

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS NO. 2008-TS-00423 COA

JOSEPH Q. BULLOCK

FILED

APPELLANT

VERSUS

APR 08 2008

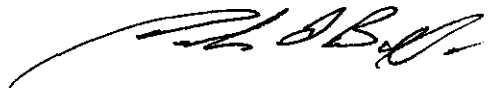
STATE OF MISSISSIPPI

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COURT OF APPEALS

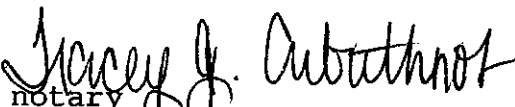
APPELLEE

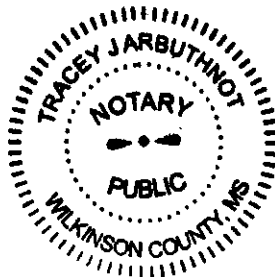
APPEAL FROM THE CIRCUIT COURT OF PRENTISS COUNTY, MISSISSIPPI
CRIMINAL ACTION NO. CR02-127

BRIEF OF APPELLANT
ORAL ARGUMENT IS REQUESTED


Joseph Q. Bullock

SWORN TO AND SUBSCRIBED BEFORE ME,
THIS THE 7th DAY OF April, 2008.


notary



my commission expires

My Commission Expires
January 27, 2009

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APEAELS NO.2008-TS-00423-COA

JOSEPH Q. BULLOCK

APPELLANT

VERSUS

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERISTED PERSONS

THE UNDERSIGNED APPELLANT CERTERFIES THAT THE FOLLOWING LISTED PERSONS HAVE AN INTEREST IN THE OUTCOME OF THIS CASE. THESE REPR-
ESENTATATIONS ARE IN ORDER THAT THE JUSTICES OF THE SUPREME COURT
AND OR THE JUDGES OT THE COURT OF APPEALS MAY EVALUATE POSSIBLE
DISQUALIFICATIONS OR RECUSAL.

HON. JOHN R. YOUNG, D.A.

HON. JAMES S. POUNDS, A.D.A.

HON.PAUL S. FUNDERBURK
PRESIDING JUDGE

HON. KENNY FLOYD
HON. CLAY NAILS
ATTORNEYS

JOSEPH Q. BULLCOK
APPELLANT pro se

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CERT. OF INETERESTED PERSON

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STATUTES AND RULES

MISS. UNF. CR. RULES, 2.04, 4.06, 406 (a) (1) AND 4.09
MISS. CODE ANN. 97-3-95 (2)
MISS. CODE. ANN. 99-18-81
MISS. CODE ANN. 13-7-25

STATEMENT OF ISSUES

1. WHETHER THE TRIAL COURT HAS ERRORED IN REFUSING TO ADHERE TO UNF. CR. RULES 2.04, 4.06, 4.06 (a) (1) and 4.09 WHEN IT DENIED APPELLANT'S MOTION TO INSPECT GRAND JURY MINUTES UNDER CAUSE NUMBER CRO2-127?

PROCEDURAL HISTORY

APPELLANT WAS INDICTED BY THE PRENTISS COUNTY GRAND JURY DURING ITS 2002 TERM ON CAPITAL MURDER IN VIOLATION OF MISS CODE ANN. 97-3-19 (2) (e).

PETITIONER ENTERED AN INVOLUNTARY GUILTY PLEA WITH THE ADVICE OF COUNSEL DUE TO EXTREME DURESS FROM A DENIAL OF SPEEDY TRIAL WHICH CAUSED AN UNNECESSARY EXTENDED DELAY, WHICH PREJUDICED PETITION AND RESULTED IN THE DENIAL OF HIS CONSTITUTIONAL RIGHT TO SPEEDY TRIAL WHICH RESULTED IN HIS INVOLUNTARY GUILTY PLEA.

STATEMENT OF THE CASE.

