COPY

SUPREME COURT OF MISSISSIPPI

COURT OF APPEAL OF THE STATE OF MISSISSIPPI

MERVIN SANDERS — APPELLANT'S

VS.

STATE OF MISSISSIPPI — APPELLEE

NO. 2008-CP-01052-COA

ON APPEAL FROM THE CIRCUIT COURT OF PIKE COUNTY, MISSISSIPPI

Respectfully submitted

Mervin Sanders

Mervin Sanders #06438 pro se

TABLE OF Contents

1. I was denied the due process clauses of the Fourteenth Amendment to the United States Constitution and Article 3, Section 14 of the Mississippi Constitution. To a fair Hearing on the issue to vacate the Judgment on the ground that Judge Joe N. Pigott was disqualified under Mississippi Code Judicial Conduct canon 3 C(1)a). That at the time he heard the action and enter Judgment in favor of the State of Mississippi in cause number 13,732. The State of Mississippi vs. Mervin Sanders in the Circuit Court of Pike County, Mississippi. On/or about November 6, 1991. By Judge Micael M. Taylor in the Circuit Court of Pike County. In Cause Number 08-051-PCT in September 10, 2008 and January 9, 2009. See page 10-29.

2. Judge Joe N. Pigott violated Mississippi Code of Judicial Conduct Canon 1, 2, 2A, 3A(1), 3A(4), 3B(1), and 3(1) when he change the defendant sentence from consecutive to concurrently. See pages 29-41.

3. The defendant would show that Judge Joe N. Pigott was bias or prejudice by his failure to dismiss the charge under the Speedy trial. See pages 41-56.

STATEMENT OF THE CASE

1. On January 21, 1990, I Mervin Sanders (sometimes "Appellant or "Sanders") was arrested in Pike County, Mississippi, and charge with possession of cocaine with intent to sell. It was not until October 17, 1991, that the State of Mississippi (sometimes "Appellee" or the State") finally got around to indicting the appellant Sanders on the same charge. Counsel was appointed on october 23, 1991, see (R. 230). And I sanders was "swiftly" brought to trial eight (80 days late, see (R. 222). The length of the delay between the date of my "Sanders" arrest and the date of my indictment was 613 days. from January 21, 1990, until Octobet 31, 1991. In the cause number 13,732, the State of Mississippi vs. Mervin Sanders in the Circuit Court of Pike County, Mississippi. See (R. 2-3).

2. On October 31, 1991, I Sanders was found guilty of unlawful possessiobn of cocaine with intent to deliver. On November 6, 1991, I Sanders was sentenced to thirty years imprisonment without parole, probation, good time, or early release and further ordered to pay a fine in the amount of $30.000. See (R. 4-5).

3. On December 6, 1991, counsel for the defendant filed Notice of Appeal. See (R. 145-149). On June 6, 1996, my Sanders conviction and sentenced were affirmed by the Supreme Court of Mississippi. Sanders v. State 678 So.2d 663 (Miss. 1996), see (R. 150).

4. On or about April 3, 1998, I Mervin Sanders filed in the Mississippi Supreme Court my Application For Leave to File Motion For Post-Conviction Relief, see (R. 151). And along with Brief as Amicus Cuiae filed by Attorney Armis E. Hawkins. See (R. 152), and on October 2, 1998, the State filed in the Supreme Court of Mississippi its Response for Leave to Proceed in the Circuit Court of Pike for Post-Conviction Relief.

Sanders' initial proceedings asking to seek post-conviction relief were docteted in the Supreme Court as No. 98-M-00525. Those proceedings remain among the files and records of the Supreme Court and are of considerable relevance here.

5. On October 13, 1998, the Supreme Court entered its Order granting Sanders leave to file his Motion for Post-Conviction Relief in the Circuit Court of Pike County, Mississippi and along with the Brief as Amicus Curiae filed by Attorney Armis E. Hawkins. (R. 152-153).

6. On October 13, 1998, the Supreme Court entered its Order granting Sanders leave to file his Motion for Post-Conviction relief in the Circuit Coury of Pike County, On December 7, 1998, the Supreme Court entered a further Order clarifying its prior Order and providig that sanders had been "granted leave by this Court's Order of October 13, 1998, to proceed in the Pike County Circuit Court ... on all issue raised in this Court."

7. On February 12, 1999, and acting under th authority of the Order of October 13, 1998 and December 17, 1998, Sanders filed in the Circuit Court of Pike County, my Motion For

Post-Conviction Relief. At the same time, I Sanders filed my Motion that I be allowed to proceed in forma pauperis and that, in accordance with Miss. Code §§ 99-15-15, -39-23(1), counsel be appointed to represent me. See (R. 165), Sanders also request that the undersigned, James L. Robertson, be appointed as my counsel.

8. On April 19, 2000, I Sanders filed my Motion For Summary Judgment. In that Motion, I Sanders noted that the Request had been on file for six months without denial or objection and hat, as a matter of law,, the facts set forth therein should be taken as admitted. Rule 36(a), Miss. R. Civ. P.. Taking the facts so stated as the facts of the case, there remaind no genuine issue of matter facts and I Sanders became entitled to judgment as a matter of law. Rule 56(c), Miss. R. Civ. P..

9. On May 17, 2000, the State filed its (Cross) Motion for Summary Judgment. In its Cross-Motion, the State only reiterated the groung which the State had presented in its original Response of October 2, 1998, and which had been rejected by the Supreme Court by its Orders of October 13, 1998 and December 17, 1998.

10. On June 21, 2000, I sanders filed my Response and Opposition to the State's Cross-Motion for Summary Judgment. In my Respone and Oppsition, I Sanders made clear that the grounds upon which the State relied in its Cross-Motion had already been rejected by the Supreme Court in its Order of October 3, 1998 and

December 17, 1998, that the rejection of those defense had became the law of the case, and that the State could not proceed thereon.

At no point did the State deny the truth of the facts set forth in the Request for Admissions. The State presented no reason why it could not have made response and objections, allowed by Rules 36, Miss. R. Civ. P., nor did the State offer any good cause why it should be allowed to makes its response or objections so many months after the expiration of the thirty day time limit. At no point did the state present to the Circuit Court any argument or explanation of how, if the facts set forth in the Request for Admissions were taken as true, the Court could deny relief to Sanders.

11. On December 6, 200, the Circuit Court entered its Final Judgment granting the State's Motion for Summary Judgment and denying my Sanders Motion for Summary Judgment. The Circuit Court acted without ever setting a hearing for briefs on the matter and issue set forth in the resoective Motion then pending. See (R. 166 number 5).

12. On January 10, 2001, I Sanders filed in the Circuit Court of Pike County my Motion that I be allowed to appeal in forma pauperis and that accordence with Miss. Codre Annotated §§ 99-15-15 and 99-39-23(1), counsel be appointed to represent me. That James L. Robertson, MSB 5612, of Jackson, Mississippi, had

represented Sanders throughout the proceeding in the Circuit Court of Pike County, had become throughly familiar with the case, and had a substantial familiarity with post-conviction proceeding in Mississippi. I Sanders asked that Mr. Robertson be appointed to represent me on that appeal of the Circuit Court's denial of my applcation for post-conviction relief. The Circuit Court granted Sanders's Motion for leave to proceed in forma pauperis but refused Sanders's request that Mr. Robertson be appointed represent me. Instead, the Circuit Court pointed Paul M. Luckett of McComb, Mississippi, who was completely unfamiliar with the case.

This case bore docket number 2001-CA-00073-COA
These proceeding remain among the file and records
of the Supreme Court and are considerable relevance here.

13. The Mississippi Court of Appeal affirmed the lower Court ruling on June 25, 2002. Sanders v. State 846 So.2d 230 (Miss. App. 2002), reh'g denied January 14, 2003, cert. denied May 15, 2003. See (R. 154).

14. On or about December 19, 2003, I Mervin Sanders filed in the Southern District of Mississippi, Jackson Division, Pettition Foe Writ of Habeas Corpus 28 U.S.C. § 2254. See (R. 155).

15. On or about January 25, 2006, in the United States Court of Appeal For the Fifth Circuit Court, dismissed for want of prosecution. The Appellant failed to timely pay docketing fee. See (R. 156).

16. On August 22, 2005, I Sanders filed in the Circuit Court of Lincoln County, Mississippi. A Petition For Writ Of Habeas Corpous, Motion to Vacate and Set Aside Conviction and Sentence. Stating that the prior convictions used to shown that I was an habitual offender in the Circuit Court of Pike County, Mississippi was void. See (R. 157-160).

17. On November 10, 2005, the Circuit Court of Lincoln County, denied the Motion For Post-Conviction Collateral Relief. See (R. 161-162).

18. On or about November 14, 2006, the Court of Appeal of Mississippi, affirmed the lower Court Order. Sanders v. State, 942 So.2d 298 (Miss. 2006). See (R. 163-164)

19. On or about February 15, 2008, I Mervin Sanders filed in the Circuit Court of Pike County, Mississippi, A Motion Under Mississippi Rules of Civil Procedure 60 B(4), to Vacate the Judgment on the ground that Judge Joe N. Pigott was disqualified under Mississippi Code Judicial Conduct Canon 3(1)(a), that at the time he heard this action and entered the judgment in favor of the State of Mississippi in cause number 13,732, the State of Mississippi vs. Mervin Sanders, on/or about October 31, 1991. See (R. 221).

20. On or about September 10, 2008, the Circuit Court of Pike County, denied the relief. See (R. 439-440).

21 On September 22. 2008, I filed in the Circuit Court of

Pike County, the following: (1) Notice of Appeal, (2) Designation of the Records, (3) Motion to Allow Appeal in Forma Pauperis, (4 Affidavit of Indigent and (5) Certificate of Service. See (R. 441-447).

22. On November 5, 2008, I received a Notice from the Supreme Court of Mississippi stating that they have not received a copy of the certificate of compliance in accordance with M.R.A.P. 11(b)1. See (R. 455).

23. On January 6, 2009, I Sanders filed in the Circuit Court of Pike my certificate of compliance in accordance with M.R.A.P. 11(b)(1). See (R. 448-455).

