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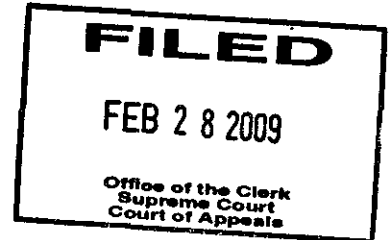
CASE NO. 2008-CP-01448-COA

COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RODERICK HOOKS
APPELLANT/DEFENDANT

VS.

STATE OF MISSISSIPPI
APPELLEE/PLAINTIFF



APPEAL FROM THE CIRCUIT COURT OF
LINCOLN COUNTY, MISSISSIPPI

APPELLANT'S OPENING BRIEF

ORAL ARGUMENT NOT REQUESTED

BY: Roderick Hooks
Roderick Hooks, [REDACTED]
503 South Main Street
Columbia, MS 39429

Appellant

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I.

STATEMENT REGARDING ORAL ARGUMENT

Appellant does not specifically request oral argument in this case as it is believed that the issues are capable of being adequately briefed by the parties. However, in the event the Court believes oral arguments would be helpful or beneficial to the Court then Appellant does not oppose oral argument and would in the court's discretion, ask that same be allowed by Appellant's attorney

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II.


CERTIFICATE OF INTERESTED PERSONS

The undersigned Appellant Roderick Hooks, certifies that the following listed persons have interested in the outcome of this case. These representation are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Roderick Hooks, Appellant pro se
2. Honorable Jim Hood, and staff, Attorney General
3. Honorable Mike Smith, Circuit Court Judge
4. Honorable Dewitt Bates, District Attorney

Respectfully submitted,

BY: _____

Roderick Hooks, 
503 South Main Street
Columbia, MS 39429

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III.

STATEMENT OF THE ISSUES

ISSUE ONE

Appellant has adequately demonstrated cause and prejudice for failing to bring claims of newly discovered evidence at time of trial court guilty plea proceedings.

ISSUE TWO:

Appellant has suffered due process of law and such conviction should be vacated.

ISSUE THREE:

Trial court erred in failing to grant an evidentiary hearing on claims.

ISSUE FOUR:

Appellant suffered cumulative error which caused him to be deprived of his constitutional right to a fair trial violation of the 5th and 14th Amendments to the United States Constitution.

IV.

STATEMENT OF INCARCERATION

Appellant Roland Hooks is presently incarcerated and being housed in the Mississippi Department of Corrections at Columbia, Mississippi, in service of the term imposed in this case. Appellant has been continuously confined, in regards to such sentence, since date of conviction and imposition by the trial court.

V.

STATEMENT OF CASE

Appellant was indicted on August 10, 2005, on the offense of statutory rape, MCA §97-3-65, in the Circuit Court of Lincoln County, Mississippi. This charge was based upon an alleged sexual action with Bernitri Deise Henderson, a female under the age of 18. The indictment alleged that this action was committed knowingly and intentionally by Roderick Hooks.

On September 16, 2005, a plea hearing took place. Roderick Hooks, upon advice of his attorney, entered a plea of guilty. Roderick Hooks continued to maintain his innocence by continuously advising his attorney that he was not aware of the age of Bernitri Henderson and that she told him she was 18 years of age.

Appellant was subsequently sentenced to a term of 8 mandatory years in the custody of the Mississippi Department of Corrections

ARGUMENT

In order to succeed in a post-conviction motion under Mississippi law, an Appellant must show that the adjudication of a claim in a Mississippi court resulted in a conviction or sentence

that was obtained in violation of the Constitution or laws of the United States. Miss. Code Ann §99-39-1, *et. seq.* The Constitution, as the framework from which all Federal law springs, must not be violated as applied to the Appellant. The trial court failed to recognize this legal requirement when the PCR was summarily dismissed by the trial court.

I. THE PETITIONER'S CLAIMS ADEQUATELY SET FORTH GROUNDS OF CAUSE AND PREJUDICE FOR FAILING TO RAISE THESE CLAIMS AT TRIAL OR ON DIRECT APPEAL AND SHOULD NOT HAVE BEEN SUMMARILY DISMISSED BY THE TRIAL COURT.