APPELLANT FILED A MOTION TO INSPECT GRAND MINUTES IN THE CIRCUIT COURT OF PRENTISS COUNTY, ON JANUARY 10, 2008, SEEKING ACCESS TO THE RECORDS OF THE TRIAL COURT, NAMES AND ADDRESSES OF ATTORNEYS FOR THE STATE APPEARING BEFORE, PRESENTING EVIDENCE TO, OR MAKING STATEMENTS TO THE GRAND JURY AND AS TO WHETHER ANY UNSWORN WITNESSES OR UNAUTHORIZED PERSONS WERE PRESENT IN THE GRAND JURY ROOM IN ADDITION TO DISCLOSURE OF ALL STATEMENTS AS TO WHEN THE JURY FIRST COMMENCED ITS DUTIES, AND A COPY OF ANY DOCUMENTS OR ORDERS RELATING TO OR EXTENDING ITS LEGAL AUTHORITY OR TERM. THIS APPEAL FROM THE DENIAL OF SAID MOTION.

SUMMARY OF ARGUMENT

APPELLANT'S CLAIM OF ENTITLEMENT TO THE GRAND JURY TESTIMONY OF WITNESSES BASED ON RULE 4.09 DESERVES CONSIDERATION. RULE 4.09 PROVIDES THAT THE COURT MAY HOLD AN OMNIBUS HEARING UPON REQUEST, OR ON ITS OWN MOTION. THE RULE OUTLINES WHAT IS TO TAKE PLACE AT SUCH A HEARING AND PROVIDES A CHECKLIST TO BE FOLLOWED. MISS UNF. CR. RULES 4.09 APPENDIX A. AMONG THE SUBPARTS OF APPENDIX A. ARE 6 (E) 6(F) AND 6(G) WHICH CONTEMPLATE, RESPECTIVELY A STATEMENT BY THE PROSECUTION AS TO WHETHER GRAND JURY PROCEEDINGS WERE RECORDED, A STATEMENT CONCERNING WHETHER OR WHEN THE GRAND JURY TESTIMONY OF WITNESSES TO BE CALLED THE STATE AT A HEARING OR TRIAL ARE TO BE SUPPLIED TO THE DEFENDANT/APPELLANT AND A SETTING FOR ANY HEARING NECESSARY TO DETERMINE ISSUES CONCERNING THE SUPPLYING OF GRAND JURY TRANSCRIPTS. SEE-ADDKISON VS STATE 608 So2d 304 (MISS 1992) at 312 (G).

ARGUMENT AND CITATIONS OF AUTHORITIES

PROPOSITION ONE:

WHETHER THE TRIAL COURT ERRORED IN REFUSING TO ADHERE TO MISS. UNF. CR. RULES, 2.04, 4.06, 4.06 (A) (1) AND 4.09 WHEN IT DENIED APPELLANT'S MOTION TO INSPECT GRAND JURY MINUTES UNDER CAUSE NUMBER CRO2-127?

APPELLANT ARGUES THAT HE SHOULD HAVE BEEN SUPPLIED A COPY OF THE GRAND JURY PROCEEDINGS WHICH RESULTED IN INDICTMENT IF SUCH RECORDINGS EXIST OR THE "SUBSTANCE" OF WHAT THE WITNESSES TESTIFIED TO, SINCE THE DISTRICT OR COUNTY ATTORNEY, OR BOTH, WAS OBLIGATED TO MAKE SURE IT WAS ACCURATE. SEE-ADDKISON VS STATE, SUPRA APPELLANT DECLARES AND THIS COURT SHOULD AGREE THAT IT WAS PRE-

MATURE FOR THE LOWER COURTS TO SIMPLY DENY HIS MOTION WITHOUT FURTHER ADHERENCE TO RULES 2.04, 4.06, 4.06 (A) (1) AND 4.09 OF THE MISS. UNF. CR. RULES OF PROCEDURE.

