IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RODERICK HOOKS A/K/A RODERICK D. HOOKS — APPELLANT

VS. — NO. 2008-CP-1448-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RODERICK HOOKS A/K/A RODERICK D. HOOKS **APPELLANT**

VS. **NO. 2008-CP-1448-COA**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

In this appeal from a second, if not a third, quest in a state trial court for post-conviction relief sought in the wake of his guilty plea to statutory rape, RODERICK HOOKS, proceeding *pro se*, apparently seeks to exempt himself from a successive writ bar by claiming he has newly discovered evidence proving the victim deceived him by misrepresenting her age.

This is basically the same defense Adam used when he partook of the forbidden fruit, *viz.*, the woman gave it to me to eat after the serpent deceived her. Genesis 3:12-13.

God didn't buy it, and neither did the circuit judge. (C.P. at 17 - Volume 1 of 1; appellee's exhibit A, attached)

RODERICK HOOKS, a twenty-seven (27) year old African American male and former resident of Brookhaven who has completed ten (10) years of high school (C.P. at 11, 16), appeals from the summary dismissal of his second, if not his third, motion for post-conviction relief filed in the wake of his guilty plea on September 16, 2005, to statutory rape, David Strong, Jr., and Mike

Smith, respectively, Circuit Judges, presiding. (C.P. at 10-15 - Volume 1 of 2)

Hooks desires to either vacate his sentence and conviction or enjoy the benefit of an evidentiary hearing which has been twice denied by the trial court. *See* appellee's exhibits B and C, attached.

STATEMENT OF FACTS

Following a plea-qualification hearing conducted on September 16, 2005, in the Circuit Court of Lincoln County, Roderick Hooks entered a plea of guilty to statutory rape, Mike Smith, former circuit judge, presiding. (C.P. at 10-14) Hooks was thereafter sentenced to serve fifteen (15) years in the custody of the MDOC with eight (8) years to serve and seven (7) years on post-release supervision. (C.P. at 15 - Volume 1 of 2)

Four (4) months later, on January 10, 2006, Hooks sought post-conviction relief in the form of a motion to reduce his eight (8) year sentence imposed on September 16th following his guilty plea. (C.P. at 19-25) The relief requested was based upon the affidavit of Phyllis Henderson, the victim's mother, who declared, under oath, she felt Hooks should not have to serve a sentence for which he pled guilty. (C.P. at 21 - Volume 1 of 2)

On January 18, 2006, Judge Smith, treating Hooks's post-plea motion as a motion for post-conviction relief, denied Hooks's motion to reduce his eight (8) year sentence on the ground that nothing in fact and law had transpired that would warrant re-sentencing. (C.P. at 27 - Volume 1 of 2; appellee's exhibit B, attached)

Six months after that, on June 29, 2006, Judge Smith signed a three (3) page order denying Hooks's second motion for post-conviction relief and rejecting Hooks's claims he was denied the effective assistance of counsel during his guilty plea. (C.P. at 27-29; appellee's exhibit C, attached.)

On January 22, 2008, Hooks filed his third motion for post-conviction relief claiming he had

new evidence that would demonstrate his plea was involuntary and his lawyer still ineffective. (C.P. at 3-15)

Attached to his motion were the affidavits of both the victim and her mother.

Phyllis Harris is the mother of Bernitric Denise Henderson.

Phyllis, under the trustworthiness of the official oath, swore her daughter " . . . did have a habit of giving people an incorrect age before and if a person did not know her personally, they could easily be mislead or fooled." (C.P. at 7 - Volume 1 of 1)

Bernitric Henderson is the daughter of Phyllis Harris.

Bernitric, also under the trustworthiness of the official oath, swore she told Hooks she was twenty (20) years of age and agreed to have sex with him. She had been seeing Hooks around the neighborhood and liked him, and " I did end up pregnant and my mother found out about Roderick and me." (C.P. at 8)

On August 19, 2008, Judge Strong entered a one (1) page order summarily denying post-conviction relief. He noted in particular that Hooks had previously filed a motion to reduce his eight (8) year sentence based upon the dual affidavits of the victim and her mother and that the trial court had previously entered two orders denying the relief sought. (C.P. at 17; appellee's exhibit A, attached)

Judge Strong concluded "[t]hat Roderick D. Hooks has previously addressed all issues raised in the current pleading and the same is dismissed as a successive writ." (C.P. at 17; appellee's exhibit A, attached)

We concur.

