IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

KAMAL KARRIEM, JR. — APPELLANT

VS. — NO. 2009-CA-1583

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

I. The trial court correctly ruled that Kamal Karriem's plea was knowingly, voluntarily and intelligently made.

II. The trial court correctly ruled that Kamal Karriem received constitutionally effective assistance of counsel.

III. Kamal Karriem's sentence of ten years, suspended, with five years probation is not cruel and unusual punishment and is within the statutory minimum and maximum for the violation of Mississippi Code Annotated § 97-11-31.

SUMMARY OF THE CASE

On or about November 21, 2005, Kamal Karriem, Jr., entered a plea of guilty to the charge of embezzlement by a public official pursuant to Mississippi Code Annotated § 97-11-25. The trial court accepted Karriem's guilty plea and sentenced him to serve a term of ten years in the custody of the Mississippi Department of Corrections. The trial court suspended Karriem's ten year sentence and placed him on probation for five years. Karriem attempted to withdraw his plea, but the motion was denied by the trial court. (Tr. 85-86) On July 23, 2007, the trial court set a revocation hearing based on the allegation the Karriem had violated his probation by using cocaine while on probation. (C.P. 57) A hearing was held on September 21, 2007. The trial court found that Karriem had in fact violated the terms and conditions of his probation by using cocaine. The trial court did not revoke Karriem's probation at that time but instead ordered him to attend and complete the one-year drug treatment program at Teen Challenge. (C.P. 57) Karriem failed to complete the Teen Challenge program. The trial court conducted a hearing and ordered that Karriem gain entry into a long-term residential drug treatment facility and complete the program as ordered by the trial court on September 21, 2007. Subsequently, Karriem received a gunshot wound on February 29, 2008 and was not able to immediately enter the long term drug and alcohol program that his attorney had found for him. (C.P. 58) Karriem was on supervised probation while he recovered from his gunshot wound. On April 2, 2008, the Mississippi Department of Corrections sought another arrest warrant for Karriem alleging that he had once again tested positive for cocaine while on probation. The trial conducted a hearing on the matter and found that Karriem had violated the terms of his probation by testing positive for cocaine. The trial court then revoked Karriem's previously suspended sentence and ordered that

he serve the ten-year sentence previously imposed. (C.P. 58)

Karriem filed his Petition for Post Conviction Relief on November 20, 2008. (C.P. 11) The trial court conducted an evidentiary hearing on February 27, 2009. After taking the matter on advisement, the trial court issued a detailed order on August 31, 2009, finding that Karriem's plea was freely, voluntarily, knowingly and intelligently entered. The trial court further found that Karriem's counsel had provided him with Constitutionally effective representation and that his sentence was not cruel or unusual for purposes of the Eighth Amendment. Finally, the trial court found by a preponderance of the evidence that Karriem had failed yet a second drug test for cocaine and that the Court had no choice but to revoke his previously suspended sentence. The trial court therefore denied Karriem's request for post-conviction relief. (C.P. 66) The instant appeal ensued.

SUMMARY OF THE ARGUMENT

The trial court correctly ruled that Kamal Karriem's plea was knowingly, voluntarily and intelligently made. The plea recommendation offered by the prosecution was exactly as presented at the plea hearing, ten years in the custody of the Mississippi Department of Corrections, suspended, with five years probation. Karriem was fully advised as to the nature of the recommendation and the complete discretion of the trial court in the matter of sentencing.

The trial court correctly ruled that Kamal Karriem received constitutionally effective assistance of counsel. Kamal Karriem's sentence of ten years, suspended, with five years probation is not cruel and unusual punishment and is within the statutory minimum and maximum for the violation of Mississippi Code Annotated § 97-11-31. The threshold comparison of the crime committed to the sentence imposed does not lead to an inference of 'gross disproportionality' and the *Solem* analysis is not triggered. The trial court correctly denied Karriem's Motion for Post Petition Relief and the trial court's ruling should be affirmed.

