

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CASE NO. 2008-CP-01078

FILED

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SUPREME COURT
COURT OF APPEALS

TRAVIS WICKER

APPELLANT

VERSUS

STATE OF MISSISSIPPI

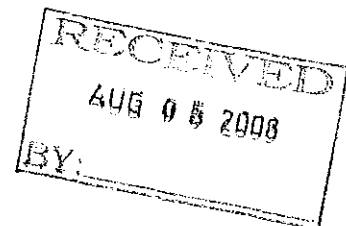
APPELLEE

BRIEF OF APPELLANT

AN APPEAL OF A CONVICTION OF AGGRAVATED ASSAULT,
BY A PLEA OF GUILTY, AND SENTENCE OF TWENTY YEARS WITHIN
THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS
FROM THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

APPELLANT IS CURRENTLY INCARCERATED

TRAVIS WICKER #54276
East Miss. Corr. Facility
10641 Highway 80 West
Meridian, MS 39307



IN THE COURT OF APPEALS OF MISSISSIPPI

CASE NO. 2008-CP-01078

TRAVIS WICKER

APPELLANT

VERSUS

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The Appellant hereby certifies that the following listed persons have an interest in the outcome of this case:

The Circuit Court Of Rankin County Mississippi
P.O. Box 1599
Brandon, Ms 39043

Michael Guest
District Attorney
Brandon Office
P.O. Box 68
Brandon, MS 39043

This the 1st day of August, 2008.

Travis Wicker 54276
Travis Wicker #54276

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STATEMENT OF THE CASE

1.

Petitioner was convicted upon a plea of guilty in the Circuit Court of Rankin County, Mississippi of MURDER and Aggravated Assault, and sentenced to LIFE imprisonment for the MURDER cause #4911, Twenty (20) years for Aggravated Assault in Cause #4912, and Twenty (20) years for Aggravated Assault in Cause # 5208.

2.

The judgement(s) and sentence(s) were entered in the Circuit Court on or about the 30th day of November, 1995.

3.

On July 26, 2007, Wicker caused a Motion To Vacate Unconstitutional Conviction and Sentence to be filed within the Circuit Court Of Rankin County, Miss.

4.

On May 9, 2008, the Circuit Court "DISMISSED" Wicker's Motion To Vacate Unconstitutional Conviction And Sentence.

5.

Wicker filed a timely Notice Of Appeal with the Circuit Court on May 16, 2008.

6.

On June 24, 2008, this Court (The Court Of Appeals) issued a "Notice Of Briefing Schedule" giving Wicker Forty (40) days to submit the brief of the appellant.

7.

This, the brief of the appellant, Wicker, summarily follows.

STATEMENT OF THE ISSUES

1. THE CIRCUIT COURT ERRED IN DISMISSING APPELLANT'S CLAIM THAT HIS FUNDAMSN TAL OR CONSTITUTIONAL RIGHT AGAINST DOUBLE JEOPARDY WAS AFFECTED AND VIOLATED.
2. THE CIRCUIT COURT ERRED IN DISMISSING APPELLANT'S CLAIM THAT HIS FUNDAMENTAL OR CONSTITUTIONAL RIGHT TO BE TRIED ONLY OF CHARGE FOUND OR MADE BY A GRAND JURY IN AN INDICTMENT WAS AFFECTED AND VIOLATED.
3. THE CIRCUIT COURT ERRED IN DISMISSING APPELLANT'S CLAIM THAT HE WAS CONVICTED ON THE BASIS OF A GUILTY PLEA THAT WAS THE PRODUCT OF INEFFECTIVE ASSISTANCE OF COUNSEL, WHICH VIOLATED HIS FUNDAMENTAL OR CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.
4. THE CIRCUIT COURT ERRED IN DISMISSING APPELLANT'S POST-CONVICTION, AND THE ISSUES THEREIN, ON THE BASIS THAT IT WAS PROCEDURALLY TIME BARRED.

STATEMENT OF THE FACTS

(A) Wicker was indicted on two (2) separate charges with two (2) separate indictments for both Capital Murder and Aggravated Assault.

(B) The indictment for Count I charged Wicker with the specific charge of Capital Murder/ section **97-3-19(2)(f)** with the Felonious Abuse of A Child/ Section **97-5-39** as the underlying offense, against **Karen Bond**.

(C) The indictment for Count II charged Wicker with the specific charge of Aggravated Assault/ Section **97-3-7(2)** against **Barbara Wicker**.

(D) On November 30, 1995, Wicker withdrew his plea of not guilty and entered a plea of guilty to the criminal offense of Murder in Cause #4911. Wicker also withdrew his plea of not guilty and entered a plea of guilty to the criminal offense of Aggravated Assault as charged in Count II/ Cause #4912 on the same said date, November 30, 1995.

FACTS NOT WITHIN THE APPELLANT'S PERSONAL KNOWLEDGE

(E) The specific facts not within the appellant's personal knowledge involve those related to why or how he was unduly charged and sentenced to Twenty (20) Consecutive years for an offense, (Aggravated Assault/ section §97-3-7(2) in cause #5208 against Karen Bond), that he was never charged for nor that he pled guilty to.

(F) The claims set forth in this Brief will be proven by the testimony and the records in cause numbers 4911, 4912, and 5208.

(G) Wicker hereby verifies that he has read the contents of the Brief and verifies, states and certifies under the penalty of perjury that the same are true and correct and made upon his personal knowledge.