Here and now Hooks invites this Court to reverse the trial judge's summary dismissal and either vacate his sentence and conviction via guilty plea or grant him an evidentiary hearing where

he will be given an opportunity to prove his claims. (Appellant's Opening Brief at 11-12)

We respectfully submit Judge Strong found no error involving fundamental rights, or any other rights, sufficient to exempt Hooks from the statute barring his claims as successive. In this posture, Hook's motion for post-conviction relief was correctly denied by the lower court as procedurally barred by the successive-writ prohibition and manifestly without merit on its merits as well. (C.P. at 17; appellee's exhibit A, attached) This ruling was both judicious and correct.

SUMMARY OF ARGUMENT

"The burden of proving that no procedural bar exists falls squarely on the petitioner." **Crawford v. State,** 867 So.2d 196, 202 (Miss. 2003).

Hooks, for the second time, if not the third, seeks post-conviction relief from the same 2005 guilty plea.

Hooks has already been there and done that. *See* appellee's exhibits B and C, attached.

Although one of his previous motions was labeled as a motion to reduce sentence (C.P. at 19), such was properly treated as a motion for post-conviction relief assailing the integrity of the same guilty plea and the sentence imposed in its wake. (C.P. at 17;appellee's exhibit A, attached)

A rose by any other name smells the same. *See* **Sanders v. State,** 440 So.2d 278, 282 (Miss. 1983), note 1 ["We affirm our long-standing rule that *pro se* post-conviction relief efforts will be examined in the light of the substantive claims presented rather than their possible inapt denomination."]

There must at some point in time be an end to seemingly endless litigation.

Hooks's most recent claims were clearly successive-writ barred by virtue of Miss.Code Ann. § 99-39-23(6). **Arnold v. State,** 912 So.2d 202, 203 (Ct.App.Miss. 2005).

The "cause and actual prejudice" factor defined in Miss.Code Ann. §99-39-21(2)(4) and (5)

provides no basis for due process relief. We respectfully submit Hooks has received all the process he was due.

ARGUMENT

HOOKS'S POST-PLEA MOTION FOR POST-CONVICTION RELIEF WAS PROCEDURALLY BARRED AS A SUCCESSIVE WRIT AND WAS MANIFESTLY WITHOUT MERIT ON THE MERITS AS WELL.

This Court has stated time and again the standard for appellate review of post-conviction cases.

"When reviewing a trial court's decision to deny a petition for post-conviction relief, [an appellate court] will not disturb the trial court's factual findings unless they are found to be clearly erroneous. [citation omitted] However, where questions of law are raised, the applicable standard of review is *de novo*." **Twillie v. State,** 892 So.2d 187, 189 (Miss. 2004). *See also* **Buckhalter v. State,** 912 So.2d 159, 160 (Ct.App.Miss. 2005), reh denied.

"A trial judge's finding will not be reversed unless manifestly wrong." **Hersick v. State,** 904 So.2d 116, 125 (Miss. 2004).

Hooks claims that newly discovered evidence in the form of a quasi-recantation by the victim is sufficient to raise a "mistake of age" defense and should warrant granting the requested relief. This argument is devoid of merit for several reasons.

Plea of Guilty Negates Value of New Evidence.

First, a plea of guilty, by definition, negates any notion there is some undiscovered evidence which could prove a prisoner's claim of innocence.

