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IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

MICHAEL A. BLISS, PRO SE
APPELLANT

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SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S BRIEF ON APPEAL FROM THE DENIAL
OF HIS MOTION FOR POST CONVICTION RELIEF
IN THE WARREN COUNTY CIRCUIT COURT

Respectfully Submitted,

Michael A. Bliss

Michael A. Bliss #K9204
S.M.C.I. Area-1 Unit-12
P.O. Box 1419
Leakesville, Ms. 39451

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IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

MICHAEL A. BLISS, PRO SE

APPELLANT

VERSUS

CAUSE NO. 2008-CP-00288-COA

STATE OF MISSISSIPPI

APPELLEE

NOTICE OF MOTION

COMES NOW, the Pro Se Prisoner Appellant, Michael A. Bliss in the above styled, numbered, cause and action and would bring on for hearing this his Appellant Brief on the denial of his Motion for Postconviction Collateral Relief by the Warren County Circuit Court to be heard at a time and place to be set by this Honorable Court. Oral Argument not requested.

This the 20 day of May 2008.

Respectfully Submitted,

Michael A. Bliss
Michael A. Bliss #K9204
S.M.C.I. Area-1 Unit-12
P.O. Box 1419
Leakesville, Ms. 39451

IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

MICHAEL A. BLISS, PRO SE

APPELLANT

VERSUS

CAUSE NO. 2008-CP-00288-COA

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PARTIES

COMES NOW, the Pro Se Prisoner Appellant, Michael A. Bliss, the Undersigned Pro Se Counsel of Record, and certifies that the following listed person(s) below have an interest in the out-come of this case at bar.

These representations are made in order that the Justices on the Court of Appeals for the State of Mississippi may evaluate possible disqualification or recusal of themselves in the case at bar.

Michael A. Bliss, Pro Se

Appellant

Hon. Jim Hood

Attorney General

Hon. Frank Vollor

Circuit Court Judge

Hon. Gil Martin

District Attorney

Respectfully Submitted,

This the 20 day of May 2008.

Michael A. Bliss
Michael A. Bliss #K9204
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STATEMENT OF ISSUES

PROPOSITION I: Appellant's Guilty Plea was not knowingly and intelligently entered.

PROPOSITION II: Appellant was not provided with effective assistance of Counsel at the time of his guilty plea as is guaranteed by the 6th Amendment of the United States Constitution and Article III, Section 26 of the Mississippi Constitution of 1890.

PLEADINGS

Appellant's assertion that where a prisoner is prisoner is proceeding Pro Se, the Court takes that fact into account and in its discretion, credits not so well pleaded allegations, to the end that a Prisoner's meritorious complaint may not be lost because it was inartfully drafted. Moore vs. Ruth, 556 So. 2d 1059 (Miss. 1990).

Appellant further asserts that his Pro Se Representations is merely a layman at law, and ask this Court to thereby construe those facts under the authority of Watson Vs. Ault, F. 2d 886 (5th Cir. 1976) and Haines Vs. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed. 2d 652 (1972), in that his Pro Se proceedings are to be construed with an lenient eye and are not to be held to the standards of Lawyers.

Appellant ask that his Brief be construed upon the doctrine of excuseable error without being scrutinized for the technical excellence of an attorney.

IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

MICHAEL A. BLISS, PRO SE

APPELLANT

VERSUS

CAUSE NO. 2008-CP-00288-COA

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S BRIEF ON APPEAL FROM THE DENIAL
OF HIS MOTION FOR POST CONVICTION RELIEF
IN THE WARREN COUNTY CIRCUIT COURT, DATED
JANUARY 23, 2008.

COMES NOW, the Pro Se Prisoner Appellant, Michael A. Bliss, (Herein after referred to as Appellant) and files this Appeal to the denial of his Motion for Post Conviction Collateral Relief by the Warren County Circuit Court on January 23, 2008, and in support thereof, would show unto this Honorable Court the facts that duly support his grounds and claims, to wit;

JURISDICTION

Appellant would assert that this Court has exclusive and total jurisdiction over the parties and subject matter in that Appellant was convicted and sentenced after a plea of guilty to the crime of "Possession of Precursor Chemicals" in the Warren County Circuit Court, Vicksburg, Mississippi, and further sentenced to a term of Twenty(20) years, with Four(4) years suspended, leaving Sixteen(16) years to serve and further placed on Five(5) years of Post Release Supervision.

References to the Certified Record of Appeal Pages will be in the format of "R/A" followed by the page number. Mississippi's practice is to refer to the volume containing pleadings and Motions as "Clerk's Papers" or "C.P." followed by the page number.

Appellant asserts that after denial of his Motion for Post Conviction Relief by the Warren County Circuit Court, that he perfects this Appeal to this Court of Appeals for the State of Mississippi with all of his Issues procedurally alive!!!

