

IN SUPREME COURT OF MISSISSIPPI
NO. 2010-KA-0448-SCT

KEVIN ELDRIDGE

APPELLANT

V.

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S REPLY BRIEF

Oral Argument Requested

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STATUTES

none

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REQUEST FOR ORAL ARGUMENT

Pursuant to M. R. A. P. Rule 34, Appellant respectfully requests oral argument.

This appeal concerns important attorney-client conflict of interest issues arising from the appellant's previous court appointed counsel's participation in the prosecution of the appellant in the same case. Oral argument would also benefit the court on the remaining issues regarding ineffective assistance of counsel and weight of the evidence.

REPLY ARGUMENT

ISSUE NO. 1: *Conflict of Interest*

The state does not challenge the principle that, due to conflict of interests, a prosecutor who previously represented a particular defendant in a particular case may not then prosecute the former client in that case. *Ousley v. State*, 984 So. 2d 985, 987-88 (Miss. 2008). The state merely suggests that there was inadequate grounds for recusal of Eldridge's previous counsel notwithstanding his active participation at trial following several consultations with Eldridge in the capacity of appointed defense counsel.

A resolution of this issue requires the application of a three part test established by the Court in *Aldridge v. State*, 583 So. 2d 203 (Miss. 1991). The *Aldridge* opinion requires disqualification of a district attorney, an assistant, and an even the entire office, in circumstances such as Eldridge's here, unless the State proves that the previous defense lawyer-turned-prosecutor: (1) "had absolutely no participation in the case," (2)

“divulged no confidential information,” and (3) “notified the other party promptly upon becoming aware of the conflict of interest.” *Id.*

The state argues that Eldridge provided no notice of the conflict of interest to the state. However, the burden to provide notice is not on the defendant, rather the lawyer. *Id.* The burden to prove the *Aldridge* factors remains with the state. *Id.*

Applying the *Aldridge* test to the present case, Mr. Duggan did participate in the case against Eldridge. Duggan was never asked if he divulged confidential information, so the state did not meet this part of the test. Duggan did not notify Eldridge of the conflict of interest. A fair application of *Aldridge* to the present facts, therefore, as a matter of law, requires reversal.

ISSUE NO. 2: *Ineffective Assistance.*

The appellant rests on his initial brief and authorities therein.


ISSUE NO. 3: *Weight of Evidence*

The appellant rests on his initial brief and authorities therein.

Respectfully submitted,

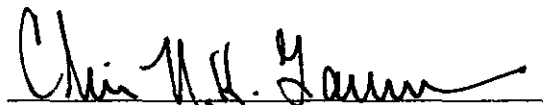
KEVIN ELDRIDGE

By:


Chris N. K. Ganner, His Attorney

CERTIFICATE

I, Chris N. K. Ganner, do hereby certify that I have this the 3 day of August, 2010, mailed a true and correct copy of the above and foregoing Brief Of Appellant to Hon. Samac Richardson, Circuit Judge, P. O. Box 1885, Brandon MS 39043, and to Hon. Marlin Miller, Asst. Dist. Atty., P. O. Box 68, Brandon MS 39043, and to Hon. W. Glenn Watts, Spec. Assistant Attorney General, P. O. Box 220, Jackson MS 39205 all by U. S. Mail, first class postage prepaid.


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