IN THE STATE OF MISSISSIPPI SUPREME COURT
COURT OF APPEALS

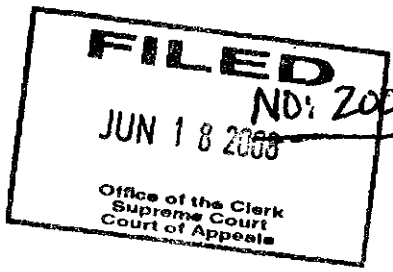
COPY

NO: 2007-CP-01548-COA

Antonio Moore

V

STATE OF MISSISSIPPI



Petitioner-Appellant
NO: 2007-CP-01548-COA

Respondent-Appelle

APPEAL FROM THE JUDICIAL DISTRICT
CIRCUIT COURT OF Lowdnes County Mississippi

APPEALLANT(S) BRIEF IN ANSWER
TO NOTICE OF BRIEFING SCHEDULE Pursuant to M.R.A.P.
31(b) ORAL ARGUMENT NOT REQUESTED

Appeallant would INVOKE Habeas Corpus Art 3, 21
are PREFERENCE CASES: (see 11-43-1, 9-1-19 M.C.A
28 U.S.C 2254(b) (C)

Antonio Moore # L0149
Attorney of Record - PROSE
Marshall County Correctional Facility
833 West Street
Holly Springs, Mississippi 38635

Respondent name:
Attorney General
JIM Wood
P.O. Box 220
Jackson, MS. 39205

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VENUE M.R.C.P. Rule 81(a)

U.S. Constitution Art. I, §9. Cl. 2
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28 U.S.C. 2254 (b) (C)
Art. 3. 21 Habeas Corpus
AM. JUR. 18 AM. Jur. 2d Coram Nobis and Allied Statutory Remedies §§4.5, 7, 21., 44-48, 52, 53, 54, 57, 59, 60

ARGUMENT . . . . (Pg 1) Fourteenth Amendment 14th
Thus the appellant would assert herein Antonio Moore L0149
thatin the case "Sub judice" and pursuant to United States Supreme Court Bands Supra. that is impossible without a trial transcript or adequate substitute and the Supreme Court of the United States has held that states must provide trial records to an inmate as in the case at bar. citing Griffin V Illinois 351, U.S. 12, 20 (1956), Eskridge V Washington Prison. Bd 357 U.S. 214 (1958)

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MISSISSIPPI RULES APPELLATE PROCEDURE

Equal Protection Fourteenth Amendment [Part] 1 STATEMENT OF FACTS AND ISSUES M.R.C.P. 26(a)(b) 28 U.S.C. 2254(b)(c)

Criminal LAW - Indictment - RECORD MUST Show Presentment

Receipt AND Filing OF Indictment 13-7-1 evidence, process, juries

Petitioner would assert that in the instant case at bar Antonio Moore # L0149 unless the record of a conviction or sentence on a criminal charge, preferred by indictment, shows that the indictment was presented to the Court by the grand jury and recieved by the Court Circuit Court of Lowdnes County (rec vol. 1 "unKnown" day of 2001 on a jury trial on or about Febuary 27 2002 on the charge of SALE of Cocaine allegedly in violation of Miss. Code Ann. 41-29-139. and Filed. It is as though there never was no indictment Found, and such conviction cannot Stand. (Citing art. 257 Code, 614). This Court must Find and note by showing that there was a grand jury organized, or that such jury ever came into open court and there presented a true bill, twelve of the number assenting. Appellant here would insist that the Court of APPEALS OF MISSISSIPPI cannot afford to sacrifice a Fundamental principle of the Constitution, and a positive provision of the Statue, intended to carry out the principle, to the ignorance of clerks or the neglect of the Counsel Michael Miller. Therefore the caption of the minutes showing the organization of the grand jury. and the entry according to art. 257 Code, 614 are in essence indispensable Facts of every record in a Criminal cause. There is no statute of jeofails so broad as to cure the want of a Finding by the grand jury [13-7-1 and the record must show it, and the 57th article has prescribed what the evidence shall be. The coming into open court of at least twelve of the grand jurors, and presenting by their Foreman the bill, the recieving by clerk,

