

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

**BOBBY CAMPBELL**

**APPELLANT**

**VS.**

**NO. 2012-CP-0074-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
STATEMENT OF FACTS .....	2
SUMMARY OF THE ARGUMENT .....	3
ARGUMENT .....	5
CAMPBELL'S CLAIMS OF A DEFECTIVE INDICTMENT AND AMENDMENT THERETO, ILLEGAL SENTENCE, <i>ET CETERA</i> , ARE EITHER DEVOID OF MERIT ON THEIR FACE OR SUBSTANTIALLY AND MATERIALLY CONTRADICTED BY THE RECORD. ....	5
CONCLUSION .....	10
CERTIFICATE OF SERVICE .....	11

## TABLE OF AUTHORITIES

### STATE CASES

<b>Baker v. State, 358 So.2d 401, 403 (Miss. 1978)</b>	<b>2, 4, 5, 9</b>
<b>Bilbo v. State, 881 So.2d 966, 968 (Ct.App.Miss. 2004)</b>	<b>4, 5</b>
<b>Brown v. State, 731 So.2d 595, 598 (Miss. 1999)</b>	<b>4, 5</b>
<b>Buckhalter v. State, 912 So.2d 159 (Ct.App.Miss. 2006)</b>	<b>6</b>
<b>Dockery v. State, No. 2011-CP-00643-COA decided February 21, 2012 [Not Yet Reported]</b>	<b>4</b>
<b>Fairly v. State, 812 So.2d 259, 263 (Ct.App.Miss. 2002)</b>	<b>4, 9</b>
<b>Falconer v. State, 832 So.2d 622 (Ct.App.Miss. 2002)</b>	<b>10</b>
<b>Hersick v. State, 904 So.2d 116, 125 (Miss. 2004)</b>	<b>4, 5</b>
<b>Jefferson v. State, 556 So.2d 1016, 1019 (Miss. 1989)</b>	<b>6</b>
<b>Mayfield v. State, 612 So.2d 1120, 1129 (Miss. 1992)</b>	<b>6</b>
<b>Mowdy v. State, supra, 638 So.2d 738, 743 (Miss. 1994).</b>	<b>9</b>
<b>Philips v. State, 856 So.2d 568, 570 (Ct.App.Miss. 2003)</b>	<b>4</b>
<b>Richardson v. State, 769 So.2d 230 (Ct.App.Miss. 2000)</b>	<b>2, 5, 9</b>
<b>Robinson v. State, 920 So.2d 1009, 1012 (Ct.App.2003)</b>	<b>9</b>
<b>State v. Santiago, 773 So.2d 921, 923-24 2000)</b>	<b>3</b>
<b>Swilley v. State, No. 2011-CP-01198-COA decided July 24, 2012 [Not Yet Reported]</b>	<b>8</b>
<b>Taylor v. State, 766 So.2d 830 (Ct.App.Miss. 2000)</b>	<b>2, 5</b>
<b>Turner v. State, 590 So.2d 871, 874 (Miss. 1991)</b>	<b>3</b>

### STATE STATUTES

<b>Miss.Code Ann. § 99-39-11</b>	<b>10</b>
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<b>Miss.Code Ann. §97-3-7</b>	<b>1</b>
<b>Miss.Code Ann. §99-35-143</b>	<b>7</b>
<b>Miss.Code Ann. §99-39-11(2)</b>	<b>3</b>
<b>Miss.Code Ann. §99-39-21(1)</b>	<b>7, 8</b>
<b>Miss.Code Ann. §99-39-23(7) (Rev.2000)</b>	<b>5</b>
<b>Miss.Code. Ann. §99-19-81</b>	<b>7</b>
<b>Mississippi Code Annotated Section 97-3-7 (1972)</b>	<b>6</b>

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**BOBBY CAMPBELL**

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**VS.**

**NO. 2012-CP-0074-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE CASE**

BOBBY CAMPBELL seeks appellate review of summary denial of a pleading styled “Petition for Writ of Habeas Corpus/Motion to Vacate Conviction and Sentence” filed in the Circuit Court of Jones County on November 15, 2011, only seven (7) months after entering on April 21, 2011, a voluntary plea of guilty to aggravated assault and recidivism charged under Miss.Code Ann. §97-3-7 and §99-19-81, respectively. (C.P. at 40-42; appellee’s exhibit A, attached.)

