IN THE SUPREME COURT OF APPEALS, FOR THE STATE OF MISSISSIPPI

NO. 2008-CP-234-COA

DENNIS DOBBS — APPELLANT

VS.

Trial court NO. 6539

STATE OF MISSISSIPPI — APPELLEE

APPELLANT BRIEF FOR DENIAL OF POST - CONVICTION COLLATERAL RELIEF, §99-39-5 (1) (g)

OUT-OF-TIME (meets exceptions in §99-39-5 MCA (1972)

DENNIS DOBBS

DCF/ CA-05

3800 COUNTY Rd. 540

GREENWOOD, MISSISSIPPI 38930

2-23

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSISSIPPI
JANUARY TERM, 2007

DENNIS DOBBS — PETITIONER

VS. — CAUSE NO. 2002-0152

STATE OF MISSISSIPPI — RESPONDENT

ORDER

Came on to be heard this day the above styled and numbered post conviction matter; and the Court after having reviewed the record of proceedings in the trial court, the petition to enter guilty plea, the plea colloquy, the sentencing order and the pleadings herein; is of the opinion that petitioner's Motions are all frivolous and that these petitions are not well taken and that no hearing is necessary. The Court has repeatedly reviewed Petitioner's post-conviction motions, which now fill two overflowing civil files, and the Court once again finds that Petitioner's motions are subsequent filing which have been previously ruled upon by this Court. The Petitioner was revoked in Clay County Criminal Cause Number 6539 on July 18, 1991, and the Petitioner was sentenced in Clay County Criminal Cause Number 6874 on January 27, 1994. Therefore, the Petitioner's motions are time barred and meet none of the exceptions outlined in Section 99-39-5 MCA (1972).

IT IS THEREFORE ORDERED, that these petitions be hereby dismissed as frivolous filings without the necessity of a hearing. Any subsequent filings of the same nature will also be considered as frivolous and such sanctions imposed upon Petitioner as permitted by authority of law. Further, the Circuit Clerk is directed to send a copy of this Order to all parties.

SO ORDERED, this the 15th day of Jan, 2008.

FILED CLAY COUNTY
JAN 15 2008
Robert D Hamilton Jr

125-710

CIRCUIT JUDGE

IN THE SUPREME COURT OF APPEALS, FOR THE STATE OF MISSISSIPPI

NO. _____

DENNIS DOBBS — APPELLANT

VS. — Trial Court NO. 6539

STATE OF MISSISSIPPI — APPELLEE

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 this court may evaluate possible disqualifications or recusal.

1.) STATE OF MISSISSIPPI ---------- JAMES M. HOOD (3rd.)

2.) PRO-SE APPELLANT---------- DENNIS DOBBS

THIS THE 31st DAY OF January 2008

BY: Dennis Dobbs

DENNIS DOBBS

PRO - SE APPELLANT

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STATEMENT OF THE CASE

That on October 9th 1989, Appellant was indicted on the charge of False Pretense - Third Offense - 13 Counts. All 13 checks was written between November 24th and November 27th 1988 to Grady L. Johnston d.b.a Grady's. Appellant's bank account was open, checks where not written on a closed account, deficiency or default was caused by an un-intentionaly over draft. Appellant made several attempts to pay the checks off at Grady's Store however the owner Grady L. Johnston wanted twenty ($20.00) dollar service charge for each check, when the state law at that time only required ten dollars ($10.00) service charge fee to be paid to victims. Appellant agreed to pay Grady L. Johnston fifteen dollars ($15.00) per check, Grady refused stated he had to have seventeen dollers ($17.00) per check or he would turn it in to the District Attorney's Office for prosecution. Appellant refused to pay the seventeen dollars and was contacted by the D.A's Office and they requested ($30.00) thirty dollars per check and ($10.00) ten dollars to the victim per each check. Appellant refused to pay the ($30.00) thirty dollars per check, but stated he would pay the ($10.00) ten dollars per check to the victim as he agreed to in December 1988. The DA's office refused the ($10.00) ten dollars per check and advised Appellant he would be indicted.

FACTS

Appellant wrote (13) thirteen checks to Gradys on/or about November 24th 1988. Appellant was indicted October 9th 1989 for (13) thirteen counts of False Pretense - Third Offense.

Appellant hired Attorney Richard Burdine to represent him on January 16th 1990. Appellant's attorney advised him that third offense false pretense carried five (5) years because third offense was a felony. Further advised appellant that the State had offered him five (5) years probation. Appellant plead to five (5) years probation on January 16th 1990 in front of Lee J. Howard. After said plea hearing, Judge Howard advised probation officer William Bill Bland to explain Appellant what being placed on probation was, the rules, and how it works. William Bill Bland and Appellant went into the foyer area in the back of the Court room, between Circuit Clerks Office and the court room, where Bland explained the rules of probation, and fill out the January 16th 1990 court order's and sign Judge Howard's signature the orders. Bland, further filled out the order to retire - two (2) thru (13) thirteen to the files and sign Judge Howard's signature to it likewise sentencing orders.

