

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

No. 2010-CP-00545-COA

ELIUS REED

Appellant

v.

STATE OF MISSISSIPPI

Appellee

BRIEF FOR APPELLANT

Elius Reed
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ELIUS REED

Appellant

v.

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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. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Elius Reed-Appellant

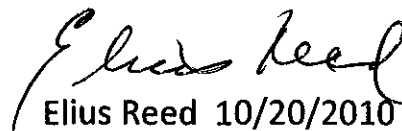

Elius Reed 10/20/2010
Pro Se

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STATEMENT OF THE ISSUES

1. Whether the Circuit Court erred in denying Appellant's 2nd Corrected Motion For Post Conviction Relief on the ground that it had found Appellant's Motion to be frivolous warranting a \$1,000.00 sanction because the Circuit Court and State Supreme Court had denied Appellant's evidence; after his conviction Appellant had not chose not to exercise his right to an Appeal, but attempted to attack his conviction by filing a Motion For Post Conviction Relief that was denied; where Appellant can show that the newly discovered evidence listed in Appellant's Corrected 2nd Motion For Post Conviction Relief filed on 12/23/2009 (certified copies of the 5/4/76 and 6/23/76 FBI Fingerprint Reports Appellant obtained from the FBI on 8/3/2000 via FOIA Request) were not listed as newly discovered evidence in Appellant's Motion For Post Conviction Relief filed on 12/4/1990; during period 4/11/1991-12/22/2009 Appellant did not file a Motion For Post Conviction Relief in the Circuit Court listing the 5/4/76 and 6/23/76 FBI Fingerprints Reports as newly discovered evidence; after his conviction Appellant did choose to exercise his right to an Appeal-Appellant did file a Notice of Appeal on 1/13/77.

STATEMENT OF FACTS

On 4/1/76 2-3 unknown masked black males Armed Robbed the Meridian. Mississippi Dixie Pak a Sak Store Owner J B Williams of about \$24.86 cents and the Posey Citgo Service Station of about \$125.00. On about 3:00 AM, 4/3/76 Meridian Police Department (MPD) Officers unlawfully stopped the Appellant's car for no reason as he was driving home from a restaurant; they then arrested and transported Appellant and his brother Robert Reed to the Meridian Police Station stating that Police Chief Roy Miller wanted to talk to them; as Appellant entered the Police Station he saw a older white male hiding behind the door; the MPD Officers did not advise Appellant and his brother of their Miranda Rights; the MPD Officers then attempted to have Appellant and his brother sign a written statement stating that they had robbed the Dixie Store and Posey Citgo Service

Station-Appellant and his brother did not sign the statement; the MPD Officers then charged Appellant and his brother for the Dixie Pak a Sak Store Armed Robbery and placed Appellant and his brother in jail-Appellant heard a MPD Officer tell the older white male (Dixie Pak a Sak Store Owner J B Williams) that they had arrested the Reed brothers; the MPD Officers later fingerprinted Appellant and his brother and forwarded their fingerprints to the Washington, D.C. FBI Latent Print Office to be compared to the latent fingerprints that had been recovered from the Dixie Pak a Sak Store cash register. On 5/4/76 the FBI Director mailed the MPD Police Chief a Fingerprint Report stating that 3 latent fingerprints of value appeared on 2 lifts in FBI Case No. B-29046; 2 of 3 latent fingerprints were not identical to Appellant Elius Reed and Robert Reed; inked impression of the sides and tips of Appellant Elius Reed's and Robert Reed's fingers were needed for a Conclusive Report. On about 6/1/76 Appellant and his brother voluntarily went to the MPD and were re-fingerprinted; the MPD again forwarded Appellant Elius Reed's and Robert Reed's fingerprints to the FBI Latent Print Office for a conclusive comparison. On 6/23/76 the FBI Director mailed the MPD Police Chief a Conclusive FBI Fingerprint Report stating that latent fingerprints in FBI Case No. B-29046 were not identical to Appellant Elius Reed and Robert Reed. During period 5/4/76-11/16/76 no discovery was conducted by Appellant's Attorney Tom Goldman/no disclosures of the 5/4/76 and 6/23/76 FBI Fingerprint Reports were made to the Appellant by the District Attorney in violation of Circuit Court Rule 9.04; Attorney Goldman did not inform Appellant and his brother of the 5/4/76 and 6/23/76 FBI Fingerprints Reports. During the 11/16/76 trial Dixie Store Owner J B Williams testified that Appellant and his brother Robert Reed had Armed Robbed him on 4/1/76; the 5/4/76 FIB Fingerprint and 6/23/76 Conclusive FBI Fingerprint Reports were not introduced as evidence or exhibits to the Jury; Appellant and his brother were convicted of the 4/1/76 Armed Robbery and were later administered 6 years sentences at the Mississippi State Penitentiary by Circuit Court Judge Lester Williamson Jr. On about 1/13/77 Appellant and his brother instructed their Attorney Tom Goldman to file a Notice of Appeal-Attorney Goldman filed the Notice of Appeal on 1/13/77. On 2/10/77 Circuit Clerk Raymond P. Davis and Circuit Court Judge Lester Williams Jr. coerced Appellant's parents to have Appellant and his brother sign a document entitled "Affidavit Waiving Rights To Remain In The Lauderdale County Jail" stating that Appellant and his brother no longer wished to pursue an Appeal and requested immediate transfer to the Mississippi State Penitentiary; the Affidavit was then illegally notarized and filed into the record of Case No. 8209. (See R. at