Campbell claims (1) his indictment was defective because it omitted certain essential elements and because he was denied a preliminary hearing; (2) his sentence was illegal; (3) the State’s motion to amend the indictment to reflect a charge of recidivism was deficient, and (4) one of the prior convictions used for sentence enhancement failed to pass muster.

The trial judge addressed each one of these claims in his ruling denying post-conviction relief. Several of these claims are belied by the transcript of the plea-qualification hearing taking

place on April 21, 2011, where Campbell answered questions under the trustworthiness of the official oath. (C.P. at 44, 43-68) They are belied by the amended petition to enter plea of guilty as well. It was sworn to and subscribed by Campbell himself. (C.P. at 13-20)

Campbell agreed there was a factual basis for his plea of guilty to aggravated assault as explained by the prosecutor (C.P. at 45-46) and agreed to plead guilty as a habitual offender in the wake of the amended indictment. (C.P. at 44)

This Court has said, time and again, that “[s]olemn declarations in open court carry a strong presumption of verity.” **Baker v. State**, 358 So.2d 401, 403 (Miss. 1978). Accordingly, an evidentiary hearing was not required. **Richardson v. State**, 769 So.2d 230 (Ct.App.Miss. 2000); **Taylor v. State**, 766 So.2d 830 (Ct.App.Miss. 2000).

This appeal from denial of post-conviction relief in the wake of a voluntary and intelligent plea of guilty is but another feeble effort by an industrious jailhouse lawyer to take advantage of a system that bends over backwards to protect the rights of the guilty.

The posture of this appeal is controlled, fully and fairly, by the standards found in the recent case of **Dockery v. State**, No. 2011-CP-00643-COA decided February 21, 2012 [Not Yet Reported], which addressed the “clearly erroneous” and “preponderance of the evidence” standards. (Slip Opinion at 7-8)

### STATEMENT OF FACTS

Bobby Campbell, a thirty-nine (39) year old male who had completed eleven (11) years of school and could both read and write (C.P. at 46), entered a guilty plea to aggravated assault and recidivism on April 21, 2011. He was thereafter sentenced to serve a term of twelve (12) years in the custody of the MDOC with eight (8) years to serve and four (4) years of post-release supervision. (C.P. at 21)

An amended petition to enter plea of guilty as a habitual offender is a matter of record at C.P. 13-20.

A transcript of the plea-qualification hearing is a matter of record at C.P. 96-111.

Campbell makes several claims. To the extent they include the voluntariness of his guilty plea, we address that claim also.

### SUMMARY OF THE ARGUMENT

Miss.Code Ann. §99-39-11(2) of the Mississippi Uniform Post-Conviction Collateral Relief Act authorizes a circuit judge to summarily dismiss a motion for post-conviction relief if it is manifestly devoid of merit.

Specifically, “[i]f it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief, the judge may make an order for its dismissal and cause the petitioner to be notified.” See **Parker v. State**, 71 So.3d 620, 623 (Ct.App.Miss. 2011) quoting from **State v. Santiago**, 773 So.2d 921, 923-24 (¶11) (Miss. 2000).

“This Court has established that dismissal of a PCR motion is proper where ‘it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’ ” **Id.** (Quoting **Turner v. State**, 590 So.2d 871, 874 (Miss. 1991)).

Judge Landrum’s order of dismissal reflects that “ . . . having fully reviewed the Motion and Exhibits attached thereto, and the Court file named hereinabove, the transcript of the hearing on the Plea Petition, and being fully and maturely advised in the premises does find and adjudicate as follows, to-wit: \* \* \* [T]he Motion for Post-Conviction Relief filed herein by Bobby Campbell is dismissed (1) for lack of any showing that the Movant is entitled to any relief whatsoever and (2) that Movant is not entitled to an evidentiary hearing.” (C.P. at 41-42)

When reviewing the voluntariness of a guilty plea, this Court “. . . will not set aside findings of a trial court sitting without a jury unless such findings are clearly erroneous.” **Dockery v. State**, *supra*, No. 2011-CP-00643-COA decided February 21, 2012 [Not Yet Reported] (§17), citing **Walton v. State**, 16 So.3d 66, 70 (§8) (Ct.App.Miss. 2009).