STATEMENT OF CASE OF APPELLANT

Appellant asserts that he was stopped for speeding during a traffic stop by Deputy Sheriff Chris Satcher at approximately 6:00 P.M. on or about June 30th, 2005 in the area of Jeff Davis Road and Fisher Ferry Road in Warren County, Vicksburg, Mississippi. (R/A p. 29)

Appellant asserts that another Officer arrived on the scene, Officer Jeff Crevitt of the Warren County Sheriff's Department whereby both Officers could smell ether coming from the Appellant's truck. Thereafter, the Officers searched and found items used in the making and manufacture of methamphetamine. (R/A p. 29).

Appellant was thereafter lawfully arrested and summarily charged with "Possession of Precursor Chemicals" whereas afterwards, Appellant asserts that he retained Attorney Edwin Woods, Jr., to represent him.

Appellant asserts that he was Indicted at the July 2006 term of the grand jury for possession of precursors chemicals when he retained Honorable Edwin Woods to represent him and that his Trial Counsel agreed to represent him for a fee of \$1,500.

Appellant asserts that however, there was a conflict from the out-set concerning paying his Attorney the full balance of the required fee that they had both agreed upon, and on January 11th, 2007, Mr. Woods filed a Motion with the Warren County Circuit Courts Office to with-draw as Appellant's Trial Counsel due to the fact that Appellant had not secured all the required fee that his Attorney had requested from him. (R/A p.42, 43, 44, 46-47)

Appellant asserts that during critical stages of the criminal proceedings against him, that he was forced to go and borrow money against his vehicle to pay Mr. Woods \$500 to continue to represent him. (R/A p. 42).

Appellant asserts that on February 5th, 2007, after securing \$500 for Mr. Woods, that Appellant was taken before the Warren County Circuit Court Judge Honorable Frank G. Vellor on the advice of his Trial Counsel, and entered an open plea.

Appellant asserts that he was lead to believe that he would get Drug Court and that he was under the impression of just that fact. (R/A p. 25, 26, 35-39).

Appellant asserts that even though he had been out on Bond for approximately a year and a half, that he was ordered to be remanded to the Custody of the Sheriff until sentencing.

Appellant asserts that on June 28, 2007, he found out that he was rejected for Drug Court, and thereby sentenced to a Term of Twenty(20) Years, with Four(4) years suspended, leaving Sixteen(16) years to serve, and further sentenced to serve Five(5) years of Post Release Supervision.

Appellant asserts that being aggrieved thereby, he filed a Motion for Post Conviction Collateral Relief (R/A p. 4-23) whereas he alleged errors that should be challenged. However, Appellant asserts that He filed his Motion for Post Conviction Collateral Relief on January 17, 2008 challenging his guilty plea and that he received ineffective assistance of Counsel, his Motion was denied a week later on January 24th, 2008. (R/A p. 4, 49-54).

Appellant asserts that the denial of his Post Conviction was without an evidentiary Hearing as should of been required, and that no chance on his part to argue his case before the Court was given.

Appellant asserts that on February 15th, 2008, that he filed his notice of Appeal, Appealling the denial of his Motion for Post Conviction Collateral Relief, whereas, his Motions were granted in the instant cause to proceed into the Mississippi Supreme Court. (R/A p. 64-68).

Appellant asserts that on a denial of a Motion for Post Conviction Relief from the lower Court, and where Appeals are made to the high Court, the reasons for the denial should be then addressed and determined by the Supreme Court and/or, the Court of Appeals to the resolve those matters.

PROPOSITION I:

APPELLANT'S GUILTY PLEA WAS NOT
KNOWINGLY AND INTELLIGENTLY ENTERED

Appellant asserts that his guilty plea was not knowingly and and intelligently entered on February 5th, 2007 and for reasons that will be addressed, he asserts the following facts to prove his grounds to wit; He was lead to believe that he would ultimately be given Drug Court if he pleaded guilty via an open plea by his trial Counsel, Edwin Woods, Jr.,. however, Appellant was thereby rejected for Drug Court and on June 28th, 2008, he was sentenced to a term of Twenty(20) Years, with Four(4) years suspended, with that leaving Sixteen(16) years to serve, and further sentenced to Five(5) years of Post Release Supervision up release.

Appellant asserts that the voluntariness of his guilty plea is controlled by Rule 8.04 (Formerly 3.03) of the Uniform Rules of County and Circuit Court Practice (U.R.C.C.C.P.) which states that;

SUBSECTION 2, VOLUNTARINESS: Before the Trial Court may accept a plea of guilty, the Court must determine that the plea is voluntarily and intelligently made, and that there is a factual basis for the plea. A plea of guilty is not voluntarily if induced by fear, violence, deception, or improper inducement. A showing that the plea was voluntarily and intelligently entered must appear on the record.

