

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

HAROLD Z. EUBANKS

APPELLANT

VS.

CAUSE NO. 2009-CA-01922

R+

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 the Mississippi Supreme Court and Court of Appeals may evaluate for possible disqualification or recusal.

1. Jeffrey Klingfuss, Esq, Special Assistant Mississippi Attorney General
2. Hal Kittrell, District Attorney 15th Circuit Court District
3. Honorable Prentiss G. Harrell Circuit Judge
4. Harold Z. Eubanks, the Appellant
5. Lee Turner, Counsel for the Appellant

SO CERTIFIED on this the 28th day of July, 2010.



Lee Turner

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ARGUMENT

I. THE MISSISSIPPI APPELLATE COURTS HAVE THE AUTHORITY TO ADOPT EQUITABLE EXPUNGEMENT

On a preliminary note, Eubanks acknowledges that both the Mississippi Supreme Court and the Mississippi Court of Appeals have in the past declined to adopt equitable expungement. *See, Turner v. State*, 856 So. 2d 1056 (Miss. Ct. App. 2004) and *Caldwell v. State*, 564 So. 2d 1371 (Miss. 1990). Eubanks, however, urges this Court to revisit those decisions and recognize equitable expungement as advocated by a host of state and federal jurisdictions. Instead of regurgitating the numerous persuasive authorities from other jurisdictions listed in his brief, Eubanks will use this rebuttal to address certain perceived errors in the Appellee's brief, as well as clarify the issue. Likewise, this Reply Brief will not address Eubanks post-conviction accomplishments, as discussed in his initial brief.

The State asserts that neither *Turner* nor *Caldwell* address 'equitable expungement' as an alternative to the statutory scheme created by the legislature. On the contrary, the holding in *Turner* makes specific reference to a Court's inherent power or lack thereof to grant expungements. Specifically, a closer review of *Turner*, reveals that the Mississippi Court of Appeals relying on *Caldwell* determined that it would be an intrusion upon the province of the legislature to adopt the position that judges can utilize their inherent powers to grant an expungement on equitable grounds. *Turner*, 856 So. 2d at 1059 (¶11). Eubanks, as discussed *supra*, asserts that these holdings need to be revisited in light of the collateral consequences of maintaining a public record of his conviction, and the increased societal costs associated with an offender being unable to fully reintegrate into society.

While ultimately denying the requested relief, this position was supported by the trial judge's findings. R. at 85. Specifically, the trial judge held:

This court finds that the precedent set forth in *Turner v. State*, 816 So. 1056 (Miss. Ct. App. 2004) that circuit judges are without inherent power to expunge should be **revisited**... (emphasis added)

Id.

Here Eubanks is being denied full employment due to his inability to sit for the professional engineers exam, despite an exemplary post-conviction life.



In addition, the State argues in it's brief that "the Mississippi Legislature is consistent in that '...no expunction of an implied consent violation shall be allowed.'" (See, Appellee's Brief, p. 5). The State specifically cites to Mississippi Code Annotated Section 9-23-23. Eubanks concedes that this statute does not allow for expunction of an offense under the implied consent law. However, said statute is specifically relegated to expungments obtained after completion of a drug court program. Consequently, Eubanks contends that it is not applicable to the facts of this case since he did not participate in a drug court program.

Furthermore, Eubanks would like to address the State's reference to his citation to Federalist Paper Number 74. The Appellant's Brief clearly reflects that Eubanks was merely acknowledging that he did not coin the phrase "unfortunate guilt;" therefore, he deemed that a citation was appropriate. There is nothing in the brief to imply in any way that Federalist Paper Number 74 was persuasive authority for this Court to consider on this issue.

The State also points out that Eubanks has other avenues for obtaining some of the relief he desires via executive pardon. Eubanks does not deny that he has the opportunity to apply for a pardon. However, he argues that circuit court judges, under appropriate circumstances should also have the ability to expunge the public record of a conviction, especially when one considers the politically charged nature of obtaining a pardon. As discussed more fully in his brief, equitable expungement where recognized is utilized, despite the fact that their respective executive branches also have the power to pardon, or other forms of relief might be available.

CONCLUSION

Approximately, eighteen years ago when Eubanks was himself only eighteen he made a horrible mistake, not unlike many naïve college freshman to drink and drive and a tragedy ensued. Eubanks has taken full advantage of the benevolence bestowed upon him by the trial judge and the victim's family leading a post-conviction life that is a testament to second chances. Thus, this Court should revisit and overturn the holdings in *Turner* and *Caldwell*; because the public record of Eubanks's convictions serves no legitimate purpose except to continue punishing him long after the expiration of his sentence. Accordingly, the Judgment of the Circuit Court of Pearl River County should be reversed and this case remanded for further proceedings.

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CERTIFICATE OF SERVICE

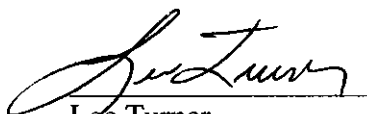
I, Lee Turner, do hereby certify that I have this day served via first class mail postage prepaid, a true and correct copy of the Appellant's Reply Brief to the following parties:

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