

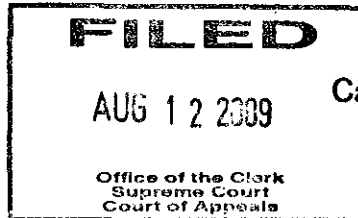
COPY

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

Alex Durode Johnson III

Appellant

Vs



Cause No. 2009-CP-00875-COA

State of Mississippi

Appellee

Criminal Appeal Form

The Circuit Court of Washington County, Mississippi

4th Judicial District

BRIEF FOR APPELLANT

Alex Durode Johnson III Pro-Se of Record

M.D.O.C. #76193

P.O.Box 342

Glen Allan Ms 38744

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

Alex Durode Johnson III

Appellant

Vs

Cause No. 2009-CP-00875-COA

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. The undersigned counsel provides the representations in order that Justices of the Mississippi Supreme Court and/or the Judges of the Mississippi Court of Appeals may evaluate possible disqualification or recusal.

ALEX DURODE JOHNSON III PRO-SE for DEFENDANT


DWAYNE RICHARDSON, ASSISTANT DISTRICT ATTORNEY

MR. JIM HOOD ATTORNEY GENERAL, STATE OF MISSISSIPPI

MR. ASHLEY HINES, TRIAL COURT JUDGE

MR. GEORGE T. KELLY JR TRIAL COUNSEL for DEFENDANT

Respectfully submitted,



Alex Durode Johnson III Pro-Se

M.D.O.C. #76193

P.O.Box 342

Glen Allan Ms 38744

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

Alex Durode Johnson III

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BEFORE THE SUPREME COURT OF APPEALS OF THE STATE OF MISS.

Alex Durode Johnson, III.

Appellant

Vs.

Cause No. 2009-CP-00875-COA

State Of Mississippi

Appellee

BRIEF FOR THE APPELLEE

STATEMENT OF THE ISSUE

ISSUE ONE:

**I.) THE TRIAL COURT ERRED WHEN TRIED AND SENTENCING
THE APPELLANT**

STATEMENT OF FACTS

Alex Durode Johnson, III was not indicted by the Grand Jury during the July, 2005 term in the Circuit Court of Washington County, Mississippi, for the offense of Possession of Cocaine a Controlled substance with intent. **[See: Exhibit "1"]**

Appellant subsequently entered a guilty plea to the charge of Straight possession and Was sentence to a term of twelve (12) years in the custody of the Mississippi Department Of Corrections with eight (8) years to serve, four (4) years on post-release supervision.

Appellant subsequently provided his post-conviction motion (PCR) to the Circuit Court of Washington County Mississippi which was filed by the Clerk on August 4, 2007.

Appellant subsequently provided a Notice of Amended Post-Convictions Claim to the Circuit Court of Washington County Mississippi, which was filed by the Clerk on August 4, 2007.

Motion for Post-convictions Relief to vacate Conviction and Sentence was denied, **but** the Notice of Amended Post-Convictions Claim (**See: Exhibit "B"**) was never reviewed by the Trial Court. **[See: Exhibit A].**

STATEMENT OF JURISDICTION

The Circuit Court of Washington County Mississippi did not have jurisdiction over **Cause No. 2005-198** pursuant to **Miss. Code Ann. 41-29-139-(a)(1)&(b)(1) nor (c)(1)(d).**

SUMMARY OF ARGUMENT

The Appellant should never been tried on the in proper indictment and when plead to the unindicted charge the maximum sentence for the appellant where four (4) years, the way the plea was enter and accept by the Trial Court and the State gave the facts of the Indictment charge. (**See: Transcript page 2 line 23-29 and page , and page 8 lines 15-23).**

ARGUMENT

ISSUE ONE:

I.) The Trial Court Erred when tried and sentence the Appellant

Appellant request this Honorable Court to reverse the Trial Court judgment on April 4, 2006 base on the record reflects and confirms that the appellant never admitted to the elements required by the Indictment Statute.

The Trial Court crossed established Legal Principles when permitting the plea to Straight possession instead of possession with the intent. Therefore, Move over, possession with the intent where the Trial Court did not accept the appellant Petition. **(See; Transcript page 2 lines 23-29 and Exhibit "I").**

The Prosecution crossed established Legal Principles where the record reflects No objection or correcting of the facts of the Petition and mislead the Trial Court that the Appellant was charge with Possession of Cocaine. **(See; Transcript page 8 lines 15-23).**

Therefore the appellant was convicted and sentence for the wrong charge, when the Trial Court dismiss the greater offense and the Prosecution failed to stated the facts required by the Indictment statute, to the Trial Court. **(See; Transcript page 8 lines 15-23.**

Without the Trial Court accepting the Plea Petition, the record can not reflect the greater offense being reduced in a Legal Principle accordingly to the Law.

