**IN THE COURT OF APPEALS OF MISSISSIPPI**
**NO. 2008-CA-00948-COA**

**CHRISTOPHER WADE ELLIOTT** **APPELLANT**

**VERSUS**

**STATE OF MISSISSIPPI** **APPELLEE**

# BRIEF OF APPELLANT

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

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## CERTIFICATE OF INTERESTED PERSONS

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

1. Christopher Wade Elliott, Appellant;
2. A. Randall Harris, Attorney for Appellant;
3. Hon. Circuit Judge R. I. Prichard, III, Marion County Circuit Judge;
4. Hon. Haldron J. Kittrell, Marion County District Attorney.

Respectfully submitted
CHRISTOPHER ELLIOTT

By: Randy Harris
His Attorney of Record

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Appellant timely filed his Motion for Post-Conviction Relief. On March 24, 2008, Judge Prichard issued his Order of Dismissal, denying Appellant Post Conviction Relief (C.P. 77-81). That Order was subsequently amended on April 17, 2008 by the filing of an Amended Order of Dismissal (C.P.85-89). It is from the Amended Order of Dismissal that Appellant files this Appeal.

## STATEMENT OF THE FACTS

Christopher Wade Elliott was indicted for a charge of sexual battery and was appointed a lawyer to represent him. This charge represents the only felony charge in his 31 years of his life (C.P. 64 #8). He was sentenced to serve a mandatory twenty (20) years in prison for a sex act with a girl he had previously been sexually active with, who invited him into her home voluntarily, who was high on marijuana and methamphetamine at the time of the alleged offense, and a girl who became incensed when he, in her presence, telephonically told another girl he was on his way to see her (C.P.16-18). In retaliation and jealously, she bit his penis causing him to black out and once he regained his senses and fled her home, she lodged a criminal complaint against him, claiming he had forced her to perform oral sex on him.

Though appointed a lawyer on this serious charge, the representation of the attorney amounted to no representation at all. The attorney never discussed the merits of the case with him at all (C.P.16). Upon information and belief, the attorney never investigated any aspect of the case. He failed to gather impeaching convictions in the Marion County Justice Court signaling that the complainant had thrice been convicted of crimes of dishonesty (C.P.67-69). He further advised Appellant that if he just pleaded guilty, the Judge would literally suspend the

sentence and he would spend no days in jail (C.P. 17-18). He never advised Appellant that upon pleading guilty, he would be deemed a sex offender for the rest of his life.

During the guilty plea, when Wade Elliott got the first opportunity to discuss the merits of the case, the discussion was with the Judge. When asked if he forced his penis in her mouth, and if that was the truth, he responded, " Not according to me, it's not" (C.P. 51 L.10). When the Judge delved further to satisfy himself that the allegation against Wade was the truth, Wade responded, "No, sir, it's not the truth"(C.P. 51 L.19). He then acquiesced and informed the Judge that he was pleading guilty because he was advised (by this attorney) to take the plea (C.P. 51 L.22).

During this disagreement with the Judge, Wade's attorney stood silent. He never uttered a word. He furthermore did not pull Wade aside and discuss whether he did want to plead guilty or not based on the revelations he heard in open court. Likewise, during the sentencing phase, his attorney offered no statement at all. He could have told the Judge that Wade had had relations with the complainant before. He could have stated that the girl was high on methamphetamine and marijuana. He could have told the Judge that a background check of the girl revealed not only crimes of dishonesty, but also a DUI conviction. He could have called witnesses, including Affiant, Martha Miller, to relate some positive aspects of Wade Elliott to the Court. Rather, his lack of investigation, his failure to fully inform himself on the merits of the case, and his failure to call even a single mitigating witness or offer even a word of mitigation resulted in Wade having no representation at all.

The guilty plea petition does not mention that Wade will be deemed a sex offender hereinafter or that he must register upon release and abide by the stringent conditions required of

a sex offender (C.P. 63-66). The Order of Conviction does not mention denominating him a sex offender or registration (C.P. 60-61). The entire plea colloquy is also silent on the mention of the word sex offender or registration).