APPELLANT ACKNOWLEDGES THAT IF HE CAN SHOW A "PARTICULARIZED NEED" WHICH WOULD OUTWIEGH THE NEED FOR SECRECY OF THE GRAND JURY PROCEEDINGS, THEN THE TESTIMONY OR SUBSTANCE OF SUCH MIGHT BE RELEASED, SEE- PITTSBURG PLATE GLASS CO. VS. U.S., 360 U.S. 395 (1992).

APPELLANT ASSERTS, THAT DUE TO THE FACT THAT THE REQUIRED (6) MONTH WAITING PERIOD HAS CLEARLY EXPIRED, THE MINUTES SHOULD BE HANDED OVER BECAUSE ANY RULE OF GRAND JURY SECRECY HAVE NO APPLICATION IN THIS CASE, id AT 313.

APPELLANT ARGUES THE "PARTICULARIZED NEED" THAT WOULD OVER-RIDE THE POLICY FOR "CONTINUOUS SCRECY" IS THE FACT THAT THE TRIAL COURT HAVE PLAINLY AND PARTICULARLY FAILED TO AHERE TO THE RULES DURING THE CONSIDERATION OF HIS MOTION TO INSPECT GRAND JURY PROCEEDINGS. SEE-ADDKISON VS STATE, SUPRA.

NO DEMONSTRATION WAS MADE IN REGARDS TO WHETHER OR NOT THE GRAND JURY PROCEEDINGS WERE IN FACT RECORDED BY THE PROSECUTION OR THE "SUBSTANCE" DOCUMENTED. NOR WAS THERE A DETERMINATION AS TO WHETHER A STATEMENT DEVELOPED CONCERING WHETHER OR WHEN THE GRAND JURY TESTIMONY WAS TO BE CALLED BY THE STATE AT A HEARING OR TRIAL OR WAS TO BE SUPPLIED TO THE APPELLANT OR A SETTING FOR ANY HEARING NECESSARY TO CONSIDER ISSUES CONCERNING THE SUPPLYING OF GRAND JURY TRANSCRIPTS OR THE SUBSTANCE OF SUCH. ADDKISON, AT 312, NEITHER WAS THE INFORMATION INCLUDED IN ANY DOCUMENT HANDED OVER TO APPELLANT.

SEE-PUCKET VS STATE, 879 So.2d 920, (MISS 2004) AT 649 PARAGRAPH110.

RULES, 2.04 4.06, 4.06 (A) (1) AND 4.09, PROVIDES FOR A FULL AND FAIR PROTECTION OF THE RIGHTS OF APPELLANT. THE RULES FULLY REGARD THE DUE PROCESS RIGHTS OF THE APPELLANT TO REASONABLE PROCEEDINGS. SEE-PETERSON VS STATE, 671 So.2d 647(MISS 1996). APPELLANT CONTENDS THAT IT WAS REVERSIBLE ERROR TO DENY HIS MOTION IN THE LOWER COURT WITHOUT PROPER RESPECT TO THE RULES OF THE COURT. DISTINGUISHABLE FROM BALLENGER VS STATE. 667 So.2d 1242 (MISS 1995), BECAUSE THE TRIAL COURT GRANTED BALLENGER'S MOTION PURSUANT TO THE RULES SET OUT IN ADDKISON, WHICH WERE SATISFIED IN FULL.

HOW DID THE PROSECUTION OBTAIN AN INDICTMENT ON THE APPELLANT IN THIS CASE?

APPELLANT DECLARES THAT THE ANSWERS TO THE ABOVE QUESTIONS MIGHT LIE IN THE DESPERATELY SOUGHT GRAND JURY MINUTES IF SUCH EXIST OR THE SUBSTANCE OF ANY UNCOVERED TESTIMONY OF WITNESSES BEFORE THE GRAND JURY IN THIS CASE.

(A) APPELLANT, IN ADDITION, SEEKS DISCLOSURE OF THE NAMES AND ADDRESSES OF ALL ATTORNEYS FOR THE STATE APPEARING BEFORE, PRESENTING EVIDENCE TO, OR MAKING STATEMENTS TO THE GRAND JURY.

