COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2015-CP-01374-COA

ORIGINAL

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SUPREME COURT
COURT OF APPEALS

JAMES KENARD PARISH, APPELLANT,

VERSUS

STATE OF MISSISSIPPI, APPELLEE.

APPEAL FROM CIRCUIT COURT OF HARRISON COUNTY

BRIEF FOR APPELLANT

APPELLANT PRO SE:

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IN THE COURT OF APPEALS--STATE OF MISSISSIPPI
NO. 2015-CP-01374-COA

JAMES KENARD PARISH, APPELLANT,

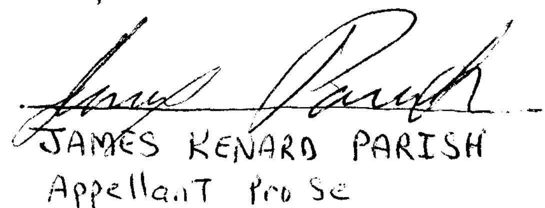
VERSUS

STATE OF MISSISSIPPI, APPELLEE.

The Appellant 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 this Court may evaluate possible disqualification or recusal.

1. Honorable Lawrence P. Bourgeois, Jr., Second Circuit Judge
2. Honorable Joel Smith, District Attorney
3. Honorable Jim Hood, Attorney General
4. James Kenard Parish, Appellant

DATED, This the 1 day of MAR, 2016.



JAMES KENARD PARISH
Appellant Pro Se

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STATEMENT OF THE ISSUES

1. Appellant's guilty plea was entered involuntarily, unknowingly, and unintelligently.

2. Appellant's conviction and sentence derived from a defective indictment.

3. The evidence was insufficient to support the verdict of possession with intent to sell.

4. Appellant was denied the effective assistance of trial counsel.

5. Appellant's sentence is illegal as a matter of law and/or in the interest of justice.

STATEMENT OF THE CASE

That on/or about March 7, 2007, Appellant was arrested in Gulfport (Harrison County), Mississippi, on the charge of Possession of a Controlled Substance with Intent to Sell. That on/or about July 16, 2007, Appellant was indicted by a Harrison County, Mississippi Grand Jury, and charge with the criminal offense of 'Possession of Controlled Substance with Intent' (Miss. Code Ann. § 41-29-139(a)(1)); 'Enhanced Penalty' (Miss. Code Ann. § 41-29-147); and 'Habitual offender' (Miss. Code Ann. § 99-19-81).

That on/or about December 3, 2007, Appellant (subsequent to a plea-bargain), Appellant entered a plea of guilty to 'Possession of Controlled Substance with Intent' in exchange for a Ten (10) year sentence as a habitual offender, and dismissal of other pending charge(s).

During the sentencing stage, the Court expressed that the plea-bargained sentence of Ten (10) years (12/03/07) would not be honored by the Court; the Court (Honorable Stephen B. Simpson), then sentenced Appellant to a term of Twenty (20) years imprisonment, as a habitual offender, to be served in the custody of the Mississippi Department of Corrections, day-for-day without the eligibility of parole or any other early release options.

SUMMARY OF THE ARGUMENT

1. Part of the inducement of Appellant's guilty plea, was the promise of a Ten (10) year prison sentence... Thus, because Appellant was sentence to a term of Twenty (20) years imprisonment, rather than the promised Ten (10) years; Appellant's guilty plea was not voluntary, knowing, and intelligent.

2. The indictment was defective, as it did not identity any person Appellant was alleged to sell to, as to intent... and, furthermore so because it did not state the alleged weight of the drugs.

3. Appellant's due process rights was violated as the evidence put forth by the State did not show intent, to support the verdict.

4. Appellant was denied the effective assistance of trial counsel, as counsel failed to investigate the facts and circumstances of the case... and, erroneously advised Appellant to enter a plea of guilty to a defective indictment.

5. Appellant's sentence is illegal as a matter of law and/or in the interest of justice... As Appellant plea-bargained for a ten (10) years sentence, but was instead sentence to twenty (20) years.

ARGUMENT

I.

APPELLANT'S GUILTY PLEA WAS ENTERED INVOLUNTARILY, UNKNOWINGLY AND UNINTELLIGENTLY.