The purpose of a post-conviction proceeding is to bring to the trial court's attention material facts not known at the time of judgment. Foster v. State, 687 So.2d 1124 (Miss. 1996), cert. denied, 521 U.S. 1108, 117 S.Ct. 2488 (1997). Other issues which were either presented through direct appeal or at trial may be procedurally barred in a motion for post-conviction relief. In the instant matter, the Petitioner's claims rest upon facts outside of the record, making their inclusion in any trial or appellate motions improper. Said evidence was not known nor discoverable at the time of or before the trial.

Miss. Code Ann §99-39-7 (2001) provides that a petition for post-conviction relief is a motion in the original cause, except where the conviction and sentence have been appealed to the Supreme Court of Mississippi and there affirmed or the appeal dismissed. Mississippi has a three year time limitation on filing for post-conviction relief. This petition is properly before the court as the issues presented have not previously been raised at trial or on appeal and have resulted in the deprivation of the Petitioner's constitutional rights. This petition is timely filed in that his conviction became final on September 16, 2005., the date of sentencing

The Appellant seeks to vacate and set aside his conviction and sentence due to errors of constitutional magnitude which became available after the proceedings and after affidavits were

provided. Such errors were the causative result of Petitioner's conviction and sentence and the plea of guilty entered by Appellant. As indicated herein, both cause and prejudice are present in this case justifying that the issues be decided upon their merits.

Appellant was prejudiced by the fact that the trial court never considered the affidavits of Phyllis Harris and Bernitric Henderson before summarily denying the PCR filed in this case. The Court dismissed the PCR as being a successive writ based upon a finding that the affidavits which supported the PCR had been received and ruled upon before. (R. 17) Appellant would assert that the trial court's actions are incorrect and based upon erroneous findings where there is no record of affidavits by the victim and her mother other than those affidavits filed in support on the present PCR. The affidavits were signed by the victim and her mother on December 21, 2007, (R. 7-9) where the trial court rendered its order on August 19, 2008, with said order being filed by the Clerk on August 20, 2008. (R. 17). While the record does contain a declaration which purports to demonstrate that Phyllis Henderson executed a statement asserting that, in pertinent part, "I feel that Roderick Hooks should not have to serve a sentence for which he plead guilty." Prior to the affidavit executed by Bernitric Henderson on December 21, 2007, there is no other affidavit in the record by Bernitric Henderson. (R. 8-9) The trial court was therefore in error when the court found that it had heard and determined the affidavits of the victim and her mother on two prior occasions.

The affidavit executed by Bernitric Henderson on December 21, 2007, is the first evidence which actually demonstrates that Bernitric Henderson hoodwinked Appellant into believing that she was 20 years of age. Before this affidavit Appellant actually had no way to prove he did not know that age of Bernitric Henderson. The affidavit of Bernitric Henderson and Phyllis Harris is therefore newly discovered evidence. Appellant filed his PCR on January 22,

2008, which was filed without undue delay soon after he secured the affidavits of Bernitric Henderson and Phyllis Harris on December 21, 2007. Appellant actually filed his motion in one month after the discovery.

A review of the statutory rape statutes demonstrates that age is a critical element of such crime. "Crimes such as statutory rape and sexual assault, in the instant case are defined by the ages of the persons involved." Washington v. State, 645 So.2d 915, 919 (Miss.1994). "The age of the victim makes or breaks the conviction." *Id.* Thus, age is the defining characteristic of statutory rape, be it forcible or not. See Lewis v. State, 184 So. 53, 183 Miss. 192 (1938). The legislative intent of § 97-3-67 is contained in General Laws of Mississippi, 1914, ch. 171, House Bill No. 76 wherein the legislature stated "An Act to fix the age of consent at eighteen years." The clear intent underlying the crime of statutory rape is that females under age eighteen are legally unable to consent to sexual relations with another. Intent or mistake as to the age of the child are irrelevant.