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Constitution of United States

Equal Protection of law 14th STATEMENT OF THE ISSUES M.R.C.P 26(a)(b) 28 U.S.C 2254 (b)(C)

That the petitioner Antonio Moore #L0149 would invoke the Mississippi Rules of Evidence Adopted Effective January 1, 1986 by ORDER ADOPTING THE MISSISSIPPI RULES OF Evidence by the Supreme Court of Mississippi: It is noted by Plaintiff/ Appellant that on May, 15 1985 the Supreme Court entered an Order effecting preliminary actions with regard to the adoption of The Mississippi Rules of Evidence. That Order was published in the Southern Reporter, Mississippi Edition, on June 6, 1985, and provided for a ninety (90) day period of time within which interested persons could submit to the Court and to the Advisory Committee ON Rules views with respect to The Mississippi Rules of Evidence, or any of them. That Moore would submit that in accordance with the ninety (90) period of time has now elapsed. And by the (rec. Vol. 1 "Petition FOR AN ORDER TO SHOW CAUSE / MISSISSIPPI RULES OF APPELLATE PROCEDURE RULE 27 MOTIONS" And the Court of Appeals having heard and considered in their entirety. For the discovery and Production of the Appeal transcript for "30" days period in order to argue adequately in his brief on this appeal (rec vol. 1 2007-CP-01548-COA under his 1st Amendment and Fourteenth Amendments rights. Bounds Supra, And that there is evidence he still does not possess a trial transcript or adequate substitute, and the Supreme Court of the United States has held that states must provide trial records to an inmate such as Moore in the instant case at bar. (citing Griffin V Illinois 351 U.S. 12, 20 (1956) (citing Eskridge V Washington Prison Bd. 357 U.S. 214 (1958) (citing Long V District Court of Iowa. 385 U.S. 192 (1966) 28 U.S.C 2254(b) (C) citing Picard V Connor 404 U.S. 270 92 S.Ct. (1972) M.R.A.P. 27 (a)

STATEMENT OF ISSUES M.R.C.P. 26(2)(b) 28 U.S.C. 2254(b)(c) [R VII]

Petitioner Antonio Moore # L0149 would assert and contend that it is well-settled that a state prisoner seeking habeas Corpus relief in the State or Federal court is First required to exhaust his available state remedies. (Citing Rose V Lundy 455 U.S. 509 (1989) CF. Luckett V STATE 582 So. 2d 428 (MISS 1991) (citing Rummel V Estelle 590 F.2d 103: 1979 U.S. App.

AFFirmative Matters Sentencing and punishment

Petitioner/Appellant would assert PROSE that a Full and Fair adjudication of Moore's claims in the state Court of Appeals is a pre requisite for application of AEDPA'S review provisions. (Citing Nobles V. Johnson 127 F.3d. 409, 416 (5th cir 1997) 28 U.S.C. 2254 (d)(2) applies to a state court's Factual determinations, and subsection (d)(1) governs the Federal Court's review of questions of law and mixed questions of law and Fact (CF. Lockhart V Johnson, 104 F.3d. 54, 56-57 (5th cir) Cert. denied, 521. U.S. 1123, 117 S.Ct. 2518. 138 L. Ed 2d. 1019 (1997): "An application of law to Facts is Unreasonable only when it can be said that reasonable jurists Considering the question would be of one view that the state court ruling was incorrect" Drinkard V Johnson 97 F.3d. 751, 768-69 (5th cir 1996) Under the M.R.A.P. Rule 22 an Application for Post-conviction Collateral Relief IN criminal cases states (2) (b) (2)(i) (ii)(iii) (iv) (rec vol. 1 2007-CP-01548-COA) to wit: MISS carriage of Justice!