In the case sub judice, Appellant's

plea is invalid, because the same is centered around the breach of the plea-bargained agreement by the State, and the erroneous advice of trial counsel. In this regard, a guilty plea may be set aside as involuntary, when the Appellant can establish prejudice, for the most part from ineffective assistance as trial counsel; and/or a breach of the plea-bargained agreement by the State. Appellant contends that the results of an evidentiary hearing to be ordered by the Court will prove these claims; See, Williams v. State, 473 So. 2d 974 (Miss. 1985). See also, U. S. v. Kraus, 137 F.3d 447, 449 (7th Cir. 1998) and Scott v. State, 817 So. 2d 642 (Miss. Ct. App. 2002).

Part of the inducement to obtain Appellant's guilty plea, was the [p]romise of a ten (10) years sentence of imprisonment. It is yet to be decided if this promised sentence was the main inducement underlying the guilty plea. At any rate, it cannot be concluded that Appellant's guilty plea was knowingly and intelligently made. The Constitution requires that a guilty plea be made knowingly and intelligently, as well as voluntary; See, Tollett v. Henderson, 411 U.S. 258, 266 (1973). See also, Shafer v. Bowersox, 329 F.3d 637, 648 (8th Cir. 2003) and U.S. v. Bradley, 381 F.3d 641, 647 (7th Cir. 2004).

In respect to Appellant's contention, that his guilty plea is invalid, no guilty plea colloquy was made a part of the record designated for this appeal. When a conviction derives from a guilty plea, the court reporter must keep a verbatim record of the plea proceedings that take place in the court; including the court's advice to the accused, the voluntariness inquiry, the factual basis inquiry, and the details of the plea agreement. In absence of this record, the court is not entitled to presume guilty plea knowing and voluntary; see, Boykin v. Alabama, 395 U.S. 238, 243 (1969). See also, U.S. v. Correa-Torres, 326 F.3d 18, 24 (1st Cir. 2003), and Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005).

In the case at bar, Trail Counsel informed Appellant that in exchange for his guilty plea, that he would 'inter alia' receive a Ten (10) years term of imprisonment. However, Appellant was sentenced to a term of Twenty (20) years imprisonment. In this regard, the ineffective assistance of Trial Counsel prevented Appellant from entering a knowing and voluntary guilty plea; see, Hill v. Lockhart, 474 U.S. 52, 59 (1985). See also, White v. State, 751 So. 2d 481 (Miss. Ct. App. 1999) and Readus v. State, 837 So. 2d 209 (Miss. Ct. App. 2003).

Herein, Appellant signed a plea-bargain

agreement for a Ten (10) years sentence of imprisonment in exchange for his guilty plea. After the State had secured the conviction--via the guilty plea in question-- the Court then sentenced Appellant to a term of Twenty (20) years imprisonment, rather than the agreed upon Ten (10) years term. In this regard, the plea-bargained agreement was breached by the State. The determination of whether a plea agreement has been breached is governed by the law of contracts, with some exceptions. Due process requires that any ambiguity be construed against the government; see, U.S. v. Villa-Vazquez, 536 F.3d 1189, 1197 (10th Cir. 2008). See also, U.S. v. De La Garza, 516 F.3d 1266, 1270 (11th Cir. 2008) and U.S. v. Lovelace, 565 F.3d 1080, 1087 (8th Cir. 2009).

In the case at bar, Appellant's guilty plea was not voluntary, knowing and intelligent. Thus, the same is invalid, and must be vacated; see, Courtney v. State, 704 So.2d 1352 (Miss. Ct. App. 1997). See also, U.S. v. Sibley, 448 F.3d 754, 759 (5th Cir. 2006) and Puckett v. U.S., 129 S.Ct. 1423, 1430 (2009).

II.

APPELLANT'S CONVICTION AND SENTENCE DERIVED

FROM A DEFECTIVE INDICTMENT.

In the case sub judice, the indictment was defective to such an extent, that it deprived the court of jurisdiction over this case. Under this indictment, the Trial Court had no judicial authority to accept Appellant's guilty plea, and to impose sentence in this case; See, U.S. V. Osiemi, 980 F.2d 344, 345 (5th Cir. 1993). See also, David V. U.S., 134 F.3d 470, 474 (1st Cir. 1998) and Harris V. U.S., 149 F.3d 1304, 1307 (11th Cir. 1998).

