IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2009-CP-00108-COA

REGINALD EDWARDS APPELLANT

V.

STATE OF MISSISSIPPI APPELLEE

BRIEF FOR APPELLANT

BY: Reginald Edwards

Reginald Edwards, #R9451
JFCF
279 Hwy. 33
Fayette, MS 39069

ORAL ARGUMENT NOT REQUESTED

PRO SE PRISONER BRIEF

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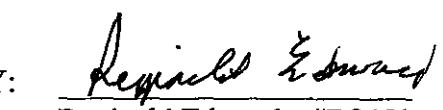
CERTIFICATE OF INTERESTED PERSONS

The undersigned Appellant, Reginald Edwards, certifies that the following listed persons have an interested in the outcome of this case. The representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Reginald Edwards, Appellant pro se.
2. Honorable Jim Hood, and staff, Attorney General.
3. Honorable Lamar Pickard, Circuit Court Judge.
4. Honorable Alexander Martin, Assistant District Attorney.

Respectfully Submitted,

BY: 

Reginald Edwards, #R9451
JFCF
279 Hwy. 33
Fayette, MS 39069

Appellant

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

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STATE OF MISSISSIPPI APPELLEE

STATEMENT OF ISSUES

A.

Reginald Edwards was denied his sixth Amendment Right to effective Assistance of Counsel where defense counsel failed to bring out the issues stated herein where, if raised, there would have been a different result.

B.

Appellant Edwards was denied due process of law where he was convicted of the offense in the indictment without having admitted all elements required to prove such crimes. Having never stated to the court that he knowingly sold such drugs whi le knowing such actions to be illegal.

C.

The sentence imposed upon Edwards in illegal where the court failed to specify the number of years or length of the post release supervision term. The court stated that "such post release supervision term may continue until the court in term time or the judge in vacation shall alter extend, terminate or direct the execution of the above sentence."

D.

Reginald Edwards was subjected to a denial of due process of law where the trial court failed to advise Edwards of the right to appeal the sentence, which the court

imposed, directly to the Supreme Court of the state of Mississippi as in any other appeal.

E.

The trial court failed a to file a complete record of the trial court proceedings after Appellant clearly designated a complete record in his designation of record on appeal and sought that the transcript of the plea be included where the Appellant was raising issues of the voluntariness of the plea of guilty

F.

The Indictment was illegal

STATEMENT OF INCARCERATION

The Appellant is presently incarcerated and is being housed in the Mississippi Department of Corrections and assigned to the Marion County Correctional Facility in Columbia, Mississippi, in service of the prison term imposed. Appellant has been continuously confined in regards to such sentence since date of conviction and imposition of sentence by trial court..

STATEMENT OF CASE

The state filed an indictment against Appellant which charged that on April 13, 2006, Appellant willfully, unlawfully, feloniously, and knowingly sold cocaine to another. The indictment failed to set out any person's name as to cocaine being sold to. Appellant was represented by Honorable Cynthia Stewart during the proceedings. Upon information and belief,Appellant would state that upon entering plea of guilty the court never inquired into whether Appellant knew about the right to appeal the sentence imposed upon me to the Supreme Court or Court of Appeals of the State of Mississippi. Upon information and belief, the trial court never asked me personally whether Appellant actually sold the drugs. This element

was a part of the indictment which charged me of such offense. The indictment nor the court never advised Appellant as to the name of the person the drugs was alleged to have been sold to. Upon information and belief,Appellant hereby assert that the trial court never actually advised me that Appellant had a right to appeal the sentence directly to the Supreme Court or the Court of Appeals of the State of Mississippi.

STANDARD OF REVIEW

In reviewing a trial court's decision to deny a motion for post-conviction relief the standard of review is clear. The trial court's denial will not be reversed absent a finding that the trial court's decision was clearly erroneous. Kirksey v State, 728 So.2d 565, 567 (Miss. 1999).

In the instant case, well-settled law dictates that the trial court's decision was clearly erroneous since the trial court failed to fully address all substantial and meritorious claims made by Edwards in the motion, i.e., the record clearly demonstrates that Appellant Edwards suffered constitutional violations where the trial court imposed a sentence of time served (Supp. R. 21) The trial court never addressed this most critical claim which, proven by the record, invalidates the post release supervision which the court subsequently imposed and which was later revoked. The trial court should have allowed Flowers an evidentiary hearing on the claims before summarily dismissing the motion.