In the recently decided case of **Bell v. State,** No. 2007-CP-01857-COA decided February 3, 2009 (¶¶ 10-12) [Not Yet Reported], we find the following language addressing this state of affairs:

> A petitioner seeking post-conviction relief based on new evidence must prove that the new evidence has been discovered since the end of trial, and such evidence could not have been discovered through due diligence before the beginning of the trial. **However, "[w]hen a defendant pleads guilty he is admitting that he committed the offense. Therefore, by definition, a plea of guilty negates any notion that there is some undiscovered evidence which could prove his innocence."** ***Jenkins v. State,*** **986 So.2d 1031, 1034 (¶12) (Miss. Ct.App. 2008).**
>
> After entering a guilty plea, Bell asserts that new evidence came to light on January 9, 2008, after review of the court transcript that will show that she was wrongfully accused, charged, and sentenced in cause number CR-03-198, and she was ill-advised and misinformed by defense counsel that there was nothing on the recording that would implicate her involvement in the drug buy on April 4, 2003. Although Bell's current sentence is based on guilty pleas to two separate charges, she is requesting that this Court review the evidence and either reverse or dismiss the charge in cause number CR03-198.
>
> The issues of new evidence being available and ineffective assistance of counsel are being raised for the first time in this appeal. "An issue not raised before a trial court in a motion for post-conviction relief is procedurally barred." *Long v. State,* 982 So.2d 1042, 1045 (¶13) (Miss. Ct. App. 2008). Thus, the issues of new evidence and ineffective assistance of counsel are procedurally barred from review by this Court. Even if these issues were not subject to a procedural bar, Bell has failed to specifically identify any new evidence. **Furthermore, Bell's guilty plea in cause number CR03-198 would nullify any belief that new evidence would prove that Bell was wrongfully accused, charged, and sentenced. Considering the dialogue between Bell and the trial judge in her plea colloquy, we are satisfied that Bell received adequate legal service and advice from defense counsel.** We find that this issue is without merit. Therefore, the decision of the trial court is affirmed.

Same here.

It will serve no useful purpose to re-plow ground that has already been plowed time and again by Judge Smith in January and June of 2006 (C.P. at 27 - volume 1 of 2 and C.P. at 27 - volume 1 of 1) and again by Judge Strong in 2008. (C.P. at 17) It is enough to say the fact-finding made by

Judge Strong in the wake of Hooks's most recent quest for post-conviction relief was neither clearly erroneous nor manifestly wrong. We adopt the findings made in his order and attachments thereto.

Successive Writ.

Second, Hooks's motion was successive-writ barred.

Hooks's motion was essentially a second, if not a third, successive request for post-conviction collateral relief. Judge Strong made the following observations in his order denying relief:

> "Roderick D. Hooks has previously filed a 'Motion to Reduce the (8) Years Sentence and Be Put on Post Release Supervision' based on the victim's and her mother's affidavit statements. That the motion was treated as a post-conviction relief motion by the Court and that the Court has previously entered two orders denying the relief sought. Hooks filed these pleadings in cause number 05-192-LS, his original indictment number. A copy of the previous pleadings and orders are attached to this order as Exhibit A." (C.P. at 17 - Volume 1 of 1; appellee's exhibit A, attached)

"The issue of whether [Hooks's] petition is procedurally barred as a second or successive writ is a question of law and is reviewed *de novo*." **Arnold v. State,** 912 So.2d 202, 203 (Ct.App.Miss. 2005).

Miss.Code Ann. § 99-39-23 (6) identifies in plain and ordinary English the successive writ limitations on motions for post-conviction collateral relief. We quote:

> (6) The order as provided in subsection (5) of this section or any order dismissing the prisoner's motion or otherwise denying relief under this chapter is a final judgment and shall be conclusive until reversed. It shall be a bar to a second or successive motion under this chapter. * * * * * *

See **Arnold v. State,** *supra,* 912 So.2d 202, 203 (Ct.App.Miss. 2005); **Skinner v. State,** 864 So.2d 298 (Ct.App.Miss. 2003); **Lewis v. State,** 797 So.2d 248 (Ct.App.Miss. 2001); **Clay v. State,** 792 So.2d 302 (Ct.App.Miss. 2001), reh denied.

The January 22, 2008, motion for post-conviction relief was at least Hooks's third appearance in the Circuit Court of Lincoln County in a post-conviction environment. It was a successive writ and was properly denied for this reason, if for no other.

