

COPY

BEFORE THE SUPREME COURT OF APPEALS OF THE STATE OF MISSISSIPPI

FILED

Alex Durode Johnson, III

Appellant

Vs

Cause No. 2009-CP-00875-COA

State of Mississippi

Appellee

SEP 29 2009

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

BRIEF FOR APPELLANT IN OPPOSITION TO RESPONDANTS REPLY

Comes Now, the Appellant Alex Durode Johnson, III. who file this/his Brief in opposition to Appellee Reply Brief.

ARGUMENT IN SUPPORT

The appellant would agree with the Assistant for the Attorney General, **that if**, the Trial Court had reviewed the **Notice Of Amended Post-Convictions Claim**. The record dated September 12, 2007, **reflect and confirms** that the Trial Court did not in fact review the motion.(See: **Exhibit A**).

The Circuit Judge abuse his judicial discretion when the appellant raised the issue about the **ILLEGAL SENTENCE** on August 04,2007, where the record do not reflect being reviewed as to the Assistant for the attorney General submitted to this Honorable Court on January 28, 2008.(See: **Exhibit C**).

Appellant Fifth Amendment Rights were violated where as the Circuit Judge did not review the **ILLEGAL SENTENCE** and the Assistant for the Attorney General mislead this Honorable Court accordingly to **Miss. Code Ann. 99-7-9. (See: EXAMINTION BY THE COURT)** as followed:

THE COURT: All right, what facts would the State show in the event of a trial?

MS. JONES: Your Honor, the State would show that Alex Durode Johnson, III. on or about the 3rd day of May, 2005, in Washington County, did unlawfully, willfully, knowingly, and feloniously have and possess cocaine, a schedule II controlled substance, in violation of 41-29-139 of the Mississippi Code of 1972 as annotated and amended.

Q. And do you accept the statement of the State as to the possession of the Cocaine?

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Q. And as to this charge of possession of cocaine, how to you plead?

The transcript confirms the **ILLEGAL SENTENCE** and the Circuit Judge did not accept the Plea Petition for the appellant. (See: Transcript page 2) The record confirms that the State {M}ove the intent when stating the facts of the charge. (See: Transcript page 8 lines 17 – 23). Therefore, the appellant are serving **ILLEGAL SENTENCE** as to Torrey v. State, 816 So. 2d 452,454 (Miss 2002).

In the Torrey, case it is the Supreme Court opinion, where the State **dismiss** the greater offense and proceeded with the lesser offense, the Trial Court must rendered it's sentence pursuant to the lowest weight, because there was No amount specified on the indictment that Torrey allegedly possessed. (See: Transcript page 3 and Exhibit 1).

Accordingly to **Exhibit 1** the appellant should not been tried for **Cause No. 2005-198**, whereas in the July Term of 2005, the Circuit Court of Washington County, Mississippi, did not have a True Bill against the appellant. This record where certify by the Supreme Court Clerk on November 24, 2008, that this is the ATTEST A True Copy. (See: Exhibit 1).

CONCLUSION

Accordingly to **Miss. Code Ann. 99-7-9** and **Torrey v. State** the appellant **Fifth Amendment Rights** where violated and in God Faith in this Honorable Court, that this Appeal should be granted according to the Record and Law.

Alex Durode Johnson, III

Alex Durode Johnson, III

CERTIFICATE OF SERVICE

I, Alex Durode Johnson, III Pro-Se herein, do hereby certify that I have this day mailed postage full prepaid a true copy of the for going Appeal for the Appellant to the following:

Mrs. Kathy Gillis

Clerk

P.O. Box 249

Jackson, Ms 39205-0249

This the 29th day of September 2009.

Respectfully Submitted,


Alex Durode Johnson, III Pro-Se

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