Bland then took Appellant back into the court room before Judge Howard, and show him the orders. Judge Howard got onto him for signing his name to the orders, then Judge Howard noticed that Appellant's second conviction on the inclictment for False Pretense was June 1st, 1989 and none of the checks was over one hundred dollars, which petitioner was indicted on (continue-on-next-page)

Judge Howard then advised petitioner that he was going to dismiss the case back down to Clay County Justice Court where it would be handle and should have been, because the offense was a misdemeanor and not a felony.

During March of 1990, William Bill Bland call Appellants resident (662-369-6915) advising him that he had not reported to his probation officer; Appellant tried to explain that he was not placed on probation. Appellant had to start meeting as he was on probation.

In November of 1990, Appellant was lock-up for probation violation. During January 1991 term of Court, Circuit Judge John M. Montgomery modified Appellants false probation, and sentenced him to Hinds County Restitution Center. On July 18th 1991 Circuit Judge John M. Montgomery revoked the five (5) years false probation and sentenced Appellant to serve five (5) in prison under Mississippi Department of Corrections control.

Appellant filed for Post-Conviction Collateral Relief in the Circuit Court in October 1991, the trial Court ruled his Petition was frivolus and without merits and dismissed Appellants Post-Conviction petition. Appellant raised grounds that Circuit Judge Howard did not sign the January 16th 1990 Court Order, and it was not his third (3rd) offense. Appellant filed a writ Habeas Corpus and raised the issues, it was not his 3rd offense, the Circuit Judge did not sign the order, the sentence exceed the maxium authorised by law, and his counsel was ineffective (continue-on-the next page)

In January 1992, Appellant had a Spears evidentiary hearing in Aberdeen Federal Court. The Magistrate dismiss the petition, and advised the Appellant, he must have evidence that it was not his 3rd offense and none of the checks was over one hundred dollars.

Appellant was advised also that he must seek C.O.A of denial of Post-Conviction relief to the Highest State Court when he gain such evidence.

Appellant was indicted in Clay County Circuit Court April 11th 2003 in Cause No. #8399 and the Trial Court used conviction #6539 to enhance the punishment, indicted petitioner as a habitual offender.

Threw Appellants Motion of Discovery or inspection of his prior convictions, he gain proff that his second offense of False Pretense was October 16th 1990 (see exhibit - B -). one (1) year after he was indicted for 3rd offense false pretense.

Appellant filed for post-conviction relief in the Trial Court, and the lastest denial order was January 15th 2008.

SUMMARY OF THE ARGUMENT

This was not Appellants 3rd Offense of False Pretense October 1989. His second offense was October 16th 1990. The second and first offense the State used on Appellants indictment, was only one (1) offense, it was two (2) counts in his first offense, and the D.A's office fabricated the second offense in the indictment, using one of the offense out of appellants first offense conviction in Clay County Justice Court. Further, back in January of 1990, one (1) count of False Pretense did not carry but three (3) years maxium penalty, thus the sentence exceed the maxium by law.

M.R.C.C.P, the Trial Judge that impose probation must be the one revoke it, therefore this False probation would have to been modified January 1991 by Circuit Judge Lee J. Howard, and sentence imposed July 1991 would have had to been by Trial Judge Lee J. Howard also. If Judge Montgomery call himself imposed a seperate probation January 1991, it was pass the two (2) year's statue of limitation law to prosecute a defendant.

The Trial Court can not use a misdimeanor to aid a Habitual Offender Status, as appellant proved # 6539 was not a felony in Cause No. # 8399 indictment then the state amended # 8244 to aid the habitual stakes. (see exhibit -D-)

This is not a felony offense, meets exceptions in § 99-39-5 MCA (1972) and sentence should be vacated, because it will continue to cause procedural defaults

Menna vs. New York, 423 U.S 61, 62 & N. 2, 46 L. Ed. 2d 195, 96 S. Ct. 241 (1975)

ARGUMENT

This conviction is illegal, not a felony, exceed the maxium authorized by law, is a constitutional violation.

This conviction caused a procedural default in January 1994 in cause # 6874 of Clay County Circuit Court, because I was tried as a prior convicted felonie.

This conviction caused a procedural default in cause # 8399 of Clay County Circuit Court, April 11th 2003, because I was indicted as a Habitual Offender and the state used this said conviction # 6539 to aid the habitual Offender status on the original indictment in Cause No. #8399.

This conviction is continuing to cause Appellant to be exposed to "obstruction of Justice"

Appellant was sentenced again September 17th 2002 for the same restitution involved in conviction #6539. Conviction #8244 of Clay County Circuit Court was appealed to Miss. Supreme Court on the Denial of Post-Conviction Relief, and it was denied by the Panel. Appeal ground appellant raised was that he was sentenced again for the restitution in #6539 in the September 17th 2002 conviction in #8244, which caused jeopardy to attach. (U.S.D.C No. 1:07cv 48-A-D is the conviction cause number being reviewed)

Only Remedy is to vacate this illegal sentence is in the best interest of appellant and the State

ISSUE #1 : Whether Appellant's Fifth Amendment Right's where violated ?