Contrary to the position taken by Hooks, neither he nor his writ-writer have successfully alleged anything that would exempt Hooks from the successive writ bar.

Manifestly Without Merit.

Third, Hooks's claims were manifestly without merit on the merits as well. This is because the new evidence fails to make it "practically conclusive" that had such been known to Hooks at the time of his plea, it would have caused a different result in his conviction via guilty plea or his sentence. *See* Miss.Code Ann. §99-39-23(6).

"Mistake of age" is not a defense to the crime of statutory rape; rather, knowledge or ignorance of the age of the victim is irrelevant to the offense of statutory rape. **Collins v. State,** 691 So.2d 918 (Miss. 1997), reh'g denied 693 So.2d 384 (Miss. 1997), cert. denied 522 U.S. 877, 118 S.Ct. 198, 139 L.Ed.2d 135 (1997).

Hooks concedes in his brief that mistake of age is not a viable defense to the charge of statutory rape in Mississippi. (Appellant's Opening Brief at 7) Although Hooks claims the victim beguiled him, Hooks, nevertheless, must accept the victim in the posture that he finds her - at least 14 but under 16 years of age. Mistake as to the victim's age is not relevant to the charge.

Finally, revelations made by Phyllis Harris and especially by Bernitric Henderson, do not pass muster as evidence newly discovered. The information contained in the affidavits of the victim and her mother was available as far back as January 10, 2006, when Hooks first filed his motion to reduce sentence based upon the affidavit of the mother stating she did not want Hooks to go to prison since he pled guilty. (C.P. at 21 - Volume 1 of 2)

According to the handwritten motion signed by Hooks, both the victim and her mother gave the office of the district attorney affidavits stating they did not want Hooks locked up. Hooks stated in his motion that the victim told him she was nineteen (19) years of age and he had no reason to believe otherwise. (C.P. at 19 - volume 1 of 2)

Such does not meet the criteria for newly discovered evidence as defined in **Bell v. State,** *supra,* ¶10, which is evidence discovered since the end of trial and such evidence could not have been discovered through due diligence before the beginning of the trial (or in this case prior to the guilty plea).

Miss.Code Ann. § 99-39-11 (Supp. 1999) reads, in its entirety, as follows:

> (1) The original motion together with all the files, records, transcripts and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned.
>
> **(2) *If it plainly appears* from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief, *the judge may make an order* for its dismissal and *cause the prisoner to be notified.***
>
> (3) If the motion is not dismissed under subsection 2 of this section, the judge shall order the state to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.
>
> (4) This section shall not be applicable where an application for leave to proceed is granted by the supreme court under section 99-39-27. [emphasis added]

It does. He did. And he was. *See* **Jones v. State,** 976 So.2d 407, 412 (¶11) (Ct.App.Miss. 2008) ["A post-conviction claim for relief is properly dismissed without the benefit of an evidentiary hearing where it is manifestly without merit."]

Not only were Hooks's claims successive writ barred, they were manifestly devoid of merit as well.

CONCLUSION

Hooks says he was denied due process of law and that dismissal of his claims without an evidentiary hearing was an abuse of judicial discretion.

We disagree.

Not every motion for post-conviction relief filed in the trial court must be afforded an adversarial hearing. **Rodolfich v. State,** 858 So.2d 221 (Ct.App.Miss. 2003).

Put another way, the right to an evidentiary hearing is not guaranteed in every case. **Brister v. State,** 858 So.2d 181 (Ct.App.Miss. 2003).

"This Court reviews the denial of post-conviction relief under an abuse of discretion standard." **Phillips v. State,** 856 So.2d 568, 570 (Ct.App.Miss. 2003). No abuse of judicial discretion has been demonstrated here.

