guy
16 that signs the papers to send you to the
17 penitentiary. You're the one that has got the
18 keys to that jail cell in your pocket. You decide
19 whether or not you go or go back, as the case may
20 be, by what you do while you're on probation. Do
21 all five of you understand this?

22 A. Yes, sir.

23 BY THE COURT: The ones of you who are going
24 to be released will need to meet with your
25 probation officer. Those of you who are serving
26 time will be remanded to the custody of the
27 sheriff. Good luck to all of you.

3 STATE OF MISSISSIPPI

4 COUNTY OF TIPPAAH

5 I, Christy M. Littlejohn, Official Court Reporter
6 for the Third Circuit Court District of the State of
7 Mississippi, do hereby certify that to the best of my
8 skill and ability I have reported the proceedings had
9 and done in the guilty plea hearing of STATE OF
10 MISSISSIPPI VERSUS HERMAN PRATHER, being Number
11 TK2005-066 on the docket of the Circuit Court of Tippah
12 County, Mississippi, and that the above and foregoing
13 fourteen (14) pages contain a true, full and correct
14 transcript of my stenographic notes and tapes taken in
15 said proceedings.

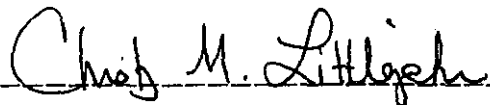
16 I do further certify that my certificate annexed
17 hereto applies only to the original and certified
18 transcript. The undersigned assumes no responsibility
19 for the accuracy of any reproduced copies not made
20 under my control or supervision.

21 This the 20th day of January, 2006.

22

23

24



25

Christy M. Littlejohn CSR-1075

26

Official Court Reporter

27