ARGUMENT

FIRST ISSUE

THE CIRCUIT COURT ERRED IN DISMISSING APPELLANT'S CLAIM THAT HIS FUNDAMENTAL OR CONSTITUTIONAL RIGHT AGAINST DOUBLE JEOPARDY WAS AFFECTED AND VIOLATED

In this claim Wicker claims that his fundamental or constitutional right against double jeopardy was affected and violated.

Wicker contends that it was impermissible, and violates the double jeopardy clause to charge him with the crimes of both Murder and Aggravated Assault because the aggravated assault was encompassed in, and made a predicate act for, the Murder. Wicker contends that this is especially so where the acts occurred at the same point in time, and both acts were directed at the same person.

The facts of the Indictment(s) and the Bill Of Information shows that Wicker was charged for both Murder and Aggravated Assault of Karen Bond, because on a particular day Wicker assaulted Karen Bond while carrying out Murder. See: Indictment(s) and Bill Of Information attached as Exhibits A and B. It is clear that the prosecutions case was based on the theory that Wicker assaulted a person in murdering that same person.

The question is whether Wicker may be punished for a section §97-3-19 violation by a sentence of LIFE imprisonment and thereafter by a consecutive Twenty (20) year sentence for section §97-3-7(2) violation for aggravated assault of the same person.

Wicker contends that based upon the principles of double jeopardy embodied in both the Fifth Amendment to the Constitution of the United States and section 22 of the Mississippi Constitution of 1880, the charge of Aggravated Assault against Karen Bond in Cause #5208, should have been dismissed.

This court must determine whether, under these facts, if the Murder Charge in Count I and Aggravated Assault charge in Count II, constitute the "same offense".

See: Blockburger v. U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932)

Under Blockburger, supra, the objective elements of each offense must be examined. The test to be applied is whether each provision requires proof of a fact which the other does not.

After a careful examination of both the Murder statute and the Aggravated Assault statute, it is clear that Wicker's right against double jeopardy was violated. There is no way that Wicker could be guilty of violating the murder statute without violating the aggravated assault statute. The elements that are necessary, in order to violate the aggravated assault statute, are necessarily included within the Murder statute. See: State v. Umfleet, MO. App., 538 S.A. 2d 55, 59.; Jones v. State, 66 Miss. 380, 6 so 2d 231, 232 (1889).

The state of Mississippi placed Wicker in Jeopardy for the assault of Karen Bond when it charged him in Count I with murder of Karen Bond. Having done this, the state could not at once put Wicker in further jeopardy in the form of consecutive punishment for that legally discrete combination of conduct constitution the murder of Karen Bond. Yet, the state did so in Count III, Aggravated Assault of Karen Bond.

The record reflects that Wicker was indicted for Capital Murder, Count I, of Karen Bond. By reasons thereof, the constitution precludes the state punishing Wicker further for the Aggravated Assault of Karen Bond via Count III.

Based on the above mentioned facts and law, Wicker asks that this Court grant this his Appeal and Vacate the said charge of Aggravated Assault as charged in Count III and the Sentence of Twenty (20) Consecutive Years.

SECOND ISSUE

**THE CIRCUIT COURT ERRED IN DISMISSING APPELLANT'S CLAIM
THAT HIS FUNDAMENTAL OR CONSTITUTIONAL RIGHT TO BE TRIED ONLY
OF CHARGE FOUND OR MADE BY A GRAND JURY IN
AN INDICTMENT WAS AFFECTED AND VIOLATED**

Wicker's complaint is that he was never indicted or his indictment failed to charge the offense as to Count III (Aggravated Assault of Karen Bond), for which he was unduly convicted and sentenced to Twenty consecutive years for, thereby violating his Fifth Amendment Right to grand jury indictment.

It is well settled that "under the Fifth Amendment, a criminal defendant has a right to be tried only on charges contained in the indictment returned by a grand jury." Miller, 116 f. 3d at 669.; see also: Russell v. U.S. 749, 770, 8 L. Ed 2d 240, 82 S. Ct. 1038 (1962).

Amendment V of the U.S. Constitution states that:

"No person shall be held to answer for a Capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury...."

U.S. Constitution, Amendment V, Id.

The record in this case shows that Wicker was indicted for Capital Murder/Abuse of a Child section §97-3-19(2)(f) of Karen Bond and Aggravated Assault/Section §97-3-7(2) of Barbara Wicker.

However, on November 30, 1995, after Wicker pled guilty to Count I and Count II, he was also convicted and sentenced for an additional charge (Aggravated Assault §97-3-7(2), of Jaren Bond, Count III also.

See: Judgement of Conviction and Sentence Instanter as to Count III attached hereto as Exhibit "C".

Wicker contends that he was never indicted for this additional charge nor did he plea guilty to this additional charge. Wicker also contends that he never waived his right to a Grand Jury Indictment, which is evident by the plea Agreement itself. The plea agreement as to Count III reads in part that:

"(7) I wish to plead guilty and request that the court accept my plea of guilty on the basis of the following:
[here set forth factual involvement in the crime charged]
on the date(s) as set forth in the "INDICTMENT",.....

Petition to plead guilty as to Count III, Id., Attached hereto as Exhibit "D".

This evidence conclusively proves that Wicker never waived his right to an indictment regarding this. It is clear from the petition to plead guilty that Wicker was under the impression that he was pleading guilty to and being sentenced for the charges in the indictment.

For the reasons stated above and herein, this Court is constrained to grant this Appeal and should order that Wicker's conviction and sentence for Aggravated Assault of Karen Bond in County III be Vacated.