ARGUMENT

I. The trial court correctly ruled that Kamal Karriem's plea was knowingly, voluntarily and intelligently made.

Karriem alleges that his guilty plea was entered unknowingly and involuntarily. "A plea of guilty is binding only if it is entered voluntarily and intelligently[,]" which requires that "the defendant [be] informed of the charges against him and the consequences of his plea." *Jones v. State*, 922 So.2d 31, 34 (Miss.Ct.App.2006) (citations omitted). "A defendant [also] must be told that a guilty plea involves a waiver of the right to a trial by jury, the right to confront adverse witnesses, and the right to protection against self incrimination." *Epps v. State*, 926 So.2d 242, 245 (Miss.Ct.App.2005) (citation omitted).

Karriem agues that he relied on his defense counsel's letter of September 7, 2005, which stated that the prosecution would recommend probation and that he "would not oppose" the application of the non-adjudication statute, Mississippi Code Annotated § 97-11-31. The letter stated that if non-adjudication statute were applied, and if Karriem successfully completed his probation, there would be no record of the arrest or felony conviction. However, the record clearly shows that Karriem understood prior to his plea hearing that the prosecution's recommendation was ten years suspended with five years probation and that the trial court was under no obligation to take the recommendation of Karriem's defense counsel to apply the non-adjudication statute. Additionally, it is clear even from this letter, written by the defense attorney without any review by the prosecutor, that the prosecutor did not agree to recommend non-adjudication.

Karriem represents in his brief that the state agreed to recommend non-adjudication.

Even by the terms of defense counsel's letter of six weeks prior to the hearing, this is not the case. Further, when defense counsel presented the possibility of non-adjudication as an option for the trial court, she did not present it as the agreed recommendation from the prosecution. When the prosecution, upon inquiry from the trial court, stated that this was not the agreement, defense counsel did not object. Defense counsel in fact represented at the hearing that she had explained to the defendant that the possibility of non-adjudication was entirely at the trial judge's discretion despite any recommendations or suggestions form any party. The record bears out the clarity of the possible sentencing options of Karriem and the complete discretion of the trial judge.

From the record, it is clear that Karriem made a voluntary, knowing and intelligent plea. The circuit judge carefully questioned Karriem about his ability to understand the charges against him, the repercussions of his guilty plea, and his willingness to enter into the plea arrangement. The record of plea hearing reflects that Karriem clearly advised and understood that he was waiving his right to a public trial by jury, the right to cross examine the state's witnesses and the right to call his own witnesses. (Tr. 7-8) Karriem testified that he understood that if he went to trial that 12 jurors would have to be convinced of his guilt beyond a reasonable doubt, that he could be sentenced to up to 10 years in the custody of the MDOC for the crime and that he could appeal the verdict. Karriem testified that he understood that by pleading guilty he was giving up those rights. (Tr. 9) Karriem testified that he had discussed the facts of the case with his lawyer and well as the State's proof and any possible defenses to the charge. (Tr. 9) Karriem testified that he was satisfied with the advise and help his counsel had provided and that no one had promised him any money or offered any rewards or hopes of leniency to get him to plead guilty.

Karriem testified that it was solely his decision to plead guilty. Karriem testified that he did commit the crime and that he had made restitution for the phone bills. (Tr. 11) The trial judge informed Karriem that the court could sentence Karriem to up to ten years in prison and up to a $5,000.00 fine. Karriem testified that having been advised of the minimum and maximum sentences for the crime and of all of his Constitutional rights, he still desired to plead guilty. Karriem did in fact enter a plea of guilty.

Karriem argues that his counsel represented to him that the prosecution would recommend non-adjudication pursuant to Mississippi Code Annotated § 99-15-26. The State's recommendation was that Karriem be sentenced to serve a term of ten years in the Mississippi Department of Corrections, that be suspended, that he be placed on probation for a period of five years. The State further recommended that if full restitution had not already been made, that it should be ordered. The following colloquy then took place:

By the Court: Is that the recommendation you expected, Mr. Karriem?

By the Defendant: I didn't know exactly what to expect. However, that's – what he's saying about the restitution, I have paid it.

