

**SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO.: 2007-TS-01844-COA**

THOMAS LAVIRL SLADE

APPELLANT

VS

STATE OF MISSISSIPPI

APPELLEE

**APPEAL FROM THE CIRCUIT COURT OF
FORREST COUNTY, MISSISSIPPI**

**APPELLANT'S REBUTTAL BRIEF
(Oral Argument Not Requested)**

Submitted By:

**JOHN R. McNEAL, JR., [REDACTED]
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ARGUMENT

The Trial Court committed an error at law and abuse of discretion in failing to grant Appellant's Motion to Recuse himself based upon the Judge's obvious predisposition to sentence the Appellant to the maximum sentence allowed when he stated that the Appellant should, "stand up like a man and be prepared to serve the max." It is further evidenced in the record at page 342, lines 9-29; page 343, lines 1-29; page 344, lines 1-6; page 344, lines 23-29 and page 345, lines 1-11.

Based upon the perceived bias of the Judge, the Judge imposed a sentence of an habitual offender upon the appellant without the benefit of sufficiency of a bifurcated hearing on the sentence.

The Trial Court committed error as contemplated in Rule 103(d) of the *Mississippi Rules of Civil Procedure*. Specifically, the Trial Court sentenced the appellant as an habitual offender contrary to this Court's holding in *Vince v. State*, 844, So.2d 510 (Ms. COA 4-29-03), when requirements for a bifurcated hearing were mandatory and must be followed. Citing *Seely v. State*, 451 So.2d 315 (Miss. 1984), the Court warned against the tendency to routinely allow the State to produce some documentation of prior offenses and for the Trial Court to perfunctorily find the defendant an habitual offender. The State failed to produce sufficient evidence beyond a reasonable doubt of Appellant's prior convictions sufficient to satisfy Section 99-19-81 of the *Mississippi Code of 1972, as amended*. They offered no credible proof of the Appellant's prior convictions by way of a certified copy of a

Pen-Pack from the Mississippi Department of Corrections. See page 342, lines 9-29; page 343, lines 1-29; page 344, lines 1-6; page 344, lines 23-29 and page 345, lines 1-11 of the record.

In *Vince, Id*, the Appellant Court found the existence of plain error in that the criminal history report upon which the State or Trial Court relied on in sentencing did not appear in the record as an exhibit as is the present case.

In addition, the record is totally devoid of any certified copies of any Judgments of Conviction which would constitute the best evidence. *McIwaine v. State*, 700 So.2d 586 (Miss. 1997).

CONCLUSION

Appellant requests that this court reverse the sentencing as an habitual offender and remand to the Trial Court for re-sentencing as a non-habitual offender.

Respectfully submitted, this the 27 day of May, 2009.

THOMAS LAVIRL SLADE

BY:


JOHN R. McNEAL, JR., Appellant's Attorney

CERTIFICATE OF SERVICE

I, John R. McNeal, Jr., do hereby certify that I have this day caused to be delivered by United Postal Service, first class prepaid postage or facsimile/electronic transmission and/or by hand-delivery a true and correct copy of the above and foregoing Rebuttal Brief of Appellant as follows:

Honorable Robert Helfrich
Forrest County Circuit Court Judge
Post Office Box 309
Hattiesburg, Mississippi 39403

Honorable Jim Hood
Attorney General for State of Mississippi
450 High Street
Jackson, Mississippi 39202

This the 27 day of January, 2009.



JOHN R. McNEAL, JR.