The Supreme Court opinion, it stated, where the Trial Court dismiss the greater offense and proceed with the lesser-included offense, the Trial Court must rendered it's sentence pursuant to the lowest weight, less than one-tenth gram. Because there was No amount specified on the indictment that Torrey allegedly possessed. **(See; Torrey V. State 816 So. 2d 452,454 (Miss.2002).**

The record reflects and confirms that there was No amount of cocaine on the Indictment nor Plea Petition that the Appellant allegedly possessed **(See; Transcript page 8 lines 15-23** and the Trial Court did not have legal ground accordingly to the Supreme Court opinion in the Torrey case to sentence the appellant pursuant to **41-29-139 (c) (1) (d).** Therefore the appellant should have never been sentence pursuant to **41-29-139 (c) (1) (d).**

NOTICE

The Appellant hereby places this Honorable Court on notice of the Fifth Amendment Rights have been violated, whereas, in the July Term of 2005, the Circuit Court of Washington County Mississippi did not have a True Bill against the appellant. **(See: Exhibit 1 Certify copy from the Clerk of this Honorable Court)** dated November 24, 2008.

The record confirmed the violation pursuant to **Miss. Code Ann. 99-7-9** where the Court of Washington County Mississippi. Indictment is not signed by the Grand Jury Foreman, the Clerk nor stamp filed of the Circuit **(See: Exhibit "1")**.

The Supreme Court held in **William V. State 64 Miss. 229,1. So 171 (1887)**, an indictment not so filed is invalid, that is, a trial cannot be had on it. Also in **Stirone V. United States, 361 US. 212, 80 S Ct. 270; 4 L.Ed 2d 252; Miss. 1960.** A federal court cannot permit a defendant to be tried on charges that are not made in the indictment against a defendant. **(See page 8 line 15-23).**

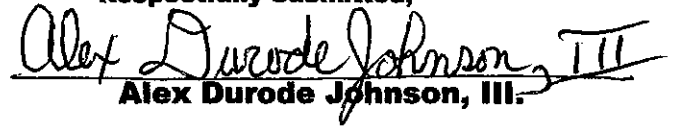
In **Ex Parte Bain, 121 US 1,7S.Ct. 781; 30 L. Ed 849;(Miss. 1887)** the Supreme Court held when it shall appear that the Circuit Court did not have Jurisdiction **(See: Exhibit "1")** to render the judgment which it gave and under which the appellant is held a prisoner, it is within the power and it will be the duty of the Supreme Court to Order appellant Discharge.

Accordingly to the law and the record **(Transcript)** there was No change of plea by the Trial Court. Therefore the appellant are serving on Illegal Sentence and that confirms that the appellant are being Detain Illegal by the record dated on November 24, 2008. **(Mrs. Betty Sephton)** the clerk for the Supreme Court. **(See: Exhibit 1)** Exhibit "1" confirms the violation of the Fifth Amendment Right.

CONCLUSION

The Appellant in God Faith request this Honorable Court to grant this Appeal accordingly to the Law and correct the erred for the appellant as the Law Required.

Respectfully Submitted,


Alex Durode Johnson, III.

P.O. Box 342

GLEN ALLAN MS, 38744

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

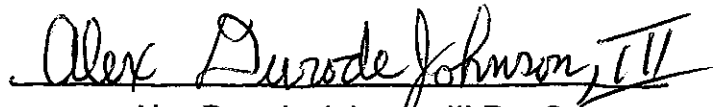
Clerk

P.O.Box 249

Jackson, Ms. 39205-0249

This the 12th day of August 2009

Respectfully Submitted,

A handwritten signature in black ink that reads "Alex Durode Johnson, III". The signature is written in a cursive style with a horizontal line underneath it.

Alex Durode Johnson III Pro-Se

M.D.O.C. #76193

P.O.Box 342

Glen Allan Ms. 38744

INDICIMENT POSSESSION OF COCAINE WITH INTENT
41-29-139(a)(1) & (b) (1)

Exhibit 1

STATE OF MISSISSIPPI

NO. 2005-198

COUNTY OF WASHINGTON

In the Circuit Court of Washington County, at the July 2005 Term.

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful men and women of Washington County, duly elected, empanelled, sworn and charged at the July 2005 Term of the Circuit Court, to inquire in and for the body of Washington County, in the name and by the authority of the State of Mississippi, upon their oaths, present:

That ALEX DURODE JOHNSON, III, on or about 3rd day of May 2005, in Washington County, did unlawfully, willfully, knowingly and feloniously have and possess of cocaine, a Schedule II controlled substance, with the intent to sell, barter, transfer or deliver the same to another, in violation of Section 41-29-139 of the Mississippi Code of 1972, as annotated and amended

against the peace and dignity of the State of Mississippi.

