

no: 19-5435

In The

Supreme Court of the United States

STEVEN EASON - PETITIONER

VS.

Scott Middle brooks - warden - respondent

ON Petition for writ of Cert. to

Mississippi Supreme Court

Petition for Writ of Cert.

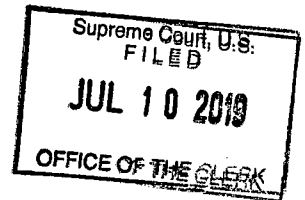
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ORIGINAL



Questions Presented

(I)

Mississippi, Colorado And Illinois All opinion that in an indictment charging Sexual Battery, the "Method of Achieving Sexual Penetration" is irrelevant, mere surplusage in the indictment and not required to be proven by the Prosecution. [But], Mississippi charges multiple Sexual Battery charges in an indictment, out of the same set of facts, that are identical, [except] for the "Method of Achieving Sexual Penetration."

Does this violate a defendant's U.S. and state Constitutional right protection against double Jeopardy or is it covered under the standard set forth in Blockburger?

(II)

This Hon. Court in U.S. v. Cotton 535 U.S. 625 (2002) ruled that, "defects in subject-matter jurisdiction can [never] be forfeited or waived." (emphasis added). If a claim of "Actual innocence because the state failed to charge a crime cognizable under law, removing jurisdiction from the convicting court," is legally founded, Is a defendant's Constitutional rights violated when the State Supreme court "time barred" the claim and stated it raised "no Arguable" basis, without opinion or case law authority to support its decision?

(III)

Is the defendant being "Forced" to serve 60 years mandatory more than his Sentencing order, [written], reflects? Violating his rights to Equal protection, cruel and unusual punishment and Due Process of law?

List of Parties

All Parties Appear in the caption of the case on the cover page.

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In The
Supreme Court of the United States

Petition for a Writ of Certiorari

Petitioner EASON respectfully prays that a Writ of Certiorari issue to review the claims herein from the judgment below.

Opinions Below

The opinion of the Mississippi Supreme Court appears at Appendix "A" to the petition and is unpublished. Cause # 2018-M-00808

Jurisdiction

The date on which the Mississippi Supreme Court denied my Application for permission to file a successive Post-Conviction in the trial court was June 25, 2019. No petition for rehearing was filed. This petition for Writ of Certiorari is filed within ninety days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Constitutional And Statutory provisions Involved

The Fifth Amend. to the U.S. Const. provides in pertinent part as follows;

no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, nor be deprived of life, liberty, or property, without due process of law; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.

U.S. Const. Am. V

The Sixth Amend. to the U.S. Const. provides in pertinent part as follows;

In all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and cause of the accusation.

U.S. Const. Am. VI

The Eighth Amend. to the U.S. Const. provides in pertinent part as follows;

... nor cruel and unusual punishment inflicted.

U.S. Const. Am. VIII

The Fourteenth Amend. to the U.S. Const. provides in pertinent part as follows;

... nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of law.

U.S. Const. Am. XIV

Miss. Code Ann. § 97-1-6 (Supp. 2006) provides in pertinent part as follows;

In addition to any other ~~penalties~~ and provision of law, any person over the age of (17) who shall direct or cause any person under the age of (17) to commit any crime which would be a felony if committed by an adult shall be guilty of a felony and upon conviction shall be fined not more than (10,000.⁰⁰~~xx~~) or imprisoned for not more than (20) years or both.

Miss. Code Ann. 97-1-6

Miss. Code Ann. § 97-3-95 (Supp. 2006) provides in pertinent part as follows;

- (1) A person is guilty of Sexual Battery if "He or she" engages in sexual penetration with;
 - (A) another person without his or her consent;
 - (B) a mentally defective, mentally incapacitated or physically helpless person;
 - (C) a child at least (14) but under (16) years of age if the person is (36) or more months older than the child; or
 - (d) a child under (14) years of age if the person is (24) or more months older than the child.