24. On or about January 6, 2009, I filed in the Supreme Court of Mississippi, Emergency Application For Extraordinary Relief, under Rules 21 (c), 21 (e) and 27 of the Mississippi Rules of appellate Practice. requesting that the Supreme court to enter an Order Vacating the Order of Judge Michael M. Taylor, denying the Motion in cause number 08-051-PCT filed in the Circuit Court of Pike County, Mississippi, on February 29, 2008, and ruled on it in September 10, 2008. That under Mississippi Rules of Civil procedure 60 B(4), to Vacate the judgment on the ground that Judge Joe N. Pigott was disqualified under Mississippi Code Judicial Conduct Cannon 3 C(1)(a), at the time he heard the action and entere the judgment in favor of the State of Mississippi in cause number 13,732, the State of Mississippi

vs. Mervin Sanders, in the Circuit Court of Pike County, Mississippi, on or about October 31, 1991, and sentence on or about November 6, 1991. Or in the alternative, to vacate the judgment pursuant to 8(c), pending a final determination of the judgment of Judge Joe N. Pigott was without jurisdiction to hear the case. See (R. 479). And at the same time I gave notice to the Circuit Court of Pike County, Mississippi of this filing. See (R. 456-457).

This case bore docket number 2006-M-01311 in the Supreme Court of Mississippi as Mervin Sanders vs. the State of Mississippi. Those proceeding remain among the files and records of the Supreme Court and are of considerable relevance here.

25. On or about February 2, 2009, in the Circuit Court of Pike county, denied the Relief of the Motion I Sanders filed on February 15, 2008, as cause number 08-051-PCT. Motion under Mississippi Rules of Civil procedure 60 B(4), to Vacate the judgment on the ground that Judge Joe N. Pigott was disqualified under Mississippi Code Judicial Conduct Canon 3 C(1)(a), that at time he heard the action and entered the judgment in favor of the State Mississippi in cause number 13,732, the State of Mississippi vs. Mervin Sanders, on or about October 31, 1991. This Motion had the same cause number of the rule in September 10, 2008 in the Circuit Court of Pike County, as 08-051-PCT. See (R. 439-440 and 458-459).

26. On or about February 4, 2009, the Supreme Court of Mississippi denied the Emergency Application For Extraordinary Relief. See (R. 480).

27. On February 12, 2009, I Sanders filed in the Supreme Court of Mississippi, a Motion for Enlargement of Time Within to file Motion For Rehearing. See (R. 481-482).

28. On February 18, 2009, I Sanders filed in the Supreme Court of Mississippi, the Motion For Rehearing. See (R. 483-497).

29. On February 20, 2009, I Sanders received from the Circuit Court of Pike County, the Order denying the Motion to Vacate Sentence and Set Aside Conviction and Sentence in cause number 08-051-PCT. See (R. 471-473).

30. On February 27, 2009, I Sanders filed in the Circuit Court of Pike County, the following; (1) Notice oof Appeal, (2) Designation of the Record, (3) Motion to allow Appeal in Forma Pauperis, (4) Certificate of Compliance with Rule 11 (b)(1), (5) Affidavit of Indigency, (6) Affidavit of Oath, (7) Affidavit of Poverty and Certificate of service. See (R. 460-473).

31. On March 2, 2009, I Sanders filed in the Supreme Court of Mississippi, a Motion to Supplement Record to Motion For Rehearing. To show that Judge Michael M. Taylor had rule on the same Motion two time. See (R. 499-512).

32. On April 14, 2009, I Sanders received the Order from the Supreme Court of Mississippi, denying the Motion For Rehearing and the Motion to Supplement. See (R. 474 and 513-514).

33. On April 20, 2009, I Sanders filed in the Supreme Court of Mississippi, a Petition for Writ of Certiorari. See (R. 515-527).

34. On May 20, 2009, the Supreme Court of Mississippi, denied the Petition For Writ of Certiorari. See (R. 528).

"STATEMENT OF THE FACTS"

ISSUE I

I WAS DENIED THE DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 3, SECTION 14 OF THE MISSISSIPPI CONSTITUTION TO A FAIR HEARING. ON THE ISSUE TO VACATE THE JUDGEMENT ON THE GROUND THAT JUDGE JOE N. PIGOTT WAS DISQUALIFIED UNDER MISSISSIPPI CODE JUDICIAL CONDUCT CANON 3 C(1)(A), THAT AT THE TIME HE HEARD THE ENTER JUDGEMENT IN FAVOR OF THE STATE OF MISSISSIPPI IN CAUSE NUMBER 13,732, THE STATE OF MISSISSIPPI VS. MERVIN SANDERS. IN THE CIRCUIT COURT OF PIKE COUNTY, MISSISSIPPI. ON/OR ABOUT OCTOBER 31, 1991, AND SENTENCE ON/OR ABOUT NOVEMBER 6, 1991. BY JUDGE MICHAEL M. TAYLOR IN THE CIRCUIT COURT OF PIKE COUNTY, IN CAUSE NUMBER 08-051-PCT ON JANUARY 9, 2008, AND SEPTEMBER 10, 2008, FILED IN THAT COURT ON FEBRUARY 22, 2008.

COME NOW: The defendant, (Mervin Sanders), pro se and file this Appeal, pursuant to Mississippi Rules of Appellate Procedure 31(b).

SUMMARY OF RELIEF REQUESTED

Petitioner (Mervin Sanders), respectfully requests that this Court grant the following Relief.

1. That the Circuit Court Judge Michael M. Taylor, Orders of January 9, 2008, filed on February 2, 2009, and rule on against in September 10, 2008 be vacate and set aside and that I be given a New Hearing, or in the alternative this Court rule on the Motion under Hathcock v. Southern Farm Bureau Cas. Ins., 912 So.2d 848 (Miss. 2005). In determining whether a judge should have recused himself, this Court must consider the trial in its entirety and examine ruling to determine if those rulings were prejudicial to the moving party.

THE ORDER OF JANUARY 9, 2008.

(¶1). This case is before the court on a claim for relief from a sentence imposed in 1991. The petitioner, Sanders, frames this claim with allegations of judicial misconduct dating back to 1978. The theory of the case is that Hon. Joe Piggott, who presided over a then one-judge district, sentenced Sanders so many times (four) that the judge should have declined to hear Sanders 1991 case. Sanders argues that since the judge should not have heard the case, the judge was without jurisdiction and the conviction and sentence should be set aside.

(¶4). Sanders claim that Judge Pigott has prejudged the case at hand is unsupported by the record. Seeking to bolster his charge against Judge Piggott sanders alleges that a 1985 sentence handed down to Sanders by Judge Pigott should have been served consecutively instead of concurrently. Of course even if the statement is accepted as true it does nothing to help Sanders

support his claim that Judge Piggott was biased against him. See (R. 459), sign by Judge Michael M. Taylor on January 9, 2008.

Clearly it would require Judge Michael M. Taylor to an impossible test to foresee the future and rule on the Motion that, I Sanders filed on February 22, 2008. Under Mississippi Rules of Civil Procedure 60 B(4) and Mississippi Code Judicial Conduct Canon 3 C(1)(A), to Vacate and Set Aside Conviction and Sentence in cause number 08-051-PCT. See (R. 6).

THE ORDER OF SEPTEMBER 10, 2008.

(¶1). This case is before the Court on a claim for relief from a sentence imposed in 1991. The petitioner, Sanders, frames this claim with allegations of judicial misconduct dating back to 1978. The theory of the case is that **Hon. Joe Pigott,** who presided over a then one-judge district, sentenced Sanders so many times (four) that the judge should have declined to hear Sanders 1991 case. Sanders argues that since the judge should not have heard the case, the judge was without jursdiction and the conviction and sentence should be set aside.

(¶4). Sanders claim that Judge Piggott has prejudged the case at hand is unsupport by the record. Seeking to bolster his charges against Judge Piggott Sanders alleges that a 1985 sentence handed down to Sanders by Judge Piggott should have been served consecutively instead of concurrently. Of course even if the statement is accepted as true it does nothing to help Sanders support his claim that judge Piggott was biased against him. See

(R. 440), sign by Judge Michael M. Taylor on September 10, 2008.

Further, The Mississippi Supreme Court has stated that "[e]very litigant is entitled to nothing less than the cold neutrality of an impartial judge, who must possess the disinterestedness of a total stranger to the interest of the parties involved in the litigation, whether that interest is revealed by an inspection of the record or developed by evidence included in the record." Jenkins v. Forest County Gen. Hosp., 542 So.2d 1180, 1181-82 (Miss. 1988). The Mississippi Supreme Court excepts that all trial judges will abide by the oath of office and "administer justice without respect to persons" while striving to "faithfully and impartially execute and perform all of their duties." In re Blake, 912 So.2d 907, 917 (Miss. 2005). The Bake Court adopt a test requiring that one view all circumstances. Id. In other words, where a reasonable person, knowing all circumstance, would conclude there is prejudice of such a degree that it adversely affects the client, the judge should recuse himself. Id.

In this case sub judice the defendant will shown that Judge Michael M. Taylor did not understand the law that Judge Pigott was disqualified from rule in my case four (4) time. See (R. 61-68.

STATE OF FACTS NECESSARY FOR UNDERSTANDING OF THE GROUND FOR RELIEF. UNDER THE MISSISSIPPI CONSTITUTION ARTICLE 6, § 165, MISSISSIPPI CODE ANNOTATED § 9-1-11, AND MISSISSIPPI

CODE OF JUDICIAL CANON 3 C(1)(A), THAT WILL SHOWN THAT JUDGE JOE N. PIGOTT WAS DISQUALIFIED BEFORE TRIAL IN CAUSE NUMBER 13,732 THE STATE OF MISSISSIPPI VS. MERVIN SANDERS IN THE CIRCUIT COURT OF PIKE COUNTY, MISSISSIPPI.

See Aetna Casualty and Surety Co. vs. Berry 669 So.2d 56, 75 (Miss. 1996): It must be remember, however, that it is the judge who must come forth and recuse himself so as to avoid any appearance of impropriety. **Jenkins** 570 So.2d 1192.