SUMMARY OF ARGUMENT

Reginald Edwards was subjected to a denial of due process of law where the trial court failed to advise Edwards of the right to appeal the sentence, which the court imposed, directly to the Supreme Court of the state of Mississippi as in any other appeal.

ARGUMENT

The trial court imposed the sentence upon Appellant, at the time of his plea and sentencing for possession of a controlled substance with intent, as follows:

MEMORANDUM OF LAW IN SUPPORT

Under URCCC 8.04(A)(3), "before the trial court may accept a plea of guilty, the court must determine that the plea is voluntarily and intelligently made and that there is factual basis for the plea." In Corley v. State, 585 So.2d 765, 767 (Miss. 1991), the Supreme Court of Mississippi discussed Rule 3.03(2), Miss. Unif. Crim. R Cir. Ct. Pract. (1979, as amended), requiring that the trial court have before it "... substantial evidence that the accused did commit the legally defined offense to which he is offering the plea." See, !UL., Edwards v. State, 533 So.2d 1118, 1124 (Miss. 1988); Reynolds v. State, 521 SO.2d 914,917 (Miss. 1988).

The Mississippi Supreme Court has long recognized that the courts of the State of Mississippi are" open to those incarcerated at Mississippi Correctional facilities and Institutions 1 raising questions regarding the voluntariness of their pleas of guilty to criminal offenses or the duration of confinement. Hill v. State. 388 So.2d 143, 146 (Miss.1980); Watts v. Lucas, 394 SO.2d903 (Miss. 1981); Ball v. State. 437 SO.2d423, 425 (Miss. 1983); Tiller v. State, 440 SO.2d 1001, 1004-05 (Miss. 1983). This case represents one such instance.

The Mississippi Supreme Court has continuously recognized that a plea of guilty may be challenged for voluntariness by way of the Mississippi Uniform Post Conviction Collateral Relief Act.

INEFFECTIVE ASSISTANCE OF COUNSEL

Appellant Reginald Edwards was denied him Sixth Amendment right to effective

assistance of counsel where his attorney, representing him during criminal charges of sales of cocaine failed to adequately represent appellant by failing to object where trial court accepted pleas and imposed sentence without determining that Appellant knew elements or charges and without advising Appellant of the right to appeal the sentence. In. Jackson v. State, 815 So.2d 1196 (Miss. 2002) the Court held the following in regards to ineffective assistance of counsel:.

Our standard of review for a claim of ineffective assistance of counsel is a two-part test: the defendant must prove, under the totality of the circumstances, that (1) his attorney's performance was deficient and (2) the deficiency deprived the defendant of a fair trial. *Hiter v. State. 660 SO.2d*961, 965 *(Miss. 1995).*

Anyone claiming ineffective assistance of *counsel has the burden of proving, not only that counsel's performance was deficient but also that he was prejudiced thereby. Strickland v. Washington.* 466 U.S. 668, 687, *104* S.Ct. *2052,* 80 *LEd.2d* 674 (1984). *Additionally, the defendant must show that there is* a *reasonable probability that, but for him attorney's errors, he would have received* a *different result in the trial court. Nicolaou v. State.* 612 *So.2d 1080, 1086 (Miss.* 1992). *Finally, the court must then determine whether counsel's performance was both deficient and prejudicial based upon the totality of the circumstances. Carney v. State.* 525 *SO.2d* 776, *780 (Miss.* 1988).

Edwards would urge that he had the right to appeal the sentence and that he, as a *first offender, should have been considered for* a *suspended sentence. Moreover, defense counsel never mentioned* to *defendant Edwards or to the Court that the elements of sales* of *cocaine had not been met by the admissions made by Edwards*

since Edwards never admitted that he engaged in such actions knowingly and was unaware that he violated the law. Defense counsel never objected to the fact that the court never advised Edwards that he had the right to directly appeal the sentence to the Supreme Court or *that the court* was *illegally sentencing appellant to an indeterminately term* of *post release supervision.*

In Ward v. State, *708* SO.2d 11 (Miss. 1998) , the Supreme Court held the following:

> Effective assistance of counsel contemplates counsel's familiarity with the law that controls him client's case. *See* Strickland v. Washington. 466 *Us.* 668, 689 (1984) *(noting that counsel has a duty to bring to bear such skill and knowledge as will render the trial reliable); see also* Herring v. Estelle. 491 *F.2d* 125, 128 *(5th Cir.* 1974) *(stating that a lawyer who is not familiar with the facts and law relevant to the client's case cannot meet the constitutionally required level of effective assistance of counsel in the course of entering a guilty plea as analyzed under a test identical to the first prong of the* Strickland *analysis);* Leatherwood v. State. 473 *So. 2d* 964, 969 *(Miss. 1985) (explaining that the basic dulies of criminal defense attorneys include the duty to advocate the defendant's case; remanding Jar consideration of claim of ineffectiveness where the defendant alleged that him attorney did nor know the relevant Jaw).*

