

**No. 19-7794**

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IN THE  
**Supreme Court of the United States**

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JEREMY SHANE FOGLEMAN,  
*Petitioner,*  
v.  
STATE OF MISSISSIPPI,  
*Respondent.*

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**On Petition for Writ of Certiorari to the  
Mississippi Supreme Court**

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**BRIEF IN OPPOSITION**

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## **QUESTIONS PRESENTED**

The sentence authorized by the jury’s guilty verdict—up to 5 years in prison—was the sentence Petitioner Jeremy Fogleman received. Fogleman was sentenced to a 5-year term of imprisonment, and the trial judge’s designation of his offense as a crime of violence simply increased Fogleman’s parole-ineligibility period. Although Fogleman has no right to serve even one day less than the 5-year sentence authorized by the jury’s verdict, he challenges under the Sixth Amendment the portion of his sentence he must serve before becoming parole eligible.

Should this Court deny certiorari, where:

- (1) Fogleman’s challenge to his sentence and crime of violence designation in his sentencing order is moot;
- (2) The Mississippi Supreme Court adhered to this Court’s precedent in holding that a jury is not required to determine facts relating to a parole eligibility date; and
- (3) This case is a poor candidate for certiorari review because the answer to the question presented makes no difference to the outcome of the case with respect Fogleman’s current sentence and parole ineligibility?

**PARTIES TO THE PROCEEDINGS**

Petitioner Jeremy Shane Fogleman was the defendant-appellant in the court below. Respondent the State of Mississippi was the appellee in the court below.

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## **BRIEF IN OPPOSITION**

The State of Mississippi (“Mississippi”) respectfully submits this brief in opposition to the petition for writ of certiorari.

## **OPINIONS BELOW**

The August 29, 2019 opinion of the Mississippi Supreme Court is reported at 283 So. 3d 685 and reproduced at Pet.App.E.<sup>1</sup> The September 18, 2018 Opinion of the Mississippi Court of Appeals is reported at 276 So. 3d 1213 and reproduced at Pet.App.B.

## **JURISDICTION**

Petitioner invokes jurisdiction under 28 U.S.C. § 1257(a).

## **STATUTORY PROVISIONS INVOLVED**

The pertinent parts of the Mississippi Code are set forth in the Respondent’s Appendix. Resp.App.1a-11a.<sup>2</sup>

## **INTRODUCTION**

The instant petition should be denied for three primary reasons. *First*, although plenary consideration of the merits is unwarranted, a threshold question of mootness would need to be resolved before this Court undertakes review. On direct appeal to the Mississippi Supreme Court, Fogleman did not challenge his underlying conviction as violative of the Sixth Amendment. Instead, Fogleman’s challenge was to the judge’s crime of violence designation in his sentencing order and the impact of that designation on

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<sup>1</sup> “Pet.App.” refers to the Petition Appendix.

<sup>2</sup> “Resp.App.” refers to the Appendix to Respondent’s Brief in Opposition to Petition for Writ of Certiorari.

his parole eligibility. As relief, Fogleman requested the case be remanded for re-sentencing.

Fogleman's case is now moot. His requested relief became moot when the Mississippi Department of Corrections designated him as parole eligible on August 29, 2016—eleven days after he was convicted, and/or when the parole board granted him parole on November 15, 2016. Furthermore, the sentence Fogleman challenged on appeal in state court fully expired on November 1, 2019—approximately three weeks before he filed a petition in this Court.

*Second*, even if Fogleman's petition is not moot, the Mississippi Supreme Court's decision does not conflict with decisions from this Court. The Sixth Amendment provides a criminal defendant with the right to have a jury determine, beyond a reasonable doubt, any fact that increases his *sentence*—that is, the amount of time a defendant must serve before he will have a legal right to be released. This principle applies to facts that increase a defendant's maximum possible sentence, *Apprendi v. New Jersey*, 530 U.S. 466 (2000), or his minimum possible sentence, *Alleyne v. United States*, 570 U.S. 99 (2013).

But this Court has never required that a jury determine facts relating to the parole eligibility date of an indeterminate and parolable sentence. Indeed, quite unlike a sentence, a parole eligibility date is not a right to be released. A *fortiori*, it is not a *right* at all—but rather a date on which the government may exercise grace by releasing the convicted defendant before he has a right to be released. Accordingly, Fogleman's petition does not request certiorari review of any misapplication of governing precedent.

*Third*, this case otherwise is a bad candidate for certiorari. The answer to the question presented by Fogleman makes no difference to the outcome of Fogleman’s case with respect to his sentence. This is so because Fogleman was convicted again on separate charges in February 2020. Because of his 2020 conviction, he currently is serving a 50-year sentence with no parole eligibility—and his current parole ineligibility has nothing to do with the 2016 crime of violence designation.

What’s more, even if there is a conflict in authority on the application of *Apprendi* and *Alleyne* to parole eligibility determinations, it is only a thin conflict. And while a broad pronouncement from this Court will not impact Fogleman’s sentence, any “further extension” of this Court’s precedent will have potentially far-reaching consequences. *Hester v. United States*, 139 S.Ct. 509 (2019) (Alito, J., concurring in denial of certiorari).

Thus, at a minimum, this Court should allow the issue to percolate further in the courts of appeals and the state courts. The lower courts are still exploring the reaches of *Alleyne*, and additional analysis could aid this Court’s consideration of the question—should review become necessary in a future case.

## STATEMENT OF THE CASE

### **A. Fogleman’s 2008 Crime and Conviction in California.**

In December 2008, Fogleman was convicted in the Superior Court of Sacramento County, California to one felony count of driving under the influence of alcohol and/or drugs and sentenced to a term of 3 years in the custody of the California Department of Corrections. Resp.App.22a-23a.

**B. Fogleman's 2016 Crime and Conviction in Mississippi.**

On August 27, 2014, a Biloxi, Mississippi police officer attempted to stop a Dodge Charger with a partially obscured license plate, after being informed that the driver of the vehicle—Fogleman—had a suspended driver's license and a warrant for his arrest. Rather than obey the officer's signals to stop, Fogleman increased his speed. He led numerous Biloxi police officers on a high-speed chase through residential neighborhoods and down the highway at speeds reaching seventy miles per hour. *See Pet.App.E.*

Ultimately, the pursuit ended after Fogleman crashed into Frank Palazzo III and his wife as they were driving through an intersection. The Palazzos sustained minor injuries, and their vehicle was totaled. Fogleman was immediately arrested and eventually indicted and tried before a jury. *See Pet.App.E.*

On August 18, 2016, the jury convicted Fogleman of failing to stop his vehicle when signaled by law enforcement while operating his vehicle with reckless or willful disregard for the safety of persons or property pursuant to Mississippi Code Section 97-9-72(2). *See Pet.App.E.*

**C. Fogleman's 2016 Sentence and Appeal.**

Like many states, Mississippi offers many of its prisoners the opportunity to be released on parole before they have completed their sentences and become entitled to release. *See Wansley v. MDOC*, 769 F.3d 309 (5th Cir. 2014) (citing Mississippi Code Section 47-7-3). Mississippi thus has a type of indeterminate sentencing system, meaning that the defendant receives a fixed maximum sentence but may be released early on parole before completing the

sentence. *See* Black's Law Dictionary (11th ed. 2019) (defining "indeterminate sentence" as "1. A sentence of an unspecified duration, such as one for jail time of 10 to 20 years. 2. A maximum jail term that the parole board can reduce, through statutory authorization, after the inmate has served the minimum time required by law."). It stands in contrast to a determinate sentencing system of "jail term of a specified duration." Black's Law Dictionary (11th ed. 2019) (defining "determinate sentence").

With respect to Fogleman's 2016 conviction, the sentencing range authorized by the jury's guilty verdict for felony failure to stop a motor vehicle for law enforcement was up to 5 years in prison. *See* MISS. CODE ANN. § 97-9-72. And the trial judge sentenced Fogleman to 5 years in the Mississippi Department of Corrections' ("MDOC") custody. *See* Pet.App.E.

The State also moved to classify Fogleman's crime as a crime of violence under Mississippi Code Section 97-3-2(2). That Section provides:

In any felony offense with a maximum sentence of no less than five (5) years, upon conviction, the judge may find and place in the sentencing order, on the record in open court, that the offense, while not listed in subsection (1) of this section, shall be classified as a crime of violence if the facts show that the defendant used physical force, or made a credible attempt or threat of physical force against another person as part of the criminal act. No person convicted of a crime of violence listed in this section is eligible for parole or for early release from the custody of the Department of Corrections until the person

has served at least fifty percent (50%) of the sentence imposed by the court.

MISS. CODE ANN. § 97-3-2(2).<sup>3</sup>

The judge granted the State's motion and designated in the sentencing order that Fogleman had committed a crime of violence under Section 97-3-2(2). *See Pet.App.E.* That designation resulted in Fogleman's parole-ineligibility period increasing from one-fourth to one-half of his 5-year sentence—a sentence within the statutory maximum as authorized by the jury's verdict. *See Pet.App.E.*

Fogleman appealed the legality of his sentence to the Mississippi Supreme Court. On appeal, Fogleman "did not challenge his conviction. Rather, his sole claim [was] that the trial judge erred by applying Section 97-3-2(2)." Pet.App.E.4. Fogleman's requested relief was that the "judgement of sentence entered in the lower court [ ] be reversed and this cause remanded for resentencing."<sup>4</sup>

The Mississippi Supreme Court, reversing the Mississippi Court of Appeals, rejected Fogleman's challenge. The Mississippi Supreme Court concluded that the statute at issue does not increase a defendant's mandatory minimum sentence and instead affects only the actual amount of jail time the defendant must serve. *See Pet.App.E.*

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<sup>3</sup> In subsection (1) of Section 97-3-2, the Legislature designated specific statutory crimes as per se violent.

<sup>4</sup> *See* Appellant Br., *Fogleman v. Mississippi*, 2017 WL 6760482 at \* 6 (Miss. Jan. 24, 2017).

#### **D. Fogleman’s Parole Eligibility and Expiration of His 2016 Sentence.**

Although Fogleman was convicted on August 18, 2016, he became parole eligible only eleven days later—on August 29, 2016. Resp.App.37a. This is in part because Fogleman had served 445 days in custody prior to his sentence.<sup>5</sup> Resp.App.37a.

Shortly thereafter, Fogleman was granted parole on November 15, 2016—only three months after his 2016 conviction. Resp.App.33a-36a. However, Fogleman was not released from custody after being granted parole because he was paroled “to detainer.” Resp. App.33a-36a. More specifically, Harrison County, Mississippi had filed a detainer request with MDOC based on separate criminal charges pending against Fogleman. Resp.App.29a-31a.

Fogleman’s 5-year sentence for his 2016 conviction expired on November 1, 2019.<sup>6</sup> Resp.App.32a, 37a.