“The burden is upon [Campbell] to prove by a preponderance of the evidence that he is entitled to the requested post-conviction relief.” **Bilbo v. State**, 881 So.2d 966, 968 (§3) (Ct.App.Miss. 2004) citing Miss.Code Ann. §99-39-23(7) (Rev.2000).

Campbell has failed to do so here.

Solemn declarations in open court carry a strong presumption of verity. **Baker v. State**, 358 So.2d 401, 403 (Miss. 1978); **Fairly v. State**, 812 So.2d 259, 263 (§11) (Ct.App.Miss. 2002).

“This court reviews the denial of post-conviction relief under an abuse of discretion standard.” **Philips v. State**, 856 So.2d 568, 570 (Ct.App.Miss. 2003).

Summary denial was not an abuse of judicial discretion and was practical, prudent and proper in this case.

This Court will not reverse findings of fact made by a trial judge unless they are clearly erroneous [**Brown v. State**, 731 So.2d 595, 598 (§6) (Miss. 1999)], or manifestly wrong. **Hersick v. State**, 904 So.2d 116, 125 (Miss. 2004).

There are material contradictions between what Campbell says “here and now” that cannot be reconciled with what Campbell said “then and there.”

Therefore, summary denial was not an abuse of judicial discretion.



## ARGUMENT

### CAMPBELL'S CLAIMS OF A DEFECTIVE INDICTMENT AND AMENDMENT THERETO, ILLEGAL SENTENCE, *ET CETERA*, ARE EITHER DEVOID OF MERIT ON THEIR FACE OR SUBSTANTIALLY AND MATERIALLY CONTRADICTED BY THE RECORD.

"The burden is upon [Campbell] to prove by a preponderance of the evidence that he is entitled to the requested post-conviction relief." **Bilbo v. State**, *supra*, 881 So.2d 966, 968 (¶3) (Ct.App.Miss. 2004) citing Miss.Code Ann. §99-39-23(7) (Rev.2000). Campbell has failed to do so here.

When reviewing the trial court's decision to deny a petition for post-conviction relief, an appellate court will not disturb the trial court's factual findings unless they are found to be clearly erroneous. **Brown v. State**, *supra*, 731 So.2d 595, 598 (¶6) (Miss. 1999).

"A trial judge's finding will not be reversed unless manifestly wrong." **Hersick v. State**, *supra*, 904 So.2d 116, 125 (Miss. 2004).

"However, where questions of law are raised the applicable standard of review is *de novo*," i.e., afresh or anew. *Id.*

Any claims made by Campbell that his plea of guilty was not entirely voluntary are belied by the official record which includes the transcript of the plea-qualification hearing taking place on April 21, 2011, as well as the petition to enter plea of guilty. (C.P. at 43-68, 13-20) This Court has said, time and again, that "[s]olemn declarations in open court carry a strong presumption of verity." **Baker v. State**, 358 So.2d 401, 403 (Miss. 1978).

Accordingly, an evidentiary hearing was not required. **Richardson v. State**, 769 So.2d 230 (Ct.App.Miss. 2000); **Taylor v. State**, 766 So.2d 830 (Ct.App.Miss. 2000).

### **Defective Indictment.**

Campbell says his indictment failed to charge all of the essential elements of aggravated assault.

The trial judge, citing **Buckhalter v. State**, 912 So.2d 159 (Ct.App.Miss. 2006), correctly held that a valid guilty plea admits all elements of a formal charge and operates as a waiver of all non-jurisdictional defects contained in an indictment.

With only two exceptions the entry of a knowing and voluntary guilty plea waives all other defects or insufficiencies in the indictment. **Jefferson v. State**, 556 So.2d 1016, 1019 (Miss. 1989).

Campbell's indictment for aggravated assault charged that "... on or about the 10<sup>th</sup> day of January, 2010 A.D., [he] did unlawfully, willfully, and feloniously, cause bodily injury to another, David J. McDonald, with a knife, by intentionally stabbing said David J. McDonald about the chest; in violation of Mississippi Code Annotated Section 97-3-7 (1972) . . ." (C.P. at 12)

The indictment charged all of the essential elements of the crime as defined in §97-3-7(2)(b).

