

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**KAMAL KARRIEM, JR.**

**APPELLANT**

**VS.**

**NO. 2009-CA-01583**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**APPEAL FROM THE CIRCUIT COURT OF  
LOWNDES COUNTY, MISSISSIPPI**

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**BRIEF FOR APPELLANT**

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**CERTIFICATE OF INTERESTED PARTIES**

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 Judge of the Circuit Court of Lee County Mississippi may evaluate possible disqualification or recusal.

1. **Kamal Karriem, Jr.**, Appellant;
2. **T.K. Moffett**, Attorney for Appellant;
3. **W. Brent McBride**, Attorney for Appellant;
4. **Nebra Porter**, Karriem's initial attorney who represented him up and through sentencing;
5. **Rod Ray**, Karriem's attorney at revocation hearing;
6. **State of Mississippi**, Appellee;
7. **Jim Hood**, Attorney General, Attorney for Appellee;
8. **Forrest Allgood**, District Attorney. Attorney for Appellee;
9. **Hon. James T. Kitchens, Jr.**, presiding Circuit Court Judge.

RESPECTFULLY SUBMITTED, this the 4<sup>th</sup> day of May, 2010.

  
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W. BRENT MCBRIDE

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**APPELLEE**

**STATEMENT OF THE ISSUES**

1. Whether the trial court erred in finding the Appellant, Kamal Karriem's ("Karriem") guilty plea was knowingly, voluntarily and intelligently made.
2. Whether the trial court erred in finding that the Appellant, Kamal Karriem had effective assistance of counsel.
3. Whether Kamal Karriem's sentence of 10 years constitutes cruel and unusual punishment and whether it is inconsistent with other sentences given for violation of the statute, Miss. Code Ann. § 97-11-31.

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**BRIEF FOR APPELLANT**

**STATEMENT OF THE CASE**

Procedural History

Kamal Karriem was indicted during the April 2005 term of the Lowndes County Grand Jury for Embezzlement for allegedly loaning a city issued cell phone to another person who made over Five-Hundred Dollars (\$500.00) in cell phone calls.

On May 19, 2005, Karriem waived arraignment and entered a plea of "not guilty". Karriem's attorney during this time was Honorable Nebra Porter. Karriem appeared before the Honorable James T. Kitchens, Jr. on November 21, 2005, and entered a plea of "guilty" to the charge of Embezzlement under Miss. Code Ann. §97-11-31. Karriem was sentenced to 10 years imprisonment with 10 years suspended; 5 years probation; One-Hundred Six Dollars and Three Cents (\$106.03) in restitution; a fine; and court costs.

Subsequently, in July of 2007, the State sought to revoke Karriem's probation, in part, for failing a drug test. After a hearing on the State's Petition to Revoke Suspension of Sentence, the Honorable James Kitchens entered an order modifying

Karriem's probation on September 21, 2007. Under said Order, Karriem was to enter and successfully complete the *Teen Challenge Residential Drug Treatment Program*. Karriem's attorney during this time was Honorable Rod Ray.

In April 2008, the State again filed a Petition to Revoke Suspension of Sentence on the grounds that Karriem had not successfully completed the drug treatment program and had, again, failed a drug test. The Honorable James Kitchens entered a Revocation Order on April 11, 2008, whereby Karriem's probation was revoked and he was placed in the custody of the Mississippi Department of Corrections to serve his full ten-year sentence. Petitioner timely filed a Petition for Post Conviction Relief, which was denied by the trial court after hearing on February 27, 2009.

The central issue on appeal is whether Karriem's guilty plea was freely, knowingly, voluntarily and intelligently entered, when said guilty plea was induced by the prosecution's unfulfilled promise to not oppose sentencing under Mississippi's non-adjudication statute, Miss. Code Ann. §99-15-26. Also, this case presents the issue of whether a ten (10) year sentence for embezzling little more than one-hundred dollars is so disproportionate to the offense as to constitute cruel and unusual punishment.

