

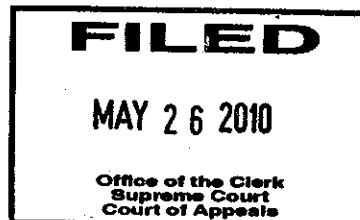


**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**JEFFERY MARCEL ROBINSON**

**APPELLANT**

**V.**



**NO. 2009-KA-1154-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**MISSISSIPPI OFFICE OF INDIGENT APPEALS**

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**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**JEFFERY MARCEL ROBINSON**

**APPELLANT**

**V.**

**NO. 2009-KA-1154-COA**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

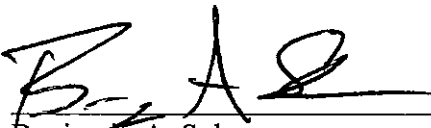
1. State of Mississippi
2. Jeffery Marcel Robinson, Appellant
3. Honorable John W. Champion, District Attorney
4. Honorable James McClure, III, Circuit Court Judge

This the 26 day of May, 2010.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



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**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**JEFFERY MARCEL ROBINSON**

**APPELLANT**

**V.**

**NO. 2009-KA-01154-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**STATEMENT OF THE ISSUE**

**ISSUE  
TRIAL COUNSEL WAS INEFFECTIVE DENYING  
THE APPELLANT OF HIS 6TH AMENDMENT RIGHT  
TO EFFECTIVE COUNSEL**

**STATEMENT OF THE CASE**

This appeal proceeds from the Circuit Court of Panola County, Mississippi, and a judgment of conviction for the crime of Possession of a Controlled Substance: Cocaine, 0.1 Gram but less than 2 Grams, against the Appellant, Jeffery Marcel Robinson. The trial judge subsequently sentenced the Appellant as a 99-19-81 Habitual Offender and 41-29-147 repeat

drug offender to a term of twelve (12) years in the Mississippi Department of Corrections. The conviction and sentence followed a jury trial on May 13, 2009, Honorable James McClure III, Circuit Judge, presiding. Robinson is currently in the custody of the Mississippi Department of Corrections.

### **FACTS**

On March 18, 2008, Michael Hardin (Hardin) and Freddie Payne (Payne) were patrolling in Batesville. Tr. 28 and 40. Hardin and Payne observed Jeffery Marcel Robinson (Robinson) in front of them at a stop sign. Tr. 40. They noticed that Robinson had his radio turn up loud. *Id.* Hardin and Payne were going to tell Robinson to turn his music down, so they initiated a traffic stop. Tr. 29. Upon turning on the blue lights and siren, Robinson did not initially pull his vehicle over on the side of the road. Tr. 31.

Once Robinson was pulled over, both Hardin and Payne approached the vehicle. *Id.* Hardin noticed that the person driving the truck was looking at them through the rearview mirror. *Id.*

According to the testimony of Hardin, he asked the driver of the truck for his driver's license. Tr. 32. The driver stated that he left it at home, and he stated his name was Aundre Robinson and gave Hardin a date of birth. When asked his age, the date of birth did not match the age that the driver had given. *Id.* The driver of the vehicle also appeared to be nervous and unsure of the information that was being provided to Hardin. *Id.*

Hardin asked the driver to step out of the vehicle. Tr. 32-33. Once outside the

vehicle, Payne patted down the driver checking for weapons. Tr. 33. Payne requested to search further and the driver complied. *Id.* Payne asked to search the drivers person and to empty his pockets. *Id.* Payne observed a one dollar bill wrapped in a rubber band in the pocket of the driver. Tr. 43-44.

Hardin then asked for consent to search the vehicle, which the driver told them to go ahead and look. Tr. 45. Upon searching the vehicle, Payne found a clear plastic bag with white powder residue in the center of the vehicle. Tr. 46. Inside it was dry, looked like it still had an excessive amount of residue on the bag. *Id.*

Once Payne found the plastic bag, he testified that the driver kept his head low and would not look at him. *Id.* Payne asked the driver to open his mouth, but he would not move his tongue. *Id.* Payne eventually noticed a glimpse pf the plastic bag with white inside. *Id.* Payne ordered the driver to spit what he had inside his mouth. Tr.46-47. The driver did not comply and attempted to swallow the item in his mouth. Tr. 47.

Payne thinking that the driver was going to swallow item, grabbed the driver under his Adam's apple so he could not swallow. *Id.* Payne held the drivers throat until they both ended up on the ground. *Id.* The driver finally spit out the item inside his mouth into the ditch. *Id.* Once the item was on the ground the driver started trying to squish it and kick it with his feet. Eventually the substance was collected.

According to Robinson, Hardin and Payne were circling through an apartment complex and they saw Robinson and turned around and pulled him over. Tr. 90. Robinson stated that Hardin and Payne opened his mouth and choked him and bashed him

to the ground. Tr. 90-91.

Robinson also stated that the entire arrest was recorded by video on the police car. Tr. 91. Robinson contends that he knew there was a tape, because once he was taken back to the police station, police officers were review the tape and some officers were laughing at what had happened. *Id.*

Robinson was certain that he did not have his radio on too loud. Robinson also asserts that he never sign a waiver of right form. He claims that someone forged his name. *Id.*

### **SUMMARY OF THE ARGUMENT**

The Appellant was denied his fundamental right to a fair trial because of his trial counsel's ineffectiveness. Counsel failed to ask for a directed verdict or ask for a peremptory jury instruction. Appellant's conviction should be reversed and remanded for a new trial.