A TRUE BILL


ASSISTANT DISTRICT ATTORNEY

FOREMAN OF THE GRAND JURY

Filed and recorded the _____ day of _____, 2005.

Circuit Clerk _____

- Exhibit "1" -

(8.)

ATTEST
A True Copy
This the 24 day of November 2008
Office of the Clerk
Supreme Court and Court of Appeals
By Betty Light

Exhibit-1

INDICTMENT POSSESSION OF COCAINE WITH INTENT
41-29-139(a)(1) & (b) (1)

STATE OF MISSISSIPPI

NO. 2005-198

COUNTY OF WASHINGTON

In the Circuit Court of Washington County, at the July 2005 Term.

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful men and women of Washington County, duly elected, empanelled, sworn and charged at the July 2005 Term of the Circuit Court, to inquire in and for the body of Washington County, in the name and by the authority of the State of Mississippi, upon their oaths, present:

That ALEX DURODE JOHNSON, III, on or about 3rd day of May 2005, in Washington County, did unlawfully, willfully, knowingly and feloniously have and possess of cocaine, a Schedule II controlled substance, with the intent to sell, barter, transfer or deliver the same to another, in violation of Section 41-29-139 of the Mississippi Code of 1972, as annotated and amended

against the peace and dignity of the State of Mississippi.


ASSISTANT DISTRICT ATTORNEY

A TRUE BILL

FOREMAN OF THE GRAND JURY

Filed and recorded the _____ day of _____, 2005.

Circuit Clerk _____

EXHIBIT-1

(20)

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27

CLERK'S FEE BILL & CERTIFICATE

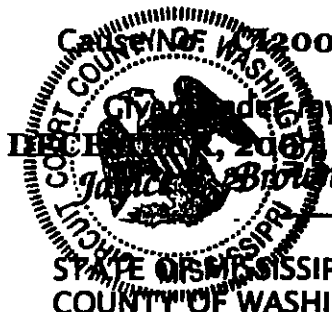
To record (94 pages @ \$2.00 per page).....	\$188.00
To postage.....	\$ 10.00
To two certificates under seal @ \$.50 each.....	\$ 1.00
Court Reporter's Cost.....	\$ 0.00
SUPREME COURT FEE.....	\$ 0.00
TOTAL COSTS.....	\$ 199.00
TOTAL PAID.....	\$ 0.00
TOTAL DUE TO CLERK.....	\$199.00

STATE OF MISSISSIPPI
COUNTY OF WASHINGTON

I, JANICE C. BROWN, Clerk of the Circuit Court of said State and County, hereby certify that the above and foregoing is a true and correct statement of the costs due on appeal in the case of

ALEX JOHNSON VS. STATE OF MISSISSIPPI

Cause No. CI2007-169 filed herewith.



Given under my hand and official seal of office, this the 7TH day of
JANICE C. BROWN, CIRCUIT CLERK
WASHINGTON COUNTY, MISSISSIPPI

I, JANICE C. BROWN, Clerk of the Circuit Court of said State and County, hereby certify that the above and foregoing is a true and correct copy of all proceedings had and done in the case of

ALEX JOHNSON VS. STATE OF MISSISSIPPI

Cause No. CI2007-169 filed herewith.

Given under my hand and official seal of office, this the 7TH day of
DECEMBER, 2007.
JANICE C. BROWN, CIRCUIT CLERK
WASHINGTON COUNTY, MISSISSIPPI

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, MISSISSIPPI

ALEX JOHNSON

PLAINTIFF

VS.

Cause No. CI2007-169

STATE OF MISSISSIPPI

DEFENDANT

I, JANICE C. BROWN, CLERK OF THE CIRCUIT COURT OF WASHINGTON COUNTY, MISSISSIPPI do hereby certify that the above style cause is a complete copy of documents in the courts original file.

Witness my hand and signature this the 7TH day of DECEMBER, 2007.



Janice C. Brown

Janice C. Brown, Circuit Clerk

By: *J. Jackson*, D.C.

Exhibit "A"

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, MISSISSIPPI

ALEX DURODE JOHNSON, III

Received & Filed

PETITIONER

VS.

SEP 12 2007

CAUSE NO. CI2007-169

STATE OF MISSISSIPPI

Janice C. Brown, Circuit Clerk
By _____ D.C.

RESPONDENT

ORDER

THIS CAUSE came before the Court on the Petitioner's Motion for Post Conviction Relief to Vacate Conviction and Sentence. After due consideration of said motion, this Court finds as follows.

