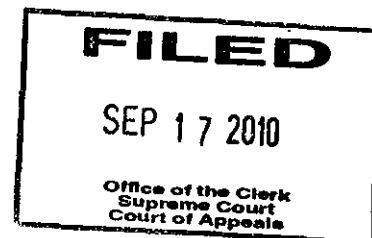


COPY

COVER LETTER

TO: MS. KATHY GILLIS, CLERK  
MISSISSIPPI SUPREME COURT/COURT OF APPEALS  
P.O. BOX 249  
JACKSON, MS. 39205-0249



FROM: JOSEPH R. TRISTE #146798  
CCRCF POD #4 BUNK #39  
120 LANDCASTER CIRCLE  
HOUSTON, MS. 38851

DATE: SEPTEMBER 10TH 2010

RE: FILING OF APPELLANT'S BRIEF IN NO. 2010-CP-00864  
JOSEPH R. TRISTE V. STATE OF MISSISSIPPI


DEAR MS. GILLIS,

PLEASE BE ADVISED THAT ENCLOSED IS AN ORIGINAL AND THREE(3) EXECUTED COPIES OF THE ABOVE REFERENCED CAUSE AND NUMBERED ACTION TO BE FILED IN YOUR MOST USUAL MANNER.

ADDITIONALLY, I'VE ENCLOSED WITH THE SAME, AN EXTRA COPY ALONG WITH A SELF ADDRESSED STAMPED ENVELOPE (S.A.S.E.) FOR YOU TO RETURN THE EXTRA COPY BACK TO ME STAMPED "FILED" WITH YOUR OFFICE FOR MY PERSONAL RECORDS.

ACCORDINGLY, PLEASE ALLOW ME THIS TIME TO THANK YOU IN ADVANCE FOR YOUR TIME, AND ANY FURTHER CONSIDERATIONS THAT YOU MAY HAVE AS IT PERTAINS TO THIS MATTER WILL BE GREATLY APPRECIATED.

RESPECTFULLY SUBMITTED

  
\_\_\_\_\_  
JOSEPH R. TRISTE #146798  
CCRCF POD #4 BUNK #39  
120 LANDCASTER CIRCLE  
HOUSTON, MS. 38851

CC:/FILE  
HON. JIM HOOD  
MISSISSIPPI ATTORNEY GENERAL

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## CITED AUTHORITY

ETHRIDGE VS. STATE 800 SO.2d 1221 (MISS.2001)	8
MISS. CODE ANN. 47-7-34	6,7,8
MISS. CODE ANN. 97-17-23	4,5,6,8

IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

JOSEPH R. TRISTE

APPELLANT

VERSUS

CASE NO. 2010-CP-00864

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PARTIES

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.

JOSEPH R. TRISTE, PRO SE

APPELLANT

HONORABLE JIM HOOD

MISSISSIPPI ATTORNEY GENERAL

RESPECTFULLY SUBMITTED.

THIS THE 17 DAY OF September 2010

Joseph R. Triste

JOSEPH R. TRISTE #146798  
CCRCF POD #4 BUNK #39  
120 LANDCASTER CIRCLE  
HOUSTON, MS. 38851

## STATEMENT OF ISSUES

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### PROPOSITION I:

APPELLANT'S SENTENCE IS ILLEGAL BECAUSE OF THE FIVE(5) YEARS OF POST-RELEASE SUPERVISION ADDED TO HIS TWENTY-FIVE YEAR SENTENCE FOR BURGLARY EXCEEDS THE AUTHORIZED MAXIMUM ALLOWED BY LAW FOR THE FELONY COMMITTED. ALSO, FINE OF \$1000 IMPOSED WAS ILLEGAL.