Further more in the instant case at bar after being tried and Convicted, A criminal defendant such as Moore Filing his First appeal has an right to have an attorney apporited under his 6th Amendment right to represent him if cannot himself hire one. (citing Douglas V California 372 U.S. 353 (1963) Johnson Supra 352 U.S. 565)

Equal Protection of Law Fourteenth Amendment [pg XIII]

STATEMENT OF THE CASE M.R.C.P. 26 (a)(b) 28 U.S.C. 2254 (b)(C)

Antonio Moore # L0149 would invoke Findings of Fact! "Art. 3. 21 Habeas Corpus" M.R.C.P. 52

The petitioner/Appellant was tried and convicted in the Lowndes County Circuit Court on or about Febuary 27 2002, on the charge of Sale of Cocaine allegedly in violation of Miss. Code. Ann. 41-29-139 and that he had imposed a Sentence of 23 years in the Mississippi Department of Correction by the Honorable Judge Howard. Which entry of judgement of conviction and Sentence was had on the above-mentioned date. That he was or allegedly indicted on or about "unknown" date of 2001: That he was never issued an indictment in the Criminal Cause "Subjudice". That the is evidence that his attorney Michael Miller was incompentent "Cause" and was abusing drugs "actual prejudice" around the time of his trial and that MR. Miller suffered from mental illness. Brady material Supra. And the records would show M.R.E. 401, & 901 in the Lowdnes County Chancery Court. Millers parents had him Committed to a psychiatric hospital in 2003. That in the instant case at bar. Once a Criminal Appellant Filing his First appeal has the right to have an attorney "Competent" appointed to represent him IF he cannot afford one himself to hire (citing Douglas V California 372 U.S. 353 (1963) Cf. Johnson V U.S. 352 U.S. 565 (1957) (citing Strickland V Washington 446 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) The Court therein held that in order to establish a Sixth Amendment violation based on ineffective assistance of counsel. An appellant must a two-part showing that his counsels performance was deficient" and that his counsel was not Functioning as counsel guaranteed by Sixth Amend. Cf DAVIS Supra 878 F.2d 1341; 1989 U.S.

Equal Protection Fourteenth Amendment

Statement of ISSUES M.R.C.P. 26 (a)(b)
[Pg VIII] 28 U.S.C. 2254(b)(c)

AFFirmative Matters Sentencing and punishment

Petitioner Antonio Moore #L0149 would assert and contend by not having a trial transcript of the present record supports granting the petitioner Post-Conviction Collateral Relief under the Mississippi ACT and which States:

A. WHERE to File a Petition For Post-conviction Relief

Petitioner would assert that under Miss. Code. Ann. Sec. 99-39-1, a motion For Post Conviction relief shall be filed as an original civil action in the trial court (Rec Vol. 1 civil Action Number 2003-0082-CVI in the Lowdnes County Circuit court of Mississippi. Unless the Appellant's conviction or Sentence has been appealed to the Supreme Court and either affirmed or denied. IF the petitioner plead guilty in the lower court From which no appeal is allowed, and the petitioner later Files For post-conviction relief, the trial court has exclusive jurisdiction to determine the post-conviction petition. Cf. MC Donald V State, 465, So. 2d 1071, 1078 (MISS 1985). IF, on the other hand, the defendant was convicted after a jury trial. and then files a direct appeal which the Supreme Court either affirms or dismisses, a motion For post-conviction relief cannot be Filed in the trial court until leave has been granted by the Supreme Court Cf. STATE V Read 544 So. 2d 810, 813 (Miss 1989): Evans V State 485 So. 2d 286, 283 (Miss. 1986). In the latter instance, the petitioner must not only prepare his/her post conviction petition, but must also prepare a petition asking For leave to File it in the trial court, setting Forth the reasons why leave should be granted. 99-39-5'(e) 99-39-23, M.C.A.