#### Statement of the Facts

Kamal Karriem served the City of Columbus, Mississippi as a Councilman from Ward 5. (CP-52; RE-25.) He had no criminal history, be it felony or misdemeanor, juvenile or adult. *Id.* However, as a Councilman, Karriem had to take positions that were sometimes unpopular with his fellow members of the council and other officials of the City of Columbus. *Id.*

One such decision concerned a purchase of new police cars for the City of Columbus, which was requested by the City's new police chief. *Id.* Karriem voted against the expenditure. *Id.* Shortly thereafter, Karriem's car was identified as fleeing from Columbus police. *Id.* However, Karriem did not flee from the police; he had loaned his car to a man who regularly washed and serviced the vehicle. *Id.* Around this same time, and after Karriem had voted against the purchase of the new police cars, an investigation of Karriem had been initiated by the police department to unearth anything that could be used to "encourage" Karriem to change his position concerning the police chief's request. (CP-52-53; RE-25-26.) The investigation uncovered the fact that Karriem had loaned his city issued cellular telephone to another person who made approximately Five Hundred Dollars (\$500.00) in cell phone calls. *Id.*

Karriem was invited by the new police chief, J.D. Sanders, to take a ride with him. *Id.* Sanders drove Karriem to a remote area and offered to make the issues of fleeing the police and the unauthorized cell phone charges "go away", in exchange for Karriem's support of his request to purchase new vehicles for the police department. *Id.* Karriem responded that he did not operate that way and would not change his vote. *Id.*

Subsequently, Karriem was arrested and charged with Embezzlement by a public official in the matter of the cell phone use. *Id.* Karriem waived arraignment and entered a plea of not guilty to the charge. *Id.*

Karriem was represented at the time by Nebra Porter, Esq of Tupelo, Mississippi. (RE-26.) Ms Porter communicated to Karriem, in a letter dated September 7, 2005, that the prosecution had offered the following plea deal:



*"...plea to the charge and he will recommend probation. He will not oppose your being sentenced under Sec. 99-15-26, the non-adjudication statute. (emphasis added). That means the judge would defer accepting your plea and you would be placed on probation. If you successfully complete probation, the entire charge goes away, there will be no record of the arrest and no felony conviction." (RE-29).*

Based on this advice and assurance, Karriem appeared in open court on November 21, 2005 and entered a plea of guilty to the charge of violating Miss. Code Ann. § 97-11-31. (RE-19).

During Karriem's plea, the following exchange occurred:

*BY THE COURT: Mr. Karriem, the Court finds beyond a reasonable doubt that your plea is freely, voluntarily, knowingly, and intelligently entered. There is a factual basis to support the charge against you, and I'll accept your guilty plea.*

*I believe - - is there a recommendation or not?*

*BY MR. ALLGOOD: Yes, sir, Your Honor. The State would recommend this defendant be sentenced to serve a term of ten years in the Mississippi Department of Corrections, that be suspended, and he be placed on probation for a period of five.*

*I think restitution has been paid, Your Honor. They're checking on that. I believe Mr. Karriem's right when he says it's been paid, but I think we ought to order restitution anyway.<sup>1</sup>*

*The other conditions are to be left up to the Court.*

*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?*

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<sup>1</sup> There was some discrepancy as to the amount of restitution and whether Karriem had already paid it or not. In the victim impact statement, the City claimed Karriem still owed \$106.03 on the phone bill. Karriem maintained it had been paid in full.

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.

BY THE COURT: Okay.

BY MS PORTER: Your Honor, if I may?

BY THE COURT: Certainly.

BY MS PORTER: The only thing I would ask, Your Honor, is I would ask the Court to consider sentencing him pursuant to the non-adjudication statute.

BY THE COURT: All right. It - - was the agreement what the State said, or - - or are you asking me - -

BY MR. ALLGOOD: The agreement was what I said, Your Honor. She's asking you to depart from that agreement. (RE-35a)

The Court accepted the State's new recommendation, but this recommendation was different from the one previously offered to Ms. Porter and was also different from the one explained to Karriem that led him to enter a guilty plea. (RE-49-50.) Once Karriem realized that the prosecution was departing from the plea agreement which Ms. Porter explained to him, Karriem requested to withdraw his plea of "guilty", but his request was denied by the trial court. (RE-35c, 36). Following his plea and based on this new recommendation, Karriem was sentenced to ten years suspended, five years probation, restitution and other costs. *Id.*

Karriem subsequently lost his position on the city council, was embarrassed and humiliated, and suffered from depression. (CP-54.) While on probation, Karriem failed a drug test and was ordered to a rehabilitation program. *Id.* In compliance with the

order, Karriem entered the *Teen Challenge of Arkansas Program* on November 5, 2007. *Id.*

On January 5, 2007, Karriem left the program to attend and speak at the funeral of Tony Dean in Mississippi. (RE-58). While at the funeral, Karriem met and talked with Judge James Kitchens, who was also in attendance at the funeral, regarding the rehabilitation program. (RE-59). The Judge indicated to Karriem that he need not return to Arkansas for the remainder of the program, but rather to consult his attorney, Rod Ray, to have an order prepared to that effect. (RE-60).