## STATEMENT OF THE CASE

---

ON OR ABOUT DECEMBER 20, 2007, DURING THE TERM THAT THE GRAND JURY MET IN ITAWAMBA COUNTY, INDICTMENTS WERE ISSUED AGAINST JOSEPH RICHARD TRISTE, HIS DAUGHTER, JAMIE DIANE TRISTE, AKA "JAMIE KIEFER" AMANDA JEAN BELL, RIKKI MARIE SWANN, AND CHARMAIN MARIE TRISTE. CHARGES INCLUDED BURGLARY OF A DWELLING, KIDNAPPING, ARMED ROBBERY, CONSPIRACY TO COMMIT BURGLARY, AND ACCESSORY AFTER THE FACT OF BURGLARY. (SEE R/A PAGES 19-21)

THEREAFTER, ON OR ABOUT FEBRUARY 23, 2009, THE APPELANT WAS CONVICTED OF "BURGLARY OF A DWELLING" IN VIOLATION OF MISS. CODE ANN. 97-17-23 AFTER PLEADING GUILTY, AND SENTENCED TO A TERM

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REFERENCES TO THE TRANSCRIPTS PAGE WILL BE IN THE FORMAT OF "R/A" FOLLOWED BY THE PAGE NUMBER. MISSISSIPPI PRACTICE IS TO REFER TO THE VOLUME CONTAINING PLEADINGS AND MOTIONS AS "CLERK'S PAPERS" OR "C.P." FOLLOWED BY THE PAGE, ADDITIONALLY, EXHIBITS OF RECIEPTS FOR FINES PAID WILL BE INCLUDED, THAT WERE NOT PREVIOUSLY AVAILABLE. "R/A" STANDS FOR "RECORD OF APPEAL"

OF TWENTY-FIVE (25) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS (M.D.O.C.) WITH SEVENTEEN (17) YEARS SUSPENDED, LEAVING A TOTAL OF EIGHT (8) YEARS TO SERVE. FURTHER, APPELLANT WAS SENTENCED TO AN ADDITIONAL FIVE (5) YEARS OF POST-RELEASE SUPERVISION ADDED TO HIS ALREADY TWENTY-FIVE (25) YEAR BURGLARY SENTENCE, TOTALLING THIRTY(30) YEARS. THEREBY THIS WOULD MAKE APPELLANT'S SENTENCE ILLEGAL IN THAT IT EXCEEDS THE AUTHORIZED MAXIMUM ALLOWED BY LAW FOR THE BURGLARY CHARGE BY FIVE (5) YEARS.

ADDITIONALLY, THE COURT IMPOSESD A ONE-THOUSAND DOLLAR (\$1000) FINE, WHICH NOWHERE IN THE STATUTE STATES ANYTHING ABOUT A FINE.

#### SUMMARY OF THE ARGUMENT

APPELLANT ASSERTS THAT THE SUMMARY OF THE ARGUMENT IS ACCURATE AND CLEAR. DUE TO THE FACT THAT THE TRIAL COURT WAS WITHOUT THE BOUNDS OF THE LAW WHEN IT SENTENCED THE APPELLANT TO FIVE(5) YEARS OF POST-RELEASE SUPERVISION. BECAUSE THAT WOULD ADD UP TO A TOTAL OF THIRTY (30) YEARS FOR THE "BURGLARY OF A DWELLING" THAT APPELLANT IS SERVING TIME ON.

APPELLANT ASSERTS FRUTHER THAT "BURGLARY OF A DWELLING" PURSUANT TO M MISS.CODE ANN 97-17-23 ONLY IS PUNISHABLE BY UP TO TWENTY-FIVE (25) YEARS IN PRISON, IN WHICH HE WAS SENTENCED TO. HOWEVER, THE TRIAL COURT ADDED AN ADDITIONAL FIVE (5) YEARS TO THAT SENTENCE WHEN IT IMPOSED A TERM OF POST-RELEASE SUPERVISION ON THE APPELLANT PURSUANT TO MISSISSIPPI CODE

ANN. 47-7-34. THUS THE SENTENCE IS ILLEGAL.

#### ARGUMENT

APPELLANT'S SENTENCE IS ILLEGAL BECAUSE OF THE FIVE (5) YEARS OF POST-RELEASE SUPERVISION ADDED TO HIS TWENTY-FIVE (25) YEAR SENTENCE FOR BURGLARY EXCEEDS THE MAXIMUM ALLOWED BY LAW FOR THE FELONY COMMITTED, AND FINE OF \$1000 IMPOSED WAS ILLEGAL.

---

APPELLANT ASSERTS THAT HIS SENTENCE IS ILLEGAL DUE TO THE FACT THAT THE TRIAL COURT UNLAWFULLY SENTENCED HIM TO AN ADDITIONAL FIVE (5) YEAR SENTENCE OF POST-RELEASE SUPERVISION ADDED TO HIS TWENTY-FIVE (25) YEAR SENTENCE FOR "BURGLARY OF A DWELLING".

