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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-CP-01470-COA

CARLOS JACKSON

APPELLANT

**FILED**

V.


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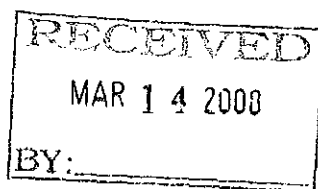
APPELLEE

**BRIEF FOR APPELLANT**

BY:   
Carlos Jackson, #K8610  
Unit 29-I, MDOC  
Parchman, MS 38738

**ORAL ARGUMENT NOT REQUESTED**

**PRO SE PRISONER BRIEF**



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V

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned Appellant, Carlos Jackson, certifies that the following listed persons have an interest in the outcome of this case. The representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Carlos Jackson, Appellant pro se.
2. Honorable Jim Hood, and staff, Attorney General.
3. Honorable R. I. Prichard, III, Circuit Court Judge.
4. Honorable Claiborne McDonald, IV, District Attorney.

Respectfully Submitted,

BY:



Carlos Jackson, #K8610  
Unit 29-I, MDOC  
Parchman, MS 38738

Appellant

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-CP-01470-COA

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APPELLANT

V

STATE OF MISSISSIPPI

APPELLEE

**STATEMENT OF ISSUES**

**ISSUE ONE**

Appellant was denied due process of law where the trial court failed to enter separate judgments of conviction in the multiple count indictment and where the law requires that separate judgments be entered. Such action, as a matter of law, invalidates the judgments of conviction and requires vacation of the illegal sentencing order.

**ISSUE TWO**

Appellant was denied due process of law and equal protection of the law by unknowingly having violated the speedy trial statutory law causing unnecessary waiver by no fault of his own while being represented by counsel, and by the Court which used trickery tactics to get him to acknowledge voluntariness of waiving his speedy trial rights while entering a plea of guilty.

**ISSUE THREE**

That the sentence of life imprisonment which was imposed upon Appellant by the trial court, without the providence of a jury, constitutes a discriminatory practice where, under Mississippi law, a jury is required to determine whether a life sentence is to be imposed after the conviction of the crime of murder or capital murder. The failure of the law to require that a jury

make the determination of the sentence in the case of murder constitutes a violation of the equal protection of the 14th Amendment to the United States Constitution.

#### **ISSUE FOUR**

The Court committed plain error by failure to include in the record, after having been sentenced pursuant to a guilty plea, by subjecting Carlos F. Jackson to a denial of due process of law where the trial court failed to advise Jackson of the right to a direct appeal of the imposed sentence to the Supreme Court.

#### **ISSUE FIVE**

The Court shall review Jackson's assignment of errors as "Cumulative Errors".

#### **STATEMENT OF INCARCERATION**

The Appellant is presently incarcerated and is being housed in the Mississippi State Penitentiary at Parchman, Mississippi, in service of the prison term imposed as a result of the convictions which is the subject of this action. Appellant has been continuously confined in regards to such sentence since date of conviction and imposition by the trial court.

#### **STATEMENT OF CASE**

Appellant was convicted in a multiple count indictment of Count I for Murder and Count II for Aggravated Assault, in the Circuit Court of Pearl River County, Mississippi, pursuant to entry of a guilty plea on October 12, 2001. All other counts of the multiple counts indictment were dismissed and nolle prosequi. Appellant was subsequently sentenced to a term of life on the Count I Murder plus 20 years to serve on Count II for Aggravated Assault consecutive to the life sentence. Appellant was not told by the court that he could file a direct appeal to the Supreme Court from the judgment imposed by the court. On or about January 28, 2003, and Memorandum in Support Thereof., which was denied by the order of the trial court on

May 22, 2003. Appellant subsequently appealed the trial court's decision and the Mississippi Court of Appeals affirmed the lower court's denial of Relief on May 4, 2004, in a written opinion. See Jackson v. State, 872 So.2d 708 (Miss. App. 2004). Appellant subsequently filed with the United States District Court for the Southern District of Mississippi, Southern Division, a Motion pursuant to 28 U.S.C. Section 2244(d), which was subsequently denied. Appellant attempted further exhaustion his remedies by proceeding with habeas corpus motion pursuant to 28 U.S.C. Section 2254 in the United States District Court for the Southern District of Mississippi, which was also subsequently denied.

Appellant would urge that the trial court committed manifest error in failing to grant post conviction relief and in finding that Appellant's fundamental plain error claims do not survive the three year statutory bar under Miss., Code Ann. §99-39-5(2).

#### **STANDARD OF REVIEW**

In reviewing a trial court's decision to deny a motion for post-conviction relief the standard of review is clear. The trial court's denial will not be reversed absent a finding that the trial court's decision was clearly erroneous. Kirksey v State, 728 So.2d 565, 567 (Miss. 1999).