We might also reach a different conclusion if chanceller Bridges had given the parties an opportunity to object or consent to him sitting on the case. We recently addressed the issue of parties waiving their objections to judicial recusal in **Banana v. State,** 635 So.2d 851 (Miss. 1994), wherein we acknowledged that in Mississippi, disqualification of a judge is both constitutional and statutory. Section 165 of the Mississippi Constitution of 1890 require a judge to disqualify himself "where the parties or either of them, shall be connected with in him by affinity or consanguinity, or where he may be interested in the same, **except by the consent of the judge and of the parties.' Mississippi Code,** in addition to requires for relation of the judge by affinity or consanguinirty, requires disqualified where the judge have been of counsel.

635 So.2d at 853 quoting **Jenkins,** 570 So.2d at 1192) (emphasis added). In Banana, the defendant was given the opportunity to

object to the judge sitting on his case, and after conferring with counsel, specifically waived any objections. We then held that he had indeed waived the recusal issue for purpose of his appeal.

In this case sub judice the petitioner were not given this opportunity. Judge Joe N. Pogott only let the Court know that he was the judge in cause number 9991, 9992 and 10376 in the Circuit Court of Lincoln County, Mississippi. And counsel stood still and did nothing, and this was at the Sentencing Hearing on November 6, 1991 after the trial. See (R. 395-396).

> By the Court: Very well, Well, of course this same Judge is the Judge of the Circuit Court of Lincoln County, and I have independent recollection of having sentencing Mr. Sanders on those two occasions, the first of which was in the old courthouse before it was torn down, and the second time in the new court house after it was built. All right.

1. Prior to the start of this trial on October 13, 1991, the petitioner was indicted for the offense of unlawful possession of cocaine with intent to deliver with enhanced punishment and by an habitual criminal, arising out of three (3) prior felonies conviction. See (R. 2-3).

2. On September 20, 1978, I defendant pled guilty in the Circuit Court of Lincoln County, Mississippi, in cause number 9991 to the crime of unlawful sale of controlled substance, a felony under the laws of the State of Mississippi: and was sentenced by the Court to serve a term of five years in the

custody of Mississippi Department of Corrections. However, execution of said sentence was suspended an I was placed on probation for a period of five years under certain terms and conditions as set forth in the Order of the Court. See (R. 186). Also on said date, I defendant plead guilty to the crime of unlawful sale of controlled substance in cause number 9992, a felony under the laws of the State of Mississippi, and was sentence by the Court to serve a term of five years in the custody of the Mississippi Department of Corrections. However, execution of said sentence was suspended and I was placed on probation for a period of five years. Said order of probation is of record in Minute Book 18 at page 533 in said Clerk's office in Lincoln County, Mississippi. Said sentence was to run consecutively with sentence imposed in cause number 9991. See (R. 403-407.

3. On September 20, 1978, Judge N. Pigott sign off on the plea negotiation. See (R. 407).

4. On/or about June 1, 1983, in the Circuit Court of Lincoln County, Mississippi. The Assistant District Attorney Daniel H. fairly did a Petition For Revocation of Probation in cause number 9991 and 9992 the State of Mississippi vs. Mervin Sanders and Judge N. Pigott was at this Hearing. See (R. 408-409), which stated as following:

> Petition now charge that the defendant has materially violated the term and conditions of his probation by wilfully, unlawfully, feloniously and knowingly having

in his possession more than one ounce of marihuana, but less one kilogram of marihuana, a controlled substance, with the unlawful and felonious intent of him, the said Mervin Sanders, wilfully, unlawfully, feloniously an knowing to distribute said marihuana to some other **person or persons unknown on or about the 3rd day of May 1983,** in Lincoln County, Mississippi.

5. On September 16, 1983, Judge Joe N. Pigott did the Order Revoking Probation in cause number 9991 and 9992, the State of Mississippi vs. Mervin. See (R. 412-413).

On that Order that was sign by Judge Joe N. Pigott, Revoking Probation, it show that I defendant was not appointed counsel at the Petition For Revocation of Probation and I stood along at this hearing. See (R. 412) it shown as following:

FRIDAY MORNING, SEPTEMBER 16TH, 1983

ORDER REVOKING PROBATION

This cause came to be heard this day upon oral oral and documentary proof for Revocation of Probation against the defendant, **Mervin Sanders.** And the Court find as follows:

See (R. 413) for the Minutes number

MINUTES 23
SEPTEMBER TERM, 1983
FRIDAY MORNING, 16TH, 1983

In Custis v. United States 114 S.Ct. 1738, 511 U.S. 496 (1994): As revered in a number of the case cited in this opinion, failure to appoint counsel at all will generally appear from the judgment roll itself of from an accompanying minute order. Plaintiff have showed that their was no appointment of counsel on the Order Revoking Probation. See (R. 412).

6. On August 30, 1983, in the Crcuit Court of Lincoln County, Mississippi. The defendant was indicted for the offense of unlawfully of more than one ounce of marihuana with intent to distribute, in cause number 10,372 the State of Mississippi v. Mervin Sanders. See (R. 414), shown as following:

> On or about the **3rd day of May 983** in the County of aforesaid and within the jurisdiction of this Court, did wilfully, unlawfully, feloniously and knowingly have in his possession more than one ounce of marihuana, but less than one ounce of marihuana, a controlled substance, with the unlawful and felonious intent of him the said Mervin Sanders, wilfully, unlawful, feloniously and knowingly to distribute said marihuana to some other **person or persons to the grand jurors unknow,** contrary to and in violation of Section 41-29-139 of the Mississippi Code of 1972, and

7. On September 16, 1983, Judge Joe N. Pighott in the same cause number 10,372, the State of Mississippi vs. Mervin Sanders. That Judge Judge Joe N. Pigott handle it this way:

> Dispostion 9/16/1983, Nolle Prosegui/dismissed. On this document it shown that the defendant had no counsel. see (R. 414-415). And this was the same offense which the defendant probation was revoked on. See (R. 412-413).

8. On September 8, 1983, in the Circuit Court of Lincoln County, Mississippi, the defendant was indicted for the same offense of unlawful possession of more than one ounce of marihuana with intent to distribute in cause number 10,399 the State of Mississippi vs. Mervin Sanders. See (R. 416), as shown above in no. 6 this indictment stated the same.

9. On September 16, 1983, Judge Joe N. Pigott in the same cause number 10,399, the State of Mississippi vs. Mervin Sanders.

The Judge handl it the same he did in the above number 7. On this form and it shown no counsel name. See (R. 417). This is the same offense in which the defendant probation was revoked for. See (R. 412-413), and the same offense which the defendant was indicted for on August 30, 1983. See (R. 414).

10. At the Revocation of Probation Hearing that was did on or about June 1, or 1983, by Judge N. Pigott, see (R. 408-413), in cause number 9991 and 9992 was did in a violation of the defendant right to counsel.

In this case sub judice the defendant was not sentence at the time he plea guilty in September 20, 1978. Defendant was sentenced by the Court to a term of five years in the custody of the Mississippi Department of Correction. However, execution of said sentence was suspended and I defendant was placed on probation ~~for~~ a period of five years under certain terms and conditions as set forth in the order of the Court in cause number 9991 and the same in cause number 9992. See (R. 407).

The Supreme Court of Mississippi is well aware that all Revocation of Probation is entitled to be represented by appionted of counsel.

See Rily v. State 562 So.2d 1202 (Miss. 1990): citing Mempa v. Rhay, 389 U.S. 128, 88 S.Ct. 254, 10 L.Ed.2d 336 (1967) (Holding that a probation is entitled to be represented by appionted counsel at a combined revocation and sentencing hearing

unless the probation was sentenced at the time of trial). As showed above the defendant was not sentenced until the time that probation was revoked on September 16, 1983. See (R. 412-413).

The charge that happen on May 3, 1983, that was used to revoked the defendant probation. Judge Joe N. Pigott dismissed it on September 16, 1983 as zero conviction. See (R. 418). And in the Petition For Revocation of Probation, the defendant never had an accuser who could said that the defendant intent to distribute any marihuana to and this was the same information in the indictment in cause number 10,372 and 10,399. See (R. 409).

11. On August 30, 1983, I defendant Mervin Sanders was indicted for the offense of unlawful sale of more than one ounce of marihuana. In cause number 10,376 in the Circuit Court of Lincoln County, Mississippi. See (R. 419).

12. On September 8, 1983, I defendant was arraigned of the charge of unlawful sale of marihuana and entered a plea of not guilty in cause number 10,376 in the State of Mississippi vs. Mervin Sanders. See (R. 4200.

13. On September 16, 1983, at the Change of Plea And sentence. I defendant entered a guilty plea to one count of the sale of marihuana in violation of section § 41-29-139 of the Mississippi Code of annotated (1972), to eight (8) years to run consecutive to sentence in cause number 9991 and cause number 9992. See (R. 423).

14. On/or about September 15, 1984, Attorney Daniel H. Farily in his private practice filed a Motion For Modification of Sentence in cause number 9991, 9992 and 10,376 in the Circuit Court of Lincoln County, Mississippi. The State of Mississippi vs. Mervin Sanders, to have these prior conviction and sentence to run concurrently. See (R. 424), of the letter of the attorney.

> Dear Mervin
> I examined the records and found that the Judge Order back in 1978, that the sentence you received 1978 were order to be consecutively. I do not think we have much chance, but I will give it a shot any way.

15. On February 1, 1985, in the Circuit Court of Lincoln County, Mississippi. The State of Mississippi vs. Mervin Sanders in cause 999, 9992 and 10,376, Judge Joe, N. Pigott sign off on the order to chance the sentence from consecutively to concurrently. See (R. 426).

The defendant have shown above facts that Judge Joe N. Pigott had rule four time prior and the case I am on now made five.

DISQUALIFIED OF A JUDGE THE AUTHORITY OF LAW

As this Court is well aware, of the Mississippi Constitution of 1890 Section 165 provides in part that:

> No judge of any Court shall preside on the trial of any cause where the parties or either of them shall be connected with him by affinity or consanguinity, or where he may be interested in the same, except by the **CONSENT OF THE JUDGE AND OF THE PARTIES.**

The Mississippi Supreme Court re-affirmed and expanded on this standard in Jenkins v. State, 570 So.2d at 1192 (Miss. 1990). In Jenkins the Court held that in Mississippi, disqualification of a judge is both constitutional and statutory. Section 165 of the Mississippi Constitution of 1890 requires a judge to disqualify himself "where the parties or either of them, shall be connected with him by affinity or consanguinity, or where he may be interested in the same, except by the consent of the judge and of the parties." Mississippi Code, in addition to requiring disqualification for relation of the judge by affinity, or consanguinity, requires disqualification where the judge may have been of counsel. Miss. Code Annotated § 9-1-11 (1972).