By the Court: **All right. Did you have a chance to talk to your lawyer about any recommendation the State might make?**

By the Defendant: **Well, yeah, I did discuss with her. Yes.**

By the Court: **And is that the recommendation she told you the State was going to make?**

By the Defendant: **Yes.**

Karriem's counsel then requested that the trial court sentence Karriem pursuant to

Mississippi Code Annotated § 99-15-26, which would allow Karriem to be sentenced to non-adjudicated probation so that he could avoid a felony conviction. The State responded that because Karriem had occupied a position of public trust, that a felony conviction was appropriate. (Tr. 14) The trial court then accepted Karriem's guilty plea and declined to sentence him pursuant to the non-adjudication statute. He sentenced Karriem to a term of ten years in the custody of the Mississippi Department of Corrections, suspended, and placed Karriem on probation for five years. He further sentenced Karriem to pay of fine of $200.00 and to pay restitution if he had not already. (Tr. 15)

In addition to his testimony at the plea hearing in which Karriem stated that the recommendation made by the State was the recommendation his counsel had advised him, Karriem also filed his Petition to Enter a Guilty Plea on November 21, 2005. (C.P. 67-68) Karriem stated in his Petition that he knew that the possible minimum sentence was 0 years and that the possible maximum sentence was 10 years. (C.P. 69) He further stated in his Petition that the District Attorney would recommend probation. (C.P. 69) Karriem did not express any expectation of non-adjudication or anything less than a felony conviction. He further stated, "I recognize that if I have been told by my lawyer that I might receive probation or a light sentence, this is merely his prediction and is not binding on the Court."

Karriem presents a letter he received from his attorney on September 7, 2005, in which she informed him that the DA would recommend probation and would not oppose Karriem's sentencing under Section 99-15-26, the non-adjudication statute. (C.P. 27) However, Karriem's Plea Petition on November 21st of 2005 makes no mention of non-adjudication. During the colloquy immediately preceding the trial court's acceptance of his plea, Karriem testified that the

prosecutor's recommendation, as stated at the hearing, ten years suspended and five years probation, was, indeed, the recommendation he was expecting. The record reflects, that by the time of the plea hearing, any misconceptions by Karriem and his counsel about the plea agreement had been clarified.

After the plea was accepted and the sentence entered, Karriem conferred with his counsel, who then addressed the trial court again, stating that she had discussed Mississippi Code Annotated § 99-15-26 with Karriem as "an *option*, and it was *up to the judge*." (Tr. 17) Again, the record reflects that after Karriem received the letter, there was continued conversation between Karriem's counsel and the District Attorney, as well as continued conversation between Karriem and his counsel to clarify the recommendation of the District Attorney and to clarify the judge's independence in sentencing despite any recommendations from the prosecution or the defense. Karriem did not like his sentence because it gave him a felony conviction, and had second thoughts when his hope for leniency were disappointed, however the record reflects that he was properly advised that the trial court could consider the request to sentence him pursuant to Mississippi Code Annotated § 99-15-26 but was not bound by any such request or recommendation. It is also clear from the plea petition and from the testimony at his plea hearing that Karriem understood that the prosecutor was recommending ten years in the custody of the MDOC, suspended, with five years probation.

Further, even if the trial court had granted to Karriem's request for non-adjudication pursuant to Mississippi Code Annotated § 99-15-26, Karriem violated his probation twice by testing positive for cocaine. Therefore, Karriem would have been back before the trial court for sentencing for a felony as a result of his probation violations pursuant to the terms of the statute,

which states, in pertinent part:

> (1) In all criminal cases, felony and misdemeanor, other than crimes against the person, the circuit or county court shall be empowered, upon the entry of a plea of guilty by a criminal defendant, to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court pursuant to subsection (2) of this section. . . .
> (2) . . . .
> (iv) successful completion of drug, alcohol, psychological or psychiatric treatment or any combination thereof if the court deems such treatment necessary.
> (v) The circuit or county court, in its discretion may require the defendant to remain in the program subject to good behavior for a period of time not to exceed five (5) years.

Karriem was unable to successfully complete his probation even after being given a second chance after he tested positive for cocaine on the first occasion. He did not complete the drug rehab program he was supposed to attend as a condition of his probation, so there is no reason to believe he would have completed such a program pursuant to the non-adjudication statute. In short, non-adjudication would have made no difference in the outcome for Karriem.