On April 4, 2006, Alex Durode Johnson, III entered a guilty plea to the charge of possession of cocaine in Washington County cause number 2005-198. This Court accepted that plea as being knowingly, willingly, and voluntarily entered into. On that same day, this Court sentenced Mr. Johnson to serve a term of twelve (12) years, such time to be served as eight (8) years in the custody of the Mississippi Department of Corrections, followed by four (4) years Post-Release Supervision. Mr. Johnson was further ordered to pay court costs and other assessments. On August 4, 2007, Mr. Johnson filed the present motion in which he claims that his guilty plea and sentence should be set aside for various reasons.

I.

Mr. Johnson claims that his guilty plea was not freely, voluntarily, and intelligently entered into due to the advice he received from his attorney. In making this claim, Mr. Johnson contends that his guilty plea was involuntary because it violated several of his constitutional rights, including his right against self incrimination and his right to due process. Mr. Johnson further claims that his guilty plea was entered under the mistaken advice of counsel, that included a belief that he could be subject to capital punishment if convicted at trial.

Having reviewed the plea transcript in this cause, it is clear that Mr. Johnson was informed by this Court of his constitutional rights and the fact that he was waiving those rights by entering a guilty plea. When asked if he understood his rights, Mr. Johnson responded "yes, sir." When asked if he

(10.)

BOOK 26 PAGE # 104

000081

Exhibit "A"

understood that he was waiving the rights by entering a plea of guilty, Mr. Johnson responded "yes, sir." Therefore, this Court finds Mr. Johnson's claim that his constitutional rights were violated to be without merit.

Having reviewed the plea transcript in this cause, it is clear that Mr. Johnson knew that the maximum penalty for the crime of possession of cocaine was twenty-four (24) years and the minimum penalty was six (6) years. It is also clear that Mr. Johnson knew that the maximum penalty for the crime of possession of cocaine with intent was thirty (30) years, and not life as he claims in his motion. Therefore, this Court finds Mr. Johnson's claim that his guilty plea was entered under the mistaken advice of counsel, that included a belief that he could be subject to capital punishment if convicted at trial, to be without merit.

Having reviewed the plea transcript in this cause, it is clear that Mr. Johnson's guilty plea was knowingly, willingly, and voluntarily entered into.

II.

Next, Mr. Johnson claims that he received ineffective assistance of counsel and that his counsel did not provide adequate information prior to his entering his plea of guilty. In order to prove ineffective assistance of counsel the two part test established in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) and followed by *Stringer v. State*, 454 So.2d 468, 476 (Miss. 1984) must be met. *Smith v. State*, 806 So.2d 1150 (¶5) (Miss. App. 2002). First, it must be shown that the counsel's performance was so deficient that it constitutes prejudice. *Strickland*, 466 U.S. 687, 104 S.Ct. 2052. Second, it must be shown that "but for his attorney's errors, there is a reasonable probability that he would have received a different result in the trial court." *Smith*, 806 So.2d at (¶5), (quoting *Rankin v. State*, 636 So.2d 652, 656 (Miss. 1994)). The burden is on the defendant to bring forth proof which demonstrates that both prongs of the *Strickland* test are met. *Moody v. State*, 644 So.2d 451, 456 (Miss. 1994) There is a strong but rebuttable presumption that

counsel's conduct falls within a wide range of reasonable professional assistance. *Id.* at 456. "The deficiency and any prejudicial effect are assessed by looking at the totality of the circumstances."

Carney v. State, 525 So.2d 776, 780 (Miss. 1988).

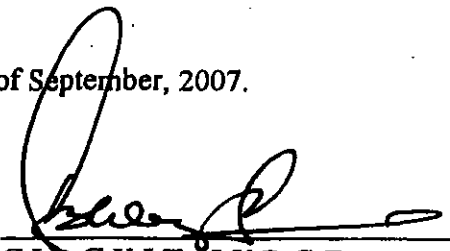
This Court, having reviewed the record in this cause, finds that Mr. Johnson has failed to provide proof that he received ineffective assistance of counsel or that his attorney provided inadequate information prior to his entering the plea of guilty. When asked if he and his lawyer had talked about the facts of the case, Mr. Johnson responded "yes, sir." When asked if his lawyer had explained the nature of the charges against him and if he fully understood those charges, Mr. Johnson responded "yes, sir." When asked if he and his lawyer had discussed the way in which he would defend himself at trial, Mr. Johnson responded "yes, sir." When asked if he was satisfied with the assistance given by his lawyer, Mr. Johnson responded "yes, sir." Based on these facts and the motion filed in this cause, this Court finds that Mr. Johnson has failed to prove that he received ineffective assistance of counsel under the two part test established in *Strickland*. Therefore, this Court finds that his claim is without merit.

Having found all of Mr. Johnson's claims to be lacking in merit and it plainly appearing from the face of the motion, the annexed exhibits, and the prior proceeding in the case that the petitioner is not entitled to relief, this Court finds that the motion shall be denied.