Equal Protection Fourteenth Amendment [Part 2] STATEMENT OF FACTS AND ISSUES M.R.C.P. 26 (2)(b) 28 USC 2254(b)(c)

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and it is generally known by his/her signing the entry: on the lack of an adequate record on the allegedly trial transcript of the charge alleged Sale of Cocaine under 41-29-139 of which he is sentenced and convicted in the present case at bar

1. The absence of the indorsement presented in open Court by the grand jury and filed this "unknown" day of 2001 (signed) initials Clerk," is fatal to the proceedings, even if it otherwise appeared that the grand jury had in open court presented the bill. But the absence of anything to show that the bill had recieved the solem assent of the jury in open court by the presentation, according to art. 257, renders it (the indictment) so much waste paper. Thus the Appellant Antonio Moore # L0149 would assert, it is impossible to say of that important article of the Code, that it is merely directory. The actual presentation of the bill in open Court, by a grand jury [13-7-1 in the manner prescribed, is as essential as the return into court of the verdict of the petit Jury on 41-29-139 Sale of Cocaine in the instant case at bar. For ought that appears, the alleged indictment may have been Found" literally, or pitched in at a window. It is generally Know that the State Founds a right to punish for crimes upon necessity: Cf Jefferson V State 556 So. 2d 1016, 1021 (Miss 1989) citing Conerly V State 607 So. 2d 1153, 1156 (Miss. 1992) and has placed her tribunals under restrictions, and surrounded the Appellant by certain safeguards. The prosecution differs from a civil suit; where the parties are the author of the suit, stand on equal grounds, are expected to take care of themselves. Citing Weaver V Graham 450 U.S. 24, 101, S.Ct. 960, 67 L.Ed. 2d. 17 (1981)

Equal Protection of LAW Fourteenth Amendment

SCOPE OF REVIEW

(POST)

"VENUE" (Part 1)

M.R.C.P. 26(a)(b)
28 U.S.C. 2254(b)(C)
"Art. 3 21 Habeas Corpus"

TRAVERSE AND BRIEF IN OPPOSITION FOR NOT BEING Supplied AN Adequate Transcript

Petitioner Antonio Moore # L0149 would assert and contend: Indictment and Information Ex Parte Bain Supra 121 U.S. 7.S.C. 781,

27 AM Jur: Indictments and Informations: Sec. 54 as Follows:
§13-7-1 State Grand Jury Act.
The established rule is stated: "It is the Constitutional right of the accused under the organic law of the Nation and of the several States, to be informed of the Nature and Cause of the accusation against him. and under these provisions, the accused is entitled to a plain statement of the charge against him. It is fundamental of course that an indictment, to be effective as such. It must set forth the constitutent elements of a Criminal offense (see Rec. vol-1 2003-0082-CVI) on the charge allegedly Sale of Cocaine in Violation of Miss. Code Ann. 41-29-139. provides

(2) Except as authorized by this article. It is unlawful for any person Knowingly or intentionally:

(1) To sell. barter. transfer. many Facture. distribute. dispense or possess. with intent to sell, barter.

(2) To create, sell, barter, transfer, distribute. dispense or possess with intent to create, sell, barter, transfer, distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in subsections (F) and (g) of this section or in Section 41-29-142 any person who Violates Subsection (2) of this Section shall be sentenced as Follows:

" Dosage unit (d.u.) "means a tablet or capsule, or in the case of a liquid solution, one (1) milliliter. In the case of lysergic acid diethylamide (LSD) the term "dosage unit" means a stamp, square, dot,

Equal Protection of LAW Fourteenth Amendment

SCOPE OF REVIEW (pg XII) "VENUE" (Part 2)

M.R.C.P. 26 (a)(b)
28 U.S.C. 2254 (b)(c)
" Art. 3, 21 Habeas Corpus"

TRAVERSE AND BRIEF IN OPPOSITION FOR NOT Being Supplied AN Adequate Transcript

Ex Parte Bain Supra: 27 AM. Jur Indictment(s)

Petitioner Antonio Moore # L0149 would assert under Mississippi Law For any controlled substance that does not Fall within the definition of the term "dosage unit" the penalties shall be based upon the weight of the controlled substance.