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<sup>5</sup> Presumably due to a coding error on the part of MDOC, it appears Fogleman actually became parole eligible after he served only one-fourth, and not one-half, of his 5-year term of imprisonment. One-fourth of Fogleman’s sentence would be approximately 1 year and 3 months. Between the 445 days of pre-sentence jail time plus the 11 days in custody post-sentence, Fogleman served approximately only 25% of his 5-year sentence prior to becoming parole eligible. Thus, in Fogleman’s case, the crime of violence designation did not affect his parole eligibility date at all.

<sup>6</sup> Fogleman’s eligibility for and grant of parole to detainer in 2016 was not raised by any party in the Mississippi Court of Appeals or the Mississippi Supreme Court. However, appellate counsel has a duty to inform this Court of these developments. *Bd. of License Comm’rs v. Pasture*, 469 U.S. 238, 240 (1985); *Sibron v. New York*, 392 U.S. 40, 50 n.8 (1968).

Moreover, Fogleman’s sentence expired on November 1, 2019, which was *after* the Mississippi Supreme Court issued its deci-

### **E. Fogleman's 2020 Conviction and Sentence as a Habitual Offender.**

While awaiting trial in 2016, Fogleman again fled from police. Resp.App.17a-27a, 38a. This time, however, Fogleman crashed into two vehicles—resulting in the death of one person and serious injury to another. Resp.App.17a-27a, 38a. On February 13, 2020, Fogleman was tried before a jury and convicted of (i) failure to stop a motor vehicle pursuant to signal of a law enforcement officer causing death; (ii) failure to stop a motor vehicle pursuant to signal of law enforcement officer; and (iii) possession of a controlled substance. Resp.App.19a-21a.

As a result of his 2020 conviction, Fogleman received a sentence of 50 years. Resp.App.19a-21a. Fogleman also was designated a habitual offender pursuant to Mississippi Code Section 99-19-81. Resp.App.19a-23a. That Section provides:

Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, shall be sentenced to the maximum term of imprisonment prescribed for such felony unless the court provides an

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sion. The state court records and MDOC's records included in the Respondent's Appendix are judicially-noticeable public records. A certification of business records from the appropriate custodian of records also is included with the MDOC records in the Respondent's Appendix.

explanation in its sentencing order setting forth the cause for deviating from the maximum sentence, and such sentence shall not be reduced or suspended *nor shall such person be eligible for parole or probation.*

MISS. CODE ANN. § 99-19-81 (emphasis supplied).

Fogleman was designated a habitual offender because he previously was convicted twice of felonies upon charges separately brought and arising out of separate incidents at different times and sentenced to separate terms of one year or more in the penitentiary. Resp.App.19a-23a. Fogleman's previous felonies include his 2008 conviction in California and the 2016 conviction in Mississippi.

Fogleman's designation as a habitual offender, however, has nothing to do with the 2016 crime of violence designation. That is, Mississippi Code Section 99-19-81 does not require a crime of violence designation for an offender to be designated as a habitual offender. Consequently, Fogleman currently is serving a 50-year term of imprisonment—with no eligibility for parole or probation.

## **REASONS FOR DENYING THE PETITION**

### **I. Fogleman's Challenge to the Sentence Imposed for his 2016 Conviction is Moot.**

Consistent with Article III of the Constitution, “[t]o qualify as a case fit for federal-court adjudication, an actual controversy must be extant at all stages of review.” *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (internal quotation marks and citation omitted). “[T]hroughout the litigation, the plaintiff ‘must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to

be redressed by a favorable judicial decision.” *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990)).

The completion of a criminal defendant’s sentence will not normally moot an appeal challenging his conviction because criminal convictions are presumed to have “continuing collateral consequences.” *Spencer*, 523 U.S. at 8, 10, 12; *see Sibron*, 392 U.S. at 57-58. But that same presumption does not apply when a defendant challenges his sentence.

When a criminal defendant challenges his sentence, and that sentence subsequently expires, the defendant bears the burden of demonstrating that the action continues to raise “collateral consequences adequate to meet Article III’s injury-in-fact requirement.” *Spencer*, 523 U.S. at 14 (applying that principle to challenges to revocation of parole after the revocation sentence was served). Further, the defendant must show that the ongoing consequences are “traceable” to the challenged action and that they are “likely to be redressed by a favorable judicial decision.” *Id.* at 7 (citation omitted); *see also United States v. Juvenile Male*, 560 U.S. 558 (2010) (“*JM I*”); *United States v. Juvenile Male*, 564 U.S. 932 (2011) (“*JM II*”).

Here, Fogleman’s state court appeal did not challenge his underlying conviction of failing to stop his vehicle when signaled by law enforcement while operating his vehicle with reckless or willful disregard for the safety of persons or property pursuant to Mississippi Code Section 97-9-72(2). Rather, in his only brief filed in the state courts, Fogleman challenged his sentence and parole eligibility date, and he asked the state court to reverse and remand “for resentencing.” Appellant Br., *Fogleman v. Mississippi*, 2017 WL 6760482 at \*6 (Miss. Jan. 24, 2017), (request-

ing that the “sentence herein, as determined to be a crime of violence, should be reversed and the case remanded for re-sentencing”).

However, Fogleman already had been granted parole (to detainer) by the time of the Mississippi Court of Appeals issued its decision—as well as by the time the Mississippi Supreme Court reversed that decision. Moreover, in November 2019, Fogleman’s sentence for his 2016 conviction expired. And Fogleman was convicted on separate charges in 2020 and currently is serving a 50-year sentence as a habitual offender with no eligibility for parole. As a consequence, this case was and is moot unless Fogleman can show that a favorable court decision would serve to redress collateral consequences of the 2016 crime of violence designation in his sentencing order.

Fogleman’s papers do not say anything about mootness or collateral consequences. However, the amicus brief filed by the Due Process Institute and the National Association for Public Defense asserts three categories of “adverse consequences” that purportedly exist for all persons with a conviction designated as a crime of violence under Mississippi Code Section 97-3-2(2) generally.<sup>7</sup>

The purported “consequences” include: (1) lost alternative sentencing opportunities (e.g., exclusion from work-release and treatment programs); (2) “harsher” sentencing if later convicted under Mississippi Code section 99-19-83’s habitual offender statute; and (3) ineligibility for expungement. Each is addressed in turn.

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<sup>7</sup> See Br. of DPI/NAPD at pp. 13-15.

First, Fogleman cannot benefit from alternative sentencing opportunities for purposes of his 2016 conviction and sentence because that sentence has expired. Second, Fogleman already has been convicted of other crimes and sentenced as a habitual offender. However, Fogleman was *not* sentenced under Mississippi Code Section 99-19-83. Instead, Fogleman was convicted and sentenced under Mississippi Code Section 99-19-81, which does *not* require a prior crime of violence designation.

Third, purported expungement ineligibility is not an ongoing “collateral consequence” that defeats mootness for a host of reasons. For starters, expungement under state law would make no practical difference to Fogleman because he is serving a 50-year sentence as a habitual offender with no eligibility for parole or probation. Further, an expunged offense counts for purposes of habitual offender status. *See* MISS. CODE ANN. § 45-27-21 (“Any criminal conviction which has been expunged or nonadjudicated may be used for the purpose of determining habitual offender status[.]”). And gaining an expungement would not undercut Fogleman’s existing habitual offender sentence. *See Fleming v. State*, 97 So. 3d 1234, 1238 (Miss. Ct. App. 2011) (expungement of predicate crime does not defeat habitual offender sentence under Mississippi Code Section 99-19-81).

Along the same lines, any ability or inability to procure an expungement under state law is a speculative future consequence. *See Spencer*, 523 U.S. at 14-16. To be sure, any attempt to petition for an expungement would take at least five years following completion of Fogleman’s sentence, and it is “in the

discretion of the court.” MISS. CODE ANN. § 99-19-71.<sup>8</sup> It is thus “purely a matter of speculation” and too attenuated to presume that, if Fogleman’s crime of violence designation is set aside, he would be able to procure an expungement—especially given Fogleman’s multiple convictions and sentence as a habitual offender. *Spencer*, 523 U.S. at 14-16.

\* \* \*

Fogleman’s sentence fully expired three weeks before he filed his petition for certiorari. His challenge to the sentence no longer presents a live controversy. When an appeal transitions from a state court to the Supreme Court via (potential) certiorari, the case still must satisfy Article III’s case or controversy requirements—and this case does not do so. *See e.g.*, *Waller v. Georgia*, 467 U.S. 39, 43 n.3 (1984) (finding lack of standing on certain claims even though state supreme court had considered the claims justiciable).

## **II. The Mississippi Supreme Court’s Decision does not Conflict with this Court’s Precedent.**

Despite Fogleman’s contrary contention, the Mississippi Supreme Court’s decision is faithful to this Court’s Sixth Amendment precedent, including *Apprendi* and *Alleyne*.

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<sup>8</sup> The expungement statute in Mississippi also is ambiguous. For instance, Mississippi Code Section 99-19-71(2)(a)(i) states that a person cannot expunge a “crime of violence as provided in Section 97-3-2.” However, whether Section 99-19-71 refers to a crime of violence listed in Section 97-3-2(1) or a crime of violence designated under Section 97-3-2(2) is unsettled state law because Mississippi appellate courts have not yet resolved the ambiguity.

A. In *Apprendi*, this Court held that a sentencing judge is restricted from imposing a determinate sentence above the maximum allowed by the jury's verdict alone. *Apprendi*, 530 U.S. 466. Yet *Apprendi* also explained that "nothing. . . suggests that it is impermissible for judges to exercise discretion—taking into consideration various factors relating both to offense and offender—in imposing judgment *within the range* prescribed by statute." *Id.* at 481 (emphasis in original).

More recently, in *Alleyne*, this Court extended the right to a jury determination of facts constituting an element of a crime used by a sentencing judge in the imposition of a determinate sentence that requires a "mandatory minimum." *Alleyne*, 570 U.S. at 113. There, this Court considered a federal sentencing statute—18 U.S.C.A. § 924(c)(1)(A)—that applied to crimes of violence or drug trafficking, in which firearms are involved. *Id.* at 103-04.

The jury's verdict in *Alleyne* supported a sentencing range from 5 years in prison to life. *Id.* at 117. But, under Section 924(c)(1)(A)(ii), if the defendant brandished a firearm during the crime, rather than simply possessing it, the mandatory minimum sentence increased from 5 years to 7 years. *Id.* at 104; *see also* 18 U.S.C.A. § 924(c)(1)(A). The district judge had made a factual finding that *Alleyne* had brandished a firearm and, thus, the mandatory minimum sentence increased from 5 to 7 years. *Id.* The Supreme Court found that this violated the Sixth Amendment.

Notably, in *Apprendi* and its progeny, including *Alleyne*, the respective sentence at issue was a definite sentence—a single number that entitled a defendant to release at its end. This Court has never held that a state must also submit factual questions to a jury when determining what *portion* of a sentence a

prisoner must serve before becoming eligible for parole.