## SUMMARY OF THE ARGUMENT

Uniform Circuit and County Court Rule 8.04 (A)(3) states the following:

> "Before the trial court may accept a plea of guilty, the court must determine that the plea is voluntary and intelligently made and that there is a factual basis for the plea. A plea of guilty is not voluntary if induced by fear, violence, deception or improper inducement. A showing that the plea of guilty was voluntarily and intelligently made must appear in the record."

The thrust of Appellant's first argument is that his plea of guilty was not voluntary. In his affidavit accompanying his Motion for Post Conviction Relief, he details that his attorney deceived him into believing that if he pleaded guilty, he would receive no days in jail. He obviously detrimentally relied on this deception by pleading guilty to a crime he never believed in his mind that he committed. The result was a stark contrast to a suspended sentence. He is now serving twenty years in Parchman, day for day.

Appellant was subjected to ineffective assistance of counsel throughout the guilt and sentencing phase of his case. The attorney did not discuss the case with him, thereby not advising Appellant of the possible defenses he truly had in this matter. The attorney did not gather impeaching documents (convictions) of the complaining witness, although same were public record in the Justice Court of the same county wherein the allegation of sexual battery was made. As this was a case with no independent eye witnesses, no confession to the sexual battery, and a case where the credibility of the complainant was the bulk of the State's case, the failure to fully inform himself as to Appellant's version, and the complainant's dishonesty, rendered the

attorney's performance defective. Moreover, during the sentencing phase on what is ostensibly an 'open plea', the attorney did not offer a scintilla of mitigation on Appellant's behalf.

Mississippi Code Annotated §45-33-39(1) states the following:

> The court **shall** provide written notification to any defendant charged with a sex offense as defined by the chapter of the registration requirements of Sections 45-33-25 and 45-33-31. Such notice **shall** be included on any guilty plea forms and judgment and sentence forms provided to the defendant. The court **shall** obtain a written acknowledgment of receipt on each occasion.

The records in this case are devoid of any of the requirements of this section. No mention of sex offender status or registration can be found in the Guilty Plea Form, Order of Conviction, or during the lengthy plea colloquy between the Lower Court Judge and Appellant. Appellant avers also that his attorney never mentioned that to him as well. This statute must be complied with in order to satisfy that plea was knowing and intelligently made, and must be adhered to in order to satisfy the dictates of the Due Process Clause of the United States and Mississippi Constitutions. Had Appellant been advised that the result of his plea would mean that he would be a sex offender for life, he would have never pleaded guilty to this less than concrete charge.

Appellant's Motion was not only summarily dismissed, but he was not even given the benefit of an evidentiary hearing on any of the issues raised.

## ARGUMENT

**The Lower Court erred in denying a request for an evidentiary hearing on the following issues:**

I

**Appellant's plea of guilty was involuntary in contravention to Uniform Circuit and County Court Rule 8.04 (A)(3) and is filed pursuant to MCA §99-39-5(1)(f).**

**STANDARD OF REVIEW**

The standard of review pertaining to voluntariness of guilty pleas is well settled: 'this Court will not set aside findings of a trial court sitting without a jury unless such findings are clearly erroneous.' In order to meet constitutional standards, a guilty plea must be freely and voluntarily entered.". Weatherspoon v State, 736 So. 2d 419 (Miss. Ct. App. 1999).

MCA §99-39-5(1)(f) allows an aggrieved prisoner to seek Post-Conviction Relief if the guilty plea was not intelligently made and entered. Uniform Circuit and County Court Rule 8.04 (A)(3) states the following:

> "Before the trial court may accept a plea of guilty, the court must determine that the plea is voluntary and intelligently made and that there is a factual basis for the plea. A plea of guilty is not voluntary if induced by fear, violence, deception or improper inducement. A showing that the plea of guilty was voluntarily and intelligently made must appear in the record."

