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In the SUPREME COURT *of the* STATE *of* MISSISSIPPI
COURT of APPEALS of the STATE of MISSISSIPPI

WILLIAM ALEX SANCHEZ

FILED

APPELLANT

VS.

APR 30 2008

CASE NO. 2007-^{LA}1836-COA

STATE OF MISSISSIPPI

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SUPREME COURT
COURT OF APPEALS

APPELLEE

BRIEF FOR APPELLANT

Oral Argument Requested

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14th Judicial District
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CASE NO. 2007-TS-01836-COA

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APPELLEE

CERTIFICATE OF INTERESTED PERSONS

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

<u>NAME</u>	<u>POSITION</u>
Honorable Michael Taylor	Circuit Court Judge
William Alex Sanchez	Appellant
Charles E. Miller	Counsel for Appellant
Dewitt Bates, Esq.	District Attorney
Jim Hood, Esq.	Attorney General

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TABLE OF CASES AND AUTHORITIES

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STATEMENT OF THE ISSUES

ISSUE ONE

Whether there was a factual basis for acceptance of the guilty plea.

ISSUE TWO

Whether there was ineffective assistance of counsel.

ISSUE THREE

Whether the arrest was improper.

ISSUE FOUR

Whether the sentence imposed was excessive.

ISSUE FIVE

Alternatively, whether Sanchez should be granted a modified sentence under Mississippi Code Annotated 1972 Section 47-7-3 (as amended).

STATEMENT OF THE CASE

The Appellant, William Sanchez was indicted on or about March 27, 2007 on the charge of unlawful sale of at least one tenth (.1) gram but less than two (2) grams cocaine within 1500 feet of a church, in violation of Mississippi Code Section 41-29-139.

That said Appellant pled guilty to said charge September 4, 2007. Further, said Appellant was sentenced on or about September 10, 2007. Finally, appellant, William Sanchez, appealed the matter to this Honorable Court.

STATEMENT OF FACTS

William Sanchez is a nineteen (19) year old black male.(R-12). That on or about March 27, 2007 William Sanchez was indicted for the crime of unlawful sale of at least on-tenth (.1) gram, but less than two (2) grams of cocaine within 1500 feet of a church. (R.2). The indictment alleges that Sanchez, on October 16, 2006 in Pike County, Mississippi knowingly sold a controlled substance to a confidential informant within 1500 feet of a Church.(R-2)

That on or about May 7, 2007 Sanchez pled not guilty to said indictment. (R-3)

That on or about September 4, 2007 Sanchez pled guilty to said charge. (R-8). The record reflects that no motions were filed on behalf of Sanchez. Further, the record shows that no actions were taken by counsel to prepare a defense for Sanchez between the time of the not guilty plea until the time of the guilty plea. Notably, the record does not contain a motion for discovery filed on behalf of the defendant.

Sanchez is a first time offender. (T-7-8). On or about September, 2007 Sanchez was sentenced as follows:

1. The Court Ordered and Adjudged that the said defendant for his crime of Unlawful Sale of at Least One Tenth (.01) But Less than Two (2) Grams of Cocaine Within 1,500 Feet of a Church be sentenced into the custody of the Mississippi Department of Corrections for the space of FIFTEEN (15) YEARS. It is further ordered that the Defendant SERVE THE FIRST SIX (6) YEARS WITH THE REMAINING NINE (9) YEARS SUSPENDED and the defendant be placed on post release supervision for a period of FIVE (5) YEARS under the supervision of the Mississippi Department of Corrections. It is ordered that the defendant be placed in the Alcohol and Drug Treatment Program and upon successful completion be placed into the general prison population. The defendant is ordered to pay a fine in the amount of \$4,000.00, restitution in the

amount of \$430.00 to the Mississippi Bureau of Narcotics, and court costs. (R-10)

SUMMARY OF THE ARGUMENT

1. The trial judge and Sanchez's attorney did not make adequate inquiry concerning Sanchez's legal defenses. This failure deprived William Alex Sanchez of his Sixth Amendment Right to effective assistance of counsel.

2. The guilty plea was against the overwhelming weight of the evidence, and the Court should not have adjudicated William Alex Sanchez guilty.

