

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

**FREDRICK JAMAL DAVIS, RALPH HUNDLEY,  
NATHAN ROGERS, JOEY MAYES, JOE RUFFIN,  
JOHNNY PICKENS, FELICIA HUNDLEY**

**APPELLANTS**

**VS.**

**2010-CA-00991-COA** 

**STATE OF MISSISSIPPI**

**APPELLEE/RESPONDENT**

**CERTIFICATE OF INTERESTED PARTIES**

The undersigned Assistant District Attorney 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 the Supreme court and/or judges of the Court of Appeals may evaluate possible disqualifications or recusal.

1. Frederick Jamal Davis, 11 Old St. Paul Church Rd, Waynesboro, Mississippi 39367 and 891 Buckatunna Mt. Zion Road, Waynesboro, MS 39367.
2. Ralph Hundley, 11 Old St. Paul Church Rd, Waynesboro, Mississippi 39367.
3. Nathan Rogers, 11 Old St. Paul Church Rd, Waynesboro, Mississippi 39367.
4. Joey Kentese May, 11 Old St. Paul Church Rd, Waynesboro, Mississippi 39367 and 713 Mitchell Street, Waynesboro, MS 39367.
5. Johnny Lee Pickens, 11 Old St. Paul Church Rd, Waynesboro, Mississippi 39367 and 25 Pickens Drive, Waynesboro, Ms 39367.
6. Felicia Hundley, 11 Old St. Paul Church Rd, Waynesboro, Mississippi 39367.
7. Office of the District Attorney, 10<sup>th</sup> Judicial District, P. O. Box 5172, Meridian, Mississippi, 39302.
8. Attorney General Jim Hood, P. O. Box 220, Jackson, Mississippi 39205-0220.
9. Honorable Lester Williamson, Jr., P. O. Box 86, Meridian, Mississippi, 39302.

Respectfully submitted, this the 31<sup>st</sup> day of January, 2011.

STATE OF MISSISSIPPI

BY: Lean Y. Follett

LEAN Y. FOLLETT

ASSISTANT DISTRICT ATTORNEY

10<sup>th</sup> JUDICIAL DISTRICT

## **TABLE OF CONTENTS**

	<b><u>PAGE NUMBER</u></b>
CERTIFICATE OF INTERESTED PERSONS	i-ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
Table of Cases	iv
Table of Rules of Court	iv
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
CONCLUSION	7
CERTIFICATE OF SERVICE	8

## TABLE OF AUTHORITIES

<u>TABLE OF CASES</u>	
CASE	PAGE
<i>Arnold v. Miller</i> , 26 Miss 152 (1853) .....	5
<i>Crawford v. Morris Transp., Inc.</i> , 990 So.2d 162 (Miss.2008) .....	5
<i>Flagstar Bank FSB v. Danos</i> , 46 So.3d 348 (Miss. App. 2008) .....	5
<i>McCain v. Dauzat</i> , 791 So.2d 839 (Miss. 2001) .....	4, 5
<i>Overbey v. Murray</i> , 569 So.2d 303 (Miss. 1990) .....	4, 6

## TABLE OF RULES OF COURT

Miss. R. Civ. P. 3 .....	5
Miss. R. Civ. P. 4 .....	2, 4, 5
Miss. R. Civ. P. 55 .....	6
Miss. R. Civ. P. 60 .....	2, 4, 5, 6, 7

## **STATEMENT OF ISSUES**

Whether the Default Judgment against the State of Mississippi signed by Circuit Judge Lester Williamson, Jr. and filed with the Wayne County Circuit Clerk on the 11<sup>th</sup> day of January, 2010 was void as a matter of law for insufficient service of process.

Whether the State of Mississippi was procedurally barred from bringing a Rule 60 (b) motion within six months of the date of entry of a default judgment.

## STATEMENT OF THE CASE

The Office of the District Attorney for the 10<sup>th</sup> Judicial District was made aware of entry of a *Default Judgment* in the Circuit Court of Wayne County, Mississippi in Civil Action CV-2009-191-W in May of 2010. (C.P. 19). The *Default Judgment* against the State of Mississippi was signed by Circuit Judge Lester Williamson, Jr. and filed on the 11<sup>th</sup> day of January, 2010. (C.P. 19).

The Appellants initially filed a document titled *Motion to Dismiss Charges for Failure to File Indictment and for Lack of Evidence* on October 26, 2009. (C.P. 4-10). A copy of this motion was certified to have been mailed to the Office of District Attorney Bilbo Mitchell at P. O. Box 5172, Meridian, Mississippi 39302. (C.P. 4-10). A Summons titled Form 1AA was served on District Attorney Bilbo Mitchell on November 2, 2009 by a Deputy Sheriff of Lauderdale County, Mississippi. (C.P. 12-13).

The Appellants, Fredrick Jamal Davis et al, failed to obtain in personam jurisdiction over the State of Mississippi by serving the District Attorney for the 10<sup>th</sup> Judicial District rather than the Attorney General for the State of Mississippi who is the designated agent for process in actions against the State of Mississippi as set forth in the Mississippi Rules of Civil Procedure, Rule 4 (d) (5). (Appellant's Brief 14, Miss. R. Civ. P. 4).