APPELLANT ASSERTS THAT WITH THE FIVE(5) YERS OF POST-RELEASE SUPERVISION ADDED TO HIS "BURGLRY OF A DWELLING" IN WHICH HE WAS SENTENCED TO TWENTY-FIVE (25) YEARS, WOULD TOTAL A THIRTY (30) YEAR SENTENCE.

APPELLANT ASSERTS THAT THE STATUTE UNDER WHICH HE AS CONVICTED FOR "BURGLARY: BREAKING AND ENTERING INHABITED DWELLING; HOME INVASION" MISS. CODE ANN. SECTION 97-17-23(1) ITS VIVIDLY CLEAR.

IT STATES THAT;

- (1) "EVERY PERSON WHO SHALL BE CONVICTED OF BREAKING AND ENTERING THE DWELLING HOUSE OF INNER DOOR OF SUCH DWELLING HOUSE OF ANOTHER, WHETHER ARMED WITH A DEADLY WEAPON OR NOT, AND WHETHER THERE SHALL BE AT THE TIME SOME HUMAN BEING IN SUSCH DWELLING HOUSE OR NOT, WITH INTENT TO COMMITT SOME CRIME THEREIN, SHALL BE PUNISHED BY COMMITTMENT TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS FOR NOT LESS THAN THREE(3) YEARS NOR MORE THAN TWENTY-FIVE (25) YEARS."

APPELLANT ASSERTS THAT AFTER HE WAS SENTENCED ON THE "BURGLARY OF A DWELLING" TO TWENTY-FIVE (25) YEARS, HE WAS FURTHER SENTENCED TO FIVE (5) YEARS OF POST-RELEASE SUPERVISION PURSUANT TO MISS. CODE ANN 47-7-34 WHICH READS IN PART:

"...HOWEVER, THE TOTAL NUMBER OF YEARS OF INCARCERATION PLUS THE TOTAL NUMBER OF YEARS OF POST-RELEASE SUPERVISION SHALL NOT EXCEED THE MAXIMUM AUTHORIZED TO BE IMPOSED BY LAW FOR THE FELONY COMMITTED."

APPELLANT ASSERTS THAT THE TRIAL COURT FURTHER ERRED WHEN IT DENIED HIS MOTION FOR POST-CONVICTION RELIEF (R/A PAGES 199-200)

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APPELLANT ASSERTS THAT THE LAW IS VERY CLEAR THAT A CRIMINAL DEFENDANT CAN NOT BE SENTENCED TO A TERM OF ANY AMOUNT OF POST-RELEASE SUPERVISION PURSUANT TO MISS.CODE ANN 47-7-34 WHEN APPELLANT HAD ALREADY BEEN SENTENCED TO THE MAXIMUM THAT WAS AUTHORIZED BY LAW PURSUANT TO MISS. CODE ANN 97-17-23 FOR "BURGLARY OF A DWELLING" WITH THAT BEING TWENTY-FIVE (25) YEARS. ADDING FIVE (5) YEARS OF POST-RELEASE SUPERVISION TO THAT WOULD TOTAL THIRTY(30) YEARS.

APPELLANT ASSERTS THAT IF RELEASED FROM PRISON AND HAVING TO SERVE ANY AMOUNT OF TIME ON POST-RELEASE SUPERVISION, THEN IS BY CHANCE HE VIOLATES THE TERMS AND CONDITIONS OF HIS POST-RELEASE SUPERVISION. THEN HE WOULD HAVE SEVENTEEN (17) MORE YEARS OF THAT SUSPENDED PORTION OF THE BURGLARY SENTENCE TO SERVE.

APPELLANT ASSERTS THAT HIS CLAIM OF AN ILLEGAL SENTENCE IS CLARIFIED IN ETHRIDGE VS. STATE 800 SO. 2D 1221 (MISS. 2001). WHICH STATES:

" THE APPELLATE COURT HELD THAT THE RIGHT TO A LEGAL SENTENCE WAS A FUNDAMENTAL RIGHT...."

APPELLANT ASSERTS THAT THIS IS A BLATANT VIOLATION OF THE LAW, THAT HIS SENTENCE IS ILLEGAL, AND THUS, MUST BE VACATED AS TO THE FIVE(5) YEARS OF POST-RELEASE SUPERVISION.



