

**COBY**

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2008 - KA - 01073**

**COBY**

**DAVID JARROD FIELDS**

**APPELLANT**

**VS.**

**FILED**

**STATE OF MISSISSIPPI**

**MAR 02 2009**

**APPELLEE**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

**ON APPEAL FROM THE CIRCUIT COURT OF  
DESOTO COUNTY, MISSISSIPPI**

**REPLY BRIEF OF APPELLANT**

**Mary Lynn Damaré, Esq.  
Chatham Damare Pittman PLLC  
291 Loshier Street  
Hernando, MS 38632  
Telephone (662)429-9871  
MS Bar No. 5782**

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### **CERTIFICATE OF COMPLIANCE**

Comes now Mary Lynn Damaré, attorney of record for Appellant and certifies that this brief contains 741 words as determined by the word count of the word processing system.

So certified, this the 2<sup>nd</sup> day of March, 2009.

A handwritten signature in black ink, appearing to read "ML Damaré", is written over a horizontal line.

Mary Lynn Damaré  
Certifying Attorney

## **I.**

### **RESPONSE TO MOTION TO DISMISS BY THE STATE OF MISSISSIPPI**

The State of Mississippi has moved to dismiss this appeal as unlawful and not authorized by statute, yet admits in its brief that this Court has addressed cases involving appeal from the trial court's denial of expungement requests wherein the issue of jurisdiction for appeal was never raised. Appellee's Brief, p. 5. In *A.E.W. v. State of Mississippi*, 925 So.2d 136 (Miss. App. 2006), *Turner v. State*, 876 So. 2d 1056 (Miss.2004), *McGrew v. State of Mississippi*, 733 So. 2d 816 (Miss.1999), and *Caldwell v. State*, 564 So.2d 1371(Miss.1990), the Mississippi Supreme Court has considered factual issues related to expungement without questioning the issue of jurisdiction for appeal. These cases do not assert any statutory authority for appeal. Appellant therefore cites these cases as precedent authority for his appeal.

## **II.**

### **RESPONSE TO PROPOSITIONS I AND II BY THE STATE OF MISSISSIPPI**

The State argues that §41-29-150, Miss. Code Ann. (1972), as amended, has no application to the offense to which appellant pled guilty. That, of course, is the true crux of this matter. Appellant David Fields has applied to this Court under the authority of Miss. Code Annotated § 41-29-150, entitling expungement of criminal record for one, " who has been convicted and adjudged guilty of an offense under subsection ( c ) or ( d ) of § 41-29-139, **OR** for possession of narcotics, stimulants, depressants, hallucinogens, marihuana, other controlled substances or paraphernalia under prior laws of this state. . .". [Emphasis added.] Clearly there is an option for persons convicted under other statutes, not only § 41-29-139.


Appellant reasserts his arguments originally propounded in Appellant's Brief.

### CONCLUSION

The conviction of Appellant David Jarrod Fields on his plea to possession of precursors should be expunged from his criminal record, as the offense occurred prior to his twenty-sixth birthday, he paid his fine, served his sentence and completed his parole. M.C.A. 41-29-150 which allows expungement of possession charges refers to offenses charged under Section 41-29-139, but also states, "or for possession of narcotics, stimulants, . . .", and it is under this category that appellant Fields requests his expungement. Appellant Fields should be granted the expungement even if the Court considers M.C.A. 41-29-150 not inclusive of offenses committed under M.C.A. 41-29-313, as Mr. Fields pled guilty to possession of precursors only and not to knowledge that the precursors would be used in the unlawful manufacture of controlled substances.

Respectfully Submitted,

DAVID JARROD FIELDS

BY:   
MARY LYNN DAMARÉ, Esq.  
Attorney for Plaintiff

## CERTIFICATE OF SERVICE

I, Mary Lynn Damaré, Attorney for Appellant, do hereby certify that I have this day mailed, via first class, postage prepaid, to the Supreme Court of Mississippi, Carroll Gartin Justice Building, 450 High Street, Jackson, MS 39201 and via first class mail, postage prepaid, to: Honorable Judge Robert P. Chamberlin, P.O. Box 280, Hernando, MS 38632, John Champion, District Attorney, 365 Losher Street, Suite 210, Hernando, MS 38632, and Assistant Attorney General Charles W. Maris, Jr., Attn: Criminal Division, P.O. Box 220, Jackson, MS 39205, a true and correct copy along with electronic disc of the above and foregoing APPELLANT'S REPLY BRIEF.

SO CERTIFIED, this the 2<sup>nd</sup> day of March, 2009.



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Mary Lynn Damaré  
Certifying Attorney