It is, therefore:

ORDERED that Petitioner's Motion for Post Conviction Relief to Vacate Conviction and Sentence shall be and is hereby **DENIED** and this cause shall be and is hereby **DISMISSED** pursuant to Miss. Code Ann. §99-39-11(2).

SO ORDERED AND ADJUDGED this the 12th day of September, 2007.


CIRCUIT JUDGE

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ALEX DURODE JOHNSON, III

APPELLANT

VS.

NO. 2007-CP-1649

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

STATEMENT OF THE ISSUES

- I. JOHNSON WAS INFORMED OF HIS RIGHT TO AVOID SELF-INCRIMINATION AND KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED SAID RIGHT.
- II. JOHNSON WAS NOT DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.
- III. THE TRIAL COURT DID NOT ERR IN ALLOWING JOHNSON TO PLEAD GUILTY TO THE LESSER-INCLUDED OFFENCE OF POSSESSION OF COCAINE.
- IV. THE TRIAL JUDGE DID NOT ERR IN DENYING JOHNSON'S MOTION FOR POST-CONVICTION RELIEF AS JOHNSON'S PLEA WAS KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY MADE.

STATEMENT OF THE FACTS

Alex Durode Johnson, III was indicted for possession of cocaine with intent to sell, barter, transfer or deliver the same to another. (Record p. 55). On April 4, 2006, Johnson pled guilty to the lesser-included offense of possession of cocaine. (See generally p. 68 - 79). His counsel was present with him at the plea hearing during which Johnson stated that he understood his rights, his plea, and the rights he was waiving by entering a guilty plea. (See generally Record p. 68 - 79).

(16.)

— Exhibit "C" —

Johnson was sentenced to serve a term of twelve years, such time to be served as eight years in the custody of the Mississippi Department of Corrections, followed by four years Post-Release Supervision. (Record p. 81).

On August 4, 2007, Johnson filed a Motion for Post-Conviction Relief to Vacate Conviction and Sentence in which he claimed that "his guilty plea was not freely, voluntarily, and intelligently entered due to attorney advice" and that he "received ineffective assistance of counsel as the result, counsel did not provide adequate information prior to making his plea of guilty." (Record p. 14). He then filed a Notice of Amended Post-Conviction Claim in which he claimed that "the trial court committed reversible error when it allowed the State to convict petitioner of possession of cocaine a offense for which petitioner was never indicted." (Record p. 60). The trial court denied his motion by written Order explaining its reasons for denying Johnson's Motion in detail. (Record p. 81 - 83).

SUMMARY OF THE ARGUMENT

The trial judge properly denied Johnson's Motion for Post-Conviction Relief as Johnson's plea was knowingly, intelligently, and voluntarily made. Johnson was informed of his rights, including his right to avoid self-incrimination and was informed that a guilty plea waived those rights. Further, Johnson was not denied his right to effective assistance of counsel and the trial court properly allowed Johnson to plead guilty to the lesser-included offense of simple possession.

ARGUMENT

The trial court's denial of a motion for post-conviction relief should not be reversed "absent a finding that the trial court's decision was clearly erroneous." *Crowell v. State*, 801 So.2d 747, 749 (Miss. Ct. App. 2000) (citing *Kirksey v. State*, 728 So.2d 565, 567 (Miss. 1999)).

III. THE TRIAL COURT DID NOT ERR IN ALLOWING JOHNSON TO PLEAD GUILTY TO THE LESSER-INCLUDED OFFENCE OF POSSESSION OF COCAINE.

Johnson argues that “the court erred in failing to find that it committed reversible error when it allowed the State to convict the appellant of possession of cocaine, an offense for which the appellant was never indicted.” (Appellant’s Brief p. 2). A defendant may be convicted of an “inferior offense . . . necessarily included within the more serious offense’ charged in the indictment.” *Booze V. State*, 964 So.2d 1218, 1222 (Miss. Ct. App. 2007) (quoting *Odom v. State*, 767 So.2d 242 (Miss. Ct. App. 2000)). Possession of a controlled substance is a lesser-included-offense of possession of a controlled substance with the intent to distribute. *Torrey v. State*, 816 So.2d 452, 454 (Miss. Ct. App. 2002) (citing *Hicks v. State*, 580 So.2d 1302, 1306 (Miss.1991)). Thus, the trial judge properly allowed Johnson to plead guilty to simple possession. Accordingly, Johnson’s third issue is without merit.

IV. THE TRIAL JUDGE DID NOT ERR IN DENYING JOHNSON’S MOTION FOR POST-CONVICTION RELIEF AS JOHNSON’S PLEA WAS KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY MADE.