See Blockburger v. U.S., 284 U.S 299 (1932)

The State Has Appellant's second conviction in the Justice Court of Clay County for the crime of False Pretense in cause number 26, as recorded in False Pretense Book # 1, and sentenced on June 1st 1989

Therefore any offense's prior to June 1st 1989 would have to went under the June 1st 1989 conviction for false pretense, and the October 1989 indictment checks was written in November 1988, which would fall under the June 1st 1989 Conviction in Justice Court. Thus this exposed Appellant to Double Jeopardy, Fifth Amendment Right of U.S. Const. See: Menna vs. New York 423 U.S. 61, 62 & n. 2, 46 L. Ed 2d 195, 96 S. Ct. 241 (1975); Failure of this court to entertain the Trial Courts procedurally barred claim, [**10] will result in a fundamental miscarriage of Justice. E.g.; Romero v. Collins, 961 F. 2d 1181, 1183 (5th Cir 1992)

However this was not appellants second offense in the indictment June 1st 1989, the District Attorney's Office Fabricated a second offense, Appellants second offense was not until October 16th 1990 (see exhibit - B - ' the original copy will show better in the Supplemental Brief Filed July 11th 2005 in Supreme Court No. 2004-KA-01638-COA)

Miss. Code Ann. § 99-39-21, states that claims are waived, except upon showing of cause for the default and actual prejudice. Fifth amendment Right no person shall be prosecuted twice for same offense, nor shall any person be subject for the same offense, to be twice put in jeopardy of "Life or Limb" "multiple punishments. (See McNeal v. Holowell, 481 F. 2d 1145, 1149 (5th Cir. 1973)

ISSUE #2 : Whether Appellant's counsel was ineffective ?

The maxium penalty for one (1) count of False Pretense is three (3) years back in 1990, Appellant's counsel allowed him to plea to five (5) years for one count of False Pretense. The Worse thing he allowed Appellant to do was plea to third offense False pretense involving checks written November 1988, on a October 1989 indictment with Appellant's second offense on the indictment June 1, 1989, therefore the November 1988 checks, would have had to fall under the June 1989 alleged second offense in the Justice Court of Clay County for the crime of, False Pretense, in cause number 26, Book # I

Appellant was sentenced to serve (5) Five years in prison July 1991 for this illegal, involuntary, and not intelligently plea his ineffective counsel allowed him to plea to. Deficiency and any prejudicial effect are assessed by looking at the totality of the circumstances Perkins v. State, 487 So. 2d 791 (Miss. 1986); Moody v. State, 644 So. 2d 451, 453 (Miss. 1994)

Ineffective assistance of counsel must show in the record, and counsel performance was deffective and the deficiency deprived the defendant of a Fair Trial. (See Edwards v. State, 797 So. 2d 1049 (Miss. 2001)

The application of the procedural bar of Miss Code § 99-39-2 (1) would be inappropriate to a defendant who had no earlier meaning opportunity to present issue of denial of effective assistance of counsel.

In doing so the reviewing court should "look to the totality of the circumstances in determing whether a defendant was deprived of effective assistance of counsel Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1990)

ISSUE # 3 : Whether Appellant's plea was involuntary and intelligently entered ?

Appellant actual relied on his counsel Richard Burdine, who advised him that it was his third (3rd) offense, and the maxium sentence that he could receive was five (5) years in the State penitentiary, however that the D.A offered him five (5) years probation. So Appellant understanding from counsel advise, either five (5) years probation or five (5) years in the State Penitentiary, therefore appellant plead to five (5) years probation in court. However the trial Judge did not sign the January 16th 1990 court order's, William Bill Bland, a MDOC field officer did. Judge Howard got-onto Bland for forging his name to the orders review the indictment offense's, and noticed that the second offense in the indictment was June 1st 1989, and the check's involved in this case was written November 1988, dismissed the case to Clay County Justice Court. This was acknowledged it was only Appellants second offese of False Pretense, which is not a felony. For Appellant to plea to a misdemeanor as a felony offense was not a intelligently entered plea. Appellants counsel mislead him that the crime was a felony causing appellants plea to be involuntary entered January 16th 1990.

Pursuant Uniform Rules of Circuit and County Court Practice Rule 8.04 "Entry of guilty pleas" before the court may accept a plea, it must be voluntairly 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 inducements. A showing that the plea of guilty was voluntarily and intelligently made must appear in the record.

Appellants plea was introduced with deception and improper inducement. The indictment was a scheme the District Attorney's Office fabricated a second offense on the October 1989 indictment in this cause.

This was not Appellants third offense, therefore it was not a felony, none of the checks was over one-hundred dollars either, thus this or these offense (counts) where all misdemeanors "Deception and improper inducements was in the plead January 16th 1990.