The indictment charge Appellant in pertient part, that he on/or about January 14, 2007, did knowingly, wilfully, unlawfully and feloniously possess cocaine, with intent to transfer or distribute; see Exhibit-A. The indictment failed to identify any person whom the Appellant intended to transfer or distribute the cocaine to. Thus, the indictment was facilly defective, as not putting the Appellant on sufficient notice of the charge against him; see, Bryant V. State, 427 So.2d 131 (Miss. 1983). See also, Stringfield V. State, 588 So.2d 438 (Miss. 1991) and Holland V. State, 656 So.2d 1192 (Miss. 1995).

The substance of an indictment charging possession with intent to transfer or distri-

bute Cocaine, must allege the weight of the controlled substance involved in the case; which said weight should also be proven. There is no mention of the weight of the cocaine in the indictment-- making same fatally defective; see, U. S. V. Doggett, 230 F.3d 160 (5th Cir. 2000). See also, U. S. V. Wilkes, 130 F.Supp. 2d 222 (D. Mass. 2001) and Jamison V. State, 73 So.3d 567 (Miss. 2011). The amount (weight) of the alleged drugs in the case is an element of the offense charge... The absense of same invalidate the indictment.

The only evidence presented by the State, as charged in the indictment, is that Appellant possessed cocaine with intent. There is no evidence whatsoever to support the portion of the charge that Appellant intended to transfer or distribute the said cocaine. Rule 7.06, of the Uniform Rules of Circuit and County Court Practice holds that: "The indictment upon which the defendant is to be tried shall be a plain, concise and definite written statement of the essential facts constituting the offense charged and shall fully notify the defendant of the nature and cause of the accusation." In this respect, the indictment is lacking; see, Copeland V. V. State, 423 So. 2d 133 (Miss. 1982). See also, Drane V. State, 493 So. 2d 294 (Miss. 1986) and

Hicks v. State, 580 So.2d 1302 (Miss. 1991).

In the case at bar, the indictment was flawed, and as such was insufficient as to putting Appellant on notice of the charge against him. An indictment is not sufficient if it fails to state a material element of the offense. Herein, the indictment did not identify a person, or even a potential person to whom Appellant intended to transfer or distribute the cocaine to... nor 'inter alia' did the indictment list the amount (weight) of the cocaine involved. In determining whether an indictment sufficiently informs the defendant of the offense charged, the courts give the indictment a common-sense construction; See, U.S. v. Du Bo, 186 F.3d 1177, 1179 (9th Cir. 1999). See also, U.S. v. Hoover, 467 F.3d 496, 499 n.2 (5th Cir. 2006) and U.S. v. Armstrong, 550 F.3d 382, 392 (5th Cir. 2008).

In Peterson v. State, 671 So.2d 647, 653 (Miss. 1996), quoting with approval from Love v. State, 52 So.2d 470, 472 (Miss. 1951), held as follows: "It is fundamental... that an indictment, to be effective as such, must set forth the constituent elements of a criminal offense; if the facts alleged do not constitute such an offense within the terms and meaning of the law or laws on which the accusation is based, or if the facts allege may

all be true and yet constitute no offense, the indictment is insufficient... Every material fact and essential ingredient of the offense -- every essential element of the offense -- must be alleged with precision and certainty, or, as has been stated, every fact which is an element in a prima facie case of guilt must be stated in the indictment." The indictment in question was lacking in stating the essential element of the offense charged; see, Thomas v. State, 591 So.2d 837 (Miss. 1991). See also, Jowers v. State, 593 So.2d 46 (Miss. 1992) and Miller v. State, 634 So.2d 127 (Miss. 1994).

III.

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICT OF POSSESSION WITH INTENT.

In the case sub judice, there was no evidence that Appellant planned to transfer or distribute the cocaine in question to anyone. As before mentioned, even the indictment failed to identify or name such a person. Under the Due Process Clause of the Fifth [Fourteenth], Amendment, the prosecutor is required to prove beyond a reasonable doubt every element of the crime with which

a defendant is charged. The reasonable doubt requirement applies to elements that distinguish a more serious crime from a less serious one--as to simple possession opposed to possession with intent; See, Hollingsworth v. State, 392 So. 2d 515 (Miss. 1981). See also, Clayton v. State, 582 So. 2d 1019 (Miss. 1991) and LaTiolais v. Whitley, 93 F.3d 205 (5th Cir. 1996).