A defendant may collaterally attack the validity of a guilty plea with a motion for post-conviction relief. *Garner v. State*, 944 So.2d 934, 942 (Miss. Ct. App. 2006) (citing Miss. Code Ann. §99-39-5(1)(f) (Supp. 2006)). The petitioner has the burden of proof by a preponderance of the evidence that the plea was not knowingly and voluntarily made. *Id.* (citing Miss. Code Ann. §99-39-23(7) (Supp. 2006)). In order for a guilty plea to be deemed voluntary, the defendant must be advised of the nature of the charges against him and understand the consequences of entering a guilty plea, including the minimum and maximum penalties he faces. *White v. State*, 921 So.2d 402, 405 (¶9) (Miss. Ct. App. 2006) (citing *Alexander v. State*, 605 So.2d 1170, 1172 (Miss. 1992); URCCC 8.04(A)(4)(b)). As set forth in detail above, Johnson indicated both at his plea hearing and

(7)

(18)

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

Exhibit "I"

VERSUS

CAUSE NO. 2005-198

ALEX DURODE JOHNSON, III

DOB: 10/07/64

PETITION TO ENTER PLEA OF GUILTY

NAME: Alex Durode Johnson, III

SOCIAL SECURITY NO: 425-13-4898

AGE: 41

EDUCATION: 11 YEARS SPECIAL Educ

CHARGE: Possession of Cocaine with intent

MAXIMUM PENALTY: (possession) 24 Years MDOC, \$500,000.00 fine; with intent

MINIMUM PENALTY: (possession) 6 Years MDOC : with intent n/a

PLEA OFFER: 12 years, 8 to serve to possession
4 on PRS, NOT TO PROSECUTE pending
drug case

PRIOR CONVICTIONS (list charge and date of each): Manslaughter, 1990.

I, Alex Durode Johnson, III, being mentally competent, and not being under the influence of any drugs or alcohol, do hereby request the Court to allow me to enter a plea of guilty to the above-mentioned charge. I have been indicted or have waived indictment and present myself on a Bill of Information and wish to enter a plea of guilty to the crime with which I have been charged.

Received & Filed

The facts of the crime committed by me are as follows:

APR 08 2006

I was in possess of cocaine

Janice G. Brown, Circuit Clerk
By [Signature] D.C.

Exhibit "I"

Exhibit

I understand the minimum and maximum sentence the Court can give me for this are listed above and that the Court is not bound by the recommendations of the district attorney, and that the Court could, if it saw fit, impose the maximum sentence for this crime.

Restitution in the amount of \$ -0- is owed to: _____

No promises have been made to me regarding a lighter sentence, preferred treatment or anything of value to induce me to petition this Court to enter a guilty plea. I have not been subjected to any duress, pressure, threat or coercion by any person to enter this petition.

I am satisfied with the services of my attorney, and believe my attorney has acted in my best interest in my case.

By pleading guilty to the charge (s) against me, I give up the following rights guaranteed to me by the Constitution of the United States of America and by the Constitution of the State of Mississippi:

- (a) the right to a speed and public trial by jury;
- (b) the right to see, hear and face⁴ in open court all witnesses called to testify against me and the right to cross-examine those witnesses;
- (c) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor;
- (d) the right to have the assistance of a lawyer at all stages of the proceedings;

Exhibit

- (e) the presumption of innocence, i.e., the State must prove beyond reasonable doubt that I am guilty;
- (f) the right to testify or not testify and thereby incriminate myself, at my sole option and , if I do not testify, the jury will be instructed that this should not be held against me; and
- (g) the right to appeal the sentence given by the Court.

I present this petition of my own free will and accord and have executed same on this the 4th day of April, 2026

Alex Johnson
DEFENDANT

STATE OF MISSISSIPPI
COUNTY OF WASHINGTON

Exhibit

AFFIDAVIT

The undersigned defendant states as follows: That the foregoing Petition to Enter Plea of Guilty was signed with the full knowledge of its contents and with the full knowledge that every person who shall willfully and corruptly swear, testify, or affirm falsely to any material matter under oath, affirmation, or declaration legally administered in any matter, cause, or proceeding in any court of law or equity shall upon conviction be punished by imprisonment in the penitentiary not exceeding ten (10) years.

Al Johnson
DEFENDANT

STATE OF MISSISSIPPI
COUNTY OF WASHINGTON

AFFIDAVIT

PERSONALLY APPEARED before me, a notary public in and for the jurisdiction aforesaid, the undersigned attorney for the defendant herein, who being by me first duly sworn, states on oath as follows: That he/she personally witnessed the signature of the above defendant after having fully explained the contents of this Petition to Enter Plea Guilty to said defendant.

[Signature]
ATTORNEY AT LAW

SWORN TO AND SUBSCRIBED before me, this the ____ day of ____, 20__.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

000046

(46.)

