COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

HERMAN JACKSON JR. — APPELLANT

V.

No. 2007-KP-00394-COA

STATE OF MISSISSIPPI — APPELLEE

COURT APPEALED FROM: Circuit Court

COUNTY: Coahoma

TRIAL JUDGE: Albert B. Smith III

FILED

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BRIEF OF THE APPELLANT

ORAL AGUMENT NOT REQUESTED

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Gia Nicole McLeod

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STATE OF MISSISSIPPI
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GIA NICOLE MCLEOD
Commission Expires
Oct. 10, 2011
HINDS COUNTY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

HERMAN JACKSON JR. APPELLANT

V. NO. 2007-KA-00394-COA

STATE OF MISSISSIPPI APPELLEE

CERTIFICATE OF INTERESTED PERSONS

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

1. State of Mississippi
2. Herman Jackson Jr, "PRO SE" Appellant
3. ALLEN D. Shackelford, Attorney
4. Jennifer Mussel White, Asst. District Attorney
5. Mickey Mallette, Asst. District Attorney
6. Honorable Albert B. Smith III, Circuit Court Judge

This the 17 day of October 2007

Respectfully Submitted,

By: Herman Jackson Jr. PRO SE

HERMAN JACKSON JR APPELLANT

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STATE OF MISSISSIPPI APPELLEE

BRIEF OF APPELLANT

STATEMENT OF THE CASE

During the June 2005 Term of the Grand Jury, for the Circuit Court for the Eleventh Judicial District of Coahoma County, Mississippi, Herman Jackson Jr, a/k/a Herman Jackson, III, a/k/a Main was indicted in Count I for Possession of a certain Controlled Substance, Marijuana, in an amount between 30 grams and 250 grams, a schedule I controlled Substance as provided for by section 41-29-115 (a)(4) of the Mississippi Code of 1972, Ann. as amended, COUNT II for Possession of a Certain Controlled Substance, Cocaine Salt, in an amount .1 gram to 2 grams, a schedule II controlled substance as provided for by Section 41-29-115 (a)(4) of the Mississippi Code of 1972, Ann. as amended, and as an Second and Subsequent offender under Miss. Code MCA § 41-29-147. After a Jury trial, Mr. Jackson was Convicted and Sentenced in Count I to Serve One year and in Count II to serve Eight years, in the Mississippi Department of Corrections. These Sentences were to run Concurrent.

STATEMENT OF THE FACTS

"Corruption" "Conspiracy" and "Racial Discrimination"

PLEADINGS

Petitioner's Prose representation is a layman at law ask @ this Hon. Court to construe the facts of this case under the authority of HAINES US KERNER, 404 U.S. 519, 92 S.Ct. 594, 30 L.ed 2d 652 (1972) in that Pro se pleadings are to be construed with a lenient eye and are not to be held to the standards of lawyers.

Petitioner further ask that this Brief be construed upon the doctrine of excusable error, without being scrutinzied for the technical excellence of a Attorney.

Petitioner also ask this Hon. Court, even thou there are several errors being raised, he ask this Hon. Court to review this case for Plain errors as well.

Respectfully Submitted
Herman Jackson Jr, Prose

ARGUMENT I

INEFFECTIVE ASSISTANCE OF COUNSEL

The Sixth Amendment to the United States Constitution provides: In all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense. U.S. Const. Amend. VI. By the Fourteenth Amendment to the United States Constitution this right is made obligatory upon the states. [**2] Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963). This right means "the right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 759, 771 n. 14, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970).

Article 3, § 26 of the Mississippi Constitution provides: "In all criminal prosecutions the [*1358] accused shall have a right to be heard by himself or counsel, or both." We hold today that the Mississippi Constitution's right to counsel embraces all rights guaranteed to a criminally accused defendant by the Sixth Amendment. Triplett v. State, 666 So. 2d 1356 (1995)

To successfully claim ineffective assistance of counsel the Defendant must meet the two-pronged test set fourth in Strickland v. Washington, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984), and adopted by this court. Alexander v. State, 605 So. 2d 1170, 1173 (Miss. 1992); McQuarter v. State, 574 So. 2d 685, 687 (Miss. 1990). The Strickland test requires a showing of (1) deficiency of counsel's performance (2) sufficient to constitute prejudice to the defense. McQuarter, 574 So. 2d. at 687. The burden to demonstrate both prongs is on the defendant. Id; Leatherwood v. State, 473 So. 2d 964, 968 (Miss. 1984), reversed in part, affirmed in part, 539 So. 2d 1378 (Miss. 1989), and he faces a strange but rebuttable presumption that counsel's performance falls within the broad spectrum of reasonable professional assistance. McQuarter, So. 2d at 687. The defendant must show that there is a reasonable probability that but for his attorney's errors, defendant would have received a different result in the trial court. Nicolaou v. State, 612 So. 2d 1080,

1086 (Miss. 1992); [**16] Ahmad v. State, 603 So. 2d 843, 848 (Miss. 1992) [redacted]

This Court must determine whether counsel's performance was both deficient and prejudicial based upon the totality of the circumstances. Carney v. State, 525 So. 2d 776, 780 (Miss. 1988); [redacted] Read v. State, 430 So. 2d 832, 839 (Miss. 1983). Our Scruting of Counsel's performance must be deferential. Ahmad, 603 So. 2d at 848. If defendant raises questions of fact regarding the deficiency of counsel's conduct or prejudice to the defendant, he is entitled to an evidentiary hearing on ineffective assistance of counsel. Alexander, 605 So. 2d at 1173; Leatherwood, 473 So. 2d at 921. Where this court determines defendant's counsel was ineffective, the appropriate remedy is to remand for a new trial. Nicolaou, 612 So. 2d at 1086. Stringer v. State, 627 So. 2d [redacted] 326, 328-29 (Miss. 1993).

To establish predicate for Sixth Amendment violation as result of Conflict of interest, defendant must be able to show that his lawyer actively represented conflicting interests and that actual conflict had adverse effect upon representation. Once defendant show both actual conflict and [redacted] adverse effect, Prejudice is presumed and defendant is entitled to relief U.S.C.A. Const. Amend. 6. Strickland v. Washington 104 S. Ct. 2052 at D. 1163 (2).

1. Defendant and his Trial Counsel had a "Conflict of interest" on "January 4, 2007" during a "Attorney visit". In which counsel was disloyal, and trying to deceive the defendant about his case, counsel told "defendant several things that was untrue about his case". Counsel was trying to "deceive" the defendant, to make him take a "deal". counsel was placed on defendants case to cause a "Grave Miscarriage of Justice" to the defendant. The defendant advised counsel that he was "Fired" and to "withdraw" off of his case. However counsel didnot file a motion to withdraw or notify the court that defendant "had Fired him". SEE: [redacted] LETTERS EXHIBITS A-C-D

These "letters" was sent to the "Mississippi Bar Ass." and the "Attorney General's office". dated "January 4, 2007". Counsel also told defendant and "I quote: that he was not going to file any motions, because the Judge was not going to hear them noway, unquote". Defendant

wrote Att. Shackelford on December 15, 2006 asking him to file several motions on defendant behalf. SEE: LETTER EXHIBIT-B also: SEE (Tr. 17-lines 12-19). (Tr. pages 16-26). Att. Shackelford did not denie any of the allegation the defendant made against him during the Pre trial hearing. In fact Att. Shackelford agreed with the defendant: (Tr. 18 lines 12-20) Mr. SHACKELFORD: "He asked me to file it. I did not file it, not" DEFENDANT JACKSON: Yeah, I asked him to file that motion and he did not file it.

Counsel has an obligation to a client, Mississippi Rules of Professional Conduct Rule 1.1 COMPETENCE "A lawyer shall prouide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and "preparation" reasonably necessary for the representation. M.R.P.C. RULE 1.7 CONFLICT OF INTEREST: COMMENT Loyalty to a Client. Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of Interest may exist before representation is undertaken in which event the representation should be declined. If such a conflict arises after representation has been undertaken the lawyer should withdraw from representation. SEE: STRICKLAND [7] [8] [9] Representation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. See Cuyler v. Sullivan, supra, 446 U.S. at 346, 90 S.Ct., at 1720." Jackson, Counsel was disloyal to him when Counsel told him he was not charge with the drugs in the vehicle. Counsel also told him the Indictment was not defected and Improper. Counsel also told him the Trooper did not have to give him a Traffic ticket for speeding." This is why the defendant "fired" Att. Shackelford on January 4, 2007 and asked him to withdraw off of his case. Att. Shackelford actively represented a conflicting interests and that actual Conflict

had adverse effect upon representation.

(2) COUNSEL Failed to file any pretrial motions, even after defendant Sent him a letter dated December 15, 2006 SEE: LETTER EXHIBIT-B Att. Shackelford didnot denie this during Pre-Trial (Tr. pages 16-26). SEE LETTER EXHIBIT-A dated January 4, 2007. The Record is void of pretrial motions by the defense attorney inwhich hindering Defendant first: Communication with his attorney in violation of M.R.P.C. Rule 1.4 "(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information" (b) "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation" These deficiencies caused extensive prejudice because defendant Counsel fell to file the Motions. If Counsel had filed the motions, the defendant had ask him to, There's a strange possibility the defendant wouldnot have had a trial. In fact the defendant filed the very Same motions, he asked Att. Shackelford to file (Tr. pages 16-26) The motions was denied, because, Att. Shackelford, Judge Smith, ADA Musselwhite, ADA Mallette, Trooper Duncan and Deputy [redacted] Hudgins Conspired against the defendant to cause a "Grave Miscarriage of Justice." M.R.P.C. Rule 1.2 Scope of Representation "(a) A lawyer shall abide by a client's decisions Concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they to be pursered. A lawyer shall abide by a clients decision whether to accept an offer of settlement of a matter. In a criminal case, a lawyer shall abide by the client's decision, after consulation with the lawyer, as to a plea to be entered, whether to waive Jury Trial and whether the client will testify." It is Obvious defendant's Attorney didnot comply with ethics of his profession nor integrity to the court or defendant denying him his Sixth and Fourteenth Amendments.

(3.) Counsel didnot raise any objections to the two count Indictment or proof therein on the Defected and Improper Indictment. (Tr. pg. 23 lines 3-6) MS. MUSSELWHITE: "Your Honor, I would like to ask for a Motion to amend the indictment to conform to the proof for the date." Att. Shackelford did not try to object.

(4.) Counsel failed to challenge defendant arrest.

(5.) Counsel failed to move to suppress the evidence that was seized from the defendant and out of the vehicle.

(6.) counsel failed to test the admissibility of items seized from the defendant that allegedly incriminated him and which were introduced into evidence without objection although a basis for attacking the legality of the arrest and search existed on lack of probable cause grounds.

(7.) Counsel failed to investigate, interview, subpoena, or call to testify the passenger willie Scott. "willie Scott was on federal probation for cocaine at the time the vehicle was stopped". SEE: STATEMENT OF FACTS WILLIE SCOTT Exhibit-E. "It's Clearly States NOT ONCE did I see weed or Crack on him". "The motion of Discovery and Indictment states Marijuana was taken off of willie Scott." "Deputy Wayne Hudgins clearly stated Trooper Duncan found some Cocaine on the passenger (Tr. pg. 124 lines 3-29.) (Tr. pg. 125 lines 1-6)." If Att. Shackelford would have conduct a investigation this could have help the defendant Strickland v. Washington 104 S. Ct. 2052 at [13] Crim. Law 641.13 (6).