The weight set forth refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance. 41-29-139 (a) to wit:

If a mixture or substance contains more than one (1) controlled substance, the weight of the mixture or substance is assigned to the controlled substance that results in the greater punishment. Any person who allegedly violates this subsection with respect to:

(1) A controlled substance classified in Schedule I or II, except marihuana, in the Following amounts shall be charged and sentenced as Follows: (A) (1), B, (C) (D) (E) And that under paragraph (3) A controlled substance classified in Schedule III, IV or V as set out in sections 41-29-117 through 41-29-121 the record must show upon Conviction may be punished as follows: (A) (B) (C) (D) (E)

IF the Facts alleged may all be true yet constitute no offense, the indictment is insufficient. -- Every material Fact and essential ingredient of the offense, every essential element of the offense must be alleged with precision and certainty. or as has been stated every Fact which is an element in a Prima Facie CASE of guilty must be stated in the indictment; see bid. sec 51-63, 79; 42 C.J.S. Indictments and Informations section 130-137-138. (Citing Twing V NEW Jersey 211 U.S. 78, 29 S.Ct. 14, 53 L. Ed. 97 (1908) Mr. Justice Moody Id. at 100-101, 29 S.Ct. at 20.

Equal Protection of Law Fourteenth Amendment

Summary of the Argument

(cite Wilwording II Swenson 404 U.S. 249, 92 S. Ct.

M.R.C.P. 26(b)(c)
28 U.S.C. 2254(b)(c)
"Art. 3, 21 Habeas Corpus"

That Moore herein would argue and assert that the Constitution of the United States of America provides:

Preamble
Article 1
Section 1
Section 2
Section 3
Section 4
Section 5
Section 6
Section 7
Section 8
Section 9
Section 10
Article 2
Section 1
Section 2
Section 3
Section 4
Article 3
Section 1
Section 2
Section 3
Article 4
Section 1
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Article 6

Amendment 1
Amendment 2
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Amendment 27

(pg 14)

And it is generally known to be here, For Our Edification, enlightment and enjoyment as a citizen of the US Constitution and all of the almendments as Ratification when completed by its States. And the First 10 Amendments to the Constitution are popularly Know as the "Bill of Rights. Hey, you can't do that it's Un Constitutional!! they're usually shouting about some part of the Bill of Rights not the entire Constitution itself. FUNNY thing about most Americas ... they have never read the Constitution nor their Bill of RIGHTS, yet many spout off about what "rights" the Constitution guarantees them. You don't really need to be a lawyer or judge or any thing like that in order to comprehend this fine example of this fine example of 18th century legalese as in the case at bar.

Equal Protection OF LAW (pg2) Fourteenth Amendment

SUMMARY OF the Argument M.R.C.P. 26(b)(c)

A: Counsel's INEffectivness" 28 U.S.C. 2254(b)(c)

Antonio Moore's CASE #L0149 "Art. 3, §1 Habeas

Thus the petition would assert and argue that "not" "Corpus" having an ~~adequate trial transcript~~ or an substitute to "exam" when his lawyer is using drugs and has a mental illness" and can concede why the respondent(s) by having him as Counsel as the (6) Sixth Amendment requires which requires that at every stage of a trial our Courts have held and Found that such things as jury deliberations and the return of the verdict constitute critical stages of a criminal trial For purposes of the Sixth Amendment (Citing United States V Calabro, 467 F.2d 973, 988 (2d Cir 1972) United States V Smith 411, F.2d 733, 736, (6th Cir. 1969): The "present case" at bar turn on the various "issues" than Appellant's Counsel Micheal Miller From the "Public Defenders OFFICE" out of Lowndes County Circuit Court (Recvd. 2003-0082-CVI And surely one with also a mental illness" would not be Competent Counsel as required by the's" UNCONSTITUTIONAL!!. because there are various ISSUES that can "arise" during these stages and which may necessitate "sound" advice but he was not that in the instant CASE "Prima Facie" M.R.E. 401 & 901 by lack of "access to the record" So all including such issues as jury, communications, prejudice" possible motions For Mistrial CAUSE" and ultimately him withdrawn "From the Case at bar that ultimately a "Competent" lawyer under his Sixth Amendment right. And the "correct" polling of the Jurors on their verdicts. By "lack of this Record Appellant cannot examine though hired "Counsel" and the decision by this Court "based on strategy" but instead merely conduct" grounded in negligence" (Citing Young V. Duckworth, 733 F.2d 482, 483, (7th Cir. 1984)