Appellant asserts that there were deceptions and improper inducements at the time of his guilty plea when he was lead to

believe that he would quite possibly get Drug Court upon an Open plea. (R/A p. 25-26, 35-39).

Appellant asserts that the record would prove that there were definitely inducements that were improper and that there were most definitely deception when he was under such intimidation being around a Court Room setting where his future was being placed in the control of others and when he believed that he would receive Drug Court.

Appellant asserts that this improper inducement and deception pertaining to his Guilty Plea when he was lead to believe that he would receive Drug Court, thereby making his Guilty Plea involuntarily and not intelligently entered, is controlled by the precepts set forth in Matusiak vs. Kelly, 786 F. 2d 536 (2d Cir. 1986) in that it states that; "The question of whether or not a plea of guilty has been entered voluntarily within the meaning of the Constitution is a complex one that involves questions of law and questions of fact. When such a plea is entered, the defendant will waive several Federal Constitutional Rights, including the right to trial by jury, the right to confront his accusers, and the privilege against compulsory self incrimination. See Boykin vs. Alabama, 395 U.S. at 243, 89 S.Ct. at 1712. For a plea to be voluntary, it is axiomatic that the defendant at least be competent to proceed, United States vs. Masters, 593 F. 2d 721, 725 (D.C. Cir. 1976). In addition, he must have an awareness of the true nature of the charges against him, Henderson vs. Morgan, 426 U.S. 637, 645, 96 S.Ct. 2253, 2257, 49 L.Ed. 2d 108 (1976), and have a rational as well as a factual understanding of the proceedings against him. Dusky vs. United States, 362 U.S. 402, 80 S.Ct. 788, 789, 4 L.Ed. 2d. 824 (1960). Furthermore, the defendant must have the knowledge of the nature of the Constitutional protections he will forego by entering his plea. Johnson vs. Zerbst, U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461 (1938).

Appellant asserts that when he was lead to believe that he would receive Drug Court and did not, that this wrongful advice is also

reversible error as stated in Courtney vs. State, 704 So. 2d 1352, 1354 (Miss. 1997). Reversed and remanded because the defendant's guilty plea was not knowingly and intelligently entered because of erroneous advice of counsel in sentencing. Smith vs. State, 636, So. 2d 1220 (Miss. 1994).

Appellant asserts that the Mississippi Supreme Court went on further to state that mistaken advice from counsel may in some cases, invalidate a guilty plea. Vittitoe vs. State, 556 So. 2d 1170 (Miss. 1992).

Appellant asserts that with the applicable law cited herein based on the foregoing facts when he was lead to believe that he would receive Drug Court, that his conviction and sentence should be reversed and remanded back to the trial Court for further proceedings.

Appellant asserts that the ends of justice would be better served if he were sentence to Drug Court, because it would give him the opportunity to prove and make himself out to a law abiding citizen. However, Appellant was never given that chance.

PROPOSITION II:

APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DURING HIS REPRESENTATION

Appellant asserts that he received ineffective assistance of Counsel during most of the critical stages of the criminal proceedings against him in violation of the 6th Amendment of the United States Constitution and Article III Section 26 of the Mississippi Constitution of 1890.

Appellant asserts that he was represented by the Honorable Edwin Woods, Jr., (Esquire) (R/A p. 42-43, 44, 46-47) and that by proof of his own words in the letters cited in the Record of Appeal, he put undo influence and pressure on Appellant to come up with more money or he would cease his representation of him.

(R/A. p. 42-43 & 46-47).

Appellant asserts that he did all he could to secure enough of the required fee to get his attorney paid, even to the point of borrowing money against his vehicle to secure \$500 more dollars for his attorney to continue to represent him.

Appellant asserts that even after all those efforts, that his trial counsel Mr. Woods didn't do anything other than stand by as a stand-in attorney for Appellant, boosting him up into believing that he would receive Drug Court.

Appellant asserts that his Trial Counsel Mr. Woods was not operating as Counsel within the meaning of the Constitution and Article III, Section 26 of the Mississippi Constitution of 1890 as evidenced by his own words when he threatened to with-draw his representation of Appellant (R/A p. 42-43 & 46-47).

Appellant asserts that this violated the precepts set forth in Strickland vs. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984) and adopted by this Court in Stringer vs. State, 454 So. 2d 468 (Miss. 1984).

Appellant asserts that his attorney never advised him that he might or could be rejected for Drug Court, but on the contrary, lead Appellant to believe that he would get Drug Court.

Appellant asserts that his attorney was not diligent in seeking a more favorable sentence for him when he was ultimately rejected by and for Drug Court by in part due to the fact, as evidenced by Mr. Woods own words (R/A. p. 42-43 & 46-47) he was dis-gruntled and angry with the fact that his client had not paid all of the required fee. However, Appellant was now in jail, having been remanded there by the Trial Court (R/A p. 37-39).