In the instant case, well-settled law dictates that the trial court's decision was clearly erroneous since the trial court failed to address the substantial and meritorious claims made in the petition, i.e., the record clearly demonstrates that Appellant Jackson was sentenced to a sentence of life imprisonment by the Court. This sentence, even for homicide, should be reserved for a jury. A trial court, without a jury, should not have the authority to impose a sentence which would permanently place person in prison for life or death.

## SUMMARY OF ARGUMENT

The record is clear and the trial court has not denied that the Court never entered separate judgments and sentences in this case and as required by Miss. Code Ann. §99-7-2. This Court should, therefore, find that the convictions, judgment and sentences being imposed upon appellant are illegal as being rendered outside the Requirements of Miss. Code Ann. §99-7-2. Furthermore, because said convictions were imposed after plain error, this Court should find that such claims should survive the three year bar found under Miss. Code Ann. §99-39-5(2).

## ARGUMENT

### ISSUE ONE

**Appellant was denied due process of law where the trial court failed to enter separate judgments of conviction in the multiple count indictment and where the law requires that separate judgments be entered. Such action, as a matter of law, invalidates the judgments of conviction and requires vacation of the illegal sentencing order.**

The law is clear that where a multiple count indictment is being proceeded under, as in this case, there must be a separate judgment and sentence for each such count of the indictment in which the defendant is convicted and sentenced thereunder. Miss. Code Ann §99-7-2 provides the following statutory language:

(1) Two (2) or more offenses which are triable in the same court may be charged in the same indictment with a separate count for each offense if: (a) the offenses are based on the same act or transaction; or (b) the offenses are based on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan.

(2) Where two (2) or more offenses are properly charged in separate counts of a single indictment, all such charges may be tried in a single proceeding.

(3) When a defendant is convicted of two (2) or more offenses charged in separate counts of an indictment, the court shall impose separate sentences for each such conviction.

***(4) The jury or the court, in cases in which the jury is waived, shall***

***return a separate verdict for each count of an indictment drawn under subsection (1) of this section.***

(5) Nothing contained in this section shall be construed to prohibit the court from exercising its statutory authority to suspend either the imposition or execution of any sentence or sentences imposed hereunder, nor to prohibit the court from exercising its discretion to impose such sentences to run either concurrently with or consecutively to each other or any other sentence or sentences previously imposed upon the defendant.

Sources: Laws, 1986, ch. 444, eff from and after July 1, 1986.

**Also see Miss. Unif. Cir. and County Ct. Rule 7.07(d).**

The trial Court never entered separate judgments and sentences in this case and as required by Miss. Code Ann. §99-7-2. This Court should, therefore, find that the convictions, judgment and sentences being imposed upon appellant are illegal as being rendered outside the Requirements of Miss. Code Ann. §99-7-2.

As cited above, the Mississippi Supreme Court has firmly held that a claim of illegal sentence or illegal judgment is not procedurally barred by the provisions of Miss. Code Ann. §99-39-5(2). Moreover, such a claim would suffice over any bar as being fundamental in nature and a denial of due process of law. Petitioner's convictions and sentences should be vacated and set aside and these cases should proceed to trial under the original charges. Petitioner's claims are not frivolous and have arguable basis in law. Each claim is supported by statutory and case law decision.

In the instant case, where the clerk filed separate papers containing a verdict on each count, the trial court failed to enter separate corresponding judgments on each count of the indictment. (R. 27-29) The law in this instance places the burden upon the state to prove multiple counts and requires that the Court, if proven, enter separate judgments and the jury enter separate verdicts. Hughes v. State, 665 So. 2d 852 (Miss. 1995).

The law was not followed in this case and the judgment entered should be vacated and set aside.

## **ISSUE TWO**

**Appellant was denied due process of law and equal protection of the law by unknowingly having violated the speedy trial statutory law causing unnecessary waiver by no fault of his own while being represented by counsel, and by the Court which used trickery tactics to get him to acknowledge voluntariness of waiving his speedy trial rights while entering a plea of guilty.**

In the guilty plea colloquy proceeding which occurred on October 12, 2001, the court used tactics in order to cause the Appellant to admit to voluntary waiver of his speedy trial rights.

During such proceeding, the following occurred after the Court was successful in getting Appellant to say he was completely satisfied with the services of that his attorney had rendered to him.

Q. Now, Carlos, you remember back on July the 5th of 2000, you made your first Circuit Court appearance and the case was continued till the October 2000 term. But on October the 3rd, you waived arraignment, waived speedy trial, waived your 270 statutory days in which to be tried, requested a continuance. And we continued the case, but we preset it for the April 2001 term. Now, on April the 2nd of 2001, you again, waived arraignment, waived speedy trial, waived 270 statutory days to be tried and requested a continuance. And at that time we set the case for trial for this coming Monday, which is October the 15th. Do you remember that?

