

**COPY**

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

**NO. 2009-CP-01824-COA**

**ALLEN HENDERSON**

**FILED**

**APPELLANT**

**V.**

**OCT 25 2010  
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SUPREME COURT  
COURT OF APPEALS**

**STATE OF MISSISSIPPI**

**APPELLEE**

**REPLY BRIEF OF APPELLANT**

**Allen Henderson, N5175  
EMCF  
10641 Hwy 80 East  
Meridian, Mississippi 39307**

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COMES NOW **Allen Henderson**, Petitioner Pro se in the above styled and numbered cause, and files his Reply to the Brief of Appellant entered in this cause on or about September 7, 2010, and in support would show the following, to-wit:

The Appellant presents the following Propositions as its reply argument to the Brief for Appellant:

**PROPOSITION ONE:**

The state has argued that there is no right to appeal a sentence after a plea of guilty and that there is no requirement that the trial court inform the defendant of the availability of an appeal from the sentence imposed upon a guilty plea. While there is no requirement or right that the defendant be told of this information by the trial court, clearly the trial court provides a defendant with other information regarding the case of which there also is no right to, i.e. that there is no parole or earned time in regards to this sentence, where applicable; that you cannot appeal a plea of guilty; that you could be sentenced as a habitual offender under any additional conviction, where applicable. While neither of these informative actions are required by law to be told to a defendant pleading guilty, a trial court usually, and routinely, provides this information. The question here would be whether the trial court may discriminatingly choose

what information it will make the defendant aware of when the Court have the defendant at it's mercy.

The state argues that under the decision rendered by this Court in Seal v. State, 38 So.3d 635, 638 (Miss. App. 2010), that a defendant no longer may appeal directly to the Supreme Court when a plea of guilty is lodged. As usual, the state's argument on this point is misplaced. The state use this self-serving argument to create a smoke screen while knowing that the July 1, 2008 amendment to Miss. Code Ann. Sec. 99-35-101 (Supp. 2009) have no effect on an appeal from a sentence which is rendered pursuant to a plea of guilty. If a defendant can satisfy the requirement that the sentence is illegal, excessive, or that the trial court was without jurisdiction to impose the sentence then the fact that there is no plea from the actual admission of guilt to the charge have no relevance to the appeal. Under Trotter v. State, 554 So.2d 313, 315 (Miss. 1989), which this Court have no authority to overrule, an appeal from the sentence on a guilty plea of allowable. The July 1, 2008 Amendment Miss. Code Ann. Sec. 99-35-101 (Supp. 2009) do not change this position of the Supreme Court and the Supreme Court have not yet rendered any finding which creates a change top the Trotter decision. The state's argument is contrary to law and ignores what the Court found in Trotter. Clearly the attorney which represented seal was ineffective and sold out Seal when counsel never sought review by the Supreme Court on a decision which was clearly controverted by the Trotter decision.

The Appellant disagree with the appellee's argument under this proposition. The Appellee cite Miss. Code Ann. Section 99-35-101 (Rev. 2000) in support of its argument. However, while this statute does not give the defendant the right to appeal his guilty plea, the Appellee misconstrued Trotter v. State, 554 So.2d 313 (Miss. 1989). Henderson does not argue the fact that he waived his right to appeal his guilty plea conviction, but he did not waive his

right to appeal his sentence. According to Trotter, the Court shall advise the defendant, who entered a plea of guilty, that he has the right to appeal his sentence. If not, the court violates the defendant's Sixth Amendment's rights to due process of law. And, counsel violates the defendant's Sixth Amendment's right to effective assistance of counsel if said counsel fails to object on behalf of his client.

Petitioner believes that the court should vacate his sentence pursuant to the ruling in Trotter v. State, and grant him the relief requested in his Brief of Appellant.

### **PROPOSITION TWO:**

The record contained an insufficient factual basis for Henderson's guilty plea to support his conviction for manslaughter when Henderson never admitted all the elements required to support his conviction.

Henderson disagree with the State's Argument under the this Proposition, and maintain his argument made in his Brief of Appellant. Henderson claims this to be a constitutional violation under the right to due process of law clause.

Henderson also averred that his counsel never objected to the legality of the indictment based upon it's failure to comply with the provisions of Rule 7.06 of the Mississippi Uniform Rules of Circuit and County Court Practice. Henderson was denied effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 689 (1984).


### **PROPOSITION THREE:**

Henderson received effective assistance of counsel and can show that his counsel was deficient or that he was prejudiced by any alleged deficiency.

Petitioner disagree with the State's argument under this Proposition and relies on his original argument made in his initial "Brief of Appellant".

**WHEREFORE, PREMISES CONSIDERED,** Petitioner prays that the court accept the issues and argument raised in his initial Brief of Appellant and grant relief in the favor of Appellant.

Respectfully submitted on this 25 day of October, 2010.

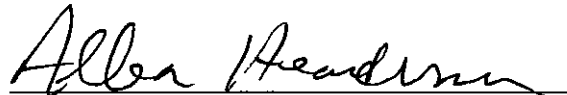


**Allen Henderson, #N5175**  
EMCF  
10641 Hwy 80 East  
Meridian, Mississippi 39307

**CERTIFICATE OF SERVICE**

This is to certify that I, **Allen Henderson**, have this date served a true and correct copy of the above and foregoing Reply 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.

This, the 25th day of October, 2010.



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Meridian, Mississippi 39307