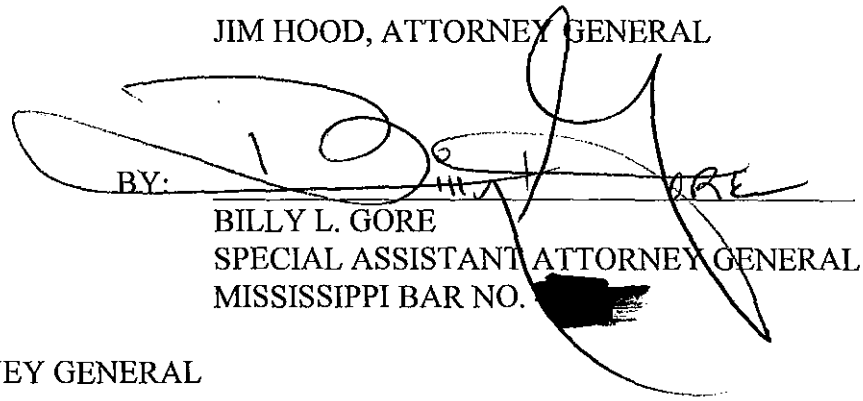
Hooks is successive-writ barred from bringing his claims here and now because the allegedly new evidence would not have caused a different result then and there. Stated differently, Hooks has failed to make a claim falling under any of the recognized exceptions to the procedural bar that comes into play by the filing of a successive writ.

Appellee respectfully submits this case is devoid of error. Accordingly, summary dismissal,

as successive-writ barred and manifestly without merit as well should be forthwith affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL



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IN THE CIRCUIT COURT OF LINCOLN COUNTY, MISSISSIPPI

RODERICK D. HOOKS, MDOC #115427 — PETITIONER

VS. — CAUSE NUMBER 2008-019-LS

STATE OF MISSISSIPPI — RESPONDENT

ORDER

THIS CAUSE came on hearing on this day on Motion for Post-Conviction Relief pursuant to Mississippi Code § 99-39-1, *et seq.* filed by Roderick D. Hooks, the Court does find as follows:

Roderick D. Hooks has previously filed a Motion to Reduce the (8) Years Sentence and Be Put on Post Release Supervision based on the victim's and her mother's affidavit statements. That the motion was treated as a post-conviction relief motion by the Court and that the Court has previously entered two orders denying the relief sought. Hooks filed these pleadings in cause number 05-192-LS, his original indictment number. A copy of the previous pleadings and orders are attached to this order as Exhibit A.

That Roderick D. Hooks has previously addressed all issues raised in the current pleading and the same is dismissed as a successive writ. The motion for post-conviction relief pursuant to Mississippi Code § 99-39-1, *et seq.* is hereby denied.

SO ORDERED AND ADJUDGED on this the 19 day of August, 2008.

CIRCUIT COURT JUDGE

TERRY LYNN WATKINS, Circuit Clerk
FILED
AUG 20 2008
By L. Price D.C.

DAVID H. STRONG, JR.
Circuit Court Judge
Post Office Drawer 1387
McComb, Mississippi 39649
601/684-3400, 601/684-2700 (fax)
MS Bar No. 9664

EXHIBIT A

B 104
P 311

IN THE CIRCUIT COURT OF LINCOLN COUNTY, MISSISSIPPI

RODERICK D. HOOKS

VS. CAUSE NO. 05-192-LS

STATE OF MISSISSIPPI

ORDER DENYING MOTION TO REDUCE THE (8) YEAR SENTENCE AND BE PUT ON POST RELEASE SUPERVISION BASED ON THE VICTIM'S AND HER MOTHER'S AFFIDAVIT STATEMENT

This cause this day came on for hearing on consideration of the above motion, and the Court, after duly considering same, finds:

1. Roderick D. Hooks pled guilty to statutory rape on September 12, 2005 and was sentenced on September 16, 2005 within statutory guidelines.

2. That in accepting the defendant's plea, the Court adjudicated that it was knowingly, willingly, freely and voluntarily made and that there existed factual basis for said plea.

3. That in pleading, said defendant waived all rights to appeal.

4. That nothing in fact or law has transpired that would warrant a re-sentencing and that said motion should be and hereby is denied.

SO ORDERED AND ADJUDGED, this the 18 day of January, A.D., 2006.