Canon 3 C of the Code of Judicial Conduct also pertains to the disqualification of a judge. It requires disqualification under the following conditions:

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be question, including but not limited to instance where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding

(b) He served as a lawyer in the matter in controversy, or lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or

such lawyer has been a material witness concerning it.

For an understanding of the word **"proceeding"** in Canon 3(1)(a) we must look to our authoritative federal constructions when determining what our construction or our rules ought to be. Mississippi Judicial Conduct Canon 3 C(1)(a) is very nearly identical to 28 U.S.C. 455 (A) B(1) and (d)(1) give the understanding of the word **"proceeding"**

(d) For the purpose of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" [include pretrial, trial, appellate review, or other stage of litigation:

See Collins v.Transport, 543 So.2d 160, 166 (Miss. 1989): Our concern have been expressed by U.S. Circuit Judge Alvin B. Rubin. "Judicial Ethics reinforced by statute exact more than virtuous behavior; they command impeccable appearance. Purity of heart is not enough. Judge's robes must be as spotless as their actual conduct." Hall v. Small Business Administration, 695 F.2d 175, 176 (5th. Cir. 1983). Federal law codifies Canon 3 (c)(1)(a) in the form of 28 U.S.C. § 455 (1976) whereby a judge is "required to disqualify in any proceeding in which his impartiality might reasoable be questioned." The Case law requires that a judge disqualify himself "if a reasonable person, knowing all circumstances, would harbor doubts about his impartiality." Hall, 695 F.2d at 179.

The Code of Judicial Conduct, adopt by the Judicial Conference of the United States, states: [HN1] "A judge shall disqualify himself in a proceeding in which his impartiality might reasonable be questioned..." Code of Judicial Conduct, Canon 3(C)(1), reprinted in 69 F.R.D. 273, 277 (1975). By statute adopted in 1974 that ethical standard was converted into mandate; every justice, judge and magistrate is required to [HN2] "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455 (1976 § supp. 1980). This disqualification may be waive n1 but the judge is forbiden to accept a waiver unless "it is preceded by a full disclosure on the record of the basis for disqualification." § 455(e) (Supp. IV 1980).

N1 28 U.S.C. § 455(b) (1976) relates to disqualification for other reasons, such as interest in the case or bias. This provision may not be waived. Id. § 455(e) (Supp. IV 1980).

Hall, 695 F.2d at 180): States A judge is required merely to disclose the basis for disqualification, not "every incident or factual detail which might contribute to the overall impression of partiality." United States v. Conforte, 457 F. Supp. at 655 (footnote omitted). In this case, however, the magistrate and his law clerk failed fully to disclose the basis on which a reasonable person might "harbor doubts about the magistrate's." Potashnick, 609 F.2d at 1111. Therefore, the SBA did not waive its right to seek recusal of the magistrate. n3

n3 The Statute expressly requires the judge to state the reasons for his potential disqualification on the record. If the parties desire to waive the disqualification and consent to his sitting, Advisory Opinion No. 25 of the Advisory Committee on judicial Activities, which antedates the statute, state a recommended procedure:

> In order that there be no question about the voluntary character of the consent, the Committee reiterates the recommendation contained in Advisory 20, **namely; that the judge advise counsel** at the earliest practiable time, through the clerk of the court or in some other appropriate way, of the reason for his disqualification, and **ask counsel to reply in writing to the clerk** whether they wish the judge to hear the case or participate in the hearing of an appeal. Unless all parties request the judge to continue, the clerk should not tell the judge which parties did not make such request, and the judge should not act thereafter in the case.

See Mississippi Constitution of 1890, Article 6, Section 165, 2which state the same:

> No judge of any court shall preside on the trial of any cause where the parties or either of them shall be connected with him by affinity or consanguinity, or where he may be interested in the same, **except by the consent of the judge and of the parties.** Whenever any judge of the supreme court or the judge or chancellor of any district, in the State, shall, for any reason, be unable or disqualified to preside at any term of court, or in any case where the attorney engaged therein shall not agree upon a member of the bar to preside in his place, the governor may commission another, or other, of law knowledge to preside at such term or during such disability or disqualification in the judge or judges so disqualified. When either party shall desire, the supreme court for the trial of any cause shall be composed of three judge. No judgment or decree shall be affirmed by disagreement of two judge constituting a quorum.

In this case sub judice Judge Joe N. Pigott never disclose to the Court, That he had been the judge in four (4) prior proceeding against the defendant (Mervin Sanders). Are nor was I defendant given the opportunity to the judge sitting on this case. But he made these statement at the Sentencing Hearing on November 6, 1991, just seven (7) days after trial on October 31, 1991. See (R. 395-396).

> By The Court: All right.
> By Mr. Lampton: Your Honor, the State would also offer as an exhibit in this hearing a certified copy from the Circuit Court of Lincoln County, Mississippi in Cause Number 10,376, the unlawful sale of more than one ounce of marijuana, wherein the defendant Mervin Sanders was sentenced to serve eight years in the Mississippi Department of Correction. That sentence was to run consecutive to the sentences in 9991 and 9992. This document was certified on the 7th day of March of 1991 by Karen Maxwell, and it bears the seal of the Court, of the Circuit Court of Lincoln County.
> By Mr. Price: For the record, we would make the same objection as to the form of the certification.
> By The Court; Very well. Well, of cousre, this same Judge is the Judge of the Circuit Court of Lincoln County, and I have independent recollection of having sentenced Mr. Sanders on those two occasions, the first of which was in the old courthouse before it was torn down, and the second time in the new courthouse after it was built. All right.

See The Aetna Casualty and Surety Company, etc. v. Berry 669 So.2d 75 (Miss. 1996): It must be remember, however, that it is the judge who must come forth and recuse himself so as to avoid any appearance of impropriety. **Jenkins. 570 So.2d at 1192.**

We might also reach a different conclusion if chancellor Bridges had given the parties an opportunit to object or consent

to him sitting on the case. We recently addressed the issue of parties waiving their objections to judicial recusal, In **Baana v. State.** 635 So.2d 851 (Miss. 1994), wherein we acknowledged that in Mississippi, disqualification of a judge is both constitutional and statutory. Section 165 of the Mississippi Constitution of 1890 requires a judge to disqualify himself 'where the parties or either of them, shall be connected with him by affinity or consaguinity, or wher he may be interested in the same, **except by the consent of the judge and of the parties.!** Mississippi Code, in addition to requiring disqualification for relation of the judge by affinity or consanguinity, requires disqualification where the judge may have been of counsel. 635 So.2d at 853 9quoting Jenkins, **570 So.2d 1192) (emphasis added).** In **Banana,** the defendant was given the opportunity to object to the judge sitting on his case, and after conferring with counsel, specifically waived any objections. We then held that he had indeed waived the recusal issue for purposes of his appeal. The defendant were not given such an opportunity in this case.

We conclude that an objective observer would harbor doubts in this situation about judge Bridges' impartiality. **Frierson v. State,** 606 So.2d 604 (Miss. 1992); **Jenkins,** 542 So.2d at 1181. Finally, Ms. Berry's argument that one of the defense lawyers (John McLaurin) was also somewhat involved in Judge Bridges'

campaign is of little consequence. First, based on Judge's statenement, and the newspaper article submitted by defendants, it is apparent that McLaurin's involvement was not as extensive as Harrell's. Even it it were, that fact does not serve to balance the scales on the question of the appearance of impropriety; rather, it may very well lead one to objectively conclude that Judge Bridges had even more reason to recuse himself.

This assignment has merit. Judge Bridges should have recused himself under the circumstances in this case.

The disqualification of a judge is a constitution issue. See Jenkins v. State 570 So.2d. 1193 (Miss. 1990): Under the objective test this Court has adopt to determine if a judge should have disqualified him or herself, a reasonable person knowing that Judge Yeager acted as prosecutor during the indictment of Jenkins would certainly question his impartiality. The very functions involved in the performance of the two positions are contradictory and no person can be considered to be impartial while that person is acting as a partisan.

Jenkins has been denied due process as required by Mississippi Constitution Article 3, §14 which includes a fair and impartial trial. See Houdson v. Taleff, 546 So.2d 359 (Miss. 1989), and Frazir v. State, 289 So.2d 690 (Miss. 1974). For that reason, we would reverse and remand for a new trial.

See Aetna Life Insurance Co. v. Lavoie Al. 475 U.S. 821-22

(1986): The record in this case present more than mere allegations of bias and prejudice, however. Appellant also presses a claim that Justice Embry had a more direct stake in the outcome of this case. In Tumey, while recongnizing that the Constitution does not reach every issue of judicial qualification, the Court concluded that "it certainly violates the Fourteenth Amendment...to subject [a person's] liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case." 273 U.S. at 523.

See Berry v. State 728 So.2d 570 (Miss. 1999): This Court will "indulge every reasonable presumption against the waiver of a constitution right." Id., quoting Aetna Ins. Co. v. Kennedy, 310 U.S. 389, 393, 57 S.Ct. 809, 812, 81 L.Ed. 1177, 1180 (1937).

ISSUE II

JUDGE JOE N. PIGOTT VIOLATED MISSISSIPPI CODE OF JUDICIAL CONDUCT CANON 1, 2, 2A, 3A(1), 3A(4), 3B(1) AND 3(1) WHEN HE CHANGE THE DEFENDANT SENTENCES FROM CONSECUTIVE TO CONCURRENTLY.

See (R. 458), (¶ 4) of the order of Judge Michael M. Taylor: Sanders claim that Judge Piggott has prejudged the case at hand is unsupported by the record. Seeking to bolster his charge against Judge Piggott Sanders alleges alleges that a 1985 sentence handed down to Sanders by Judge Piggott should have been served consecutively instead of concurrently. Of course even if

the statement is accepted as true it does nothing to help Sanders support his claim that Judge Piggott was biased against him.