### **ARGUMENT**

#### **ISSUE**

#### **TRIAL COUNSEL WAS INEFFECTIVE DENYING THE APPELLANT OF HIS 6TH AMENDMENT RIGHT TO EFFECTIVE COUNSEL**

Appellant asserts that his Sixth Amendment right to effective assistance of Counsel was violated because his attorney failed to ask for a directed verdict at the end of the state's case or ask for a peremptory jury instruction at the close of the evidence.

"When a defendant raises an ineffective assistance claim on direct appeal, the question before this Court is whether the judge, as a matter of law, had a duty to declare a mistrial or



order a new trial *sua sponte*, on the basis of trial counsel's performance." *Roach v. State*, 938 So.2d 863, 870 (Miss. Ct. App. 2006)(citing *Colenburg v. State*, 735 So. 2d 1099, 1102 (Miss. Ct. App. 1999)).

The benchmark for judging any claim ineffectiveness of trial counsel is whether counsel's conduct undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). In order to successfully claim ineffective assistance of counsel, the Appellant must meet the two-pronged test set forth in *Strickland* and adopted by the Mississippi Supreme Court. *Stringer v. State*, 454 So. 2d 468, 576 (Miss. 1984).

Under the *Strickland* test, the Appellant must prove that (1) his attorney's performance was defective and (2) such deficiency deprived him of a fair trial. *Id.* at 477. Such alleged deficiencies must be presented with "specificity and detail" in a non-conclusory fashion. *Perkins v. State*, 487 So. 2d 791, 793 (Miss. 1986).

The deficiency and any prejudicial effect are assessed by looking at the totality of circumstances. *Hiter v. State*, 660 So. 2d 961, 965 (Miss. 1995). This review is highly deferential to the attorney and there is a strong presumption that the attorney's conduct fell within the wide range of reasonable professional assistance. *Id.* The Appellant must show that there is a reasonable probability that, but for his trial attorney's errors, he would have received a different result in the trial court. *Stringer v. State*, 627 So. 2d 326, 329 (Miss. 1993). With respect to the overall performance of the attorney, "counsel's failure to file certain motions, call certain witnesses, ask certain questions, or make certain objections falls

within the ambit of trial strategy.” *Cole v. State*, 666 So. 2d 767, 777 (Miss. 1995). In order to find for the Appellant on the issue of ineffective assistance of counsel, this Court will have to conclude that his trial attorney's performance as a whole fell below the standard of reasonableness and that the mistakes made were serious enough to erode confidence in the outcome of the trial below. *Coleman v. State*, 749 So. 2d 1003, 1012 (Miss. 1999).

Counsel's representation is deficient if the errors are so serious that counsel was not functioning as the “counsel” guaranteed by the Sixth Amendment. *Strickland v. Washington*, 466 U.S., at 687, The deficient performance is prejudicial to the defendant if counsel's errors are so serious as to deprive the defendant of a fair trial. *Id.* When applying the *Strickland* standard, there is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 689; *Schmitt v. State*, 560 So.2d 148, 154 (Miss. 1990). “To overcome this presumption, (t)he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different, *Schmitt*, 550 So.2d at 154 (quoting *Strickland*, 466 U.S. at 694; *Nicolaou v. State* 612 So.2d 1080; 1086 (Miss. 1992), The defendant has the burden to satisfy both prongs of the test. *Edwards v. State*, 615 So.2d 590, 596 (Miss. 1993). If either part of the test, deficient performance or prejudice, is not satisfied then the claim must fail.

In the present case, counsel did not ask for a directed verdict after the state's evidence or ask the court for a peremptory jury instruction. In *Holland v. State*, counsel for Holland failed to make any post-trial motions, to move for a directed verdict, or even ask for a

peremptory jury instruction. *Holland v. State*, 656 So.2d 1192 (Miss. 1995). The Mississippi Supreme Court found that the performance of Holland's counsel was ineffective and reversed and remanded his conviction because the omissions (1) "deprived the trial judge of the opportunity to reexamine possible errors at trial" which (2) "deprived Holland of a fair trial." *Id.* at 1197. See *Parker v. State*, 30 So.3d 1222, 1234 (Miss. 2010).

The Appellant asserts that his case is similar to *Holland*. Counsel for Robinson did not ask for a directed verdict or peremptory instruction as did Holland's counsel. However, counsel for Robinson did file a motion for a new trial and in the alternative for a judgment not withstanding the verdict.

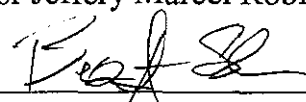
Under the standards set forth above in *Strickland*, and by a demonstration of the record and the facts set forth in support of the claims in this case, Jeffery Marcel Robinson has suffered in violation of his constitutional rights to effective assistance of counsel, in violation of the 6th Amendment to the United States Constitution. Consequently, based on the deficiencies outlined above, the Appellant's sentence should be reversed and remanded.

### CONCLUSION

Jeffery Marcel Robinson is entitled to have his conviction reversed and remanded for a new trial

Respectfully submitted,  
MISSISSIPPI OFFICE OF INDIGENT APPEALS  
For Jeffery Marcel Robinson, Appellant

BY:



BENJAMIN A. SUBER  
MISSISSIPPI BAR NO. [REDACTED]

# **CERTIFICATE OF SERVICE**

I, Benjamin A. Suber, Counsel for Jeffery Marcel Robinson, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable James McClure, III  
Circuit Court Judge  
Senatobia, MS 38668

Honorable John W. Champion  
District Attorney, District 17  
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This the 26 day of May, 2010.

  
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