Equal Protection under LAW (Pg 1) Fourteenth Amendment

Argument

"VENUE"

M. R. C. P. 26 (a)(b) 28 U.S.C. 2254(b)(C) (Pg 16)

Thus the appellant would assert herein Antonio Moore #L0049 that in the case "Sub judice" and pursuant to United States Supreme Court Bound's Supra, that is impossible without a trial transcript or adequate substitute and the Supreme Court of the United States has held that States must provide trial records to an inmate as in the case at bar, being denied who is unable to byy them: (rec vol. 1 2007-CP-01548-coa.) (Citing GRIFFIN V Illinois 351 U.S. 12, 20 (1956) (Citing ESKRIDGE V Washington Prison Bd. 357 U.S. 214 (1958) provision of trial - transcript may not be condition on approval of Judge (rec. Vol. 1 PETITION FOR ORDER TO SHOW CAUSE/ MISSISSIPPI RULES OF APPELLate Procedure Rule 27. citing M.R.C.P. Rule 26 (a)(b) (rec vol. 1 pg. 2. "Exhibit") citing Long V District Court of Iowa, 385 U.S. 192 (1966) (State must provide transcript of post-conviction proceedings. And he would invoke M.R.C.P. Rule 52, essentially the same standards of access has been applied in the precedent case in Johnson V Avery 393 U.S. 483 (1969) which that Court struck down a regulation prohibiting prisoners from assisting each other with habeas Corpus applications and other legal matters. And since that Court has held that since inmates such as him had no alternative form of legal assistance as guaranteed in violation of his Sixth Amendment right which should have been available to him. And the Court has reasoned that ban on jail house lawyers effectively prevented prisoners who were "unable themselves with reasonable adequacy 28 U.S.C. 2254 (d)(1)(2) to prepare their petitions" FROM CHALLENGING THE legality of their confinements. Id at 489 Johnson was unanimously extended to cover assistance in "CIVIL RIGHTS ACTIONS" in the case of WOLFF V MCDonnell, 418 U.S. 539 577-580 (1974) And Our previous Courts reaffirmed that states must "assure the "indigent" Appellant an adequate opportunity to present his "CLAIMS" Fairly (citing ROSS V MOFFITT 417 U.S. at 616 IN re WINSHIP

Equal Protection Under LAW Fourteenth Amendment (pg 2) ARGUMENT M.R.C.P. 26(a)(b) (pg 17) "VENUE" 28 U.S.C. 2254(b)(c) Antonio Moore #L0149 Art. 3. 21 "Habeas Corpus"

That the appellant would assert and contend the Court herein the instant case at bar should Find by the Facts that this allocation of the burden of proof was erroneous in not providing Moore with the trial transcript or adequate substitute and as the Court of the Supreme Court of the United States held then that error constitutes a denial of due process of intolerable proportions. An that Court has recognized the truth of this proposition in numerous precedents. In Ivan V City of NEW-York 407 U.S. 203, 92 S.Ct. 1951, 32 L.Ed. 2d 659 (1972) they held by their earlier decision in Winship to be fully retroactive, stating": Where the major purpose of a new Constitutional doctrine is to overcome an aspect of a criminal trial that substantially impairs its truth-Finding Function and so raises serious questions about the accuracy of guilty verdicts in past trials, (rec vol. 1 2003-0082-CVI) the new rule has been given complete retroactive effect. Neither good-Faith reliance by state or Federal authorities on prior Constitutional law or accepted practice, Nor severe impact on the administration of Justice has sufficed to require prospective application in these circumstances" CF Williams V United States 401 U.S. 646, 653 [91 S.Ct. 1148, 1152-1153, 28 L.Ed. 2d. 388] (1971) see Adams V Illinois, 405 U.S. 278, 280 [92 S.Ct. 916, 918, 31 L.Ed. 2d 202] (1972) Roberts V Russell 392 U.S. 293, 295 [88 S.Ct. 1921, 1922, 20 L.Ed. 2d 1100] (1968) "407 U.S. at 204, 92 S.Ct. at 1952 (emphasis added)