(8.) Counsel failed to investigate, interview, Subpoena, or call to testify Jerry Lutts. he would have known Trooper Duncan was testifing falsely during the cross Examination By: Ms. Shackel Ford (Tr. pg. 64 lines 11-16) this was false testimony by Trooper Duncan the license Plate wouldnot have shown Jerry Lutts own that vehicle Plate No. 128912. Trooper Duncan testified falsely

when he testified. (Tr. pg. 64 lines 12-26) This testimony could have been proven false, if Att. Shackelford had conducted a investigation and called Jerry Lutts to testify. If Att. Shackelford had investigated he could have known the defendant was not purchasing the vehicle from Jerry Lutts, this testimony was false (Tr. pg. 71 lines 1-24) what the defendant testified to was the truth. (Tr. pg. 132 lines 11-20).

(9) Counsel failed to inquire into the defendant background, family and personal circumstances, employment associations, and related matters to any significant extent.

(10.) Counsel reserved opening statement but never gave one even though the prosecuting attorney gave a detailed and incriminating opening statement.

(11) counsel did not ask the defendant nothing about the case, the only thing he was trying to do was "deceive the defendant about his case and trying to trick him into taken a deal. He never asked the defendant who owned the vehicle.

(12) Counsel failed to object to the false testimony of Trooper Duncan: (Tr. pg. 57 lines 23-28) (Tr. pg. 60 lines 4-8). (Tr. pg. 60 line 20-24) (Tr. pg. 61 lines 12-19). "The testimony of Trooper Duncan was false and can be proven threw his reports. there was "two reports" done by Trooper Duncan the First Report is: "Report of Investigation/ Field interview Date 02-11-05. Time 1525 Reporting officer walter Duncan officer ID# 691. Badge # E-21 Assisting Officer Wayne Hutchinson SO2 SYNOPSIS: I was south bound on U.S. 61 s/of Clarksdale, MS. Coahoma Co. I Noticed a North bound vehicle At high rate of speed. Radar, indicated 71-65 zone got said vehicle Stopped, Driver had No D.L. got subject out pat Natured soft object in pocket Identified As green leafy substance "Inventory of vehicle, Resulted in A Plastic bag containing white powder Substance and "under seat of driver" A plastic bag containing Several other Plastic Bags of green leafy substance". officer signature Walter Duncan E21.

"The Report of Investigation / Field interviews has been taken out of my RECORDS" the individuals who conspired against me didnot want this Honorable court to see this report because my 14th Amendment was violated, and this prove the prosecution withess Trooper Walter Duncan testimony was false." Trooper Dunsan Second Statement further proves that he was testifying falsely. MHP Report case File# TOS-1276 February 20, 2005 "As I began to pat Mr Jackson down I noticed a soft object in his right rear pocket I removed the Item an discovered a plastic bag containing a green leafy substance." "I began the vehicle inventory and "under an ashtray" "that was on the front seat between the driver and passenger a plastic bag containing a white powder substance was found" and under the front seat driver side another larger plastic bag containing a green leafy substanee was found". This statement further proves Trooper Duncan testified falsely SEE EXHIBITS D-6a -F. Deputy HUDGINS VOLUNTARY STATEMENT. "As Troper duncan Pate the Subject doen Troper duncan Felt and object in the Subject [redacted] Front Pocket." Troper duncan "ask the Subject to remove it From his pocket" "thats when we Found the drugs on the Subject"." Then we looked in the vechile and Seen a plastic bag with powder in it" "End of report." this statement is witness by "walter Duncan" See EXHIBITS D-7. "This statement Further proves Trooper Duncan was testifying falsely." The state decided not to call [redacted] Deputy Hudgins as a witness, therefore the defendant had to use Deputy Hudgins as his witness". (Tr. pg. 90 lines 24-26), (Tr. pg 91 lines 22-29) (Tr. pg. 92 lines 1-20). "The [redacted] Court [redacted] and Att. Shackelford didnot want Deputy Hudgins Voluntary state ment Read to the Jury (Tr. pg 116 lines 1-23)." This proves the court and Att. Shackelford knew Trooper Duncan had testified falsely and that Deputy Hudgins statement could prove that."

(13). "COUNSEL Failed to object to the false testimony of Trooper Duncan, when he said he issued the ticket for Speeding". "Att. Shackelford", "The court" and the "prosecutors" knew this was false testimony (Tr. 63 lines 11-21), (Tr. pg 20 lines 11-29), (Tr. pg 21 lines 1-29) (Tr. pg 22 lines 1-12).

"Att. Shackelford, the court knew I did not receive a ticket for speeding." "On Cross EXAMINATION of Trooper Duncan by, Att. Shackelford he did not ask any questions about why Trooper Duncan did not issue the defendant a traffic ticket for speeding" (Tr. pgs. 69-70), this further proves Att. Shackelford was helping the "STATE". On DIRECT EXAMINATION BY DEFENDANT JACKSON OF Trooper Duncan he Question Trooper Duncan about the ticket for speeding in a Attemp to prove to the Jury Trooper Duncan was [redacted] testifying falsely. (Tr. pg. 93 lines 14-21). "when the defendant ask that the traffic ticket be put up on the tripod, the ADA Mr. MALLETTE Jump up out of his Sit, as I was walking to the Projector, holding a traffic ticket high in the air so the Jury could See it, and walk past me, and told the court and I quote "I got the ticket right here your Honor, unquote" The Trainscripts has been Altered and Tampered with and the statement of Mr. Mallette has been taken out. But the defendant will show that a unJust act Still occurred. (Tr. pg. 93-20 Lines 20-25) DEFENDANT JACKSON: I ask that the traffic ticket to be put on the tripod."

"THE COURT: "If the District Attorney's office would help Mr. Jackson." Do you want the Jury to see that, Mr. Jackson?"

"It is obvious what happen, "why would the court ask the "District Attorney's office" to "help Mr. Jackson", when these are the vary same people who was "illegally prosecuting Mr. Jackson". It was already established that Mr. Jackson did not received a traffic ticket for speeding [redacted] during pre-Trial Motions. SEE: (Tr. pgs. 20, 21-22) "why The court did not ask Att. Shackelford to help Mr. Jackson, because the court knew there was no traffic ticket for speeding." (Tr. 93 lines 14-29)" (Tr. pg. 94 lines 1-29) (Tr. pg. 95 lines 1-26). "At know time did the prosecutors try to enter or have the traffic tickets identified, under there EXAMINATION of Trooper Duncan". "Soon as the defendant Ask Trooper Duncan about the Traffic ticket for speeding the prosecutor "Mysteriously" finds a "Traffic ticket for speeding and present it to the court". (Tr. 95 lines 8-12) SEE: EXHIBITS S-6, S-7 And the prosecutor "Mr. MALLETTE" presented [redacted] a Traffic Ticket for speeding and the COURT had it marked for Identification

as Defense EXHIBIT D-1 (Tr. pg. 94 lines 6-29)" and then the prosecutor MR. MALLETTE is trying to make it look like I knew about the ticket for Speeding (Tr. pg. 94 lines 10-12)." The Traffic ticket for Speeding was [redacted] Entered by the prosecution." The only traffic tickets I received In my motion of discovery and from Trooper Duncan SEE: EXHIBITS G-H-I ." And Att. Shackelford knew I did not receive a ticket for speeding."

(14.) COUNSEL allowed Trooper Duncan to testify falsely during the cross EXAMINATION by counsel. (Tr. pg. 64 lines 1-25). (Tr. pg. 65 lines 23-29) (Tr. pg. 66 lines 1-29), (Tr. pg. 67 line 1-26). "I told Att. Shackelford before he Cross EXAMINE [redacted] Trooper Duncan, that he was testifying falsely. Att. Shackelford told me and "I quote, to leave him alone" unquote." Att. Shackelford walked over to the counsel table during cross, and I told him again Trooper Duncan was testifying falsely about where he found those drugs (Tr. pg. 67 lines 25-28). When Att. Shackelford started back examining Trooper Duncan he ask him where was the drugs found, this EXAMINATION was weak (Tr. pg. 68 lines 1-29) (Tr. pg. 69 lines 1).

(15) "COUNSEL was not prepared for trial the only thing he had was a note book with nothing in it." The prosecutor Mr. MALLETTE : had to give the defendant a clean copy of "Trooper Duncan "MHP report" (Tr. pg. 106 lines 1-29) (Tr. pg. 107 lines 1-29) (Tr. pg. 108 lines 1-10)

(16) COUNSEL didnot present no type of defense for the defendant Even tho there was Several defenses he could has made.

(17). Counsel never at know time while Examining Trooper Duncan did he mention anything about the passenger of the vehicle Willie SCOTT.

(17) "After Defendant [redacted] fired Att. Shackelford he made a Statement towards the defendant that "BLACK people are dum" this was a "racial remark" and the defendant was offended by it."

"The defendant filed a motion verbally [redacted] During Pre-Trial for Ineffective Assistance of counsel (Tr. pg. 23 lines 15-29) (Tr. pg. 24 lines 1-29) (Tr. pg. 25 lines 1-29) (Tr. pg. 26 lines 1-23)." The court didnot make

a ruling on the InEffective Assistance of Counsel Motions." There is Tons of Errors Att. Shackelford made". That is why the defendant fired him after the prosecution first witness. At the time I fired him, I told the court that he was fired, the Transcripts has been Altered and tampered with. The transcripts is missing alot of things that was said, and it also got me saying things that I didnot say. (Tr.pg. 22 lines 20-29) (Tr. pg. 23 lines 1-29) (Tr.pg. 24 line 1-29) (Tr.pg. 25 lines 1-29) (Tr. 26 lines 1-24).

The deficient performance prejudiced the defense. Att. Shackelford didnot do nothing for the defendant, he was "incompetent" and "disloyal" to the defendant from the beginning, of being Appointed to the Case. He was placed on the defendants case to cause a "Grave Miscarriage of Justice" by "Judge Smith" and the "District Attorneys office". These Individuals knew they didnot have a case, so they "falsified Evidence" and used "False testimony" of "State Trooper Walter S. Duncan" and they used "Att. Shackelford" to carry out their "conspiracy". "Att. Shackelford filed a Motion for "Judgement NOTWITH STANDING VERDICT," In which the defendant knew nothing about, in this motion Att. Shackelford "failed" to "file the proper grounds". also in this Motion "Error # 4." The court erred in failing to sustain Defendant's objection to the hearsay testimony of witness "Romel Matthews" as to what he was told by a "Mr. Lutts". SEE (CP. Ag 12)." There was know witness by the name of "Romel Matthews" that testified at the defendant Trial." (Tr. pg. 28 lines 1-29) SEE: Strickland v. Washington 104 S.Ct 2052 at [3] 691.13(1) From Counsel's function as assistant to defendant derive the overarching duty to advocate defendant's cause and more particular duties to consult with defendant on important decisions and to keep defendant informed of important developments in course of the prosecution. U.S.C.A. Const. Amend. 6. 191.641.13(1) Defense counsel has duty to bring to bear such skill and knowledge as will renders the trial a reliable adversarial testing process. U.S.C.A. Const. Amend. 6. 57 L.Ed. U.S. 686, counsel's function in representing a criminal defendant is to assist defendant, and hence counsel owes client duty

of loyalty, a duty to avoid conflicts of interest. U.S.C.A. Const.Amend.6. due to the unprofessional Errors of defendant trial Counsel which, demonstrates his Ineffective deficiencies, then prejudice is apparent, Counsel performance and Errors had adverse effect on the Jury's verdict. Counsel Error's violated the defendant fundamental constitutional rights under the SIXTH AMENDMENT and the DUE PROCESS Clause of FOURTEENTH AMENDMENT And a ReTrial is guaranteed by the constitution. SEE: TRIPLETT v. STATE 666 So. 2d 1357: (1995), MOODY and GARCIA JR v. STATE 644 So. 2d. 451: (1994).

