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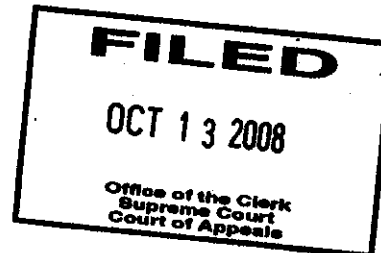
IN THE SUPREME COURT OF MISSISSIPPI

NO. 2008 - KA - 01073

DAVID JARROD FIELDS

VS.

STATE OF MISSISSIPPI



APPELLANT

APPELLEE

ON APPEAL FROM THE CIRCUIT COURT OF
DESOTO COUNTY, MISSISSIPPI

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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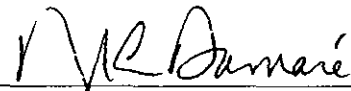
STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal:

1. David Jarrod Fields;
2. Jack Jones, III, Attorney for Defendant/Appellant at Plea;
3. Jim Hood, District Attorney;
4. Rhonda Amis, Assistant District Attorney at Plea;
5. Susan Brewer, Assistant District Attorney for Appeal;
6. Honorable George B. Ready, Circuit Court Judge, Trial Judge;
7. Honorable Robert P. Chamberlin, Circuit Court Judge.



Mary Lynn Damaré
Attorney for Appellant

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CERTIFICATE OF COMPLIANCE

Comes now Mary Lynn Damaré, attorney of record for Appellant and certifies that this brief contains 2,567 words as determined by the word count of the word processing system.

So certified, this the 13TH day of October, 2008.

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

Mary Lynn Damaré
Certifying Attorney

I.

STATEMENT OF ISSUES

The *Order Denying Motion For Reconsideration And/Or To Amend Judgment* entered by DeSoto County Circuit Judge Robert P. Chamberlin, which denied appellant David Jarrod Fields reconsideration of the expungement of his crime under §41-29-150, Mississippi Code, 1972 Annotated, was in error, in that:

A. David Jarrod Fields met every requirement for expungement as outlined in Mississippi Code Amended, 1972, § 41-29-150, in that he was under age 26 years at the time he committed the crime of possession of a stimulant, he served his sentence, paid his fine, and successfully completed his parole afterward, all in accordance with the statute's requirements. The possession of a stimulant is specifically named in §41-29-150(d)(2), as a crime eligible for expungement, as follows, "...with respect to a person who has been convicted and adjudged guilty of an offense under subsection (c) or (d) of Section 41-29-139, **or for possession of narcotics, stimulants**, depressants, hallucinogens, marijuana, other controlled substances or paraphernalia under prior laws of this state" (Emphasis added.)

B. David Jarrod Fields pled guilty to *possession* of precursors, not to knowledge that the precursors would be used for manufacture of controlled substances. He was charged as "wilfully, unlawfully and feloniously, knowingly and intentionally possess, purchase, transfer or distribute over two hundred fifty (250) dosage units of pseudoephedrine or ephedrine, **knowing, or under circumstances where one reasonably should know, that the pseudoephedrine or ephedrine will be used to unlawfully manufacture a controlled substance**, in direct violation of Section 41-29-313, Mississippi Code 1972 Annotated, as amended." (Emphasis added.) Mr. Fields' written guilty plea includes no recitation of the statute and in fact lists his crime as "possession

of precursors". At his oral guilty plea hearing before Judge Ready, Mr. Fields was asked by Judge Ready if he understood that he was charged with possession of precursors to which he replied, "Yes, sir.". Mr. Fields was not questioned regarding the elements of the crime nor was there any inquiry into the requirements of the statute. If the Court finds that M.C.A. 41-29-150 does not cover convictions of M.C.A. 41-29-313, appellant Fields should not now be denied the state's error in accepting his plea to simple "possession of precursors".

II.

