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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2007-KA-01439-SCT

MICHAEL HENRY HEARN — APPELLANT

vs.

STATE OF MISSISSIPPI — APPELLEE

TABLE OF CASES AND AUTHORITIES

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vs.

STATE OF MISSISSIPPI **APPELLEE**

REPLY BRIEF OF THE APPELLANT

COMES NOW, the Appellant herein, Michael Henry Hearn, by and through counsels of record, and files this Reply Brief in response to the State of Mississippi's Appellee's Brief filed heretofore in this honorable Court, and, without waiving any issue raised heretofore in this matter, would respectfully state and bring to this Court's attention the following facts, statutory interpretation, and case law in support of the Appellant's assertions of error in his conviction and sentence in the lower court:

As to the State's assertion in "PROPOSITION II" of the Appellee's Brief, as aforesaid, that the trial court properly conducted the required findings of fact and conclusions of law as to the Appellant's competency to stand trial and ability to represent himself during a complex criminal prosecution, the State misapprehends the mandatory nature of both of the totally separate, on-the-record, formal hearings necessary in order to properly find that the accused: (1) was ***Dusky*** competent (not insane, as inaccurately posited on pp.20-22, Appellee's Brief) to stand trial under the five-part test pursuant to the guidelines set forth in ***Connor v. State***, 632 So. 2d 1239 (Miss 1993), and (2) knowingly, intelligently, and

voluntarily waived his right to counsel pursuant to the requirements of ***Faretta*** and ***URCCC 8.05***. Without repeating the arguments raised on these issues, the Appellant would state to this honorable Court that between the filing of the Appellant's brief and the Appellee's brief, the United States Supreme Court reversed a strikingly similar case in ***Indiana v. Edwards***, 554 U.S. ___, No. 07–208 (Decided June 19, 2008), which distinguished and detailed the separate issues of ***Dusky*** competency to stand trial and ***Farretta*** ability to represent oneself at trial. In that case, the Court held that:

> We consequently conclude that the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether apparent defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under ***Dusky*** but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.

Edwards, supra, at ___.

It is disputed from the record that the Appellant was diagnosed with long-term, substantial, and multiple mental conditions. It is, therefore, reasonable to conclude that after the Appellant was found by the trial court to be competent to stand trial, a formal, on-the-record examination of the accused by the trial court on the day of trial was essential to determine if the Appellant could knowingly, intelligently, and voluntarily waive his right to counsel and proceed to represent himself *pro* se during trial. In their brief, the Appellee commingles the two distinct issues resolved by the ***Edwards*** decision by making the misplaced argument that because two State doctors expressed their opinion that "while Hearn had some personality problems, he was fully capable to stand trial and participate rationally

and intelligently in his defense" with the separate question of such mental problems legally preventing the trial court to require that Hearn represent himself. Appellee's Brief, p. 22. The State of Mississippi then goes on to misapprehend the mandatory nature of ***URCCC 8.05***'s warnings to the accused and the obligatory on-the-record findings of fact and conclusions of law in determining whether a defendant is able proceed to represent themselves *pro se*. The ***Edwards*** decision makes it clear that the argument of the State in this regard is misdirected and should be given no weight or force of law by this honorable Court. The trial record reflects the Appellant's inability to conduct a coherent defense on his own behalf, and the diagnosed mental problems not only disadvantaged the accused in this case, but likely contributed to his conviction.

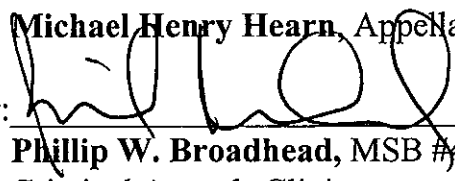
The Appellant would next address the State of Mississippi's argument in the Appellee's brief labeled, "PROPOSITION IV," which claims the jury was properly instructed, in spite of the fact that an issue of the Appellant's mental responsibility to these charges was made out through the testimony of the State's "forensic psychiatrist at Whitfield State Hospital" of a medical diagnosis of "some personality disorders." (Appellee's Brief, p. 32-33) The State also dismisses as favorable to their argument the fact that such a ***M'Naughten*** instruction to the jury was requested by stand-by defense counsel and refused by the trial judge. The State's medical testimony, coupled with the Appellant's courtroom demeanor, illogical actions, and rambling testimony at trial, more than made out a jury question as to whether he was criminally accountable for his actions in this case. The basic flaw in the State's argument is the assumption that simply because the prosecution experts

made conclusions as to the legal status of the Appellant's mental state, their opinion was the end of the issue and constituted "a lack of record evidence for being granted an insanity defense instruction to the jury." (Appellee's Brief, p. 35) This argument fails because (1) this opinion evidence in the record by the state's medical witnesses alone made out a question of fact as to criminal responsibility to the charges, and (2) a reasonable, fair-minded juror, after examining all of the evidence and testimony, could have easily concluded the proper verdict in this case would be "Not Guilty by Reason of Insanity," recommending commitment to the state hospital, instead of a term of life imprisonment in the state penitentiary. Depriving the jury proper instructions on the law of ***M'Naughten*** responsibility also deprived the Appellant of a fair trial.

WHEREFORE, PREMISES CONSIDERED, The Appellant herein submits that based on the propositions cited and briefed hereinabove, together with any plain error noticed by the Court which has not been specifically raised, the judgment of the trial court and the Appellant's conviction and sentence should be reversed and vacated, respectively, and the matter remanded to the lower court for a new trial on the merits of two counts of intimidating a judge, with proper instructions to the lower court. In the alternative, the Appellant herein would submit that the judgment of the trial court and the conviction and sentence as aforesaid should be vacated, this matter rendered, and the Appellant discharged from custody, as set out heretofore.

Respectfully submitted,

Michael Henry Hearn, Appellant

by: 

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CERTIFICATE OF SERVICE

I, Phillip W. Broadhead, Criminal Appeals Clinic Professor and attorney for the Appellant herein, do hereby certify that I have this day mailed postage fully pre-paid/hand delivered/faxed, a true and correct copy of the foregoing Brief of Appellant to the following interested persons:

Honorable David Ishee, Specially Appointed Circuit Court Judge
TENTH JUDICIAL DISTRICT
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Jackson, MS 39205;

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Mr. Michael Henry Hearn, Appellant
MISSISSIPPI DEPARTMENT OF CORRECTIONS
Leakesville, Mississippi

This the 9th day of July, 2008.

Phillip W. Broadhead, MSB #4560
Certifying Attorney