Karriem met with his attorney and related what Judge Kitchens had told him. (RE-60,61). Karriem's attorney assured him he would handle it and Karriem did not have to return to Arkansas to finish the *Teen Challenge of Arkansas Program*. *Id.* Karriem's attorney was aware of the situation and insinuated that he had already spoken to Judge Kitchens. *Id.*

Apparently, no one other than Karriem notified Teen Challenge of Arkansas that Karriem had been released. (RE-30). Teen Challenge of Arkansas notified Judge Kitchens and Karriem's probation officer that Karriem had not returned to the program, but that Karriem had advised them that Judge Kitchens had released him. *Id.* Subsequently, Karriem was ordered to find, and enter, a treatment program. (RE-27),

Karriem then made arrangements to begin a treatment program in Tupelo, Mississippi beginning on March 4, 2008. *Id.* However, Karriem was shot multiple times on February 29, 2008 in Columbus, Mississippi. *Id.* Karriem's gunshot wounds prevented him from entering the treatment program as planned, on March 4th, as he was hospitalized from the time of the shooting until March 6, 2008. *Id.* Further, due to

the pain caused by his wounds, Karriem was placed on narcotic painkillers by his physician, Dr. Thomas Vinson. (CP-54,55; RE-31). Dr. Vinson's letter also advised that Karriem would likely fail a drug test due to the painkillers he had prescribed. (RE-31).

Thereafter, on April 2, 2008, the State filed a Petition to Revoke Suspended Sentence. After a hearing, Karriem's probation was revoked and he was placed in the custody of the Mississippi Department of Corrections to serve the full ten (10) year sentence. (CP-55).

Karriem timely filed a Petition for Post Conviction Relief through the undersigned counsel which was heard by the Honorable Judge Kitchens on February 27, 2009. Following the hearing, the trial court denied the requested relief in a written order dated August 31, 2009. (CP-56-66; RE-7-17). Aggrieved by the Court's ruling, Kamal Karriem filed a notice of appeal to this Court on September 25, 2009. (CP-92-93.)

#### Standard of Review

Whether the prosecution's opposition to Appellant being sentenced under the non-adjudication statute was an improper inducement to obtain a guilty plea rendering Appellant's plea invalid, is a legal question. Whether Appellant's counsel's failure to advise the court of the true plea deal offered by the prosecution constituted ineffective assistance of counsel is a legal question. Whether a ten (10) year sentence for embezzling just over one-hundred dollars is so disproportionate to the offense that the sentence constitutes cruel and unusual punishment is a legal question. Legal questions are reviewed *de novo*. *Sanders v. Chamblee*, 819 So.2d 1275, 1277 (Miss. 2002), *Roberts v. New Albany Separate School District*, 813 So.2d 729, 730-31 (Miss. 2002) and *Carrington v. Methodist Medical Center, Inc.*, 740 So.2d 827, 829 (Miss. 1999).

## **SUMMARY OF THE ARGUMENT**

Karriem was advised by counsel that the prosecution had offered a plea deal which included an agreement to not oppose Karriem being sentenced under the non-adjudication statute. Based on this assurance, Karriem withdrew his plea of not guilty, and entered a plea of guilty. At his plea, the prosecution recommended Karriem receive a ten (10) year sentence, suspended, and probation. When Karriem's attorney requested non-adjudication, the court asked the prosecutor if non-adjudication was part of the plea deal. The prosecutor denied that it was, and accused Karriem's attorney of attempting to depart from the plea deal. The prosecution's failure to abide by its word in obtaining Karriem's guilty plea renders the plea invalid.

At hearing on Appellant's Petition for Post Conviction Relief, the testimony of both the prosecution and counsel for Karriem demonstrated that neither of the attorneys fully understood the plea deal. Accordingly, it is unreasonable to expect that Appellant did. In light of these facts, the trial court committed reversible error in finding that Karriem's plea was knowing and voluntary.

When Karriem realized the prosecution was not upholding the plea deal, he attempted to withdraw his plea. The trial court refused Karriem's request and applied the prosecution's recommended sentence.

At the same time, Karriem's attorney failed to properly advise the court of her plea negotiations with the prosecution. Counsel never advised the court of the prosecutor's agreement to not oppose non-adjudication, including showing the court the letter counsel had written Karriem stating the plea deal which led to his change of plea. Under these circumstances, counsel had a duty to inform the court that the plea

as communicated to the court by the prosecutor was not the plea which had been offered Karriem. At the plea, Karriem stated he did not understand the plea, and was clearly relying on his attorney that the agreement offered by the prosecution was the deal that had been communicated to him by his attorney.