### **Denial of Preliminary Hearing.**

Campbell complains that he was denied a preliminary hearing.

The trial judge correctly held that Campbell's indictment by a Grand Jury operated as a waiver of Campbell's right to a preliminary hearing.

"We hold that once a defendant has been indicted by a grand jury, the right to a preliminary hearing is deemed waived." **Mayfield v. State**, 612 So.2d 1120, 1129 (Miss. 1992).

### **Illegal Sentence.**

Campbell claims his sentence was illegal because he was denied his right of allocution.

The trial judge was correct when he found as a fact that Campbell was given an opportunity

to speak before the court pronounced sentence.

THE COURT: Any of you have anything you want to say at this time?

DEFENDANT CAMPBELL: No, sir. (C.P. at 64)

In any event, we invite Campbell's attention to Miss.Code Ann. §99-35-143 which states, in its pertinent parts, that

[a] judgment in a criminal case **shall not be reversed because the transcript of the record does not show** a proper organization of the court below or of the grand jury, or where the court was held, or that the prisoner was present in court during the trial or any part of it, or **that the court asked him if he had anything to say why judgment should not be pronounced against him upon the verdict**, or because of any error or omission in the case in the court below, except where the errors or omission are jurisdictional in their character, unless the record show that the errors complained of were made ground of special exception in that court. [emphasis added]

#### **Defective Amendment.**

Prior to his plea, the State filed a motion to amend the indictment so as to reflect that Campbell had been twice previously convicted and twice previously incarcerated for two prior felonies thereby rendering him a recidivist by virtue of Miss.Code. Ann. §99-19-81. (C.P. at 25-26)

Campbell claims the habitual offender portion of his amended indictment was defective.

The trial judge was correct when he found as a fact and ruled as a matter of law that the transcript of the plea-qualification hearing demonstrated that Campbell never objected to the amendment as a habitual offender and, by virtue of the plea agreement, actually consented to the amendment. (C.P. at 13-24)

Miss.Code Ann. §99-39-21(1) reads as follows:

Failure by a prisoner to raise objections, defenses, claims, question, issues or errors either in fact or law which were capable of determination at trial and/or on direct appeal, regardless of whether such are based on the laws and the constitution of the state of Mississippi or of the United States, shall constitute a waiver thereof and shall be procedurally barred, but the court may upon a showing of cause and actual prejudice grant relief from the waiver.

This section “. . . prohibits a prisoner from raising certain issues in a PCR motion if they should have been raised prior to filing a PCR motion, and a failure to raise these issues acts as a waiver.” *Swilley v. State*, No. 2011-CP-01198-COA decided July 24, 2012 [Not Yet Reported], slip opinion at 4-5 (¶8).

**Prior Convictions.**

Campbell’s two prior convictions were both for dwelling house burglary. (C.P. at 27-32) The trial judge was neither clearly erroneous nor manifestly wrong when he found as a fact and held as a matter of law that “. . . a review of the two sentencing orders . . . evidence that both convictions are valid prior convictions which were properly used to enhance the penalty in this matter.” (C.P. at 42)

The trial judge found as a fact from the individual orders that Campbell’s pleas of guilty to each of the two prior convictions had been “entered freely, voluntarily and intelligently.” (C.P. at 69-70, 71-74)

Campbell did not object to the two priors, and Miss.Code Ann. §99-39-21(1) is equally applicable here.

In the end, Campbell was advised, in plain and ordinary English, of the specific constitutional rights he was waiving. (C.P. at 13-18)

Campbell acknowledged he had no complaints to make about his lawyer’s representation and

further acknowledged he was satisfied with Mr. Piazza's services. (C.P. at 15, 63) Campbell agreed there was a legal and factual basis for his plea as those facts were explained by the prosecutor. (C.P. at 46-47) These acknowledgments have got to stand for something. See **Elliott v. State**, 41 So.3d 701, 708 (¶23) (Ct.App.Miss. 2009), where "Elliott's testimony at the plea hearing contradict[ed] his contentions [and] Elliott affirmed that he was 'totally satisfied' with his counsel's legal representation."