That is what makes this case different. Fogleman received an effective 5-year “maximum sentence,” and he had the right to be released at the end of that 5-year sentence—if he had not been released already. That makes Fogleman’s 5-year maximum sentence the equivalent of Charles Apprendi’s 12-year sentence, Ralph Blakely’s 90-month sentence, Freddie Booker’s 30-year sentence, and Allen Alleyne’s 7-year sentence.<sup>9</sup> *See Apprendi*, 530 U.S. at 471; *Blakely v. Washington*, 542 U.S. 296, 298 (2004); *United States v. Booker*, 543 U.S. 220, 227 (2005); *Alleyne*, 570 U.S. at 104.

Yet Fogleman’s crime of violence designation in his sentencing order specifying his parole eligibility date represents the *portion* of his 5-year sentence he must serve before becoming eligible for parole. This portion of his sentence term has no equivalent in *Apprendi* or *Alleyne*—or any case in which this Court has struck down a sentence as violating the Sixth Amendment jury right.

Plus, “[i]n a system that says the judge may punish burglary with 10 to 40 years, every burglar knows he is risking 40 years in jail.” *Blakely*, 542 U.S. at 309. Here, based upon the sentencing range of up to 5 years authorized by the jury’s verdict, Fogleman knew he was risking 5 years in jail. The judge did not extend Fogleman’s jail time beyond that 5-year sentence. Nor

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<sup>9</sup> To be clear, it is the equivalent in the sense of the right to be released at the end of the sentence imposed. As to Fogleman’s 2016 conviction, the sentence of up to five years in prison was authorized by the jury’s guilty verdict. *See MISS. CODE ANN. § 97-9-72.*

did the judge make a fact-finding that changed a mandatory minimum floor of his sentence—which, at 0 to 5 years with no mandatory minimum, did not exist.

Instead, the judge merely exercised his sentencing discretion, within the statutorily-prescribed range of 0 to 5 years, and that decision impacted Fogleman’s parole eligibility. If Fogleman received a 4-year sentence, for example, Fogleman’s parole eligibility date would be later than his eligibility on a 2-year sentence. The judge’s determination as to the length of the sentence, as authorized by the jury’s verdict, would always proportionately influence when Fogleman could become parole eligible. Fogleman thus knew all along, just as in Justice Scalia’s hypothetical in *Blakely*, that his sentence and corresponding parole-eligibility date result could be the result—because all the possible outcomes were statutorily-prescribed.

In fact, the *Blakely* Court reasoned that indeterminate sentencing systems in general comply with the Sixth Amendment because the jury already has authorized the maximum sentence, and any decision regarding an earlier release is a matter of grace:

The Sixth Amendment by its terms is . . . a reservation of jury power. It limits judicial power only to the extent that the claimed judicial power infringes on the province of the jury. Indeterminate sentencing does not do so. It increases judicial discretion, to be sure, but not at the expense of the jury’s traditional function of finding the facts essential to lawful imposition of the penalty. Of course, indeterminate schemes involve judicial fact-finding, in that a judge (like a parole board) may implicitly rule on those facts he deems

important to the exercise of his sentencing discretion. *But the facts do not pertain to whether the defendant has a legal right to a lesser sentence - and that makes all the difference insofar as judicial impairment upon the traditional role of the jury is concerned.*

*Blakely*, 542 U.S. at 309 (emphasis supplied).<sup>10</sup>

So, unlike the defendants in *Apprendi*, *Blakely*, *Booker*, *Cunningham v. California*, 549 U.S. 270 (2007), *Harris v. United States*, 536 U.S. 545 (2002), and *Alleyne*, who were absolutely entitled to be released upon the expiration of their terms, a parole eligibility date does not entitle any defendant to an absolute right to be discharged. *See Swarthout v. Cooke*, 562 U.S. 216, 220 (2011) (“There is no right under the Federal Constitution to be conditionally released before the expiration of a valid sentence[.]”).

B. What’s more, although a State may establish a parole system, it has no duty to do so. *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 7 (1979). And because Fogelman has no right to parole at all,<sup>11</sup> his parole eligibility date is not the same kind of “sentence” that was at issue in *Apprendi* and *Alleyne*. In fact, the very “essence of

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<sup>10</sup> The point here is not whether the terms “indeterminate” or “determinate” hold constitutional significance. What is important is that Fogelman’s crime of violence designation simply determined his parole eligibility date. It was not a determination of when Fogelman would be entitled to release. And this Court has never held that a determination of how long a prisoner must serve before becoming eligible for parole is subject to the Sixth Amendment.

<sup>11</sup> There is also no constitutionally recognized right to or interest in parole in Mississippi. *See, e.g., Vice v. State*, 679 So. 2d 205, 208 (Miss. 1996); *Wansley*, 769 F.3d at 312.

parole is release from prison, *before the completion of sentence[.]*” *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972) (emphasis supplied). That a defendant has no legal right to a lesser sentence “makes all the difference insofar as judicial impingement upon the traditional role of the jury is concerned.” *Blakely*, 542 U.S. at 309.

To be sure, when this Court has considered decisions affecting whether and when a prisoner might be released without serving his full sentence, it has never held that there is a right to have facts found by a jury. For example, in *Wolff v. McDonnell*, 418 U.S. 539 (1974), this Court examined Nebraska’s system of good-time credits—credit awarded to prisoners who behave themselves in prison, which ultimately reduces the time spent in prison below the sentence imposed. When a state revokes those credits based on sufficiently serious misconduct, it increases the amount of time until the prisoner’s release. This Court held that the revocation of statutorily guaranteed good-time credits deprives a prisoner of a liberty interest, and thus implicates the Due Process Clause. *Id.* at 556-57.

But this Court also held that a state may revoke good-time credits without impaneling a jury. *Id.* at 570-71 (upholding Nebraska’s procedure of allowing an “Adjustment Committee” to determine the revocation of goodtime credits). Even though the Court specifically mentioned the Sixth Amendment in the opinion, *id.* at 575-76, it did not give any indication that this early release mechanism implicated the right to a jury trial. And the revocation of good-time credits in *Wolff* and Fogleman’s crime of violence designation have the same basic effect: they increase the amount of time a prisoner must serve before being released *early*.

*Morrissey v. Brewer*, 408 U.S. 471 (1972), on the other hand, did involve a criminal defendant's rights in parole proceedings. Significantly, *Morrissey* held that factual findings can be made by a "traditional parole board" without violating due process. *Id.* at 489. Further, because a revocation of parole increases the portion of a sentence that is served in prison, the fact that no jury is required is relevant here.

Underscoring this point is this Court's divided decision last year in *United States v. Haymond*, 139 S.Ct. 2369 (2019). There, the Court held invalid under *Alleyne* a federal statute mandating that a judge revoke supervised release and impose a minimum sentence of 5 years' incarceration after finding by a preponderance that the defendant committed certain enumerated offenses while on release. The range of punishment authorized for a violation of the conditions of supervised release by the conviction alone, without the later judicial finding, was 0 to 10 years' incarceration; with that finding it became 5 to life.

Although a majority of five Justices concluded that the statute was unconstitutional, this Court was unable to agree on a single or consistent rationale. Justice Gorsuch, in a plurality opinion joined by Justice Ginsburg, Justice Sotomayor, and Justice Kagan ("Gorsuch plurality"), offered one rationale for the Court's holding. Justice Breyer, the author of a separate opinion concurring in the judgment, offered another.

According to the Gorsuch plurality, the statute at issue was unconstitutional under *Apprendi* and *Alleyne*. By contrast, Justice Breyer's separate opinion offered a narrower rationale. On the one hand, Justice Breyer agreed with the four dissenting Justices that "the *Apprendi* line of cases," *Alleyne* included, should

not be extended to the “supervised-release context.” On the other hand, he agreed with Justice Gorsuch’s plurality holding on the unconstitutionality of the particular statute at issue.<sup>12</sup>

Relevant here is the portion of Justice Gorsuch’s plurality opinion specifically contrasting the situation in *Haymond*’s case from the scenario of parole and probation. The plurality reasoned:

In time, of course, legislatures adopted new laws allowing judges or parole boards to suspend part (parole) or all (probation) of a defendant’s prescribed prison term and afford him a period of conditional liberty as an “act of grace,” subject to revocation. . . . But here, too, the prison sentence a judge or parole board could impose for a parole or probation violation normally could not exceed the remaining balance of the term of imprisonment already authorized by the jury’s verdict. So even these developments did not usually implicate the historic concerns of the Fifth and Sixth Amendments.

*Id.* at 2377.

C. Such “historic concerns” of the Sixth Amendment are important because the scope of the Sixth Amend-

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<sup>12</sup> When a majority of the Supreme Court agrees on the judgment, such as in *Haymond*, but “no single rationale explaining the result enjoys the assent of five Justices, ‘the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.’” *Marks v. United States*, 430 U.S. 188, 193 (1977) (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976) (plurality opinion)). In *Haymond*, Justice Breyer’s opinion concurring in the judgment represents the narrowest ground supporting the judgment.

ment's jury trial right consistently has been tied to its history. *Id.*; *Williams v. Florida*, 399 U.S. 78, 98 (1970). As this Court has explained, "the scope of the constitutional jury right must be informed by the historical role of the jury at common law." *Southern Union Co. v. U.S.*, 567 U.S. 343, 353 (2012); *see also*, *e.g.*, *Blakely*, 542 U.S. at 301-302; *Apprendi*, 530 U.S. at 477-484.

Yet parole (as well as probation) is a relatively modern invention—it did not exist at common law.<sup>13</sup> Parole traces its roots to England's penal colonies in Australia.<sup>14</sup> This rehabilitative model started to overtake the retributive model in several European countries, and came to the United States in the late nineteenth and early twentieth centuries.<sup>15</sup> And while every state but three had adopted parole by 1927,<sup>16</sup> decisions affecting eligibility for parole would have been unknown in the eighteenth and early nineteenth centuries. *Greenholtz*, 442 U.S. at 8 ("Indeed, the very

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<sup>13</sup> Paul J. Larkin, Jr., *Parole: Corpse or Phoenix?*, 50 AM. CRIM. L. REV. 303, 307-08 (2013) (citing Lawrence M. Friedman, CRIME AND PUNISHMENT IN AMERICAN HISTORY 161-63, 406-09 (1993)).