3. That the plea and sentence were in violation of William Alex Sanchez's constitutional rights, specifically the 14th Amendment right to due process, the 5th Amendment, and the 6th Amendment right to effective assistance of counsel.

4. The sentence of (15) years, with nine years suspended and six years to serve in the Department of Corrections, with five years post release supervision, was excessive and in violation of the 8th Amendment of the United States Constitution.

ARGUMENT

ISSUE S ONE AND TWO

GUILTY PLEA AND INEFFECTIVE OF COUNSEL

In the case at bar, there are no clear facts to establish that Mr. Sanchez was guilty of the crimes charged in the indictment. There was no evidence that defense counsel received an inventory of items taken from Mr. Sanchez at the time of alleged crimes charged. Additionally, Mr. Sanchez was led to believe that he would receive less than one year to serve.

defendant.

Additionally, URCC Rule 8.04 (a) (3) requires that in order for the trial court to accept a guilty plea there must be a factual basis for the guilty plea. In this case there was no evidence that Mr. Sanchez committed the acts charged and therefore no factual basis existed for a guilty plea. In reviewing this issue the court looks to the entire record. Corley v. State, 585 So.2d 765, 768 (Miss. 1991).

ISSUE ONE

ISSUE THREE

ILLEGAL ARREST

The arrest of William Sanchez was based on information from a confidential informant. The failure of the defense attorney to properly investigate and obtain discovery resulted in a plea by Sanchez that possibly could have been avoided if the appropriate motions had been filed. Motions to suppress evidence, entrapment, discovery, and other relevant motions should have been filed that could have proven that the arrest of William Sanchez was illegal.

The arrest of Sanchez was without probable cause and thus violated his 14th Amendment rights to due process.

ISSUE FOUR

EXCESSIVE SENTENCE

The sentence of William Alex Sanchez constitutes cruel and unusual punishment and is disproportionate under the Eighth Amendment to the United States Constitution.

In *Williams v. State*, 784 So. 2nd 230 (Miss. App. 2000), the Court held that a sentence is

subject to review, when it is alleged that the penalty imposed is disproportionate to the crime charged. *Fleming v. State*, 604 So. 2nd 280 (Miss. 1992); *Davis v. State*, 510 So. 2nd 794, 797 (Miss. 1987); *Presley v. State*, 474 So. 2nd 612, 618 (Miss. 1985).

The circuit court judge ignored all available options and sentenced William Alex Sanchez to what amounts to an excessive sentence in the Mississippi Department of Corrections. Thus, such sentencing by the lower court judge constituted cruel and unusual punishment and was disproportionate under the Eighth Amendment and, therefore, should be reversed and a more appropriate sentence should be imposed, that said matter should be dismissed.

Additionally, see the following case: *Hutto v. Davis*, 454 U.S. 370, 102 S. Ct. 703, 70 L. Ed. 2nd 556 (1982) Federal District Court's holding that a 15-year sentence for possessing of at least one tenth (.01) and less than two ounces of marijuana was grossly disproportionate and in violation of Eighth Amendment, reversed, and *Solemn v. Helmn*, 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed. 2nd 637 (1983) sentences must be proportionate to the crime but reviewing courts should grant substantial deference. No penalty is per se constitutional. Considerations are gravity of the offense, sentences imposed on others in the same and other jurisdictions.

ISSUE FIVE

Alternatively, Sanchez should be granted sentence modification as amended by Mississippi Code Annotated 1972 Section 47-7-3.

CONCLUSION

WHEREFORE, Appellant prays that this court grant Relief, and that this court investigate

said matter for procedural defects as outlined under the 14th Amendment of the United States Constitution and the Mississippi Constitution, and that the conviction against the Appellant be set aside and vacated. Alternatively, Appellant requests a new trial in this matter or a reduced sentence in compliance with Mississippi Code Section 47-7-3.

This the 30th day of April, 2008.

**Respectfully submitted,
William Alex Sanchez**



**By: Charles E. Miller
His Attorney**

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CERTIFICATE OF SERVICE

I, *Charles E. Miller*, counsel for appellant, do hereby certify that I have this day mailed by United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief for Appellant, *William Alex Sanchez* to:

**Honorable Michael Taylor
Circuit Court Judge
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Brookhaven, Mississippi 39602**

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**District Attorney
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DATED this the 30th day of April, 2008.


CHARLES E. MILLER