Petitioner would respectfully submit that his guilty plea was not intelligently made and was either induced by deception from his court appointed attorney or the result of prescribed medications causing confusion.

Initially, as to the attorney deception, it can be gleaned from Petitioner's affidavit that he was led to believe that a plea of guilty in this case would result in a suspended sentence (C.P. 17). Rather than receive such a suspension, Petitioner was ordered confined for twenty years without parole.

Petitioner avers that he met with his attorney in the Judge's chambers after inadvertently missing a docket call. At this meeting were prosecutors, and his defense counsel as well as the Judge. Petitioner was specifically advised by his lawyer that if he would just plead guilty to sexual battery, then he would be given a suspended sentence. Specifically, he recalls that the lawyer promised 'no days in jail'.

Petitioner would remind the Court that this was the first time he had ever been in trouble for a felony. He was entitled to rely on his attorney's advice and counsel. It is shocking that in this case, such reliance resulted in twenty years in prison. Some time after the meeting, Petitioner had a conversation with his aunt, Martha Miller. Although Ms. Miller begged him not to plead guilty to a crime he didn't commit, Petitioner assured her that he would get the promised suspended sentence (C.P.20).

Petitioner was under the influence of several prescribed medications during this meeting as well as during the plea and sentencing. To combat painful injuries received in an accident, Petitioner took Lorcet, Soma and Xanax several times daily. With Soma, a common side effect is confusion. Lorcet also lists as a common side effect that of confusion. The Xanax was prescribed to combat panic attacks. Petitioner alerted the Judge during his plea that he was taking medications.

What may appear curious about this claim is that informed attorneys in Marion County are well versed that Honorable R.I. Prichard, III does not allow recommendations as to sentencing from the prosecuting attorneys. Judge Prichard so informed Petitioner that the Judge, alone, would decide what the appropriate sentence would be in his case upon a plea of guilty. Notwithstanding, Petitioner continues to aver that his lawyer promised him a suspended sentence

if he would plead guilty. This being his first and only felony conviction, it is doubtful that Petitioner is clever enough to try and deceive the Court with a false claim of a suspended sentence. Rather, Petitioner avers such in his affidavit and is corroborated by his aunt who verifies that he told her he was getting a suspended sentence.

The only other logical explanation is that either Petitioner misheard or misinterpreted his lawyer's words and ingrained the error in his mind or the prescribed drugs he was taking caused such confusion in his mind that he stubbornly believes to this day that he was promised a suspended sentence. Whether he misheard the words or was confused, the result is the same. He did not intelligently enter this plea of guilty as is contemplated in Uniform Circuit and County Court Rule 8.04 (A)(3). It makes no sense that a person would subject himself to potentially thirty years in prison, if he didn't believe he would get suspended time, especially since during the plea colloquy, Petitioner continuously expressed his lack of guilt in this case. The transcript reveals the following exchange beginning at C.P. 50 L. 26:

Q: Now, Christopher, what happened that got you indicted for sexual battery?

A: I was talking on the phone, fixing to leave and she started, you know, she started messing with me. And the next thing I know she bit me and I blanked out and I hit her.

Q: And you what?

A: And I hit her.

Q: ... I presume she's going to come over here and testify you forced her to allow you to insert your penis in her mouth and she didn't want to do that. Is that the truth?

A: **Not according to me it's not.**

Q: All right. Well, you understand that's what trials are all about?

A: Yes, sir. I reckon I'd say that's the truth, yeah.

Q: Huh?

A: I'm going to say that's the truth.

Q: Well, I don't want you just saying something. Now, is it the truth?

A: **No, sir. It's not the truth, but -**

Q: All right. Do you want to go onto trial on this?

A: Well, I was advised to go ahead and plead guilty (C.P. 51 L. 22).