A. Yes, sir.

Q. Now, you fully understand your trial is still set for Monday morning and we have the regular weekly trial jury summoned to be here and what

is known as a special venire jury, it's and extra additional jurors drawn to make up the jury poll from which the State of Mississippi and you and Mr. Colette select a jury to conduct your trial. Do you understand that?

A. Yes, sir.

Q. Now, Carlos, you remember back each time you waived arraignment, waived speedy trial, waived your 270 statutory days to be tried, I told you any time you and Mr. Colette asked you'd be arraigned. Do you remember that?

A. Yes, sir.

Q. All right. Now, he's asked today that you be arraigned on Count 1 and Count 2 on this indictment. (See TR 3-4)

Appellant would admit unto this court, as he stated in the PCR to the trial court, that he had knowledge and remembers waiving his arraignment through his attorney filing continues, but he was not advised by his counsel, nor by the court, that he was also waiving his speedy trial rights because it was not explained to him by his counsel nor by the court before the date of entering the plea of guilty. Appellant avers that such illegal actions violated his constitutional rights to due process of law and equal protection of the law as guaranteed him under the Fourteenth Amendment of the United States Constitution as well as his rights to effective assistance of counsel.

Appellant further avers that if he had known specifically about the speedy trial statutory law, he would not have entered a plea of guilty nor would he have stated that he was satisfied with his attorney's representation.

In the instant case, the prosecution after the passage time required to bring the case to trial under the speedy trial clause of the constitution of the State of Mississippi and the constitution of the United States. Until the termination of defense counsel's assistance in this case, appellant was bound by the acts of his attorney and was unable to present any claims on his own accord. Turner v. State, 665 So.2d 852 (Miss. 1995)

Appellant's convictions and sentences also rests upon the voluntary actions of his attorney waiving the right to speedy trial without making appellant aware of such a waiver and securing a waiver from appellant.

### **Ineffective Assistance of Counsel**

To successfully claim ineffective assistance of counsel, the defendant must meet the two-prong test set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984). This test has also been recognized and adopted by the Mississippi Supreme Court. Alexander v. State, 605 So.2d 1170, 1173 (Miss. 1992); Knight v. State, 577 So.2d 840, 841 (Miss. 1991); Barnes v. State, 577 So.2d 840, 841 (Miss. 1991); McQuarter v. State, 574 So.2d 685, 687 (Miss. 1990); Waldrop v. State, 506 So.2d 273, 275 (Miss. 1987), aff'd after remand, 544 So.2d 834 (Miss. 1989); Stringer v. State, 454 So.2d 468, 476 (Miss. 1984), cert. denied, 469 U.S. 1230 (1985).

The Mississippi Supreme Court visited this issue in the decision of Smith v. State, 631 So.2d 778, 782 (Miss. 1984). The Strickland test requires a showing of (1) deficiency of counsel's performance which is, (2) sufficient to constitute prejudice to the defense. McQuarter 506 So.2d at 687. The burden to demonstrate the two prongs is on the defendant. Id; Leatherwood v. State, 473 So.2d 964, 968 (Miss. 1994), *reversed in part, affirmed in part*, 539 So.2d 1378 (Miss. 1989), and he faces a strong rebuttable presumption that counsel's performance falls within the broad spectrum of reasonable professional assistance. McQuarter,

574 So.2d at 687; Waldrop, 506 So.2d at 275; Gilliard v. State, 462 So.2d 710, 714 (Miss. 1985). The defendant must show that there is a reasonable probability that for his attorney's errors, defendant would have received a different result. Nicolaou v. State, 612 So.2d 1080, 1086 (Miss. 1992); Ahmad v. State, 603 So.2d 843, 848 (Miss. 1992). See Strickland v. Washington, 466 U.S. 668, 687 (1984).

### **Speedy Trial**

The provisions of law which requires a speedy trial in the State of Mississippi provides the following:

§ 99-17-1. Indictments to be tried within 270 days of arraignment.

Unless good cause be shown, and a continuance duly granted by the court, all offenses for which indictments are presented to the court shall be tried no later than two hundred seventy (270) days after the accused has been arraigned.

The Courts have determined that this 270 days time allotment starts from the date of initial arrest and with the defendant being held for the charge.

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For constitutional purposes, the right to a speedy trial attaches and time begins to run with arrest. The statutory right to a speedy trial set forth in this section attaches with arraignment; calculation of statutory time requires exclusion of the date of arraignment and inclusion of the date of trial and weekends, unless the last day of the 270-day period falls on Sunday. Any delays in prosecution attributable to a defendant under either the constitutional or statutory scheme tolls the running of time. Any continuances for "good cause" will toll the running of time unless "the record is silent regarding the reason for delay," in which case "the clock ticks against the State

because the State bears the risk of non-persuasion on the good cause issue." The statutory 270-day rule is satisfied once the defendant is brought to trial, even if that trial results in a mistrial. Handley v. State, 574 So. 2d 671 (Miss. 1990).

Constitutional right to speedy trial exists separately from the statutory right. Simmons v. State, 678 So. 2d 683 (Miss. 1996).

