

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RUBEN ORLANDO BENITEZ
PETITIONER

V.

CAUSE NUMBER: _____

STATE OF MISSISSIPPI
RESPONDANT

EXHIBITS

1-13

Serial: 203998

IN THE SUPREME COURT OF MISSISSIPPI

No. 2013-CT-00469-SCT

FILED

2016 FEB 10
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEAL

RUBEN ORLANDO BENITEZ A/K/A
RUBEN O. BENITEZ

Appellant

v.

STATE OF MISSISSIPPI

Appellee

ORDER

Now before the undersigned Justice comes the Request for Written Opinion/Judgment filed *pro se* by Ruben Orlando Benitez. Said motion is in the nature of a motion for clarification and it is treated as such. On January 14, 2016, the Court entered its order denying Benitez's Petition for Writ of Certiorari. Benitez now seeks to have this Court issue an opinion to establish the merits for the denial. After due consideration, the undersigned Justice finds that the motion should be denied.

Also before the undersigned Justice is Benitez's *pro se* Motion to Stay Mandate. Benitez requests that the Court stay the mandate in this matter pending his application for Writ of Certiorari in the United State Supreme Court. After due consideration, the undersigned Justice finds that the motion should be granted pursuant to M.R.A.P. 41(c).

IT IS THEREFORE ORDERED that the Request for Written Opinion/Judgment is hereby denied.

IT IS FURTHER ORDERED that the Motion to Stay Mandate is granted in accordance with M.R.A.P. 41(c).

SO ORDERED, this the 10th day of February, 2016.


LESLIE D. KING, JUSTICE

EXHIBIT # 1

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CAUSE NO:

RUBEN ORLANDO BENITEZ

PETITIONER

V

STATE OF MISSISSIPPI

RESPONDENT

ON PETITION FOR A

EVIDENTUARY HEARING

MISSISSIPPI SUPREME COURT

PRO SE SUBMISSION

RUBEN ORLANDO BENITEZ

MDOC #182157

SMCI

BUILDING D-1 ZONE B BED 194

P.O. BOX 1419

LEAKESVILLE, MS 39451

EXHIBIT # 2

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CAUSE NO. 2013 CT. 469-SU

RUBEN ORLANDO BENITEZ

PETITIONER

V

STATE OF MISSISSIPPI

RESPONDENT

ON PETITION FOR A
EVIDENTUARY HEARING
MISSISSIPPI SUPREME COURT

PRO SE SUBMISSION

RUBEN ORLANDO BENITEZ
MDOC # 182157
SMCI
BUILDING D-1 ZONE B BED 194
P.O. BOX 1419
LEAKESVILLE, MS 39451

MOTION#

2017

1858

FILE

MAY 15 2017

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

EXHIBIT # 3

Serial: 216707

IN THE SUPREME COURT OF MISSISSIPPI

No. 2017-M-00681

FILED

JAN 10 2018

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEAL

EXHIBIT
10
2

7

*RUBEN ORLANDO BENITEZ A/K/A
RUBEN O. BENITEZ*

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

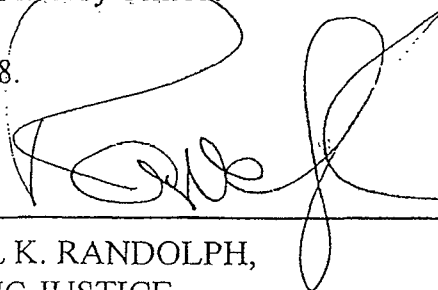
ORDER

This matter is before the panel of Randolph, P.J., King and Ishee, JJ., on the petition for evidentiary hearing filed *pro se* by Ruben Orlando Benitez. Said motion is in the nature of a motion for post-conviction-relief, and it is treated as such.

Benitez's conviction of murder and sentence of life in the custody of the Mississippi Department of Corrections were affirmed on direct appeal, and the mandate issued on May 18, 2017. *Benitez v. State*, 139 So. 3d 134 (Miss. Ct. App. 2014). On direct appeal, Benitez challenged the validity of the search warrants, arguing that underlying facts and circumstances attached to those search warrants failed to satisfactorily show the probable cause required. In the instant matter, he again challenges the validity of search warrants, alleging that an officer lied on the affidavit. We find this argument was capable of being raised at trial or on direct appeal, and it has been waived. Miss. Code Ann. § 99-39-21(1). Further, Benitez has failed to make a substantial showing of the denial of a state or federal right. Miss. Code Ann. § 99-39-27(5). Accordingly, the panel finds the instant filing should be denied.

IT IS THEREFORE ORDERED that Benitez's petition for an evidentiary hearing, which is treated as a motion for post-conviction relief, is hereby denied.

SO ORDERED, this the 10th day of January, 2018.

A handwritten signature in black ink, appearing to read 'Michael K. Randolph', written over a horizontal line.

MICHAEL K. RANDOLPH,
PRESIDING JUSTICE



Supreme Court of Mississippi
Court of Appeals of the State of Mississippi

~~Clerk's Docket~~

~~2013-CT-00469-SCM~~

Ruben Orlando Benitez v. State of Mississippi

Harrison Circuit Court District 2

Trial Court Case # B2402-2012-326

The Honorable John C. Gargiulo

Ruling Date: 03/07/2013

Appellant Attorneys

Ruben Orlando Benitez

Represented By:

George T. Holmes

Benjamin Allen Suber

Appellee Attorneys

State of Mississippi

Represented By:

John R. Henry, Jr.