This transcript reveals that Petitioner gave no credence to the complaining parties' version of the truth. Twice, he informed the Court that it wasn't the truth. Nevertheless, he succumbed to the guilty plea because he was advised to do so by his lawyer. Why follow such advice? Because he truly believed he was to receive a suspended sentence. It is difficult to accept that Petitioner fully understood the consequences of his plea when he is convinced that the only result will be a suspended sentence. The misperception is costing him twenty years without parole. Whether by deception of his attorney or his own mind, fairness dictates that this plea should be set aside. The Lower Court erred in denying him an evidentiary hearing on this issue.

## II

**Appellant was rendered ineffective assistance of counsel as there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction in the interest of justice or is otherwise subject to collateral attack and is filed pursuant to MCA §99-39-5(1)(e) and (i).**

## STANDARD OF REVIEW

The standard for reviewing claims of ineffective assistance of counsel is described in Strickland v.Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed 2d 674 (1984). The inquiry under Strickland ,supra is twofold: (1) Was defense counsel's performance deficient when measured by the objective standard of reasonable professional competence, and if so (2) Was [the appellant] prejudiced by such failure to meet that standard? Moreover, "defense counsel is presumed competent and the burden of proving otherwise rests on [the appellant]." Further, "[T]his Court bases its decisions as to whether counsel's efforts were effective on the totality of the circumstances surrounding each case." This Court's scrutiny of defense counsel's performance is highly deferential. Wiley v State, 750 So. 2d 1193 (¶11) (Miss. 1999). Finally, in the context of guilty pleas, a defendant claiming ineffective assistance of counsel must show, by a preponderance of the evidence, that there is a reasonable probability that had counsel's assistance been effective, he would not have pled guilty, but would have insisted on going to trial. Bell v. State, 751 So. 2d 1035 (¶14) (Miss. 1999).

Petitioner complains of such ineffective assistance of counsel that plea must be set aside. Essential to any representation is that the attorney be fully informed on the factual allegations of the case and if available, raise any potential defenses to the claims. Petitioner asserts in his affidavit that his attorney never discussed the merits of the case with him. Petitioner recalls meeting his attorney for the first time at a docket call. No discussions were held at this encounter. He next met with the attorney after missing the docket call, yet again no discussion ensued as to the claims lodged against him. He was in the presence of the attorney when they

filled out the petition to plead guilty, pled guilty and then was sentenced. Yet, the attorney and Petitioner never discussed the case. Although the attorney informed the Judge that he was satisfied that the State would prevail if the matter went to trial, Petitioner would submit that that statement is dubious in light of the fact that the attorney never heard Petitioner's side of the story.

Moreover, considering the averments in the affidavit as to the events as they transpired on the night set forth in the indictment, it is unthinkable that the attorney would ever advise a client in Petitioner's position to plead guilty to anything.

Had the attorney sought Petitioner's recitation of the events, he would have learned that Petitioner was invited into the home of a girl he had previously had consensual sex with. The fact that the parties had previously consented to a sexual situation casts doubt on whether there was a forcible sexual battery on the date charged. The attorney apparently never knew that the girl smoked marijuana and ingested methamphetamine in the presence of Petitioner that very night. That she was under the influence of narcotics calls into question whether the act was a consensual one or not. When Petitioner tells the Court,

> "I was talking on the phone, fixing to leave and she started, you know, she started messing with me. And the next thing I know she bit me and I blanked out and I hit her"(C.P. 50-51).

it is entirely plausible that this version was accurate. If indeed she began the sexual encounter (messing with me) and became jealous by his talking on the phone to another girl (promising the other girl that he was on his way to see her), it makes some sense that she would retaliate by biting his penis and by self preservation he hit her and then blacked out. This again resonates matters that could have been raised as a defense, had the attorney discussed the factual details with his client. It should be noted that the State did inform the Court that the complainant

'went to the ER for minor, very minor, injuries that she sustained during the struggle (C.P. 54).

