

IN THE COURT OF APPEALS FOR
THE STATE OF MISSISSIPPI

COPY

TERRY SANDERS

FILED

APPELLANT

VS

JAN 05 2008

NO. 2008-CP-1396

STATE OF MISSISSIPPI

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

APPELLEE

REPLY BRIEF OF APPELLANT

TERRRY SANDERS,
PRO SE

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PROPOSITION

STANDARD OF REVIEW

MISS. CODE ANN.99-39-23(6) STATES THAT AN INTERVENING DECISION OF THE SUPREME COURT OF EITHER THE STATE OF MISSISSIPPI OR THE UNITED STATES WHICH WOULD HAVE ADVERSELY AFFECTED THE OUT COME OF THE CONVICTION OR SENTENCE ARE EXCEPTED FROM THE SUCCESSIVE WRIT BAR.

APPELLANT BASED HIS POST CONVICTION MOTION ON JOHNSON V STATE 92-KA-00884(MISS 1995) IN THAT

THE NEW UNIFORM RULES
OF CIRCUIT AND COUNTY
COURT (U.R.C.C.C.)
PROMULGATED BY THE
MISSISSIPPI SUPREME
COURT, EFFECTIVE MAY
1, 1995 NOW PROVIDE THAT
INDICTMENTS MAY BE
AMENDED TO PROPERLY
CHARGE THE DEFENDANT AS
AN HABITUAL OFFENDER.THIS
AUTHORITY DID NOT EXIST
PRIOR TO MAY 1, 1995.
(EMPHASIS MINE).

MISS. CODE ANN. 99-39-23(7) STATES THAT

NO RELIEF SHALL BE GRANTED
UNDER THIS ARTICLE UNLESS
THE PRISONER PROVES BY A
PREPONDERANCE OF THE
EVIDENCE THAT HE IS
ENTITLED TO SUCH.

IN McCLENDON V STATE 539 SO2D 1375 (1989) THE SUPREME COURT OF MISSISSIPPI REVERSED THE CIRCUIT COURTS DENIAL OF POST CONVICTION. THE COURT AS WITH THE STATE IN THE CASE AT BAR RELIES ON CLEARLY ERRONEOUS.

EXHIBIT "A" (INDICTMENT) AND EXHIBIT "B", THE APPELLANT'S "AFFIDAVIT OF FACTS" ARE PROOF THAT THE ALLEGATIONS ARE TRUE. APPELLANT SOUGHT THE RECORDS THROUGH "MOTION FOR DISCOVERY". SEE RUSSELL V STATE 819 SO2D 1177.

APPELLANT HAS A FUNDAMENTAL RIGHT TO BE FREE OF AN ILLEGAL SENTENCE. NORWOOD V STATE 846 SO2D 1048. (MISS. CT APP. 2003).

EXHIBIT A CHARGED APPELLANT UNDER MISS. CODE ANN. 97-3-19 (1) (C). THE COURT ALLOWED THE AMENDMENT TO 97-3-19 (2) (B). APPELLANT WAS NOT UNDER A SENTENCE OF LIFE AT THE TIME.

IF TAKEN IN THE LIGHT OF PRO SE NOT SO WELL PLEADED ALLEGATIONS, WHERE THE PETITION MAY NOT BE LOST BECAUSE IN ART FULLY DRAFTED. SEE MYERS V STATE 583 SO2D 174 (MISS. 1991) AND THE FACT THAT HE IS ACTUALLY INNOCENT OF 97-3-19 (2)(B) THEN THE SENTENCE IS ILLEGAL AND THUS SUBJECT TO ATTACK UNDER MISS. CODE ANN. 99-39-1 ET SEQ. SEE ALSO GRAY V STATE 819 SO2D 542 (MISS CT. APP. 2001).

THIS COURT CAN EXAMINE A CLAIM THAT THE SENTENCE IS ILLEGAL, EVEN IF THE WRIT IS SUCCESSIVE. LYLE V STATE 756 SO2D 1.

THE INTERVENING DECISIONS OF JOHNSON V STATE 92-KA-00884, SUPRA, U.R.C.C.C. 7.09 AND THE CASES OF LESTER V STATE 692 SO2D 755 AND BERRYHILL V STATE 703 SO2D 250 (1997) OVER COME THE BAR OF MISS. CODE ANN. 99-39-23 (6).

APPELLANT SHOULD BE HEARD ON THE MERITS OF HIS CLAIMS OF EXPECTION TO THE SUCCESSIVE WRIT BAR. LUCKETT V STATE 582 SO2D 428. ALSO GRAY V STATE 819 SO2D 542 (2001).

INTERVENING DECISIONS OF JOHNSON V STATE, SUPRA. THE NOVELTY OF THE ISSUE AT TIME OF INDICTMENT AND PLEA. SEE REED V ROSS 468 US 1.

APPELLANT SHOULD BE ALLOWED DISCOVERY AND RELEASED FROM THE ILLEGAL SENTENCE. APPELLANT HAS SHOWN PROOF

SUFFICIENT TO SHOW ERROR BY HIS "FACTS WITHIN HIS KNOWLEDGE",
EXHIBITS AND LAW.

CONCLUSION

APPELLANT HAS PRESENTED A CLAIM THAT IS ALIVE AND OF A
FUNDAMENTAL RIGHT. THE COURT SHOULD REVERSE AND VACATE THE
CIRCUIT COURT'S RULING IN THE LEAST.

RESPECTFULLY SUBMITTED,

Terry Sanders
TERRY SANDERS PRO SE

CERTIFICATE OF SERVICE

I, TERRY SANDERS, DO CERTIFY THAT I HAVE MAILED A TRUE AND CORRECT COPY OF THE FOREGOING VIA FIRST CLASS PREPAID POSTAGE TO THE FOLLOWING:

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THIS THE 5 DAY OF Jan 2009.

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