CHANGE OF PLEA, APRIL 4, 2006

(THE DEFENDANT STOOD BEFORE THE COURT WITH HIS ATTORNEY, MR KELLY.)

MR. KELLY: Judge Hines, my client has signed a petition to enter a plea of guilty, and I have received a plea offer from the State in the matter. Actually I've already had it; he's accepted it. And I've got that on here, and I would ask the Court to accept his plea of guilty to possession of cocaine, which is what the charge would be reduced to under the plea agreement.

THE COURT: All right: Would you swear the witness, please.

THE CLERK: Would you raise your right hand, please. Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: Yes, ma'am.

THE CLERK: Thank you.

EXAMINATION BY THE COURT:

Q. You are Alex Johnson?

A. Yes, sir.

Q. And you are 41 years of age?

A. Yes, sir.

Q. And you have presented to the Court a petition to enter a plea of guilty to one count of possession of cocaine --

THE COURT: Is that correct? Is he pleading to possession with intent?

MR. KELLY: No, sir. Straight possession.

1 THE COURT: Okay. And on the possession,
2 straight possession how much cocaine was this?

3 MR. RICHARDSON: Twenty-five grams.

4 THE COURT: What's the --

5 MR. KELLY: It carries -- Judge, I put it on
6 the plea petition there. It carries a six to
7 twenty-four --

8 THE COURT: Six to twenty-four.

9 MR. KELLY: -- on the possession alone. Now,
10 of course, the possession with intent, which is what
11 he was originally charged with, the way the
12 indictment stands at the moment, is thirty-year
13 maximum.

14 EXAMINATION BY THE COURT:

15 Q. All right, and you have gone over this petition with
16 your lawyer, Mr. Kelly?

17 A. Yes, sir.

18 Q. Has he explained everything in the petition to you?

19 A. Yes, sir.

20 Q. Do you understand everything in the petition?

21 A. Yes, sir.

22 Q. And before we go any further, I'm going to advise you
23 of certain rights you have under the laws of this state and the
24 United States. First of all, you have the right to a speedy
25 public trial by a jury. At that trial, you would have the
26 right to cross-examine all the witnesses who testify against
27 you. You have the right of confrontation, which means the
28 witnesses must testify in your presence where you can observe
29 them as they testify. You have the right to issue subpoenas to

1 compel the production of any evidence, including the attendance
2 of witnesses. Do you know what a subpoena is?

3 A. Yes, sir.

4 Q. You have the right to be represented by a lawyer at
5 every critical stage of the proceedings against you. The law
6 presumes that you are innocent. This requires the State to
7 prove beyond a reasonable doubt that you are guilty. You have
8 the right to testify or the right not to testify. If you
9 decide not to testify, then I would instruct the jury that they
10 could draw no inference of guilt by the fact that you did not
11 testify. Do you understand that?

12 A. Yes, sir. Your Honor, could I ask you?

13 Q. Sure.

14 A. My key witness that could free me, they threatened
15 him, you know.

16 Q. Threatened him? What do you mean?

17 A. They done threatened him. They --

18 Q. Threatened. Threatened him with what?

19 A. They going to take him -- pull one his charges up and
20 threatened him. They steady calling him to the jailhouse right
21 now. As we speak now, the sheriff and them steady talking to
22 him. You know, this ain't right. The man that could free me,
23 they threatened him.

24 Q. I just -- I don't think that that violates any law to
25 prosecute somebody who's committed a crime.

26 A. Huh?

27 Q. I don't think that violates any law or rule of court
28 that I'm aware of to prosecute somebody who has committed a
29 crime, a different crime. I don't think that has anything to

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1 do with this.

2 A. Well, he not going to testify.

3 Q. Well, he could exercise his Fifth Amendment rights,
4 but if he's under subpoena, he has to testify, subject to this
5 Fifth Amendment rights, of course.

6 MR. KELLY: I've told my client that.

7 A. I understand but he not going to tell the truth
8 because -- I'm sorry, Your Honor. I'm sorry. But I just want
9 to explain my situation, and I know if I go to court and lose
10 I'm going to get thirty for it. If I had my key witness to
11 testify go on and testify and tell what happened, I be a free
12 man.

13 Q. Okay.

14 A. But he ain't going to testify 'cause they done called
15 him and threatened him if he testify, he going to get ten
16 years. They going to take him to court and he going to get ten
17 years. That ain't right.

18 Q. Well, if that's true, I don't think that violates any
19 rule that I know of.

20 A. I understand what the rule and law says, but I'm just
21 letting you aware of what's going on.

22 MR. KELLY: I think it might be good for me to
23 put on the record something about this, now, at this
24 point. He's talking about DeAndre Gaston. (To the
25 defendant) You shook your head no.