The attorney, upon information and belief, never interviewed the girl to assess whether her story was changing or to assess her credibility. Apparently, he merely read the indictment and assumed she was telling the truth. Had the attorney walked down the street to the Justice Court, he would have uncovered that the girl had previously been convicted of three separate misdemeanors( bad checks) which pursuant to the Rules of Evidence are admissible on cross examination as crimes of dishonesty. See MRE 609 (a)(2)(C.P. 67-69).

This entire case relied on the credibility of the girl as Appellant and her were the only witnesses to the alleged events. Attacking her believability with crimes of dishonest likely would have produced reasonable doubt, convincing the jury to either hang up or acquit. These crimes, coupled with the previous consensual sex and her ingestion of illegal narcotics would have all but secured a Not Guilty Verdict for the defense. Yet, unfathomably, the lawyer, whom Appellant put his trust and his future in, advises the Court that the State would prevail on the merits (C.P. 52). How can an effective lawyer so advise the Court when he has not previously fully apprised himself of all the intimate details of the evidence?

When the attorney purportedly heard for the first time his client repeatedly tell the Court that her allegations were not the truth, he stood idly by and allowed the plea to continue rather than taking his client aside, discussing the matters with him and satisfying himself that the client's claims would not prevail. His silence was tantamount to no representation at all as the client verbally jousted with the Judge.

During the sentencing phase, the attorney again stood silent as the Court hammered the client with twenty years without parole. He never offered the Court one scintilla of mitigation

which surely would have swayed the Court to a more appropriate or lenient sentence. He should have told the Court of their prior sexual liaisons and that the girl was high on illegal drugs. He should have told the Court that the girl had not just the three bad check crimes, but had also been convicted in Justice Court of DUI on two separate occasions, as well as Driving While Under Suspension For DUI (C.P. 70). He could have reminded the Court that if any injury was suffered, it was very minor and was occasioned not from his violent nature, but as a natural self-preservation reaction upon getting one's penis bitten. He could have asked some of Petitioner's family members to address the Court and relate the positive aspects of Christopher Elliott's life rather than leave the Court with the impression that he was a violent sexual offender taking advantage of some innocent girl. The failure to offer mitigation should result in ineffectiveness of counsel and entitle Appellant to at least an evidentiary hearing on this issue. See Lynch v State, 951 So. 2d 549 (Miss. 2007)(remanded for evidentiary hearing on pcr when counsel failed to timely notice State and thereby was not allowed to call mitigation witnesses in sentencing phase of capital murder case).

Strickland v Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed 2d 674 (1984) is the landmark case which guides the decisions on whether one has been subjected to ineffective assistance of counsel. The two pronged test is well known: (1) was counsel's performance deficient? and (2) was this deficient performance prejudicial in that it undermined confidence in the outcome? Petitioner has satisfied both prongs of this analysis with resounding force. The deficiencies are readily apparent. Petitioner verily believes that he has shown that there was available allegedly discoverable evidence which would have proved exculpatory and this confirms that his counsel was deficient. See Barnes v State, 577 So. 2d 840 (Miss.1991).

Whether it is the lack of investigation of the actual claims to be tried, the failure to obtain such damning proof as to the credibility of the complainant, the lack of competently advising the client on the defenses he may have had, or the failure to even attempt to offer any mitigation at sentencing, the attorney's performance was constitutionally deficient. While it may be true that there are some boilerplate answers during the plea colloquy which might be seen to undermine the strength of this argument, when viewed as a whole, it is abundantly clear that Appellant's claims have merit. The Lower Court should have granted an evidentiary hearing to explore this failure of assistance of counsel.

## III

**The plea of guilty was involuntary in contravention of Uniform Circuit and County Court Rule 8.04 (A)(3) and constitutionally infirm as the mandates of §45-33-39(1) were not adhered to in part or in toto**

The essence of every guilty plea is for the Court to insure that constitutional guarantees available to a defendant are made known to him and that he knowingly, intelligently and voluntarily waives those constitutional rights. Our Mississippi Supreme Court has held that

> 'in order for a guilty plea to pass constitutional muster it is essential that an accused have knowledge of the critical elements of the charge against him, that he fully understands the charge, how it affects him, the effects of a guilty plea to the charge, and what might happen to him in the sentencing phase as a result of having entered a plea of guilty'. Gilliard v State, 462 So. 2d 710,712 (Miss. 1985) (citing Henderson v Morgan, 426 U.S. 637, 49 L.Ed 2d 108, 96 S.Ct. 2253 (1976).