STATEMENT OF THE CASE

Appellant David Jarrod Fields was indicted on one count of possession of precursors in violation of Section 41-29-313 Mississippi Code 1972 as amended.¹ He pled guilty to **possession of precursors** and his plea was accepted by Circuit Judge George Ready on August 19, 2002, in DeSoto County, Mississippi. Judge Ready then sentenced Appellant to five years in the custody of the Mississippi Department of Corrections, three years suspended, a fine of \$1000.00, and all costs of court. After successful completion of his sentence, parole, and payment of all fines and costs, David Jarrod Fields filed a *Petition For Expungement*. Said Petition was heard by Judge Robert Chamberlain on the 19th day of February, 2008, and was denied by *Order Denying Petition For Expungement* on February 27, 2008. Petitioner filed a

¹ Mr. Fields' indictment read: That Tina Sue Boyd and David J. Fields, Late of the County and State aforesaid, on or about the 19th day of JULY, in the year of our Lord 2001, in the County and State aforesaid, and within the jurisdiction of this Court, did willfully, unlawfully and feloniously, knowingly and intentionally possess, purchase, possess, transfer or distribute over two hundred fifty (250) dosage units of pseudoephedrine or ephedrine, knowing or under circumstances where one reasonably should know, that the pseudoephedrine or ephedrine will be used to unlawfully manufacture a controlled substance, in direct violation of Section 41-29-313, Mississippi Code 1972 Annotated, as amended, contrary to the form of the statute in such cases provided, and against the peace and dignity of the State of Mississippi. However, Fields pled guilty to "possession of precursor" in his *Petition For Acceptance of Guilty Plea*, and in his colloquy before the Circuit Judge, and was sentenced for "possession of precursor" in his *Plea of Guilty And Judgment of the Court*.

Motion For Reconsideration And/Or To Amend Judgment, and the Court entered its *Order Denying Motion For Reconsideration* on the 4th of June, 2008. It is from this *Order Denying Motion For Reconsideration And/Or To Amend Judgment* that Mr. Fields appeals.

III.

SUMMARY OF ARGUMENT

Appellant David Jarrod Fields pled guilty to “possession of precursor” in 2002, was sentenced and served two years in the Mississippi Department of Corrections, completed three years on parole, and paid his costs and fine, all in satisfaction of Miss. Code Ann. §41-29-150 (d)(2), which allows expungement of a felony conviction for those who meet the requirements listed therein. Yet, he has been wrongly denied an expungement of his crime. Mr. Fields was not questioned regarding a critical element of his crime of possession during his plea colloquy; that the possessor “knows or under circumstances reasonably should know, that the psuedoephedrine or ephedrine will be used to unlawfully manufacture a controlled substance. ”. Neither his petition or sentencing documents recite either the charged statute or the element therein of “knowing the substance will be used to unlawfully manufacture a controlled substance”.

IV.

ARGUMENT

A. Expungement Should Be Granted under Miss. Code Ann 41-29-150.

David Jarrod Fields is entitled to expungement of his conviction under Miss. Code Ann. §41-29-150 (d)(2), which states in part:

Upon the dismissal of such person and discharge of proceedings against him under paragraph (1) of this subsection, or with respect to a person who has been convicted and adjudged guilty of an offense under subsection (c) or(d) of Section

41-29-139, **or for possession of narcotics, stimulants**, depressants, hallucinogens, marihuana, other controlled substances or paraphernalia under prior laws of this state, such person, if he had not reached his twenty-sixth birthday at the time of the offense, may apply to the court for an order to expunge from all official records, other than the non public records to be retained by the bureau under paragraph (1) of this subsection, all recordation relating to his arrest, indictment, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he had not reached his twenty-sixth birthday at the time of the offense, or that such person had satisfactorily served his sentence or period of probation and parole, and that he had not reached his twenty-sixth birthday at the time of the offense, it shall enter such order. . . . [Emphasis added.]

Possession of pseudoephedrine or ephedrine is not a crime unless the amount possessed is two hundred fifty (250) dosage units or fifteen (15) grams in weight **and the possessor knows, or under circumstances reasonably should know, that the pseudoephedrine or ephedrine will be used to unlawfully manufacture a controlled substance."**

In July 2002, Mr. Fields was convicted in accordance with his plea of guilty to possession of precursor drugs. At the time of his criminal act, he was under twenty-six years of age, he subsequently served d his two year sentence with the Mississippi Department of Corrections, paid his fines and costs of court, and successfully completed three additional years on parole. Ephedrine and pseudoephedrine are commonly recognized as stimulants. Yet he has been denied expungement by the learned Circuit Judge in his *Order Denying Motion For Reconsideration*, on grounds that "M.C.A. 41-29-150 does not apply to convictions under M.C. A. 41-29-313 in that said conviction included knowledge, real or imputed, that the substance would be used to manufacture a controlled substance." R.E., p. 8.