THIRD ISSUE

**TRIAL COURT ERRED IN DISMISSING APPELLANT'S CLAIM
THAT HE WAS CONVICTED ON THE BASIS OF A GUILTY PLEA THAT
WAS THE PRODUCT OF INEFFECTIVE ASSISTANCE OF COUNSEL,
WHICH DENIED HIM HIS FUNDAMENTAL OR CONSTITUTIONAL RIGHT TO
EFFECTIVE ASSISTANCE OF COUNSEL**

Wicker contends that he was convicted on the basis of a guilty plea that was the product of ineffective assistance of counsel, which denied him his fundamental or constitutional right to effective assistance of counsel.

The evidence of the record shows the following:

- (1) Wicker was indicted for the charges of Capital Murder/Felony Abuse or Battery Of A Child, Section §97-3-19(2)(f), Count I against Karen Bond and Aggravated Assault/Section §97-3-7(2), Count II against Barbara Wicker. See: Indictments attached hereto as Exhibits "A" and "E" .
- (2) On November 30, 1995, Wicker, with the advice of his counsel, withdrew his plea of not guilty and entered a plea of GUILTY to the charges of Murder in Count I and Aggravated Assault in Count II. See: Judgement of Conviction and Sentence Instant(er)s attached hereto as Exhibit(s) "F" and .
- (3) Wicker was sentenced to LIFE imprisonment for Count I/ MURDER of Karen Bond and Twenty (20) Consecutive Years for Count II/ Aggravated Assault of Barbara Wicker. See: Judgement of Conviction and Sentence Instant(er)s attached hereto as Exhibit(s) "F" and "G" .
- (4) However, Wlcker was sentenced to an additional TWENTY (20) Consecutive Years for an additional AGGRAVATED ASSAULT CHARGE, COUNT III? AGAINST KAREN BOND, that his counsel did not advise him that he would be sentenced for, that he did not plea guilty to, nor that he was indicted for. See: Judgement of Conviction and Sentence Instant(er) for Count III attached hereto as Exhibit "C" .

This evidence conclusively establishes that Wicker, relying on his counsel's advice and knowledge, caused two (2) things: (1) Wicker to plead guilty to a charge that he knew nothing about

nor agreed to plead guilty to; and (2) Wicker to be convicted and sentenced to TWENTY (20) Consecutive additional years for this additional charge.

The question now becomes: Was Wicker's fundamental right to counsel and effective assistance of counsel, affected or violated?

It is well settled that counsel's competence is presumed, and the defendant must rebut this presumption by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy. Kimmelman, 477 U.S. at 384 [20][21].

But Wicker presents evidence here that overcomes any presumption that counsel was competent. It cannot be sound strategy for an attorney to mislead her client into pleading guilty to specific charges, while knowing before the fact, that her client would be pleading guilty to and sentenced for an additional charge if he does plead guilty; nor can it be sound strategy for an attorney to advise or mislead her client to plead guilty to, and ultimately sentenced for, a charge that violates the double jeopardy clause. See: First Issue In Support Of This.

In the present case Wicker demonstrates with the utmost clarity that his counsel's assistance was ineffective under the standards of Strickland v. Washington, 466 U.S. 668 (1984) and Hill v. Lockhart, 474 U.S. 52, 88 L. Ed. 2d 203, 106 S. Ct. 366 (1985).

In Hill v. Lockhart, the United States Supreme Court held that:

"The long standing test for determining the validity of a guilty plea is whether the plea represents a voluntary and **INTELLIGENT** choice among the alternative course of action open to the defendant."

Hill v. Lockhart, 474 U.S. 52(1985) citing North Carolina v. Alford, 400 U.S. 25(1970); Boykin v. Alabama, 395 U.S. 238(1969); Machibroda v. U.S., 487, 493 (1962)>

The court in Hill v. Lockhart, went on to say that:

"Where a defendant is represented by counsel during the plea process and enters a plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice "was within the range of competence demanded of attorneys in criminal cases"."

Hill v. Lockhart, Id., citing McMann v. Richardson, 397 U.S. 759, 771 (1970).

It was shown earlier how counsel for Wicker misled him into pleading guilty to an additional charge that he knew nothing about.

The course of action taken by counsel for Wicker was not "within the range of competence demanded of attorneys in criminal cases", Hill V. Lockhart, Id., thereby prejudicing Wicker's case and making his plea involuntary and not intelligently entered.

For a guilty plea to be voluntary and intelligently entered, a defendant must be advised about the nature of the crime charged against him and the consequences of the guilty plea. See: Banana v. State, 635 so 2d at 854 (1994).

Counsel for Wicker never advised him of this additional charge nor did she advise him that he would be pleading guilty to this charge also if he changed his plea to guilty.

Wicker contends that if his counsel had advised him of this additional charge he would have insisted on going to trial instead of pleading guilty.

It is abundantly clear that under the standards of Hill v. Lockhart, Wicker's attorney's misleading tactics and failure to advise him of the nature of this additional crime charged against him and the consequences of the guilty plea, put at risk both Wicker's Fundamental or Constitutional rights to and/or effective assistance of counsel, and the reliability of the plea process.

It is clear that Wicker's Counsel's deficient performance was prejudicial as a matter of both fact and law.

For these reasons, this court should find that Wicker's fundamental rights to counsel and effective assistance of counsel were affected and/or violated and should grant this his post-conviction relief petition and vacate the conviction and sentence as to COUNT III.

ISSUE FOUR

THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S POST-CONVICTION, AND THE CLAIMS THEREIN, AS PROCEDURALLY TIME BARRED

In this case the appellant claimed that his fundamental or constitutional right against Double Jeopardy, To be Tried Only On Charge Found And Made By A Grand Jury In An Indictment, and To Effective Assistance Of Counsel, were affected and violated.