(B) APPELLANT SEEKS DISCLOSURE OF ALL STATEMENTS AS TO WHETHER ANY UNSWORN WITNESSES OR UNAUTHORIZED PERSONS WERE PRESENT IN THE GRAND JURY ROOM.

(C) APPELLANT SEEKS DISCLOSURE OF ALL STATEMENTS AS WHEN THE GRAND JURY FIRST COMMENCED ITS DUTIES AND A COPY OF ANY DOCUMENT OR ORDERS RELATING TO OR EXTENDING ITS LEGAL AUTHORITY..

(D) APPELLANT SEEKS DISCLOSURE OF ANY AND ALL TRANSCRIPTS OF THE GRAND JURY MINUTES AND OR TESTIMONY OF ALL WITNESSES BEFORE THE GRAND JURY OR THE SUBSTANCE OF SUCH. MISS CODE ANN. 13-7-25, AS AMENDED.

IN THE CASE OF REINING VS STATE, 606 So.2d 1098 (MISS. 1992), HE ARGUED THAT HE COULD HAVE BEEN SUPPLIED A COPY OF THE TRANSCRIPT OF THE GRAND JURY PROCEEDINGS WHICH RESULTED IN HIS INDICTMENT, FOR THE PROPOSITION THAT HE IS ENTITLED TO ANY EXCULPATORY MATERIAL CONCERNING. THE COURT FOUND THAT REINING DID NOT ARGUE ANY PARTICULARIZED NEED THAT COULD OVER-RIDE THE POLICY FOR SECRECY. IN ADKISON VS STATE, SUPRA, THE MAJORITY HELD THAT THE STATE WAS REQUIRED TO FURNISH THE DEFENCE UPON REQUEST THE SUBSTANCE OF UNRECORDED TESTIMONY OF A WITNESS BEFORE THE GRAND JURY. APPELLANT SEEKS SHELTER FROM THE ADKISON GUIDELINES IN THIS CASE. APPELLANT CONTENDS THAT THERE WERE INSUFFICIENT EVIDENCE UPON WHICH THE INDICTMENT RETURNED AGAINST HIM COULD HAVE BEEN FOUND BY THE GRAND JURY OF PRENTISS COUNTY, MS, SEE- PEOPLE VS BRUNDAGE 147 N.Y. S.2d 45 (1955).

APPELLANT ASSERTS AND THE RECORD WILL SHOW AND SUPPORT THE FACT THAT THERE IS NO AFFIDAVIT FROM THE GRAND JURY FOREMAN TO GIVE VALIDITY THAT THE GRAND JURY DISCUSSED THIS CASE.

APPELLANT HAS ALSO BEEN DENIED THE PRELIMINARY HEARING TRANSCRIPTS IN THIS CASE TO COMPARE TESTIMONIES OF THE WITNESSES GIVEN AT TRIAL THAT SHOULD HAVE ALSO BEEN SUBMITTED TO THE GRAND JURY FOR DELIBERATIONS.

APPELLANT ALLEGES THAT THERE ARE INCONSISTANCIES BETWEEN TESTI-
MONY OF WITNESSES IN THE PRELIMINARY HEARING.

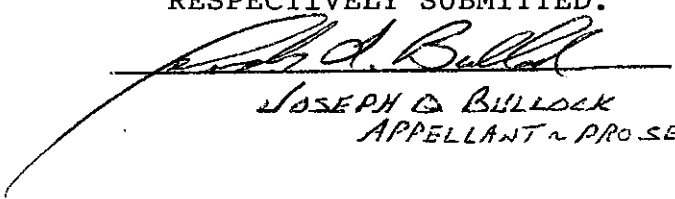
ALSO, REASONABLE JURISTS COULD AGREE THAT THIS COURT SHOULD
REVERSE AND REMAND AND ORDER AN APPOINTMENT IN THE LOWER COURT
TO ASSIST APPELLANT IN OBTAINING THE NEEDED EVIDENTIARY SUB-
MISSION REGARDING A "PARTICULARIZED NEED".- WRIGHT AT 1043.