<sup>14</sup> See 4 U.S. Dep't of Justice, *The Attorney General's Survey of Release Procedures: Parole* 11 (1939) (*Parole Survey*). Specifically, parole was born in the mid-1800s in Norfolk Island, Australia. See Beth Schwartzapfel, *Parole Boards: Problems and Promise*, 28 Fed. Sent'g Rep. 80 (Dec. 2015). Warden Alexander Manconochie broke from the tradition of "discipline by brute force" and sought instead to make convicts into "gentlemen." *Id.* A prisoner's behavior earned or lost him "marks"; with enough good behavior, he could earn sufficient marks to buy his freedom. *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Larkin, *supra* note 13, at 308 (citing Joan Petersilia, REFORMING PROBATION AND PAROLE: IN THE 21ST CENTURY 131 (2002)).

institution of parole is still in an experimental stage[.]"); *see also Oregon v. Ice*, 555 U.S. 160, 169 (2009) ("In light of this history, legislative reforms regarding the imposition of multiple sentences do not implicate the core concerns that prompted our decision in *Apprendi*.").

Thus, this case is an unpromising candidate for this Court's review because the Mississippi Supreme Court neither deviated from this Court's precedent nor departed from the historic concerns of the Sixth Amendment.

### **III. This Case Presents a Poor Candidate for Certiorari Review.**

In addition to the reasons already discussed, this petition presents a less than ideal canvas for granting certiorari review of a case challenging a defendant's sentence. At least three reasons immediately inform why.

1. Even assuming *arguendo* Fogleman's challenge is not moot, the answer to the question presented makes no difference to the outcome of the case with respect to Fogleman's sentence as a habitual offender and corresponding parole ineligibility. To be sure, Fogleman was granted parole (to detainer) only three months after his 2016 conviction, and his sentence expired on November 1, 2019. Three months after that, Fogleman again was convicted on separate charges. And he is now serving a 50-year sentence with no eligibility for parole.

Thus, even if this Court believes that it should undertake to determine—right now—whether *Alleyne* extends to parole eligibility determinations, this case presents an inappropriate vehicle for reaching that result.

2. Additionally, before a pronouncement on *Alleyne*'s (in)applicability to parole eligibility determinations, any conflict in authority on this issue should be allowed to percolate in the lower courts. Indeed, the thin split in authority appears to be only approximately three to three.<sup>17</sup> And, even then, the split is artificial in many respects because states approach sentencing and parole eligibility so differently.

For example, in *People v. Lockridge*, 870 N.W.2d 502, 516-17 (Mich. 2015), the court addressed Michigan's sentencing guidelines. Michigan's guidelines operate by "scoring" offense-related and offender-related variables ("OV") and prior-record variables ("PRV"). These OV and PVR point totals are then input into the applicable sentencing grid to yield the guidelines range. The court in *Lockridge* held that

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<sup>17</sup> On one hand, courts in New Jersey, Michigan, and Kansas have extended *Apprendi* and *Alleyne* to certain parole eligibility determinations. See *State v. Grate*, 220 N.J. 317, 106 A.3d 466, 475-76 (2015); *People v. Lockridge*, 498 Mich. 358, 870 N.W.2d 502, 516-17 (2015); *Robinson v. Woods*, 901 F.3d 710, 718 (6th Cir. 2018) (same as *Lockridge*); *State v. Soto*, 322 P.3d 334, 347-48 (Kan. 2014); but see *State v. Kiriakakis*, 235 N.J. 420 (2018); *Gully v. Hoffman*, 2015 WL 650293, at \*7 n.3 (D.N.J., 2015) ("Because neither the NERA nor the Graves Act increased the mandatory minimum to which Petitioner was subject under New Jersey Law (10 years), instead affecting only Petitioner's parole eligibility, Petitioner's sentence would likewise not violate the rule announced in *Alleyne*[,] even were *Alleyne*'s holding retroactively applicable to cases on collateral review."). On the other hand, courts in at least Illinois, Kentucky, and Mississippi have not. See *People v. Barnes*, 418 Ill.Dec. 628, 90 N.E.3d 1117, 1140 (Ill. App. Ct. 2017); *People v. Gray*, No. 1-14-3474, 2017 WL 2800019, at \*11 (Ill. App. Ct. June 26, 2017) (unpublished); *Burke v. Commonwealth*, 506 S.W.3d 307 (Ky. 2016); *Biederman v. Commonwealth*, 434 S.W.3d 40 (Ky. 2014); *Fogleman v. State*, 283 So. 3d 685 (Miss. 2019).

Michigan’s sentencing guidelines are unconstitutional to the extent the guidelines require a court to increase a defendant’s minimum sentence beyond the sentence authorized by the jury verdict. And, as a remedy, the *Lockridge* court “*Booker-ize[d]*” the guidelines by rendering them advisory only. *Id.* at 520.

The statutes at issue here stand in stark contrast to the mandatory guidelines in *Lockridge*. A trial court’s crime of violence designation pursuant to Mississippi Code Section 97-3-2(2) is discretionary. That is, while the statute sets the parole eligibility period, the application of the statute in the first instance is discretionary. Further, the judge here exercised discretion in sentencing Fogleman within a possible range of 0 to 5 years—and the time chosen is what influenced when Fogleman became parole eligible.

Thus, to the extent there is a thin conflict in authority, the issue of whether to further extend *Alleyne* to parole eligibility determinations is in a state of evolution. And that ongoing evolution calls for further percolation in the lower courts, which “may yield a better informed and more enduring final pronouncement by this Court.” *Arizona v. Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting).

In fact, additional percolation is especially important “in the context of constitutional adjudication, where the Court’s decisions cannot be overruled by statutory amendments.” Stephen M. Shapiro, *Supreme Court Practice* 506 (Stephen M. Shapiro et al. eds., 10th ed. 2013); *see also California v. Carney*, 471 U.S. 386, 400 (1985) (Stevens, J., dissenting) (“To identify rules that will endure, we must rely on the state and lower federal courts to debate and evaluate the different approaches to difficult and unresolved questions of constitutional law.”).

3. Relatedly, this Court would benefit from further percolation because any application of the Sixth Amendment jury right to parole eligibility determinations would be a fundamental extension of *Apprendi* and *Alleyne*. See *Hester*, 139 S.Ct. 509 (Alito, J., concurring in denial of certiorari) (stating, “the proposition that the Sixth Amendment requires a jury to find the facts on which a sentence of imprisonment is based” “represents a questionable interpretation of the original meaning of the Sixth Amendment. . . Unless the Court is willing to reconsider that interpretation, fidelity to original meaning counsels against further extension of these suspect precedents.”); *Ice*, 555 U.S. at 172 (“Members of this Court have warned against ‘wooden, unyielding insistence on expanding the *Apprendi* doctrine far beyond its necessary boundaries.’”) (quoting *Cunningham*, 549 U.S., at 295 (Kennedy, J., dissenting)); *see also id.* at 170.

Indeed, extending such precedent could have potentially far-reaching consequences.<sup>18</sup> As recognized in *Ice*,

.... States currently permit judges to make a variety of sentencing determinations other than the length of incarceration. Trial judges often find facts about the nature of the offense or the character of the defendant in determining, for example, the length of supervised release following service of a prison sentence; required attendance at drug rehabilitation

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<sup>18</sup> For example, the DPI/NAPD amicus brief asserts that “[a]t least fifteen states have laws that—like the Mississippi law at issue here—allow judicial factfinding to raise the minimum amount of time a defendant must serve in prison before he is eligible for parole, or render him wholly ineligible for any form of early release.” Br. of DPI/NAPD at p. 3.

programs or terms of community service; and the imposition of statutorily prescribed fines and orders of restitution.

555 U.S. at 171-72.

In this regard, if a jury must determine facts relating to parole eligibility, then must a jury determine denial of parole by parole boards? Any extension of the period before a defendant first becomes eligible for parole is the logical equivalent of a parole board finding facts that operate to deny parole. Each decision results in a convicted person being required to serve a greater or lesser portion of his or her overall sentence in prison.<sup>19</sup>

But “[i]ntruding *Apprendi*’s rule into these decisions . . . surely would cut the rule loose from its moorings.” *Id.* And that is particularly problematic in an arena where “preventing and dealing with crime is much

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<sup>19</sup> In the same vein, if a jury must make parole eligibility determinations, does a jury have to make juvenile life-without-parole determinations for purposes of the Sixth Amendment and the Due Process Clause? *But see Miller v. Alabama*, 567 U.S. 460, 465, 489 (2012) (“[M]andatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on cruel and unusual punishments.” Instead, “a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.”) (emphasis supplied).

Similarly, most states have some process for determining when charges against a person that would otherwise be processed in juvenile court should be adjudicated instead in adult court. Must a jury also determine whether a juvenile can be moved into adult court—given that such a decision can increase the sentence? *See, e.g., State v. Potts*, 374 P.3d 639 (Kan. 2016) (Potts’ Sixth Amendment rights were not violated when the district court made factual findings authorizing the State to prosecute him as an adult, collecting authority).

more the business of the States than it is of the Federal Government, . . . and [ ] we should not lightly construe the Constitution so as to intrude upon the administration of justice by the individual States.” *Patterson v. New York*, 432 U.S. 197, 201-02 (1977).

## CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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## **APPENDIX**

**APPENDIX A**

West's Annotated Mississippi Code

Title 97. Crimes

Chapter 9. Offenses Affecting Administration of Justice

Article 1. In General

Currentness

**Miss. Code Ann. § 97-9-72. Driver failing to stop motor vehicle pursuant to signal of law enforcement officer; penalty; defenses**

(1) The driver of a motor vehicle who is given a visible or audible signal by a law enforcement officer by hand, voice, emergency light or siren directing the driver to bring his motor vehicle to a stop when such signal is given by a law enforcement officer acting in the lawful performance of duty who has a reasonable suspicion to believe that the driver in question has committed a crime, and who willfully fails to obey such direction shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) or imprisoned in the county jail for a term not to exceed six (6) months, or both.

(2) Any person who is guilty of violating subsection (1) of this section by operating a motor vehicle in such a manner as to indicate a reckless or willful disregard for the safety of persons or property, or who so operates a motor vehicle in a manner manifesting extreme indifference to the value of human life, shall be guilty of a felony, and upon conviction thereof, shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by commitment to the custody of the Mississippi Department of Corrections for not more than five (5) years, or both.

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(3) Any person who is guilty of violating subsection (1) of this section, which violation results in serious bodily injury of another, upon conviction shall be committed to the custody of the Department of Corrections for not less than three (3) nor more than twenty (20) years of imprisonment.

(4) Any person who is guilty of violating subsection (1) of this section, which violation results in the death of another, upon conviction shall be committed to the custody of the Department of Corrections for not less than five (5) nor more than forty (40) years.

(5) It is a defense to prosecution under this section:

(a) That the law enforcement officer was not in uniform or that no law enforcement vehicle used in the attempted stop was clearly marked as a law enforcement vehicle; or

(b) That the driver proceeded in a safe manner to a reasonably near well-lit public place before stopping.