See §47-7-34

Case's this 5 yr. sentence exceeded maxium authorized by law, on 3yrs could be imposed however 5 yrs. probation was not illegal, was illegal to sentence Appellant for 5 yrs for 1 count of false pretense. However was not a felony, no prison term could be imposed. EXHIBIT -G-

ISSUE # 4 : Whether Appellant's Due-Process Rights where violated ?

Appellant's second offense of False Pretense was October 16th 1990 (Review exhibit - B -) Therefore if appellant had, had a evidentiary hearing in Clay County Justice Court, the misdemeanor crimes would NOT have made it to Clay County Circuit Court.

Appellants right to a preliminary hearing in Clay County Justice Court was his due process rights, which he was denied.

Dates of offense do take part in third offense false pretense likewise D.U.I's, you can't be charge with-a 2nd offense as a 3rd Offense.

A court does have-in-herent power to correct judgements obtained through fraud, accidents or mistake, which is revievable through a writ of error coram nobis See: McNeely v. Blain, 255 So. 2d 923, 925 (Miss. 1971); City of Starkville v. Thompson, 243 So. 2d 54, 55 (Miss. 1971); Corry v. Buddendorff, 98 Miss. 98, 54 So. 84 (1971)

Miss. Unif. Cir and County Ct. P.R 11-03, as the indictment did not fully nor fairly acquaint appellant with the nature of the accusation. Vince v. State, 844 So. 2d 510 (MCA - 2003)

If Circuit Judge Lee J. Howard imposed a five (5) year probation January 16th 1990, he would have had to be the Judge to revoke the surspended sentence. Review the July 18th 1991 Court order (location in record excerpts as exhibit -J- and - K -). This violated Appellants Due Process Rights.

ISSUE # 5 : Whether Appellant's Rights where violated under ex-post-facto Law ?

It is ex-post-facto, the effect, not the form of the law which determines whether it is expost facto, See: U.S.C.A Const. Art. I, §10, cl. I. Even when the sentence is at issue, a law may be retrospective for ex-post facto purpose not only if it alters the length of the sentence but also if it charges the maxium sentence from discretionary to mandatory. Critical question for ex-post-facto purpose is whether the new statutory provision imposes greater punishment after the commission of the offense, not merely whether it increases a criminal sentence, Commission of the offense is time crime is committed.

Ground Appellant raise is that the checks involved in this case was written November 1988, the fabricated second offense on the indictment in this cause was June 1st 1989, Appellants actual or true second offense was October 16th 1990 (see exhibit - B -) This false third offense put appellant crime in a Felony Level from a Misdemeaver Level, in which was premature, Appellants third offense had not been allowed to Ripe. This was an Ex-post-facto Law violation

Statute may violate ex-post-facto clause even if it alters punitive conditions outside sentence or where it substantially alters consequences attached to Crime already completed and therefore changes quantum of punishment. U.S.C.A Const. Art. 1, §10 cl. 1

Accordilingly to indictment 2nd offense and date of checks Involved, these where the 2nd offense counts to be include in June 1, 1989 conviction in Justice Court

CONCLUSION

This is a misdemeanor offense, and has continued to cause a procedural default, and the only remedy is to vacate conviction, the failure to do so will be obstruction of justice.

Appellant Request this honorable court to vacate conviction, because it was intentional plan to gain control over a bond "1981" State Bond.

WHEREFORE, PREMISES CONSIDERED, Appellant respectfully requests that this Honorable Court enter and Order requiring the State to file an Answer or other Pleading as to take any other action as the Panel deems appropriate, including ordering that the conviction be vacated.

This the 1st **DAY of** February **2008.**

RESPECTFULLY SUBMITTED,

Dennis Dobbs

DENNIS DOBBS #96145

DCF/CA-05

3800 County Rd. 540

Greenwood, Mississippi 38930

Verification of Petitioner

I, Dennis Dobbs, the above Pro Se Petitioner in the foregoing Petition, do hereby affirm and state the following, to-wit:

I.

I am the Petitioner in the foregoing original motion styled as "Appellant's Brief for Denial of Post-Conviction Collateral Relief"

II.

I have read the foregoing motion and all statements and other readings herein attached are true and correct to the best of my knowledge, information and belief.

III.

I believe that I am entitled to the relief as requested in said motion.

Dennis Dobbs
Petitioner

STATE OF MISSISSIPPI
COUNTY OF LEFLORE

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for said jurisdiction, the within named Petitioner, who, after first being by me duly sworn, stated on oath that the statements set forth in the above and foregoing are true and correct as therein stated.