100; Exhibits #3,4). During period 1/13/77-present the Appellant has not filed a Motion to Withdraw/Dismiss the 1/13/77 Notice of Appeal. On 12/4/90 Appellant filed a Motion For Post Conviction Relief in the Circuit Court; Appellant did not list as newly discovered evidence the 5/4/76 and 6/23/76 FBI Fingerprints Reports. On 4/10/1991 the Circuit Court issued an Order denying Appellant's Motion For Post Conviction Relief on the ground that Appellant was not in custody/was not entitled to Post Conviction Relief. On 8/3/2000 the FBI responded to Appellant's FOIA Request and provided Appellant with certified copies of the 5/4/76 FBI Fingerprint Report and the 6/23/76 Conclusive FBI Fingerprint Report stating that Appellant Elius Reed's and Robert Reed's fingerprints were not identical to the latent fingerprints in FBI Case No. B-29046. (R. at 100; Exhibit #5). On 12/23/2009 Appellant filed a Corrected 2nd Motion For Post Conviction Relief in the Circuit Court listing as newly discovered evidence the certified copies of the 5/4/76 FBI Fingerprint and 6/23/76 Conclusive FBI Fingerprint Reports that had been provided to the Appellant by the FBI on 8/3/2000. (See R. at 100; Exhibit #5). On 2/2/2010 the Circuit Court Judge Lester Williamson Sr. issued an Order denying Appellant's Corrected 2nd Motion For Post Conviction Relief on the ground that he had found it to be frivolous warranting a \$1000.00 sanction because the Circuit Court and Supreme Court had denied Appellant's evidence; after his Conviction Appellant had chose not to exercise his right to an Appeal but attempted to attack his conviction by filing a Motion For Post Conviction Relief that was denied. (R. at 119). On 2/6/2010 Appellant filed a Notice of Appeal. (R. at 122).

STATEMENT OF THE CASE

This case involves an Appeal filed by the Appellant Elius Reed on 2/6/2010 of the Circuit Court's Order dated 2/2/210 denying Appellant's Corrected 2nd Motion For Post Conviction Relief filed on 12/23/2009.

SUMMARY OF THE ARGUMENT

The Circuit Court erred in denying Appellant's Corrected 2nd Motion For Post Conviction Relief on the ground that it had found Appellant's Motion to be frivolous warranting a \$1,000.00 sanction because the Circuit Court and State Supreme Court had denied Appellant's evidence; after his conviction Appellant had chose not to exercise his right to an Appeal but chose to attack his conviction by filing a Motion For Post Conviction Relief that was denied; where Appellant can show that:

- (1) The newly discovered evidence listed in Appellant's Corrected 2nd Motion For Post Conviction Relief filed on 12/23/2009 (certified copies of the 5/4/76 and 6/23/76 FBI Fingerprints Reports that Appellant had obtained from the FBI via FOIA Request on 8/3/2000), was not listed as newly discovered evidence in Appellant's Motion For Post Conviction Relief Filed on 12/4/1990.
- (2) During period 4/11/1991-12/22/2009 Appellant did not file a Motion For Post Conviction Relief in the Circuit Court listing the 5/4/76 and 6/23/76 FBI Fingerprint Reports as newly discovered evidence.
- (3) After his conviction Appellant did choose to exercise his right to an Appeal- Appellant did file a Notice of Appeal on 1/13/77.