Jim Hood

LaDonna C. Holland

GENERAL DOCKET

03/19/2013 Notice of Appeal Filed

03/21/2013 Trial Court Order received - Hon. Gayle Parker

03/21/2013 Trial Court Order received - Hon. Gayle Parker

03/21/2013 Designation of Record received - Hon. Gayle Parker

03/22/2013 Notice of Assignment to Court of Appeals

03/22/2013 The Court Assignment Letter has been sent.

EXHIBIT # 5

10F5

03/27/2013 Appearance Form received - George T. Holmes

03/27/2013 Court Reporter Transcript Due Date issued - Robin Michelle Casano

03/27/2013 Certificate of Compliance received - Trial Court Clerk - Hon. Gayle Parker

03/28/2013 Court Reporter Transcript Due Date issued

03/29/2013 Motion # 2013 - 859 Motion for Leave to Withdraw

04/02/2013 Order Entered Motion # 2013 - 859

07/12/2013 Record Filed

07/12/2013 Briefing Schedule Notice Issued.

07/26/2013 Appearance Form received - Benjamin Allen Suber

08/16/2013 Appellant's Brief filed on behalf of Ruben Orlando Benitez

08/16/2013 Record Excerpts filed on behalf of Ruben Orlando Benitez

09/16/2013 Appellee's Brief filed on behalf of State of Mississippi

09/17/2013 Appearance Form received - LaDonna C. Holland

01/07/2014 Case Submitted without Oral Argument

05/20/2014 DECISION Affirmed

06/10/2014 Mandate Issued

07/08/2014 Motion # 2014 - 2738 Writ of Certiorari

08/21/2014 Order Entered Motion # 2014 - 2738

EXHIBIT # 5

3 of 5

09/09/2014 Motion # 2014 - 3613 Motion To Suspend Order

Attachment added to motion - 2014-3613

10/03/2014 Resubmission of the Original Petition For Rehearing

10/10/2014 Order Entered Motion # 2014 - 3613

10/10/2014 Attachment added to motion - 2014-3613
Resubmission of the Resubmission of the
Resubmission of the Resubmission of the
Original Petition for Rehearing...

10/10/2014 Motion # 2014 - 5420 Resubmission of the
Resubmission of the Resubmission of the
Resubmission of the Resubmission of the
Original Petition for Rehearing

10/20/2014 Motion # 2014 - 4291 Motion to Rescind Order

10/29/2014 Order Entered Motion # 2014 - 4291

01/09/2015 Correspondence Letter Issued.

01/15/2015 Motion # 2015 - 254 Out-of-Time Motion for Rehearing

02/25/2015 Correspondence Letter Issued.

03/30/2015 Order Entered Motion # 2015 - 254

07/28/2015 Mandate Recalled

07/28/2015 Order Entered - Motion # 2015 - 254

08/21/2015 Motion # 2015 - 3755 Motion to Quash Search Warrant

09/09/2015 Order Entered Motion # 2015 - 3755

09/22/2015 Correspondence Letter Issued.

10/13/2015 Rehearing Denied Motion # 2014 - 5420

10/23/2015 Motion # 2015 - 4760 Petition for Writ of
Certiorari

01/14/2016 Order Entered Motion # 2015 - 4760

02/01/2016 Motion # 2016 - 464 Request for Written
Opinion/Judgement

02/01/2016 Motion # 2016 - 465 Motion to Stay
Mandate

02/10/2016 Order Entered Motion # 2016 - 465

05/15/2017 Motion # 2017 - 1858 On Petition for a
Evedentuary Hearing Mississippi Supreme
Court

4055

EXHIBIT # 5



STATE OF MISSISSIPPI JUDICIARY

Administrative Office of Courts

EXHIBIT
5065
#5

SIGN IN | REGISTER

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Welcome to The Supreme Court of Mississippi



General Docket

2013-ct-00469-sct

No results found.



Decisions

Hand Down Lists

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2021 SCT ▼

07-15-2021 ▼

GO



Oral

Arguments

No scheduled SCT

Welcome to the website of the Mississippi Judiciary. This site is designed to provide public access to information about the state court system.

Here you will find dockets, briefs, orders and opinions of the Supreme Court and Court of Appeals. Appellate opinions dating back to 1996 are available here. Appellate court oral arguments are webcast live, and oral arguments heard since October 2014 are archived here. Mississippi College School of Law's Judicial Database, linked [here](#), includes a video archive of oral arguments dating from 2004 and a brief archive from late 2007.

At the trial court level, a growing number of Chancery, Circuit and County Courts utilize the Mississippi Electronic Courts system to e-file trial court records. Digital court documents may be viewed via the subscriber based PAMEC digital portal.

General information about each level of the court system and the kinds of matters dealt with at each level may be found here. Judicial and staff directories are available for each court.

The site provides access to all the current laws of the state through the searchable Mississippi Code. All rules of the state court system are available online. The catalog of the legal collections of the State Library is available. Court statistics and administrative data back to 1996 are

[Privacy](#) • [Terms](#)

Serial: 237433

IN THE SUPREME COURT OF MISSISSIPPI

No. 2017-M-00681

RUBEN ORLANDO BENITEZ
A/K/A RUBEN O. BENITEZ

Petitioner.

v.

*STATE OF MISSISSIPPI**Respondent***ORDER**

This matter is before the panel of Kitchens, P.J., Beam and Chamberlin, JJ., on the Application for Leave to Proceed into Trial Court with Motion for Post-Conviction Collateral Relief, filed pro se by Ruben Orlando Benitez.