Statement of the Case

Eason was indicted in April 2003 for 2 counts of statutory rape and 2 counts sexual battery, in Cause # 5051, naming (1) alleged victim for all 4 counts, (R.R.). In Oct. 2005, Eason was re-indicted in a superseding indictment, of 4 counts sexual battery, Cause # 5234 (Appendix "V"). Counts I, II and III name only (1) victim (R.R.) and count IV names two (R.R. and J.P.). Eason went to trial on Cause # 5234 in Feb. 13, 2006 to Feb. 16, 2006 and the jury found him guilty on all charges. The Sentencing judge sentenced Eason to 30 years on each of the 4 counts, to run consecutively, for a total of 120 years, with 10 years to serve and the remainder suspended in the [written] order, see issue III, but Eason is sentenced to 100 years to serve. Eason properly filed notice of appeal through court appointed counsel, raising 2 claims; "the weight and sufficiency of the evidence, (Appendix "U"), arguing that count 4 of cause # 5234 did not allege the essential elements of M.C.A. 97-3-95(1)(A) to properly charge Eason with a crime. The Miss. Ct. App. affirmed Eason's convictions on March 4, 2008, (Appendix "U"). Motion for rehearing was denied Aug. 19, 2008 without opinion. Writ of Cert. in the Miss. Supreme Court was denied on Nov. 5, 2008 without opinion (Appendix "T"). Eason's original P.C.R. was denied by the Miss. Supreme Court on May 27, 2009 only addressing ineffective assistance of counsel in a one page opinion (Appendix "S"). Eason then filed his original habeas corpus 2254 in the Southern Dist. of Miss. District court (Appendix "O") raising this and other claims. Eason then attempted to appeal that decision to the 5th Cir. court of Appeals in a request for a C.O.A. and I.P. and was denied as inadequately briefing of his claims (Appendix "M"). During this time, Eason filed 2 successive state P.C.R. motions arguing his sentence was incorrectly calculated (Appendix "L" and "N"). Eason then filed a writ of Cert. in the U.S. Supreme Court which was denied without opinion on Oct. 3, 2011, (Appendix "K"). Since then, Eason has filed 6 other successive state P.C.R. motions (Appendix "J", "H", "G", "E", "C", "A"), which were all denied without opinion or relief. And Eason filed 2 Miss. Rule of Civil Proc. Rule 60(b)(4) (Judgment is void) petitions in the Miss. Supreme Court and they were ruled as request for reconsideration and denied. (2018-m-00808). Eason has filed 4 applications for authorization

to file a successive 2254 petition (Appendix "I," "F," "D," "B"). EASON also filed numerous petitions in the 5th Cir. claiming the state committed "fraud upon the court" in its response to his request for permission to file a successive 2254 (claiming his sentence had expired), (Appendix "D"), but was denied as requests for re-review of the denial of his Application, (SEE 16-60811). EASON also filed a "notice of Constitutional Question of law" to the 5th Cir. Court of App. but it was denied because of the order of barring "any" filings in that court, (SEE Appendix "A-2" and "B"). EASON then filed a writ of Habeas Corpus § 2241 in the U.S. Supreme Court which was denied without opinion (Appendix "A-1"). EASON then filed another successive state P.C.R. motion raising these claims, which was denied without opinion and EASON warned that his issues were frivolous and future filings would bring severe sanctions. (Appendix "A"). Therefore, this writ of cert. ensues.

Reasons for Granting Petition

ISSUE I

Eason requests this Hon. Court liberally construe his filings. SEE e.g. Castillo v. U.S. 530 U.S. 126 (2000).

In People v. Rodriguez 914 P.2d 236, 258 (Colo. 1996), the state of Colorado held that, "specification of the particular manner in which [the defendant] committed the element of sexual intrusion" is not part of the essential elements of the offense.

In People v. Ross 395 Ill. App. 3d 660, 917 N.E. 2d 1111, 1121, 335 Ill. DEC. 47 (Ill. Ct. App. 2009), Illinois case law provides that the type of sexual penetration is [not] an element of the offense, and its inclusion in the indictment is merely surplusage. . . "The state need only prove that a type of sexual penetration occurred beyond a reasonable doubt."

In Hines v. State 472 So. 2d 386, 390 (Miss. 1985), the Mississippi Supreme Court stated, "we reject the argument that an indictment for sexual battery was insufficient because it 'fail[ed] to specify which organ of [the defendant's] body was said to have penetrated which orifice of [the victim].'"