It is submitted in the guilty plea and sentencing that the Lower Court failed to abide by these precepts.

Petitioner pled guilty to the crime of sexual battery. This crime carries with it a requirement by Mississippi law that the offender, upon release, register as a sex offender with the authorities in his chosen place of residence. Moreover, there are numerous other demands made on the offender, including giving notice of his sex offender status to countless other entities, ranging from employers to parents of a sports team he might volunteer to coach. This is an onerous requirement of the offender and the law requires that such a burden be made known to him and his assent to such requirements must be noted in official paperwork. Without such an acknowledgment and acceptance of the conditions by the offender prior to any plea on sex related offenses, the Petitioner cannot be said to have knowingly, intelligently and voluntarily entered a guilty plea and the requirements of the Due Process Clause are not met.

§45-33-39(1) states the following:

> The court **shall** provide written notification to any defendant charged with a sex offense as defined by the chapter of the registration requirements of Sections 45-33-25 and 45-33-31. Such notice **shall** be included on any guilty plea forms and judgment and sentence forms provided to the defendant. The court **shall** obtain a written acknowledgment of receipt on each occasion.

The transcripts in this matter reveal that no mention is made of the sex offender requirements period. The guilty plea petition does not even address any sex offender notification or information (C.P.63-66). The sentencing order contains no information (C.P. 60-61), nor the Notice of Criminal Disposition (C.P. 62). The in court colloquy does not mention anything to do with being labeled a sex offender and registration requirements.

§45-33-39(1) mandates that this code section be adhered to and the complete absence of any information or acceptance of the conditions by this Petitioner invalidates the guilty plea and sentence as a matter of constitutional law. The statute's inclusion of 'shall' is not discretionary.

The requirements must be adhered to in order to pass muster under the Due Process Clause of the United States and Mississippi Constitutions.

Petitioner avers in his affidavit that he was not once informed either by the Court or his lawyer about having to meet the conditions of being a registered sex offender. Considering Petitioner's earlier refusal to accept that the 'victim' was telling the truth in this case, it is not surprising that his affidavit avers that he would never have pleaded guilty had he been informed that he would be forever considered a sex offender and compelled to abide by each and every condition set forth in the statutes. It is also averred that his attorney not once mentioned anything to do with being labeled a sex offender.

Because the required records are silent on this issue, it cannot be argued that he knew or appreciated how this conviction would *affect him* and *what might happen to him in the sentencing phase as a result of having entered a plea of guilty'*. Due Process surely requires that he knowingly, intelligently and voluntarily waive his rights, and it is not possible to waive something you had no knowledge of. Due Process further necessitates that the Lower Court abide by the mandatory terms of the sex offender notification and acknowledgment statute.

The Court is additionally required to apprise a defendant of the minimum and maximum sentences possible as a result of a guilty plea. Apprising a defendant of the sex offender status and registration requirements is accomplished by having the defendant sign off on the paperwork. Yet nowhere in these pleadings did Appellant sign off on any pleading which notified him of the sex offender requirements.

Since the filing of his Motion for Post Conviction Relief in September of 2007, this Court has recently addressed a somewhat similar claim in the case of Magyar v State, 2007-CA-00740

(decided September 23, 2008). This Honorable Court did indeed address some of the claims made by your Appellant in Magyar, supra. However, the cases are clearly distinguishable.

Initially, Magyar's argument was that he was not apprised of the registration requirements prior to sentencing. As noted in that Opinion, the required Notice and apparent acknowledgment and acceptance by the Defendant of becoming a sex offender and having to register as such, was complied with in the sentencing Order of that case. This Court found as follows:

> "Indeed, Magyar's sentencing order was sufficient to comply with section 45-33-39(1)". Opinion p.8, ¶ 21.