See United States v. Singleton 144 F.3d 1345-47 (10 Cir. 1998): First, the presumption that the sovereign is excluded unless named does not apply "where the operation of the law is upon the agents or servants itself." Id. at 383, 58 S.Ct. 275. See United States v. Arizona, 295 U.S. 174, 184, 55 S.Ct. 666, 79 L.Ed. 1371 (1935), Dollar Sav. Bank v. United States, 86 U.S. (19 Wall.) 227, 239, 22 L.Ed. 80 (1873); see also City of Buffalo v. Hanna Furnace Corp., 305 N.Y. 369, 376, 113 N.E. 520, 523-24 (1953). In the case before us § 201 (c)(2) does not restrict any interest of the sovereign itself; it operates only upon an agent of the soveregin, limiting the way in which that agent carries out the government's interests. There is no presumption that regulatory and disciplinary measures do not extend to such officers. Taken at face value the language indicates the purpose of Congress to govern conduct of its own officers and employees as well as that of others. Arzona 295 U.S. at 184, 55 S.Ct. 666 (holding that the Secretary of the Interior was clearly subject to a law prohibiting "any person from constructing a dam on navigable waterways without the consent of Congress).

The second exception provides that the government is subject to a statute, even if it infringes upon a recognized government prerogative, if the statute's purpose is to prevent fraud, injury, or wrong. Nardone, 302 U.S. at 384, 58 S.Ct. 27, Herron,

87 U.S. (20 Wall.) at 255-56 Nardone itself relied upon this principle to hold agents were convered by statutory term "anyone" in the 1934 federal wiretap. See Nardone 302 U.S. at 382-84, 58 S.Ct. 275. the anti-gratuity provision of § 201 (c)(2) indicates Congress's belief that justice is undermined by giving, offering, or promising anything of vale for testimony. If justice is perverted when a criminal defendant seeks to buy testimony from a witness, it is no less perverted when the government does so. Because § 201(c)(2) address what Congress perceived to be wrong, and operates to prevent fraud upon the federal courts in the form of inherently unreliable testimony, the proscriptio § 201(c)(2) must apply to the government. See at 384, 58 S.Ct. 275. Further, the interest of the United States as soveregin militate in favor of applying § 201(c)(2) against federal prosecutors. The soverign's interests are in the enforcement of its laws and the just administration of its judicial system advances both interests.

Having escaped the first class of cases in which the canon applies, we determine whether our case falls within the second: cases in which "public officers are impliedly excuded from language embracing all persons" because such a reading would "work obvious absurdity.! Id, A brief overview of legal principles and the common law will confirm the rationality of the statue's result and indicate the scope of the tradition behind

its application to the government. See Kuzam v. IDR, 821 F.2d 930, 932 (2d Cir. 1987). ("[E]stablished principles of statutory construction compel us to seek a rational and sensible construction of the language in question.....").

One of the very oldest principles of our legal heritage is that the king is subject to the law. See Romans 13. King John was taught this principle at Runnymede in A.D. 1215, when his barons forced him to submit to Magna Carta, the great charter that imposed limits on the exercise of soveregn power. See William Sharp McKechine carta, 36, 42 (1914). One of the first modern expositions of this hallowed principle is found Lex, Re. whose title indicates the fundamental shift in our legal heritage toward the primacy of the law and the subordinate position of the king. Justice Brandeis expound as follows on the principle:

Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government will be imperilled if it fails to observe the scrupulously., Our Government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example. crime is contagious. If the Government becomes a lawbreaker, it breed contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justices the means--to declare that the Government

commit crimes in order to secure the conviction of a private criminal--would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

Olmstead v. United States 277 U.S. 438, 485, 48 S.Ct. 564, 72 L.Ed 944 (1928) (Brandeis, J., dissenting). This venerable principle will not give way to the expediency of the government's present practices without legislative authorization.

In this case sub judice the issue of Judge Joe N. Pigott violation of the Canon was shown in (R. 74-84).

1. Judge Joe N. Pigott violated Mississippi Code of Judicial Conduct Canon 2a and 2B by lend the prestige of his office to Ex-assistance District Daniel H. Fairly to advance in his practice. In February 1, 1985. And that Judge Joe N. Pigott was not conscious of this circumstances at the time of trial in the Circuit Court of Pike County, Mississippi. State of Mississippi v. Mervin Sanders cause number 13,832.

2. On/or about June of 1983, Assistance District Attorney did an Petition For Revocatio of Probation in the Circuit Court of Lincoln County, Mississippi. In Cause number 9991 and 9992. See (R. 408-409).

3. On September 16, 1983, Judge Joe N. Pigott sign off on the Probation violation. See (R. 412-413).

4. On August 30, 1983, I defendant (Mervin Sanders) was indicted for the offense of unlawful sale or more than one ounce

of marihuana. In cause number 10,376 in the Circuit Court of Lincoln County, Mississippi. See (R. 419).

5. On September 8, 1983, I defendant was arraigned on the charge of unlawful sale of marihuana and enter a plea of not guilty in cause number 10,376, in the State of Mississippi vs. Mervin Sanders. See (R. 420).

6. On September 16, 1983, at the Change of Plea And Sentencing. I defendant entered a guilty plea to one count of the sale of marihuana in violation of section § 41-29-139 of the Mississippi Code of Annotated (1972), to eight (8) years to run consecutive to sentences in cause number 9991 and cause number 9992, See (R. 421-423).

7. On/or about September 15, 1984, attorney Daniel H.Farily in his private practice filed a Motion For Modification of Sentence in cause number 9991, 9992 and 10,376 in the Circuit Court of Lincoln County, Mississippi. The State of Mississippi vs. Mervin Sanders, to have these prior conviction and sentence to run concurrently. See (R. 424), in this letter it stated this:

Dear Mervin:
I examined the records and found that the Judge ordered, back in 1978, that the sentences you received in 1978 were ordered to be consecutively. I do not think we have much chance, but I will give it a shot any way.

8. On February 1, 1985, in the Circuit Court of Lincoln County, Mississippi. The State of Mississippi vs. Mervin Sanders in cause number 9991, 9992 and 10,376, Judge Joe N. Pigott sign off on this Order. See (R. 426).

ORDER

This cause came on for hearing on Motion to run sentences concurrently and the Court having reviewed the record in these causes and the Motion filed herein is of the opinion that the Motion is well taken;

It is therefore ordered and adjudged that the sentence of confinement in cause 9991, 9992 and 10,376 as to the defendant Mervin Sanders shall run concurrently.

ORDER, AND ADJUDGED this is 1st day of February, 1985.

Judge Joe N. Pigott did this in a violation of Mississippi Code Judicial Conduct Canons 1, 2A, 2B, 3A(1), 3(A)(4), 3(b), and 3 C(1)(b).

See Denton v. Maples 394 So.2d 898 (Miss. 1981): "(2)(a) Any Circuit Court or County Court may, upon it s own Motion, acting upon the advice and consent of the Commissioner of the Department Of Correction at the time of the initial sentencing only. Not earlier than thirty (30) days nor later than one hundred eight (180) days after the defendant has been delivered to the custody of the Department of Corrections, to which he has been sentenced.

9. Defendant had been delivered to the Mississippi Department of Correction on September 28, 1983, see (R. 428). Judge Joe N. Pigott change the sentence 18 months after the defendant had been delivered to the Mississippi Department of Correction. See (R. 426).

On September 28, 1983 the defendant had 18 years in the Mississippi Department Of Corrections. See (R. 437), see Sentence Computation Data Sheet. On February 1, 1985, sentence

was corrected, and it shown I had eight (8) years, see Sentence Computation data Sheet (R. 436).

See Mississippi Commission on Judicial Performance v. Sanders, 708 So.2d 872 (Miss. 1998): A judge does not have the authority to suspend the execution of a sentence after it has been imposed. **Fuller v. State,** 100 Miss. 811, 57 So. 806 (1912). This Court has stated that "the only time a trial judge can suspend a sentence is immediately after the defendant is convicted and the the time the trial judge announces and imposes sentence." **Denton v. Maples,** 394 So.2d 895, 898 (Miss. 1981). Further, this Court has stated that if a case is appealed to this Court and affirmed, :there is no authority in the Circuit Court, or indeed this Court, following the issuance of a mandate affirming the case, to modify a judgment and sentence theretofore imposed." **Harrigill v. State,** 403 So.2d 867, 868 (Miss. 1981), Miss. Code Ann. § 47-7-33 address the power of the circuit court to suspend sentence and place defendant on probation.

The sentences of 9991, 9992 and 10,376 was imposed on September 16, 1983. See (R. 423).

See Harigill v. State 403 So.2d 869 (Miss. 1981): The only avence of relief available for people incarcerated is through the Executive Branch of our government, unless there is some statutory of constitution right being violation, in which latter event to address the appropriate Court by appropriates original proceeding. Following conviction and final termination of a case,

however, neither the Circuit Court nor this Court has power to simply review a case and decide whether or not the original sentence should be amend in any way. Any attempt to do so is a nullity.

10. At the Sentencing Hearing in the Circuit Court of Pike County, Mississippi. In Cause Number 13,732, the State of Mississippi vs. Mervin Sanders, Judge Joe N. Pigott had forgot that he had ran these prior convictions and sentences in cause number 9991, 9992 and 13,372 concurrently in February 1, 1985, See (R. 426). This is what happen at the sentencing hearing on November 6, 1991. See (R. 399).

> By The Court: And hope that you wouldn't violate the law any more and then, of course, you did, and I had to sentence you September 16, 1983, to eight years for the charge of sale of more then one ounce of marijuana, and you had to serve---how long did you serve?
>
> By the defendant: Did two years.
>
> By the Court: And that was with the hope that you would just put out of your mind ever dealing with marijiuana or cocaine or any other controlled substance. We gave you a second chance, we gave you a pretty light sentence, and we let the other sentences run--they ran consecutive but for reason they let you out **extremely early.**

See Liljeberg v. Health Services acquisition Corp. 486 U.S. 861, 108 s. Ct. 2203, 100 L.Ed.2d 855 (1988)). In this case both the District Court and the Court of appeals found an ample basis in the record for concluding that an objective observer would have questioned Judge Collins' imaprtiality. Accordingly, even though his failure to disqualify himself was the product of a

temporary lapse of memory, it was nevertheles a plain violation of the terms of statute.

A Conclusion that a statutory violation occurred does not, however, end our inquiry. As in other areas of the law, there is surely romm for harmless error committed by busy judges who inadvertenly overlook a disqualifying circustance. n9 There need not be a draconian remedy for every violation of 455(a).It would be equally wrong, however, to adopt am absolute prohibition against any relief in case involving forgetful judges.