The indictment charged Appellant with possession of Cocaine, a Scheduled II Controlled substance, with intent to transfer or distribute. Because no person whom the alleged transfer or distribution was to be made, apparently this allegation was made on the amount of cocaine that was in Appellant's possession. However, the mere amount of drugs present in a select case, is insufficient evidence of an intent to transfer or distribute; see, Edwards v. State, 615 So. 2d 590 (Miss. 1993). See also, Jones v. State, 635 So. 2d 884 (Miss. 1994) and Murray v. State, 642 So. 2d 921 (Miss. 1994).

The underlying facts of this instant case, is that the cocaine possessed by Appellant could have been for his personal use. A cocaine user is just like any other consumer, the more money on hand, the more drugs that you can buy. IT has always been said, that cocaine is a

rich man drug, because ones who uses it never gets enough. In this regards, absent a person whom Appellant intended to transfer or distribute same to, the cocaine could have just as easily been for Appellant's own personal use; See, Boches v. State, 506 So.2d 254 (Miss. 1987) and U.S. v. Skipper, 74 F.3d 608 (5th Cir. 1996).

There was nothing in the indictment or the prosecution's offer of proof, as evidence that Appellant intended to transfer or distribute the cocaine. Thus, it come down to the fact that the prosecution's charge of intent is merely a presumption. A presumption is an evidentiary device that enables the fact-finder to find a statutory element of a crime -- called an "ultimate" or "elemental" fact -- from "basic" or "evidentiary" facts already proved beyond a reasonable doubt. However, the Supreme Court has cautioned that a presumption is [u]nconstitutional if it undermine(s) the factfinder's responsibility... to find the [elements of a crime] beyond a reasonable doubt; See, In Re Winship, 397 U.S. 358, 364 (1970). See also, Sullivan v. Louisiana, 508 U.S. 275, 278 (1993) and Clark v. Ariz., 548 U.S. 735, 766 (2006).

Accepting Appellant's guilty plea for possession of cocaine with intent to transfer or distribute, without any proof of the latter, and then

imposing sentence for said charge, amounts to a miscarriage of justice; See, U.S. v. White, 406 F.3d 827, 836 (7th cir. 2005). See also, U.S. v. Lopez-Medina, 461 F.3d 724, 739 (6th cir. 2006) and U.S. v. Acosta, 475 F.3d 677, 681 (5th cir. 2007). In this regard, the State's failure to meet its burden of proof should result in Appellant's acquittal; See, McKenzie v. Smith, 326 F.3d 721, 728 (6th cir. 2003). See also, U.S. v. Scofield, 433 F.3d 580, 586 (8th cir. 2006) and U.S. v. Hall, 515 F.3d 186, 194 (3d cir. 2008).

IV.

APPELLANT WAS DENIED THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

The Sixth Amendment to the United States Constitution guarantees that, criminal defendants are entitled to the assistance of counsel in presenting their defense. The right to counsel is a fundamental right of criminal defendants; it assures the fairness and thus the legitimacy of the adversary process; see, Kimmelman v. Morrison, 477 U.S. 365, 374 (1986). Furthermore, the United States Supreme Court has recognized that, the right to trial counsel, is the right to the effective assistance of trial counsel;

McMann v. Richardson, 397 U.S. 759, 771 (1970).

Appellant is cognizant of the fact that, in order to prove this ineffectiveness of counsel's claim, he will have to establish that: (1) counsel's representation fell below an objective standard of reasonableness; and (2) but for counsel's error, there is a reasonable probability that the outcome of the proceeding would have been different; see, Strickland v. Washington, 466 U.S. 668 (1984).

In the case sub judice, Trial Counsel, Robert Koon, commited multiple errors which served to deprive Appellant of his constitutional right to the effective assistance of Trial Counsel. In respect to these errors, there was no equal test of the adversaries [prosecution-vs-defense], and as a further result, Appellant was deprived of his due process right to a fair trial--in this case criminal proceedings ending in a guilty plea; see, McKenzie v. State, 101 So. 2d 651 (Miss. 1958) and Triplett v. State, 666 So. 2d 1356 (Miss. 1995). Primarily, had counsel not promised only a Ten (10) years prison sentence, Appellant more than likely would have bypassed the entry of his guilty plea and went to trial; see, Hannah v. State, 943 So. 2d 20 (Miss. Ct. App. 2006).