Benitez's conviction of murder and sentence of life in the custody of the Mississippi Department of Corrections were affirmed on direct appeal, and the mandate issued on May 18, 2017. *Benitez v. State*, 139 So. 3d 134 (Miss. Ct. App. 2014). The instant filing is Benitez's second motion for post-conviction relief. We find the application to be barred by time and as a successive application for leave. Miss. Code Ann. §§ 99-39-5(2), 99-39-27(9). Further, the claims argued are barred by the doctrine of *res judicata*. Miss. Code Ann. § 99-39-21(3). Accordingly, the panel finds that the application for leave should be denied.

IT IS THEREFORE ORDERED that the Application for Leave to Proceed into Trial Court with Motion for Post-Conviction Collateral Relief is denied.

SO ORDERED.


DIGITAL SIGNATURE

Order#: 237433

Sig Serial: 100003946

Org: SC

Date: 06/29/2021

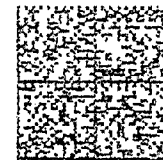

James W. Kitchens, Presiding JusticeEXHIBIT # 6
1 of 2

OFFICE OF THE CLERK
Supreme Court & Court of Appeals
Post Office Box 249
JACKSON, MS 39205-0249

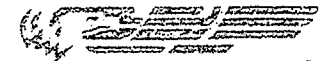
01-194

2017-M-00681

Ruben Orlando Benitez
SMCI Bldg D-1 # 182157
P O Box 1419
Leakesville, MS, 39451



U.S. POSTAGE >> PITNEY BOWES



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Date Received

7-12-21

Accepted

Refused

Inmate Signature

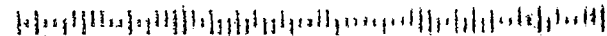
Date/Time

7-13-21

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EXHIBIT # 6



Supreme Court of Mississippi
Court of Appeals of the State of Mississippi

Clerk's Docket

2017-M-00681

Ruben Orlando Benitez v. State of Mississippi

Harrison Circuit Court District 2

Trial Court Case # B2402-2012-326

The Honorable John C. Gargiulo

Ruling Date:

Petitioner Attorneys

Ruben Orlando Benitez

Represented By:

Pro Se

Respondent Attorneys

State of Mississippi

Represented By:

Jim Hood

Jason L. Davis

GENERAL DOCKET

05/15/2017

Miscellaneous Case Created

05/15/2017

Motion # 2017 - 1858 On Petition for a Evedentuary
Hearing Mississippi Supreme Court

EXHIBIT # 1



EXHIBIT # 8

MANDATE
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

To the Harrison County Circuit Court 2nd Judicial District - GREETINGS:

In proceedings held in the Courtroom, Carroll Gartin Justice Building, in the City of Jackson, Mississippi, the Court of Appeals of the State of Mississippi entered a judgment as follows:

Court of Appeals Case # 2013-CT-00469-COA
Trial Court Case #B2402-2012-326

Ruben Orlando Benitez a/k/a Ruben O. Benitez v. State of Mississippi

Tuesday, 20th day of May, 2014

The judgment of the Harrison County Circuit Court of conviction of murder and sentence of life in the custody of the Mississippi Department of Corrections is affirmed. All costs of this appeal are assessed to the appellant.

Tuesday, 13th day of October, 2015

The motion for rehearing is denied. James, J., would grant.

Thursday, 14th day of January, 2016

DISPOSITION OF THE MISSISSIPPI SUPREME COURT - The Petition for Writ of Certiorari filed pro se by Ruben Orlando Benitez is denied. To Deny: Waller, C.J., Randolph, P.J., Lamar, Kitchens, Pierce, King and Coleman, JJ. To Grant: Dickinson, P.J. Not Participating: Maxwell, J. Order entered.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

I, Muriel B. Ellis, Clerk of the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, certify that the above judgment is a true and correct copy of the original which is authorized by law to be filed and is actually on file in my office under my custody and control.

Witness my signature and the Court's seal on May 18, 2017, A.D.

Muriel B. Ellis

CLERK



EXHIBIT #9

MANDATE
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

To the Harrison County Circuit Court 2nd Judicial District - GREETINGS:

In proceedings held in the Courtroom, Carroll Gartin Justice Building, in the City of Jackson, Mississippi, the Court of Appeals of the State of Mississippi entered a judgment as follows:

Court of Appeals Case # 2013-KA-00469-COA
Trial Court Case #B2402-2012-326

Ruben Orlando Benitez a/k/a Ruben O. Benitez v. State of Mississippi

Tuesday, 20th day of May, 2014

The judgment of the Harrison County Circuit Court of conviction of murder and sentence of life in the custody of the Mississippi Department of Corrections is affirmed. All costs of this appeal are assessed to the appellant.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

I, Kathy Gillis, Clerk of the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, certify that the above judgment is a true and correct copy of the original which is authorized by law to be filed and is actually on file in my office under my custody and control.

Witness my signature and the Court's seal on June 10, 2014, A.D.

Kathy Gillis
CLERK

Serial: 197791

IN THE SUPREME COURT OF MISSISSIPPI

No. 2013-CT-00469-SCT

*RUBEN ORLANDO BENITEZ A/K/A
RUBEN O. BENITEZ*

FILED

MAR 30 2015

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS
Appellant

EXHIBIT # 10
1 of 2

v.