And in Ehlander v. State 789 So. 2d 109, 112 (p. 7) (Miss. Ct. App. 2001), the Mississippi Court of Appeals held that the particular "method of achieving sexual penetration is not an element of the offense" of sexual battery.

Eason was charged in a multi-count indictment of (4) counts of sexual battery under Miss. Code Ann. 97-3-95, which provides in pertinent part:

- (1) A person is guilty of sexual battery if "he or she" engages in sexual penetration with;
 - (A) another person without his or her consent;
 - (B) a mentally defective, mentally incapacitated or physically helpless person;
 - (C) a child at least (14) but under (16) years of age if the person is (36) or more months older than the child; or
 - (d) a child under the age of (14) years if the person is (24) or more months older than the child.

Counts 1, 2 and 3 of Eason's indictment allege violations of subsection (1)(d) and count 4 is charged under subsection (1)(A). (SEE Appendix "E").

Eason claims that counts 2 and 3 violate his state and Federal Constitutional rights against double jeopardy because counts 1, 2 and 3 are identical in every way except for the "method of achieving sexual penetration," such as count 1 is vaginal, count 2 is anus and count 3 is oral. (SEE Appendix "V")

This Court ruled in 1932 in Blockburger, that;

where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision [requires proof] of an additional fact which the other does not. Id@304

but it also states that; "where the [same elements] are [required] by each charge, they are considered the same offense and (emphasis added) double jeopardy bars additional punishment." Id@299

The difference between Blockburger and Eason is that all 3 of Eason's charges are indicted under the same statute and same subsection.

The question is, "should Mississippi be allowed to use the "method of achieving sexual penetration" to charge multiple charges out of the same set of facts, if the only thing separate and distinct in each count is the "method of achieving sexual penetration?"

Mississippi case/law has ruled and adhered to, the opinion that the "method of achieving sexual penetration" is irrelevant and mere surplusage in the indictment and [is not] required to be proven. Such examples are crystal clear; SEE,

Burrows v. State 961 So.2d 701, 706 (P.14) (Miss. 2007) (where the defendant was alleged to have digitally penetrated the victim, while proof showed he used an object.)

Graham v. State 185 So.3d 992, 998-99 (pp. 16-17) (Miss. 2016) (the allegation was that the defendant performed fellatio on the "female" victim, but it was adequate that the state showed the victim had performed fellatio on the defendant.)

Phandler supra @ 111 (P.3) (Count II of digital penetration was [amended] [after] the testimony of the child and the child's therapist that "pointed to acts of fellatio rather than digital penetration." HE appealed claiming the amendment was substantive and it interrupted his defense strategy, requiring him to defend a broader charge of sexual penetration rather

than the specific charge of digital penetration," the court rejected his claim and affirmed his conviction. Id. (p.5).
Hennington v. State 702 So.2d 403, 408 (p.20) (Miss. 1997) (whether there was penetration "of" or penetration "with" the victim is not an essential element of the crime and is [not relevant]).
Young v. State 194 So.3d 904, 909-10 (pp. 19-21) (Miss. Ct. App. 2016) (Young complained that one of his jury instructions was erroneous because it denied him a unanimous verdict, when it allowed the jury to [pick] between two different orifices that he may have penetrated in a single count. The ~~court~~ cited People v. Rodriguez supra, People v. Rose supra, Hines supra, and Chandler supra to emphasize the [fact] that the "method of achieving sexual penetration" is not an element of the offense of sexual battery. The court opined that, "the jury unanimously convicted young of sexually penetrating the victim, which is the essence of the offense of sexual battery." Id. (p.21).

In Eason's indictment counts 1, 2 and 3 are completely identical, Every thing is exactly the same, "Except!" the method of achieving sexual penetration. The one thing the state is not required to prove, and in fact states is irrelevant.

Because the method of achieving penetration is irrelevant, Eason's defense for counts 1, 2 and 3 are all the exact same! The statutory elements. Eason has no individual defense for these counts because without the method of achieving penetration, they are the same; "A person is guilty of sexual battery if "he or she" engages in sexual penetration with:
(d) a child under the age of (14) years if the person is (24) or more months older...

making all the counts the same charge.

