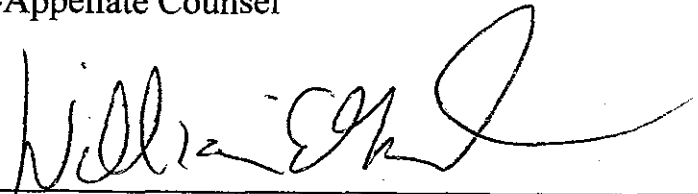


CERTIFICATE OF INTERESTED PARTIES

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

1. Jim Hood, Attorney General, State of Mississippi.
2. Honorable Michael Eubanks, Trial Judge in Original Trial
3. Prentis Harrell, Trial Judge issuing Denial of PCR Petition
3. Robert Didon, Appellant
4. Dwayne Deer, Trial Attorney for Appellant
5. William E. Goodwin, Appellate Attorney
6. Matthew Wheat, Co-Appellate Counsel



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99-39-1

STATEMENT OF ISSUES

The issues relating to this case include:

- 1. THE DEFENDANT DIDON WAS DENIED EFFECTIVE REPRESENTATION AS GUARANTEED BY THE FEDERAL AND STATE CONSTITUTIONS.**

STATEMENT OF THE CASE

A. Nature of the Case

This case involves the conviction of Bobby Didon of the crime of sexual molestation of his grand daughter. Didon was sentenced to life in prison without the benefit of parole . This sentence was based on two prior criminal convictions pursuant to 97-19-83 of the Mississippi Code of 1972.

B. Course of the Proceedings

Didon was indicted by the Lawrence County Grand Jury on December 16, 2003, for the crime of Touching, Handling and Fondling of his nine year old grand daughter pursuant to Section 97-5-23 (2) of the Mississippi Code of 1972, as amended.

He appeared in court but was not arraigned, and the case was continued several times and was finally brought to trial on December 8, 2005. After trial, the jury returned a verdict of guilty and, as stated before, Didon was sentenced to life without parole as a habitual offender. Following the conviction, a direct appeal was perfected and began by trial counsel Dwayne Deer. Appellate Counsel was retained two days prior to the expiration of the time for the direct appeal and appellate counsel continued the proceedings for the direct appeal. A transcript was ordered and obtained.

Once the transcript was ordered and reviewed, together with interviews with family members and other witnesses, it became clear that a direct appeal was not supported by the trial record or the post trial record and that appeal was dismissed by the defendant with an eye towards appellate counsel addressing the inadequacies of the performance of trial counsel in a post Conviction Relief Petition. The original Supreme Court filing is found in Cause No. 2006-KA-00629-SCT.

A Petition for Post Conviction Relief was filed after obtaining sworn statements from the various witnesses and from the defendant outlining the facts pertaining to trial counsel's performance. This petition was filed and reviewed by the trial court, now presided over by a different judge (The original trial Judge, the Hon. Michael Eubanks has retired.) The Circuit judge assigned the PCR petition, the Hon. Prentis Harrell, reviewed the petition and supporting depositions and sworn statements and found that the defendant had made a prima facie case of his claim. He ordered the State of Mississippi to file a response, which it did. Afterwards, the court ordered a testimonial hearing on case.

The case was set for hearing on April 4, 2008 in Prentis, Mississippi and Judge Harrell issued his opinion on April 29, 2008 based on the record filed with the petition. No further testimony was taken.

C. Statement of Facts

The facts which are pertinent to this petition are rather simple: Despite having been paid well over ten thousand dollars to represent Bobby Didon, and despite having had the case for more than two years prior to trial, trial counsel made absolutely no effort to interview witnesses, develop a trial strategy or in any manner investigate the facts of this case. By any standard, Bobby Didon was not properly represented at trial and the deficiencies of attorney Dwayne Deer affected the outcome of this case.

ARGUMENT

The record before the court on the issue of the Post Conviction Collateral Relief petition sets out the following: First, the State of Mississippi made no effort to rebut the allegations made in the sworn statements, depositions and affidavits attached to the petition. This in spite of the fact they clearly knew Judge Harrell was very concerned about the allegations against trial counsel Dwayne Deer. Therefore, any effort to call into question the validity of those statements must fail. Secondly, the trial court found in his April 28, 2008 order that the performance of Deer was sub-par.

In a recent opinion, this Court recently pointed out in very strong and insightful terms the fact that in a criminal case, the defendant is at the mercy of almost everyone else in the system. He must rely on the prosecution to be fair, the court to be just and his attorney to give good, competent and honest advice and to be prepared.