Wicker contends that all of these claims fall within the exceptions of the (3) Three year statute of limitations period, as demonstrated below:

A. THE DOUBLE JEOPARDY CLAIM

In Fuselier v. State, 654 so 2d 519, 522 (Miss. 1995), the court specifically found that although the double jeopardy violation was procedurally barred, the procedural bar does not prevent review and relief on a double jeopardy claim because double jeopardy involves a fundamental constitutional right.

The Supreme Court has also said that a showing of a fundamental constitutional error is exempt from the time bar found in Miss. Code Ann. §99-39-5(2) and the successive writ bar found in Miss. Code Ann. §99-39-27(9). See: Lockett v. State, 656 so 2d 76, 83 (Miss. 1995).

Wicker has demonstrated that case-law has carved out an exception to the procedural bar when it comes violating a defendant's fundamental constitutional right against double jeopardy.

B

**APPELLANT'S RIGHT TO BE TRIED ONLY OF CHARGE FOUND
AND MADE BY A GRAND JURY IN AN INDICTMENT**

Wicker has already shown that a showing of a fundamental or constitutional error is exempt from the time bar in §99-39-5(2) and exempt from the successive writ bar in §99-39-27(9). See again: Lockett v. State, 656 so 2d 76, 83 (Miss. 1995).

Smith v. State, 477 so 2d 191 (Miss. 1985) specifically states that:

"... errors affecting fundamental rights
are exceptions to the (procedural bar) rule ..."

Id. at 195 [3] [4] [5] [6], citing Read v. State, 430 so 2d 832 (Miss. 1983; Brooks v. State, 209 Miss. 150, 46 so 2d 94 (1950).

Accordingly, from the case-law presented above, it is clear that a showing that a fundamental or constitutional right has been affected overcomes a procedural bar.

C.

APPELLANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

The Mississippi Supreme Court has said that "errors affecting fundamental constitutional rights may be excepted from procedural bars which would otherwise prohibit their consideration. See: Kennedy v. State, 732 so 2d 184 (¶8) (Miss. 1999).

In Beville v. State, 669 so 2d 14 (Miss. 1996) our Supreme Court said that although a mere raising of ineffective assistance of counsel claim is insufficient to surmount procedural bars, a demonstration of the ineffective assistance of counsel would surmount procedural bars. In the subsequent case of Hymes v. State, 703 so 2d 258 (Miss. 1997), the Miss. Supreme Court made it clear that the procedural bar was surmounted and the prisoner was allowed to proceed on his claim of ineffective assistance of counsel because counsel's brief on appeal was totally incoherent.

In Kimmelman, the U.S. Supreme Court said that the right of an accused to counsel is beyond question a "Fundamental Right". Id. at 377, quoting Gideon, 372 U.S. at 344, 83 S. Ct at 796. The Supreme Court went on to say in the Kimmelman case that the right to counsel includes the right to effective assistance of counsel. The court said:

"In other words, the right to counsel
is the right to effective assistance
of counsel."

Id. at 377, citing Evitts v. Lucey, 469 U.S. 387, 395-396 (1985).

It therefore follows that the right to effective assistance of counsel is a fundamental right as a matter of law. And where this court declared that errors effecting fundamental rights are exceptions to the procedural bar rules, so is the fundamental right to counsel and effective assistance of counsel.

Thus Wicker was and is entitled to have his counsel claims considered on the merits, as a matter of law.

In conclusion Wicker's Post-Conviction and the claims therein should not have been dismissed as procedurally time barred and be reconsidered.

CONCLUSION

Based on the issues and case-law dictated above, this court should reverse the decision of the trial court and vacate the conviction of Aggravated Assault in Count III Cause #5208 and sentence of (20) Twenty Consecutive Years.

Respectfully Submitted,

Travis Wicker 54276
Travis Wicker #54276

This The 1st day of August 2008.

CERTIFICATE OF SERVICE

This is to certify that I, the undersigned, have this date as reflected below, caused to be mailed, via United States Postal Service, postage pre-paid, by placing a true and correct copy of the foregoing pleading and/or instrument in the United States mail addressed to the following person(s):

Betty Sephton
Court of Appeals Clerk
P.O. Box 249
Jackson, MS 39205

Jim Hood
Atty. General of Mississippi
P.O. Box 220
Jackson, MS 39205

Signed this the 1st day of August, 2008.

Tucker Wicks

Signature

54216

MDOC Number

F.M.C.F.

Address

10641 Highway 80 West

Address

Meridian, MS 39307

EXHIBIT A

I N D I C T M E N T

CAPITAL MURDER §97-3-19(2)(f)

CAUSE NO. 4911

THE STATE OF MISSISSIPPI
COUNTY OF RANKIN

IN THE CIRCUIT COURT OF SAID COUNTY, JANUARY TERM, 1995
Grand Jury recalled March 16, 1995

The Grand Jurors of the State of Mississippi, taken from the body of good and lawful citizens of said county, elected, summoned, empaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oath present that:

TRAVIS C. WICKER ("defendant" hereinafter)

on or about the 31 day of January, 1995, in the county aforesaid and within the jurisdiction of this Court, did wilfully, unlawfully and feloniously, kill and murder Karen Bond, a child, while being then and there engaged in the felony crime of felonious abuse of a child (97-5-39), in violation of M.C.A. 97-3-19(2)(f) (1972); against the peace and dignity of the State of Mississippi.

Endorsed: A True Bill

Michael S. Wirt
Foreman of the Grand Jury

[Signature]
District Attorney

AFFIDAVIT

COMES NOW Michael Wirt, Foreman of the January, 1995, Rankin County Grand Jury, and makes oath that this indictment presented to this Court was concurred in by twelve (12) or more members of the Grand Jury and that at least fifteen (15) members thereof were present during all deliberations.