**APPENDIX B**

West's Annotated Mississippi Code  
Title 97. Crimes

Chapter 3. Crimes Against the Person (Refs & Annos)

Currentness

**Miss. Code Ann. § 97-3-2. Crimes of violence**

(1) The following shall be classified as crimes of violence:

- (a) Driving under the influence as provided in Sections 63-11-30(5) and 63-11-30(12)(d);
- (b) Murder and attempted murder as provided in Sections 97-1-7(2), 97-3-19, 97-3-23 and 97-3-25;
- (c) Aggravated assault as provided in Sections 97-3-7(2)(a) and (b) and 97-3-7(4)(a);
- (d) Manslaughter as provided in Sections 97-3-27, 97-3-29, 97-3-31, 97-3-33, 97-3-35, 97-3-39, 97-3-41, 97-3-43, 97-3-45 and 97-3-47;
- (e) Killing of an unborn child as provided in Sections 97-3-37(2)(a) and 97-3-37(2)(b);
- (f) Kidnapping as provided in Section 97-3-53;
- (g) Human trafficking as provided in Section 97-3-54.1;
- (h) Poisoning as provided in Section 97-3-61;
- (i) Rape as provided in Sections 97-3-65 and 97-3-71;
- (j) Robbery as provided in Sections 97-3-73 and 97-3-79;
- (k) Sexual battery as provided in Section 97-3-95;

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- (1) Drive-by shooting or bombing as provided in Section 97-3-109;
- (m) Carjacking as provided in Section 97-3-117;
- (n) Felonious neglect, abuse or battery of a child as provided in Section 97-5-39;
- (o) Burglary of a dwelling as provided in Sections 97-17-23 and 97-17-37;
- (p) Use of explosives or weapons of mass destruction as provided in Section 97-37-25;
- (q) Statutory rape as provided in Section 97-3-65(1), but this classification is rebuttable on hearing by a judge;
- (r) Exploitation of a child as provided in Section 97-5-33;
- (s) Gratification of lust as provided in Section 97-5-23; and
- (t) Shooting into a dwelling as provided in Section 97-37-29.

- (2) In any felony offense with a maximum sentence of no less than five (5) years, upon conviction, the judge may find and place in the sentencing order, on the record in open court, that the offense, while not listed in subsection (1) of this section, shall be classified as a crime of violence if the facts show that the defendant used physical force, or made a credible attempt or threat of physical force against another person as part of the criminal act. No person convicted of a crime of violence listed in this section is eligible for parole or for early release from the custody of the Department of Corrections until the person has served at least fifty percent (50%) of the sentence imposed by the court.

**APPENDIX C**

West's Annotated Mississippi Code

Title 47. Prisons and Prisoners; Probation and Parole

Chapter 7. Probation and Parole

Probation and Parole Law

Effective: July 1, 2018

Currentness

**Miss. Code Ann. § 47-7-3. Parole eligibility; earned time; tentative hearing date; program priority**

(1) Every prisoner who has been convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi Department of Corrections for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the department, and who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

- (a) No prisoner convicted as a confirmed and habitual criminal under the provisions of Sections 99-19-81 through 99-19-87 shall be eligible for parole;
- (b) Any person who shall have been convicted of a sex crime shall not be released on parole except for a person under the age of nineteen (19) who has been convicted under Section 97-3-67;

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(c)(i) No person shall be eligible for parole who shall, on or after January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term or terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole. The provisions of this paragraph (c)(i) shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon. This paragraph (c)(i) shall not apply to persons convicted after September 30, 1994;

(ii) No person shall be eligible for parole who shall, on or after October 1, 1994, be convicted of robbery, attempted robbery or carjacking as provided in Section 97-3-115 et seq., through the display of a firearm or drive-by shooting as provided in Section 97-3-109. The provisions of this paragraph (c)(ii) shall also apply to any person who shall commit robbery, attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the display of a deadly weapon. This paragraph (c)(ii) shall not apply to persons convicted after July 1, 2014;

(d) No person shall be eligible for parole who, on or after July 1, 1994, is charged, tried, convicted and sentenced to life imprisonment without eligibility for parole under the provisions of Section 99-19-101;

(e) No person shall be eligible for parole who is charged, tried, convicted and sentenced to life imprisonment under the provisions of Section 99-19-101;

7a

(f) No person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30, 1995, except that an offender convicted of only nonviolent crimes after June 30, 1995, may be eligible for parole if the offender meets the requirements in subsection (1) and this paragraph. In addition to other requirements, if an offender is convicted of a drug or driving under the influence felony, the offender must complete a drug and alcohol rehabilitation program prior to parole or the offender may be required to complete a post-release drug and alcohol program as a condition of parole. For purposes of this paragraph, "nonviolent crime" means a felony other than homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping, felonious abuse of vulnerable adults, felonies with enhanced penalties, except enhanced penalties for the crime of possession of a controlled substance under Section 41-29-147, the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law, felony child abuse, or exploitation or any crime under Section 97-5-33 or Section 97-5-39(2) or 97-5-39(1)(b), 97-5-39(1)(c) or a violation of Section 63-11-30(5). In addition, an offender incarcerated for committing the crime of possession of a controlled substance under the Uniform Controlled Substances Law after July 1, 1995, including an offender who receives an enhanced penalty under the provisions of Section 41-29-147 for such possession, shall be eligible for parole. An offender incarcerated for committing the crime of sale or manufacture of a controlled substance shall be eligible for parole after serving one-fourth (1/4) of the sentence imposed by the trial court. This paragraph (f) shall not apply to persons convicted on or after July 1, 2014;

(g)(i) No person who, on or after July 1, 2014, is convicted of a crime of violence pursuant to Section 97-3-2, a sex crime or an offense that specifically prohibits parole release, shall be eligible for parole. All persons convicted of any other offense on or after July 1, 2014, are eligible for parole after they have served one-fourth ( 1/4) of the sentence or sentences imposed by the trial court.

(ii) Notwithstanding the provisions in subparagraph (i) of this paragraph (g), a person serving a sentence who has reached the age of sixty (60) or older and who has served no less than ten (10) years of the sentence or sentences imposed by the trial court shall be eligible for parole. Any person eligible for parole under this subsection shall be required to have a parole hearing before the board prior to parole release. No inmate shall be eligible for parole under this paragraph of this subsection if

1. The inmate is sentenced as a habitual offender under Sections 99-19-81 through 99-19-87;
2. The inmate is sentenced for a crime of violence under Section 97-3-2;
3. The inmate is sentenced for an offense that specifically prohibits parole release;
4. The inmate is sentenced for trafficking in controlled substances under Section 41-29-139(f);
5. The inmate is sentenced for a sex crime; or
6. The inmate has not served one-fourth (1/4) of the sentence imposed by the court.

(iii) Notwithstanding the provisions of paragraph (a) of this subsection, any offender who has not

9a

committed a crime of violence under Section 97-3-2 and has served twenty-five percent (25%) or more of his sentence may be paroled by the parole board if, after the sentencing judge or if the sentencing judge is retired, disabled or incapacitated, the senior circuit judge authorizes the offender to be eligible for parole consideration.

- (h) Notwithstanding any other provision of law, an inmate who has not been convicted as a habitual offender under Sections 99-19-81 through 99-19-87, has not been convicted of committing a crime of violence, as defined under Section 97-3-2, has not been convicted of a sex crime or any other crime that specifically prohibits parole release, and has not been convicted of drug trafficking under Section 41-29-139 is eligible for parole if the inmate has served twenty-five percent (25%) or more of his or her sentence, but is otherwise ineligible for parole.
- (2) Notwithstanding any other provision of law, an inmate shall not be eligible to receive earned time, good time or any other administrative reduction of time which shall reduce the time necessary to be served for parole eligibility as provided in subsection (1) of this section.
- (3) The State Parole Board shall, by rules and regulations, establish a method of determining a tentative parole hearing date for each eligible offender taken into the custody of the Department of Corrections. The tentative parole hearing date shall be determined within ninety (90) days after the department has assumed custody of the offender. The parole hearing date shall occur when the offender is within thirty (30) days of the month of his parole eligibility date. The parole eligibility date shall not be earlier than one-

10a

fourth (1/4) of the prison sentence or sentences imposed by the court.

(4) Any inmate within twenty-four (24) months of his parole eligibility date and who meets the criteria established by the classification board shall receive priority for placement in any educational development and job training programs that are part of his or her parole case plan. Any inmate refusing to participate in an educational development or job training program that is part of the case plan may be in jeopardy of noncompliance with the case plan and may be denied parole.

## APPENDIX D

West's Annotated Mississippi Code

Title 99. Criminal Procedure

Chapter 19. Judgment, Sentence, and Execution

Sentencing of Habitual Criminals

Effective: July 1, 2018

Currentness

### **Miss. Code Ann. § 99-19-81. Habitual criminals: maximum term**

Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, shall be sentenced to the maximum term of imprisonment prescribed for such felony unless the court provides an explanation in its sentencing order setting forth the cause for deviating from the maximum sentence, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

12a

**APPENDIX E**

**IN THE CIRCUIT COURT OF  
HARRISON COUNTY, MISSISSIPPI  
SECOND JUDICIAL DISTRICT**

To the Mississippi Department of Corrections:

You are hereby notified that at the AUGUST 2016 term, of the Circuit Court, Judge Honorable Roger T. Clark presiding, the following named person:

CASE NUMBER: B24021500242

NAME: Jeremy Shane Fogleman

ALIAS:

DATE OF SENTENCE: August 18, 2016

CHARGE: FAILURE TO STOP MOTOR VEHICLE

REDUCED CHARGE:

HEARING TYPE: SENTENCING

TERM OF SENTENCE: FIVE (5) YEARS TO SERVE  
IN THE CUSTODY OF MDOC. DEFENDANT SHALL  
RECEIVE CREDIT FOR ANY AND ALL TIME  
SERVED AS TO THIS CHARGE.

SEX: M

RACE: W

DOB: [REDACTED]/1979

SSN: [REDACTED]

APPEALED: No.

REMARKS: Give brief summary of crime committed.  
SEE ATTACHED INDICTMENT

Dated: August 25, 2016

Connie Lachner, Harrison County Circuit Clerk

By: /s/ [Illegible]

13a

IN THE CIRCUIT COURT OF  
HARRISON COUNTY, MISSISSIPPI  
SECOND JUDICIAL DISTRICT

---

CAUSE NO. B2402-2015-242

---

STATE OF MISSISSIPPI  
VERSUS

JEREMY SHANE FOGLEMAN  
D.O.B.: [REDACTED] 1979 W/M  
S.S.N: \*\*\*-\*\*-3288

---

ORDER

This day this cause came on for Sentencing of the Defendant, who was previously found guilty in this cause of Failure to Stop Motor Vehicle on August 10, 2016. Present were Assistant District Attorney, Ian Baker, who prosecutes for the State of Mississippi, the Defendant in his own proper person, *pro se*, and stand by counsel, Charlie Stewart.