A document titled *Application to Clerk for Entry of Default or Motion for Default Judgment* was filed by Appellant Fredrick Jamal Davis with the Wayne County Circuit Clerk on the 11<sup>th</sup> day of December, 2009 requesting that default be entered in the case and "that a judgment that the unindicted charges against Fredrick Jamal Davis et al, be dismissed and all previous verbal instructions regarding waiting for the January term of the grand jury be voided." (C.P. 14-15).

An *Affidavit [sic] in Support of Application for Entry of Default by Clerk* was sworn to before a notary by Fredrick Jamal Davis and also filed on the 11<sup>th</sup> day of December, 2009. (C.P. 16).

No entry of default was entered by the Wayne County Circuit Clerk. A *Motion for Default Judgment* was filed on the 8<sup>th</sup> day of January, 2010. (C.P. 17). A *Default Judgment* against the State of Mississippi was signed by Circuit Judge Lester Williamson, Jr. and filed on the 11<sup>th</sup> day of January, 2010. (C.P. 19).

In May, 2010 the Office of the District Attorney was made aware of the *Default Judgment* and promptly filed a *Motion to Set Aside and Void Default Judgement*. (C.P. 20-21). A hearing date was set for the 9<sup>th</sup> day of June, 2010 at 8:30 a.m. and the parties listed in the initial motion were notified by mail to the only address listed in the motion, 11 Old St. Paul Church Rd, Waynesboro, Mississippi 39367.

A *Response/Objections and Motion to Dismiss Defendant's Untimely Rule 60(b) Motion to Set Aside Default Judgement* was filed on the 1<sup>st</sup> day of June, 2010 by Jamal Davis and no other party. (C.P. 22-31).

Nathan Rogers and Felicia Hundley appeared before the Court at the noticed hearing. Jamal Davis, Ralph Hundley, Joey Mayes, Johnny Pickens did not appear. Joey Moulds, representing the South Mississippi Drug Task Force confirmed for the court that Johnny Pickens was incarcerated. No attorney of record is listed on any of the documents filed by the Appellants. The Court found the Plaintiffs did not file a Complaint, did not properly serve the State of Mississippi, and no clerk's entry of default was entered in the action.

The Court ruled that the *Default Judgment* entered on January 11, 2010 was a void judgment ab initio. The *Order Setting Aside Default Judgment* was signed by Judge Lester Williamson, Jr. on the 9<sup>th</sup> day of June, 2010. (C.P. 32-33). The Appellants have appealed the *Order Setting Aside Default Judgment*. (C.P. 44).

### **SUMMARY OF THE ARGUMENT**

Mississippi Rule of Civil Procedure 4(d)(5) clearly states that service of process upon the State of Mississippi is made by delivering a copy of the summons and complaint to the Attorney General of the State of Mississippi, not the District Attorney for the 10<sup>th</sup> Judicial District. Miss. R. Civ. P. 4.

Proper service of process did not occur, therefore the judgment is void as a matter of law. *McCain v. Dauzat*, 791 So.2d 839, 842 (Miss. 2001).

Mississippi Rule of Civil Procedure 60(b) provides in pertinent part that “on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment” if there was an “accident or mistake” or “any other reason justifying relief from the judgment.” There is no six-month time limit on a 60(b) (4) motion. The only limitation is that the motion be made “within a reasonable time...” *Overbey v. Murray*, 569 So.2d 303, 306 (Miss. 1990) citing Miss. R. Civ. P. 60.



## ARGUMENT

Mississippi Rule of Civil Procedure 4(d)(5) clearly states that service of process upon the State of Mississippi is made by delivering a copy of the summons and complaint to the Attorney General of the State of Mississippi, not the District Attorney for the 10<sup>th</sup> Judicial District. Miss. R. Civ. P. 4.

Proper service of process did not occur, therefore the judgment is void as a matter of law. *McCain V. Dauzat*, 791 So.2d 839, 842 (Miss. 2001). There was no in personam jurisdiction over the State of Mississippi. Before a default can be entered the court must have jurisdiction over the party against who the judgment is sought, which means that there must be effective service of process on that party. *Flagstar Bank, FSB v. Danos*, 46 So.3d 348 (Miss. App. 2008 citing *Arnold v. Miller*, 26 Miss 152 (1853)).

When a default judgment is void due to failure to obtain jurisdiction by proper service of process, the trial court has no discretion and must set the judgment aside. *Sartain v. White*, 588 So.2d 204, 211 (Miss.1991).

Fredrick Davis, et al, the Appellants, were allowed to open a civil action by the Wayne County Circuit Clerk by filing a *Motion to Dismiss Charges for Failure to File Indictment and For Lack of Evidence* on October 26, 2009. (C.P. 4-10). Mississippi Rule of Civil Procedure 3(a) states that “[a] civil action is commenced by filing a complaint with the court”. Miss. R. Civ. P. 3.