Karriem cites *Littleton v. State*, 3 So.3d 760 (Miss.Ct.App.2008), for the proposition that where a negotiated plea deal between the State and criminal defendant is breached, the trial court abused its discretion in refusing to allow the Littleton to withdraw his guilty plea. However, the instant case is clearly distinguishable from *Littleton*. In *Littleton*, both Littleton and the prosecutor had the intent to make an agreement and a mutual understanding of the agreement. Whether the intent to make a plea agreement existed was not an issue. In the instant case, the prosecutor clearly did not agree that he had made such a plea deal with Karriem. At the time of the plea hearing, the defense attorney did not represent the suggestion that the trial court non-adjudicate Karriem as part of the plea deal, and, in fact, stated that Karriem knew that this was entirely up to the trial court. She did not state that the prosecution had agreed not to oppose non-

adjudication.

At the hearing on Karriem's Petition for Post-Conviction Relief, prosecutor Forrest Allgood testified that when defense counsel Nedra Porter called him about a plea agreement for Karriem, he told Porter that he would recommend "probation," and that by that, he meant, "felony probation." Allgood testified that Porter wanted non-adjudication and that he informed Porter that he would not recommend non-adjudication. Allgood testified that Porter asked him if he would oppose non-adjudication and that he stated, "I am never going to agree to non-adjudication."

Allgood testified, in pertinent part:

> And as I recall the conversation flowing, she said, "Well, will you oppose it?" And I said, "Nebra, I don't have any evidence in aggravation. I don't have any proof that I can put on in aggravation, like he's got prior convictions or things of that nature. I don't have anything of that nature, but I'm not going to go out in the courtroom and agree to it. I think he deserves a felony conviction."

(Tr. 282)

Allgood further testified that he understood that Porter was going to ask for less for her client, but that was not the plea agreement. Allgood testified that the plea agreement was as he had represented it at the plea hearing, ten years in the custody of the MDOC, suspended, and five years probation. He testified that this was the customary plea agreement involving public officials "caught with their hand in the till." Allgood further testified that he told the court at the plea hearing exactly what he had told Porter prior to the plea hearing, "I didn't agree to it and I thought he deserved a felony conviction." He testified that he did not make any statements during the course of Karriem's plea hearing that were a departure from what Karriem was originally offered. (Tr. 285) Allgood noted that Porter made a distinction between probation and

non-adjudicated probation and that everyone involved comprehended that probation was a felony conviction. (Tr. 285)

Karriem interprets his counsel's statement in the letter of September 7, 2007, that the prosecution would not "oppose" non-adjudication to mean that the prosecution would state to the court that the prosecution did not disagree with the application of the non-adjudication statute. However, it was abundantly clear from the testimony of both the prosecutor, Forrest Allgood, and the defense attorney, Nedra Porter, at the hearing on Karriem's Petition for Post-Conviction Relief, that both attorneys understood this to mean that the prosecution would not put on any evidence of aggravating factors which would prevent the application of the non-adjudication statute.

Allgood's representations regarding the plea agreement during the plea hearing were completely consistent with his testimony at the hearing on Karriem's Petition for Post-Conviction Relief. The circuit court found Karriem's decision was freely, voluntarily, and intelligently made and accepted his plea. The record reflects that Karriem was correctly advised by his attorney that the prosecution would recommend a suspended sentence and probation. This issue is without merit and the trial court's dismissal of Karriem's Petition for Post Conviction Relief should be affirmed.

II. The trial court correctly ruled that Kamal Karriem received constitutionally effective assistance of counsel.

Karriem claims that his trial counsel failed to render effective assistance of counsel. Specifically, he alleges that his counsel did not present her earlier letter to Karriem to the trial court at the plea hearing as evidence of a plea deal "proffered by the prosecution." However, as

argued above, the record reflects, that despite Porter's letter to Karriem some two and half months before the plea hearing, that all involved understood that the prosecutor's recommendation was ten years suspended for a felony conviction and five years probation. While Karriem knew that his attorney would ask for non-adjudication, it was also clear that the prosecution's recommendation would be ten years suspended with five years probation, and that while the prosecution would not put on evidence of aggravating factors, the prosecutor would not *agree* to non-adjudication. Karriem's Plea Petition showed that he understood that the recommendation would be probation and he did not state anything about an expectation of non-adjudication. He further stated in the Plea Petition that he was satisfied with the advice and help his counsel had given him and that, "if I have been told by my lawyer that I might receive probation or a light sentence, this is merely his prediction and is not binding on the court."