STATE OF MISSISSIPPI

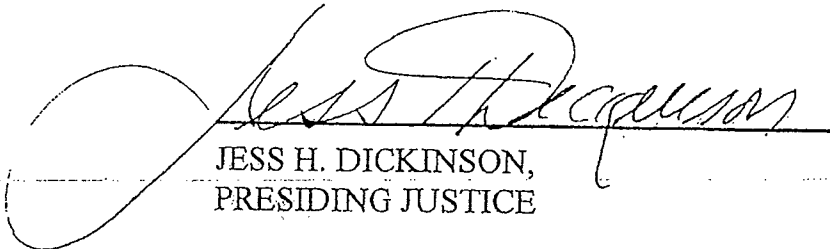
Appellee

ORDER

Now before the undersigned Justice comes the Out-of-Time Motion for Rehearing. On August 21, 2014, this Court dismissed Benitez's petition for writ of certiorari because he failed to file a motion for rehearing with the Court of Appeals. Further, the Court of Appeals' mandate issued on June 10, 2014. Subsequently, Benitez requested from the Court of Appeals, permission to submit his motion for rehearing. In its order dismissing the motion, the Court of Appeals informed Benitez that, because this Court last exercised jurisdiction by denying his petition for writ of certiorari, he must apply to this Court for relief from his untimely motion for rehearing. Instead, this Court dismissed his petition for writ of certiorari because it was untimely and the prerequisite motion for rehearing had not been filed and ruled on by the Court of Appeals. Benitez's request to file an out-of-time motion for rehearing, which if granted would require the Court of Appeals to recall its mandate, is properly suited for the Court of Appeals to decide. Accordingly, the instant motion is remanded to the Court of Appeals for a disposition on whether Benitez should be permitted to proceed out-of-time with his motion for rehearing.

IT IS THEREFORE ORDERED that the Out-of-Time Motion for Rehearing, filed pro-
se by Ruben Orlando Benitez, is hereby remanded to the Court of Appeals for a disposition
on whether Benitez's should be allowed to proceed out-of-time with his motion for rehearing.

SO ORDERED, this the 30th day of March, 2015.


JESS H. DICKINSON,
PRESIDING JUSTICE

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Muriel B. Ellis
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082
e-mail: sctclerk@courts.ms.gov

EXHIBIT # 11

July 28, 2015

Ruben Orlando Benitez a/k/a Ruben O. Benitez

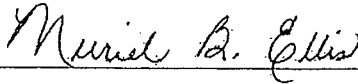
v.

State of Mississippi

Case # 2013-CT-00469-COA

NOTICE

The mandate previously issued on June 10, 2014 for Harrison County Circuit Court, Second Judicial District, Case #B2402-2012-326 is recalled and placed back on the docket.


CLERK

jfd

Serial: 199979

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

No. 2013-CT-00469-COA

RUBEN ORLANDO BENITEZ A/K/A
RUBEN O. BENITEZ

FILED

Appellant

v.

JUL 28 2015
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI

Appellee

ORDER

This matter comes before the Court en banc on Appellant Ruben Orlando Benitez's pro se "Out-of-Time Motion for Rehearing," which was remanded to this Court for consideration by the Mississippi Supreme Court on March 30, 2015.

Benitez's direct criminal appeal was affirmed by this Court on May 20, 2014. No motion for rehearing was received. The mandate issued on June 10, 2014. On July 8, 2014, Benitez filed a pro se writ of certiorari, which the supreme court dismissed because no rehearing motion had been filed or heard by this Court. In response, on October 10, 2014, Benitez filed a motion for resubmission of his motion for rehearing. His motion states he submitted his rehearing motion to prison officials for mailing on June 4, 2014, prior to the issuance of this Court's mandate. He attached a copy of his pro se motion for rehearing, which is dated June 3, 2014. He also enclosed the prison mail log, which confirmed the rehearing motion was submitted for mailing on June 4, 2014, although it was not received by this Court. "Under the prison mailbox rule, a pleading is deemed timely if it is deposited

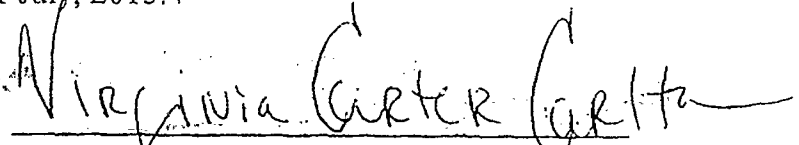
EXHIBIT #12
1 of 2

in the prison mail system within the time required.” *Sykes v. State*, 757 So. 2d 997, 1000 (¶12) (Miss. 2000). While Benitez’s rehearing motion was due on June 3, 2014, fourteen days after this Court’s decision, Benitez has submitted a letter from counsel, which incorrectly informed Benitez that the motion for rehearing was due on June 5, 2014.

Benitez now asks this Court to recall the mandate so his motion for rehearing can proceed. The Court finds the motion is well taken and should be granted. Benitez has shown good cause to recall the mandate under Mississippi Rule of Appellate Procedure 2(c) and to allow his rehearing motion received on October 10, 2014, to proceed. Benitez has been diligent in his efforts to pursue his rehearing motion, and he has provided the prison mail log, confirming that he submitted the rehearing motion for mailing on June 4, 2014. Although the motion was submitted a day late, this was the fault of counsel, who informed him of the incorrect due date.

IT IS THEREFORE ORDERED that Benitez’s pro se “Out-of-Time Motion for Rehearing” is granted. The mandate is hereby recalled, and Benitez’s pro se motion for rehearing shall be allowed to proceed.

SO ORDERED, this the 3^d day of July, 2015.


VIRGINIA CARTER CARLTON, JUDGE

Serial: 194582

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

No. 2013-CT-00469-COA

RUBEN ORLANDO BENITEZ A/K/A
RUBEN O. BENITEZ

FILED

Appellant

OCT 29 2014

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Appellee

v.