ARGUMENT II

"Defendant Sixth Amendment right to counsel was violated because the CIRCUIT COURT "did not sufficiently warn him of the perils of self-Representation", "and therefore defendant did not make a knowing and intelligent waiver of his right to counsel." [HN2] when an accused manages his own defense he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must "knowingly and intelligently" forgo these relinquished benefits. "In order for a waiver to be knowing and intelligent, the trial Judge must warn the defendant against the perils and disadvantages of self-representation". U.S. v. DAVIS 269 F. 3d 514: (5th Cir. 2001) [HN5] Before granting a defendant's request for self-representation, the trial Judge must caution the defendant about the dangers of such a course of action so that the record will establish that he knows what he is doing and his choice is "made with eyes open". "In order to determine whether the right to counsel has been effectively waived, the proper inquiry is to evaluate the circumstances of each case as well as the background of the defendant". DAVIS 269 F. 3d 514 at FARETTA v. CALIFORNIA 422 U.S. 806: 95 S.Ct. 2525: 45 L.Ed. 2d 562: (1975) [HN10] Same at: FOWLER v. COLLINS 253 F. 3d 244: 2001 U.S. App. LEXIS 11542: 2001 FED App. 0181P (6th Cir.) [HN5] Same at COM v. STATE 251 Miss. 488: 170 So. 2d 203: 1964 [HN2].

[HN1] U.S. Const. amend. VI and XIV guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment. FARETTA v. CALIFORNIA. [HN7] Because rights under U.S. Const. amend. VI are basic to our adversary system of criminal justice, they are part of the due process of law that is guaranteed by U.S. Const. amend. XIV to defendants in the criminal courts of the states. The rights to notice, confrontation, and compulsory process, when taken together, guarantee that a criminal charge may be answered in a manner now considered fundamental to the fair administration of American justice -through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence. In short, the Amendment constitutionalizes the right in an adversary criminal trial to make a defense. FARETTA. [HN12] The right to counsel is so fundamental that courts "should indulge every reasonable presumption against waiver". HOWARD v. STATE 701 So. 2d 274; 1997 Miss."

[redacted] Defendant states that on January 19, 2007, the Trial court violated his fundamental Rights provided by the Constitution under the SIXTH and FOURTEENTH Amendments, denying the defendant "EFFECTIVE ASSISTANCE OF COUNSEL", and "forcing" the defendant to go to Trial with "Incompetent" COUNSEL. DURING "PRETRIAL Hearing", Defendant brought to the Courts attention, that his lawyer refuse to file several Motions on behalf of the defendant, in which the defendant had sent a [redacted] letter to his lawyer on December 15, 2006 SEE: "EXHIBIT B" and the defendant also ask his lawyer to file the Motions on January 4, 2007 during a Attorney visit. During the visit the lawyer was trying to deceive the defendant about his case. The lawyer had told the defendant several things that was untrue about his

case, the defendant advise the lawyer that he was "Fired" and "to" with draw off of his case." unfortunately the lawyer failed to file the motion to the Trial court. On January 4. 2007 the defendant wrote a letter to the "Mississippi Bar. Assi." and the "ATTORNEY Generals office" seeking a "investigation" into the defendant's case "SEE EXIBIT-A" unfortunately both Agency turned a "blind eye" to the defendant. Defendant wrote the Miss. Bar. Assi. against trying to receive help. the defendant received two responses from the Miss. Bar. Assi. "SEE EXIBITS-C-D" the defendant never received a response from the Attorney's General office., and the following "Miscarriage of Justice" Occurred to the defendant. "During the pre-Trial hearing the defendant made the same Allegation against his Attorney on Record., and the Attorney did not denie none of the Allegation the defendant had made against him" SEE: (Tr. pgs. 16, 17, 18, 19, 20, 21, 22 23, 24, 25, 26.) Defendant states that he filed a motion for "ineffective Assistance of Counsel" and the court did not rule on the motion. In fact the court was trying to make the defendant think the lawyer was good and could help him. SEE: (Tr. pgs. 23, 24, 25, 26). "However "the court was part of a "conspiracy" to "illegally" get the "defendant found guilty". As the defendant was explaining to the court what made the Attorney Ineffective the defendant was cut off by the Court" (Tr. pg. 29 lines 17-22), THE COURT: Mr. Jackson, before you get into attorney/client matters that you really don't want them to hear, in your best interests. I can just take it -- I take your word. You are telling me that you and he had a disagreement with to this matter." The court abused it's discreation by not letting the defendant finish and by not ruling on the motion, the court actually agreed with the defendant, therefore the court should have granted the defendant another Attorney". The court go on to say (Tr. pg. 25 lines 16-19) He can help you in this trial. He can. He's not -- I don't care whether you don't think that he likes you or you don't like him. The court stated in it's on words "It don't care", and proceeded to violate the defendant

Fundamental Rights provided by the "Constitution" under "SIXTH" AND FOURTEENTH AMENDMENTS" SEE: FARETTA [HN7] "Defendant states the Attorney didnot [redacted] a give a Opening State, refused to file any Pre-Trial Motions, refused to call any witness [redacted] for the defense, the Attorney was not Prepared for trial. And did a poor Job Cross Examining the States Star witness Trooper Duncan, who was testifying falsely threw out the whole trial." The defendant constantly told the Attorney, Trooper Duncan was testifying falsely". The Attorney didnot submit any Jury instruction, he didnot present no type of defense for the defendant. Even tho there were several." After the "poor examining of" Trooper Duncan" SEE: (Tr. pgs. 64, 65, 66, 67, 68, 69, 70.) The defendant advised the Attorney that he was fired. The defendant and the Attorney approached the bench and the following took place. "The defendant told the court he was firing Att. Shackelford" "This sentence has been taken out of the [redacted] Transcripts, the Transcripts has been altered." (Tr. pg. 72 lines 20-29) THE COURT: All right. Y'all approach the bench. THE COURT: NOT -- y'all get back there, and you get over here, that's on the case, the new girl, get her over here, too. Mr. Shackelford, bring your client on. Bring -- y'all get -- you get on that side. (Tr. pg. 73 line 1-3) and y'all get on this side. I understand you wanted -- you said you wanted a conference before we started. SEE (Tr. pg. 73 lines 4-29) (Tr. pg. 74 lines 1-29) (lines 12-20 state) The COURT: I don't think so. DEFENDANT JACKSON -- to represent myself. THE COURT: well -- MR. SHACKELFORD: Obviously, your Honor, I have no objection. THE COURT: I understand that. DEFENDANT JACKSON: I got conflict of interest with Mr. Shackelford. SEE (Tr. pg. 25 lines 1-29) and (Tr. pg. 76 lines 1-24). "After the defendant [redacted] told the Court he wanted a "Mistrial", that's when the court agreed to let the defendant represent hisself." (Tr. pg. 75 lines 1-29). "The defendant told the Court he wanted to recall Mr. Duncan to the stand," the court tryed to "deceive" the defendant by saying, "Mr. Duncan has already been released" SEE: (Tr. pg. 25 lines 9-15)." This was "deception"

by the court", because in fact Mr. Duncan had not been released SEE: (Tr. pg. 22 lines 13-17) "THE COURT: We're going to take a short recess. You may return to the witness room. The court will be in recess for the morning". The Court repeatly showed "bias and prejudice" against the defendant, and it went so far as to "deceive" the defendant."

The defendant didnot make a "knowing" and "intelligent" waiver of his "SIXTH" And "FOURTEENTH Amendments" of this constitutional rights. The defendant was "forced" to represent his Self or Continue on with "incompetent counsel". The defendant "was not warned of the dangers and disadvantages of self representation and the Record clearly shows that the defendant did not proceed with eyes open. SEE: Faretta v. California 422 U.S. 806 95 S.Ct. 2525; 45 L.Ed.2d 562; (1975) [HN10] ; U.S. V. DAVIS 269 F.3d 514; (5th Cir. 2001) [HN2] [HN5] ; FOWLER V. COLLINS. 253 F.3d. 244; 2001 U.S. App. Lexis 11542; 2001 Fed App. 0181P (6th Cir. [HN5] and CONN V. STATE 251 Miss. 488; 170 So.2d. 205; 1964 [HN2] ; Hoggard v. State 701 So.2d 274; 1997 Miss. [HN12] (ALSO SEE: MISSISSIPPI UNIFORM RULES OF CIRCUIT AND COUNTY COURT PRACTICE PRO SE DEFENDANTS RULE 8.05)

The defendant tryed to re assert his right to counsel during, his Sentencing hearing (Tr. pg. 160 lines 12-29). The court further showed ~~[illegible]~~ bias and Prejudice, towards the defendant" (Tr. pg. 160 lines 19-29) (Tr. pg. 161 lines 1-29) ; (Tr. pg. 162 lines 1-6) "The court ignored the defendant request for counsel and proceeded to sentence the defendant. The court went so far as imposing a "illegal sentence" on the defendant until the defendant Corrected the Court". SEE (Tr. pg. 161 lines 18-29) (Tr. pg. 162 1-29) (Tr. Pg. 163 lines 1-18). "The defendant told the court he needed a Attorney to file his appeal, the court reappointed Att. Shackelford to do the defendants Appeal", "the same Attorney who didnot do anything for the defendant from the start." It was "unconstitutional" for the court to reappoint

Att. Shackelford to do the defendant appeal". "The Court disregarded the defendants constitutional rights under the Sixth and Fourteenth Amendments." The Sixth and Fourteenth amendment guarantee the defendant a right to Effective Assistance of counsel and, the Fourteenth amendment also guarantee the defendant DUE PROCESS and a right to a fair trial and equal protection." (Tr. pg. 165 lines 23-29) (Tr. pg. 166 lines 1-29) "The defendant filed a pro se Motion for ineffective Assistance of Counsel SEE (CP. Pg. 17-25) (CP. pg. 58-59) the ORDER States the Motion was not proper before the Court (CP. Pg. 81)" also see Sentencing Judgement (CP pg. 20) [HN4] A defendant who waives the right to counsel is entitled to withdraw that waiver and reassert the right. A defendant's rights to waive counsel and to withdraw that waiver are not unqualified. A trial court need not countenance abuse of the right to counsel or the right to waive it. A defendant is not entitled to choreograph Special appearances by counsel or repeatedly to alternate his position on counsel in order to delay his trial or otherwise obstruct the orderly administration of Justice. U.S. v. TAYLOR 933 F. 2d 307 (5th cir. 1991) [HN5] U.S. const. amend. VI provides in part that all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense. This amendment means that a defendant is entitled to be represented by counsel at all critical Stages of a criminal proceeding against him. critical stages of a criminal proceedings are these stages of the proceeding at which the substantial rights of a defendant may be affected. Sentencing is a critical Stage of a criminal proceeding. The right to be represented by Counsel is a fundamental component of our criminal Justice System.