The state failed to respect Jackson's constitutional or statutory right to a speedy trial in this case and for that reason this Court should vacate the conviction and the sentences with prejudice. Moreover, ineffective assistance of counsel should also be found. Since the right to a fair trial, as well as a speedy trial, is a fundamental and essential right, under form of our government, Johnson v. State, *supra*, there shall be no procedural bar to these assignments of error, which collectively denied Carlos Jackson his constitutional fundamental right to a fair trial and a fast and speedy trial, being raised for the first time in a post-conviction setting. Gallion v. State, 469 So.2d 1247 (Miss. 1985).

Appellant Jackson did not receive his fundamental constitutional right to a fair trial in this case and, for that reason, as outlined above, he was unable to prove his innocence to the crimes because the police and prosecuting authorities, as well as his attorney, used unfair and illegal tactics to bring him to trial long after the time for trial under the law had expired. For example:

- (1) In July 2000, Jackson made his first appearance before the court and was advised by his counsel to enter a plea of not guilty, and because the court was not ready to proceed, the court continued the case until the October 2000 term; (TR 4)
- (2) During the October 2000 Term, Jackson's attorney, not Jackson, waived his 270 statutory days in which to be tried, by requesting continuance without giving prior notice of the reason for his continuance and without his client's consent; and for whatever reason was given by the defense counsel, the court continued the case until the April 2001 term of court. (TR 4)

- (3) On April 2, 2001, Jackson's attorney, without prior knowledge of his intentions, waived his arraignment, thereby unknown to Jackson, waived the 270 statutory speedy trial days to be tried, by requesting the court for a continuance for no justified reasons for during so. And for whatever reason, the court continued the case for trial until October 15, 2001. (TR 4)
- (4) The Court, made it clear on the record that Jackson's attorney specifically waived speedy trial, by using tactics to make sure it was in the record, by saying, "you remember back each time you waived arraignment, ... I told you any time you and Mr. Colette asked, you'd be arraigned. Do you remember that?"

Jackson avers and would show unto the court, by putting on testimony and by referring back to the record upon each time a continue of arraignment was made, that it was not explained to Appellant that when his counsel continued his arraignment, it was not stated that the defendant was also waiving his the 270 days statutory requirement by which the trial was supposed to commence. Neither Jackson's counsel nor the court explained to him that by continue his arraignment for trial, he was also waiving his 270 days limitations for trial.

The statute of limitations on prosecutions provides the following provisions of law:  
§ 99-1-7. Time limitation on prosecutions; commencement of prosecution.

A prosecution may be commenced, within the meaning of Section 99-1-5 by the Issuance of a warrant, or by binding over or recognizing the offender to compel his appearance to answer the offense, as well as by indictment or affidavit.

Thus, it is clear that the prosecution of Jackson started on the date in which he was arrested by warrant in Pearl River County, Mississippi for Murder and Aggravated Assault, and not on the date when he was indicted for the same in Pearl River County, Mississippi.

Although an indictment is required to prosecute one charged with a felony, for purposes of the statute of limitations, a prosecution can be commenced by the issuance of a warrant or by an arrest. State v. Woodall, 744 So. 2d 747 (Miss. 1999).

The convictions and sentences imposed in this case should have been vacated by the trial court as being constitutionally invalid as a matter of law. Where the trial court below has failed to adhere to the applicable law, this Court should reverse and remand the decision denying relief.

### **ISSUE THREE**

**That the sentence of life imprisonment which was imposed upon appellant by the trial court, without the providence of a jury, constitutes a discriminatory practice where, under Mississippi law, a jury is required to determine whether a life sentence is to be imposed after the conviction of the crime of murder or capital murder. The failure of the law to require that a jury make the determination of the sentence in the case of murder constitutes a violation of the equal protection of the 14th Amendment to the United States Constitution.**

Appellant is alleging that his sentence is illegal because of the court failure to conduct a separate sentencing proceeding before a jury to determine whether the defendant should be sentenced to life imprisonment without the eligibility for parole, or life imprisonment, in violation of Section 99-19-101 (1), which states as following:

***§ 99-19-101. Jury to determine punishment in capital cases in separate sentencing proceeding; aggravating and mitigating circumstances to be considered.***

*(1) Upon conviction or adjudication of guilt of a defendant of capital murder or other capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death, life imprisonment without eligibility for parole, or life imprisonment. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a jury to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose or may be conducted before the trial judge sitting without a jury if both the State of Mississippi and the defendant agree thereto in writing. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence, and shall include matters relating to any of the aggravating or mitigating circumstances. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitutions of the United States or of the State of Mississippi. The state and the*

*defendant and/or his counsel shall be permitted to present arguments for or against the sentence of death.*

(2) After hearing all the evidence, the jury shall deliberate on the following matters:

- (a) Whether sufficient factors exist as enumerated in subsection (7) of this section;
- (b) Whether sufficient aggravating circumstances exist as enumerated in subsection (5) of this section;
- (c) Whether sufficient mitigating circumstances exist as enumerated in subsection (6) of this section, which outweigh the aggravating circumstances found to exist; and
- (d) Based on these considerations, whether the defendant should be sentenced to life imprisonment, life imprisonment without eligibility for parole, or death..."