Historically, there have been two basic rationales for statutory rape laws. The first rationale is the need for strict accountability to protect young girls. The second rationale is the premise that the defendant's intent to commit statutory rape can be derived from his intent to commit the morally or legally wrongful act of fornication. 6 Am.Jur.2d Proof of Facts § 2 (1975). Further, "the history of the offense of statutory rape indicates that from ancient times the law has afforded special protection to those deemed too young to understand their actions." United States v. Ransom, 942 F.2d 775, 776 (10th Cir.1991). The weight of authority in this country indicates that statutory rape has traditionally been viewed as a strict liability offense. *Id.* (citing 8 A.L.R.3d 1100 and 1 Wharton's Crim. Law & Proc. § 321.)

Despite the fact that statutory rape is historically a strict liability offense, "mistake of age" has been asserted successfully as a defense in several states and is recognized by the Model Penal Code when the child is over the age of ten years. The basic premise of this defense is that a reasonable or good faith mistake as to the age of the victim is a valid defense to statutory rape. However, as the Mississippi Supreme Court has previously recognized, this defense remains the minority view. Far more states have rejected the defense. See Nelson v. Moriarty, 484 F.2d 1034 (1st Cir.1973); U.S. v. Ransom, 942 F.2d 775 (10th Cir.1991), cert. denied 502 U.S. 1042, 112 S.Ct. 897, 116 L.Ed.2d 799; People v. Green, 183 Colo. 25, 514 P.2d 769 (1973); State v. Plude, 30 Conn.App. 527, 621 A.2d 1342 (1993); State v. Sorakrai, 543 So.2d 294 (Fla.App.1989); Tant v. State, 158 Ga.App. 624, 281 S.E.2d 357 (1981); State v. Silva, 53 Haw. 232, 491 P.2d 1216 (1971); State v. Stiffler, 117 Idaho 405, 788 P.2d 220 (1990); Toliver v. State, 267 Ind. 575, 372 N.E.2d 452 (1978); State v. Tague, 310 N.W.2d 209 (Iowa 1981); Garnett v. State, 332 Md. 571, 632 A.2d 797 (1993); Commonwealth v. Moore, 359 Mass. 509, 269 N.E.2d 636 (1971); State v. Stokely, 842 S.W.2d 77 (Mo.1992); State v. Campbell, 239 Neb. 14, 473 N.W.2d 420 (1991); Jenkins v. State, 110 Nev. 865, 877 P.2d 1063 (1994); State v. Davis, 108 N.H. 158, 229 A.2d 842 (1967) rev'd on other grounds, 136 N.H. 191, 612 A.2d 923 (1992); State v. Moore, 105 N.J.Super. 567, 253 A.2d 579 (1969); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973); State v. Fulks, 83 S.D. 433, 160 N.W.2d 418 (1968); State v. Randolph, 12 Wash.App. 138, 528 P.2d 1008 (1974); Kelley v. State, 51 Wis.2d 641, 187 N.W.2d 810 (1971).

The "mistake of age" defense could hardly co-exist with our statutory rape statute which is intended to set forth the "age of consent." As a result, children below this age are legally incapable of consenting to sexual relations. There is no indication by the Mississippi Legislature

or by the Supreme Court of Mississippi that the defendant's knowledge the child's age is a factor to be considered. Rather, the knowledge or ignorance of the age of the child is irrelevant. If reasonable mistake were recognized as a defense, the very purpose of the statute would be frustrated and the deterrent effect considerably diminished. However, Hooks would ask that this Court recognize "mistake of age" as a defense in this instant where the victim has presented, in sworn fashion, that she actively mislead Hooks and the mother of the victim verified that her daughter was capable of such and had did so in the past. In view of this, there was no mistaken age but a misleading age. Hooks relied upon what was told to him and, according to the affidavit of the mother, he had no reason to believe otherwise where her daughter had all the tendencies of a grown women. Hooks therefore had no reason to request an identification card. He should not be blamed in this case for not doing so. While a defense of mistake in age is not the law in this state, the fact that Hooks was actively mislead by the victim, without the mother being first aware of the matter, should be a defense. There was no criminal intent shown by the evidence. While Hooks did plead guilty, as the trial court stated, his plea was because he had no way of proving his defense at the time and it would have been fruitless and frivolous to stand before a jury asserting that he was mislead by the victim without any proof. It would have been committing suicide.