Michael S. Wirt
FOREMAN OF THE GRAND JURY

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

March, A. D., 1995.

PHILIP WARREN, CIRCUIT CLERK

BY: [Signature] D.C.

EXHIBIT B

IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI
STATE OF MISSISSIPPI

VERSUS

CAUSE NO. 5208

TRAVIS C. WICKER


CRIMINAL INFORMATION

IN THE NAME OF, AND BY THE AUTHORITY OF, THE STATE OF
MISSISSIPPI:

BEFORE ME, the undersigned authority in and for
Rankin County, Mississippi, comes, Jim Kelly an Assistant
District Attorney for the 20th Circuit Court District of
Mississippi, who makes oath on information and belief, that

TRAVIS C. WICKER, in Rankin County, Mississippi, on or about
the 31 day of January, 1995, and within the jurisdiction of
this Court, did wilfully, unlawfully, knowingly and
feloniously, cause serious bodily injury to another, Karen
Bond, by striking her in the head with the butt end of a
shotgun, but that he did not by such blow cause the death of
Karen Bond;

in violation of M.C.A. section 97-3-7(2)(1972),
against the peace and dignity of the State of Mississippi.


Jim Kelly
Assistant District Attorney
20th Circuit Court District
State of Mississippi

SWORN TO AND SUBSCRIBED before me on this, the

30th day of Nov, A. D., 1995.

PHILIP WARREN, CIRCUIT CLERK



My Commission Expires:

1-1-96

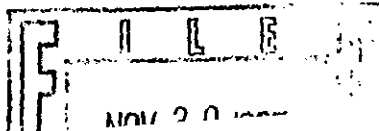


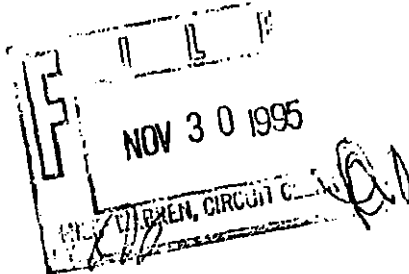
EXHIBIT C

IN THE CIRCUIT COURT OF RANKIN COUNTY MISSISSIPPI

STATE OF MISSISSIPPI

VS.

TRAVIS C. WICKER



CAUSE NO. 5208

DEFENDANT

JUDGMENT OF CONVICTION AND SENTENCE INSTANTER

THIS DAY this cause came on to be heard on the sworn petition of TRAVIS C. WICKER, the Defendant, a citizen of the United States, to withdraw the previous plea of not guilty and to enter a plea of guilty to the criminal offense of AGGRAVATED ASSAULT as charged in the Bill of Information in cause no. 5208; and the Defendant, the Defendant's attorneys, Honorable Vickie Williams and Honorable James Bobo, and the attorney for the State all being personally present in open court and ready for hearing; and the Court having heard and considered the petition together with the evidence adduced in support of it, including the testimony under oath of the Defendant and the statements of counsel, is of the opinion and finds that the allegations contained in the petition are supported by the evidence and are true and correct as set forth in it; that the Defendant's plea of guilty is not induced by force, violence, threats, coercion, fear, deception, promises, or misrepresentations; that the Defendant is competent to understand and does understand the nature of the criminal offense to which the plea of guilty is entered and understands the minimum and maximum punishments prescribed by law for it; that the

Defendant understands that by entering a plea of guilty the following are expressly waived: the right against self-incrimination, the right to trial by jury, the right to confront and cross-examine the witnesses for the State, the right to testify as a witness, the right to subpoena, call, and examine witnesses in defense, the right to appeal and if indigent, the right to a court-appointed attorney to prosecute an appeal; that the Defendant's plea of guilty is freely, voluntarily, and intelligently made, and that there is a factual basis for the plea which establishes the Defendant's guilt beyond any reasonable doubt; that the petition should be granted and the Defendant's plea of guilty should be accepted and entered.

IT IS THEREFORE ORDERED AND ADJUDGED that the plea of guilty of the Defendant is accepted and entered and that based on it the Defendant should be and is found guilty and convicted of the crime of AGGRAVATED ASSAULT, as charged in the Bill of Information.

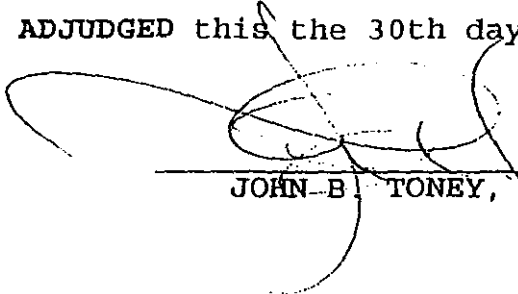
IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, TRAVIS C. WICKER, is sentenced as follows:

To serve a term of TWENTY (20) YEARS in the custody of the Mississippi Department of Corrections.

IT IS FURTHER ORDERED AND ADJUDGED that the sentence herein be CONSECUTIVE to the LIFE SENTENCE imposed in Rankin County Circuit Cause No. 4911 and also CONSECUTIVE to the TWENTY (20) YEAR sentence imposed in Rankin County Circuit Cause No. 4912.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant's custody is remanded to the Sheriff of Rankin County, Mississippi, to begin serving the sentence imposed.

SO ORDERED AND ADJUDGED this the 30th day of November, 1995.