Judge Joe N. Pigott violated Section 165 of the Mississippi Constitution of 1890 and Mississippi Code of Judicial Conduct Canon 3 C, when he did not disqualified himsel, and the defendant did not consent to him being the judge. The only remedy is to reverse the case.

See Collins v. Dr. C.V. Joshi 611 So.2d 902 (Miss. 1992). In Davis the case went to jury verdict. Here it was disposed of by directed verdict. There may be circumstances in which a failure to recuse might be deemed harmless error but we decline to enter such an analysis here. It should suffice to say that in the trial of a case, the effect of bias often undectible from the record and the proper course in all but the most unusual circumstance is to reverse. In the words of the United States Supreme Court in Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108

S.Ct. 2194, 100 L.Ed.2d 855 (1988) dealing with the appropriate remedy for failure to recuse under the federal statute identical to canon 3 C., "it is approriate to consider the risk that the denial of relief will produce injustice in other case, and the risk of undermining the public's confidence in the judicial process." Id at 864

11. The defendant had made the Circuit Court of Pike County, Mississippi, aware of the Petition For Emergency Application For Extraordinary Relief. Filed in the Supreme Court of Mississippi on January 6, 2009. See (R. 456-457).

12. In Judge Michael M. Taylor rule on February 2, 2009, after the ruling of September 10, 2008, which was identical to each other. The filed A Motion to Supplement Record to shown of the ruling to the Supreme Court of Mississippi. See (R. 498-512). To shown of Judge Michael Taylor was biased.

See United States Of America V. Olis 571 F. Supp.2d 791 (5th, Cir. 2008). "As articulated by the Supreme Court, this rule more or less divides events occurring or opinions expressed in the course of judicial proceeding from those that take place outside of the litigation context and hold that the former rarely require recusal." The Fifth Circuit has additionally held that § 455 motions must be timely. see United States v. Sanford, 157 F.3d 987, 988 (5th Cir. 1998), cert. denied, 526 U.S. 1089, 119 S.Ct. 1500, 143 L.Ed. 2d 654 (1999) (describing the general rule on timeliness as requiring one to seek disqualification

under § 455 "at the earliest moment after [obtaining] knowledge of the facts demonstrating the basis for such a disqualification").

Court must be cautious and discriminating in review recusal motion for, as the Seven Circuit has noted:

> A thoughful observer understands that putting disqualification in the hands of a party, whose real fear may be that the judge will apply rather disregard the law, could introduce a bias into adjudication. Thus the search is for a risk substantially out of the ordinary.

See in Re Blake 912 So.2d 917 (Miss. 2005): The oath of office taken by all trial judges, including Judge Green, requires that judge "administer justice without respect to persons," and that they "faithfully and impartially execute and perform" all of their duties.

See Collins v. Transport 543 So.2d 166 (Miss. 1989): Elementary notions of due process afford a corollary priciple: that a judge is otherwise qualified to preside at trial or other proceeding must be sufficiently neutral and free of disposition to be able to render a fair decision. No person should be required to stand before a judge with a "bent mind." Berger v. United States, 255 U.S. 22, 41 S.Ct. 230, 233, 65 L,Ed. 481 (1921); Wolfram, Modern Legal Ethics : 17.5.5 Independence Neutrality, p. 989 (1986).

The defendant herein, respectfully ask this Court, that the

opinion issued by Judge Michael M. Taylor on January 9, 2008, filed February 2, 2009 and September 10, 2008. Be withdraw as biase, because Judge Michael M. Taylor did not follow the law on disqualification, he had more respect for the Honorable Joe N. Pigott.

ISSUE III

THE DEFENDANT WOULD SHOWN THAT JUDGE JOE N. PIGOTT WAS BIAS OR PREJUDICE BY HIS FAILURE TO DISMISS THE CHARGE UNDER THE SPEEDY TRIAL. WHICH IS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND BY ARTICLE 3, SECTION 26 OF THE MISSISSIPPI CONSTITUTION.

Since the time of the filing of Motion Under Mississippi Rules of Civil Procedure 60 B(4), Mississippi Code Judicial Conduct Canon 3 C(1)(A) to Vacate and Set Aside Conviction And Sentence. The Fifth Circuit Court of Appeal has decided the case of United States v. Seale, 542 F.3d 1033 (5th Cir. 2008) pertaining to denial of speedy trial rights to a defendant and the remedy therefor. Stated that the delay between the commission of the alleged offense and the indictment, defendant claimed that his prosecution was barred by the applicable statute of limitations.

The appellant would respectfully point out to the Court that the alleged offense of which I was convicted took place on or about January 21, 1990. However, the Appellant was not indicted until October 17, 1991, and tried on October 31, 1991.

The defendant argues the speedy issue as issue number 6, in the Circuit Court of Pike County, Mississippi, at the filed of the Motion. See (R. 134-137).

When the issue of the speedy trial was before the Supreme Court, in Sanders v. State 678 So.2d 669 (Miss. 1996): Th State stated we will not consider issues raised for the first time in an appellant's reply brief."

When the issue of the speedy trial was before the Court of Appeal of Mississippi. In Sanders v. State 846 So.2d 237-238 (Miss. 2002): Sanders argues on appeal that his right to a speedy trial was violated. This issue was examined on direct appeal. The Mississippi Supreme Court found that the issue was procedurally barred because it was not raised at trial and was not raised in the brief of the appellant. Sanders first made this assertion in his reply brief on the appellate level. The trial court cannot be held in error on a legal point never presented for it consideration. Chase v. State, 645 So.2d 829, 846 (Miss. 1994). We are not, thus, obligated to review this issue. Id Nevertheless, because of the lengthy delay alleged by Sanders, we will discuss the merits of the issue.

Barker v. Wingo, 407 U.S. 5143, 33 L.Ed.2d 101, 92 S.Ct. 2182 (1972), stands as the seminal case on the issue of the sixth Amendment right to a speedy trial. State v. Woodall, 801 So.2d 678 (P 10) (Miss. 200. Our court have consistenly followed the

approach set in Barker since its inception. Id In Barker, the United States Supreme Court stated that courts should consider the "length of delay, the reason for the delay, the defendant assertion of his [speedy trial] right, and prejudice to the defendant" when faced with Sixth Amendment speedy trial issue. Woodall, 801 So. 2d at 681 (P 10) (guoting Barker, 407 U.S. at 530). In applying these four factors, the court instructed that they "are related factors and must be consider together with such other circumstances as may be relevant." Woodall, 801 So.2d at 681 (P 10) (quoting Barker 470 U.S. at 533).

See United States v. Seales 524 F.3d 1033 (5th Cir. 2008), stands as the seminal case on the issue of the Sixth Amendment right to a speedy trial. Between the commission of the alleged offense and the indictment, for the running of the statute of limitations.

United States 524 F.3d 1033 (5th Cir. 2008), is an intervening decision, because this decision create a new intervening rule, right, and claim that did not exist at the time of my conviction under the speedy trial. Id. at 237, Our Court have consistently followed the approach set forth in Barker since its inception.

And "intervening decision is not procedurally barred. See Conner v. State 904 So.2d 105 (Miss. 2004): Under case law, the Eight Amendment barred the execution of mentally retarded persons. Pursuant to Miss. Code ann. § 99-39-52(2) (2004), this

was an "intervening decision" of the United States Supreme Court that saved the inmate's petition before the state supreme court from being procedurally barred. P5. Conner now brings before this Court a successive application to seek leave to file motion to vacate death sentence, claiming that he is mentally retarded and, therefore, exempt by Atkins from execution. Sine Atkins was not decided until 2002, it constitute an "intervening dicision" of the United States Supreme Court, saving Conner's petition before this Court from being procedurally barred. Miss. Code Ann. § 99-39-5(2) (Supp. 2004). See Foster v. State, 848 So.2d 172 (Miss. 2003).

In this case sub judice the speedy trial is a constitutional right. See Sanders v. State 678 So.2d 670 (Miss. 1996): As a rule, the Supreme Court only addresses issues on plain error review when the error of the trial court has impacted upon a fundamental right of the defendant. "It has been established that wher fundamental rights are violated, procedural rules give way to prevent a miscarriage of justice." Gray v. State, 549 So.2d 1316, 1321 (Miss. 1989). Although the right to a speedy trial is a fundamental constitutional right, it is diffcult to tell if this right has been violated in the case at bar.

The chronology of, even from the time of Sanders' arrest on January 21, 1990, until the time of my trial on October 31, 1991, is as follow:

1. January 21, 1990, Arrest for possession of cocaine with intent. See (R. 532-533).

2. January 22, 1990, Agent Oster made out a criminal affidavit & warrant for Sanders's arrest. See (R. 532-533).

3. January 22, 1990, Affidavit of Indigency & Application for appointment of counsel, Attorney Jerry Rushing. See (R. 531).

4. January 26, 1990, Sanders released on recognizance bond. This come to 5 days on the speedy trial for Sanders. See (R. 530).

5. February 13, 1990, Agent Oster went back to Justice Court and Judge Phillip re-date the criminal affidavit for Sanders arrest. See (R. 534, 539-540).

6. February 21, 1990, sanders rearrested & incarcerated in Brookhaven, Mississippi and transport to the Pike County Jail, see (R. 530, 535-536). This come to 26 days for the State on the speedy trial.

7. February 21, 1990-March 16, 1990, Sanders was incarcerated (23 days + 5 days = 28 days for Sanders on the speedy trial. See (R. 530).

8. March 16, 1990, Sanders bonded out of jail & released to Ted Burton, Bondsman (28 days for Sanders on the speedy trial. See (R. 537-538).

9. March 27, 1990, Agent Oster went back to Justice Court and Judge Phillip O'Brien charged Sanders with possession of

cocaine and bound Sanders over to next term Of Court, (October , 1990) (2333 days for Sanders on the Speedy trial. See (R. 539-541).

10. October 16, 1990, Analyst Maddox completed report on the cocaine. See (R. 293), lines 17-18. (241 days for Sanders on the speedy trial.