In **Robinson v. State**, 920 So.2d 1009, 1012 (¶10) (Ct.App.2003), the Court of Appeals held that material contradictions in the plea transcript rendered Robinson's assertions "a sham." We respectfully submit the same may be true here.

Although a defendant is entitled to change his mind, solemn declarations made in open court under the trustworthiness of the official oath carry a strong presumption of verity. **Baker v. State**, *supra*, 358 So.2d 401, 403 (Miss. 1978); **Fairley v. State**, *supra*, 812 So.2d 259, 263 (¶11) (Ct.App.Miss. 2002), citing **Richardson v. State**, *supra*, 769 So.2d 230, 235-36 (¶14) (Ct.App.Miss. 2000). Stated somewhat differently, for purposes of determination of the voluntariness of a guilty plea, the Supreme Court places " . . . a strong presumption of validity upon an individual's statements made under oath." **Mowdy v. State**, *supra*, 638 So.2d 738, 743 (Miss. 1994).

This presumption has not been overcome here.

## CONCLUSION

Miss.Code Ann. § 99-39-11 reads, in its pertinent parts, as follows:

\* \* \* \* \*

(2) *If it plainly appears* from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief, *the judge may make an order* for its dismissal and *cause the prisoner to be notified*.

\* \* \* \* \*

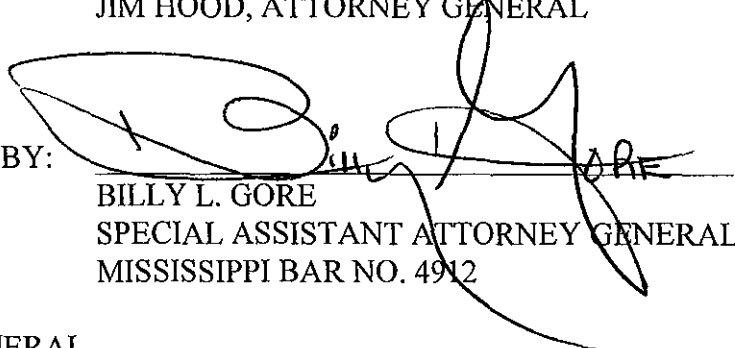
It does, he did, and he was. **Falconer v. State**, 832 So.2d 622 (Ct.App.Miss. 2002) [“(W)e affirm the dismissal of Falconer’s motion for post-conviction relief as manifestly without merit.”].

Appellee respectfully submits this case is devoid of any claims worthy of an evidentiary hearing or vacation of the guilty plea voluntarily and intelligently entered by Bobby Campbell. Accordingly, the judgment entered in the lower court summarily denying Campbell’s motion for post-conviction collateral relief - essentially a motion to vacate Campbell’s conviction via his plea of guilty - should be forthwith affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

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**IN THE CIRCUIT COURT OF JONES COUNTY, MISSISSIPPI**

**SECOND JUDICIAL DISTRICT**

**BOBBY CAMPBELL**

**MOVANT**

**VERSUS**

**CIVIL ACTION NO. 2011-102-CV11**

**STATE OF MISSISSIPPI**

**RESPONDENT**

**ORDER DENYING MOTION FOR POST-CONVICTION COLLATERAL RELIEF**

BOBBY CAMPBELL seeks relief from conviction in Jones County Circuit Court, Second Judicial District, Cause No.2010-103-KR2, and the Court, having fully reviewed the Motion and Exhibits attached thereto, and the Court file named hereinabove, the transcript of the hearing on the Plea Petition, and being fully and maturely advised in the premises does find and adjudicate as follows, to-wit:

**JURISDICTION**

The Movant timely filed his Petition for Writ of Habeas Corpus/Motion to Vacate Conviction and Sentence, which this Court has determined is a Petition for Post-Conviction Collateral Relief, on the 14<sup>th</sup> day of November, 2011, being within three (3) years of the entry of his guilty plea on the 21<sup>st</sup> day of April, 2011, to the indictment against him in Cause Number 2010-103-KR2, being a charge of Aggravated Assault, Habitual Offender. Therefore, the Court has full and complete jurisdiction over the Motion for Post-Conviction Relief.