STATE OF MISSISSIPPI

ORDER

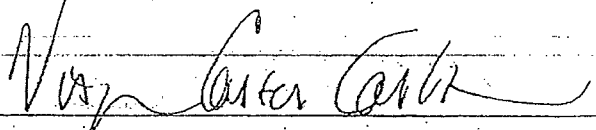
This matter comes before the Court, on Appellant, Ruben Orlando Benitez's, pro se motion, filed October 20, 2014, to "rescind" this Court's order entered October 10, 2014. Benitez asserts that Mississippi Department of Corrections regulations require legal mail to be placed in the prison mail system each Monday. ~~He then claims that his petition for rehearing, which he claims was placed in the prison mail system on June 4, 2014, should be deemed mailed on Monday, June 2, 2014. Regardless of when DOC regulations say Benitez should have placed his petition in the mail, the notary signature attached to the letter transmitting it to the Court shows that it was notarized on June 4, 2014, and it was therefore beyond the June 3, 2014 deadline for mailing. As set out in this Court's October 10, 2014 order, this Court is without jurisdiction to rule on Benitez's motion. Therefore, the Court finds that the motion is not well-taken and should be dismissed for lack of jurisdiction by this Court.~~

EXHIBIT #13
10-2

2012

IT IS THEREFORE ORDERED that the Appellant's pro se motion to "rescind" this Court's October 10, 2014 order is hereby dismissed for lack of jurisdiction, without prejudice to Benitez to seek permission from the Supreme Court for leave to pursue an out-of-time motion for rehearing, or a motion for post-conviction relief.

SO ORDERED, this the 29th day of October, 2014.


VIRGINIA CARTER CARLTON, JUDGE

IN THE SUPREME COURT OF THE UNITED STATES

RUBEN ORLANDO BENITEZ
PETITIONER

V.

CAUSE NUMBER: _____

STATE OF MISSISSIPPI
RESPONDANT

APPENDICES

A

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RUBEN ORLANDO BENITEZ

PETITIONER

V.

CAUSE NO: _____

STATE OF MISSISSIPPI

RESPONDANT

**APPLICATION FOR LEAVE TO PROCEED INTO TRIAL COURT
WITH MOTION FOR POST-CONVICTION COLLATERAL RELIEF**

Mississippi Supreme Court
Office of the Clerk
Post Office Box 249
Jackson, MS 39205-0249

Dear Clerk,

Please find enclosed the original and three (3) copies of the Petitioner's "Application to Proceed Into The Trial Court-with-Post-Conviction Collateral Relief" to be filed in my behalf. Please mark one (1) copy "Filed" to be returned to this Petitioner for his record/file.

As the attached "Certificate Of Service" does certify, "All" concerned parties listed have been provided one (1) copy each.

Your attention to this request would be greatly appreciated.

Date: 04/01/2021

 #182157
Ruben Orlando Benitez MDOC # 182157

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RUBEN ORLANDO BENITEZ

PETITIONER

V.

CAUSE NUMBER: _____

STATE OF MISSISSIPPI

RESPONDANT

CERTIFICATE OF INTERESTED PERSON(S)

Indigent Pro Se Petitioner, Ruben Orlando Benitez of this "Application For Leave To Proceed Into Trial Court-with-Motion For Post-Conviction Collateral Relief," do certify the following listed person(s) have an interest in the outcome of this case. These representations are made in order that the Justices of the Mississippi Supreme Court/Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Ruben Orlando Benitez---- Petitioner
2. Lynn Fitch-----MS Attorney General
3. Joel Smith-----MS Court of Appeals Justice
4. Crosby Parker-----Harrison County Acting D.A.
5. Connie Ladner-----Harrison Co. Cir. Court Clerk



Ruben Orlando Benitez

MDOC # 182157

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RUBEN ORLANDO BENITEZ

PETITIONER

V.

CAUSE NUMBER _____

STATE OF MISSISSIPPI

RESPONDANT

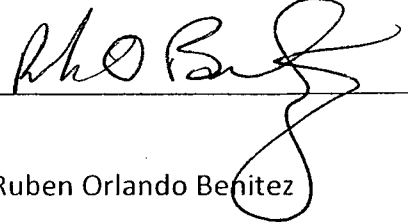
**APPLICATION FOR LEAVE TO PROCEED INTO TRIAL COURT
WITH MOTION FOR POST-CONVICTION COLLATERAL RELIEF**

Comes now Indigent Pro Se Petitioner, Ruben Orlando Benitez without the benefit of counsel, and brings before this Mississippi Supreme Court Petitioner's "Application for Leave to Proceed Into Trial Court"- with- "Motion for Post-Conviction Collateral Relief" pursuant to Mississippi Code Ann. Section 99-39-27 under M.C.A sections 99-39-1 thru 99-39-9 at 99-39-21. In support thereof, would show unto this Mississippi Supreme Court the attached "Motion for Post-Conviction Collateral Relief"

Indigent Pro Se Petitioner Ruben Orland Benitez prays that this Mississippi Supreme Court will find the attached "Motion for Post-Conviction Collateral Relief" well-taken and will grant Petitioner

Benitez "Leave to Proceed" with said "Motion" in the Circuit Court of Harrison County-Second
Judicial District- Biloxi Division. MS Code Ann. 99-39-13 through 99-39-23

Respectfully Submitted by



Ruben Orlando Benitez

MDOC # 182157

S.M.C.I.