ARGUMENT III

Trial Judge Failed to Recuse Himself from defendant Trial and Sentencing Hearing.

[26] Judges 49(1) A Judge who is otherwise qualified to preside over a trial must be free of disposition and sufficiently neutral. to be capable of rendering a fair decision. McGee v. STATE 820 So. 2d 700. (Miss. App. 2000). [26] Judges 49(1) If a reasonable person, knowing all the circumstances, would harbor doubts about a Judge's impartiality, he is required to recuse himself. McGee * 700 820 So. 2d 700. [22]-1148 The court of Appeals must review the entirety of defendant's trial and reverse based upon a Judge's denial of a motion to recuse only in the event of a manifest abuse of discretion 820 So. 2d 700. SEE Garrison v. State, 726 * 711 So. 2d 1149, 1152 (Miss. 1998) (4) A Judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A Judge, However, may obtain the advice of a disinterested expert on law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Mississippi Code of Judicial Conduct Canon 3 (1995) Further, the code speaks to cases in which a Judge should disqualify himself in a proceedings in which his impartiality might reasonably be questioned, including but not limited to instances where: (a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding... C. Disqualification. [UNI] Willful misconduct in office is the improper or wrongful use of the power of his office by a Judge acting intentionally, or

with gross unconcern for his conduct, and generally in bad faith. It involves more than an error of Judgment or a mere lack of diligence". Necessarily, the term would "encompass conduct involving moral turpitude, "dishonesty", or "corruption", and also any knowing misuse of the offices whatever the motive. However, these elements are not necessary to a finding of Bad Faith." A specific "intent" to use the powers of the Judicial office to accomplish a purpose which the Judge knew or should have known" was beyond the legitimate exercise of his authority constitutes "bad faith". "willful misconduct" in office of necessity is conduct "prejudicial" to the administration of Justice that brings the Judicial office into disrepute. However a Judge may also, though "negligence" or "ignorance" not amounting to bad faith, behave in a manner prejudicial to the administration of Justice so as to bring the Judicial office into disrepute. In Re Inquiry Concerning Judge Edna Garner 466 So. 2d 884 (Miss. 1985) [HN1] [HN3] A Judge may also, through "negligence" or "ignorance", not amounting to bad faith behave in a manner prejudicial to the administration of Justice so as to bring the Judicial office into disrepute. The result is the same regardless of whether bad faith or "negligence" and "ignorance" are involved and warrants sanctions. In Re Inquiry 466 So. 2d 884 (Miss 1985).

On "December 7, 2006" the Defendant was taken to a hearing because his first Attorney had filed a Motion to withdraw on "June 19th 2006" SEE (Tr. pg. 6, 7, 8, 9, 10, 11, 12, 13, 19) SEE: (CP. pg. 7). It took the Trial court "(5-months and 17 days)" to bring the withdrawal motion on for hearing. Therefore violating the defendant Constitutional rights under U.S. CONST. 14. Amendment Due Process. The defendant received a letter from Mr. Johnson on May 17, 2006, the conflict of Interest between the defendant and Mr. Johnson was about money, the defendant advised Mr. Johnson that since he was incarcerated he could not pay him. SEE: EXHIBIT-K

On "August 3, 2006" the defendant received a plea agreement from the District Attorneys office "SEE: EHIBITS-L-M-N-O"
"On "August 11, 2006" defendant wrote a letter to the "District Att. office", "Mr. Johnson" and the court", turning any deals down. "In this letter the defendant makes several Allegation", the defendant also invoke his right to a "fast and speedy Trial", he also ask for a "Evidentuary Hearing", none of which he received. There fore the court continued to violate his "USconst. Rights under the "SIXTH" and "Fourteenth" "amendment" by dening him a "fast and speedy Trial," and "Due Process". In this same letter the defendant ask whgn the Motion to Allow Counsel to withdraw hadn't been heard "See letter" "EXHIBIT-P"

On "DECEMBER 7, 2006" the defendant was taken to the hearing to allow counsel to withdraw and the following events took place. SEE: (Tr. pg. 6. lines 24-29) Mr. Johnson admits that, him and Mr. Lewis had talked to Judge smith about my case. Mr. Johnson tells the Court about the "Plea negotiations" SEE (Tr. pg. 7 lines 1-29) The defendant tells the court he had talked to Mr. Lewis and that he was confused. and then Mr. Lewis deceive the court by telling the court things that was untrue SEE: (Tr. pg 8 lines. 1-29). Then the defendant states that he was confused again thats when the court made a smart remark: THE COURT: Yeah, you are. Then Mr. Lewis deceived the court again. and the defendant told the court: First of all, that man lying. THE COURT tells the defendant: you are stubborn; hard headed" -- THE DEFENDANT: No, I ain't Hard headed. I'm telling you the truth, sir. THE COURT: -- and you are here in trouble." THE COURT: and you got all these lawyers You be Quiet! The defendant: He just flat out lying. THE COURT: would you shut up! Now you don't get along with this man; you don't get along with that man, and they are both trying to help you. And you are sitting up here arguing with me, the Judge. You are

-- let's see what -- are you facing a habitual -- Is it? MR. Johnson: second and subsequent." THE COURT: Second. I would say that you need to learn to get along a little bit better than you are doing, "Mr. Jackson. You are hurting yourself." You are not supposed to get in front of this bench and say things on the record that could hurt you." You need somebody to help you. Now, I -- you know, You got a chip on your shoulder. "That's not going to help you." "That's going to put you further down the road over there." "Look at you, looking around like you so cool and all this kind of thing. How's that going to help you?" "Huh?" The defendant: I don't. The COURT: "It's not going to help you a bit". The Defendant: like nobody lying on me, period. SEE: (Tr. pgs. 8, 9, 10, 11.) "The comments made by the court cause bias, to the defendant". The court, by making these type of comments "pre judged" the defendant guilty". These comments by the court, cause the defendant to Habor doubts about the Judge's impartiality. SEE: McGee v. State 820 So. 2d 121 Judges 49(1) also SEE: Canon 3 (1995) C.(1). The defendant States Deputy OTHA Hunter deceive the court as well see: (Tr. pg. 13 lines 13-29) The reason the defendant was housed at Tallahatchie County Correctional Facility, is because the Jailers at the Coahoma County Jail be Jumping on Inmates, and the defendant would not and was not going to let them Jump on him, and his family told the Sheriff if they put there hands on him, they was going to sue, and this is why he was housed at the other Facility.

THE COURT: "I can understand that (laughing)". Okay. Look well, okay. So, now when are you going to be able to tell. I tell you what, let's stay off the record. Let me see let's get off the record a minute. Let me see the public defenders in chambers. Y'all can come, too, DA. (Motion hearing concluded.) "The defendant states the hearing was not concluded, the court, made the Reporter turn the Machine off. "During the time the machine was turned off the defendant was "Attacked and Assaulted", while he was in

"handcuffs and Shackles" by "Deputy OTHA HUNTER", there were over fifty witness to the assault." The defendant was taken back in front of the court, the defendant told the court he wanted to press charges on deputy Hunter and for assaulting him, and he wanted it on the Record. The court told the defendant and I "quote he didnot see it, and nothing was going to be on Record." and I'm appointing you Mr. Allen D. Shackelford now get him out of here, unquote. The transport officers refused to take the defendant to the doctor, But when the defendant arrived back at Tallahatchie County Correctional Facility, the warden and the nurse told the officers if they didnot take the defendant back to a doctor, they couldnot accept him back there, that's when the deputies took him to the hospital." "All of these is facts and can be proven."

The court violated the Mississippi Supreme Court, Rules when he made the reporter turn the machine off. SEE: In light of the Judge's role as arbitrator of the accused's Constitutional right to a fair trial, the duty to ensure the complete recordation of the case also rests with the court see: U.S. v. Garner, 581 F.2d 481 (5th Cir. 1978): "The trial Judge has a duty to see that the reporter makes a true, complete and accurate record of all proceedings. American Bar Association, Standards Relating to Trial Judge Section 2.5 (1972) (emphasis added)

The Mississippi Supreme Court, under its supervisory powers, has directed the trial courts to "require, as a minimum, a recording of all facets of a criminal trial... Darrough vs. State 432 So. 2d 35, 37 (Miss. 1983) (emphasis supplied). There is Knoco doubt that the court made the Reporter turn the machine off. SEE (Tr. pg. 14 lines 1-2) This is when the "Conspiracy" started by "The court", "Att. Shackelford" and "DA. MALLETTE". These individuals conspired against the defendant, with Trooper Duncan and Deputy Hudgin and DA Musselwhite, the Records and Transcripts is overwhelming proof and can't be denied. The Judge committed,

"Misconduct in office and "improper" and "wrongful" use of power in office. SEE: In Re Inquiry 466 So.2d 884 (Miss. 1985) [HN1] [HN3] also SEE McGee v. State 820 So. 2d 700 [20] Judges 49(1).

On December. 15. 2006 the defendant wrote Att. Shackelford a letter. In the letter the defendant ask him to file several motions. one of the motions being to have Judge Smith removed from my case. "SEE: EXHIBIT - B " also SEE: (Tr. pg. 22 lines 11-26). also see: (Tr. pg. 160 lines 11-26). also see (Tr. pg. 160 lines 1-16)

On "January. 4. 2007" I received a Attorney visit from Att. Shackelford in which he tryed to deceive the defendant about his case. Att Shackelford also told the defendant, "that he wasnot going to file any motion, because the Judge was not going to hear them noway". The statement by Att. Shackelford proves they had already conspired against the defendant. The defendant told Att. Shackelford he was fired and to withdraw off of his case. Att. Shackelford got mad and left. The defendant wrote the Mississippi Bar Assn and the Attorney General office On "January 4. 2007" "seeking a investigation into his case. SEE: EXHIBIT ___ BOth agency turned a "Blind Eye", and didnot help the defendant. "SEE: EXHIBIT - C - D"

On "January 19. 2007" the defendant was taken to Trial and the following "Miscarriage of Justice" occurred. The defendant states after entering the Judge's Chambers. Judge Smith asked the defendant did he have any questions. "The defendant State he told Judge Smith. that he wanted to file some motions to the court but Att. shackelford refused to do so. And Judge Smith said to him. you could file your motion verbally and the court would hear them"; this statement has been deleted from the Transcripts." This same statement was filed in a motion for Records and Transcripts. On February. 2. 2007 "SEE (CP. pg. 65)

During the course of the Pre. Trial hearing the defendant filed the vary same motions. that he ask Attorney shackelford to file.