The defendant alleges Ineffective Assistance of Counsel and it is understood that this is a high burden to meet; however, a reading of the transcripts of Robert Didon's family will clearly demonstrate how lacking the representation by Attorney Deer.

The Haynes court was very eloquent in its description of the relationship between a defendant and his lawyer. In a very recent case, the relationship of the Attorney and client are described in the most eloquent terms:

The relationship of the accused to his lawyer provides a critical factual context here. As he stands before the bar of justice, the indicted defendant often has few friends. The one person in the world, upon whose judgment and advise, skill and experience, loyalty and integrity that defendant must be able to rely, is his lawyer. This is as it should be. Any rational defendant is going to rely heavily upon his lawyer's advice....

Hannah v. State, 2004-CT-00725-SCT (¶8) (Miss. Oct. 19, 2006) (quoting *Myers v. State*, 583 So.2d 174, 178 (Miss. 1991)).

There could never be a case where this is more true than the case of Bobby Didon. Standing before the court and jury was a man who had been twice convicted of sexual molestation against children. Didon came to court with absolutely no one in the process having any sympathy for him whatsoever. By the time pre-trial motions were filed, the trial judge rightfully knew Didon's past. The prosecution knew and, most likely, members of the jury pool knew. Didon had lived in Lawrence County for a long time and it would be virtually impossible in this small community for his past not to be known.

Most importantly, his attorney knew his past. All of this adds up to an *increased* duty on the part of trial counsel to investigate every aspect of this case. Yet, after interviewing almost a dozen people over the last year, this writer has yet to find a single person to whom Deer spoke in preparation of Bobby Didon's trial---- and this includes the defendant Didon himself.

In addition, Dwayne Deer never went to the home in question to view the layout of the property in order to determine if the testimony of the child was reasonable. The sworn statement of the defendant's wife, Nora Didon, clearly demonstrates that the layout of the home was such that the molestation could not have taken place as alleged. The failure of Dwayne Deer to properly interview Nora Didon and to go the scene of the alleged offense meant that he was not able to properly cross examine her at trial.

2. It would stretch the imagination for the Attorney General to argue that the defendant—and justice—was not prejudiced by trial counsel's actions—or lack thereof. The second prong of the *Strickland* test does not require the defendant to prove he will prevail at trial. The statements taken under oath in preparation of this petition demonstrate the total lack of preparation by trial counsel and demonstrate that if Deer had interviewed witnesses and prepared for trial, there is a strong possibility the outcome would have been different.

CONCLUSION

Bobby Didon did not have a lawyer who was taking his case seriously. The trial attorney did not interview witnesses or make any other serious investigation into the case. In addition, he put one potential witness in the position that she could not be called to the witness stand because, on Deer's instruction, she had offered money to the victim's mother in exchange for the charges being dropped. Robert Didon should be granted a new trial with counsel who is willing to do the work required to put on a vigorous, prepared defense.

Respectfully Submitted,



William E. Goodwin

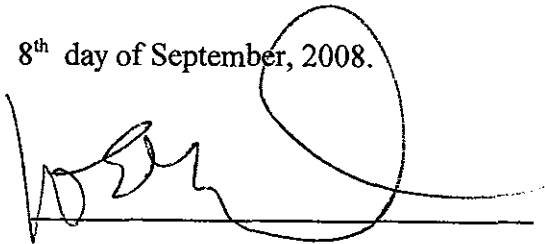
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CERTIFICATE OF SERVICE

We hereby certify that we have this date served a copy of the foregoing on the following person (s) by placing a copy of the same in the United States mail, postage prepaid to his/her business mailing address (es) as follows:

1. Honorable Jim Hood, Attorney General's Office, State of Mississippi, P.O. Box 220, Jackson, Ms. 39205-0220.
2. Harold Kittrell, Office of the District Attorney, 500 Courthouse Square, Columbia, MS, 39429
3. Hon. Prentis Harrell, P.O. Box 488, Purvis, Ms. 39475.
4. Robert Didon, Jefferson CCF, P. O. Box 218 Fayette, MS 39069
5. Dwayne Deer, Trial Counsel.

So certified this the 8th day of September, 2008.

A handwritten signature in black ink, appearing to read 'W. E. Goodwin', is written over a horizontal line. The signature is stylized with loops and a large circular flourish at the end.

WILLIAM E. GOODWIN