Thereupon the defendant was placed at the Bar of the Court for sentencing and was asked by the Court if he had anything to say why the judgment should not be pronounced and no sufficient cause to the contrary being shown or appearing to the Court, the State made the recommendation that the Defendant be sentenced to a term of *Five (5) Years to serve in the custody of the Mississippi Department of Corrections as a crime of violence pursuant to Mississippi Code Annotated Section Code 97-3-2(2)*. It is, therefore.

14a

ORDERED that the Court hereby finds that the facts in evidence in this case show that the Defendant used physical force against another person, and thus the Failure to Stop Motor Vehicle in this cause is a crime of violence pursuant to Mississippi Code Annotated Section Code 97-3-2(2). It is, further,

ORDERED that the Defendant is hereby sentenced to Five (5) Years to serve in the custody of the Mississippi Department of Corrections as a crime of violence pursuant to Mississippi Code Annotated Section Code 97-3-2(2). *The Defendant shall receive credit for any and all time served as to this charge.*

ORDERED this the 18th day of August, 2016.  
Entered this the 22nd day of August, 2016.

/s/ Roger T. Clark  
Roger T. Clark, Circuit Judge

15a

INDICTMENT

THE STATE OF MISSISSIPPI, CIRCUIT COURT  
SECOND JUDICIAL DISTRICT,  
COUNTY OF HARRISON

---

No. B2402-2015-242

---

FEBRUARY TERM, A.D., 2015

---

FAILURE TO STOP MOTOR VEHICLE  
Section 97-9-72(2), 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 Second 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:

JEREMY SHANE FOGLEMAN

in the Second Judicial District of Harrison County, Mississippi, on or about August 27, 2014,

did willfully, unlawfully and feloniously, while operating a motor vehicle in such a manner as to indicate a reckless or willful disregard for the safety of persons or property, fail to stop such vehicle after being given a visible or audible signal by a Law Enforcement Officer by emergency light or siren directing him to bring his motor vehicle to a stop when such signal was given by a Law Enforcement Officer acting in the

16a

lawful performance of duty who had reasonable suspicion to believe that Jeremy Shane Fogleman had committed a crime, to-wit: partially obscured license plate, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

A TRUE BILL

/s/ [Illegible] \_\_\_\_\_  
DISTRICT ATTORNEY

/s/ [Illegible] \_\_\_\_\_  
FOREMAN OF THE GRAND JURY

WITNESSES: Raymond Akins

AFFIDAVIT

Comes now Martha D. Harper. 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.

/s/ [Illegible] \_\_\_\_\_  
FOREMAN OF THE GRAND JURY

Sworn to and subscribed before me this the 22nd day of June, 2015.

GAYLE PARKER, CIRCUIT CLERK

By: /s/ [Illegible] \_\_\_\_\_

**APPENDIX F**

**IN THE CIRCUIT COURT OF  
HARRISON COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT**

To the Mississippi Department of Corrections:

You are hereby notified that at the February 2020 term, of the Circuit Court, Honorable Judge Lawrence P. Bourgeois Jr. presiding, the following named person:

CASE NUMBER: B2401-16-495

NAME: JEREMY SHANE FOGLEMAN

ALIAS:

DATE OF SENTENCE: February 13, 2020

CHARGE: FAILURE TO STOP MOTOR VEHICLE PURSUANT TO SIGNAL OF LAW ENFORCEMENT OFFICER (HABITUAL OFFENDER) – COUNT I; FAILURE TO STOP MOTOR VEHICLE PURSUANT TO SIGNAL OF LAW ENFORCEMENT OFFICER (HABITUAL OFFENDER) – COUNT II; POSSESSION OF CONTROLLED SUBSTANCE (HABITUAL OFFENDER) – COUNT III

REDUCED CHARGE:

HEARING TYPE: JURY VERDICT

TERM OF SENTENCE: FORTY (40) YEARS IN COUNT I. TEN (10) YEARS. IN COUNT II AND THREE (3) YEARS IN COUNT HI. SAID SENTENCE IN COUNT I AND COUNT III SHALL RUN CONCURRENTLY WITH ONE ANOTHER FOR A TOTAL OF FORTY (40) YEARS AND. SHALL RUN CONSECUTIVE TO THE DEFENDANT'S SENTENCE IN COUNT II FOR A TOTAL OF FIFTY (50) YEARS TO SERVE, SAID SENTENCE BEING WITHOUT HOPE OF PAROLE OR PROBATION. THE DEFENDANT

18a

SHALL RECEIVE CREDIT FOR ANY AND ALL  
TIME SERVED AS TO THESE CHARGES.

SEX: M

RACE: W

DOB: [REDACTED]/1979

SSN: [REDACTED]

APPEALED: No.

REMARKS: Give brief summary of crime committed.  
SEE ATTACHED INDICTMENT

Dated: February 19, 2020

Connie Ladner, Harrison County Circuit Clerk

By: /s/ [Illegible]

19a

IN THE CIRCUIT COURT OF  
HARRISON COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

---

CAUSE NO. B2401-2016-495

---

STATE OF MISSISSIPPI  
VERSUS

JEREMY SHANE FOGLEMAN  
D.O.B.: [REDACTED] 1979 W/M  
SSN: \*\*\*-\*\*-3288

---

FINAL JUDGMENT (8th DAY)

Comes now the Assistant District Attorney's, Matthew Burrell and Jason Josef, who prosecute for the State of Mississippi and the defendant, Jeremy Shane Fogleman in his own proper person and represented by counsel, Jim Davis, being joined on issue on February 4, 2020, whereupon comes a jury composed of Sherry L. Davis and eleven (11) others, with two (2) alternates (one juror excused for today due to a death in the immediate family) who being duly empanelled, specially sworn and charged to well and truly try the issue joined and a true verdict render according to the law and the evidence. After hearing all the instructions of the Court, the jury retired (with the exception of the alternate who was then and there excused) and presently returned into open Court with the following verdict, to-wit:

“We, the jury find the Defendant, Jeremy Shane Fogleman, guilty of Failure to Stop

Motor Vehicle Pursuant to Signal of Law Enforcement Officer Causing Death-Count I."

"We, the jury find the Defendant, Jeremy Shane Fogleman, guilty of Failure to Stop Motor Vehicle Pursuant to Signal of Law Enforcement Officer Causing Injury-Count II."

"We, the jury find the Defendant, Jeremy Shane Fogleman, guilty of Possession of Controlled Substance-Count III."

A poll of the jury showed all twelve agreed as to the verdict.

The Court determined that the Defendant had been previously convicted twice of felonies upon charges separately brought and arising out of separate incidents at different times and that the Defendant was sentenced to separate terms of one year or more in the penitentiary. The Defendant is a habitual offender pursuant to §99-19-81 of the Miss. Code of 1972 annotated.

Thereupon the defendant was placed at the Bar of the Court for sentence and was asked by the Court if he had anything to say why the judgment should not be pronounced and no sufficient cause to the contrary being shown or appearing to the Court, the State made the recommendation that the Defendant be sentenced to *Forty (40) Years in Count I, Twenty (20) Years in Count II and Three (3) Years in Count III, with all counts to run consecutive with one another for a total of Sixty-Three (63) Years to serve day for day in the custody of the Mississippi Department of Corrections.* It is, therefore,

ORDERED that the Defendant is hereby sentenced to Forty (40) Years (Habitual Offender) in Count I,

21a

Ten (10) Years (Habitual Offender) in Count H and Three (3) Years (Habitual Offender) in Count III. Said sentence in Count I and Count III shall run concurrently with one another for a total of Forty (40) Years and shall run consecutive to the Defendant's sentence in Count H for a total of Fifty (50) Years (Habitual Offender) to serve in the custody of the Mississippi Department of Corrections, and pursuant to section 99-19-81, Miss. Code of 1972, as amended, said sentence being without hope of parole or probation in the custody of the Mississippi Department of Corrections. The Defendant shall receive credit for any and all time served as to these charges.

ORDERED this the 13th day of February, 2020.  
ENTERED this the 14th day of February, 2020.

/s/ Lawrence P. Bourgeois, Jr.

Lawrence P. Bourgeois, Jr., Circuit Judge

IN THE CIRCUIT COURT OF  
HARRISON COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

---

CAUSE NO. B2401-2016-495

---

STATE OF MISSISSIPPI

VERSUS

JEREMY SHANE FOGLEMAN

---

ORDER AMENDING INDICTMENT

THIS CAUSE, coming before the Court on the Motion to Amend Indictment filed by the State of Mississippi and the Court after considering said motion does find and so orders:

That he, JEREMY SHANE FOGLEMAN, is a habitual criminal who is subject to being sentenced as such pursuant to § 99-19-81, Miss. Code of 1972, as amended, in that he, the said JEREMY SHANE FOGLEMAN, 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 was sentenced to serve at least one year imprisonment on each charge, to-wit:

(1) On December 12, 2008, the Defendant, JEREMY SHANE FOGLEMAN, was convicted in the Superior Court of Sacramento County, California, to one (1) felony charge: to wit: One (1) Count of Driving under the Influence of Alcohol and/or Drugs, in Cause Number 08F04323, was sentenced to a term of three

(3) years in the custody of the California Department of Corrections.

(2) On August 8, 2016, the Defendant, JEREMY SHANE FOGLEMAN, was convicted in the Circuit Court of Harrison County, Mississippi, Second Judicial District to one (1) felony charge: to wit: One (1) Count of Failure to Stop a Motor Vehicle Pursuant to Signal of Law Enforcement Officer, in cause number B2402-15-242, and on August 18, 2016 was sentenced to a term of five (5) years in the custody of the Mississippi Department of Corrections.

SO ORDERED this the 14th day of November, 2018.

/s/ [Illegible]  
CIRCUIT COURT JUDGE

ORDER SUBMITTED BY:

/s/ Matthew D. Burrell  
Matthew D. Burrell  
Assistant District Attorney

24a

MULTI-COUNT INDICTMENT

THE STATE OF MISSISSIPPI CIRCUIT COURT  
FIRST JUDICIAL DISTRICT,  
COUNTY OF HARRISON

---

No. B24101-16-4195

---

MARCH TERM, A. a, 2016

---

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:

COUNT I

FAILURE TO STOP MOTOR VEHICLE PURSUANT  
TO SIGNAL OF LAW ENFORCEMENT OFFICER  
Section 97-9-72(4), Miss. Code of 1972, as amended

That: JEREMY SHANE FOGLEMAN

in the First Judicial District of Harrison County, Mississippi, on or about July 8, 2015

did willfully, unlawfully and feloniously, while operating a motor vehicle, fail to stop such vehicle after being given a visible or audible signal by a Law Enforcement Officer by emergency light or siren directing him to bring his motor vehicle to a stop when such signal was given by a Law Enforcement Officer acting in the lawful performance of duty who had reasonable

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suspicion to believe that Jeremy Shane Fogleman had committed a crime, which failure resulted in the death of Edward Charles Fredrickson, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

COUNT II

FAILURE TO STOP MOTOR VEHICLE PURSUANT  
TO SIGNAL OF LAW ENFORCEMENT OFFICER  
Section 97-9-72(3), Miss, Code of 1972, as amended

As part of the same common scheme or plan That:

JEREMY SHANE FOGLEMAN

in the First Judicial District of Harrison County, Mississippi, on or about July 8, 2015

did willfully, unlawfully and feloniously, while operating a motor vehicle, fail to stop such vehicle after being given a visible or audible signal by a Law Enforcement Officer by emergency light or siren directing him to bring his motor vehicle to a stop when such signal was given by a Law Enforcement Officer acting in the lawful performance of duty who had reasonable suspicion to believe that Jeremy Shane Fogleman had committed a crime, which failure resulted in the serious bodily injury to Cassandra Renee Walker, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

26a

COUNT III

POSSESSION OF CONTROLLED SUBSTANCE  
Section 41-29-139(c)(1), Miss. Code of 1972, as amended

As part of the same common scheme or plan That:

**JEREMY SHANE FOGLEMAN**

in the First Judicial District of Harrison County,  
Mississippi, on or about July 8, 2015

did knowingly, willfully, unlawfully and feloniously  
possess 0.1 grams or more but less than 2.0 grams of  
METHAMPHETAMINE, a SCHEDULE II 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.