Karriem entered a plea of guilty to embezzling \$106.03. His sentence of the full ten (10) years, as authorized by the statute is clearly disproportionate to the offense, and weighs far outside the range of other sentences given for a violation of the same statute.

### **ARGUMENT**

#### **I. THE TRIAL COURT ERRED IN FINDING THE APPELLANT, KAMAL KARRIEM'S, GUILTY PLEA WAS KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY MADE.**

As demonstrated by the letter Karriem received from his then attorney, Nebra Porter, the prosecution had offered to not oppose Karriem being sentenced under the non-adjudication statute Miss. Code Ann. §99-15-26. (RE-29). As Ms Porter advised Karriem, in such a case,

*"the judge would defer accepting your plea and you would be placed on probation. If you successfully complete probation, the entire charge goes away, there will be no record of the arrest and no felony conviction." Id.*

However, as noted *supra*, at Karriem's sentencing, the prosecution did oppose Karriem being sentenced under the non-adjudication statute. The prosecutor stated that his recommendation was the entire agreement and that the suggestion of non-adjudication was Ms. Porter asking the Court to depart from the agreement. (RE-36). At the post conviction relief hearing, the prosecution denied ever agreeing to non-adjudication for Karriem. (RE-63-64.) Subsequently, the prosecutor testified that there

was a misunderstanding between he and Karriem's counsel regarding the plea agreement. (RE-65-69). Further, the prosecutor admitted that he had opposed non-adjudication at Karriem's plea. (RE-67-69).

"All agree that for a plea of guilty to be binding on an accused it must be voluntarily made. Whether it was so must, of course, be viewed as of the time it was submitted to the court." *Shelton v. United States*, 246 F.2d 571, 572 (5<sup>th</sup> Cir. 1957). That Court affirmed the accepted definition of a voluntary plea thus: "A correct statement of the applicable rule might be: a plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes)." *Shelton*, 246 F.2d at 572 fn. 2.(Citations omitted.)(Emphasis added).

In the instant case, Karriem had previously entered a plea of not guilty. After receiving the letter from his attorney, relating the prosecution's offer in regard to non-adjudication, and explaining the consequences of non-adjudication, Karriem reversed his position and agreed to enter a plea of guilty: thereby waiving his constitutional rights to a jury trial and against self-incrimination. Karriem relied on the misrepresentation, or unfulfilled promise, of the prosecution in making his guilty plea.

"When a plea rests . . . on a promise or agreement of the prosecutor, so that it can be said to be a part of the inducement or consideration, such promise must be

fulfilled." *United States v. Robinson*, 858 F.Supp. 77, 80 (E.D. Texas 1994)(Quoting *Santobello v. New York*, 404 U.S. 257, 262 (1971). See also, *Salter v. State*, 387 So.2d 81, 83-84 (Miss. 1980).

In *Littleton v. State*, 3 So.3rd 760 (Miss.App. 2008), the Court ruled that where a prosecutor induced a defendant to enter a plea of guilty with an unfulfillable promise, there never existed a valid contract, it was an improper inducement to obtain a guilty plea, AND, the trial Court abused its discretion when it failed to allow the defendant to withdraw his plea. The *Littleton* Court reversed and remanded the case to the active trial docket.

Here, after the prosecution opposed Karriem being sentenced under the non-adjudication statute, contrary to the prior agreement, Karriem attempted to withdraw his guilty plea. (RE-40). However, the trial Court refused the request and accepted the guilty plea. *Id.*

Following the February 2009 hearing, the trial Court denied Karriem's request for relief as to this issue on the basis of the testimony of Karriem's counsel at the time of his plea. (CP-56-66; RE-7-17.) The court wrote that it found counsel's testimony to be credible that neither she nor the prosecution ever promised Karriem non-adjudicated probation. *Id.* However, that was not the testimony of counsel, Nebra Porter, at the February 2009 hearing. (RE-43-43). Karriem's counsel testified that she had discussed a plea with the prosecution and that "Mr. Karriem would receive probation, the State would not oppose non-adjudication, and that was the agreement." *Id.* Personally, and in a letter, Karriem's counsel communicated this plea agreement to him. (RE-29; RE-43-45.) The testimony also showed that not having a felony conviction, due to the non-



adjudication, played a significant role in Karriem changing his plea from not guilty to guilty. (RE-46). Further, Nebra Porter testified that the prosecution did depart from the plea to which they had agreed. (RE-48).