Karriem's attorney did not present the letter to the trial court because she knew that is was not an accurate reflection of the plea agreement. The record is also clear that Karriem understood that is was not an accurate reflection of the plea agreement based on his own testimony at the hearing after the prosecution had made its recommendation. Karriem testified regarding that recommendation as follows:

By the Court:	**All right. Did you have a chance to talk to your lawyer about any recommendation the State might make?**
By the Defendant:	**Well, yeah, I did discuss with her. Yes.**
By the Court:	**And is that the recommendation she told you the State was going to make?**
By the Defendant:	**Yes.**

Karriem's unreasonable optimism that the court would non-adjudicate his plea upon a request from his lawyer is not grounds for a reversal of the trial court. Nor does an attorney's letter, two and half months before a hearing, represent the entirety of her representation. Karriem's counsel, based on his own testimony at the plea hearing, his Plea Petition and his counsel's representations at the plea hearing, had clarified for Karriem the nature of the prosecution's recommendation.

The Mississippi Court of Appeals has held, "[t]his Court employs the standard of review set forth in *Strickland v. Washington*, 466 U.S. 668, 687-96, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) in evaluating an ineffective assistance of counsel claim." *Calvert v. State*, 726 So.2d 228, 231 (Miss.Ct.App.1998). Under *Strickland*, Karriem "must prove that the performance of his attorney was deficient, and the deficiency was so substantial as to deprive [him] of a fair trial." *Id.* "[W]hen a convicted defendant challenges his guilty plea on grounds of ineffective assistance of counsel, he must show unprofessional errors of substantial gravity." *Buck v. State*, 838 So.2d 256, 260 (Miss.2003). The defendant must also show that, but for counsel's errors, the defendant would not have entered a plea of guilty. *Id.*

Karriem's unreasonable optimism regarding the possibility of non-adjudication does not indicate deficient performance by his counsel. The prosecution agreed to recommend a sentence of ten years in the custody of the Mississippi Department of Corrections, suspended, with ten years probation. The agreement, as understood by both attorneys, was that the prosecution would not offer evidence of aggravating factors in opposition to defense counsel's recommendation to the court that Karriem be non-adjudicated. Karriem understood that he could get a felony conviction even if he pled guilty. He understood, and stated so in his Plea Petition, that any

suggestions put forth by his counsel were not guarantees. He stated in his plea petition that representations by his attorney that he might receive a lighter sentence were *predictions* and not binding on the court.

Karriem's counsel is presumed to be competent and Karriem has not overcome that presumption. Karriem received constitutionally effective assistance of counsel and this issue is without merit.

III. Kamal Karriem's sentence of ten years, suspended, with five years probation is not cruel and unusual punishment and is within the statutory minimum and maximum for the violation of Mississippi Code Annotated § 97-11-31.

Regarding Karriem's proportionality argument, the supreme court has stated that "where a sentence is within the prescribed statutory limits, it will generally be upheld and not regarded as cruel and unusual." *Gray v. State*, 926 So.2d 961, 979 (Miss.Ct.App.2006) (quoting *Tate v. State*, 912 So.2d 919, 933 (Miss.2005)). Nonetheless, where the sentence is grossly disproportionate to the crime committed, it may be subject to attack on the grounds that it violates the Eighth Amendment prohibition on cruel and unusual punishment. *Id.* "The three factors to look at when determining whether a sentence is proportional are: (1) the gravity of the offense and the harshness of the penalty; (2) the sentences imposed on other criminals in the same jurisdiction; and (3) the sentences imposed for commission of the same crime in other jurisdictions." *Id.* (citation and internal quotations omitted).

In *White v. State*, 742 So.2d 1126 (Miss.1999), the Mississippi Supreme Court opined:

> When a "threshold comparison of the crime committed to the sentence imposed leads to an inference of 'gross disproportionality' " the proportionality analysis of *Solem* is used. *Hoops v. State*, 681 So.2d 521, 538 (Miss.1996) (quoting

Smallwood v. Johnson, 73 F.3d 1343, 1347 (5th Cir.1996)). One seeking to prove a sentence violative of the Eighth Amendment carries a heavy burden. See Stromas v. State, 618 So.2d 116, 123 (Miss.1993). Although White's sentence is severe, the Solem proportionality analysis is not implicated in this case. See *id.*

White, 742 So.2d at 1136. See also *Harmelin v. Michigan*, 501 U.S. 957, 965, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) ("... Solem was simply wrong; the Eighth Amendment contains no proportionality guarantee.")