Here, in the case sub judice, there is nothing in the record to indicate that Jackson waived his rights for a jury to determine his sentence in order to let the judge impose sentence immediately after conviction. Such action of this court is a clear violation of due process of law as guaranteed him under the Fifth and Fourteenth Amendment of the United States Constitution and a clear denial of equal protection of the law as guaranteed him under the Fourteenth Amendment of the United States Constitution, as well a violation of statutory law under Section 99-19-101 (1) of the Miss. Code Ann. 1972, as amended.

The Court must find that Jackson's sentence was illegally imposed that the case must be vacated for resentencing or for a sentence hearing nunc pro tunc.

## **ISSUE FOUR**

**The Court committed plain error by failure to include in the record, after having been sentenced pursuant to a guilty plea, by subjecting Carlos F. Jackson to a denial of due process of law where the trial court failed to advise Jackson of the right to a direct appeal of the imposed sentence to the Supreme Court.**

The trial court failed to advise Carlos F. Jackson that he had the right to appeal the actions of the Court in the sentence it arrived at in regards to the plea. Even upon a plea of guilty the law would allow Jackson a direct appeal of the sentence imposed. The trial court judge made fundamental error where it failed to advise Jackson of this avenue of review of the sentence in regards to the plea of guilty. The law is clear that a defendant who pleads guilty has a right to a directly appeal the sentence to the Supreme Court. Trotter v. State, 554 So. 2d 313, 86 A.L.R.4th 327 (Miss. 1989).

On August 3, 1987, a sentencing hearing was held. After a full hearing in which Trotter contested the imposition of sentence, Trotter was sentenced to serve two years on each of the two burglary charges, the sentences to run concurrently. From that sentence, Trotter appeals, claiming that the delay of more than four years in sentencing him violated his fifth amendment right to due process and his sixth amendment right to a speedy trial. He also claims that the delay in sentencing violated certain provisions of the Mississippi Constitution, as well as Rule 6.01 of the Mississippi Uniform Rules of Circuit Court Practice. A preliminary point needs to be addressed.

The State contends that this appeal should be dismissed for lack of jurisdiction because Trotter pleaded guilty to the charges against him. The State cites Miss. Code Ann. § 99-35-101 (1972), which states: Any person convicted of an offense in a circuit court may appeal to the supreme court, provided, however, an appeal from the circuit court to the supreme court shall not be allowed in any case where the defendant enters a plea of guilty. In Burns v. State, 344 So.2d

1189 (Miss. 1977), this Court implied that an appeal from a sentence imposed pursuant to a guilty plea is not equivalent to an appeal from the guilty plea itself. In Burns, an appeal from denial of a habeas corpus petition challenging the legality of a sentence imposed subsequent to a guilty plea was treated by this Court as a direct appeal. While the Court acknowledged the language of §99-35-101, the Court stated: "[W]e do not deem the present case as an appeal from a guilty plea." Burns, 344 So.2d at 1190.

Although Jackson's guilty plea may have automatically waived his right to appeal the conviction itself, it was not explained to Harris that he had the right to appeal the sentence of the court and the terms of such sentence. During the guilty plea hearing, the court failed to demonstrate in the record that Jackson knowingly and voluntarily waived his right to appeal his sentence. United States v. Robinson, 187 F.3d 516 (5th Cir. 1999). In Robinson, the Fifth Circuit stated:

"Although a defendant may waive his right to appeal as part of a plea agreement with the government, this waiver must be "informed and voluntary."

United States v. Baty, 980 F.2d 977, 978 (5th Cir. 1992) (quoting United States v. Melanco, 972 F.2d 566, 567 (5th Cir. 1992).

This court must vacate the judgment and hold an evidentiary hearing on whether defendant was in fact denied the right to appeal his sentence.

#### **ISSUE FIVE**

#### **The Court SHOULD consider and review Jackson's assignment of errors as "Cumulative Error"**

Appellant asserts in this Court, as asserted in the Court below, that even in the event this Honorable Court holds that each of the aforesaid claims raised, standing alone, does not

constitute cause to grant relief, the cumulative effect of each acted to deprive Jackson of his constitutional rights to a fair trial, as guaranteed to him under the Sixth and Fourteenth Amendments to the United States Constitution, and Article 3, Sections 14 and 26 of our Mississippi Constitution. Rainer v. State, 473 So.2d 172, 174 (Miss. 1985); Williams v. State, 445 So.2d 798, 814 (Miss. 1984)

In cases such as the one presented here, the Supreme Court has not hesitated in reversing other defendants convictions and ordering a new trial, for “(a) fair trial is, after all, the reasons we have our system of justice; it is a paramount distinction between free and totalitarian societies.” Johnson v. State, 476 So.2d 1195 (Miss. 1985), cited with approval in Fisher v. State, 481 So.2d 283 (Miss. 1985).