11. March 4, 1991, was the next term of Court, but no indictment. (380 days for Sanders on the soeedy trial.

12. March 7, 1991, Document certified for Circuit Court of Lincoln County by Karen Maxwell show that prosecution was ready for trial. See (R. 394, line 25-28). (383 days for Sanders on the speedy trial.

13. October 17, 1991, Sanders indicted on charge. See (R. 226), showing date of indictment. (606 days for sanders on the speedy trial.

14. 31, 1991, The date of trial (620 days between arrest and trial.

There was no reason why, upon the arrest of Sanders on January 21, 1990, the State Could not have promtly indicted Sander, arraigned him and put him to trial. The reason for the delay between the date Sanders arrested and the date Sanders was put on trial is that Officer Ronnie Frazier tell this at trial. See (R. 307, line 1-4, line 22-26, R. 308 line 18-23).

307 line 1-4:

> Q.---So for a year and a half y'all didn't do anything to prosecute him, is that right?

A. No, sir, because at the time the informant that we were using---

Q. Is Johnny Morris still turing cases for you?

A. Johnny Morris is still a reliable informant for the bureau, yes, sir.

Q. Is it true that when you first arrested Mr. Sanders he was released without bond?

A. I believe her was, yes, sir.

Q. And later on you brought him back to court and out a bond on him?

A. Yes, sir.

308 Line 18-23:

By the Court: Sustained. I have already sustained that objection.

Q. I believe you said that one reason that this case was not taken to Court was because Mr. Morris was working undercover, or was helping the bureau?

A. Yes, sir, that correct.

See Frank Jones, alias 'Black Frank" v. State 250 Miss. 189; 164 So.2d 800 (Miss. 1964): The Court overruled the Motion to quash and dismiss the indictment and this is the only assignment of error. The question is; Whether appellant was denied a speedy trial within the meaning of Sec. 26 of the Constitution of Mississippi which provides that in all prosecutions by indictment or information, the accused shall have the right to a "speedy and public trial by an impartial jury..."

Sec. 2518, Mississippi Code 1942, (now Mississippi Code Annotated § 99-17-1), provides that all indictment shall be tried at the first term, unless good cause be shown for continuance..." Sec. 2473, Miss. Code 194, (Now Mississippi Code Annotated § 99-3-17), provides that every person making an arrest shall take the offender before the proper officer without unnecessary delay for examination of his case. "Appellant was never taken before a

magistrate and charged with the crime although an affidavit was made against him. In Sheffield v. Reece, Sheriff, 201 Miss. 133, 28 So.2d 745, this Court held that requirement that an offender shall be taken before officer without unnecessary delay for examination of his case is in furtherance of the legislative purpose to insure a speedy trial and public trial as guaranteed by Sec. 26 of the constitution of 1890.

In Nixon v. State, 2 S. & M. (10 Miss.) 497 Am. dec. 601, the Court said: by a speedy trial is ten intended, a trial conduct according to fixed rules, regulations, and proceedings of law, free from vexacious, capricious, and oppressive delays,..."

The authorities agree that the law does not exact or impose extraordinary efforts on the part of the representatives of the state and the State is not to be deprived of a reasonable opportunity of preparing for trial and fairly prosecuting persons charged with a crime. 14 Am. Jur., Criminal Law, Sec. 18, p. 859. We hold that where the State knows the identity of the accused, has the accused in custody, obtains a confession, and holds the accused in the penitentiary for a period of over eight years, during which time the accused has suffered the disadvantages as stated herein, then the delay is vexacious, capricious, and oppressive, and the accused has been denied a speedy trial as contemplated by the Constitution. This is in accord with cases from the States where similar questions have arisen. 118 A.L.R.

1037; State v. Milner, et al (Ohio), 149 N.E. 2d 189; State v. Brockelman, 173 Kan. 469, 249 P. 2d 692; Arrowsmith v State, 131 Tenn. 480, 175 S. W. 545.

The State filed what amounts to no answer to the brief of appellant. It cites only one case, Buton v. State, 226 Miss. 31, 79 So. 2d 242. That case involved the question of double jeopardy and the matter of a speedy trial was not raised or considered and is no authority on the question before the Court.

REVERSED AND APPELLANT DISCHARGED.

In this case sub judice the state: (1). knew the identity of the accused. See (R. 431).

(2). Had the accused in custody. See (R. 530-533).

(3). Obtain a confession or had the Report of the Investigation on January 29, 1990, See (R. 431-433).

(4). Had take the offender before the proper office without unnecessary delay for examination of the case, see the following;

A. On or about Monday, January 22, 1990, I Mervin Sanders was presented before Justice Court Judge Philip B'Brien, see (R. 531-533), who advised Sanders that he should work with Officer and agree to any terms or conditions suggested by Officer Oster. Five days after I was incarerated by the State in Pike County Jail, the State release me Mervin Sanders on my own recognizance. The reason the MBn officers arranged for Sanders's release on his own recognizance on January 26, 1990, was that, in the view of

the officer, it appeared that I Sanders might want to cooperate later on down the road. The officer thought the chances were good that they could talk Sanders into becoming a confidential informant. After all my Sanders's alternative was thirty years imprisonment without parole.

After I Sanders was released on January 26, 1990, (R. 530), Craig Oster drove Sanders in Oster's official automobile to my Sanders' home in Brookhaven. Enroute, Officer Oster "explained" to me Sanders that it was in my interest to cooperate with MBN and become a CI. Officer Oster again gave me Sanders the names of the four persons that Oster suggested were dealing in controlled substances and asked that I Sanders help set each of those persons up for arrest on controlled substances. Before we arrived at my Sanders' home in Brookhaven, Officer Oster gave me Sanders his (Oster) telephone number and advised me Sanders to stay in touch with him.

B. Between January 26, 1990 and february 21, 1990, I Sanders did not call Officer Oster. On February 21, 1990, Oster decided to get my Sanders' attention. At Oster's instance, sanders's recognizance bond was revoked and I was again taken into custody. See (R. 530, 534,-536 and 539-540). Between January 26, 1990 and February 21, 1990, I Sanders had done nothing that could be fairly construed as a violation of the conditions of my release. Between January 26, 1990, and February 21, 1990, I Sanders had

done nothing that would have suggested that I would not appear for Court or that I was otherwise a flight risk.

Nevertheless, on February 21, 1990, I Mervin Sanders found myself again being held in the Pike County Jail upon the same controlled substance charge, to-wit: the unlawful possession of cocaine with intent to deliver, and subject to the same penalty upon conviction. Craig Oster's purpose remeined to press me Sander into service as an unpaid, unprotected, involuntary undercover informant and agent for the MBN. Oster and the MBN still saw me Sanders as a likely recruit as an unpaid and unprotected agent and undercover confidential informant, only I Sanders needed 'a little more persuading." I Sanders remained in jail until March 16, 1990. See (R, 530). On that date, I Mervin sander posted a bail bond, and the State release me Sanders from physical custody. See (R. 5337-538).

Eleven days later, the State convened a preliminary hearing. See (R. 539-541). On March 27, 1990, the Justice Court ordered that I Sanders be bound over to the next Grand Jury on a charge of unlawful possession of cocaine with intent to delivere. After the preliminary hearing, the state took no formal action to bring me Mervin Sanders to trial, or otherwise to prosecute Sanders' until the matter was presented to the Grand Jury of Pike County and an indictment returned on or about October 17, 1991.

The action (and inactions) of the State were devastating to Sanders personally, As a result of my arrest and incarceration for a week in January and for almost a month in late February and the first half of March of 1990, I Sanders lost my business. After I Sanders lost my business, in the spring of 1990, I attempt other employment and tried another business but without success.

These document used to shown the date of my arrest in the Circuit Court of Pike County, documents 530-541 remain the files and records in the Supreme Court as No. 98-M-00525 in the intial proceeding asking the right to seek post-conviction relief. They bore docket number 99-002 in the Circuit Court of Pike County, Mississippi in February 12, 1999.

See United States v. Seale 542 F3d. 1033 (5th Cir. 2008) [¶ 12]: This reasoning applies with equal or greater force to criminal limitations period. Criminal statutes of limitation merely limit the time in which the government can initiate a criminal charge and do not burden substantive right. See id. Moreover, criminal limitations periods "provide predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudice." United States v. Marion, 404 U.S. 307, 322, 92 S. Ct. 455, 30 L.Ed.2d 468 (1971); see Toussie v. United States, 397

U.S. 112, 114-15, 90 S.Ct. 858 S.Ct. 25 L.Ed. 2d 156 (1970). Marion 404 U.S. at 322.

The law has provided other mechanisms to guard against possible as distinguished from actual prejudice resulting from the passage of time between crime and arrest or charge. As we said in United v.Ewell, supra, at 122, 15, L.Ed. 2d at 632 "the applicable statute of limitations...is the primary guarantee against bring overly stale criminal charge." Such statutes represent legislative assessments of relative interests of the State and the defendant in administering and receiving justice; they "are made for the repose of society and the protection of those who may [during the limitation..have lost their means of defense." Public Schools v. Walker, 9 wall 282, 288, 19 L.Ed 576, 578 91870). These statutes provide predictability by specifying a limit beyond which ther ia an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced. As this Court observed in Toussie v. United states, 397 U.S. 112, 114-115, 25 L. Ed.2d 156, 161, 90 S.Ct 858 (1970): "The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the has decide to punish by criminal sanctions.

The Mississippi stated that under the speedy trial, see Sander v. State 678 So. 670 (Miss. 1996): Finally, if this Court were to address the merits of this issue, it would be hard

press to find a violation of Sanders' right to a speedy trial. The only prong of Barker that Sanders may have satisfied is that of lenght of delay as short as 298 days may be enough to satisfy the first of the Barker requirements. Bailey v. Stae, 463 So.2d 1059 (Miss. 1985). Over a year and a half passed between Sanders' arrest and his indictment and trial, almost certainly a long enough delay to satify Barker. See also Sanders v. State 846 So.2d 237 (Miss. 2002): Sanders was arrested on January 21, 1990. He was not indicted until October 17, 1991. trial was held on October 31, 1991. The State admits that the more than 600 days between Sanders's arrest and trial is sufficient to trigger the barker analyis.