The state opines that because each of these charges [simply contain] a separate and distinct fact which the other does not, they meet the requirements set forth in Blockburger

See e.g.; Alexander v. State 811 So.2d 272, 280 (p.23) (Miss. Ct. App. 2001) (two separate counts of sexual battery are proper where the defendant violated the victim by penetrating two separate orifices of her body, . . .)

But Blockburger [requires] that an additional fact/element [not just be present] but [be proven]. Id. 304. And Mississippi case law makes it clear that the "type of penetration or method" is irrelevant.

With Mississippi, Colorado and Illinois All ruling that the Method of Achieving Sexual Penetration is irrelevant and not required to be proven in a charge of Sexual Battery, should Mississippi be allowed to use the Method of Achieving Penetration to charge multiple charges out of the same facts if it's not required to prove anything different for each count? And if it does so, would that violate the defendant's (Eason's) Constitutional right against double jeopardy when his defense would be identical (the exact same) for each count? The short answer, Absolutely not be allowed to use it and YES it most definitely violates his Constitutional rights against double jeopardy. Therefore, this writ of Cert. should be granted and any other relief this court deems Eason is entitled to

ISSUE II

Eason raised this claim in a successive Post-Conviction Petition in the Miss. Supreme Court filed April 22, 2019 and denied June 25, 2019, (which this petition stems from), but the court, without opinion or case law authority backing it, denied this jurisdictional claim as "time barred" and not raising an arguable basis. This Hon. Court in U.S. v. Cotton 535 U.S. 625 (2002) ruled that, "defects in subject-matter jurisdiction can [never] be forfeited or waived." (emphasis added). If Eason can show that this claim has an arguable basis, it will automatically show that he was denied his Constitutional rights by the state for failing to review his actual innocence claim caused by a jurisdictional defect. And the state failed to adhere to clearly established opinion of this Hon. Court.

In Eason's successive P.C.R., he points out that a jurisdictional claim cannot be procedurally barred, citing Kelly v. U.S. 29 F.3d 1107, 1112 (7th cir. 1994), overruled on other grounds by U.S. v. Caballeros 302 F.3d 674 (7th cir. 2002); also citing Wainwright v. Sykes 433 U.S. 72, 90-91, 97 S.Ct. 2497 (1977); Murray v. Carrier 477 U.S. 478, 496; 106 S.Ct. 2639 (1986) and Gonzalez v. Abbott 967 F.2d 1499, 1504 (11th cir. 1992); and U.S. v. Cotton supra. Along with many state case law examples.

So EASON provided the Miss. Supreme Court with ample precedent that this claim could not be procedurally barred, which suggests that the court was Acting Arbitrarily towards his claim. But if EASON cannot show that he raises an Arguable basis, than the Miss. Supreme Court would be justified in its denial of his claim.

EASON claims here that count 4 of his indictment (see Appendix "V") does not charge a crime under Miss. Code Ann. 97-3-95 (1)(A). (supp. 2006), which reads in pertinent part;

(1) A person is guilty of sexual battery if "he or she" engages in sexual penetration with, (A) another person without his or her consent.

The full statute is written out in Issue I on pg. 5

Count 4 of his indictment reads;

in Perry, Miss, between Dec. 2002 And Jan 2003, did willfully, purposely, unlawfully and feloniously commit sexual battery upon R.R. and J.P., without the consent of the said R.R. and J.P., by engaging in the act of sexual penetration, to-wit, "forcing J.P. to place his penis in the anus of R.R. ... (Appendix "V")

As shown here, count 4 charges EASON with ~~forcing~~ two minors to engage in sexual penetration with each other, not EASON. But M.C.A. 97-3-95 mandates that in order for EASON to be guilty of sexual battery, he, himself [must] commit the act of sexual penetration with the victim.

The Miss. Ct. Appeals made it clear in its decision on EASON's direct appeal, that EASON, himself, [did not] engage in sexual penetration with either alleged victim. see eg.

"The [fact] that EASON merely ordered the penetration of one minor child by another minor child, [rather than doing it himself] is of no consequence."
EASON v. state 994 so.2d 785, 789 (p.10) (Miss. Ct. App. 2008).

This removes the main element from the charge, EASON sexually penetrating either victim. And Miss. case law stands firm on the standard that Criminal statutes are to be strictly construed [against] the state and liberally in favor of EASON - see eg.