*“It is one of the crowning glories of our law that, no matter how guilty one may be, no matter how atrocious his crime, nor how certain his doom when brought to trial anywhere, he shall, nevertheless, have the same fair and impartial trial accorded to the most innocent defendant. Those safeguards crystallized into the constitution and laws of the land as the result of centuries of experience, must be, by the courts, sacredly upheld as well as in the case of the guiltiest as of the most innocent defendant answering at the bar of his country. And it ought to be a reflection always potent in the public mind, that where the crime is atrocious, condemnations is sure, when all these safeguards are accorded the defendant, and therefore the more atrocious the crime, the less need is there for any infringement of these safeguards.”*  
Tennison v. State, 79 Miss. 708, 713, 31 So. 421, 422 (1902), cited and quoted with approval in Johnson v. State, *supra*.

The importance to which the Honorable Mississippi Supreme Court has jealously guarded and accused’s right to a fair trial and fair judicial process is further reflected in Cruthirds v. State, 2 So.2d 154 (Miss. 1941)

*“The storm of opposition, brute force and hate which is sweeping across a large part of the universe has levered to the ground the temple of justice in many countries, and even in our own it has been shaken and broken in places, yet we may fervently hope that when the storm shall have spent its fury there will remain undisputed, as one of the foundational pillars of that temple, the right of all men, whether rich or poor, strong or weak, guilty or innocent, to a fair trial, orderly and impartial trial in the courts of the land. Id. at 146. .*

The case sub judice falls within the perimeters of that described in Scarborough v. State, 37 So.2d 748 (Miss. 1948):

*"This is not one of those case for the application of the rule that a conviction will be affirmed unless it appears that another jury could reasonably reach a different verdict upon a proper trial then that returned on the former one, but rather it is a case where the constitutional right of an accused to a fair and impartial trial has been violated. When that is done, the defendant is entitled to another trial regardless to the fact that the evidence on the first trial may have shown him to be guilty beyond every reasonable doubt. The law guarantees this to one accused of crime, and until he has had a fair an impartial trial within the meaning of the Constitution and the laws of the State, he is not to be deprived of his liberty by a sentence in the state penitentiary." Id. At 750.*

Since the right to a fair trial, as well as a speedy trial, is a fundamental and essential right, under form of our government, Johnson v. State, supra, there shall be no procedural bar to these assignments of error, which collectively denied Carlos Jackson his constitutional fundamental right to a fair trial and a fast and speedy trial, being raised for the first time in a post-conviction setting. Gallion v. State, 469 So.2d 1247 (Miss. 1985).

Appellant Jackson did not receive a fair trial in this case and, for that reason, as outlined above, he was unable to prove his innocence to the crimes because the police and prosecuting authorities, as well as his attorney, used unfair and illegal tactics to bring him to trial long after the time for trial under the law had expired. It was his counsel without his consent to waive his rights to a speedy trial by filing unnecessary continues. Appellant had no action or part in such action intentionally done by his counsel. The remedy for a denial of a fast and speedy trial is that the charges and sentence should be dismissed with prejudice. Such tactics done by his counsel acting in concert with the prosecutor and the Court was to get him to incriminate himself by having no other choice but to enter a plea of guilty.

Jackson also alleges that it was cumulative error that the sentence imposed upon the defendant by the court constitutes an illegal sentence since it exceeds the amount of time in which a trial court may impose without a jury under the law in effect at the time. The sentence

therefore constitutes a fundamental constitutional error cognizable at anytime and not withstanding any procedural bar.

Jackson's sentence is ambiguous, which was unknowingly to him before the court accepted his plea of guilty and when it was alleged that Jackson committed the offense of murder; however, it was knowledgeable to Jackson that he could only receive a life sentence for his crime of murder and 1 to 20 years for the aggravated assault charge, but it was not made known to him that whatever sentence that he would receive on the aggravated assault conviction would be a consecutive sentence to the life sentence. By imposing such a sentence, even though the court did not sentence Jackson to life without parole, the Court made certain that Jackson would never be granted a parole because of the consecutive additional 20 years he was given on the Aggravated assault charge. Such a sentence is a death sentence if the court had considered the age of Jackson before imposing such a sentence. That being clear, the trial court exceeded its authority in imposing such a sentence upon Jackson on October 12, 2001. Without entering a signed agreement with the prosecutor giving the court authority to determine such a sentence without a jury making such determination a death sentence or a life sentence with parole or without parole. Jackson's sentence is clearly illegal. See Lanier v. State, 635 So.2d 813 (Miss. 1994).