Herein, Trial Counsel, inter alia, failed to adequately meet with Appellant to discuss the case,

failed to address key facts of defenses, or to ascertain that potential defenses did not exist, which amounts to trial counsel's failure to conduct any type of independent pretrial investigation into the true facts and circumstances of the case. Trial counsel has an obligation to conduct a substantial independent pre-trial investigation into each of the plausible lines of defense. An independent substantial investigation is just what the term implies--it does not demand that counsel discover every shred of evidence, but that a reasonable inquiry into all plausible defenses be made; see, U.S. v. Cronic, 466 U.S. 648, 659 (1984). See also, Rompilla v. Beard, 545 U.S. 374, 381 (2005) and Higgins v. Renico, 470 F.3d 624, 631 (6th cir. 2006).

In the case at bar, Appellant was indicted and charged with a facially and fatally defective indictment. Appellant was charged in the indictment with possession of cocaine with intent to transfer or distribute. However, the indictment did not identify any person Appellant was alleged to transfer or distribut the cocaine to -- nor did the indictment list the amount of drugs in this case, lacking key elements of the charged offense; see, Huffington v. Nuth, 140 F.3d 572 (4th cir. 1998). See also, Buehl v. Vaughn, 166 F.3d 163, 172 (3d cir. 1999) and Sonnier v. Quarterman, 476 F.3d 349, 358 (5th cir. 2007).

Rather Than conduct an independent pre-Trial investigation, Trial Counsel relied solely on The information [discovery packet], provided To him by The prosecution To prepare To defend Appellant in This case. In This regard, Trial Counsel was Totally unprepared To effectively defend Appellant in This case, and preceded by inducing Appellant To enter a plea of guilty, resulting in ineffective assistance of Trial Counsel; see, Williams v. Washington, 59 F.3d 673, 679 (7th Cir. 1995). See also, Beene v. State, 910 So.2d 1152, 1155 (Miss. Ct. App. 2005) and Outten v. Kearney, 464 F.3d 401, 414 (3d Cir. 2006).

The prevailing argument presented herein demonstrate That Trial Counsel's performance was deficient [Toro v. Quarterman, 498 F.3d 486, 490 (5th Cir. 2007)], and That, Counsel's deficient performance resulted in prejudice To Appellant [Virgil v. Dretke, 446 F.3d 598, 613 (5th Cir. 2006)], depriving Appellant his Constitutional right To The effective assistance of Trial Counsel--and his due process right To a fair Trial. In This regard, Appellant is entitled To The relief sought, or at The least an evidentiary hearing; see, Williams v. Taylor, 529 U.S. 362, 396 (2000). See also, Glover v. U.S., 531 U.S. 198, 201 (2001) and Stewart v. Wolfenbarger, 468 F.3d 338, 361 (6th Cir. 2006).

V.

APPELLANT'S SENTENCE IS ILLEGAL AS A MATTER OF LAW AND/OR IN THE INTEREST OF JUSTICE.

In The case sub judice, Appellant was lead To believe--as an inducement-- That he would receive only a Ten (10) years prison sentence in exchange for his guilty plea. However, during The Sentencing Stage, The Court Sentenced Appellant To a Term of Twenty (20) years imprisonment, despite The plea agreement for Ten (10) years. In This respect, Appellant's sentence is illegal as a matter of law; See, U.S. V. Olano, 507 U.S. 725, 732 (1993). See also, U.S. V. Booker, 543 U.S. 220, 224 (2005) and U.S V. Bigelow, 462 F.3d 378, 380 (5th Cir. 2006).

During The Course of The preTrial plea-bargaining Session, Appellant asserted To Trial Counsel That he was only guilty of possession, but To no avail, as counsel ignored him and only persisted in inducing Appellant To enter a plea of guilty in exchange for a Ten (10) years prison Sentence [all be it served day-for-day]. However, Appellant was Sentenced To Twenty (20) years, rather Than The agreed upon Ten (10) years prison

Sentence.... Said Twenty (20) years being imposed in violation of Appellant's due process rights; See, U.S. v. Markin, 263 F.3d 491, 495 (6th Cir. 2001). See also, U.S. v. Martinez, 434 F.3d 1318, 1322); and U.S. v. Colson, 573 F.3d 915, 916 (9th Cir. 2009).