**ALLEGATION OF ERROR**

Movant requests post-conviction relief based on the fact that the indictment returned against him was faulty; that he was denied a Preliminary Hearing; that his sentence was illegal and unlawful in that the Judge failed to give Movant the opportunity to say anything before he pronounced sentence; that the State's Motion to Amend Indictment was defendant, and that one



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Bart Gavin  
Circuit Clerk  
Jones County, Mississippi

of Movant's prior convictions did not meet the requirements for use as a prior conviction to enhance his sentence.

### FINDINGS

The merits of Campbell's Motion entitle him to no relief and no hearing on his Motion. In particular, he raises no argument, theory, alleged error or other rationale showing that he is entitled to relief. The Court finds all of the above arguments presented by Movant to be without merit.

The Mississippi Court of Appeals reiterated the holding of many cases that "[t]he law is well settled in Mississippi jurisprudence that '[a] valid guilty plea admits all elements of a formal criminal charge and operates as a waiver of all non-jurisdictional defects contained in an indictment against a defendant.'" *Buckhalter v. State*, 912 So.2d 159 (Miss. App. 2005). A thorough review of Campbell's guilty plea indicates that his plea was entered freely, voluntarily and intelligently. **See Transcript of Plea Hearing, attached as Exhibit A.**

Movant next claims that he was denied a Preliminary Hearing. However, because Movant was indicted by a Grand Jury prior to his arrest, he was not entitled to a Preliminary Hearing.

Next, Movant avers that his sentence was illegal and unlawful, as the Court failed to give him an opportunity to make any statements to the Court prior to sentencing. Despite Movant's contention, a review of the plea transcript reveals that the Court did, in fact, give Movant every opportunity to address the Court prior to sentencing. **See Transcript of Plea Hearing, attached as Exhibit A, p. 22, Lines 3-5.**

Further, Movant claims that the State submitted a defective Motion to Amend Indictment. However, a review of the plea and the Transcript of the Plea Hearing, reveals that Movant did



not object to the Motion to Amend, and in fact, by virtue of his plea agreement, consented to said amendment.

Finally, Movant alleges that one of his prior convictions for which the State based his being charged as a habitual offender, did not meet the requirements for use as a prior conviction that could be used to enhance his penalty. However, a review of the two sentence orders, attached hereto as Exhibit B, evidence that both convictions are valid prior convictions which were properly used to enhance the penalty in this matter. Further, the Movant pled guilty in open court, and his plea was found to be freely, voluntarily and intelligently made. **See Sentence Orders attached hereto as Exhibit B.**

IT IS, THEREFORE, ORDERED that the Motion for Post-Conviction Relief filed herein by Bobby Campbell is dismissed (1) for lack of any showing that the Movant is entitled to any relief whatsoever and (2) that Movant is not entitled to an evidentiary hearing.

The Clerk of Court is ordered to mail a copy of this Order to the Movant at his last mailing address shown of record. All costs herein are assessed to Jones County.

SO ORDERED AND ADJUDGED this the 15<sup>th</sup> day of November, 2010.



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CIRCUIT COURT JUDGE

MIN 178 178

**CERTIFICATE OF SERVICE**

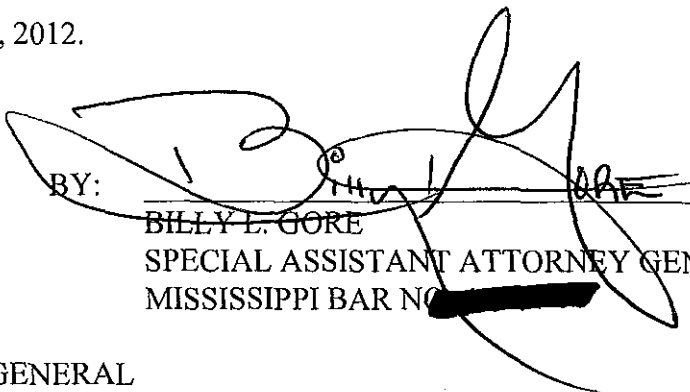

I, Billy L. Gore, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the above **BRIEF FOR THE APPELLEE** to the following:

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This the 30th day of July, 2012.

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