In the instant case, defense counsel failed to advise Edwards of his adequate defense or investigate the facts prior to advising Edwards to enter a plea of guilty. To successfully claim ineffective assistance of counsel, a defendant must meet the two-prong test set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984). This test has also been recognized and adopted by the Mississippi Supreme Court. Alexander v. State, 605 SO.2d 1170, 1173 (Miss. 1992); Knight v. State, 577 SO.2d 840, 841 (Miss. 1991); Barnes v. State, 577 SO.2d 840, 841 (Miss. 1991); McQuarter v. State, 574 SO.2d 685, 687 (Miss. 1990); Waldrop v. State, 506 SO.2d 273, 275 (Miss. 1987), aff'd after remand, 544 So.2d 834 (Miss. 1989); Stringer v. State, 454 So.2d 468, 476 (Miss. 1984), cert. denied, 469 U.S. 1230 (1985).

The Mississippi Supreme Court visited this issue in the decision of Smith v. State, 631 So.2d 778, 782 (Miss. 1984). The Strickland test requires a showing of (1) deficiency of counsel's performance which is, (2) sufficient to constitute prejudice to the defense. McQuarter 506 SO.2d at 687. The burden to demonstrate the two prongs is on the defendant. Id;

Leatherwood v. State, 473 SO.2d 964, 968 (Miss. 1994), *reversed in part, affirmed in part,* 539 So.2d 1378 (Miss. 1989), and he faces a strong rebuttable presumption that counsel's performance falls within the broad spectrum of reasonable professional assistance. McQuarter, 574 SO.2d at 687; Waldrop, 506 So.2d at 275; Gilliard v. State, 462 SO.2d 710,714 (Miss. 1985). The defendant must show that there is a reasonable probability that for him attorney's errors. defendant would have receivec a different result. Nicolaou v. State, 612 So.2d 1080, 1086 (Miss. 1992); Ahmad v. State, 603 SO.2d 843, 848 (Miss. 1992). In Strickland v. Washinaton, 466 U.S. 668, 687 (1984), the United States Supreme Court held as follows:

> In assessing attorney performance, all the Federal Courts of Appeals and all but a few state courts have now adopted the "reasonably effective assistance" standard in one formulation or another. See Trapnell v. United States, 725 F.2d 149, 151-152 (CA2 *1983)i* App. B to Brief for United States in United States v. Cronic, o. T. 1983, No. 82-660, pp. 3a-6a; Sarno, [466 U. S. 668, 684] Modern status of Rules and Standards in state Courts as to Adequacy of Defense Counsel's Representation of Criminal Client, 2 A. L. R. 4th 99-157, 7-10 (1980). Yet this Court has not had occasion squarely to decide whether that is the proper standard. With respect to the prejudice that a defendant must show from deficient attorney performance, the lower courts have adopted tests that purport to differ in more than formulation. See App. C to Brief for United States in United states v. Cronic, supra, at *7a-10ai* Sarno, supra, at 83-99, 6. In particular, the Court of Appeals in this case expressly rejected the prejudice standard articulated by Judge Leventhal in him plurality opinion in United states v. Decoster, 199 U.S. App. D.C. 359, 371, 374-375, 624 F.2d 196, 208, 211-212 (en bane), cert. denied, 444 U.S. 944 (1979), and adopted by the State of Florida in Kniqht v. State, 394 So.2d, at 1001, a standard that requires a showing that specified deficient conduct of counsel was likely to have affected the outcome of the proceeding. 693 F.2d, at 1261-1262. For these reasons, we granted certiorari to consider the standards by which to judge a contention that -the Constitution requires that a criminal judgment be overturned because of the actual ineffective assistance of counsel. 462 U.S. 1105 (1983). We agree with the Court of Appeals that the exhaustion rule requiring dismissal of mixed petitions, though to be strictly enforced, is not jurisdictional. See Rose v. Lundy, 455 U.S., at 515 -520. We therefore address the merits of the constitutional issue.
>
> In a long line of cases that includes Powell v. Alabama, 267 U.S. 45 (1932), Johnson v. Zerbst, 304 U.S. 458 (1938), and Gideon v. Wainwright, 372 U.S. 335 (1963), this Court has recognized that the Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental

right to a fair trial. The Constitution guarantees a fair trial through (466 U.S. 668, 685] the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the Counsel Clause: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in him favor, and to have the Assistance of Counsel for him defense." Thus, a fair trial is one in which evidence sub~lectto adversarial testing *is* presented to an impartial tribunal for resolution of issues defined in advance of the proceeding. The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the "ample opportunity to meet the case of the prosecution" to which they are entitled. Adams v. United States ex reI. McCann, 317 u.s. 269, 275 , 276 (1942); see Powell v. Alabama, supra, at 68-69.

Because of the vital importance of counsel's assistance, this Court has held that, with certain exceptions, a person accused of a federal or state crime has the right to have counsel appointed if retained counsel cannot be obtained. See Argersinger v. Hamlin, 407 U.S. 25 (1972); Gideon v. Wainwright, supra; Johnson v. Zerbst, supra. That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command. The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair. [466 U.S. 668, 686] For that reason, the Court has recognized that "the right to counsel is the right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 759, 771 , n. 14 (1970). Government violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense. See, e. g., Geders v. United States, 425 U.S. 80 (1976) (bar on attorney-client consultation during overnight recess); Herring v. New York, 422 u.S. 853 (1975) (bar on summation at bench trial); Brooks v. Tennessee, 406 u.S. 605, 612 -613 (1972) (requirement that defendant be first defense witness); Ferguson v. Georgia, 365 u.s. 570, 593 -596 (1961) (bar on direct examination of defendant). Counsel, however, can also deprive a defendant of the right to effective assistance, simply by failing to render "adequate legal assistance," Cuyler v. Sullivan, 446 U.S., at 344 . rd. at 345-350 (actual conflict of interest adversely affecting lawyer's performance renders assistance ineffective). The Court has not elaborated on the meaning of the constitutional requirement of effective assistance in the latter class of cases - that is, those presenting claims of "actual ineffectiveness." In giving meaning to the requirement, however, we must take its purpose - to ensure a fair trial - as the guide. The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. The same

principle applies to a capital sentencing proceeding such as that provided by Florida law. We need not consider the role of counsel in an ordinary sentencing, which may involve informal proceedings and standardless discretion in the sentencer, and hence may require a different approach to the definition of constitutionally effective assistance. A capital sentencing proceeding like the one involved in this case, however, is sufficiently like a trial in its adversarial format and in the existence of standards for decision, see Barclay (466 U.S. 668, 687] v. Florida, 463 U.S. 939, 952 -954 (1983); Bullington v. Missouri, 451 U.S. 430 (1981), that counsel's role in the proceeding is comparable to counsel's role at trial - to ensure that the adversarial testing process works to produce a just result under the standards governing decision. For purposes of describing counsel's duties, therefore, Florida's capital sentencing proceeding need not be distinguished from an ordinary trial.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

As all the Federal Courts of Appeals have now held, the proper standard for attorney performance is that of reasonably effective assistance. See Trapnell v. United States, 725 F.2d, at 151-152. The Court indirectly recognized as much when it stated in McMann v. Richardson, supra, at 770, 771, that a guilty plea cannot be attacked as based on inadequate legal advice unless counsel was not "a reasonably competent attorney" and the advice was not "within the range of competence demanded of attorneys in criminal cases." See also Cuyler v. Sullivan, supra, at 344. When a convicted defendant (466 u.s. 668, 688J complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness. More specific guidelines are not appropriate. The sixth Amendment refers simply to "counsel," not specifying particular requirements of effective assistance. It relies instead on the legal profession's maintenance of standards sufficient to justify the law's presumption that counsel will fulfill the role in the adversary process that the Amendment envisions. See Bobby v. Louisiana, 350 **U.S.** 91, 100 -101 (1955). The proper measure of attorney performance remains simply reasonableness under prevailing professional norms. Representation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. See Cuyler v. Sullivan, supra, at 346. From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions

and to keep the defendant informed of important developments in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. See Powell v. Alabama, 287 U.S., at 68 -69. These basic duties neither exhaustively define the obligations of counsel nor form a checklist for judicial evaluation of attorney performance. In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances. Prevailing norms of practice as reflected in American Bar Association standards and the like, e. g., ABA Standards for Criminal Justice 4-1.1 to 4-8.6 (2d ed. 1980) ("The Defense Function"), are guides to determining what is reasonable, but they are only guides. No particular set of detailed rules for counsel's conduct can satisfactorily take [466 U.S. 668, 689] account of the variety of circumstances faced by defense counselor the range of legitimate decisions regarding how best to represent a criminal defendant. Any such set of rules would interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions. See United states v. Decoster, 199 U.S. App. D.C., at 371, 624 F.2d, at 208. Indeed, the existence of detailed guidelines for representation could distract counsel from the overriding mission of vigorous advocacy of the defendant's cause. Moreover, the purpose of the effective assistance guarantee of the Sixth Amendment is not to improve the quality of legal representation, although that is a goal of considerable importance to the legal system. The purpose is simply to ensure that criminal defendants receive a fair trial. Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. Cf. Engle v. Isaac, 456 O.S. 107, 133 -134 (1982). A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." See Michel v. Louisiana, supra, at 101. There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way. See Goodpaster, [466 **U.S.** 668, 690] The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases, 58 N. Y. U. L. Rev. 299, 343 (1983). The availability of intrusive post-trial inquiry into attorney performance or of detailed guidelines for its evaluation would encourage the proliferation of ineffectiveness challenges. Criminal trials resolved unfavorably to the defendant would increasingly come to be followed by a second trial, this one of counsel's unsuccessful defense. Counsel's performance and even willingness to serve could be adversely affected. Intensive scrutiny of counsel and rigid requirements for acceptable assistance could damplOJil the ardor and impair the independence of defense counsel, discourage the acceptance of assigned cases, and undermine the trust between attorney and client. Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct

on the facts of the particular case, viewed as of the time of counsel's conduct. A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case. At the same time, the court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. These standards require no special amplification in order to define counsel's duty to investigate, the duty at issue in this case. As the Court of Appeals concluded, strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic (466 U.S. 668, 691) choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments. The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information. For example, when the facts that support a certain potential line of defense are generally known to counsel because of what the defendant has said, the need for further investigation may be considerably diminished or eliminated altogether. And when a defendant has given counsel reason -to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable. In short, inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions, just as it may be criti.cal to a proper assessment of counsel's other litigation decisions. See United States v. Decoster, supra, at 372-373, 624 F.2d, at 209-210.

B

An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment. Cf. United States v. Morrison, 449 U.S. 361, 364 -365 (1981). The purpose of the Sixth Amendment guarantee of counsel is to ensure [466 U.S. 668, 692] that a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Accordingly, any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution. In certain Sixth Amendment contexts, prejudice is presumed. Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice. So are various kinds of state interference with counsel's

assistance. See United States v. Cronic, ante, at 659, and n. 25. Prejudice in these circumstances is so likely that case-by-case inquiry into prejudice is not worth the cost. Ante, at 658. Moreover, such circumstances involve impairments of the sixth Amendment right that are easy to identify and, for that reason and because the prosecution is directly responsible, easy for the government to prevent. One type of actual ineffectiveness claim warrants a similar, though more limited, presumption of prejudice. In Cuyler v. Sullivan, 446 U.S., at 345 -350, the Court held that prejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests. Given the obligation of counsel to avoid conflicts of interest and the ability of trial courts to make early inquiry in certain situations likely to give rise to conflicts, see, e. g., Fed. Rule Crim. Proc. 44(c), it is reasonable for the criminal justice system to maintain a fairly rigid rule of presumed prejudice for conflicts of interest. Even so, the rule is not quite the per se rule of prejudice that exists for the Sixth Amendment claims mentioned above. Prejudice is presumed only if the defendant demonstrates that counsel "actively represented conflicting interests" and that "an actual conflict of interest adversely affected him lawyer's performance." Cuyler v. Sullivan, supra, at 350, 348 (footnote omitted) [466 U.s. 668, 693] Conflict of interest claims aside, actual ineffectiveness claims alleging a deficiency in attorney performance are subject to a general requirement that the defendant affirmatively prove prejudice. The government is not responsible for, and hence not able to prevent, attorney errors that will result in reversal of a conviction or sentence. Attorney errors come in an infinite variety and are as likely to be utterly harmless in a particular case as they are to be prejudicial. They cannot be classified according to likelihood of causing prejudice. Nor can they be defined with sufficient precision to inform defense attorneys correctly just what conduct to avoid. Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another. Even if a defendant shows that particular errors of counsel were unreasonable, therefore, the defendant must show that they actually had an adverse effect on the defense. It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test, cf. United States v. Valenzuela-Bernal, 458 U.S. 858, 866 -867 (1982), and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding. Respondent suggests requiring a showing that the errors "impaired the presentation of the defense." Brief for Respondent 58. That standard, however, provides no workable principle. Since any error, if it is indeed an error, "impairs" -the presentation of the defense, the proposed standard is inadequate because it provides no way of deciding what impairments are sufficiently serious to warrant setting aside the outcome of the proceeding. On the other hand, we believe that a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case. This outcome-determinative standard has several strengths. It defines the relevant inquiry in a way familiar to courts, though the inquiry, as is inevitable, is anything but precise. The standard also reflects the profound importance of finality in criminal