COUNT IV

PERJURY

Section 97-9-59, Miss. Code of 1972, as amended

As part of the same common scheme or plan That:

**JEREMY SHANE FOGLEMAN**

in the First Judicial District of Harrison County,  
Mississippi, on or about February 17, 2016

did willfully and corruptly falsely testify to a material  
matter under oath, affirmation or declaration legally  
administered and required by law and necessary for  
the prosecution at a preliminary hearing for the crime  
of failure to stop a motor vehicle pursuant to a signal  
of law enforcement, at the Harrison County Justice  
Court, First Judicial District, said Court having com-  
petent authority to administer said oath, affirmation  
or declaration, in that the said Jeremy Shane Fogelman  
did, then and there, unlawfully, willfully, knowingly,  
feloniously and corruptly swear, testify or affirm

falsely that the said Jeremy Shane Fogelman was not the driver of the vehicle involved in an automobile accident occurring at or near 28th Street and 8th Avenue in Gulfport, Mississippi during the early morning hours of July 8, 2015, whereas in truth the said Jeremy Shane Fogelman was in fact the driver of the vehicle, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

A TRUE BILL

/s/ Joel Smith  
JOEL SMITH  
DISTRICT ATTORNEY

/s/ [Illegible]  
FOREMAN OF THE GRAND JURY  
WITNESSES: Kelley Marie Clark

AFFIDAVIT

Comes now Darcy Mogler, 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.

/s/ [Illegible]  
FOREMAN OF THE GRAND JURY

Sworn to and subscribed before me this the 1 day of August, 2016.

CONNIE LADNER, CIRCUIT CLERK  
By /s/ [Illegible], D.C

## APPENDIX G

### CERTIFICATION OF BUSINESS RECORDS

#### CUSTODIAN OF RECORDS:

Name      Marilyn S. Philpot  
Mississippi Department of Corrections  
Address    421 West Pascasoula St  
              Jackson, MS 39225

#### CERTIFICATION OF CUSTODIAN OF RECORDS

I, the undersigned, being the authorized custodian of records or other qualified witness and having first-hand knowledge about the making, maintenance and storage of records, and having the authority to certify the attached records, proclaim the following

The attached records (1) were made at or near the time the act, event, condition, opinion or diagnosis by, or from information transmitted by, a person with knowledge of those matters, (2) were kept in the course of regularly conducted activity, (3) were made as part of the regular practice of the provider, and (4) are the complete and unabridged copies of records maintained by this facility.

I DECLARE UNDER PENALTY OF PERJURY  
THAT THE FOREGOING IS TRUE AND CORRECT.

Signature /s/ Marilyn S. Philpot

Printed Name Marilyn S. Philpot

**MISSISSIPPI DEPARTMENT OF CORRECTIONS**  
**DETAINER ACTION LETTER**

To: Harrison County Sheriff Department  
 P O Box 1480  
 Gulfport, MS 39502

Institution: MDOC Records Dept.  
 Parchman, MS 38738

Date: September 30, 2016

NAME	NUMBER	LOCATION
Jeremy Fogelman Felony Eluding/ Felony Eluding Causing Death	205376 Parjory	CWCF Possession of methamphetamine

Dear Sir:

The below checked paragraph relates to the above named inmate: Jeremy Fogelman

A detainer has been filed against this subject in your favor for see above scheduled for ERS-11/4/2019 10:57:29/2020, however we will again notify you approximately 60 days prior to actual release.

We have been advised that the above named subject is in your facility. Please lodge the attached certified as a detainer for this institution and mark your records to notify us prior of any type of release. Also advise if subject will waive extradition. We will extradite.

Your detainer was removed on the basis of immediately, if you do not concur with this action

Your letter dated \_\_\_\_\_ request notification prior to the release of the above named prisoner. Our records have been noted. Tentative release date at this time is \_\_\_\_\_

\_\_\_\_\_ A detainer was lodged for your agency on \_\_\_\_\_, for \_\_\_\_\_  
 The prisoner is scheduled for discharge/parole from this institution on \_\_\_\_\_  
 The inmate is housed \_\_\_\_\_ Please advise if you will assume custody on that date between the hours of 8:00 and 5:00. Subject did/did not sign waiver of extradition.

Pursuant to your request attached is the information requested.

\_\_\_\_\_ Please find enclosed your correspondence on the above named subject. They are being returned for the following reason: \_\_\_\_\_

Sincerely,  
  
 Troy M. Tuck  
 MDOC Records Officer  
 MISSISSIPPI DEPARTMENT  
 OF CORRECTIONS

PC: 1) Inmate    2) File    3) Offender Services

RECORDS DEPARTMENT, POSI OFFICE, BOX 880, PARCHMAN, NIS 38738

10/02/2016 SUN 20:38 FAX

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**MISSISSIPPI DEPARTMENT OF CORRECTIONS**  
**DETAINER ACTION LETTER**

To: Warder, Jerry Scott Department  
P.O. Box 1480  
McComb, MS 39140  
 Date: Sept 06 1992

From: Mississippi Department of Corrections  
Records Division  
Post Office Box 800  
Parchman, MS 39078  
 Date: September 16, 2016

Name: NUMBER LOCATION CLASS DETENTION PROTECTION

205126 Prison

<u



**HARRISON COUNTY  
SHERIFF'S DEPARTMENT**

**TROY J. PETERSON  
Sheriff**

PO Box 116, 1801 Main Street, Kosciusko, MS 39090 • (662) 228-2466

**DETAINER REQUEST**

Please accept this Official Detainer Request for the Harrison County Sheriff's Department on the below-listed inmate on the below-listed charge. When Subject is ready for pick-up, please advise. If your agency has a scheduled release date, please notify us of that date.

**\*\*OUR CONTACT INFORMATION\*\***

Email: [inmaterecords@harrisoncountysheriff.com](mailto:inmaterecords@harrisoncountysheriff.com)

Fax: 228-896-0632

Phone: 228-896-0616 or 228-604-2368 or 228-896-0631

**\*\*OUR CONTACT INFORMATION FOR TRANSPORT/PICK-UP\*\***

Email: [amanda.chink@harrisoncountysheriff.com](mailto:amanda.chink@harrisoncountysheriff.com)

Fax: 228-866-5649

Phone: 228-855-4136

**\*\* INMATE INFORMATION \*\***

Date: 9-30-16

Time: 1042

From Inmate Records Clerk: Calford

Name: Jeremy Shane Fogelman

MDOC: \_\_\_\_\_

SSN: \_\_\_\_\_

DOB: 11/16

Race: W

Sex: M

Charges: Felony Eluding; Felony Eluding; Causing Death, Perjury; Poss. of Methamphetamine

Case and/or Case #: 62401-2016-0491 x 4

Detainer was faxed to: MDOC Records

Detainer was made Attention: MDOC Records

# Mississippi Department of Corrections



## Discharge Certificate

TO WHOM IT MAY CONCERN:

The undersigned, Director of Records of the Department of Corrections of the State of Mississippi, hereby certifies that:

**MDOC 205376**

Number:

<b>SSN</b>	[REDACTED]	<b>Date of Birth</b>	<b>[REDACTED] 1979</b>
<b>Race</b>	<b>White</b>	<b>Sex</b>	<b>Male</b>
<b>Height</b>	<b>5'11</b>	<b>Weight</b>	<b>210</b>
<b>Hair</b>	<b>Brown</b>	<b>Eyes</b>	<b>Blue</b>
<b>Complexion</b>	<b>Ruddy</b>	<b>Build</b>	<b>Large</b>
<b>Marks/Scars</b>	<b>Multi tattoo's/words arm upper/Multi tattoo's words</b>		
<b>Cause Number</b>	<b>B2402-2015-242</b>		

Who was convicted by the Circuit Court of Harrison County for **Failure to Stop Motor Vehicle**, and was sentenced **5 Year(s)** in the Mississippi Department of Corrections with **0 Year(s) Suspended, and 5 Year(s) to Serve and 0 Year(s) Post Release Supervision, 0 Year(s) Supervised Probation, 0 Year(s) Unsupervised/Non-Reporting Probation**

That, MDOC Number **205376** Name **Fogleman, Jeremy** has completed sentence service of **5 Year(s)** in the Mississippi Department of Corrections and is hereby **DISCHARGED ON November 01, 2019** due to Expiration of Sentence.

That, according to law, MDOC Number **N/A** Name **N/A** Name **N/A** hereby remanded to the supervision of the Mississippi Probation and Parole Board to complete the suspended portion of this sentence under the jurisdiction of the court.

Witness my hand and seal, this 11 day of September, 2019.

Jeworski Mallett  
Director of Records

**ACTION OF THE PAROLE BOARD**

**NAME** FOGLEMAN, JEREMY SHANE      **No.** 205376

**LOCATION** SOUTH MISSISSIPPI COUNTY JAIL      **DATE** 11/15/2016

Inmate present for       Yes       No

**PAROLE to DETAINER (HARRISON)**

Pending       Completion of A&D Program       Compact Acceptance  
 Completion of Pre-Release Program       Completion of A&D Therapeutic Community  
 Completion of Long Term A&D       Completion of New Hope Drug Program  
 Other

**RESCIND PAROLE**

DENIED      **CONTINUED** \_\_\_\_\_  Months(s): \_\_\_\_\_  Years(s): \_\_\_\_\_  Duration  
**PAROLE**

Next Hearing Date

**ELIGIBILITY DATE** 08/29/2016

**TENTATIVE RELEASE DATE****SPECIAL CONDITIONS WHILE ON PAROLE**

Must attend alcohol and drug treatment program.  
 Must attend AA as directed.  
 Must attend Mental Health for counseling as directed.   
 Must not use alcoholic beverages.  
 Pursue GED.  
 GENERAL COUNSELING

**RESIDENCE PLAN**

Dwelling Name: \_\_\_\_\_  
 Apartment Number: \_\_\_\_\_  
 Street Number: \_\_\_\_\_  
 Street Name: \_\_\_\_\_  
 City: \_\_\_\_\_  
 State: \_\_\_\_\_  
 Postal Code: \_\_\_\_\_  
 Country: \_\_\_\_\_  
 Phone: \_\_\_\_\_

**Reasons Favoring Parole.**

Has served sufficient portion of sentence.  
 Good prison record.  
 Good risk assessment.  
 Detainer/other sentence to serve.  
 Recommendation by prison authority.  
 Recommendation by law enforcement official.  
 Successfully completed set-off.  
 Need supervision prior to discharge.