SWORN TO AND SUBSCRIBED before me, this the 31st day of January, 2008

Augusta R. Anderson
NOTARY PUBLIC

STATE OF MISSISSIPPI
NOTARY PUBLIC
ID # 66910
AUGUSTA R. ANDERSON
Commission Expires
Sept. 9, 2011
HOLMES COUNTY

Subscribed and sworn to before me in my presence, this 31st day of Jan., 2008, a Notary Public in and for the County of Holmes State of Miss.
Augusta Anderson
(signature) Notary Public
My Commission Expires 9/9, 2011

FALSE PRETENSE - Third Offense - 13 Counts

THE STATE OF MISSISSIPPI, CIRCUIT COURT

CLAY COUNTY NO. 6539

OCTOBER TERM, 1989

Count #1

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful men and women of said County, duly elected, empanelled, sworn and charged, at the Term aforesaid of the Court aforesaid, to inquire in and for the body of the County aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present: That DENNIS DOBBS late of the County aforesaid, on or about the 24th day of November, 1988, in the County aforesaid unlawfully, wilfully & feloniously did, then and there devising and intended by unlawful means to cheat, wrong and defraud Grady L. Johnston d.b.a. Grady's of the sum of $5.00, or of property the equivalent thereof in value, and the said DENNIS DOBBS then and there having an insufficient amount of money or funds on deposit to his credit in Bank of Mississippi of West Point, Mississippi, Inc., a banking corporation, with which a check drawn by the said DENNIS DOBBS on said Bank for the sum of $5.00, may be paid, he, the said DENNIS DOBBS did then and there wilfully, unlawfully, feloniously and fraudulently issue, sign and deliver unto Grady L. Johnston for value, a certain check on the said Bank, well knowing at the time of issuing, signing and delivering said check, that he did not have a sufficient amount of money or funds on deposit to his credit in said Bank with which to pay said check and which said check consisted of the following words and figures, to-wit:

SEE COPY OF CHECK ATTACHED

and the said check was afterwards endorsed by the said payee named in said check and was by him or his assignees, presented to the said Bank for payment and the said check was not paid by the said Bank upon presentation for the reason that the said DENNIS DOBBS did not have a sufficient amount of money or funds on deposit to his credit in said Bank with which to pay said check in full upon presentation, and by means and color of making, issuing and delivering the said check to the said payee named herein, he, the said DENNIS DOBBS did then and there unlawfully, feloniously and fraudulently obtain and receive of and from the said payee named in the said check, the following thing of value to-wit:

merchandise;

all of which was at the time of said making and issuing of said check then and there sold and delivered by the said payee named in said check, to the said DENNIS DOBBS and said check was then and there given for the purchase of the same, contrary to the statute in such case made and provided and against the Peace and Dignity of the State of Mississippi.

AND FURTHER that the said DENNIS DOBBS was previously convicted in the Justice Court of Clay County

EXHIBIT A

Bad check 2nd

10/16/1990

How could Oct 1989 been a 3rd offense, it was second oct. 1989 and 10/16/1990 was 3rd offense, but State can not enter change

Exhibit -B-

IN The Circuit Court of Clay County, Miss

Dennis Dubbs
vs.
State of Mississippi

FILED CLAY COUNTY
APR 22 2003
Bobbie C Davis

defendant
No. 8399
plaintiff

Motion to Dismiss Count of Indictment - Circuit

The defendant Dennis Dubbs, mores to dismiss count of indictment on the following grounds;

The indictment does not state sufficient facts to enable the defendant to plead the judgement of Court - Grand Jury, as a bar to a future prosecution for the same act alleged in the indictment, because the defendant was wrongfully and unlawful detain in Clay County Jail, therefore any actions or acts that may, could, or plaintiffs alleged happen is duty on the State's behalf.

The defendant mores the court to strike from the indictment as hereinafter specified, because the plaintiff acted out the scope of his duty.

Respectfully submitted this 21st Day of April 2003.

Exhibit - C -

X Dennis Dubbs
defendant

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSISSIPPI

OCTOBER TERM, 2003

STATE OF MISSISSIPPI

VS. NO. 8399

DENNIS DOBBS

MOTION TO AMEND INDICTMENT

Comes now the State of Mississippi and respectfully moves the Court for the entry of an Order to Amend the Indictment to include the Habitual Offender language pursuant to Section 99-19-81 M.C.A. (1972); and in support thereof, would show unto the Court the following, to-wit:

1. That the said DENNIS DOBBS was previously convicted in the Circuit Court of Clay County, Mississippi, in Cause #6874 for the crime of Grand Larceny, a felony, and sentenced on January 26, 1994, to serve a term of Five (5) years in the Mississippi Department of Corrections; and
2. That the said DENNIS DOBBS was previously convicted in the Circuit Court of Clay County, Mississippi, in Cause #6539 for the crime of False Pretense and was sentenced on January 16, 1990, to serve a term of Five (5) years in the custody of the Mississippi Department of Corrections, with said sentence being suspended; and
3. That the said DENNIS DOBBS was previously convicted in the Circuit Court of Clay County, Mississippi, in Cause #8244 for the crime of False Pretense and was sentenced on September 18, 2002, to serve a term of One (1) year in the custody of the Mississippi Department of Corrections followed by Two (2) years of Post-Release Supervision.

WHEREFORE, PREMISES CONSIDERED, the State of Mississippi respectfully moves the

EXHIBIT D-1

Court for the entry of an Order to amend the Indictment herein to include the Habitual Offender information pursuant to Section 99-19-81 M.C.A. (1972).