This Court should vacate the order of the trial court and reverse and remand this case to the trial court for an evidentiary hearing.

II. PETITIONER'S CONVICTION MUST BE VACATED ON THE GROUND THAT HE WAS DENIED DUE PROCESS OF LAW

The Fifth Amendment to the United States Constitution guarantees that every criminal defendant is entitled to due process of law before any conviction of crime. The Supreme Court has held that such right is fundamental.

The idea that laws and legal proceedings must be fair. The Constitution guarantees that the government cannot take away a person's basic rights to 'life, liberty or property, without due process of law.' Courts have issued numerous rulings about what this means in particular cases.

The Fourteenth Amendment prohibits the deprivation of liberty or property without due process of law. A due process claim is cognizable only if there is a recognized liberty or property interest at stake. Board of Regents v. Roth, 408 U.S. 564, 69 (1972).

The Sixth Amendment, which is applicable to the states through the Due Process Clause of the Fourteenth Amendment, see *In re Oliver*, 333 U.S. 257, 273-74 (1948), guarantees a criminal defendant a fundamental right to be clearly informed of the nature and cause of the charges against him. In order to determine whether a defendant has received constitutionally adequate notice, the court looks first to the information. James v. Borg, 24 F.3d 20, 24 (9th Cir.), cert. denied, 115 S. Ct. 333 (1994). 'The principal purpose of the information is to provide the defendant with a description of the charges against him in sufficient detail to enable him to prepare his defense.' *Id.*

The Fourteenth Amendment prohibits the deprivation of liberty or property without due process of law. A due process claim is cognizable only if there is a recognized liberty or property interest at stake. Board of Regents v. Roth, 408 U.S. 564, 569 (1972).

Due process is best defined in one word--fairness. Throughout the U.S.'s history, its constitutions, statutes and case law have provided standards for fair treatment of citizens by federal, state and local governments. These standards are known as due process. When a person is treated unfairly by the government, including the courts, he is said to have been deprived of or denied due process.

The Appellant at this point did not want to enter into the plea agreement as when he arrived at court he continued to maintain his innocence to his attorney. As the affidavit of the witness asserts, defense counsel did not ask her whether she actually advised Hooks that she was

over 18. Counsel merely told Hooks to plead guilty. Had counsel properly informed the Appellant of all the facts of the plea agreement, it is more likely than not that the Appellant would have foregone the plea agreement and gone to trial.¹

The controlling case law in Mississippi states that where a defendant enters a guilty plea, the key question is whether “there is a reasonable probability that had counsel’s assistance been effective, [defendant] would not have pled guilty, but would have insisted on going to trial.” Bell v. State 751 So.2d 1035, 1038 (P14) Miss. 1999). As has already been shown the Appellant would have taken a different route and gone to trial had he known that the witness would have told the truth. Because the judge gave him only the option of agreeing to the plea agreement or going to trial that day, the Appellant had no choice but to accept the agreement. Had counsel been effective and apprised the Appellant of this requirement beforehand, the Appellant would not have entered into the agreement.

Moreover, a guilty plea must be made knowingly, voluntarily, and intelligently. Boykin v. Alabama, 395 U.S. 238 (1969). See Bryant v. Cherry, 687 F.2d 48 (4th Cir.1982) cert denied 459 U.S. 1073. In order to plead voluntarily, a defendant must know the direct consequences of his plea, including the actual value of any commitments made. Mabry v. Johnson 104 S.Ct. 2543, 2547 (1984).

