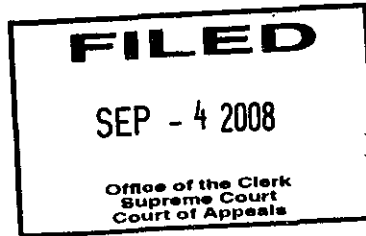


**IN THE COURT OF APPEALS FOR
THE STATE OF MISSISSIPPI**

TERRY SANDERS

VS

STATE OF MISSISSIPPI



APPELLANT

NO. 2008-^{CP}TS-01396-C0A

APPELLEE

BRIEF OF APPELLANT

TERRY SANDERS, PRO SE

CERTIFICATE OF INTERESTED PERSONS

**THE BELOW LISTED PERSONS HAVE INTEREST IN THE OUT COME OF
THIS MOTION.**

**HONORABLE ROGER CLARK
P.O. BOX 235
BILOXI, MS. 39533**

**HONORABLE JIM HOOD
P.O. BOX 120
JACKSON, MS. 39205**

**HONORABLE CONO CARANNA
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STATEMENT OF ISSUES

1. DID THE COURT ERR BY DISMISSING THE PETITION AS
SUCCESSIVE?
2. DID THE COURT ERR BY ONLY ALLOWING APPEAL ON THE
RECORD BEFORE IT?

SUMMARY OF THE ARGUMENT

1. APPELLANT ALLEGED INTERVENING DECISIONS BY THE SUPREME COURT THAT OVER COME THE SUCCESSIVE WRIT BAR.
2. APPELLANT HAS ATTEMPTED TO ACQUIRE THE TRANSCRIPT OF THE 1985 HEARING TO SHOW ERROR.

ARGUMENT 1.

APPELLANT ALLEGED THAT THERE WERE INTERVENING DECISIONS OF THE MISSISSIPPI SUPREME COURT THAT OVER CAME THE SUCCESSIVE WRIT BAR OF MISS. CODE ANN. 99-39-23(6).

COURT OF APPEALS CAN EXAMINE A CLAIM THAT A SENTENCE WAS ILLEGAL EVEN IF THE PETITION FOR POST CONVICTION RELIEF FROM DENIAL OF WHICH APPEAL IS TAKEN IS SUCCESSIVE LYLE V STATE 756 SO2D 1 (1999).

APPELLANT ALLEGED AN ILLEGAL SENTENCE DUE TO THE COURT'S ERRORS. U.R.C.C.P. 7.09 WHICH WAS RULE ON AFTER APPELLANT'S PLEA DID NOT EXIST PRIOR TO MAY 1995. SEE ALSO JOHNSON V STATE 92-KA-00884.

BOTH RULE 7.09 AND JOHNSON SHOULD BE SEEN AS INTERVENING DECISIONS. THAT WOULD HAVE ACTUALLY ADVERSELY AFFECTED THE OUTCOME OF THE SENTENCE. THESE ARE NOT PRE-EXISTING LAW AND RULES WHEN APPELLANT ENTERED HIS PLEA. SEE PATTERSON V STATE 594 SO2D 606.

APPELLANT'S RIGHT TO BE FREE OF AN ILLEGAL SENTENCE INVOLVES A FUNDAMENTAL RIGHT WHICH IS EXCEPTED FROM MISS. CODE ANN. 99-39-23. SEE NORWOOD V STATE 846 SO2D 1048 ALSO GRAY V STATE 819 SO2D 542.

INTERVENING DECISION ALONE DOES NOT PRECLUDE WAIVER UNDER 99-39-21, BUT CAN ONLY EXCEPT CASE FROM EFFECT OF 3- YEAR STATUTE OF LIMITATION IN SUBSECTION (2) OF THIS SECTION

AND PROHIBITION OF SECOND
PETITIONS IN 99-39-27 (9) WILEY
V STATE 517 SO2D 1373.