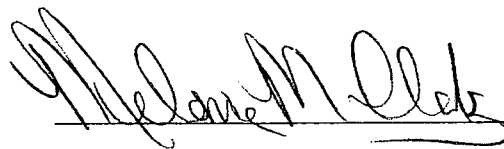
Bldg D-1 B-Zone Bed 194

P. O. Box 1419

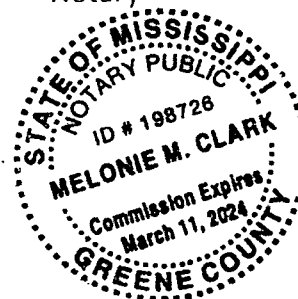
Leakesville, MS 39451

Date: 04/01/2021

Sworn to and subscribed before me, this the 1st day of April, 2021



Notary



IN THE CIRCUIT COURT OF HARRISON COUNTY IN THE STATE OF MISSISSIPPI

CAUSE NO: _____

RUBEN ORLANDO BENITEZ

PETITIONER

V.

STATE OF MISSISSIPPI

RESPONDANT

ON PETITION FOR POST-CONVICTION COLLATERAL RELIEF IN THE

HARRISON COUNTY CIRCUIT COURT

PRO SE SUBMISSION

RUBEN ORLANDO BENITEZ

MDOC # 182157

S.M.C.I.

BLDG D-1 B-ZONE BED 194

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STATEMENT OF THE FACTS

Stacey Wright was killed in D'Iberville, MS in apartment # 1023 at the address of 11059 Lamey Bridge Road. According to Police reports a Courtesy Officer Ramsey, from the apartment complex, performed a wellness check of the apartment at approximately 1020 hours on the morning of September 18, 2011. Officer Ramsey first knocked on the apartment door and received no answer. Officer Ramsey then acquired entry by turning the knob on the unlocked apartment door and found a female laying on the ground of the apartment. Officer Ramsey did not approach the body or render any type of aid to the female. Instead, Officer Ramsey exited the apartment, closed the door and requested for a second Officer to respond. Upon the arrival of Officer Fore (second Officer) at approximately 1021 hours, Officer Ramsey then reentered the apartment with Officer Fore. Officer Fore went through the apartment to clear it of any other bodies or suspects with negative results. Neither, Officer Ramsey or Officer Fore rendered any aid to the victim that was on the floor of the apartment and neither Officer checked to see if the victim had any vital signs of life. The two Officers then exited the apartment and started a crime scene log and made notifications to the D'Iberville Fire Department. D'Iberville Fire Department arrived at approximately 1025 hours and quickly administered Cardiopulmonary Resuscitation (CPR) with negative results.

It is unknown how the name of this Indigent Pro Se Petitioner was introduced as a suspect as the Police reports do not provide any eyewitness accounts, fingerprints, evidence, photos, etc. establishing a nexus to Indigent Pro Se Petitioner Ruben Orlando Benitez. However, an interview conducted with Anthony Wright Sr. establishes that the victim was known to be "alive" during the early hours of September 18, 2011 based on a text message. Nonetheless, D'Iberville Investigator

Marty Griffin found it necessary to interview Pro Se Benitez on September 18, 2011 at approximately 2300 hours. Upon the conclusion of the interview Pro Se Benitez allowed Investigator Griffin to search the apartment in Pearl, MS at approximately 0200 hours on September 19, 2011, and vehicle of Pro Se Benitez which resulted in negative findings. The search conducted include the searching of the following areas:

1. Living room
2. Kitchen—Refrigerator, cabinets, stove, dish washer, pantry
3. Bathroom—Cabinet, toilet tank
4. Bedroom---Bed, under the bed, dresser/drawers
5. Closets---Front, bedroom
6. Laundry closet
7. Vehicle---Trunk, cab, back seat, glove compartment, center console
8. Cell phone---Made calls, received calls, photos, text messages

At the conclusion of the search, Investigator Griffin left and Pro Se Benitez was not given any negative connotations.

At approximately 2200 hours on September 19, 2011 Joel Wallace appeared at the Pearl, MS apartment, identified himself as a Mississippi Bureau Investigator (MBI), and showed Pro Se Benitez a piece of paper claiming it was a search warrant. According to MBI Wallace the warrant authorized for the search of the following items:

1. Sharp edge instruments
2. Hand guns
3. Or any other items

After making some small talk with Pro Se Benitez, MBI Wallace had a female come up to the apartment and perform a search. [Investigator Stacey Smith which is the recorded name on the "Return" of the search warrant]. The search produced negative results as no items were seized and

concluded at approximately 0015 hours on September 20, 2011. MBI Wallace then informs Pro Se Benitez that he cannot reenter the apartment and must surrender all keys to the apartment and personal vehicle. MBI Wallace calls a cab for Pro Se Benitez and instructs him to leave the area.

According to the signed "Return," Investigator Smith must have returned to the apartment without the presence of Pro Se Benitez and seizes the following items on September 20, 2011 with no specific time indicated on the "Return":

1. One (1) metal key
2. Two (2) cellular phones
3. Pair of brown in color shoes w/stains
4. Garmin GPC

None of the items illustrated on the "Return" were particularly described in the warrant and more importantly none of the items illustrated fall within the particular description of items illustrated in the search warrant. Furthermore, the Underlying Facts and Circumstances supplied to the signing Magistrate who signed the illegal search warrant never mentions the type of weapon/means sought for a crime nor does it make any mention of information creating a nexus to Pro Se Benitez for the search warrant to be issued in the name of Pro Se Benitez. Moreover, the information given to the signing Magistrate clearly provides information for the issuance of a search warrant for the victim, Stacey Wright, and all vehicles registered to her. The Magistrate never reads any of the supporting document(s) and absolutely abandons his/her judicial role in rubber stamping the search warrant as there are no written amendments on the search warrant or Underlying Facts of Circumstances sheet.

Not only is it unconstitutional but highly illegal to issue and execute a search warrant for one person which clearly depicts another by name, address, apartment number, and vehicle by all based information provided under oath. Such an act denies fundamental constitutional rights in the clearest form and allows for a deviation from the laws of the land our "Fore Fathers" mandated to us as Americans.