proceedings. [466 U.S. 668, 694] Moreover, it comports with the widely used standard for assessing motions for new trial based on newly discovered evidence. See Brief for United States as Amicus Curiae 19-20, and nn. 10, 11. Nevertheless, the standard is not quite appropriate. Even when the specified attorney error results in the omission of certain evidence, the newly discovered evidence standard is not an apt source from which to draw a prejudice standard for ineffectiveness claims. The high standard for newly discovered evidence claims presupposes that all the essential elements of a presumptively accurate and fair proceeding were present in the proceeding whose result is challenged. Cf. United States v. Johnson, 327 U.S. 106, 112 (1946). ~n ineffective assistance claim asserts the absence of one of the crucial assurances that the result of the proceeding is reliable, so finality concerns are somewhat weaker and the appropriate standard of prejudice should be somewhat lower. The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome. Accordingly, the appropriate test for prejudice finds its roots in the test for materiality of exculpatory information not disclosed to the defense by the prosecution, United States v. Agurs, 427 U.S., at 104 , 112-113, and in the test for materiality of testimony made unavailable to the defense by Government deportation of a witness, United States v. Valenzuela-Bernal, supra, at 872-874. The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of 1:he proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. In making the determination whether the specified errors resulted in the required prejudice, a court should presume, absent challenge to the judgment on grounds of evidentiary insufficiency, that the judge or jury acted according to law. [466 u.s. 668, 695] An assessment of the likelihood of a result more favorable to the defendant must exclude the possibility of arbitrariness, whimsy, caprice, "nullification," and the like. A defendant has no entitlement to the luck of a lawless decision maker, even if a lawless decision cannot be reviewed. The assessment of prejudice should proceed on the assumption that the decision maker is reasonably, conscientiously, and impartially applying the standards that govern the decision. It should not depend on the idiosyncrasies of the particular decision maker, such as unusual propensities toward harshness or leniency. 1\lthough these factors may actually have entered into counsel's selection of strategies and, to that limited extent, may thus affect the performance inquiry, they are irrelevant to the prejudice inquiry. Thus, evidence about the actual process of decision, if not part of the record of the proceeding under review, and evidence about, for example, a particular judge's sentencing practices, should not be considered in the prejudice determination. The governing legal standard plays a critical role in defining the question to be asked in assessing the prejudice from counsel's errors. When a defendant challenges a conviction, the question *is* whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt. When a defendant challenges a death sentence such as the one at issue in this case, the question is whether there is a reasonable probability that, absent the errors, the sentencer - including an appellate court, to the extent it independently reweighs the evidence - would have concluded

that the balance of aggravating and mitigating circumstances did not warrant death. In making this determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury. Some of the factual findings will have been unaffected by the errors, and factual findings that were affected will have been affected in different ways. Some errors will have had a pervasive effect on the inferences to [466 U.S. 668, 696] be drawn from the evidence, altering the entire evidentiary picture, and some will have had an isolated, trivial effect. Moreover, a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support. Taking the unaffected findings as a given, and taking due account of the effect of the errors on the remaining findings, a court making the prejudice inquiry must ask if the defendant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors.