Respectfully submitted,

Patricia Faver

PATRICIA FAVER
ASSISTANT DISTRICT ATTORNEY
16TH CIRCUIT COURT DISTRICT

CERTIFICATE OF SERVICE

I, Patricia Faver, Assistant District Attorney, do hereby certify that I have this day hand-delivered a true and correct copy of the State's Motion To Amend Indictment to the Defendant's attorney, the Honorable Jeff Hosford at the Clay County Courthouse on today's date.

This the 9th day of October, 2003.

Patricia Faver

PATRICIA FAVER
ASSISTANT DISTRICT ATTORNEY
16TH CIRCUIT COURT DISTRICT

FILED CLAY COUNTY
OCT 09 2003
Bobbie C. Kemp
CIRCUIT CLERK

Exhibit -D-

In The Circuit Court of Clay County, Mississippi

State of Mississippi — Plaintiff

VS.

Cause No. 8399

Dennis Dobbs — Defendant

Motion for Quick and Speedy Trial or in Alternative; Dismiss without Prejudice

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Comes Now Dennis Dobbs, the defendant without the benifit of his counsel, who is currently incarcerated in the Carroll-Montgomery Regional Correctional Facility - Vaiden, Mississippi, files this Motion and is surpport of list as follows:

1. That Dennis Dobbs, the defendant was indicted April 11th 2003 on the charge of simple assault on a Law Enforcement Officer (§97-3-7) as an Habitual Offender with two prior felony convictions in the Clay County Circuit Court, Mississippi in cause number 6874 for the crime of Grand Larceny and in cause Number 6539 for the crime of Felony False Pretense.

2. That the Defendant is making it known to the Court that in cause Number 6539 the crime was not a Felony crime of False Pretense, none of the checks was over hundred dollars that the defendant was indicted on October of 1989, nor was it the defendant 3rd ~~to~~ offense, it was his second offense, therefore the charge was a mis demeanor, not a felony

EXHIBIT -E-

and it should have been handle in Clay County Justice Court, inwhich it later was (See exhibit attached abstract of Clay County Justice Court Records Docket 3; Page 46; case 901733). Improper Indictment - 5th Amendment, Article 3. Sec. 27

However, the defendant has filed serveral motions and petition to the Clay County Circuit Court in regard of this errow of the indictment, and for the court to ensure justice, it would be in the best interest of the defendant as well as the public to dismiss the indictment, instead of striking any parts from the indictment, which would cause un-neccesary cost of tax payers of Clay County Mississippi Court funds.

Further the defendant prays for this court to make the only lawfull act or only Alternative; Dismiss the charge or case without prejudice.

3. That said charge could & and should have been resolved at an earlier date and should move this court to grant relief for a speedy trial pursant to the Constitution of the United States of America - Sixth Amendment Rights of an accused in Criminal Prosecutions.

4. That I, the defendant, Dennis Dabbs will make it known to my Attorney Jeff Hosford by mailing him a copy of this motion.

United States vs. Ewell, v383 U.S. 116, 121 (1966)
Klopfer vs. North Carolina 386 U.S. 213, 221-33 (1967)
Smith vs. Hoovey, 393 U.S. 374, 377-379 (1969)

Unlike other provisions of the sixth amendment, this guarantee can be attributable to reasons which have to do with the rights of and inflictions of harms to both defendant and society. The provision is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibility that delay will impair the ability of an accused to defend himself.

Baker vs. Wingo, 407 U.S. 514, 519 (1972)

Dickey vs. Florida, 398 U.S. 30, 42 (1970)

The passage of time alone may lead to the loss of witness' memories or possible death of witness.

WHEREFORE, defendant respectfully submitts this motion to this honorable court and hopes, and prays that this court will honor his motion and protect his rights as guaranteed by the constitution of the United States of America and to a speedy trial or in the alternative dismiss the alleged charge of simple assault on a law enforcement officer as an Habitual Offender.

Respectfully submitted this 15th Day of March 2004.

Dennis Oakley

pro/see plaintiff

1440 Hwy. 35
Vaiden, MS 39176

Certificate of Service

This is to certify that I, Dennis Dobbs the defendant have this date mailed a true and correct copy of the above and foregoing Motion to:

Forrest Allgood
P. O Box 1044
Columbus, Ms. 39703

Jeff J. Hosford
P. O Box 332
113-B Commerce St.
West Point, Ms. 39773

So certified this the 15th day of March 2004.

x Dennis Dobbs

Dennis Dobbs
Pro/See plaintiff

1440 Hwy. 35
Vaiden, Ms. 39176

IN Supreme Court of Mississippi

Dennis DOBBS #96145
W.C.C.R.C.F / D-Zone
P.O Drawer 928
Lowsville, Ms. 39339

Date: ~~March~~ 24th 2005

Re: Dennis Dobbs v. State of Miss.
Supreme Court No. 2004-CA-01638

Dear Ms. Sephton;

please find enclosed for entry is a supplemental Brief that I have prepared myself in support of my counsel brief when he files it. The Bar stated that I could file this in case my counsel do not argue all the grounds.