And Att. Shackelford didnot denie any of the Allegation the defendant made against him, but the Court didnot inquire or ask Att. Shackelford why he didnot file the motions for the defendant, in fact the court did not ask Att. Shackelford one single question during the whole hearing. SEE: (Tr. pgs. 16-26). This further proves the court helped conspire against the defendant, and violated all of the defendant United states CONSTITUTIONAL Rights. also SEE: Mississippi Judicial Performance Commission v. James "Petey Hopkins. 590 So. 2d. 857 (Miss. 1991) [HN5] Miss. Const. art. 6. § 177A. The court further abused it's ~~Absolute~~ power when the defendant filed a motion for ineffective assistance of counsel the court didnot rule on that motion SEE: (Tr. pgs 24-25-26). However the court did say: "He can help you in this trial. He can. He's not -- I don't care whether you don't think that he likes you or you don't like him." SEE (Tr. pg 25 lines 16-19). This statement by the court further proves the court had conspired against the defendant. The states Star witness whole testimony was false. Trooper Duncan testified falsely during the "Direct Examination by Ms. MUSSELWHITE", "Cross Examination by Att. Shackelford", "REDIRECT by MUSSELWHITE" and ON "DIRECT by defendant Jackson" and on "cross by Mr. MALLETTE." SEE: (Tr. pgs. 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 68, 70, 71, 72.) also SEE: (Tr. pgs. 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110) Trooper Duncan Testimony was false and the court, Att. Shackelford and the prosecuters knew his testimony was false. Trooper Duncan repeatly testified that he gave the defendant a "Traffic ticket for speeding". SEE: (Tr. pgs. 63, 93, 113). The defendant didnot receive a traffic ticket for speeding from Trooper Duncan, and he made it known to the court during Pre Trial SEE: (Tr. pgs. 20, 21, 22.). The court even told the defendant, Trooper Duncan didnot have to give him a speeding

ticket. SEE: (Tr. pg. 21 lines 20-29) (Tr. pg. 22 lines 1-12). this further proves the court knew the testimony of Trooper Duncan was false. Also the defendant didnot receive a speeding ticket in his motion of Discovery. the only tickets the defendant received "SEE: EXHIBITS G-H-I" When the defendant was questioning Trooper Duncan about the speeding ticket, "the prosecutor Mr. Mallette Jump up with a copy of a ticket in his hand holding it in the air in front of the Jury, And said and I quote "I got the ticket right here your Honor" Unquote". And then Mr. Mallette walk past the defendant and went to the projector." The Statement made by Mr. Mallette has been taken out of the Transcripts." But the court goes on to say: The Court: "If the District Attorney's office" would help Mr. Jackson. Do you want the Jury to see that, Mr. Jackson". "The defendant stated to the court: I want the Jury to see, because I have no copy of a traffic ticket. That's why I'm-": The defendant was cut off by the court: Mr. Jackson hold on. That's these are all legal matters. My question is are you wanting the Jury to see that? You Just tell me yes or no". SEE: (Tr. pg. 93 lines 14-29) (Tr. pg. 94 lines 1-3) The Court interfered with the defendant defense, that Trooper Duncan "illegally stop search the vehicle". "The court had the ticket enter as Exhibit D-1". "Then the prosecutor Mr. Mallette had the other tickets entered as states Exhibit Numbers S-6 and S-2. This was done to Mislead this Honorable Court. The defendant states he told Att. Shackelford to tell the Judge he wanted a Mistrial, because of the prosecutors Conduct. Att. Shackelford told the court something different. SEE: (Tr. pgs. 93, 94, 95). "This is clear proof of "conspiracy", "corruption" and "Deception" by the court and this type of conduct is not premitted and it is unexceptable, by the laws of the State of

Mississippi. SEE: Mississippi Judicial Performance Comm. v. Hopkins 590 So. 2d 857; (Miss 1991) [HN5] Miss. const. art. 6. § 177A, [HN9], Miss. Code. Jud. Conduct. Canon 3(B), [HN8] Miss code. Jud. Conduct Canon 3(B)(1), (4). Trooper Duncan further testified falsely, as to where he found the drugs. SEE (Tr. pgs. 57, 60, 61, 62, 65, 66, 67, 68, 71, 72, 96, 97, 98, 99, 104, 105, 108, 110, 113.) The testimony of Trooper Duncan can be proven false, by his own statements. SEE "MHP Report" EXHIBIT D-6a and Report of Investigation / Field Interview, however the Field interview report was withheld from the Jury, and it's not in the defendant EXHibits by the court. The "Field report" was enter into evidence as a unidentified exhibit. SEE (Tr. pg. 103 - lines 3-29). The defendant is entering the Field interview in his EXHibits, for this Honorable court to review. SEE "Exhibit F" TROOPER DUNCAN testimony can be proven false threw Deputy Hudgins voluntary Statement SEE. Exhibit D-2. in which Trooper Duncan signed as a witness." And also Trooper Duncan testimony can be proven false threw Deputy Hudgins testimony. SEE (Tr. pgs. 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128). The court and Att. Shackelford tryed to keep the defendant from presenting this Statement to the Jury SEE: (Tr. pg. 112 lines 1-23). Trooper Duncan testimony can also be proven false threw the defendants testimony SEE (Tr. pgs. 130, 131, 132, 133, 139) The court, Att. Shackelford and the prosecutors, knew Trooper Duncan had testified falsely. SEE: (Tr. pg. 139 Lines 12-21) "Mr. Shackelford clearly stated: "Uh, I'm going to object to S-1 because in order to make it over 30 grams, it will require the drugs "that marijuana that was found under the seat". Mr. MASSEL WHITE Clearly stated to the Jury, "during Closing Argument" "The marijuana that was found in the vehicle was found underneath the driver's seat." This

proves The court, Att. Shackelford and the prosecutors knew Trooper Duncan had testified falsely, And they did not stop him or try to Correct the false testimony. And this farther proves they conspired against the defendant." "The court denied ever motion the defendant filed during trial SEE: (Tr. pgs. 16, 17, 18, 19, 20, 21, 22, 23, 32, 99, 91, 141). after the Court denied the last motion. Att. Shackelford said: "Why am I not surprised". The court also made a statement to the prosecutor: The Court: You're in Clarksdale now, See, We know what time it is around here. SEE (Tr. pg. 88 lines 1-12). The court also gave "errors Jury instruction to the Jury". The court "used" errorous words in the Jury instruction". And the court also "Amended the indictment threw the Jury instruction". SEE: (Tr. pgs. 144, 145, 146, 147, 148, 149, 150, 151) These instruction was improperly read to the Jury, by the court. "The Court change words and use words that was preJudicous to the defendant and this had a grave impact on the Jury verdict." Compare the Jury Instruction that was read to the Jury, with the Jury Instruction that's in the Clerks paper. SEE: (C.P. Pgs. 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108). "The court amended the defendant indictment threw the Jury Instruction." This farther proves the court conspired to illegally deprive the defendant of his United states constitutional rights." "During the defendants sentence hearing the defendant told the Court he needed a lawyer to help him," the court ignored the defendant", and began to give the defendant a illegal Sentence," in which the defendant had to correct the court. SEE: (Tr. pgs. 160, 161, 162, 163). The defendant told the court he needed a Attorney to file his appeal. The

Court reappointed Att. Shackelford to do the [redacted] defendants [redacted] Appeal, so they could try to "cover up" what they did to the defendant SEE: (Tr. pgs. 165, 166). The defendant states after the court read the last Jury Instruction the court told the Jury and I quote: "and he is "Guilty", unquote. this statement has been deleted from the transcripts. It toote the Jury "19 minutes" to find the defendant guilty. it is common sense, they was only deliberating on the lesser include offense. The defendant filed several motions to the court as Post Conviction motions. One of the Motions was for "Judgement notwith standing" the verdict" the court never made a ruleing on the motion (SEE: CP. pgs 45 46 47 48 49 50 55 [redacted]) also SEE: (Tr. pgs. 166, 167). The Order denying all of the defendant's Pro-se motions states there not proper before the court; there was know supporting Opinion stating what was improper about the motions, and this Order do not have the defendant Pro se motion on it for "JNOV" SEE: (CP. Pg. 81). The law clearly states: Where a prisoner is proceeding prose, the court takes that fact into account and, in it's discretion, and Credits not so well pleaded allegations, to the end that a prisoner's meritorious complaint may not be lost because it was inartfully drafted. SEE: Moore v. Ruth 556 So. 2d 1059 (Miss. 1990) also SEE HAINES V. KERNER 404 U.S. 519 (1972) The court has also "forged documents" and have put them in the defendant Records SEE: (CP pgs 6-9) The defendant States, the only Attorney he went to arraignment with is "Wilbert Johnson." The defendant states he have not been to know arraignment with Att. Shackelford, and the charges have been changed on both arraignment papers. The defendant has proven a clear and overwelming case of "Conspiracy", "Corruption" and "Racial Discrimination". The defendant has made Allegation

and he has proven these Allegation beyond a reasonable doubt. The defendant was "illegally deprived of his liberty", the Court violated all of his "constitutional Rights". 4th, 5th, 6th and 14th amendment provided by the United States Constitutional Rights". The "Fourteenth Amendment" guarantee every person Due Process and a right to a fair trial and equal protection adopted by the Mississippi Constitution Article 3 sec. 14 of 1890. The defendant has proven Judge Smith used "willful misconduct", "abused his power", "conspired against the defendant" and this type of conduct is not permitted. SEE: Hopkins 590 So. 2d 857; 1991 [HN3] Miss. Const. art. 6, § 177A, [HN9] Miss. Code Jud. Conduct Canon 3(B) also SEE Gaines, 466 So. 2d 884; 1985 [HN1][HN2] also SEE: Mississippi Judicial Performance Comm. v. George w. Walker, 565 So. 2d 1117 (Miss 1990) [HN1] [HN3] Miss. Code Jud. Conduct Canon 1 (Code) [HN4] Miss. Code Jud. Conduct Canon 2 [HN5] Miss. Code Jud. Conduct Canon 3 also SEE: Garrison v. State 226 * 211 So. 2d 1144 1152 (Miss 1998)(4) also SEE Mercer * 700 820 So. 2d [227-1148

ARGUMENT IV.