The trial court's finding is against the weight of the evidence, and should be reversed. The relief granted in *Littleton* should be granted to Karriem.

**II. THE TRIAL COURT ERRED IN FINDING THAT THE APPELLANT, KAMAL KARRIEM, HAD EFFECTIVE ASSISTANCE OF COUNSEL.**

To prevail on his ineffective assistance of counsel claim, Karriem must "show by a preponderance of evidence (1) that counsel's performance was deficient, and (2) but for the deficiencies, the trial court outcome would have been different." *Jones v. State*, 976 So.2d 407, 410-411 (Miss. App. 2008)(Quoting *Ward v. State*, 914 So.2d 332, 336 (Miss. App. 2005)). See also *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

"A presumption exists that the attorney's conduct was adequate." *Hull v. State*, 983 So.2d 331, 333-334 (Miss. App. 2007)(Citations omitted) Karriem "must show that there is a 'reasonable probability' that but for the alleged errors of counsel, the sentence of the trial court would have been different." *Hull*, 983 So.2d at 334 (Citing *Nicolaou v. State*, 612 So.2d 1080, 1086 (Miss. 1992)).

As noted, *supra*, Porter had in her possession her letter to Karriem, dated two and one half months before Karriem entered his guilty plea, setting forth the plea deal proffered by the prosecution. When the prosecution refused to abide by that agreement (to not oppose sentencing via the non-adjudication statute), counsel failed to bring the prior agreement to the court's attention. After the Court inquired as to whether the plea agreement differed from what the prosecutor recommended,

Karriem's counsel failed again to apprise the Court of the true agreement. Further, when the prosecution accused Porter of asking the Court to depart from the plea agreement that the prosecution had set forth at the hearing, Karriem's counsel failed to enlighten the Court of the true agreement or offer her letter into evidence to show what she and Karriem believed was the basis for Karriem's plea of guilty. (RE-47-53).

It is clear from the testimony given at Karriem's sentencing that he was unaware of how the recommendation the prosecution proposed deviated from what he was told by his counsel that the agreement would be:

*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. (RE-35b)*

Karriem had been induced to plead guilty by the prosecution's offer to not oppose non-adjudication. When the prosecution opposed non-adjudication, Karriem's counsel was deficient in failing to properly advise the Court of the previous agreement, including introducing her letter showing what that agreement was. Had counsel so advised the court, the court should not have accepted Karriem's plea, and he could have proceeded to trial.

In the order denying Karriem's Petition for Post Conviction Relief, the court's rationale for denying Karriem on this issue was simply that,

*"This Court cannot and will not find Ms. Porter to be constitutionally deficient for failing to convince this court that it should have departed from the agreed recommendation and place Karriem on non-adjudicated probation." (CP-63; RE-14).*

The trial court misses the issue. The issue is not Ms. Porter's persuasiveness. The issues are whether the prosecution abided by the plea agreement, whether the plea Karriem made was the plea offered to induce him to plead guilty, and whether Karriem's attorney advised the court that the plea recommended was not what Karriem had been offered. The answer to all of the above questions is "No", and consequently, Karriem was deprived of effective assistance of counsel.

**III. KAMAL KARRIEM'S SENTENCE OF 10 YEARS CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT AND IS INCONSISTENT WITH OTHER SENTENCES GIVEN FOR VIOLATION OF THE STATUTE, MISS. CODE ANN. §97-11-31.**

Previous to his charge of embezzlement, Karriem had no prior criminal history. The charge of embezzlement was based on approximately Five Hundred Dollars (\$500.00) in cell phone calls that he allowed someone else to make on his city issued cell phone. Assuming, without agreeing, that he had not made full restitution at the time of his sentencing, the amount still owed on the phone bill was One Hundred and Six Dollars and Three Cents (\$106.03). For such a small amount of money, Karriem was given the full ten (10) year sentence allowed by statute for the offense.

*"The Eighth Amendment declares: 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.' The final clause prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed. The principle that a punishment should be proportionate to the crime committed is deeply rooted and frequently repeated in common-law jurisprudence." Solem v. Helm, 463 U.S. 277, 284 (1984).*

"The constitutional principle of proportionality has been recognized explicitly in this Court for almost a century." *Solem*, 463 U.S. at 286. The prohibition against

excessive penalties applies to prison sentences, as well as bail, fines and capital punishment. *Id.*, at 289.