IV

A number of practical considerations are important for the application of the standards we have outlined. Most important, in adjudicating a claim of actual ineffectiveness of counsel, a court should keep in mind that the principles we have stated do not establish mechanical rules. Although those principles should guide the process of decision, the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results. To the extent that this has already been the guiding inquiry in the lower courts, the standards articulated today do not require reconsideration of ineffectiveness claims rejected under different standards. Cf. Trapnell v. United States, 725 F.2d, at 153 (in several years of applying "farce and mockery" standard along with "reasonable competence" standard, court "never found that the result of a case hinged on the choice of a particular standard"). In particular, the minor differences in the lower courts' precise formulations of the performance standard are insignificant: the different [466 U.S. 668, 697] formulations are mere variations of the overarching reasonableness standard. With regard to the prejudice inquiry, only the strict outcome-determinative test, among the standards articulated in the lower courts, imposes a heavier burden on defendants than the tests laid down today. The difference, however, should alter the merit of an ineffectiveness claim only in the rarest case. Although we have discussed the performance component of an ineffectiveness claim prior to the prejudice component, there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one. In particular, a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed. Courts should strive to ensure that ineffectiveness claims not become so burdensome to defense counsel that the entire criminal justice system suffers as a result.

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

Under the standards set forth above in .Strickland, and by a demonstration of the record and the facts set forth in support of the claims, it is clear that Reginald Edwards has suffered a violation of him constitutional rights to effective assistance of counsel, in violation of the 6th Amendment to the United States Constitution. Defense counsel should have made specific objections where the trial court imposed an indeterminate term of post release supervision. Further, defense counsel never objected when the court failed to advise appellant of the right to appeal the sentence.

The Supreme Court has repeatedly held that an allegation that counsel for a defendant failed to advise him of the range of punishment to which he was subject to gives rise to a question of fact about the attorney's constitutional proficiency that is to be determined in the trial Court. See: Nelson v. State, 626 So.2d 121, 127 (Miss. 1993) [The failure to accurately advise Nelson of the possible consequences of a finding of guilt in the absence of a plea bargain ... may, of proven, be sufficient to meet the test in Strickland v. Washington See also: Alexander v. State, 605 So.2d 1170 (Miss. 1992). [Emphasizing that where a criminal defendant alleges that he pleaded guilty to a crime without having been advised by his attorney of the applicable maximum and minimum sentences is a question of fact which raises concerns whether the attorney's conduct was deficient).

This Court should conclude that here counsel rendered ineffective assistance of counsel and that such ineffectiveness prejudices Petitioner's guilty plea in such a way as to mandate a reversal of the plea as well as the sentence imposed.

TWO

THE PLEA OF GUILTY IS INVALID

Appellant entered a plea of guilty to sale of cocaine. Such plea of guilty was made without Edwards fully admitting the elements or proof and without the trial court making

Edwards aware that the sentence imposed on such offense could be appealed independently of the fact that a plea was entered.

The record should clearly show that during the plea colloquy Edwards did not admit to the required elements of law which must be admitted before a plea of guilty may be accepted. There was no admission by Edwards that he knowingly possessed or sold cocaine or that his actions were committed within the judicial district of the court. Based upon what Edwards would recall which occurred in the courtroom, Edwards would assert that he never clearly stated to the court that any such actions were committed while he know such actions to be violative of the law. The plea was not voluntary under these circumstances.

This Court should vacate the plea of guilty and the sentence imposed upon Edwards and should find that Edwards never pleaded guilty to a crime since the facts of the case, along with the state's offer of proof, does not constitute adequate admission.

THREE

The sentence imposed upon Edwards in illegal where the court failed to specify the number of years or length of the post release supervision term. The court stated that "such post release supervision term may continue until the court in term time or the judge in vacation shall alter extend, terminate or direct the execution of the above sentence."

This Court have previously found that the number of years of post release supervision and the number of years imposed by the Court to serve, in a combination, cannot exceed the maximum term of imprisonment for the offense. The Order entered by the trial court failed to specify such number of years on post release supervision and is therefore an illegal order.

FOUR

APPELLANT WAS DEPRIVED OF DUE PROCESS OF LAW WHERE TRIAL COURT FAILED TO ADVISE OF HIS RIGHT TO APPEAL THE SENTENCE.

The trial court failed to advise Reginald Edwards that he had the right to appeal the actions of the Court in regards to the sentence it arrived at whether by plea of guilty or jury finding on the principle charge. The trial court judge made fundamental error where it failed to advise Edwards of this avenue of review of the sentence in regards to the plea of guilty. The trial court could have imposed a term of suspended sentence or a more lesser term of imprisonment since there was no mandatory minimum term applicable. The law is clear that a defendant who pleads guilty has a right to direct appeal the sentence to the Supreme Court. Trotter v. State, 554 So. 2d 313, 8E A.LR.4th 327 (Miss. 1989).

FIVE.