PROSECUTORIAL MISCONDUCT

[HN11] Any person charged with a crime, under the constitution of Mississippi, is entitled to be tried in a proceeding that is conducted by the prosecutor with "dignity" and "propriety", free from name calling, gratuitous insult and "unnecessary inflammatory comment", repeated expressions of outrage, frequently recurring and transparent appeals to the emotions of Jurors, and other "such unacceptable conduct" that courts repeatedly condemn. A court cannot close it eyes to prosecutorial misconduct, condone it when it occurs, or tolerate further recurrence. [HN12] Miss. Unif. Crim. R. Cir. Ct. Prac. 5.01.512 require that the attorneys for the state, as well as defense counsel, conduct themselves with dignity and decorum, treating the court, counsel, witnesses, and even the defendant

with professional respect. under Miss. Unif. Crim. R. Cir. Ct. Prac. 5.01 attorneys are required to act in a fit, dignified, and courteous manner that will not degrade or interfere with the administration of Justice. GARY LYNN GRIFFIN V. STATE 557 So. 2d 542 (Miss 1990) also SEE: [HN8] It is the duty of the presiding Judge, as well as trial attorneys on both sides, in the Conduct of a criminal case to see that the constitutional rights of an accused are not violated. A defendant has a constitutional right not to take the witness stand. SEE: STRINGER V. STATE 500 So. 2d 928 (Miss 1986) [**47], [**6]. [HN10] The purpose of a closing argument is to fairly sum up the evidence and to point out those facts presented by the state on which the prosecution contends a verdict of guilty would be proper. Counsel cannot, however, state facts which are not in evidence, and which the court does not Judicially know, in aid of his evidence. Neither can he appeal to the prejudices of men by injecting prejudices not contained in some source of the evidence. [HN11] unwarranted and improper remarks of a district attorney would warrant reversal where there was a most extreme and intolerable abuse of his privilege, even without defendant attorney's objection. WILLIAMS V. STATE 445 So. 2d 798 (Miss 1984). [HN12] [illegible] the prosecutor's personal belief in the guilt of an accused is improper. United states v. Grant, 971 F.2d 799, 810 (1st Cir. 1992)

[HN1] The Due Process Clause of the Fourteenth Amendment forbids the government from knowingly using, or failing to correct, false testimony. See Giglio v. United States, 405 U.S. 150, 153, 31 L. Ed. 2d 104, 92 S. Ct. 763 (1972); Napue v. Illinois, 360 U.S. 264, 271, 3 L. Ed. 2d 1217, 79 S. Ct. 1173 (1959). To prove a due process violation, the appellants must establish that (1) [illegible] a witness testified falsely; and (2) the government knew the testimony was false; and (3) the testimony was material. See Giglio, 405 U.S. at 153-54; Knox v Johnson, 224 F.3d 470, 477 (5th Cir 2000); United States v. ALFONZO Mason and Linda Smith, 293 F.3d

826, 2002 U.S. App. LEXIS 10994 [HN1]. [3] Constitutional Law 268(5) Suppression by prosecution of evidence favorable to an accused upon request violates due process where evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of prosecution. U.S.C.A. Const. Amend. 14 BRADY V. MARYLAND 83 S.Ct 1194, 373 U.S. 83, [redacted] (U.S. Md. 1963).

On June 1, 2005 the defendant was indicted by a Grand Jury of Coahoma County. He was indicted on a multiple Count indictment for possession of a Controll substance, he also was indicted under statue 41-29-142 Second and subsequent offense The charge that was used to obtain the offense of 41-29-142, was a charge of Marijuana a Misdemeanor in which the defendant Plead Nola: CONTENDRE TO. This Misdemeanor charge was Presented to the Grand Jury to "mislead" them, by the District Attorney Laurance Mullen, The law clearly states under "MISSISSIPPI RULES OF EVIDENCE" COMMENT RULE 410. INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS. Under existing Mississippi law, a plea of nolo contendere by a defendant is not admissible against him later in either a civil case or a criminal case. SEE. Keys v. State, 312 So. 2d 7 (Miss. 1975). (A plea of nolo contendere is only available in Misdemeanor cases). Rule 410 is consistent with Mississippi law by rendering inadmissible both guilty pleas which are withdrawn and statements made in a Judicial procerding regarding a plea of guilty which is withdrawn or a plea of nolo contendere. Sanders v. State, 435 So. 2d 1177 (Miss. 1983) and Rule 3.03 (6) Uniform Criminal Rules of Circuit Court Practice. The charge of Nolo Contendere should not have been presented to the [redacted] Grand Jury. This charge was used to "mislead" the Grand Jury. There's a strongs possibilty if this charge wasnot presented

to the Grand Jury [redacted] the defendant would not have gotten Indicted. because the prosecutors case was weak.. And the District Attorney clearly violated the Mississippi Rules of Evidence Rule 410. SEE EXHIBIT -J This exhibit was withheld out of the defendant Records. Also SEE (C.P. pg.5)

On August 2. 2006 the defendant received a Plea Agreement to testify in a Murder trial. SEE: EXHIBITS -L-M-N-O. The defendant sent a letter to the Assistant District Att. Larry Baker telling him he was not going to except any plea on August 11. 2006 SEE: EXHIBITS -P. This is what lead to the "vindictive" prosecution of the defendant.

On December 7. 2006 the defendant was taken to a withdrawal hearing. his first Attorney Wilbert Johnson filed a motion to withdraw off of the defendant Case, due to a Conflict of Interest. SEE: (C.P. pgs. 7-8) also SEE (Tr. pgs. 6-14). The defendant states the Conflict of interest between Att. Johnson was about money. The defendant received a letter from Wilbert Johnson. SEE Exhibit -K

On December 7. 2006 the Defendant and Judge Smith had a confrontation threw out the whole hearing. And Judge smith made the Court Reporter turn the machine off SEE: (Tr. pgs 6-14)

[redacted] Judge Smith called Att. Shackelford and the prosecutor Mr. Malletta in his chambers, [redacted] when the "plot" and "conspiracy" started. SEE: (Tr. pg. 14 lines 1-7). During the time the machine was off the defendant was Attacked and Assault by Deputy OTHA Hunter; there was a court room full of witnesses to the assault.

On January 4. 2007 the defendant received a Attorney visit from Att. Shackelford during the visit Att. Shackelford was trying to deceive the defendant about his case.

On January 4. 2007 the defendant wrote the Mississippi Bar Assi. and the Attorneys General office., making Allegations of Misconduct and seeking a investigation into his case against "Att. Shackelford"

"Judge Smith" and the "District Attorneys office". unfortunaly both agencys turned a "blind eye" to the defendant "SEE EXHIBIT "A-C-D"

On January 19, 2007 the defendant was taken to Trial and the following "Miscarriage of Justice" occurred. During PreTrial the prosecutor Mr. Mallette and the court deceived the defendant about the Indictment not being "defected and improper". SEE: (Tr. pgs. 16-17). Mississippi Rules of Professional conduct STATES: Rule 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS. In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person: During Trial the prosecutors Mr. Mallette and Ms. MUSSELWHITE; knowly used there main witness Trooper walter J. Duncan to testify falsely threw the whole trial. SEE (Tr. pgs. 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 93, 94, 95, 96, 97 98, 99, 100, 101, 102, 103, 104, 105, 106, 108, 110, 111, 112, 113). Trooper Duncan testimony was false, when he testified about he found Marijuana in the vehicle and that he found several other plastic bags of green leafy substance inside that bag "On the front seat SEE (Tr. pg. 57 lines 20-28) Trooper Duncan continue to testify falsely SEE (Tr. pg. 60 lines 4-29) he continue to testify falsely SEE: (Tr. pg 61 lines 15-27) (Tr. pg. 62 lines 1-28) (Tr. pg. 65 lines 23-29) (Tr. pg. 66 lines 1-12). (Tr. pg. 72 lines 1-6) (Tr. pg. 96 lines 1-7) (Tr. pg. 97 lines 1-29) (Tr. pg. 98 lines 1-29) (Tr. pg. 99 lines 1-13). The testimony can be proven false by Trooper Duncan own testimony. SEE: (Tr. pg. 105 lines 1-13) (Tr. pg 108 lines 12-20) the testimony of Trooper Duncan also can be proven false by his written statements (MHP) Report SEE (EXHIBIT 6a and also SEE Field Interview Report, this statement was taken out of the defendant Records But The defendant is inclosing his copy SEE "EXHIBIT E". Trooper Duncan Testimony can also be proven false threw Deputy Wayne Hudgins Voluntary statement, in which Trooper Duncan signed as a witness. according to this statement the only thing

that was "found in that vehicle was packed". SEE EXHIBIT D3" Trooper Duncan testimony also can be proven false threw Deputy Hardgins Testimony SEE: (Tr.pg.117 lines 21-29) (Tr.pg.118 lines 1-29) (Tr.pg.119 lines 1-29) (Tr.pg.120 lines 1-29) (Tr.pg.121 lines 1-29) (Tr.pg124 lines 1-29) (Tr.pg.125 lines 1-29) (Tr.pg.126 lines 1-29) (Tr.pg.127 lines 1-29) Trooper Duncan testimony can also be proven false threw Mississippi Crime Laboratory Evidence Submission Form. This from clearly states 001 "One (1) heat sealed plastic bag marked #8267049 (1), containing a plastic bag containing numerous tied plastic bags" each containing a green leafy substance. tpw=22.6 grams. 002 One (1) heated sealed plastic bag marked #8267049 (2), containing a plastic bag containing a green leafy substance. These forms was withheld out of the defendant Records "SEE EXHIBITS Q" Trooper Duncan testimony about finding the cocaine on the hump of the floor SEE(Tr.pgs 62,64,104,105) testimony can also be proven to be false threw the same evidence the defendant has presented on the Marijuana. The prosecutors knew the testimony of Trooper Duncan was false because they had the very same evidence the defendant has. To prove further they knew Att. Shackelford and the court knew, Trooper Duncan testimony was false SEE: (Tr.pg.139 lines 12-21) Att. Shackelford said "marijuana that was found under the seat". Ms. Musselwhite during closing ARGUMENT said: "The marijuana that was found in the vehicle was found underneath the driver's seat". SEE: (Tr.pg.152 lines 1-6) without Trooper Duncan false testimony the state didnot have a case, and the defendant would not have been convicted. Trooper Duncan further Testified falsely, when he testified to giving the defendant a ticket for speeding. SEE: (Tr.pg.63 lines 20-21) (Tr.pg.93 lines 14-29) (Tr.pg.94 lines 1-29) (Tr.pg.95 lines 1-25). "When the defendant ask Trooper Duncan about the speeding ticket, the prosecutor Mr. Mallette Jumped out of his sit with a ticket in his hand holding it so the Jury could see it and told the court "I got the ticket right here"

your Honor." And then M. Mallette walk past the defendant and went to the prodector. The statement made by Mr. Mallette has been taken out of the transcripts. But the court goes on to say: The court: "If the "District Attorneys office" would help Mr. Jackson." The court had the ticket enter as D-1 and the prosecutor had the other sets of tickets entered as Exhibits S-1a and S-1 also see (Tr. pgs 93-94-95) The defendant didnot receive a "ticket for Speeding" and there was know copy of a speeding ticket in his "Motion of discovery." The only tickets the defendant received "SEE EXHIBITS G-H-I" "The prosecutors", "The court" and "Att. Shackelford" knew the defendant didnot receive a ticket for Speeding," and they knew Trooper Duncan was testifing falsely. SEE (Tr. pgs. 20-21-22) MISSISSIPPI RULES OF PROFESSIONAL CONDUCT RULE 8.4 MISCONDUCT: It is professional misconduct for a lawyer to: (a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving "dishonesty; fraud; deceit" or "misrepresentation"; (d) engage in conduct that is prejudicial to the administration of Justice; (e) state or imply an ability "to influence improperly a government agency" or official"; or (f). "knowingly assist a "Judge" or "Judicial" officer" in conduct that is a violation of applicable rules of Judicial conduct or other law." M.R.P.C. RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR. The prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause." False testimony cannot be used against a defendant SEE: GIGLIO v. United States 405 U.S. 150; 92 S.Ct. 763; 31 L.Ed. (U.S. 1972) [HN1] LAW 8840 [2] "A conviction secured by the use of false evidence must fall under the Due process clause where

the state, although not soliciting the false evidence, allows it to go uncorrected when it appears [***LEdHN6] under the due process clause, a new trial is required in a criminal case. if false testimony introduced by the state, and allowed to go uncorrected when it appeared, could in any reasonable likelihood have affected the judgment of the jury. also SEE: U.S. v. MASON and SMITH 293 F.3d 826; 2002 U.S. App. [HN1] [***3] [***4] NAPUE v. ILLINOIS 360 U.S. 264; 79 S.Ct. 1173; 3L. Ed. 2d 1217; (U.S. 1959) [HN1] [HN2] MOONEY v. HOLOHAN, WARDEN 294 U.S. 103; 55 S.Ct. 340; 79 L.Ed. 791; 1935 U.S. [HN1] [***LEdHN2]. The prosecution prime witness Trooper Duncan testified falsely and the defendant has proven that. The prosecutors knew Trooper Duncan was testifing falsely, and the testimony was material and had a Grave impact on the Jury's verdict. Therefore the defendant's United States constitution rights were violated under the FOURTEENTH AMENDMENT DUE PROCESS CLAUSE. Reversal of this conviction is guaranteed.