IT can easily be said That, The majority of Circuit Court Criminal cases are revolved by guilty pleas. Once a State (prosecutor), as well as defense counsel serves up an offer To induce a guilty plea, This offer must be fulfilled: because in The signing and/or voicing of This guilty plea, The accused pleas away his liberty, his freedom. In not fulfilling This offer of a Ten (10) years prison Sentence, after using This promise To induce Appellant To enter his plea, seriously adversely affects The fairness, integrity and/or public reputation of judicial proceedings; See, U.S. v. Bailey, 488 F.3d 363, 368 (6th Cir. 2007). See also, U.S v. Gonzalez-Terrazas, 529 F.3d 293, 296 (5th Cir. 2008) and U.S. v. Garrett, 528 F.3d 525, 529 (7th Cir. 2008).

As a rule-of-law, Appellant has a constitutional right To a legal Sentence. In fact, The Courts holds That The right To a legal Sentence after The State has secured a Criminal Conviction is a [f]undamental [c]onstitutional [r]ight. Thus, The imposition of The Twenty (20) years prison

was imposed in violation of Appellant's constitutional rights; See, U.S. V. Wolfe, 245 F.3d 257, 261 (3d cir. 2001). See also, U.S. V. Benton, 523 F.3d 424, 433 (4th Cir. 2008) and U.S. v. Burns, 526 F.3d 852, 858 (5th Cir. 2008).

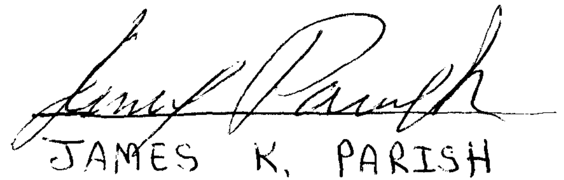
Most, if not all, Trial judges' findings of fact, and conclusions of law, are reviewable under the abuse of discretion standards. After the prosecution and defense entered into a plea-bargain agreement for a Ten (10) years prison sentence in exchange for Appellant's guilty plea, the Trial Court abused its discretion in imposing a Twenty (20) years prison sentence; See, U.S. V. Fernandez, 443 F.3d 19, 26 (2d cir. 2006). See also, U.S. V. Sanchez-Juraz, 446 F.3d 1109, 1114 (10th cir. 2006) and U.S. V. Gall, 552 U.S. 38, 50 (2007).

From the outset of these proceedings, it has never been disputed nor denied that, Appellant was promised a Ten (10) years prison sentence in exchange for his guilty plea. Once Appellant had incriminated himself -- by entering the agreed upon guilty plea -- the Trial Court then imposed a Twenty (20) years sentence. Furthermore, after the Trial Court informed Appellant that the Ten (10) years prison sentence was not to be imposed, the Trial Court did not provide Appellant

an opportunity to withdraw the guilty plea. Appellant's current prison sentence of Twenty (20) years amounts to an unconscionable injustice, and the same should be vacated and set aside; see, Wetz v. State, 503 So. 2d 803 (Miss. 1987). See also, Herring v. State, 691 So. 2d 948 (Miss. 1997) and California v. Roy, 519 U.S. 2, (1997).

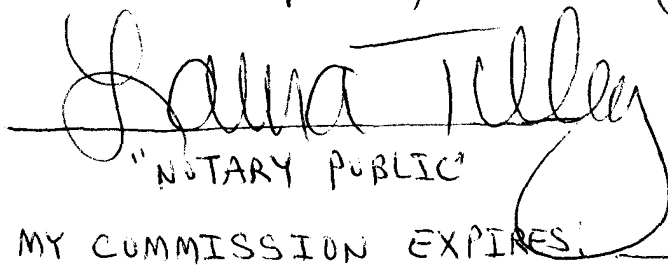
WHEREFORE, Appellant respectfully prays that the guilty plea be vacated; sentence set aside; and the case remanded for further proceedings; and for such other and further relief as this Court may deem just and proper.

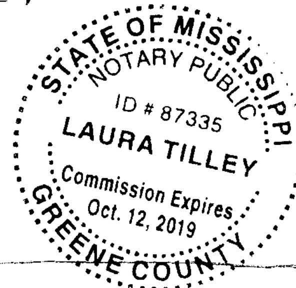
Respectfully Submitted,



JAMES K. PARISH

SWORN TO AND SUBSCRIBED BEFORE ME,
This the 1 day of March, 2016.





STATE OF MISSISSIPPI
NOTARY PUBLIC
ID # 87335
LAURA TILLEY
Commission Expires
Oct. 12, 2019
GREENE COUNTY

"NOTARY PUBLIC"

MY COMMISSION EXPIRES: ________________.