Appellant asserts that by his attorneys action with the letters threatening to with-draw and filing a Motion to with-draw as his Counsel were unconscionable acts that placed improper inducements on the Appellant to the point that he was placed in a situation to having to give an open plea by his Attorneys action which con-

travened the established precepts set forth in Strickland vs. Washington, supra and adopted by this Court in Stringer vs. State, supra.

Appellant asserts that in Hill vs. Lockhart, 474 U.S. 52, 106 S.Ct. 399, 88 L.Ed. 2d 203 (1985), the United States Supreme Court set forth and applied the Strickland Two(2) prong test to cases involving ineffective assistance of counsel when it pertained to the guilty plea scenarios wherein a defendant must prove not only that his Counsel's performance was deficient, but that he was prejudiced thereby and that the defendant would not have pleaded guilty at all due to the deficient performance of his counsel.

Appellant asserts that the Mississippi Supreme Court addressed similar claims in Ward vs. State, 708 So. 2d 11 (Miss. 1998) and Payton vs. State, 708 So. 2d 599 (Miss. 1998).

Appellant asserts that in those cases, the Mississippi Supreme reversed each case primarily due to the complete ineffectiveness of these defendants trial counsel's which denied them their Constitutional Rights protected by the 6th Amendment. Due process violation in representation and sentencing. Triplett vs. State, 666 So. 2d 1356 (Miss. 1995); State vs. Tokman, 564 So. 2d 1339 (Miss. 1990); and Yarbrough vs. State, 529 So. 2d 659 (Miss. 1988).

Appellant asserts that his trial Counsel Edwin Woods, Jr., was an experienced criminal attorney of multiple cases who had previously argued and won cases before the bar of justice in the Warren County Circuit Court in Vicksburg, Mississippi.

Appellant asserts that in typical cases where his attorney's loyalty is questioned, the reason for his divided allegiance is relatively unclear. Here, the opposite is true. Had Trial Counsel received all of his money from the door (\$1,500), Appellant would have probably received better representation by Mr. Woods, and would not have had to worry about his attorney threatening him about with-drawing as his Counsel because he had not be paid.

Thus, this conviction and sentence must be reversed and rendered forthwith on ineffective assistance of counsel.

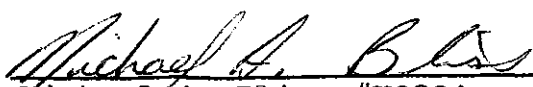
CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the Appellant Michael A. Bliss hereby believes that he has kept his Appellant Brief on the Denial of his Post Conviction brief, concise, and to the point and further would move this Honorable Court to review on the merits all of his briefed grounds for relief and determine that he has in fact, thus carried the burden of asserting and substantially proving his grounds for relief by which he respectfully ask this Honorable Court to hereby grant the following;

- 1) Vacate and Remand the Appellant's conviction and sentence; or,
- 2) Vacate and Remand the Appellant's case back to the trial Court allowing the Appellant to with-draw his guilty plea and proceed to trial, or Plea anew; or,
- 3) Vacate and Remand the Appellant's case back to the trial Court for reconsiderations and instructions for the trial Court to Reconsider Appellant for Drug Court in that he is in fact, a first time Drug Offender and the end of Justice would be better served if Appellant received Drug Court; or
- 4) Vacate and Remeand the Appeallant's case back to the trial Court for an Evidentiary Hearing on the Breified Grounds for Relief; and/or,
- 5) Grant any and all further Relief that this Court may deem that Appellant is entitled to, in the interest of justice.

Respectfully Submitted,

This the 20 day of May 2008.



Michael A. Bliss #K9204
S.M.C.I. Area-1 Unit-12
P.O. Box 1419
Leakesville, Ms. 39451


CERTIFICATE OF SERVICE

I, Michael A. Bliss #K9204, do hereby state that I have caused to be mailed this date, via the United States Postal Service, Postage Pre-paid and mailed through the Inmate Legal Assistance Program (I.L.A.P.) here at the South Mississippi Correctional Institution (S.M.C.I.) in Leakesville, Mississippi, a true and correct copy of the foregoing Appellant Brief to the following person(s) listed below;

Ms. Betty W. Sepaten, Clerk
Mississippi Supreme Court/ Court Of Appeals
P.O. Box 2499
Jackson, Mississippi 39205-0249

Hon. Jim Hood, Attorney General
Mississippi Attorney General's Office
P.O. Box 220
Jackson, Mississippi 39205-0220

Mailed this the 20 day of May 2008.


Michael A. Bliss #K9204
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Leakesville, Mississippi 39451