The U.S. Supreme Court has ruled that a plea must be found to be involuntary if it was based upon promises or threats which deprived it of a voluntary character. Machibroda v. United

¹ On the date and time of the plea proceedings before the trial court in this case the trial court accepted the plea of five other defendants at the same time as it accepted Appellant’s plea. It was actually hard to determine who understood their rights and who did not. The trial court herded the six defendants through court like carrying a heard of cows to the slaughter house. Little time was spent asking questions and even less spent in securing answers. The other defendant were merely charged with property offenses. Hooks was charged with a sex offense which, in the State of Mississippi, would be a crime which would haunt Appellant for the rest of his life. Such serious offense should not have been regarded so lightly by the trial court as to characterize it with burglary and failure to support minor child, or destroying public property.

States, 386 U.S. 487, 493, (1962). “The validity of a guilty plea hinges on whether it was a voluntary and intelligent choice among alternative courses of action open to the defendant.” Banks v. United States, 920 F.Supp. 688 (E.D.Va1996).

When looking at whether or not a plea should be set aside, three areas of the plea negotiation should be evaluated. This test was set forth in the case of United States v. Ribas-Dominicci, 50 F.3d 76 (1st Cir. 1995). According to that court, “violations of any of the three core concerns--absence of coercion, understanding of the charges, and knowledge of the consequences of the guilty plea--mandate that the plea be set aside.” Id. at 78.

In the instant case, the Appellant was not absent coercion, as the judge gave him a “do or die” option, either agree to the plea agreement as it was written or go to trial that day.

In sum, Appellant’s plea of guilt to the specific crime charged in the indictment was not voluntary in character, and was therefore not voluntary. See Machibroda, 368 U.S. at 493. Because the plea was forced and not “a voluntary and intelligent choice among alternative courses of action,” the plea was not constitutionally valid. See Banks, 920 F.Supp. 688. Because the plea was forced and made without knowledge of the consequences, it must be vacated. See Bibas-Dominicci, 50 F.3d at 78. Consequently, Appellant prays that this court vacate his guilty plea.

As the Appellant received ineffective assistance of counsel in violation of the Sixth Amendment to the United States Constitution, the Appellant submits that his conviction and subsequent sentence must be vacated and this matter be set for rehearing consistent with the findings of this court and the constitutional principles of fair play and substantial justice.

III. THE APPELLANT IS ENTITLED TO AN EVIDENTIARY HEARING ON THESE MATTERS

The Mississippi Supreme Court has held “a post-conviction collateral relief petition which meets basic requirements sufficient to mandate an evidentiary hearing unless it appears beyond a doubt that the Appellant can prove no set of facts in support of his claim which would entitle him to relief.” Marshall v. State, 680 So.2d 794, 794 (Miss. 1996).

In the instant case, the Appellant asserts that he was deprived the effective assistance of counsel, a claim that can best be supported by the introduction of evidence not currently in the record. Moreover, the trial court fully ignored the evidence and never actually actually evaluated the affidavits filed by Appellant. The Court considered the PCR as successive and the affidavits as having been presented before when, in fact, such affidavits had not been presented the trial court nor considered. If the facts as claimed by the Appellant are taken as true, there can be little doubt that he is entitled to relief in this matter. Therefore, the Appellant requests an evidentiary hearing to review the issues.

CONCLUSION

For the above stated reasons, the Appellant respectfully requests that this honorable Court vacate his convictions. At a minimum, the Court should grant the Appellant an evidentiary hearing to resolve these issues.

Respectfully submitted,

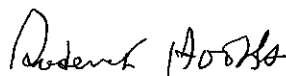



Roderick Hooks, [REDACTED]
503 S. Main Street
Columbia MS 39429

CERTIFICATE OF SERVICE

This is to certify that I, Roderick Hooks, have this date served a true and correct copy of the above and foregoing Brief for Appellant, by U. S. Postal Service, first class postage prepaid, to Honorable Jim Hood, Attorney General, P. O. Box 220, Jackson, MS 39205; Honorable Michael M. Taylor, Circuit Court Judge, P. O. Box 1350, Brookhaven, MS 39602; Honorable Dewitt Bates, Jr. District Attorney, 284 East Bay Street, Magnolia, MS 39652.

This, the 28 day of February, 2009



Roderick Hooks, 
MCCF
503 S. Main Street
Columbia MS 39429