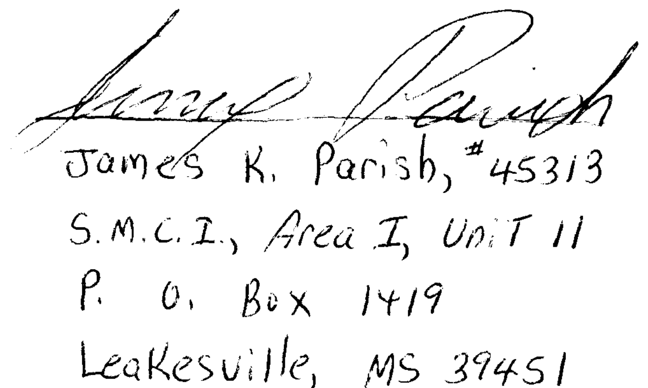
CERTIFICATE OF SERVICE

This is to certify that I, James Parish, MDOC # 45313, have this day and date mailed, via United States Mail, postage prepaid, a true and correct copy of 'Appellant Brief' to the following:

Muriel B. Ellis, Clerk
Supreme Court
P. O. Box 249
Jackson, MS 39205

Honorable Jim Hood,
Attorney General
P. O. Box 220
Jackson, MS 39205

This the 1 day of MAR, 2016.



James K. Parish, #45313
S.M.C.I., Area I, Unit 11
P. O. Box 1419
Leakesville, MS 39451

EXHIBIT-A(1)

INDICTMENT

THE STATE OF MISSISSIPPI, CIRCUIT COURT MARCH TERM, A. D., 2007

FIRST JUDICIAL DISTRICT, COUNTY OF HARRISON No. B2401-07-584

POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT
Section 41-29-139(a)(1), Miss. Code of 1972, as amended
ENHANCED PENALTY - Section 41-29-147, Miss. Code of 1972, as amended
HABITUAL OFFENDER - Section 99-19-81, Miss. Code of 1972, as amended

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful citizens of the First Judicial District of Harrison County, duly elected, empaneled, sworn and charged to inquire in and for the said State, County and District, at the Term of Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present:
That:

JAMES KENARD PARISH aka JAMES KINARD PARISH aka JAMES KINE PARISH

in the First Judicial District of Harrison County, Mississippi, on or about January 14, 2007

did knowingly, wilfully, unlawfully and feloniously possess COCAINE, a SCHEDULE II Controlled Substance, with the intent to transfer or distribute the said controlled substance, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

After he, the said James Kenard Parish aka James Kinard Parish aka James Kine Parish, had previously been convicted on June 25, 1992, of the crime and felony of Transfer of Controlled Substance, said conviction having been in the Circuit Court of Harrison County, Mississippi, First Judicial District, being Cause Number 26,804,

in violation of Section 41-29-147, Miss. Code of 1972, as amended, under which Section the State of Mississippi intends to seek twice the maximum punishment for the crime of Possession of Controlled Substance With Intent, to-wit: COCAINE, a SCHEDULE II Controlled Substance, and against the peace and dignity of the State of Mississippi.

And we, the aforesaid GRAND JURORS, upon our oaths do further present, that he, the said James Kenard Parish aka James Kinard Parish aka James Kine Parish, is a habitual criminal who is subject to being sentenced as such pursuant to Section 99-19-81, Miss. Code of 1972, as amended, in that he, the said James Kenard Parish aka James Kinard Parish aka James Kine Parish, has been convicted at least twice previously of felonies or federal crimes upon charges separately brought and arising out of separate incidents at different times and has been sentenced thereon to separate terms of imprisonment of one year or more, to-wit:

(1) On June 13, 1988, he, the said James Kenard Parish aka James Kinard Parish aka James Kine Parish, was convicted in the Circuit Court of Harrison County, Mississippi, First Judicial District, in Cause Number 22,016, of the felony of Attempted Burglary, and, on June 13, 1988, in said Court, was sentenced to a term of five years in the custody of the Mississippi Department of Corrections; and,

EXHIBIT-A(2)

INDICTMENT

THE STATE OF MISSISSIPPI, CIRCUIT COURT MARCH TERM, A. D., 2007

FIRST JUDICIAL DISTRICT, COUNTY OF HARRISON No. B2401-07-584

(2) On June 25, 1992, he, the said James Kenard Parish aka James Kinard Parish aka James Kine Parish, was convicted in the Circuit Court of Harrison County, Mississippi, First Judicial District, in Cause Number 26,804, of the felony of Transfer of Controlled Substance, and, on June 25, 1992, in said Court, was sentenced to a term of three years in the custody of the Mississippi Department of Corrections; and,