I do not have accessory to a copy machine, due to being housed where there is no prison law libriary, therefore could you please mail the Appellee's a copy of said supplemental Brief, being person's

1. Jim Hood - P.O Box 220 - Jackson, Ms. 39205
2. Forrest Allgood - P.O Box 1044 - Columbus, Ms. 39701
3. Lee J. Howard - P.O Box 364 - West Point, Ms. 39773

Thank you for your time and service

Sincerly

Dennis Dobbs

EXHIBIT
-F-

In The Supreme Court of Mississippi

No. 2004-CA-01638

Dennis Dobbs — Appellant

vs.

State of Mississippi — Appellee

Supplemental Brief of Appellant

EXHIBIT
-F-

STATEMENT OF FACTS

1. Appellant was incarcerated in Clay County Jail on December 6th 2002, which is located inside the city limits of West Point, Mississippi,
2. Appellant was fined, plus court cost, & assessments totaling $201.00 in Clay County Justice Court February 20th 2003.
3. Appellant was indicted for simple assault on a Law enforcement officer April 2003 term of Court.
4. Appellant filed for a fast and speedy Trial in March of 2004.
5. Appellant was convicted of simple assault on a police officer July 22nd 2004, and sentenced July 23rd 2004.
6. Appellant was tried as an habitual offender, and the court used conviction *6539 a 1990 conviction, that was not a felony. False Pretense for a $5.00 check, supposely, Appellant 3rd offense, but was second offense.
   Gray v. State, (Miss. 1992) 605 So. 2d. 791

Certificate of Service

I, Dennis Dobbs, appellant, hereby certify that I have caused to be mailed by first class U.S. mail, postage prepaid, a true and correct copy of the foregoing Supplemental Brief of Appellant, in support of Brief appellant's counsel is to file to:

Ms. Betty W. Sephton
Miss. Supreme Ct. Clerk
P. O Box 249
Jackson, Ms. 39205

I herby request that the clerk send's all appellee's (party) a copy of said action, due to appellant not having accessory to a copy machine at this time

This the 24th day of March 2005

Dennis Dobbs

Dennis Dobbs - Appellant
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specify a term of post-release supervision, provided that the total of the two terms did not exceed the maximum sentence allowed. Johnson v. State, 2004, 924 So.2d 527, rehearing denied, certiorari granted 921 So.2d 1279, affirmed in part, reversed in part 925 So.2d 86. Sentencing And Punishment ⚷ 1872(2)

Sentence imposed on defendant for sale of cocaine did not exceed statutory maximum; defendant was sentenced to 30 years in custody of Department of Corrections, with 18 years suspended, thus only actually leaving 12-year sentence to serve, and when five years of post-release supervision were added, total of 17 years still fell short of statutory maximum of 30 years. Edwards v. State, 2005, 916 So.2d 542. Controlled Substances ⚷ 100(2)

Two concurrent nine year sentences and five years of post-release supervision for aggravated assault and shooting into an occupied dwelling convictions where maximum sentence was 20 years was not illegal sentence; defendant's period of supervised release does not count towards defendant's time served. Richardson v. State, 2005, 907 So.2d 404. Assault And Battery ⚷ 100

Sentence which included period of post-release supervision, imposed upon defendant who was prior felon, was not illegal, where post-release supervision was not equivalent of suspended sentence, for which defendant would have been ineligible. Wheeler v. State, 2005, 903 So.2d 756, rehearing denied. Sentencing And Punishment ⚷ 1936

Defendant's sentence of three years' incarceration, seven years suspended, and five years' supervised probation, did not exceed 10-year maximum sentence for embezzlement; time on probation did not count as time served. Brown v. State, 2004, 872 So.2d 96. Embezzlement ⚷ 52; Sentencing And Punishment ⚷ 1946

Maximum amount of time defendant could be placed under post-release supervision was five years, and thus, defendant's sentence of 20 years with 10 years in custody of department of corrections and 10 years post-release supervision for possession of at least 238 dosage units of Diazepam with intent to distribute violated post-release supervision statute. Stigall v. State, 2003, 869 So.2d 410, rehearing denied, certiorari denied 878 So.2d 67. Sentencing And Punishment ⚷ 1946

When sentencing defendant to period of incarceration followed by period of supervision by Department of Corrections (DOC), better practice is to apply post-release supervision, rather than supervised probation. (Per Carlson, J., with three justices concurring, and one justice concurring in the result only.) Miller v. State (Miss. 2004) 875 So.2d 194. Sentencing And Punishment ⚷ 1936

Sentence of five years incarceration for possession of precursors followed by five years of post-release supervision was proper, even though defendant was a convicted felon; defendant was not sentenced to a suspended sentence, and convicted felons were eligible to be sentenced to post-release supervision. Hunt v. State, 2004, 874 So.2d 448. Sentencing And Punishment ⚷ 1936