JOHN B. TONEY, CIRCUIT JUDGE




EXHIBIT D

IN THE CIRCUIT COURT OF HANKIN COUNTY, MISSISSIPPI
STATE OF MISSISSIPPI

VERSUS

CHARLES WICKER

CRIMINAL CAUSE NO. 5208

PETITION TO ENTER PLEA OF GUILTY

COMES NOW THE DEFENDANT, CHARLES WICKER, and respectfully petitions this Honorable Court to accept his plea of guilty to the crime of aggravated assault, and in support thereof would show unto the Court the following:

1. My true name is CHARLES WICKER, and I am also known as n/a. I request that all proceedings against me be had in my true name. I am 31 years of age. I have gone to school up to and including 7th grade. I am x I am not able to read and write [**check one**]. My physical and mental health is x satisfactory unsatisfactory [**check one**]. I am not under the influence of any drugs or intoxicants except Donetal. [if none, so specify].

2. I am represented by lawyers who are court appointed; their names are James A. Bobo and Vicky Williams. This petition has been read and explained to me in detail by my lawyers, and I understand its contents.

3. I wish to plead guilty to the charge of aggravated assault.

4. My lawyers have advised me as to the possibilities of my acquittal or conviction on the charges against me, and have thoroughly discussed all aspects of my case with me. My lawyers have counseled and advised me, and have made no threats or promises of any type or kind to induce me to enter this plea of guilty. The decision to seek entry of this plea was my own and mine alone, based on my own reasons and free from any outside coercive influences.

5. I understand that I have the right to plead not guilty to any offense charged against me. If I choose to plead not guilty, the Constitution guarantees me:

- a. the right to a speedy and public trial by jury;
- b. the right to see, hear, and face in open court all witnesses called to testify against me, and the right to cross examine those witnesses;
- c. the right to use the power and process of the court to compel the production of any evidence, including the attendance of any witnesses in my favor;

Charles Wicker
Defendant, CHARLES WICKER

d. the right to have the assistance of a lawyer at all critical stages of the proceedings against me;

e. the presumption of innocence, i.e., the State must prove beyond a reasonable doubt that I am guilty, and the right to a unanimous jury verdict of all twelve jurors before I could be found guilty;

f. the right to take the witness stand and testify in my own behalf if I want to; if I do not wish to take the witness stand and testify, I further understand that this fact cannot be held against me, and that the jury may be instructed that my refusal to testify may not be held against me;

g. I understand that unless I knowingly, willingly, and voluntarily agree to do so, I cannot be compelled to give testimony against myself in violation of my Fifth Amendment rights;

h. I further understand that should I be convicted in a jury trial, I have the right to appeal my conviction to the Mississippi Supreme Court, and with the assistance of counsel at no cost to me should I be financially unable to pay for an attorney to represent and assist me.

Knowing and understanding the Constitutional and other legal rights and guarantees set forth in this paragraph, I hereby waive each and every one of them and renew my desire to enter a plea of guilty.

6. I have fully informed my lawyers of all the facts and circumstances known to me about the charges against me. My lawyers have counseled and advised me on the nature and elements of the charges, on any and all lesser-included charges, and on all possible defenses that I might have in this case. My lawyers advise me and I understand that the elements of the charges to which I am pleading guilty are as follows: aggravated assault - the attempt to cause or purposely or knowingly cause bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm;

7. I wish to plead guilty and request the Court to accept my plea of guilty on the basis of the following: [here set forth factual involvement in the crime charged] on the date(s) as set forth in the indictment, I did knowingly or intentionally cause bodily injury to another, Karen Bond, with a deadly weapon by striking her in the head with a shotgun. However, the blow to the head did not cause the death of Karen Bond. This act occurred in Rankin County, Mississippi.

8. I know that if I plead guilty to the charge of aggravated assault the sentence may be 0 years [minimum] to 20 years [maximum], and/or a fine of \$ 0 to \$ 10,000.00. I have also been told by my lawyer that any sentence I may receive is up to the Court, and that the Court may impose a maximum sentence


Defendant, CHARLES WICKER

of 20 years and a fine of \$ 10,000.00 ; that the Court is not required to carry out any understanding made by me and my attorneys with the District Attorney; I understand that the Court is not required to follow the recommendation of the District Attorney, if any. The District Attorney will take no part other than providing to the Court police reports and other factual information which may be requested by the Court; and the District Attorney shall make no recommendation to the Court concerning my sentence except as follows: 20 years to serve in the custody of the Mississippi Department of Corrections to be served consecutive to the sentence of life imprisonment imposed in cause number 4911, and the sentence of 20 years imposed in cause number 4912, pay court costs, statutory fees and restitution if applicable.

9. I have been convicted of no felonies in this or in any other state or of the United States, except as follows:
none.

10. I am am not X presently on probation or parole. I understand that pleading guilty in this case may cause revocation of my probation or parole, and that this could result in a sentence of n/a in that case. I further understand that if my probation or parole is revoked, any sentence in that case may be consecutive to or in addition to any sentence in this case.

11. I understand that no one can assure me of parole or early release from prison and that the state of the law regarding parole eligibility is uncertain. If I am sentenced as an habitual criminal, I will not be eligible for parole. If I am not eligible for parole I will not receive good-time credits and that earned or good-time credits will not be applied to reduce my parole eligibility date.

12. I declare that no officer or agent of any branch of government, federal, state, or local, has made any promise or suggestion of any kind to me, or within my knowledge, to anyone else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead guilty, and that I have not been threatened, forced, intimidated, or coerced in any manner by anyone.

13. I believe that my lawyers have done all that anyone could do to counsel and assist me. **I AM SATISFIED WITH THE ADVICE AND COUNSEL THEY HAVE GIVEN ME.** I recognize that if I have been told by my lawyers that I might receive probation or a light sentence, this representation is merely their opinion and that it is not binding on the Court or the District Attorney.