APPELLANT WOULD ASSERT THAT THE TRIAL COURT ERRED IN FAILING TO INCLUDE THE TRANSCRIPT OF THE PLEA PROCEEDINGS AND PORTIONS OF THE RECORD WHICH THE TRIAL COURT REFERRED TO AS BEING THE FACTUAL FINDINGS OF THE SENTENCING JUDGE WHICH JUSTIFIED BARNES UNDERSTOOD AND WAIVED HIS RIGHTS.

Appellant would assert to this Court that it is the responsibility of the Appellant to make the record contain those documents which supports the claims raised. Puckett v. Stuckey, **633 So.2d 978, 982 (Miss. 1993).**

In Puckett, the Supreme Court held that:

> Inexplicably, the MDOC visitation policy was not made a part of the record in the circuit court. A purported copy is included in appellee's brief but may not be considered in the present posture of the case. We have stated on many occasions that each case must be decided by the facts shown in the record, not assertions in the brief. Facts asserted to exist must and ought to be definitely proved and placed before us by a record certified by law, otherwise, we cannot know them. *Britt v. State*, , 1379 (Miss. 1988).

In the instant case, as the record demonstrates, Appellant designated all transcripts of the record and all clerks papers. While Appellant did not include a particular cause number in his designation, the designation all transcripts filed in this case. (C.P. 34). The post conviction relief motion filed by Appellant contained Cause No. 02-250MS (C. P. 4), which was part of this case in which the designation referred to. Moreover, this Court has previously stated in Doss v. State, 956 So.2d 1100 (Miss.App. 2007) (fn 1) that:

> None of the transcripts from the proceedings on the underlying robbery conviction were included in the record which is before this Court. Doss's "Designation of Records" designated "[a]ll clerks papers, trial transcripts and exhibits filed, taken or offered in this case" as being necessary to be included on appeal. Technically, this designation does not include papers, transcripts, or exhibits which are part of the underlying criminal conviction, as a motion for post-conviction collateral relief is a separate civil action. Nevertheless, were we not affirming on grounds which are in no way dependent on these absent documents, we would order a supplemental record to include such documents.

The decision in Doss represented a similar designation of records which this Court indicated it would reversed and supplement the record on appeal were there not other claims which caused dismissal and which claims were not inclusive in the portions of the record missing. In the instant case, the crucial portions of the record are missing. The trial court referred to a finding by the sentencing court which is not included in the record. Moreover, this Court previously sent this case to the trial court to reconstruct the record. The trial court never reconstructed the record and never conducted an evidentiary hearing. This trial court never rendered any finding upon the Rule 9.06 claim which Appellant presented in the post conviction motion. Such claim can only be decided by a full review of the record which the trial court never included after Appellant did all which was possible to make the record contain those portions

which would support his claims on appeal. Court have firmly held that the case will be reversed and remanded when this Court is presented with only one side of the argument to review, an insufficient record and a judgment that has no clear support from the record. IN RE J.D.W., 881 So.2d 929 (Miss.App. 2004).

SIX

Illegal Sentence

The indictment filed against Appellant failed to set out the name of the person who the drugs was alleged to have been sold to. Such indictment therefore withheld information in which Appellant was legally entitled to. Such action denied Appellant due process of law and information' needed to prepare a defense to the charges. Further, the sentence imposed upon Appellant contained an indeterminate term of Post Release Supervision. Said sentence was illegal where trial court imposed Post Release Supervision for a period of time until the court, in term time or vacation, suspend or terminate such sentence. Such actions was illegal and therefore tainted the sentence where the Post Release Supervision was illegal. The sentence is constitutionally illegal and amounts to plain error.

CONCLUSION

Appellant Edwards respectfully submits that based on the authorities cited herein and in support of his brief, that this Court should vacate the decision rendered by the trial court and render this case as having been a sentence illegally imposed after Appellant was sentenced to time served.

Respectfully submitted:

By: Reginald Edwards

Reginald Edwards, Jr., #21722

CERTIFICATE OF SERVICE

This is to certify that I, Reginald Edwards, have this date served a true and correct copy of the above and foregoing Brief for Appellant, by United States Postal service, first class postage prepaid, to: Honorable Jim Hood, Attorney General, P. O. Box 220, Jackson, MS 39205; Honorable Lamar Pickard, Circuit Court Judge, P. O. Box 310, Hazlehurst MS 39083; Honorable Alexander C. Martin, District Attorney, P. O. Drawer 767, Hazlehurst, MS 39083

This, the 26, day of June, 2009.

Reginald Edwards, #21722
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Appellant