ARGUMENT

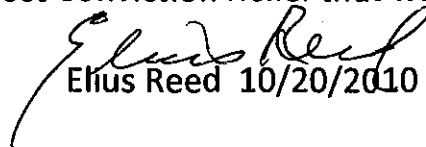
Mississippi Code Ann. Section 99-35-5 (Supp. 1992) states that (1) Any prisoner in custody under the sentence of a Court of record of the State of Mississippi (e) who claims that there exists evidence of material facts not previously presented and heard that requires vacation of the conviction in the interest of Justice; (2) a Motion for relief shall be made within 3 years after the time in which the Appeal is ruled on by the Mississippi State Supreme Court, or in the case if no Appeal is taken within 3 years after the time for taking an Appeal from the Judgment of conviction; **excepted from this 3 year statute of limitations are those cases in which the prisoner can demonstrate that he has evidence not reasonably discoverable at the time of trial which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction.**

It is undisputed that on 11/16/76 Appellant Elius Reed and his brother Robert Reed were convicted on the 4/1/76 Dixie Store Armed Robbery and were administered 6 year sentences at the Mississippi State Penitentiary. On 1/13/77 Appellant filed a Notice of Appeal. During period 1/13/77-present the Appellant has not filed a Motion To Withdraw/Dismiss the 1/13/77 Notice of Appeal. On 12/4/1990 Appellant filed a Motion For Post Conviction Relief in the Circuit Court- Appellant did not list the 5/4/76 and 6/23/76 FBI Fingerprint Reports as newly discovered evidence. On 4/10/1991 the Circuit Court issued its Order denying Appellant's Motion For Post Conviction Relief. During period 4/11/1991-12/22/2009 Appellant did not file a Motion For Post Conviction Relief in the Circuit Court listing the 5/4/76 and 6/23/76 FBI Fingerprints Reports as newly discovered evidence. On 8/3/2000 the FBI responded to Appellant's FOIA Request

and provided Appellant with certified copies of the 5/4/76 FBI Fingerprint and the 6/23/76 Conclusive FBI Fingerprint Reports stating that Appellant Elius Reed's and Robert Reed's fingerprints were not identical to the latent fingerprints in FBI Case No. B-29046. On 12/23/2009 Appellant filed a Corrected 2nd Motion For Post Conviction Relief in the Circuit Court listing the 5/4/76 FBI Fingerprint and 6/23/76 Conclusive FBI Fingerprint Reports as newly discovered evidence. Thus the Circuit Court and State Supreme Court did not deny Appellant's newly discovered evidence during period 4/11/1991-12/22/2009.

CONCLUSION

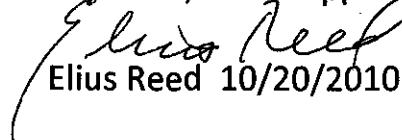
Thus the Circuit Court erred in issuing its Order dated 2/2/2010 denying Appellant's Corrected 2nd Motion For Post Conviction Relief on the ground that it had found it to be frivolous warranting a \$1,000.00 sanction because the Circuit Court and Supreme Court had denied Appellant's evidence; after his conviction Appellant had chose not to exercise his right to an Appeal but attempted to attack his conviction by filing a Motion For Post Conviction Relief that was denied.


Elius Reed 10/20/2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing has been deposited in the U S Mail; first class; postage pre-paid; addressed to:

District Attorney Bilbo Mitchell
500 Constitution Avenue
Meridian, Mississippi 39301

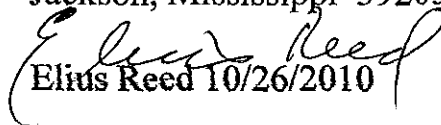

Elius Reed 10/20/2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy the Appellant Brief, filed on about 10/20/2010 in Case No. 2010-CP-00545, has been deposited in the U S Mail; first class; postage pre-paid, addressed to:

Circuit Court Judge Lester Williamson Sr.
500 Constitution Avenue
Meridian, Mississippi 39301

Mississippi Attorney General Jim Hood
P O Box 249
Jackson, Mississippi 39205-0249


Elius Reed 10/26/2010