14. I understand that my plea of guilty may be withdrawn at any time during a hearing on this petition, prior to the acceptance of my plea by the Court.

15. **I OFFER MY PLEA OF GUILTY FREELY AND VOLUNTARILY AND OF MY OWN ACCORD AND WITH FULL UNDERSTANDING OF ALL THE MATTERS SET**


Defendant, CHARLES WICKER

FORTH IN THE INDICTMENT OR INFORMATION AND IN THIS PETITION AND WITH UNDERSTANDING OF THE CERTIFICATE OF MY LAWYERS WHICH IS PART OF THIS PETITION.

16. HABITUAL CRIMINAL PARAGRAPH. If not applicable to this plea, check X. If applicable, note the statute under which the plea of guilty is to be taken:

_____ MISS. CODE ANN. Section 99-19-81 (Supp. 19____); or under
_____ MISS. CODE ANN. Section 99-19-83 (Supp. 19____); Specify below the punishment sought to be enhanced by either of the above:

WHEREFORE, PREMISES CONSIDERED, the defendant prays that this petition will be granted, that the plea of guilty will be accepted and that the defendant will be convicted and sentenced for the crime of aggravated assault just as if the defendant had been found guilty of his crime by the verdict of a jury.

SIGNED AND SWORN TO UNDER OATH BY ME, CHARLES WICKER, on this, the 2nd day of November, A.D., 1995, with full knowledge that if I willfully and corruptly swear, testify, or affirm falsely to any material matter under oath, affirmation, or declaration legally administered in this Court I will, upon conviction, be punished additionally for the crime of perjury.

Vicky Wicker
DEFENDANT'S ATTORNEY

Charles Wicker
DEFENDANT

A. Baker
DEFENDANT'S ATTORNEY

STATE OF MISSISSIPPI

COUNTY OF RANKIN

SWORN TO AND SUBSCRIBED before me on this, the 29th day of November, A.D., 1995.

SEAL

Janice J. Stirling
Notary Public
(Official Title)
Notary Public State of Mississippi At Large
My Commission Expires: October 29, 1999
BONDED THRU HEIDEN-MARCHETTI, INC.

Charles Wicker
Defendant, CHARLES WICKER

EXHIBIT E

I N D I C T M E N T

THE STATE OF MISSISSIPPI
COUNTY OF RANKIN

CAUSE NUMBER 4912

AGGRAVATED ASSAULT (97-3-7(2))

IN THE CIRCUIT COURT OF SAID COUNTY, JANUARY TERM, 19 95
RECALLED MARCH 16, 1995

The Grand Jurors of the State of Mississippi, taken from the body of good and lawful citizens of said county, elected, summoned, empaneled, sworn and charged to inquire in and for the body of the county aforesaid, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oath present that:

TRAVIS C. WICKER

on or about the 31 day of January, 1995, in the county aforesaid and within the jurisdiction of this Court, did unlawfully, feloniously, purposely and knowingly, cause serious bodily injury to Barbara Wicker, a human being, by shooting her with a firearm, a deadly weapon, in violation of M.C.A. Section 97-3-7(2); against the peace and dignity of the State of Mississippi.

endorsed: A True Bill

Michael A. Wirt
Foreman of the Grand Jury

[Signature]
District Attorney

AFFIDAVIT

COMES NOW Michael A. Wirt, Foreman of the January 1995, Rankin County Grand Jury, and makes oath that this indictment presented to this Court was returned by twelve (12) or more members of the Grand Jury and that at least fifteen (15) members thereof were present during all deliberations.

Michael A. Wirt
FOREMAN OF THE GRAND JURY

SWORN TO AND SUBSCRIBED before me on this, the 31st day of March, A.D., 1995.

PHILIP WARREN, CIRCUIT CLERK

BY: [Signature] D.C.

EXHIBIT F

IN THE CIRCUIT COURT OF RANKIN COUNTY MISSISSIPPI

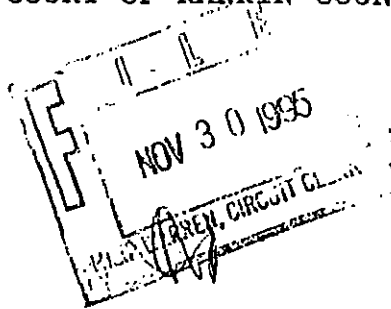
STATE OF MISSISSIPPI

VS.

CAUSE NO. 4911

TRAVIS C. WICKER

DEFENDANT



JUDGMENT OF CONVICTION AND SENTENCE INSTANTER

THIS DAY this cause came on to be heard on the sworn petition of TRAVIS C. WICKER, the Defendant, a citizen of the United States, to withdraw the previous plea of not guilty and to enter a plea of guilty to the criminal offense of SIMPLE MURDER, a lesser offense than that charged in the indictment in cause no. 4911; and the defendant, the Defendant's attorneys, Honorable Vickie Williams and Honorable James Bobo, and the attorney for the State all being personally present in open court and ready for hearing; and the court having heard and considered the petition together with the evidence adduced in support of it, including the testimony under oath of the Defendant and the statements of counsel, is of the opinion and finds that the allegations contained in the petition are supported by the evidence and are true and correct as set forth in it; that the Defendant's plea of guilty is not induced by force, violence, threats, coercion, fear, deception, promises, or misrepresentations; that the Defendant is competent to understand and does understand the nature of the criminal offense to which the plea of guilty is entered and understands the minimum and maximum punishments prescribed by law for it; that the defendant understands that by entering a plea of guilty the

following are expressly waived: the right against self-incrimination, the right to trial by jury, the right to confront and cross-examine the witnesses for the State, the right to testify as a witness, the right to subpoena, call, and examine witnesses in defense, the right to appeal and if indigent, the right to a court-appointed attorney to prosecute an appeal; that the Defendant's plea of guilty is freely, voluntarily, and intelligently made, and that there is a factual basis for the plea which establishes the Defendant's guilt beyond any reasonable doubt; that the petition should be granted and the Defendant's plea of guilty should be accepted and entered.