COLEMAN v. state 947 so.2d 878, 881 (p.16) (Miss. 2006) citing McLamb v. state

456 So. 2d 743, 745 (Miss. 1984); Allen v. State 960 So. 2d 489, 492-93 (p. 15) (Miss. Ct. App. 2006) citing Forman v. Carter 269 So. 2d 865, 868 (Miss. 1972); State v. Taylor 100 Miss. 544, 56 So. 521 (1911)

The Miss. Supreme Court has already ruled that M.C.A. 97-3-95 is [not] unconstitutionally vague or ambiguous in Wilcher v. State 227 So. 3d 890 (Miss. 2017). But the Miss. Ct. App. stated in its opinion on Eason's direct appeal, that;

"Reasonably and practically [construed] M.C.A. 97-3-95 prohibits any penetration of a child's genital or anal opening by any part of the body or any object for lustful gratification, [I]t is certain the legislature did not intend to omit this type of conduct from punishment [under this statute]." Id @ Eason supra (p. 10) (Emphasis added)

But Miss. Case law states that no statutory construction or interpretation will be resorted to when ambiguity does not exist. SEE Allen supra (p. 15). And if the Miss. legislature didn't intend on omitting this type of conduct from [this] statute, why hasn't it been amended in the past 10 years since Eason's appeal? And why would the Miss. legislature create another criminal statute that the state uses to charge such crimes as in count 4 of Eason's indictment? SEE M.C.A. 97-1-6 (Supp. 2006).

Mississippi has used this statute to charge others with the [exact same] allegations Eason is charged with in count 4; SEE e.g. Cook v. State 2013-ct-01246-ScT. (Miss. 2013) and Faulkner v. State 109 So. 3d 142 (Miss. Ct. App. 2013)

The Miss. Court of Appeals notes that Eason [could have] been charged under M.C.A. 97-1-6, in a specially concurring opinion on Eason's direct appeal; SEE Eason supra @ 792 (p. 21) FN 2;

"Had the prosecution chosen to do so, it could have charged Eason with violating § 97-1-6. . .

Clearly acknowledging that M.C.A. 97-1-6 covered the charge in count 4 of Eason's indictment, not M.C.A. 97-3-95.

Therefore, the charge in Count 4 of Eason's indictment does not fall under M.C.A.

97-3-95 (1)(a). And the courts have [no authority] to broaden the charges that may be covered under a particular statute without the legislature amending it to cover such a charge. EASON believes he has shown more than an arguable basis. The Miss. Ct. Appeals clearly states he didn't engage in the act of sexual penetration with either victim as required by M.C.A. 97-3-95.

And in Thomas v. State 126 So.3d 877, 879-80 (p.8) (Miss. 2013), the Miss. Supreme Court held that ("the failure to charge Thomas with a crime cognizable under Miss. law is a plain, Constitutional error and requires dismissal of the indictment and reversal of the conviction"). This, after the state indicted Thomas as a "felon in possession of a knife" but failed to state what particular type of knife, a key essential element of that crime.

Just as in EASON's case! Sexual penetration of the victim [by] EASON is the very ESSENCES of the charge of sexual battery and this charge and his conviction cannot be valid as it stands. This removed the subject-matter jurisdiction from the convicting court making EASON actual innocent of the charge and illegal conviction in Court 4 of his indictment. Therefore, this writ of cert. should be granted and any other relief this Hon. Court deems EASON entitled to.

ISSUE III

The Miss. rule of law on sentencing issues is that, "its well settled law in Miss. that a [written] order of sentence prevails over a conflicting oral pronouncement." Weary v. State 155 So.3d 866, 869 (p.9) (Miss. Ct. App. 2013). In Boutwell v. State 847 So.2d 249, 296 (p.8) (Miss. Ct. App. 2003)

the court found, "while other jurisdictions follow the oral pronouncement of sentence over a written order in a sentencing conflict, [our Supreme Court] has held that where there is a direct conflict between oral and written pronouncement of sentence, the written pronouncement controls." Chandler v. State 27 So.3d 1199, 1201 (p.8) (Miss. Ct. App. 2010).