- Community support.
- Has employment or adequate provisions for maintenance and care.
- The board believes (he/she) is able and willing to fulfill the obligation of a law-abiding citizen.
- Psychiatric/psychological evaluation indicates reasonable chances of success on parole.
- Mitigating circumstances surrounding crime.
- Participating in rehabilitative programs.
- 

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## Reasons For Denial

- Serious nature of offense
- Number of offenses committed
- Police and/or juvenile record
- Prior felony conviction(s)
- Additional charges pending/detainer
- Prior misdemeanor conviction(s)
- Probation unsatisfactory/violated
- Parole unsatisfactory/violated
- Other conditional release unsatisfactory/violated
- Escape
- Institutional disciplinary reports
- Recent/pending disciplinary reports
- Unsatisfactory work rating
- Failure to participate in or complete rehabilitative programs
- Poor risk assessment
- Poor prognosis according to psychological/psychiatric evaluation
- Community opposition
- Failure to comply with board's instruction
- Further investigation required
- Insufficient time served
- You requested not to be paroled
- Inadequate arrangements for employment and/or residence
- We are of the opinion that the social, mental or educational resources are lacking which are necessary to function successfully on parole
- The Board believes the ability or willingness to fulfill the obligations of a law-abiding citizen is lacking, pursuant to Section 47-7-17 of the Mississippi Code Annotated as amended

**FOR BOARD USE ONLY**

- Offense Details
- Social History
- Criminal History
- Conduct/Employ
- Medical Info
- Psy. Report

Victim's Input	
Elig. Det./Records	
Risk Matrix	
If sex offender, psy. within one year	
If capital offense; legal advertise	
Other	
VOTE:	
For parole	
Against parole	
NOTES	

SPECIAL INSTRUCTIONS TO OFFENDER:  
 At next hearing, come before the Board with a clean record.  
 At/prior to next hearing, provide proof of EMPLOYMENT?RESIDENCE plans.  
 Participate in ALCOHOL & DRUG PROGRAM, GED, ABE, VOCATIONAL SCHOOL.

Recorded By  
SP

Rev. 06-2001

NAME Fogelman, Terry JAIL No 205376 LOCATION Harrison CT DATE 11/15/16

Inmate present for hearing  Yes  No

PAROLE to Harrison County

Pending:  Completion of Short Term A & D Program  Compact Acceptance  
 Completion of Pre-Release Program  Long Term A & D  
 Completion of Long Term A&D or A&DTC  Acceptance  
 Other

RESCIND PAROLE

DENIED PAROLE CONTINUED        ( ) Month(s);        ( ) Year(s);        ( ) Duration  
Next Hearing Date       

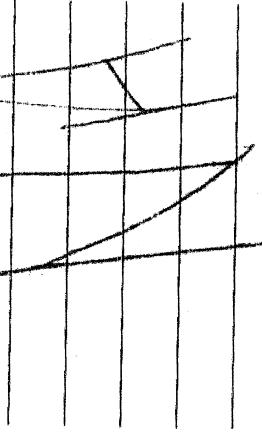
ELIGIBILITY DATE       

SPECIAL CONDITIONS WHILE ON PAROLE

- Must attend alcohol and drug treatment program.
- Must attend AA as directed.
- Must attend Mental Health for        counseling as directed.
- Must Register as a Sex Offender
- Must not use alcoholic beverages
- Pursue GED
- General counseling
- Must attend 90 AA/NA meetings in 90 days
- 

TENTATIVE RELEASE DATE       

RESIDENCE PLAN



Phone:       

Reasons Favoring Parole

- Has served sufficient portion of sentence.
- Good prison record.
- Recommendation by prison authority.
- Good risk assessment.
- Detainer/other sentence to serve.
- Recommendation by law enforcement official.
- Successfully completed set-off.
- Needs supervision prior to discharge.
- Community support.
- Has employment or adequate provisions for maintenance and care.
- The Board believes (he/she) is able and willing to fulfill the obligation of a law-abiding citizen.
- Psychiatric/psychological evaluation indicates reasonable chances of success on parole.
- Mitigating circumstance surrounding crime.
- Participating in rehabilitative programs.

Reasons For Denial

1. Serious nature of offense
2. Number of offenses committed
3. Police and/or Juvenile record
4. Prior felony conviction(s)
5. Additional charges pending/detainer
6. Prior misdemeanor conviction(s)
7. Probation unsatisfactory/violated
8. Parole unsatisfactory/violated
9. Other conditional release unsatisfactory/violated
10. History of violence
11. History of drug or alcohol abuse
12. Psychological and/or psychiatric history
13. Crimes committed while incarcerated
14. Escape
15. Institutional disciplinary reports
16. Recent/pending disciplinary action
17. Unsatisfactory work rating
18. Failure to participate in or complete rehabilitative programs
19. Poor prognosis according to psychological/psychiatric evaluation
20. Community opposition
21. Failure to comply with board's instruction
22. Further investigation required
23. Insufficient time served

<b>FOR BOARD USE ONLY</b>	
Offense Details	<u>      </u>
Social History	<u>      </u>
Criminal History	<u>      </u>
Conduct/Employ	<u>      </u>
Medical Info	<u>      </u>
Psy. Report	<u>      </u>
Victim's Input	<u>      </u>
Elig. Det/Records	<u>      </u>
Risk Matrix	<u>      </u>
If sex offender; psy. within one year	<u>      </u>
If capital offense; legal advertise	<u>      </u>
Other	<u>      </u>
VOTE:	
For parole	<u>      </u>
Against parole	<u>      </u>
NOTES	<u>      </u>
Not present	<u>      </u>
Absent	<u>      </u>
DEC 2016	
MP RECORDS	

**Mississippi Department of Corrections**  
**Inmate Time Sheet**

**Offender:** FOGLEMAN, JEREMY SHANE 205376

**Housing:** CMCF, CMCF QB, BLD C, ZONE C, BED 0105

**Computation Date:** 08/16/2017 14:23

**Date Printed:** 04/15/2020 11:24

**Sentences:**

DATE	CAUSE/COUNT	OFFENSE	COMMITTED	COUNTY	SERVE	HOUSE	PROBATION HAB	DEFERRED	OVERRIDE	CONCURRENT	CONSECUTIVE
08/18/16	B2402-2015-242/1	5465:FLEEING LAW ENFORCEMENT OFFICER	08/27/14	Harrison	5Y		N				

First Time Offender

**Pre Trial/Pre Sentence Jail Time:**

FROM	TO	DAYS
08/27/14	10/30/14	64
08/03/15	08/18/16	381

Total Jail Time: 445

Override

**Computation Details:**

DATE	DESCRIPTION
08/18/16	B2402-2015-242/1 5465:FLEEING LAW ENFORCEMENT OFFICER 5Y
01/04/17	Into Trusty Status 01/04/17 T/S- DISABILITY
02/03/17	Trusty Earned Time 01/04/17 to 02/03/17 : 30D
03/05/17	Trusty Earned Time 02/03/17 to 03/05/17 : 30D
04/04/17	Trusty Earned Time 03/05/17 to 04/04/17 : 30D
05/04/17	Trusty Earned Time 04/04/17 to 05/04/17 : 30D
06/03/17	Trusty Earned Time 05/04/17 to 06/03/17 : 30D
07/03/17	Trusty Earned Time 06/03/17 to 07/03/17 : 30D
08/02/17	Trusty Earned Time 07/03/17 to 08/02/17 : 30D
08/16/17	Out Of Trusty Status 06/06/17 MULTIPLE RVRs

**Summary:**

Begin Date	House Arrest Date	Parole Date	ERS Date	Tentative Discharge	Max Discharge	End Date
05/31/2015		08/29/2016	04/08/2019	11/01/2019	05/29/2020	
Total Term To Serve: 5Y		Total Earned Time: 207D		Earned Time Lost: 0D		Total MET Earned: 0D
						Total Trusty Time Earned: 210D

**Comments:**

**Mississippi Department of Corrections**  
**Inmate Time Sheet**

**Offender:** FOGLEMAN, JEREMY SHANE 205376

**Housing:** CMCF, CMCF QB, BLD C, ZONE C, BED 0105

**Computation Date:** 03/12/2020 17:06

**Date Printed:** 04/15/2020 11:24

**Sentences:**

DATE	CAUSE/COUNT	OFFENSE	COMMITTED	COUNTY	SERVE	HOUSE	PROBATION HAB	DEFERRED	OVERRIDE	CONCURRENT	CONSECUTIVE
02/13/20	B2401-2016-495/I	5466:FLEEING LAW ENFORCEMENT OFFICER - INJURY/DEATH	07/08/15	Harrison	40Y		Y				
02/13/20	B2401-2016-495/II	5466:FLEEING LAW ENFORCEMENT OFFICER - INJURY/DEATH	07/08/15	Harrison	10Y		Y				B2401-2016-495/I
02/13/20	B2401-2016-495/III	3588:POSSESSION OF CONTROLLED SUBSTANCE	07/08/15	Harrison	3Y		Y				B2401-2016-495/I

First Time Offender

**Pre Trial/Pre Sentence Jail Time:**

FROM	TO	DAYS
11/01/19	02/13/20	104

Total Jail Time: 104

Override

**Computation Details:**

DATE	DESCRIPTION
02/13/20	B2401-2016-495/I 5466:FLEEING LAW ENFORCEMENT OFFICER - INJURY/DEATH 40Y
02/13/20	B2401-2016-495/II 5466:FLEEING LAW ENFORCEMENT OFFICER - INJURY/DEATH 10Y CS to B2401-2016-495/I
02/13/20	B2401-2016-495/III 3588:POSSESSION OF CONTROLLED SUBSTANCE 3Y CC with B2401-2016-495/I

**Summary:**

Begin Date 11/01/2019	House Arrest Date	Parole Date	ERS Date 10/19/2069	Tentative Discharge 10/19/2069	Max Discharge 10/19/2069	End Date
Total Term To Serve: 50Y	Total Earned Time: 0D	Earned Time Lost: 0D	Total MET Earned: 0D	Total Trusty Time Earned: 0D		

**Comments:**