IT IS THEREFORE ORDERED AND ADJUDGED that the plea of guilty of the Defendant is accepted and entered and that based on it the Defendant should be and is found guilty and convicted of the crime of SIMPLE MURDER, a lesser offense than that charged in the indictment.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, TRAVIS WICKER, is sentenced as follows:

To serve a term of LIFE in the custody of the Mississippi Department of Corrections.

IT IS FURTHER ORDERED that the Defendant be given credit against this sentence for time served in pretrial detainment.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant's body is remanded to the Sheriff of Rankin County, Mississippi, to begin serving the sentence imposed.

SO ORDERED AND ADJUDGED this the 30th day of November, 1995.

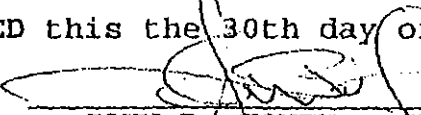

JOHN B. TONEY, CIRCUIT JUDGE

EXHIBIT G

IN THE CIRCUIT COURT OF RANKIN COUNTY MISSISSIPPI

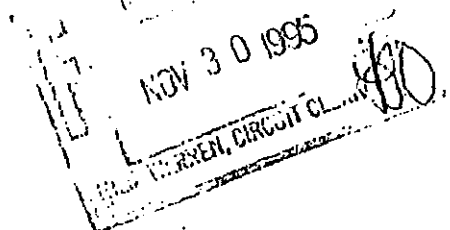
STATE OF MISSISSIPPI

VS.

TRAVIS C. WICKER

CAUSE NO. 4912

DEFENDANT



JUDGMENT OF CONVICTION AND SENTENCE INSTANTER

THIS DAY this cause came on to be heard on the sworn petition of TRAVIS C. WICKER, the Defendant, a citizen of the United States, to withdraw the previous plea of not guilty and to enter a plea of guilty to the criminal offense of AGGRAVATED ASSAULT as charged in the indictment in cause no. 4912; and the Defendant, the Defendant's attorneys, Honorable Vickie Williams and Honorable James Bobo, and the attorney for the State all being personally present in open court and ready for hearing; and the Court having heard and considered the petition together with the evidence adduced in support of it, including the testimony under oath of the Defendant and the statements of counsel, is of the opinion and finds that the allegations contained in the petition are supported by the evidence and are true and correct as set forth in it; that the Defendant's plea of guilty is not induced by force, violence, threats, coercion, fear, deception, promises, or misrepresentations; that the Defendant is competent to understand and does understand the nature of the criminal offense to which the plea of guilty is entered and understands the minimum and maximum punishments prescribed by law for it; that the Defendant understands that by entering a plea of guilty the

following are expressly waived: the right against self-incrimination, the right to trial by jury, the right to confront and cross-examine the witnesses for the State, the right to testify as a witness, the right to subpoena, call, and examine witnesses in defense, the right to appeal and if indigent, the right to a court-appointed attorney to prosecute an appeal; that the Defendant's plea of guilty is freely, voluntarily, and intelligently made, and that there is a factual basis for the plea which establishes the Defendant's guilt beyond any reasonable doubt; that the petition should be granted and the Defendant's plea of guilty should be accepted and entered.

IT IS THEREFORE ORDERED AND ADJUDGED that the plea of guilty of the Defendant is accepted and entered and that based on it the Defendant should be and is found guilty and convicted of the crime of AGGRAVATED ASSAULT, as charged in the indictment.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, TRAVIS C. WICKER, is sentenced as follows:

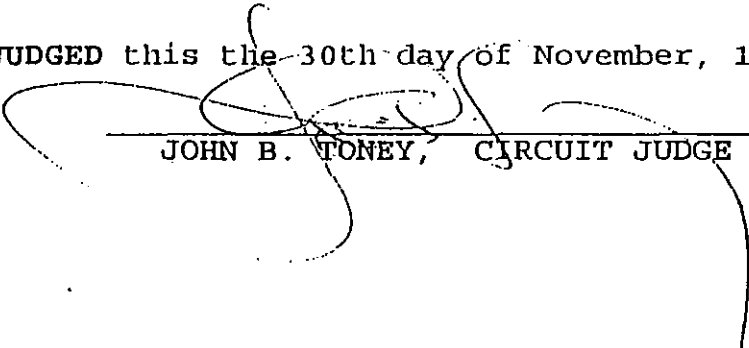
To serve a term of TWENTY (20) YEARS in the custody of the Mississippi Department of Corrections.

IT IS FURTHER ORDERED AND ADJUDGED that the sentence herein be CONSECUTIVE to the LIFE SENTENCE imposed in Rankin County Circuit Cause No. 4911.

IT IS FURTHER ORDERED that the Defendant be given credit against this sentence for time served in pretrial detainment.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant's custody is remanded to the Sheriff of Rankin County, Mississippi, to begin serving the sentence imposed.

SO ORDERED AND ADJUDGED this the 30th day of November, 1995.



JOHN B. TONEY, CIRCUIT JUDGE