IN THE CIRCUIT COURT OF HARRISON COUNTY IN THE STATE OF MISSISSIPPI

RUBEN ORLANDO BENITEZ

PETITIONER

V.

CAUSE NO: _____

STATE OF MISSISSIPPI

RESPONDANT

**MOTION FOR
POST-CONVICTION COLLATERAL RELIEF**

Comes now indigent Pro Se Petitioner Ruben Orlando Benitez filing this Motion For Post-Conviction Collateral Relief pursuant to Mississippi Code Ann. 99-39-5; 99-39-21 (1); 99-39-23; 99-39-27; leading from a conviction because the state is without authority or right to impose a sentence illegally or without due process. U.S.C.A. Const. Amends. 5, 14; West's A.M.C. sec. 99-39-5 (1)(a) Thus, Pro Se Benitez makes the specific allegations, alleges a deliberate falsehood or reckless disregard for the truth, and accompanies such a claim with the foregoing detailed offer of proof which is not subject to time bar as the right to be free from an illegal sentence and denial of due process has been found to be constitutionally fundamental U.S.C.A. Const. Amend. 6; A.M.C. const. Art. 1 sec 31; Batiste v. State, 184 So. 3d 290 (Miss. 2016); Smith v. State, 149 So. 3d 1027 (Miss. 2014); Sims v. State, 134 So. 3d 300 (Miss. 2014) to wit:

JURISDICTION

Jurisdiction is vested within this Circuit Court of Harrison County-Second Judicial District-Biloxi Division, due to Petitioner's arrest in Rankin County and transfer to Harrison County without a Preliminary hearing in Rankin County on or about September 19, 2011 on a charge of Murder and indicted on or about December 11, 2012 [over the allotted 290 days] with a trial in Biloxi starting on or about March 4, 2013, conviction on or about March 8, 2013 and sentencing to Life on same date. Entering of J.N.O.V. on or about March 15, 2013; Direct Appeal filed by Public Defender on August 16, 2013 and affirmed on May 20, 2014. A mandate was issued on June 10, 2014. However, the mandate was recalled on July 28, 2015 due to acknowledged errors of the Mississippi Court of Appeals; Rehearing filed on January 15, 2015; Rehearing was denied October 13, 2015; Writ of Certiorari in the Mississippi Supreme Court was filed October 23, 2015; Writ of Certiorari was granted in the minority by the Honorable Dickinson, P.J. on order no: 2015-4760 Miss. Code Ann. 9-4-3 without opinion on January 14, 2016; Motion Requesting written opinion filed on February 1, 2016; Request was denied on February 10, 2016; Motion for Evidentiary Hearing filed on May 15, 2017. No ruling was ever given or filed on the Motion for Evidentiary Hearing and there has been no mandate issued for the General Docket of Cause number- 2013-CT-00469-SCT in which the Motion was assigned/appears.

DID AFFIANT MAKE A FALSE STATEMENT OR OMISSION

KNOWINGLY AND INTENTIONALLY, OR WITH RECKLESS

DISREGARD FOR THE TRUTH

Pro Se Benitez asserts, the information provided to the Magistrate, who issued an illegal search warrant for Pro Se Benitez, by Mississippi Bureau of Investigation (MBI) Joel Wallace contained fabricated, false and unsupported statements which lead to a direct violation of the United States Constitution's Fourth Amendment, Mississippi Constitution's Article 3 sec 23, and Miss. Code Ann. 41-29-157, 99-25-15, and 99-25-17 which are fundamental constitutional due process rights afforded to Pro Se Benitez. Lockett v. State, 656 So. 2d 76, 83 (Miss. 1995); Rowland v. State, 98 So. 3d 1032 (Miss. 2012); Bester v. State, 976 So. 2d 939 (Miss. Ct. App. 2007)

According to the document(s) submitted to the signing Magistrate, MBI Wallace illustrates, on the sworn to "Underlying Facts and Circumstances Sheet:" [Exhibit # 1]

"Based upon the aforementioned Underlying Facts and Circumstances, the affiant hopes and prays a search warrant will be issued to "discover and determine" evidence of aforementioned crime is located at this address [11059 Lamey Bridge Road] and all vehicles, *registered to the "victim" and parked at the residence.*"

This most egregious false material statement, provided to the signing Magistrate by MBI Wallace, is illustrated in the fifth and final paragraph of the Underlying Facts and Circumstances Sheet. A plain non-technical reading of the paragraph shows it is undisputable false material information.

MBI Wallace knew he was seeking a search warrant for Pro Se Benitez and knew the sole address illustrated on the created and sworn to Underlying Facts and Circumstances Sheet was of the “victim” and the vehicle parked at that apartment. Ethridge v. State, 800 So. 2d 1221 (Miss. Ct. App. 2001); Means v. State, 43 So. 3d 438 (Miss. 2010); Miss. Code Ann. 97-11-1 MBI Wallace knowingly and intentionally left out the address of Pro Se Benitez because he had no corroborating source of reliability of material information with any type of indicia of veracity. US v. Ray, 803 F. 3d 244 (2015); Roach v. State, 7 So. 3d 911, 917 (Miss. 2009); Hughes v. State, 90 So. 3d 613 (2012); Batiste v. State, 121 So. 3d 808 (2013)

In fact, the only information MBI Wallace may have had was the name of Pro Se Benitez. However, that is also questionable as the name of Pro Se Benitez does not appear anywhere on the based Underlying Facts and Circumstances Sheet nor is there any indicia of veracity or reliability illustrating the person or source who initially provided the name and nexus attempted to be established to Pro Se Benitez. State v. Woods, 866 So. 2d 422, 426-27 (Miss. 2003); Gillet v. State, 56 So. 3d 469 (2010); Chesney v. State, 165 So. 3d 498 (2015)