APPELLANT WOULD STATE THAT RULE 7.09 JOHNSON SUPRA ARE
INTERVENING DECISIONS OF MISS. CODE ANN. 99-39-23 (6) ALSO LESTER V
STATE 692 SO2D 755 (1997), DAVIS V STATE 684 SO2D 643. HENDERSON V
STATE 660 SO2D 220 (WITHOUT AUTHORITY OF LAW). DRETKE V
HALEY 541 US 386 (2004).

ARGUMENT 11

IN 1985 APPELLANT HAD AN EVIDENTARY HEARING. HONORABLE
JAMES THOMAS WAS THE JUDGE AT THE HEARING. JUDGE THOMAS WAS
ALSO THE DISTRICT ATTORNEY AT TIME OF INDICTMENT.

WHERE THE JUDGE PRESIDING
OVER APPELLANT'S OVER
APPELLANT'S POST CONVICTION
MOTION SERVED A PROSECUTORIAL
RULE IN THE UNDERLYING CRIMINAL
CASE, THESE INHERENT CONTRADICTORY
FUNCTIONS REQUIRED HIS RECUSAL.
FAILURE TO DO SO WAS REVERIBLE
ERROR. RYALS V STATE 914 SO2D 285
(2005).

APPELLANT HAS TRIED TO ACQUIRE THE 1985 TRANSCRIPTS AND
RECORD. APPOINTED COUNSEL (DAVID WHEELER) IS NO LONGER A
CRIMINAL ATTORNEY DID NOT FILE AN APPEAL AS REQUESTED. THE
COURT IN ITS GRANTING OF FORMA PAUPERIS STATED THE APPEAL
WOULD ONLY BE ON THE RECORD BEFORE IT.

REMAND WAS WARRANTED FOR
AUGMENTATION OF RECORD ON
MOTION FOR POST CONVICTION

RELIEF WHERE PETITIONER
APPEARED PRO SE AND HAD
REPEATEDLY ATTEMPTED TO
COMPLETE RECORD. LEWIS V
STATE 776 SO2D 679. (2000)

APPELLANT WUOLD STATE THAT BY THE DENIAL OF THE RECORDS
THAT HE HAS BEEN RESTRICTED IN HIS ATTEMPT TO PRIVE CAUSE AND
PREJUDICE OTHER THAN BEING SENTENCED TO AN ILLEGAL SENTENCE.

POST CONVICTION RELIEF
PETITIONER WAS ENTITLED
TO COMPULSORY PROCESS
OF THE COURT TO THE EXTENT
THAT DISCOVERY WAS ALLOWED.
RUSSELL V STATE 819 SO2D 1177
(2001).

IN CONCLUSION

WHEREFORE PREMISSES CONSIDERED APPELLANT WOULD ASK THIS
HONORABLE COURT TO GRANT DISCOVERY TO THE 1985 HEARING
TRANSCRIPTS.

APPELLANT WOULD ASK THE COURT TO REMAND SAID ILLEGAL
SENTENCE BACK TO THE LOWER COURT. THAT THE INTERVENING
DECISIONS OVER COME THE BAR OF THE LOWER COURT.

APPELLANT ASKS THIS COURT TO REMAND FOR HEARING THE POST
CONVICTION MOTION.

APPELLANT STATES THAT THIS COURT'S REMAND WILL BE ON THE
SENTENCE ONLY AND WILL NOT AFFECT THE CONVICTION. APPELLANT
PRAYS FOR ANY OTHER RELIEF HE MAY BE ENTITLED TO UNDER LAW.

Terry Sanders

CERTIFICATE OF SERVICE

I, TERRY SANDERS, HERBY ATEST THAT I HAVE CAUSED TO BE
MAILED, VIA FIRST CLASS, PREPAID POSTAGE, A TRUE AND CORRECT
COPY OF THE FOREGOING TO THE BELOW LISTED PERSON(S).

HONORABLE ROGER CLARK
P.O. BOX 235
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HONORABLE CONO CARANNA
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HONORABLE JIM HOOD
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THIS THE 4 DAY OF Sept 2008.

Terry Sanders