*"In sum, we hold as a matter of principle that a criminal sentence must be proportionate to the crime for which the defendant has been convicted. Reviewing courts, of course, should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes, as well as to the discretion that trial courts possess in sentencing convicted criminals. But no penalty is per se constitutional. As the Court noted in Robinson v. California, 370 U.S. at 667, a single day in prison may be unconstitutional in some circumstances." Id., at 290.*

"[A] court's proportionality analysis under the Eighth Amendment should be guided by objective criteria, including (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." *Id.*, at 292.

As noted, *supra*, Karriem was charged with embezzling approximately \$500.00 in cell phone calls. At the time of his plea, he had either paid all the money back, or, at most, still owed \$106.03.<sup>2</sup> A ten year sentence for a little over \$100 in phone calls is clearly disproportionate. The \$106.03 the State claimed he had not repaid would amount to petit larceny – justifying no more than six (6) months in jail under that statute.

Concerning sentences received by others convicted under the statute Karriem pled guilty to violating, none have received anything approaching the maximum

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<sup>2</sup> In *Solem v. Helm*, cited extensively *supra*, the Defendant had been convicted as a habitual offender after passing a "no account" check for \$100. As the Court noted in finding his sentence disproportionate to his crime, "[Helms'] crime was one of the most passive felonies a person could commit. It involved neither violence nor threat of violence to any person. The \$100 face value of [his] 'no account' check was not trivial, but neither was it a large amount." 463 U.S. at 296.

sentence allowed by the statute, despite having embezzled significantly larger amounts. *Fleming v. State*, 687 So.2d 146 (Miss. 1997)(Defendant sentenced to five (5) years with four (4) suspended); *Salter v. State*, 387 So.2d 81 (Miss. 1980)(Defendant sentenced to three (3) years, suspended, and fined \$10,000 after pleading guilty to two of ten charges of embezzlement); *Cumbest v. State*, 456 So.2d 209 (Miss. 1984)(Defendants each sentenced to four (4) years, with three (3) suspended after being found guilty at trial); *Johnson v. State*, 831 So.2d 1171 (Miss. App. 2002)(Defendant, the former fire chief of the City of Starkville, was tried and convicted in the Oktibbeha County Circuit Court of embezzlement under Miss. Code Ann. § 97-11-31. He was sentenced to probation for embezzling \$466.54 from the city.)

Clearly, the ten year sentence Karriem received is disproportionate to both the crime committed and to the sentences others who have violated the statute have received.

### **CONCLUSION**

Petitioner Kamal Karriem's plea was not knowing and voluntary as the prosecution deviated from the plea deal it offered Karriem in order to induce his guilty plea. Karriem was denied effective assistance of counsel when his attorney failed to properly advise the court that the plea deal as stated by the prosecution was not the agreement which the prosecution had made to counsel or Karriem. Further, a ten year sentence for theft of just over one hundred dollars is clearly disproportionate to the offense and to other sentences handed down in Mississippi for violations of the same

statute. Karriem's conviction and sentence should therefore be reversed, and this cause remanded to the Circuit Court of Lowndes County for a new trial.

Respectfully submitted,

**KAMAL KARRIEM**, Appellant

BY: W. Brent McBride  
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MS BAR NO [REDACTED]

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**CERTIFICATE OF SERVICE**

I, **Brent McBride**, attorney for Appellant, do hereby certify that I have this day delivered a true and correct copy of the above and foregoing **BRIEF FOR APPELLANT** to the following individuals by placing a copy of same in United States mail, postage prepaid, and mailing to them at their usual business address as follows:

Honorable Forrest Allgood  
PO Box 1044  
Columbus, MS 39703

Honorable James T. Kitchens, Jr.  
Circuit Court Judge  
PO Box 1387  
Columbus, MS 39703

DATED this the 4<sup>th</sup> day of May, 2010.

  
\_\_\_\_\_  
W. Brent McBride

**CERTIFICATE OF FILING**

The original and three (3) copies of the **BRIEF FOR APPELLANT**, along with a copy of same on disk, have this date been filed by placing same in *Federal Express* and delivered to:

Ms. Kathy Gillis, Clerk  
Supreme Court of the State of Mississippi  
Court of Appeals of the State of Mississippi  
450 High Street  
Jackson, MS 39201

DATED this the 4<sup>th</sup> day of May, 2010.

  
\_\_\_\_\_  
W. Brent McBride