In Lanier, the procedural history of the case were as follows:

Johnny Rufus Lanier was indicted for capital murder in the December 28, 1985 murder, kidnapping, and aggravated assault of Alma Walters, a Meridian police officer. Venue was changed from Lauderdale County to Covington County, where Lanier was tried, convicted, and sentenced to death. On appeal, this Court affirmed the guilty verdict but, based on a confrontation clause violation by the State, reversed and remanded for a new sentencing hearing. See Lanier v. State, 533 So.2d 473 (Miss.1988).

On remand, the State agreed to forego a sentencing hearing, thus forfeiting the right to seek the death penalty, in exchange for Lanier's waiver of any future right to

apply for parole on the capital murder charge. At a hearing before the circuit court on October 27, 1989, the judge accepted Lanier's waiver. Lanier was represented by five attorneys all of whom were in favor of Lanier's agreement with the State and felt it was in Lanier's best interest. All five attorneys assured the court that Lanier understood the terms and implications of the agreement.

The circuit judge questioned Lanier extensively about his agreement with the State and the rights he waived by signing it. Lanier acknowledged that he had discussed the agreement with his attorneys and that he understood he was giving up all present and future rights to parole on the capital murder charge. Lanier further understood that his sentences for the three offenses (murder, kidnapping, aggravated assault) were to run consecutively, beginning with his life sentence for the murder.

In response to questions from the court, Lanier responded that he had not been threatened or coerced to accept the agreement with the State. Lanier and his attorneys then signed the agreement, which provided Lanier was "sentenced to serve a life sentence with the Mississippi Department of Corrections without eligibility for parole." Accordingly, the circuit judge sentenced Lanier to life without parole.

On April 11, 1991, Lanier offered a motion to "Reduce, Modify and/or Correct Sentence," which was ultimately filed by the Circuit Clerk of Lauderdale County on April 30, 1991. Lanier alleged the following three grounds for post-conviction relief:

1. His sentence violated the constitutions of the United States and the State of Mississippi;
2. His sentence exceeded that allowed by law; and
3. He received ineffective assistance of counsel at the sentencing phase.

On May 3, 1991, the circuit judge entered an order directing the State to answer Lanier's petition and requiring answers from two of the attorneys who had represented Lanier at trial. The circuit judge stated explicitly in his order that he was expanding the record pursuant to Miss.Code Ann. § 99-39-17.

Lanier's motion was denied by the circuit judge on August 20, 1991. The judge noted Lanier challenged only the validity of the sentence agreed to for capital murder, yet did not seek to withdraw or breach his "Waiver of Parole Rights" agreement. Consequently, the trial court found only one question needed to be addressed: Is the "no parole" provision in the sentence imposed upon Lanier for his capital murder conviction valid? The trial judge further concluded that this was a question of law; therefore, no evidentiary hearing was necessary. The court then found that, as a matter of law, the "no parole" provision of Lanier's sentence was "a valid part of the sentence imposed on the Appellant."

Lanier subsequently prosecuted an appeal to the Supreme Court of Mississippi which found as follows:

Enforcement of the contract between Johnny Rufus Lanier and the State would result in a sentence which is not authorized by law. Pursuant to Miss.Code Ann. § 99-19-101(1) (Supp.1993), the sentencing options available to one convicted of capital murder are life imprisonment or death. Life imprisonment without the possibility of parole is not an option unless the convict is adjudged an habitual offender. Miss.Code Ann. §§ 99-19-81, 99-19-83 (Supp.1993). Lanier was not indicted as, and apparently was not, an habitual offender; therefore a life sentence qualified by the preclusion of parole is not available to Lanier.

Enforcement of the contract would also yield a result beyond the power of this Court to produce. The legislature has established our parole system and the extent of possible sentences for crimes. See Miss.Code Ann. Title 47, Chapter 7 (Probation and Parole) and Titles 97 and 99 (Crimes, Criminal Procedure). The judiciary is responsible for trying those accused of crimes and for imposing sentences authorized by the legislature. But it is the executive branch, via the parole board, that implements the legislature's parole policies and determines the actual time served by those convicted of crimes. Miss.Code Ann. § 47-7-5(3) (1972). It follows that enforcement of the contract by this Court would effect judicial encroachment on an executive function. In other words, enforcement would bind the parole board, which took no part in the negotiations with Lanier.

Although the right to contract is fundamental, contracts contrary to public policy are unenforceable. *Hertz Commercial Leasing v. Morrison*, 567 So.2d 832, 834 (Miss.1990); *First Nat. Bank of Vicksburg v. Caruthers*, 443 So.2d 861, 864 n. 3 (Miss.1983). Our statutes are enactments of the public policy of this state. *Grisham v. Hinton*, 490 So.2d 1201, 1209 (Miss.1986) (Robertson, J., concurring). Indeed, regarding invalidation of contracts on public policy grounds, this Court has said that the public policy of this state is "found in its constitution and statutes, 'and when they have not directly spoken, then in the decisions of the courts and the constant practice of the government officials.' " *Cappaert v. Junker*, 413 So.2d 378, 380 (Miss.1982), quoting *State ex rel Knox v. Hines Lbr. Co.*, 150 Miss. 1, 48, 115 So. 598, 605 (1928).