(3) On April 12, 1994, he, the said James Kenard Parish aka James Kinard Parish aka James Kine Parish, was convicted in the Circuit Court of Harrison County, Mississippi, First Judicial District, in Cause Number 28,115, of the felony of Burglary of a Dwelling, and, on April 12, 1994, in said Court, was sentenced to a term of ten years in the custody of the Mississippi Department of Corrections; and,

(4) On April 12, 1994, he, the said James Kenard Parish aka James Kinard Parish aka James Kine Parish, was convicted in the Circuit Court of Harrison County, Mississippi, First Judicial District, in Cause Number 28,116, of the felony of Burglary of a Dwelling, and, on April 12, 1994, in said Court, was sentenced to a term of ten years in the custody of the Mississippi Department of Corrections; and,

(5) On October 11, 1996, he, the said James Kenard Parish aka James Kinard Parish aka James Kine Parish, was convicted in the Circuit Court of Harrison County, Mississippi, First Judicial District, in Cause Number B2401-96-00019, of the felony of Uttering Forgery, and, on October 11, 1996, in said Court, was sentenced to a term of seven years in the custody of the Mississippi Department of Corrections; and,

(6) October 11, 1996, he, the said James Kenard Parish aka James Kinard Parish aka James Kine Parish, was convicted in the Circuit Court of Harrison County, Mississippi, First Judicial District, in Cause Number B2401-96-00020, of the felony of Uttering Forgery (two counts), and, on October 11, 1996, in said Court, was sentenced to a term of seven years for each count in the custody of the Mississippi Department of Corrections; and,

(7) April 19, 2002, he, the said James Kenard Parish aka James Kinard Parish aka James Kine Parish, was convicted in the Circuit Court of Harrison County, Mississippi, First Judicial District, in Cause Number B2401-01-375, of the felony of Grand Larceny, Count I, and, on April 19, 2002, in said Court, was sentenced to a term of four years in the custody of the Mississippi Department of Corrections; and,

(8) April 19, 2002, he, the said James Kenard Parish aka James Kinard Parish aka James Kine Parish, was convicted in the Circuit Court of Harrison County, Mississippi, First Judicial District, in Cause Number B2401-01-375, of the felony of Receiving Stolen Property, Count V, and, on April 19, 2002, in said Court, was sentenced to a term of four years in the custody of the Mississippi Department of Corrections; and,

(9) April 19, 2002, he, the said James Kenard Parish aka James Kinard Parish aka James Kine Parish, was convicted in the Circuit Court of Harrison County, Mississippi, Second Judicial District, in Cause Number B2402-01-664, of the felony of Shoplifting, and, on April 19, 2002, in said Court, was sentenced to a term of four years in the custody of the Mississippi Department of Corrections; and,

EXHIBIT-A(3)

INDICTMENT

THE STATE OF MISSISSIPPI, CIRCUIT COURT MARCH TERM, A. D., 2007

FIRST JUDICIAL DISTRICT, COUNTY OF HARRISON No. B2401-07-584

(10) April 19, 2002, he, the said James Kenard Parish aka James Kinard Parish aka James Kine Parish, was convicted in the Circuit Court of Harrison County, Mississippi, First Judicial District, in Cause Number B2401-01-894, of the felony of Accessory After the Fact of Armed Robbery, and, on April 19, 2002, in said Court, was sentenced to a term of four years in the custody of the Mississippi Department of Corrections; and against the peace and dignity of the State of Mississippi.

A TRUE BILL

DISTRICT ATTORNEY

FOREMAN OF THE GRAND JURY

WITNESSES: Bradley Walker

AFFIDAVIT

Comes now Jewel Dunaway, Jr., Foreman of the aforesaid Grand Jury, and makes oath that this indictment presented to this Court was concurred in by twelve (12) or more members of the Grand Jury and that at least fifteen (15) members of the Grand Jury were present during all deliberations.

FOREMAN OF THE GRAND JURY

Sworn to and subscribed before me this the 16 day of July, 2007.

GAYLE PARKER, CIRCUIT CLERK

By Priscilla Crockett, D.C

FILED
JUL 16 2007
GAYLE PARKER
CIRCUIT CLERK
By