M.C. A. 41-29-150 **Participation in drug rehabilitation programs; probation.**, refers throughout to persons convicted under M.C.A. 41-29-139. M.C. A. 41-29-313 (2) (c) (i) specifically refers to M.C. A. 41-29-139, **Prohibited acts; penalties.**, stating,

“It is unlawful for any person to purchase, possess, transfer or distribute two hundred fifty (250) dosage units or fifteen (15) grams in weight (**dosage unit and weight as defined in Section 41-29-139**) of psuedoephedrine or ephedrine, knowing or under circumstances where one reasonably should know, that the pseudoephedrine or ephedrine will be used to unlawfully manufacture a controlled substance.” (Emphasis added.)

These statutes, although passed at different times by the Mississippi legislature, are interrelated, as all discuss offenses involving controlled substances and the penalties for their possession. The Court has found that conviction of sale of amphetamines could not be expunged under M.C.A. 41-29-150. *Mauney v. State ex rel. Moore*, 707 So. 2d 1093 (Miss. 1998). However, there has been no case law on the denial of expungement of possession of precursor under M.C.A. 41-29-313. Further, Miss. Code Ann. §41-29-150 (g) reads, “It is the intent and purpose of the legislature to promote the rehabilitation of persons convicted of offenses under the Uniform Controlled Substances Law.” Appellant Fields pled guilty to possession of precursors under the Uniform Controlled Substances Law and should be granted an expungement of his criminal record.

B.

Appellant’s Plea Missing Essential Element.

David Jarrod Fields pled guilty to possession of precursors. His *Scire Facias*, *Waiver of Arraignment*, *Petition To Accept Guilty Plea*, his colloquy with the court, and the Court’s *Sentencing Order* all refer to the crime only as “possession of precursors”, not as “knowing or under circumstances where one reasonably should know, that the precursor chemicals will be used to unlawfully manufacture a controlled substance”. R.E. pp.9-30. In *Berry v. State of Mississippi*, 2006-KA-00216-COA, WL 1747486, ¶6 (Miss. App.2007), the appellate court found that an indictment which does not allege a crime is fatally defective. In *Berry*, Count I of

John Allen Berry's indictment was missing a necessary element of the underlying crime - that precursors were possessed *with intent to unlawfully manufacture controlled substance*. *Id.* at ¶ 8. The Court found no case law which allows an essential element omitted from one count to be imported from a subsequent count in the indictment. *Id.*

A plea of guilty to a criminal act is afforded the same protection. "It is essential that an accused have knowledge of the critical elements of the charge against him, that he fully understands the charge, how it involves him, the effects of a guilty plea to the charge, and what might happen to him in the sentencing phase as a result of having entered the plea of guilty. *Turner v. State*, 864 So. 2d 288, 290 (Miss. 2003), citing *Reeder v. State*, 783 So. 2d 711, 717 (Miss.2001), citing *Smith v. State*, 636 So. 2d 1220, 1225 (Miss. 1994).

In the case at bar, David Jarrod Fields' *Scire Facias* for DeSoto County Circuit Court dated 16th day of January 2002 and a *Scire Facias* dated 18th day of February 2002, each lists his offense as "possession of precursors". R.E. pps. 9-12. His *Waiver of Arraignment* lists his offense as "possession of pseudoephedrine". R.E., p. 12. Mr. Fields' *Petition To Enter Plea of Guilty*, stated at paragraph 3, "I plead guilty to the charge of *possession of precursor*, as set forth in the indictment in this cause number." R.E., p. 14. Even the Guilty Plea transcript reflects that the judge asked Mr. Fields, " You understand you're charged with possession of precursors?", to which Mr. Fields responds, "Yes, sir.". R.E. p. 27, T.T. p. 6. The judge queried Mr. Fields about his petition asking, " . . . you presented a *Petition to Enter a Plea of Guilty*. Do you realize you did that under penalty of perjury?", to which Mr. Fields responds, "Yes, sir.". Again, the Petition asserts a plea to the "possession of precursors". R.E. p. 14. Appellant Fields should not be denied the expungement on grounds of his plea to M.C.A. 41-29-313, as the state clearly accepted his plea of guilty to simple "possession of precursors".


III.

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 Federal Express - Overnight Mail 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, Susan Brewer, Assistant District Attorney, 365 Loshier Street, Suite 210, Hernando, MS 38632, and Attorney General Jim Hood, 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 BRIEF.

SO CERTIFIED, this the 13TH day of October, 2008.



Mary Lynn Damaré
Certifying Attorney