INSUM, this the Supreme Court of the United States has heretofore adhered to the principle that "[I]n the administration of Criminal Justice our society imposes almost the entire risk or error upon itself." because the interests of Appellant Moore a state prisoner who challenges his conviction by Collateral Review or Habeas Corpus proceeding are of such magnitude." CF. Addington V Texas 441 US. 418, 423-424 99 S.Ct. 1804, 1807-1808, (1979)

Equal Protection OF LAW Fourteenth Amendment

CONCLUSION "VENUE" Antonio Moore's CASE #L0149

M.R.C.P. 26(b)(c) (Pg 18)
28 U.S.C. 2254(b)(c)
"Art. 3, 21 Habeas Corpus"
CF: Gideon V Wainwright 372 U.S. 335]

WHEREFORE, PREMISES CONSIDERED, I, Plaintiff/Appellant movant prays that this Honorable Court to "SHOW CAUSE/ why he has not been provided with an adequate trial transcript of the Court's Findings of Facts AND CONCLUSIONS M.R.C.P. 52 has been INVOKED in the Court of Appeals 2007-CP-0158-COA. Citing MISSISSIPPI RULES OF OUR Appellate Procedure 26(a)(b) which has pass been invoked Bounds Supra. For thirty (30) days period Mississippi Rules of Evidence Rule: 1:03

(a) Effect of Erroneous Ruling. Error may not be predicated on or upon a ruling which admits or excludes evidence unless a substantial right Question of Federal Constitution of the party as effected by it... as in the case at bar. And he would invoke Rule 1:03 (2) by tendering My offer of Proof in the present procedural posture. And by the Filing of the instant Brief by one that has excluded evidence of the trial transcripts And the substance of the evidence has been made Known to the Supreme Court or Court of Appeals by offer or it is really apparent from the context within which his beginning Questions have been asked. And he would invoke 1:03 (d) Plain error and nothing in this rule precludes our Courts in the State of Mississippi affecting Substantial Rights to 6th Amendment Effective Counsel "And has been brought to the attention of Mississippi Court's. is a restatment of that doctrine as it existed in pre-rule practice. It reflects a policy to administer the law fairly and justly. citing Boyd V State 204 So.2d 165 (Miss. 1967) Citing Howell STATE 445 So.2d 815 (Miss. 1984) Surely someone is incar-

(pg)(19) CERTIFICATE OF SERVICE 28 USC 2254(b) Art. 3. 21 Habeas Corpus

I the plaintiff/Appellant/movant Antonio Moore #L0149 have caused to be mailed NOTICE OF BRIEF Assignment (MISS. Code Am. 9-7-175) From a NOTICE of Briefing schedule, From the Court of Appeals pursuant to Mississippi Rules of Appellate Procedure rule 28 "Briefs and M.R.A.P. "31" entitled Filing of Brief(s). And having this day sent copy .Miss. Rules of Circuit and County Court Practice Rule 2.06 have been Sent to the Following persons.

Respectfully Submitted.
s/Antonio Moore
Plaintiff/Appellant/Affinity

Honorable Betty W. Septon
Mississippi Supreme Court
P.O. Box 249
Jackson MS 39205

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

STATE OF MISSISSIPPI }
COUNTY OF MARSHALL }

Personally APPEARED BEFORE ME; the undersigned authority In and For said Jurisdiction, the within named plaintiff/Appellant who after First being by meduly Sworn, stated on Oath that the statements are set Forth above and Foregoing are true and correct as therein stated. "So HELP ME GOD"

SWORN TO AND SUBscribed before me, this the 18th day of June 2008.

BERNICE BROWN
NOTARY PUBLIC
My Comm Expires
February 3, 2011
MARSHALL COUNTY
STATE OF MISSISSIPPI

Bernice Brown
NOTARY PUBLIC

Cf. Goodwill v. Cafaro, 149 F.3d 274-276 (5th Cir. 1998) "mail box rule"