In Mingo v. State, 944 So.2d 18 (Miss. 2006), the Mississippi Supreme Court held that "when sentences are within the limits of the statute, the imposition of such sentences is within the sound discretion of the trial court, and this Court will not reverse them . . . . Likewise, we have held that providing punishment for crime is a function of the legislature, and, unless the punishment specified by statute constitutes cruel and unusual punishment, it will not be disturbed by the judiciary." *Presley v. State*, 474 So.2d 612, 620 (Miss. 1985) We review sentences in light of the factors articulated by the United States Supreme court in *Solem v. Helm*, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.637 (1983), only when a threshold comparison of the crime committed to the sentence leads to an inference of "gross disproportionality."

As the trial court noted in its Order denying Karriem's Petition for Post-Conviction Relief, the sentencing was within the sentencing guidelines set out in the statute and Karriem only received time to serve on the embezzlement conviction after he had on two separate occasions violated the terms of his probation. (C.P. 65)

In his argument on appeal, Karriem leaps directly to the application of the *Solem* factors without reference to the requirement that a "threshold comparison of the crime committed to the sentence imposed leads to an inference of 'gross disproportionality' "

Rummel v. Estelle, 445 U.S. 263, 265-66, 100 S.Ct. 1133, 1134-35, 63 L.Ed.2d 382

(1980), serves as a guide in the determination of this threshold comparison. *Hoops v. State*, 681 So.2d 521 (Miss. 1996) The defendant in *Rummel* was sentenced to life in prison with the possibility of parole under a recidivist statute for a third non-violent felony conviction. Although the total loss from the three crimes was less than $250.00, the United States Supreme Court found Rummel's sentence to be proportionate and not violative of the Eighth Amendment. *Id.*

In Hoops, the Mississippi Supreme Court held:

> In light of *Rummel*, it cannot be argued that Hoops's sentence was grossly disproportionate to his crime. Like Rummel, Hoops maintains a possibility of parole, but unlike Rummel, who was sentenced to life, Hoops was sentenced to a total of thirty years at an age of eighteen. Although Hoops was not sentenced under a recidivist statute, the quality of his crime is certainly as egregious as Rummel's three non-violent crimes which netted him a paltry sum of approximately $250.00. The jury found Hoops guilty in shooting two people, apparently for no other reason than they were in a rival street gang. To be sure, this is a serious act of violence. The trial judge was statutorily empowered to sentence Hoops to twenty years on each count, but he did not. On balance, these facts do not lend themselves to a finding that Hoops received a sentence grossly disproportionate to his crime; therefore, an extended proportionality review under Solem is not warranted. This Court finds no error.

Pursuant to *Rummel* and *Hoops* the instant case the does not rise to the level required to warrant the application of a Solem analysis. A threshold comparison of the crime committed to the sentence imposed does not lead to an inference of gross disproportionality. Karriem was an elected official who committed the crime of embezzlement by a public official. He was serving as a City of Columbus Council Member and was charged with embezzling city property entrusted to him because of his office. While Karriem did receive the maximum sentence under the statute, the entire sentence was suspended and Karriem was placed on probation for five years. Karriem would not have served any time had he not *twice* violated the terms of his probation by

testing positive for the use of cocaine. There is no inference of gross proportionality in light of the standard set in *Rummel*, and therefore, the *Solem* analysis is never triggered.

The trial court correctly held that Karriem's sentence did not violate the dictates of the Eighth Amendment and denied relief. This issue is without merit and the trial court's denial of Karriem's Petition for Post Conviction Relief should be affirmed.

CONCLUSION

The assignments of error presented by the Appellant are without merit and the trial court's denial of Karriem's Motion for Post Conviction Relief should be upheld.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Laura H. Tedder, 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:

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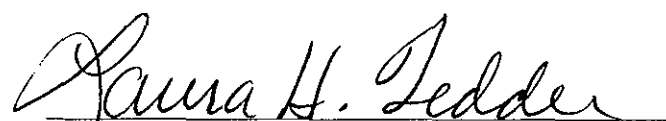
This the 6th day of August, 2010.



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