CONCLUSION

WHEREFORE, PREMISES CONSIDERED, APPELLANT, JOSEPH R. TRISTE BELIEVES THAT HE HAS KEPT HIS CLAIM OF AN ILLEGAL SENTENCE CONCISE AND BRIEF, AND WOULD ASK THIS HONORABLE COURT TO GRANT THE FOLLOWING:

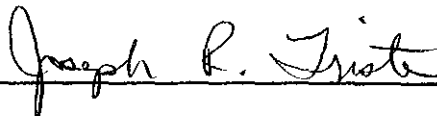
A) REVERSE AND REMAND THE DENIAL OF APPELLANT'S MOTION FOR POST-CONVICTION RELIEF BACK TO THE TRIAL COURT OF ITAWAMBA COUNTY, BY GRANTING THIS APPEAL, AND/OR

B) ORDER THAT THE FIVE(5) YEARS OF POST-RELEASE SUPERVISION BE VACATED FROM APPELLANT'S SENTENCE DUE TO THE FACT THAT WITH IT BEING ADDED TO THE TWENTY-FIVE(25) YEAR BURGLARY SENTENCE, WOULD TOTAL THIRTY(30) YEARS, WHICH EXCEEDS THE AUTHORIZED MAXIMUM ALLOWED BY LAW FOR THE FOLONY COMMITTED: AND

C) GRANT ANY FURTHER RELIEF THAT THIS HONORABLE COURT MAY DEEM APPELLANT IS ENTITLED TO BY LAW, INCLUDING DISMISSING THE \$1000 FINE THAT WAS IMPOSED AND ORDERING THE TRIAL COURT TO REFUND THE \$500 DOLLARS ALREADY PAID THAT WAS UNLAWFULLY IMPOSED. (SEE EXHIBIT "A")

RESPECTFULLY SUBMITTED

THIS THE 17 DAY OF September 2010



JOSEPH R. TRISTE #146798

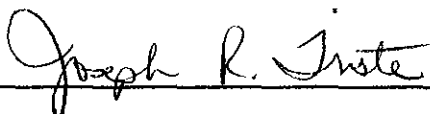
CERTIFICATE OF SERVICE

I, JOSEPH R. TRISTE #146798 DO HEREBY STATE THAT I HAVE CAUSED TO BE MAILED THIS DATE, VIA THE UNITED STATES POSTAL SERVICE, POSTAGE PRE-PAID, A TRUE AND CORRECT COPY OF THE FOREGOING ENCLOSED "BRIEF OF THE APPELLANT" TO THE FOLLOWING PARTIES OF INTEREST LISTED BELOW:

MS. KATHY GILLIS, CLERK  
MISSISSIPPI SUPREME COURT/COURT OF APPEALS  
P.O. BOX 249  
JACKSON, MS. 39205-0249

HON. JIM HOOD, ATTORNEY GENERAL  
OFFICE OF THE ATTORNEY GENERAL  
P.O. BOX 220  
JACKSON, MS. 39205-0220

MAILED THIS THE 17 DAY OF September 2010

  
\_\_\_\_\_  
JOSEPH R. TRISTE #146798  
CCRCF POD #4 BUNK #39  
120 LANDCASTER CIRCLE  
HOUSTON, MS. 38851

## FEE BILL, CRIMINAL CASES, CIRCUIT COURT

State of Mississippi  
Itawamba County

STATE VS TRISTE, TRISTE, BELL, SWANN &amp; KIEFER

Case # CR07-109      Acct #      1394 Paid By CASH      Receipt#      7046

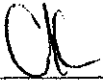
CLERK FEE	85.00
JURY TAX	3.00
COURT ADMINISTRATOR	2.00
LAW LIBRARY	2.50
COUNTY ATTORNEY	3.00
SCCF	.50
COURT REPORTER	10.00
SHERIFF FEE	35.00
OF	166.50
2% BOND	192.50

Total      \$500.00

Payment received from TRISTE, JOSEPH

Transaction      8437 Received      5/11/2009 at 14:55 Drawer      1 I.D. CAROLD

Account Balance Due      1,107.50      Receipt Amount      \$500.00

By  D.C. Carol Gates, Circuit Clerk

Case # CR07-109      Acct #      1394 Paid By CASH      Receipt#      7046