A “complaint goes to the heart of whether a civil action exists,” and “[its] absence relates directly to a court’s exercise of jurisdiction.” *Crawford v. Morris Transp., Inc.* 990 So.2d 162, 172-173 (Miss.2008).

Since there was no Complaint the civil action was not properly commenced and the relief granted was null and void. Miss. R. Civ. P. 60.

The Circuit Clerk of Wayne County did not enter a default. Prior to obtaining a default judgment, there must be an entry of default in compliance with Mississippi Rule of Civil Procedure 55 (a). Miss. R. Civ. P. 55.

Should the document titled *Motion to Dismiss Charges for Failure to File Indictment and For Lack of Evidence* be considered a Complaint the default judgment should be set aside as an “accident or mistake”. Mississippi Rule of Civil Procedure 60(b) provides in pertinent part that “on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment” if there was an “accident or mistake” or “any other reason justifying relief from the judgment.” There is no six-month time limit on a 60(b) (4) motion. The only limitation is that the motion be made “within a reasonable time...” *Overbey v. Murray*, 569 So.2d 303, 306 (Miss. 1990) citing Miss. R. Civ. P. 60.

Judge Lester Williamson, Jr. stated at the motion hearing “I failed to notice at the time that the Clerk had never entered a Clerk’s entry of default which also is a prerequisite to a default judgment; therefore, I find based on the evidence here that’s evident in the file that I signed a default judgement by mistake.” (T. 16). Judge Williamson continued [the default judgment] “was in fact void because the State of Mississippi was never given proper notice of the matter”. (T. 16).

The complaining parties inappropriately pursued civil relief from pending criminal charges which were not ripe for presentation to a grand jury. The criminal charges involved controlled substance violations and crime lab results were issued on December 7, 2009. There is no requirement that law enforcement must present active cases to the first grand jury after an arrest is made. Cases are often not ready to be presented immediately after a crime occurs or an arrest is made when additional evidence to prove the elements of a crime is needed. The forensic scientist’s findings are essential to proving charges involving controlled substances.

## CONCLUSION

The Default Judgment against the State of Mississippi signed by Circuit Judge Lester Williamson, Jr. and filed with the Wayne County Circuit Clerk on the 11<sup>th</sup> day of January, 2010 was a void judgment. The Appellants, Jamal Davis et al, failed to obtain in personam jurisdiction over the State of Mississippi by serving the District Attorney for the 10<sup>th</sup> Judicial District rather than the Attorney General for the State of Mississippi who is the designated agent for process in actions against the State of Mississippi. A court must have jurisdiction obtained by proper service of process in order to enter a default judgment against a party.

There was no in personam jurisdiction over the State of Mississippi. Before a default can be entered the court must have jurisdiction over the party against who the judgment is sought, which means that there must be effective service of process on that party.

No entry of default was entered by the Wayne County Circuit Clerk.

There was no Complaint filed with the Wayne County Circuit Clerk therefore a civil action was not properly commenced and the relief granted was null and void under Mississippi Rule of Civil Procedure 60(b) (4).

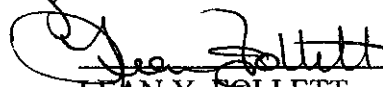
Even though the Rule 60 (b) motion was not required to be filed within six months of the date of entry of a default judgment, it was filed within six months of the date of entry of a default judgment, and the motion was not procedurally barred.


The *Order Setting Aside Default Judgment* should be affirmed.

**CERTIFICATE OF SERVICE**

I certify that I have mailed the original **BRIEF OF APPELLEE** to the Supreme Court Clerk along with three copies to MS. KATHY GILLIS, MISSISSIPPI SUPREME COURT CLERK, P O BOX 117, JACKSON, MS 39205-0117. Copies of the **BRIEF OF APPELLEE** have also been mailed to Frederick Jamal Davis, Ralph Hundley, Nathan Rogers, Joey Mayes, Johnny Pickens, Felicia Hundley at 11 Old St. Paul Church Rd, Waynesboro, Mississippi 39367. I have also mailed copies of the **BRIEF OF APPELLEE** to Johnny Lee Pickens at 25 Pickens Drive, Waynesboro, Ms 39367, Fredrick Davis at 891 Buckatunna Mt. Zion Road, Waynesboro, MS 39367 and Joey Kentese May at 713 Mitchell Street, Waynesboro, MS 39367 the addresses listed on guilty plea petitions filed with the Clerk of the Wayne County Court during 2010 and 2011. I certify that I have hand delivered a copy of the **BRIEF OF APPELLEE** to the Honorable Lester Williamson, Jr. at his office in the Lauderdale County Courthouse, Meridian, Mississippi.

This the 31<sup>st</sup> day of January, 2011.

  
LEAN Y. FOLLETT  
ASSISTANT DISTRICT ATTORNEY  
10<sup>TH</sup> JUDICIAL DISTRICT

LEAN Y. FOLLETT  
MBN:   
ASSISTANT DISTRICT ATTORNEY  
P.O. BOX 5172  
MERIDIAN, MISSISSIPPI 39302  
(601) 482-9757