The defendant asking this Court to addresses this issues under Berry v. State 728 So.2d 570-571): The right to a speedy trial is subject to a knowing and intelligent waiver. Vickery, 535 So. 2d at 1377. this Court will "indugle every reasoable presumption against the waiver of a constitutional right., quoting Aetna Ins. Co. v. Kennedy, 301 U.S. 389, 393, 57 S.Ct. 809, 812, 81 L.Ed. 1177, 1180 (1937). Even when a defendant fails to assert his speedy trial he does not permanently waive this right. Vickery, 535 So. 2d at 1377.

[3] ¶ 6. Ordinarily, failure to object to a given instruction at trial results in a procedural bar on appeal, unless its granting amounts to a plain error. Sanders v. State,

678 So.2d 663, 670 (Miss. 1996) ("As a rule, the Supreme Court only addresses issue on plain error review when the error of the trial court has impacted upon a fundamental right of the defendant").

See Barnes v. State 577 So.2d 841 (Miss. 1991); While conceding that "it would appear that [the speedy-trial] was violated," the State contends that Bares should be procedurally barred from raising the speedy-trial issue on appeal since he failed to raise the issue at the trial level. Appellee's Brief at 5-6 (citing Colburn v. State 431 So.2d 111 (Miss. 1983); Callahan v. State 419 So.2d 165 (Miss. 1982)). In Colburn, this Court held that, because the appellant failed to question the constitutionality of a statute at the trial level, he could not raise the question on appeal. 431 So.2d 1113. And in Callahan, this Court held that, because a "constitutional question was not raised in the lower court or in the assignment of error" on appeal, the question may not be addressed. 419 So.2d at 171.

Barnes counters that the State's contention should be rejected because: (1) The State's only authoritative support-Collburn and callahan-are not factually nor philosophically analogous to the case sub judice; (2)this Court has held that a party may not be procedurally barred from raising issue for the first time on appeal if the error affects fundamental right. Appellant's reply Brief at 1 (citing Read v.

153).

On December 6, 2000, the Circuit Court entered its Final Judgment granting the State's Motion for Summary Judgment and denying my Mervin Sanders Motion for Summary Judgment. The Circuit Court acted without ever setting a hearing for briefs on the matters and issue set forth in the respective motions then pending. See (R. 166 number 5).

When the issue of the speedy trial was before this Court in Sanders' v. State 846 So.2d 237 (Miss. 2002): This Court use the wrong stands as the seminal case on the issue of the Sixth Amendment right to a speedy trial.

The defendant have satisfied the statute of limitation issue on the speedy trial. Judge Joe N. Pigott was bias in not dismiss this case at trial on the speedy trial issue. When he became aware of the issue.

ISSUE IV

STATEMENT OF FACTS FOR NECESSARY FOR UNDERSTANDING OF THE GROUND FOR RELIEF. UNDER THE MISSISSIPPI CONSTITUTION ARTICLE 6, § 165, MISSISSIPPI CODE ANNOTATED § 9-1-11, AND MISSISSIPPI CODE OF JUDICIAL CONDUCT CANON 3 C(1)(A), THAT WILL SHOW THAT JUDGE JOE N. PIGOTT WAS DISQUALIFIED BEFORE TRIAL IN CAUSE NUMBER 13,732 THE STATE OF MISSISSIPPI VS. MERVIN SANDERS IN THE CIRCUIT COURT OF PIKE COUNTY, MISSISSIPPI:

This issue was argue in the Brief at (R. 61-84). For the most part, a rereading of Brief of Appellant will suffice to

answer the (non) argument by the Circuit Court of Pike County, by Judge Michael M. Taylor.

ISSUE V.

WHETHER THE TRIAL JUDGE JOE N. PIGOTT ERRED ACTIVELY ASSUMING THE ROLE ESTABLISHING THE VALIDITY OF THE PRIOR CONVICTIONS UNDER MISSISSIPPI CODE ANNOTATION § 99-19-81.

This issue was argue in the Brief at (R. 86-99). For the most part, a rereading of the brief of Appellant will suffice to answer the (non) argument by the Circuit Court of Pike County, by Judge Michael M. Taylor.

ISSUE VI.

THE TRIAL JUDGE JOE N. PIGOTT EXPRESS BIAS OR PREJUDICE TOWARD THE DEFENDANT AT THE TRIAL COURT. WHEN HE ERRED BY DENIED ATTORNEY JOHN P. PRICE, MOTION TO WITHDRAW AS COUNSEL AND POSTPONEMENT OF THE TRIAL. AND THIS DENIED THE DEFENDANT'S THE RIGHT TO A FAIR TRIAL. WHICH IS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENT, TO THE UNITED STATES CONSTITUTION. AND BY THE MISSISSIPPI CONSTITUTION, ARTICLE 3, SECTION 14 AND 26.

This issue was argue in the Briel at (R. 99-112). For the most part, a rereading of the brief of Appellant will suffice to answer the (non) argument by the Circuit Court of Pike County, by Judge Michael M. Taylor.

ISSUER VII.

DEFENDANT WOULD SHOW THAT JUDGE JOE N. PIGOTT

WAS NOT FAIR DOING TRIAL. IN CONSIDER THE RIGHT OF THE ACCUSSED IN DISCOVERY. IN VIOLATION OF THE UNITED STATES CONSTITUTION UNDER FOURTEENTH AMENDMENT, BRAY V. MARYLAND, 373 U.S. 33, 10 L.ED 2D 215, 83 S.Ct. 1194 (1963) AND MISSISSIPPI CONSTITUTION ARTICLE 3 § 14, BOX V. STATE 437 SO.2D (MISS. 1983).

This issue was argue in the brief at (R. 112-124). for the most par. a rereading of the brief of Appellant will suffice to answer the (non) argument by the Circuit Court of Pike County, by Judge Michael M. Taylor.

ISSUE VIII.

THE TRIAL JUDGE JOE N. PIGOTT WAS BIAS OR PREJUDICE CONCERNING THE DEFENSE ON ENTRAPMENT ISSUE.

This issue was argue in the brief at (R. 124-129). For the most part, a rereading of the brief of appellant will suffice to answer the (non) argument by the Circuit Court of Pike County, by Judge Michael M. Taylor.

ISSUE IX.

THE TRIAL JUDGE JOE N. PIGOTT WAS BIAS OR PREJUDICE TOWARD THE DEFENDANT WHEN HE DENIED THE RIGHT TO AN WARRANTLESS SEARCH UNDER THE FOURTEENTH AMENDMENT.

This issue was argue in the brief at (R. 129-134) which show the following.

The defendant would show that Judge Joe N. Pigott was bias or prejudice toward the defendant when he rule the search was proper. But in the same like case he rule the search was improper. Also he had the same plaintiff's attorney, the same

judge, the same Court term and the same argument. See (R. 213 and 214).

[New Article 214 Friday November 1, 1991]

> Sanders attorney John P. Price admitted Sanders had the cocaine but said the informant enticed him to do wrong.
>
> "It an absolutely clear case of entrapment, "Price said.
>
> He also objected to officer search of Sanders car without warrant, but Judge Joe Pigott said they had the legal right to do so since they had probable cause he was breaking the law.

[New Article (R. 213) Thursday November 7, 1991]

> A trial came to a halt Wednesday after a defendant testified that officer's search his car without his consent.
>
> Marvin Anthony Giacone, 23, 312 Third St. McComb was charge in Pike County Circuit Court with burglary and grand larceny in connection with April 16, theft of gun from the home of Francis and caroln Myers, 821 Pearl Ave.
>
> Police officers said they received and anonymos tip fingering Giacone and arrested him in June 13, finding some of the missing gun in his car. Myers said Giacone was a friend of his son's and had visited the house before. He said the fun were worth $8.00 to $9.00.
>
> Detective Jimmy carruth said he obtained Giacone consent to serach the car, but Giacone said officers search his car without his consent."
>
> detective Perry Ashely said he didn't recall Giacine giving verbal consent.
>
> Judge Joe N. Pigott would not let prosectors refer to the recovered gun. He also ruled out a confession signed by Giacone since the search that prompted was inadmissible. At this point prosecutors decided to drop the charges.
>
> In this case we had no other evidence to go forward with, said assistant district attorney Jerry Rushing.

Further, The Mississippi Supreme Court has stated that [e]very litigant is entitled to nothing less than the cold

neutrality of an impartial judges, who must posses he disinterestness of a total stranger to the interest of the parties involved in the litigation, whether that interest is revealed by an inspection of the record or developed by evidence aliunde the record." Jenkins v. Forest County Gen. Hosp., 542 So.2d 1180, 1181-82 (Miss. 1989).

See Collins v. Dr. C.V. Joshi and Neshoba County general Hospital 611 So.2d 898, 900-901 (Miss. 1992): We note that Davis v. Josh, Gen. and Heshoba County General Hospital, 611 So.2d 904 (Miss. 1992)(on pet. rehearing), also has the same plaintiffs attorney, the same defendant, the same trial judge, and the same recusal motion with the same argument; this Court reversed and remanded for a new trial. In the case here decided, the trial directed a verdict. Because of his failure to recuse and ruling and our in like case, we must reverse and remand.

Defendant have shown that he has been denied due process as required by the Mississippi Constitutional Article Article 3, § 14 which includes a fair and impartial trial. For the reason above the defendant should be given a New Trial.

See Payton v. State 939 So.2d 465 (Miss. 2006): Stands as the seminal case on the issue of disqualification of a judge under Section 165 of the Mississippi Constitution of 1890. ("A judgment entered by a judge who has been disqualified in the manner prescribed in the statute is void"), abrogated on other

grounds by Matter of Benson, 141 Ore. App. 458, 919 P.2d 496 (Or. 1996); McElwee v. McElwee, 911 S.W.2d 182, 186 (Tex. Ct. App 1995) ("If a judge is disqualified under the Texas Constitution, he is without jurisdiction to hear the case, and there, any judgment he renders is void and a nullity"). The State has cited to us no authority which contradicts the proposition that, once recused, a judge should take no further action in the case.

In this case sub judice the defendant is in prison, sentence of thirty (30) years, as an habitual offender without parole, probation, good time, or early release and to pay a $30.000 fine.

CONCLUSION

Mervin Sanders respectfully request that the Court reverse and render. The Court reverse the Judgment of the Circuit Court and enter judgment here ordering that Sanders be discharged from custody.

Respectfully submitted,

Mervin Sanders

Mervin Sanders #06438 pro se