Trooper Duncan's testimony also violated the Mississippi RULES OF EVIDENCE [HN3] Miss. R. Evid. 403, which allows for the exclusion of relevant evidence, states that although relevant, evidence may be excluded if its probative value is substantially out-weighed by the "danger of unfair "prejudice", "confusion" of the issues", or "misleading the Jury", or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. JAMES ALBERT SAMPLE, II v. STATE 643 so. 2d 524 (Miss 1994) [HN4] [HN8] When a witness admits making a prior inconsistent statement, extrinsic evidence of that statement is inadmissible: JAMES HENRY FOSTER v. STATE 508 So. 2d 1111; 1982 Miss.

Trooper DUNCAN ADMitted to testifing to things that was not in his Statements SEE: (Tr. pg 68 lines 1-29) (Tr. pg 69 lines 1-2) (Tr. pgs 92-98-99-104-105-108) The testimony of Trooper Duncan was danger and unfair to the defendant, it also Cause Grave Prejudice to the defendant. The testimony

also confused the Jury and it was intended to Mislead the Jury. Therefore Trooper Duncan testimony violated the Miss. Rules of Evid. RULE 403

The "Closing ARGUMENT" of Ms. Musselwhite was "Erroreus" when she told the Jury: "the car belonged to Mr. Jackson" SEE (Tr. pg. 151 lines 22-28). The only evidence presented to the Jury: to prove the vehicle was the defendant. Was the false testimony of Trooper Duncan.

The "Closing ARGUMENT" of Mr. Mallette was Erroreus when the told the Juror: "Well, does not matter whether he had the cocaine in the car or Just the cocaine that was taken off of him". SEE (Tr. pg. 154 lines 11-28). The Grand Jury indicted the defendant for all of the drugs. the drugs that was found on the defendant and the drugs found in the vehicle SEE (CP. Pg. 3) The law clearly states: [HN12] A defendant cannot be put in Jeopardy for crimes except those which a grand Jury of his peers has presented. Only a grand Jury can advise a defendant of what he is to be charged with. The very purpose of the requirement that a man be indicted by grand Jury is to limit his Jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or Judge. "An indictment" can be made only by a grand Jury, and no court or prosecutor can make", "alter", or amend an indictment returned by a grand Jury." STATE v. BERRYHILL 703 So. 2d 250 (Miss 1997)" Mr. Mallette further committed error when he told the dury "He's guilty". He's told you he's guilty "and I think you should find him guilty in both counts". The prosecutors remarks clearly inflammed the Jury. SEE (Tr. pg. 154 lines 11-28) [HN12] "Any representation as to the prosecutor's personal

belief in the guilt of an accused is improper. United States v. Joseph Smith 982 F.2d 681 (U.S App 1993)". The defendant at know time admitted to having any drugs in that vehicle". "the defendant didnot own that vehicle". "the passenger was left along in that vehicle". "there was marijuana found own the passenger" SEE C.R pg.4 also "SEE EHIBITS Q-R-S-T" "Deputy Hudgins Clearly testified: "I don't know if it was any powder found there. The only powder that was found there was on that passenger that was in the vehicle with you and he had it in his sock when we got him to the Jail".) In know statement or report it states that "powder was found own the passenger." Deputy Hudgins go on to say: "The passenger, what he found on him at the Jail, that's what "Trooper" found him, 'cause I was there when "Trooper Duncan" got it out of his sock." SEE (Tr. pg. 124 lines 1-29) (Tr. pg. 125 lines 1-8)". There was no finger prints taken off of the drugs found in the vehicle". "Deputy Hudgins whole testimony and statment contradict everything Trooper Duncan testified to and his statements". "Trooper Duncan Signed deputy Hudgins" statement as a witness". "Deputy Hudgins voluntary Statement doesn't state anything about Marijuana being found in that vehicle only powder" SEE EXHIBIT D-2. (what the defendant is trying to figure out is that Deputy Hudgins "looked in the vehicle and seen a plastic bag with "powder" in it. SEE EXHIBIT D-2." But in Trooper Duncan REPORT OF INVESTIGATION / FIELD INTERVIEW it clearly states under "Seizures TYPE 2. White Rocky Sub." "SEE EXHIBIT F" But then Trooper Duncan changed it at the bottom of the Field interview report: "Resulted in A plastic bag containing white powder Substance." Trooper Duncan "NOTICE OF SEIZURE" REPORT CLEARLY States "@ Herman Jackson @ Willie Scott "names of Person in possession at time of seizure". "Plastic bags of Green

leafy substance" (2) "Plastic bags of white Rocky substance" (SEE: EXHIBIT D-3. Trooper Duncan "Impound vehicle inventory report" At the bottom it clearly States "(1) Pastic bag containing a White Rocky Substance" SEE EXHIBIT D-2. Trooper Duncan weight those drugs and the Amount of the "Rocky Substance (5.3)" Green leafy substance Amount (62.2) SEE [redacted] Field interview Report "EXHIBIT F". The Mississippi Crime LABORATORY report clearly states: "Evidence Submission #001 Marihuana Amount (12.1) Grams" Evidence Submission #002 Marihuana Amount: 27.1 Grams. Add Evid. Subm. #001 with #002 39.8 Grams"). Add Evid. Subm. [redacted] #003 with #004 0.6 grams. (SEE Tr. pg. 80, 81, 82, 83, 84, 85) "This proves beyond a reason doubt, those drugs was Tampered with before they even made it to the Crime Lab" SEE: "EXHIBITS Q ". "It also proves [redacted] that with all the Testimony of Trooper Duncan and statements and Deputy Hudgins Testimony and Statement, the officers planted those drugs in that vehicle and also tampered with the drugs that was found on the defendant." "And it also proves, the prosecutors used false evidence to illegal deprive the defendant of his liberty". [HN1] A conviction obtained through use of "false evidence, known to be such by representatives of the state, must fall under U.S. Const. amend. XIV." The same result obtains when the state, although not soliciting "false evidence," allows it to go uncorrected when it appears [***LEdHN1] NAPUE v. ILLINOIS 360 U.S. 264; 79 S.Ct. 1173; 3L. Ed. 2d 1217; (U.S. 1959) GIGLIO v. UNITED STATES 405 U.S. 150; 92 S. Ct. 763; 31 L. Ed. 2d 104 (U.S. 1972) [***LEdHN1][***LEd HN2] "The defendants constitutional Rights was violated under the FOURTEENTH AMENDMENT DUE PROCESS AND A RIGHT TO A FAIR TRIAL and EQUAL PROTECTION and he was Illegal denied of his liberty". The prosecutors also suppressed Material evidence. [3] CONSTITUTIONAL LAW 268(5) Suppression by prosecution of

evidence favorable to an accused upon request violates due process where evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of prosecution. U.S.C.A. Const. Amend. 14. BRADY v. Maryland *1194 83 S.Ct. 1194 373 U.S. 83 10 L. Ed. 2d 215

1. The prosecutors suppressed a "Traffic Ticket for Speeding" in which the defendant didnot knoco nothing about. The prosecutor Mr. Mallette Jump up with a ticket in his hand holding it in the air in front of the Jury. But at knoco time did the prosecutor try to present the ticket until the defendant was EXAMINING Trooper Duncan (SEE: Tr. pgs. 93-94-95) also SEE. (Tr. pgs. 20, 21, 22) "There was knoco speeding Ticket in the defendant Motion of Discovery." the only Tickets the defendant received "SEE EXHIBITS "G-H-I" "The Ticket for speeding has been put in the Defendants EXHIBITS MARKED as "D-1" also SEE: The prosecutor had the other tickets Marked as S-6 S-2).

2. THE PROSECUTORS also Suppressed "TWO STATMENTS OF DEPUTY WAYNE HUDGINS," it clearly states at the bottom of his statement "I have read each page of [redacted] this Statement Consisting of "3 pages". SEE [redacted] EXHIBITS "D-2" When the defendant ask Deputy Hudgins where was the other TWO pages: Deputy Hudgins stated: "There's no other two to it SEE" (Tr. pg. 123 lines 1-19) also SEE (Tr. pg. 122 lines 19-29).

3. The prosecutors also Suppressed a "Audio and video tapes." from Trooper Duncan. the Tape that was in his "tape recorder" and the "video tape from his patrol car". These tapes can further help the defendant prove Trooper Duncan testified falsely and Tampered with the evidence. The defendant filed a Pro-se motion to the Circuit Court as a Post Conviction motion, this motion was denied as being improper SEE (C.P. pgs. 42, 43, 44.) also SEE: (C.P. pgs. 21) GIGLIO 405 U.S. 150 [***] LEd.Ed.104 37) under the due Process clause, the prosecution's suppression of material evidence Justifies a new Trial irrespective of the prosecution's good faith or bad faith.

ARGUMENT V.