The contract between Lanier and the State relates not merely to the parties' private business, but to matters of public concern. Both Miss.Code Ann. § 99-19-101 and this Court's interpretation of this statute have consistently allowed only two sentencing options for one convicted of capital murder: death or life imprisonment, not qualified by preclusion of parole. The contract at issue is an attempt to circumvent § 99-19-101, and as such, this contract is void ab initio on the ground that it violates the public policy of this state. As a result, both parties are placed back in the positions which they occupied prior to entering into the agreement. *Sullivan v. Pouncey*, 469 So.2d 1233, 1234 (Miss.1985). Lanier once again has the right to be sentenced by a jury and the State once again has the right to seek the death penalty.

Lanier v. State, 635 So.2d 813, 817-18 (Miss. 1994).

It is clear from Lanier, and other cases cited here, that the sentence imposed upon Jackson is an illegal sentence which the trial court had no authority to impose for a capital murder which was charged to have occurred on October 28, 1993.

***Whether Carlos Jackson may be procedurally barred  
from having his claim of an illegal sentence heard.***

In Kennedy v. State, 732 So.2d 184, 186-87 (Miss. 1999), the Supreme Court of Mississippi held as follows in regards to an illegal sentence claim similar to the one offered here.

Kennedy essentially contends that his life sentence for murder is an illegal sentence, and as such, is not subject to either of the aforementioned bars. Kennedy further contends that even if the trial court had the authority to sentence him to life imprisonment for murder, the court erred in doing so because the indictment failed to include the portion of Miss.Code Ann. § 97-3-21 which authorizes the court to impose such a sentence. This Court has held that errors affecting fundamental constitutional rights may be excepted from procedural bars which would otherwise prohibit their consideration. Lockett v. State, 582 So.2d 428, 430 (Miss.1991). This exception to procedural bars for a claim of illegal sentence was noted by the Court in Kennedy I as well. Kennedy v. State, 626 So.2d 103, 105 (Miss.1993). Further, the right to be free from an illegal sentence has been found to be fundamental. See Sneed v. State, 1998 WL 635554, 722 So.2d 1255 (Miss.1998).

Thus, Kennedy is entitled to have his claim considered on the merits.

Carlos Jackson's claim here is against an unconstitutional illegal sentence which the Supreme Court has clearly held to be a fundamental constitutional claim which is entitled to the exception allowed by law. That being explicitly clear, this Court should hear and determine Jackson's claims on the merits. Lockett v. State, 582 So.2d 428, 430 (Miss.1991).

Additionally, trial counsel never objected to the excessive sentence which the trial court imposed upon Bridges and which sentenced has been shown to be excessive in the claims presented here. No claim of such sentence was presented to the trial court by counsel. Additionally, defense counsel never advised Bridges that he had a right to file an appeal in regards to the legality of the sentence imposed.

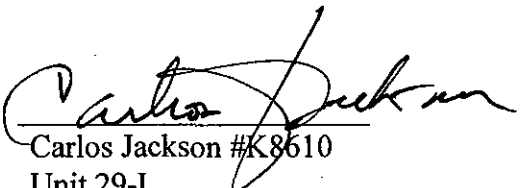
Appellant Bridges would urge this Court to grant post conviction relief in regards to this claim and to conduct an evidentiary hearing on this issue.

### CONCLUSION

Appellant Jackson respectfully submits that based on the authorities cited herein and in support of his brief, that this Court should vacate the guilty pleas, convictions and sentences imposed as well as the action taken by the trial court in regards to the post conviction relief motion. The trial court erred in failing to conduct an evidentiary hearing and in failing to grant relief in this case. This case should be remanded to the trial court for an evidentiary hearing.

Respectfully submitted:

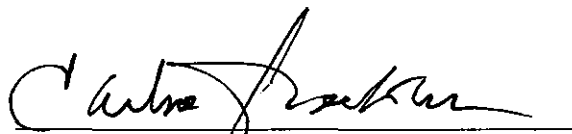
By:

  
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### CERTIFICATE OF SERVICE

This is to certify that I, Carlos Jackson, have this date served a true and correct copy of the above and foregoing Brief for Appellant, by United States Postal service, first class postage prepaid, to: Honorable Jim Hood, Attorney General, 5th Floor of Gartin Justice Building, Jackson, MS 39205; Honorable R. I. Prichard, III, Circuit Court Judge, P. O. Box 1075, Picayune, MS 39466; Honorable Claiborne McDonald, Assistant District Attorney, 500 Courthouse Square, Suite 3, Columbia, MS 39429.

This, the \_\_\_\_\_, day of March, 2008

  
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