CONCLUSION

FOR THE ABUNDANT ABOVE REASONSE AND AUTHORITIES, AS WELL AS
THOSE THAT MAY APPEAR TO THIS COURT UPON AN EXAMINATION OF THE
ENTIRE RECORD IN THIS CASE. APPELLANT SUBMITTS THIS COURT WILL
FIND AMPLE GROUNDS TO REVERSE AND REMAND THE DENIAL OF HIS PRIOR
FILED MOTION TO INSPECT GRAND JURY MINUTES WHTT FURTHER PROCEED-
INGS IN THE LOWER COURT. ON THESE SUBJECTS.

THE APPELLANT RESPECTIVELY REQUESTS THIS COURT TO INDULGE ON
POSSIBLE WRONGFUL ACT THAT MAY HAVE TAKEN PLACE DURING THE
PRESENTATION OF HIS TO THE GRAND JURY OF PRENTISS COUNTY,
MISSISSIPPI.....PROPER JUSTICE MAY NOT HAVE BEEN SERVED IN THIS
CASE.

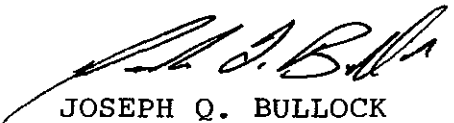
RESPECTIVELY SUBMITTED.


JOSEPH G. BULLOCK
APPELLANT ~ PRO SE

AFFIDAVIT OF POVERTY

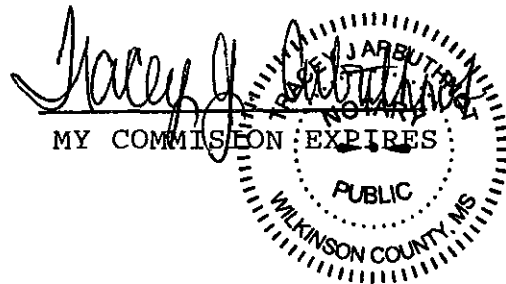
I, JOSEPH Q. BULLOCK, DO SWEAR, UNDER THE PENALTY OF PERJURY THAT I AM AN INDIGENT INMATE OF THE M.D.O.C. AND I AM UNABLE TO PAY THE COSTS OF THIS ACTION, NOR DO I HAVE ANY INCOME OR ASSETS IN WHICH TO REPAY SAID COSTS.

EXECUTED THIS THE 3rd DAY OF APRIL 2008 .


JOSEPH Q. BULLOCK

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 14th DAY, April 2008 .

My Commission Expires
January 27, 2009
NOTARY PUBLIC



AFFIDAVIT OF OATH

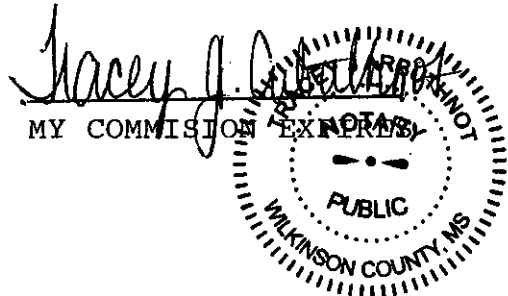
I, JOSEPH Q. BULLOCK, DO SWEAR, UNDER THE PENALTY OF PERJURY THAT THE FACTS LISTED IN THE ATTACHED APPEAL ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

EXECUTED THIS THE 3rd DAY OF APRIL 2008.

(S) [Signature]
JOSEPH Q. BULLOCK.

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 14th DAY OF April 2008.

My Commission Expires
January 27, 2009
NOTARY PUBLIC



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 and attached instruments to the following:

HON. BETTY SEPTON

P.O. Box 249

JACKSON, MS 392050249

CLERK - SUPREME COURT OF APPEALS

JIM HOOD

P.O. Box 220

JACKSON, MS 392050220

ATTORNEY GENERAL

This the 8 day of APRIL, 2008.

Joseph A. Bullock
PETITIONER JOSEPH A. BULLOCK
MDOC# L7248

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