DEFECTED AND IMPROPER INDICTMENT

The FIFTH AMENDMENT which states that, "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." There are certain ways an indictment must be written, presented and amended. "The indictment must give notice of the nature and cause of the charges, although reasonably concise statement of the crime will suffice". STATE V. Berry Hill, 703 So. 2d 250 (Miss. 1997) Amendments may be made as to form but not as to the substance of the charged offense. Indictments may also be amended to include the charge of habitual status or to enhance punishment. This may be done only if the defendant is afforded an opportunity to present a defense and is not unfairly surprised by the amendment. Thus, "The prosecution cannot present evidence at trial that would amend the indictment." All other amendments must be made by the Grand Jury. URCCC 7.09"

The defendant was indicted by a Grand Jury of Coahoma County on "June 1, 2005". Under Count I the indictment reads in part: did "unlawfully", "knowingly" or "intentionally" possess a certain controlled substance, to-wit: Marijuana, in an amount between 30 grams and 250 grams, a schedule I controlled substance as provided for by section 41-29-115 (a)(4) of the Mississippi Code of 1972, Annotated, as amended. "STATUE 41-29-115 (a)(4) only consist of Cocaine," it do not consist of [redacted] "Marijuana" SEE: Mississippi Code Ann. 1972 41-29-115 (a)(4)

Under COUNT II of the defendant indictment it reads in part: did "unlawfully", "knowingly" or "intentionally" possess a certain controlled substance, to wit: Cocaine Salt, in an amount 1 gram to 2 grams, a Schedule II controlled substance as provided for by section 41-29-115 (a)(4)". STATUE 41-29-115(a)(4) carry a penalty of "up to" 30 years and a fine if convicted up to One million dollars or both see: §41-29-139 Prohibited acts; penalties

The defendant also was indicted under Statue "41-29-147" Second and subsequent. To obtain the Second and subsequent offense the the District Attorney used a Misdemeanor Charge in which the

the defendant Pleaded "Nolo contendere to. SEE EXHIBIT "J" under Mississippi Rules of Evidence Rule 410 Inadmissibility of pleas, plea discussions, And Related Statments "COMMENT" a Plea of Nolo Contendere Cannot be used in a criminal proceeding "SEE Keys v. STATE, 312 So 2d. 2 (Miss. 1975) At the "TOP" of the defendant's indictment it has Statue MCA Section "41-29-139 (c)(2)(c)" the penalty for this statue carries up to 3 years imprisonment and up to a Three thousand dollar fine". Also at the "TOP" of the defendant indictment is statue 41-29-139 "(c)(1)(B)" Also at the "Top" of the defendant indictment is statue 41-29-139 "(c)(2)(a)" the indictment has the defendant charged under "four different Statue." SEE "(C.P. pgs 3-4-5)" [redacted] [illegible] Questions regarding the adequacy of indictments are tested by Miss. Unif. Crim. Rules Cir. Ct. Prac 2.05. The major purpose of an indictment is to furnish the accused. such a description of the charges against him as will enable him to adequately prepare his defense. The description should include a concise and clear statement of the elements of the crime charged. Nothing more is required. King and King and king v. State 580 So. 2d 1182 (Miss 1991). The defendant "ARRAIGNMENT" paper under "Wilbert Johnson" has "statues 41-29-139 (c)(3)(a)" and "41-29-139 (c)(1)(b) "Statue" 41-29-139 (c)(2)(c)" has been removed from the ARRAIGNMENT PAPER" SEE "(C.P. Pg. 6)". The court has falsified A ARRAIGNMENT Paper with "Att. Shackelford" name on it." The defendant states he has not been to know arraignment with [redacted] Att. Shackelford" the statues on this paper [redacted] is "(c)(2)(c)" and "(c)(1)(b)" the statue "(c)(2)(a)" is missing off of this paper. SEE "(C.P. pg. 9)". The "NOTICE OF CRIMINAL DISPOSITION" clearly states The defendant was indicted "under §41-29-139 (c)(2)(c)" count I "(Marijuana)" and "sentenced under "Ms. code §41-29-139(c)(2)(A)" and it also states under "COUNT II Charge (cocaine salt)" Indicted under Ms code "§41-29-139 (c)(1)(B)" "sentenced under "Ms code §41-29-139 (c)(1)(B)" This document has been falsified" There is know "Statue of "41-29-139 (c)(1)(B)" on the defendants indictment" SEE: (C.P. pg. 23) and also SEE "(C.P. pgs 3-4-5)" This proves the defendant Indictment was Amended to the substance by the circuit Court."

The defendant filed a "motion verbally" to the court during "Pre-Trial proceedings" for "Defected and Improper Indictment." The prosecutor gave the defendant a lame excuse, because he knew the defendant didnot understand the law". Then when the defendant actually filed the motion. The court cut the defendant off and said "It will have to conform to the proof." and denied the motion. SEE: "(Tr. pg. 116 1-29)" also SEE "(Tr. pg. 17 lines 1-28)". The defendant brought up again about the motion to Quash indictment during his sentencing Hearing". SEE "(Tr. pg. 162 lines 17-22)" also SEE "(Tr. pg. 163 lines 19-29)" "(Tr. pg. 164 lines 1-29)" "(Tr. pg. 165 lines 1-22.)" The defendant also filed a "post conviction motion" to "Quash Indictment" because it was "DEFECTED AND IMPROPER" the motion was denied. SEE (C.P. pgs. 33-34; 35-36) (C.P. pg. 81). The law clearly states [HN3] A defendant has a substantial right to be tried solely on charges presented in an indictment returned by a grand Jury. That right is defeated when a defendant is later subjected to prosecution for an offense not charged by the grand Jury. U.S. v. BIZZARD 615 F.2d 1080; U.S. App. 1980 [HN3] The missing critical elements from an indictment may not be supplied by "proof presented at trial" or "by Jury instructions" that adequately set out the essentials of the charged crime. White v. STATE 851 So. 2d 400 (Miss. App. 2003) [HN2] also See: Miss. Unif. Cir. & COUNTY Ct. Prac. R. 7.06 Also SEE: Quick v STATE 569 So. 2d 1187. (Miss. 1990) [4] 159(2) [5] 159(1) SEE: Burrell v. STATE, 722 So. 2d. 261 (Miss. Ct. App. 1998) Berry Hill 203 So. 2d 250 [**12] [**13] [**14] STIRONE V. U.S. 361 U.S. 212, 218; 4 L. Ed. 2d 252, 80 S. Ct. 270 (1960) also SEE 41 Am. Jur. 2d Indictments and Informations § 1 (1995) - § 168-69 (1995)

The defendant "Indictment was amended by the Jury Instruction, by changing the essential elements of the charge. "By changing "knowingly or Intentionally" to willfully, feloniously". [redacted] SEE: (C.P. pgs. 3; 4; 5; 103; 104). Therefore violating the defendant

UNITED STATES CONSTITUTION RIGTH UNDER THE FIFTH AMENDMENT AND THE MISSISSIPPI CONSTITUTION ARTICLE 3 SEC. 27 reversely of this Conviction is guaranteed.

ARGUMENT VI

IMPROPER JURY INSTRUCTIONS

[1] Criminal Law 814(3) Jury Instructions which are unsupported by the evidence or incorrectly state the law are not to be given to the Jury. [2] Criminal Law 1172.1(1) Reversible error from the giving of improper Jury instructions will be found only if the instructions created an Injustice. [3] Criminal Law 795 (1.5) A lesser-included offense instruction may be given if the more serious offense includes all the elements of the lesser offenses, that is, it is impossible to commit the greater offense without at the same time committing the lesser-included offense. RAYMOND HELTON FRILEY JR. V. STATE 856 So. 2d 654 (Miss. App. 2003) [4] 220(2) A party has the right to have his theory of the case presented to the Jury by Instructions, provided that there is credible evidence that supports that theory. [5] 220(3) The principal concern with respect to Jury instructions is that the Jury was fairly instructed and that it understood each party's theory of the case. [6] 829(1) A Jury instruction may be improper if it incorrectly states the law, is without foundation in the evidence, or is stated elsewhere in the instructions. McGEE v. State 820 So. 2d 700 (Miss. App. 2002) [HN3] The missing critical elements from an indictment may not be supplied by proof presented at trial or by Jury Instructions that adequately set out the essentials of the charged crime. White v. State 851 So. 2d 400 (Miss App. 2003)

"On January 19, 2007 The court read "erroneous" Jury Instruction to the Jury. The court left out key words, replaced key words with his own words, said things that was not supported by law and Give Jury Instraction which Amended the defendant Indictment to the essentials elements of his Indictment. And the erroneous Jury Instruction cause grave prejudicial and created an Injustice to the defendant."

(1) "INSTRUCTION C-1" was Improper because the Court left out key words and used his own words that prejudice the defendant. SEE (Tr. pgs. 144-145-146) Compare to (C.P. pgs. 95-96)

(2) "INSTRUCTION C-2" was Improper because the court left out key words and used his own words that prejudice the defendant. SEE (Tr. pg. 146 lines 1-15) Compare to (C.P. pgs. 97)

(3) "INSTRUCTION C-12" was Improper because the court left out key words and used his own words that prejudice the defendant. SEE: (Tr. pg. 146 lines 15-29) (Tr. pg. 147 lines 1-3) compare to (C.P. pg. 98)

(4) "INSTRUCTION C-24" was Improper because the Court left out key words and used his own words that Prejudice the defendant. SEE (Tr. pg. 147 lines 3-18) Compare to (C.P. pg. 101).

(5). "INSTRUCTION C-22" was Improper because the Court left out key words. SEE: (Tr. pg. 147 lines 19-23) compare to (C.P. pg. 100)

(6). "INSTRUCTION C-19" was Improper because the court left out key words and used his own words. SEE: (Tr. pg. 147 lines 24-29) (Tr. pg. 148 lines 1-13) Compare to (C.P. pg. 99).

(7). INSTRUCTION C-25) was Improper because the Court left out key words and used his own words that prejudice the defendant. SEE (Tr. pg. 148 lines 14-17) compare to (C.P. pg. 102)

(8). INSTRUCTION S-1) was Improper because the Court left out key words and used his own words that prejudice the defendant. And this Instruction also changed the "essential elements charged" in the defendant indictment from "knowingly" or "intentionally" to "wilfully" and "feloniously." SEE: (Tr. pg. 148 lines 18-29) (Tr. pg. 149 lines 1-7) compare to (C.P. pg. 103) (C.P. pgs. 3,4,5).

(9). INSTRUCTION S-2) was Improper because the court left out key words and used his own words that prejudice the defendant. And this INSTRUCTION also changed the "essential elements charged" in the defendant indictment from "knowingly" or "intentionally" to "wilfully" and "feloniously" SEE: (Tr. pg. 149 lines 8-15) compare to (C.P. pg. 104) (C.P. 3-4-5)

INSTRUCTION S-3 was Improper because the court left out key words and used his own words that preludice the defendant. And this Instruction is also improper because the Grand Jury didnot charge a lesser included offense in the defendant indictment. SEE (Tr. pg. 149 lines 16-29) (Tr. pg. 150 lines 1-6) (C.R. 105) (C.R. pgs 3-4-5)

INSTRUCTION S-4 was Improper because the court left out key words and used his own words that preJudice the defendant. (SEE (Tr pg. 150 lines 2-21) Compare to (C.R. 106)

INSTRUCTION S-5 was Improper because the court left out key words and used his own words that preludice the defendant. SEE (Tr. pgs. 150-151.) compare to (C.R. pgs. 107, 108)

"After the COURT finished reading the last Jury Instruction he said and I quote, and he is guilty unquote, this statement has been taken out of the Transcripts."

"The defendant requested a Jury Instruction, and the court misquoted the law and deceived the defendant. SEE: (Tr. pgs. 137, 138, 139, 140-141)"

"Due to the erronous Instruction read to the Jury this case requires reversal of the defendant conviction SEE: ERCLEY 856 So. 2d 659 [1][2][3] McGEE, 820 So. 2d 200 [4][6][7] White 851 So. 2d 400 [11N3]"

CONCLUSION

Dlie to the "corruption" and "conspiracy" against the defendant. And Due to the violation of his United STATES Constitutional Rights 4th Amendment, 5th Amendmend 6th Amendment and 14th Amendment adopted by the Mississippi Constitution of 1890. Article 3, SEC. 28, Article 3, sec. 27, Article 3, Sec. 14 and Article 3, SEC. 26. And the defendant was illegal depriued of his liberty. The Judgment of thise Honorable Court should be, the defendant conviction be reversed and Discharged.

Respectfully Submitted
Herman Jackson Jr.

CERTIFICATE OF SERVICE

This is to Certify that I, the undersigned, have this day and date mailed, via United States Mail, postage Pre-paid, a true and correct copy of the foregoing Appellant Briefs consisting of "46" pages to the following.

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This the 17 day of October 2007

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