An exhaustive review of the Sentencing Order, Plea Petition, Order of Conviction and plea colloquy reveals that, unlike Magyar, the sex offender denomination is never mentioned at all. That the apparent notice and acknowledgment in the Sentencing Order might have sufficed in Magyar does not apply to your Appellant at bar as no notice appears in any of the pleadings or sworn testimony.

Secondly, Magyar failed to even address or convince this Court 'how knowing that he had to register as a sex offender would have made him decide to go to trial, which is required under our holding in *Pleas*, 766 So. 2d 43 (¶7)'. See Pleas v State, 766 So. 2d 41 (Miss. Ct. App. 2000). Appellant's plea colloquy, affidavit, and Motion for Post Conviction Relief touches on the requirements of Pleas, supra.. During the plea discussion with the Lower Court Judge, Appellant maintained in the beginning that he did not force oral sex on the complainant. As noted previously, the following exchange took place:

Q: ... I presume she's going to come over here and testify you forced her to allow you to insert your penis in her mouth and she didn't want to do that. Is that the truth?

A: **Not according to me it's not.**

Q: All right. Well, you understand that's what trials are all about?

A: Yes, sir. I reckon I'd say that's the truth, yeah.

Q: Huh?

A: I'm going to say that's the truth.

Q: Well, I don't want you just saying something. Now, is it the truth?

A: **No, sir. It's not the truth, but -**

Q: All right. Do you want to go onto trial on this?

A: Well, I was advised to go ahead and plead guilty .

Although Appellant finally acquiesced by accepting that the complainant's version might be believed by a jury, it is clear that he did not commit the crime charged in his mind. In his affidavit, he swore that he would have never pleaded guilty had he known he would be considered a sex offender. Considering that he had known the complainant for years, that he had previously had sexual relations with her, and his protestations that her version was not the truth, it has been shown that had he known that his actions in Court would label him a sex offender for life, then he would have never pleaded guilty to this crime.

Finally, §45-33-39(1) mandates that the court '**shall** obtain a written acknowledgment of receipt on each occasion'. As this Court will not find any written acknowledgment by your Appellant of the requirements set forth in this statute, this too may distinguish this case from the holding in Magyar, supra. Had the Guilty Plea Petition set forth a notification of his upcoming sex offender status, as is mandated, the plea would have never made it to open court with the Judge. Appellant would not have agreed to plead guilty to this charge.

It should be noted that neither the Lower Court's Opinion denying Post Conviction relief,

nor the State's Response to the Motion for Post Conviction Relief mentioned or addressed the failure of the Lower Court to comply with the requirements of §45-33-39(1). Appellant believes he has shown by a preponderance of the evidence that this claim in the least deserves an evidentiary hearing.

## CONCLUSION

Christopher Wade Elliott appeals to this Honorable Court to grant him the Post Conviction Relief requested by setting aside his Guilty Plea and Sentence. In the least, he respectfully requests that this Court remand same for an Evidentiary Hearing on the merits of his claims. The denial of relief was clearly erroneous. Smith v State, 806 So. 2d 1148 (Miss. Ct. App. 2002).

Respectfully submitted
CHRISTOPHER WADE ELLIOTT

BY: Randy Harris
HIS ATTORNEY

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## CERTIFICATE OF SERVICE

I, Randy Harris, do hereby certify that I have this day caused to be mailed by U.S. mail, postage prepaid, a true and correct copy of the above Brief of Appellant to the following persons:

Honorable Circuit Judge R.I. Prichard, III , P.O. Box 1075 Picayune, Ms 39466;
Honorable Haldon J. Kittrell, District Attorney, 500 Courthouse Square, Columbia, Ms 39429;
Attorney General Jim Hood, P.O. Box 220 Jackson, Ms 39205-0220.

This the 26th day of November, 2008.

Randy Harris