CIRCUIT JUDGE

EXHIBIT
B

FILED
JAN 19 2006
MRS. TERRY LYNN WATKINS
CIRCUIT CLERK
D.C.

27.

05-192 LS

FILED

IN THE CIRCUIT COURT OF LINCOLN COUNTY, MISSISSIPPI

JUL 03 2006

MRS. TERRY LYNN WILLIAMS
CIRCUIT CLERK
D.C.

RODERICK D. HOOKS

VS.

STATE OF MISSISSIPPI

CAUSE NO. 2006-267-LS (CIVIL)
05-192-LS (CRIMINAL)

ORDER DENYING PETITIONER'S MOTION FOR POST CONVICTION COLLATERAL RELIEF

THIS CAUSE this day came before this Court came Petitioner, Roderick D. Hooks's, Motion for Post Conviction Collateral Relief; and this Court, after duly considering same, doth find, ORDER AND ADJUDGE:

1. Roderick D. Hooks pled guilty to statutory rape and in doing so under oath, he stated that he had been represented by counsel at each stage of the proceedings in court, that he understood the indictment and the elements of the crime; that his attorney had reviewed the discovery material provided from the District Attorney's file with him; that his attorney had answered all of his questions; that he was satisfied with his attorney's representation; that he understood his right to a trial by jury and his right to challenge the composition of the Grand Jury that indicted him and the trial jury that would try him; that he understood his right to have subpoenas issued through the Circuit Clerk's Office to be served on his witnesses so they would be available to testify for him at trial; that he understood his right that any witness who testified against him must do so in his presence and his right to have his attorney cross-examine any witness who testified against him; that he understood his right to not give any information that would incriminate him or furnish any evidence at all; that he understood his right to testify at trial as well as the right not to testify and his right to choose as to whether or not he wanted to testify at his trial; that he understood his right that he not have to prove anything, that the burden of proof was entirely upon the State to prove his guilt by credible evidence and beyond any

EXHIBIT
C

reasonable doubt and that if the State failed to so prove his guilt by credible evidence and beyond any reasonable doubt, the jury would be under a duty to find him not guilty; that he understood his right that all twelve jurors would have to agree as to any verdict of guilty or not guilty; and that he understood his right that even if he were found guilty by the verdict of the jury, he would still have the right to appeal to the Mississippi Supreme Court; that he understood the minimum and maximum penalty; that he understood that a guilty plea waived all of these rights and placed him in a position where he could be sentenced by the court up to the maximum penalty; he further stated under oath that no one had threatened, abused or promised him anything to cause him to want to plead guilty and that he was pleading guilty because he was guilty and for no other reason; and he stated under oath that he was satisfied that the state could prove beyond a reasonable doubt that he was guilty of the crime of statutory rape.

The Court personally observed the Petitioner's demeanor, appearance and manner in answering the Court's questions and it appeared to the Court that the Petitioner was competent to understand and did understand the above. The Court found that the guilty plea was knowingly, willingly, freely, voluntarily and intelligently made and accepted the plea and found the Petitioner guilty. The Petitioner was then sentenced within the statutory guidelines.

2. Petitioner alleges "ineffective assistance of counsel" which is contrary to his sworn statement that he understood a guilty plea would waive his rights and place him in a position where he could be sentenced by the court up to the maximum penalty; and also contrary to his further statements that no one had threatened, abused or promised him anything to cause him to want to plead guilty and that he was pleading guilty because he was guilty and for no other reason.

3. The Court would show that counsel is presumed to be competent. An indigent or defendant is not entitled to expert counsel or counsel of his own choosing but to only reasonable effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed 2d 674 (1984). The Court further finds that there was no breakdown of the adversarial process due to the assistance rendered by Mr. Sermos.

4. Petitioner's Motion for Post Conviction Collateral Relief should be and hereby is denied.

SO ORDERED AND ADJUDGED, this, the 29 day of June, A.D., 2006.

CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I, Billy L. Gore, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable David H. Strong, Jr.
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Post Office Box 1387
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Honorable Dee Bates
District Attorney, District 14
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Roderick Hooks, # 115427
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This the 9th day of March, 2009.

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