Such is the issue in EASON's case. He was convicted and sentenced on Feb. 16, 2006
11.

on 4 counts of Sexual Battery. And the sentencing judge's [oral] pronouncement of sentence was 30 years on each of the 4 counts, running consecutively, with 10 years to serve on count 4 and the remaining 20 years of that count suspended with 5 years Post-Release Supervision, for a 100 year sentence. (SEE appendix "Z")

But on Feb. 20, 2006, the sentencing judge signed a [written] order of sentence, sentencing Eason to 30 years on each, running consecutive, for a 120 year total, with [10 years] to serve in the custody of M.D.O.C. and the [remainder] suspended. SEE (appendix "Y").

Now when M.D.O.C. first calculated Eason's sentence during his initial processing into prison in March of 2006, they calculated his sentence from the [written] sentencing order as (10) years to serve on each count, totaling (40) years to serve, SEE (appendix "ZA")

Shortly thereafter, Eason filed a "motion to set a reasonable bond pending appeal" in Nov. 2006, showing his sentence to be, 120 years, 80 suspended, 40 to serve, SEE (appendix "W"), because that's what M.D.O.C.'s time sheet stated, SEE (appendix "ZA"). In June 2007 the sentencing judge denied Eason's request for an appeal bond, stating Eason's sentence to be;

... sentenced to (30) years in each count for a total of (120) years in the custody of M.D.O.C. with said sentences to run consecutively with [10 years] to serve and the remainder suspended. ... (SEE appendix "X") (emphasis added).

Nowhere in the above order, from the sentencing judge himself, is the sentence of 100 years to serve, only 10 years to serve.

After receiving this order, Eason filed a "motion to clarify sentence" in the sentencing court, because he felt like the 40 year sentence was incorrect.

On Oct. 11, 2007, the sentencing court's Deputy Court Administrator (D.C.A.)/court paralegal, Clarissa C. Kelly sent Eason a letter in reference to his "petition to clarify sentence," stating in the last paragraph, "As to your sentencing order, it is [clear] and [concise] that your sentences are to run consecutively to each other with you serving [10 years] for each sentence. ... (emphasis added) (appendix "ZB").

Also noting that, "The Abiding order in this matter is the "Jury verdict and sentencing of the defendant by the court" [signed by the judge on Feb. 20, 2006].

Miss. case law precedent states in Anderson v. State 288 So.2d 852, 855 (Miss. 1974) that;

"An order of a trial court imposing sentence is controlling. However [A]ny ambiguity in an order [must] be resolved in favor of the accused."

Stare decisis is controlling because this case has never been overruled and is now being used as a reference case law in the [new] Mississippi Rules of Criminal Procedure (effective July 1, 2017) (see rule 26.7 therein).

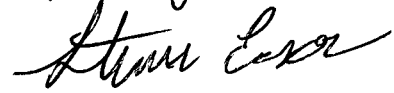
The only [written] document that says Eason has a (100) year sentence, is the criminal disposition filled out and signed only by the circuit court clerk, which holds no authority over the [written] sentencing order signed by the sentencing judge.

A similar issue occurred in Thompson v. State 92 So.3d 691, 698-99 (pp. 17-19) (Miss. Ct. App. 2012), when the sentencing judge [orally] sentenced him to (8) years for count one and (25) years for count two, to be served [consecutively], for a total of (33) years. Four days later and prior to the end of the term of court, the sentencing judge entered a [written] order sentencing Thompson to (16) years on count I and (60) years on count II to run [concurrently], totaling (60) years to serve. That's a (27) year difference between oral pronouncement and the [written] order. The written order not only changed Thompson's total years to serve, but it also changed the manner it would be served from consecutive to concurrent.

This shows that in Mississippi the oral pronouncement of sentence holds [no] authority over the written order. And because everyone, other than the appeals courts, in Eason's case interprets his [written] sentencing order as (10) years to serve on each count, running consecutively, for a (40) year sentence, the courts are forcing Eason to serve (60) mandatory years more than his [written] order reflects, see Anderson supra, because

he is currently under a (100) year sentence in reflection of the criminal disposition signed only by the Circuit Court clerk. This violates his rights to Equal protection, cruel and unusual punishment and DUE process of law. There fore, ^{conclusion} this writ of cert. should be granted And any other relief this Hon Court deems Eason entitled to.

Respectfully Submitted,



STEVEN EASON-118089

This the 10 day of July 2019.