26 THE DEFENDANT: I'm just saying --

27 MR. KELLY: Okay. He's talking about DeAndre
28 Gaston --

29 THE DEFENDANT: I'm sorry, sir.

1 MR. KELLY: -- DeAndre Gaston is a relative of
2 the sheriff. I think a cousin or nephew. At any
3 rate, I've interviewed DeAndre Gaston before this
4 day, about a week ago, in my office, and he gave me
5 a statement. I wrote down what he said. Now, what
6 he said at that time was not something that would
7 free my client, as he said. That's -- he was going
8 to say that he saw my client throw a bag with a beer
9 bottle in it in the trash can, which would help him,
10 but wouldn't free him. Now, as I understand it
11 today, he has told my client and my client told me
12 that DeAndre Gaston has told him that he was willing
13 to testify today that it was somebody else's dope.
14 Now, whether he's been called over to the sheriff's
15 office and talked to -- he said he had, but I don't
16 know that. I'm not sure. But I just want to point
17 out to the Court, and my client knows this to be
18 true because he was there also, when this guy gave
19 me a statement originally, it wasn't anything that
20 would free my client. It would have assisted him
21 but not free him.

22 EXAMINATION BY THE COURT:

23 Q. All right. So do you understand your rights?

24 A. Yes, sir.

25 Q. You understand you're waiving the rights --

26 A. Yes, sir.

27 Q. -- by entering a plea of guilty?

28 A. Yes, sir.

29 Q. And you are charged with the crime of possession of

1 cocaine. This carries a maximum penalty of twenty-four years
2 in the penitentiary and the minimum of six --

3 A. Yes, sir.

4 Q. -- and a \$5,000 fine. Do you understand that?

5 A. Yes, sir.

6 Q. And have you and your lawyer talked about the facts
7 of the case?

8 A. Yes, sir.

9 Q. Has he explained to you and do you fully understand
10 the nature of the charges against you?

11 A. Yes, sir.

12 Q. And have you discussed the way that you would defend
13 yourself in the trial?

14 A. Yes, sir.

15 Q. And are you satisfied with the assistance given to
16 you by Mr. Kelly?

17 A. Yes, sir.

18 Q. And after you and Mr. Kelly have discussed the case,
19 is it your own decision to enter the plea of guilty?

20 A. Yes, sir.

21 Q. And other than the recommendation of the State of a
22 twelve-year sentence with eight to serve and forbearance of the
23 prosecution of a pending drug case and you would have to pay
24 court costs and other assessments -- other than that
25 recommendation from the State, has anyone offered you anything
26 of value as an inducement to plea guilty? Has anyone offered
27 you anything to get you to plea guilty, other than this plea
28 recommendation? Of payment of money or do to anything else for
29 you or anything like that?

1 A.. Well, I don't know, but I been offered to try to set
2 somebody up, and I been recently been trying to help them, you
3 know, doing this and doing that for them.

4 Q. Okay, but as far as an inducement --

5 A. No.

6 Q. -- to plead guilty?

7 A. This here, no, sir.

8 Q. Has anybody threatened you to make you plead guilty?

9 A. Not me.

10 Q. And are you presently under the influence of --

11 A. No, sir.

12 Q. -- drugs or alcohol? Are you undergoing treatment
13 for any type of mental condition or disorder?

14 A. No, sir.

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

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

24 MR. RICHARDSON: And, Your Honor, just for
25 purposes of the record, if this case were to go to
26 trial, this State would also show that potentially
27 one witness will testify that when he walked into
28 the C & Lounge he saw this defendant throw a -- the
29 brown bag that we're talking about -- in the garbage

1 can, that being a deputy. That deputy at that point
2 retrieving the brown bag from the garbage can, and,
3 Your Honor, if we were to go to trial, we would
4 anticipate that that deputy who also stated at that
5 point this defendant snatched the bag from him and
6 took off running, and at that point he chased after
7 him, that this defendant being in possession of the
8 bag with the illegal drugs in it again, and once
9 obtaining this they were down in the kitchen area of
10 that lounge, that's when this defendant threw the
11 bag to the ground. That's when they finally were
12 able to open the bag and determine that there were
13 narcotics in the bag.

14 THE COURT: Okay.

15 EXAMINATION BY THE COURT:

16 Q. And do you accept the statement of the State as to
17 the possession of the cocaine?

18 A. Do I accept his statement?

19 Q. Her statement? Do you accept that as true?

20 A. I -- did I do that? You saying did I do that?

21 Q. I'm saying do you accept her statement of fact as
22 true?

23 A. Yes, sir. I got to accept it.

24 Q. And as to this charge of possession of cocaine, how
25 to you plead? Guilty or not guilty?

26 A. Guilty, sir.

27 Q. The Court accepts your plea of guilty and finds that
28 it is knowingly, willingly, and voluntarily entered into.

29 THE COURT: We'll proceed with sentencing