Portion of sentence requiring 30 years of supervised probation was plain error in violation of statute establishing five years as maximum time that Department of Corrections could supervise an offender on post-release supervision. Brooks v. State, 2003, 858 So.2d 930. Criminal Law ⚷ 1042

Sentence of 12 years incarceration on each of two convictions for sale of cocaine, with sentences to run concurrently, in addition to post-release supervision for a period of five years, was not illegal; total number of years of incarceration plus total number of years of post-release supervision did not exceed the maximum sentence authorized to be imposed by law for the felonies committed. Kern v. State, 2002, 828 So.2d 871. Controlled Substances ⚷ 100(2)

5. Effect of plea agreement

Sentence of 25 years, with 15 years in custody and remaining 10 years under post-release provisions with five year supervision period, with post-release supervision to be served concurrent to defendant's suspended sentence was consistent with defendant's plea bargain of 15 years. Craft v. State, 2006, 955 So.2d 384, rehearing denied. Sentencing And Punishment ⚷ 60

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assault charge with ten years suspended was not part of actual time defendant was sentenced to serve and, thus, sentence did not exceed maximum penalty authorized by law. Jones v. State, 2002, 805 So.2d 610. Assault And Battery ⚿ 100

2.5. Construction with other laws

Period of post-release supervision included in sentence imposed upon defendant with prior felony convictions was not "probation" within scope of statute governing suspension of sentences in favor of probation and prohibiting grant of probation to persons with prior felony convictions. Johnson v. State, 2004, 883 So.2d 607, rehearing denied, certiorari dismissed 898 So.2d 679. Sentencing And Punishment ⚿ 1936

Supervised probation and post-release supervision are totally different statutory creatures, with at least two major differences: (1) supervised probation may not be imposed on convicted felon while post-release supervision may be imposed on convicted felon, and, (2) supervised probation is limited to five years while post-release supervision is not. (Per Carlson, J., with three justices concurring, and one justice concurring in the result only.) Miller v. State (Miss. 2004) 875 So.2d 194. Sentencing And Punishment ⚿ 1811

3. Suspended sentence

Defendant's sentence for manslaughter did not exceed statutory maximum of 20 years; although defendant was sentenced to 20 years, plus four years of post-release supervision, four years of prison sentence had been suspended. Brown v. State, 2006, 923 So.2d 258. Homicide ⚿ 1568

Defendant who was a felon was eligible for suspended sentence under post-release supervision statute. Gaston v. State, 2002, 817 So.2d 613. Sentencing And Punishment ⚿ 1936

Although defendant's prior felony conviction precluded trial court from suspending five-years of defendant's ten-year sentence for attempted armed robbery, trial court actually intended to sentence defendant to confinement of five years followed by five years' post release supervision pursuant to statute designed specifically for felons, thus requiring remand for correction of sentence. Thomas v. State, 2004, 883 So.2d 1197. Criminal Law ⚿ 1181.5(8)

4. Supervision imposed after incarceration

Sentence of two years' imprisonment and one year of post-release supervision, imposed upon defendant convicted as prior convicted felon of uttering a forgery, was not illegal, where offense of conviction was felony punishable by up to 15 years' imprisonment and period of post-release supervision did not extend total sentence above maximum allowable sentence. King v. State, 2006, 929 So.2d 373. Sentencing And Punishment ⚿ 1425; Sentencing And Punishment ⚿ 1873

The total number of years of defendant's incarceration plus the total number of years of post-release supervision did not exceed the maximum sentence authorized to be imposed against defendant for felony of aggravated assault, warranting imposition of post-release supervision, despite defendant's assertion that his guilty plea was in exchange for a plea bargain offer under which he would receive a seven-year sentence but which never addressed a term of post-release supervision; defendant had acknowledged in writing that prosecutor recommended a five-year period of post-release supervision. Elliott v. State, 2006, 924 So.2d 609. Assault And Battery ⚿ 100; Sentencing And Punishment ⚿ 60; Sentencing And Punishment ⚿ 1945

It is perfectly within the sentencing judges province to sentence the defendant to a term of imprisonment followed by a term of post-release supervision, so long as the sum of the two do not exceed the maximum sentence authorized to be imposed by statute for the felony committed. Epps v. State, 2005, 926 So.2d 242, rehearing denied. Sentencing And Punishment ⚿ 1936

Sentencing court was not authorized to suspend sentence for defendant who was a previously convicted felon; under statute, the court was required to specify a term of incarceration and could

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:

Robert "Bob" Harrell, Jr.
Clay County Circuit Court
P.O. BOX 364
West Point, MS 39773

Mrs. Betty W. Sephton/ Clerk
Mississippi Supreme Court
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Jackson, Ms. 39205

Lee J. Howard (3rd)
16th Judicial District Judge
P.O. BOX 1344
Starkville, Ms. 39759

James M. Hood (3rd.)
Attorney General's Office
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This the 1st day of February, 20 08.

R Dennis Dobbs
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