The referenced paragraph exhibits a factual reckless disregard for the truth and a denial of a fundamental constitutional right of due process by MBI Wallace in misleading the Magistrate in signing an illegal search warrant solely based on a fabricated and almost entirely false Underlying Facts and Circumstances Sheet particularly describing the address, apartment, vehicle of the victim

and prescribed for the victim. McBride v. State, 2005 WL 1089056 (Miss. Ct. App. 2005) United States v. George, 975 F. 2d 72, 75-76 (2nd cir. 1992); United States v. Morris, 977 F. 2d 677, 682 (1st cir. 1992); United States v. Kow, 58 F. 3d 423, 428-29 (9th cir. 1995); US v. Sells, 463 F. 3d 1148 (2006)

In an alternative showing of recklessness, MBI Wallace makes Pro Se Benitez a victim for the sole purpose of obtaining a victim for indictment, conviction, and sentence by providing the signing Magistrate fabricated, sworn to, false material document(s). Caviness v. State, 1 So. 3d 917 (Miss. Ct. App. 2008); Sorrells v. US, 287 US 435, 53 S.Ct. 210 86 A.L.R. 249, 77 L. Ed 413, 38

The next false material illustration on the Underlying Facts and Circumstances Sheet, created by and sworn to by MBI Wallace, presented to the signing Magistrate, illustrates the following:

“Therefore, it is believed this death was caused by murder.”

Pro Se Benitez asserts, MBI Wallace knowingly and intentionally omitted the means/weapon used in illustrating a “belief.” Without this material information, no probable cause could be established to allow the signing Magistrate to formulate probable cause for the issuance of a search warrant for Pro Se Benitez. The material omission is crucial as it is a denial of fundamental constitutional due process rights as it allows MBI Wallace to create an illegal “general search warrant” [Exhibit # 2] United States Constitution’s Fourth Amendment; Mississippi Constitution’s Article 3 sec 23; Trotter v. State, 907 So. 2d 397 (Miss. Ct. App. 2005); Maryland v. Garrison, 480 US 79, 84, 107 S.Ct. 1013, 94 L. Ed 72 (1987); Anderson v. Maryland, 427 US 463, 480, 96 S.Ct. 2737, 49 L. Ed 2d 627 (1976); United States v. Vitek Supply Corp., 144 F. 3d 476, 4480-81 (7th cir. 1998); Marron v. US, 275 US 192 (1927) to seek open-ended items with no particular description:

“3. That said things are particularly... sharp edge instrument,
handguns likely to produce death, or any other evidence
supporting the crime of murder in violation of MS code 97-3-19

The knowingly and intentional omission ultimately allows MBI Wallace to create an entire crime
scenario without possessing any personal knowledge of the circumstances, facts, victim, or Pro Se

Benitez:

“There is common agreement that where a Law Officer envisages a crime,
plans it, and activates its commission by one not theretofore intending
its perpetration, for the sole purpose of obtaining victim through indictment,
conviction, and sentence, the consummation of so revolting a plan,
ought not to be permitted by any self-respecting tribunal.”

Sorrells v. US, 287 US 435, 53 S.Ct. 210, 86 A.L.R. 249, 77 L. Ed 413, 38

There is no clearer form of recklessness made by MBI Wallace knowingly and intentionally
omitting material details in the document(s), sworn and presented to the signing Magistrate in
attempting to create probable cause [Exhibit # 3]. Chesney v. State, 165 So. 3d 498 (2015)

Moreover, since MBI Wallace was supplied all of his information by D'Iberville Investigator Griffin,
it is unknown “whose belief” it was to illustrate, “the death was caused by murder.” Agnello v.

United States, 269 US 20, 33, 46 S.Ct. 4, 6, 70 L. Ed 145, 57 A.L.R. 409

Pro Se Benitez further asserts, MBI Wallace had no personal knowledge of any aspects relating to the victim, Pro Se Benitez, crime scene, or the crime from the beginning and wholly relied solely on second, third, and even presumably fourth party uncorroborated information with no type of indicia of veracity or reliability making the sources of the information double, triple, even quadruple hearsay; none of which is admissible. [Exhibit # 4] State v. Woods, 866 So. 2d 422, 426-27 (2005); Lyon v. State, 258 GA App. 9, 11 (1), 572 S.E. 2d 632 (2002); Reobuck v. State, 915 So. 2d 1132 (2005) The shown reckless disregard for the truth unswervingly diminishes the credibility of MBI Wallace which extends to the fabricated document(s) created, sworn to, and presented to the signing Magistrate. United States Constitution's Fourth Amendment; Mississippi Constitution's Article 3 sec 23; Wilson v. Layne, 526 US 603, 610, 119 S.Ct. 1692, 143 L. Ed 2d 818

The aforementioned information exhibits a preliminary showing that MBI Wallace knowingly and intentionally withheld material information from the signing Magistrate and was reckless in not collecting true corroborated personal information in the scope of his investigation and creating the sworn to document(s) presented to the signing Magistrate. Thus, MBI Wallace denies the fundamental constitutional rights of due process to Pro Se Benitez.

The third false material statement Pro Se Benitez asserts was illustrated by MBI Wallace is found in the third paragraph of the Underlying Facts and Circumstances Sheet submitted under oath to the signing Magistrate:

"...between 0800 and 0900 hours, Officer Steven Ramsey...received a call from a male identifying...who lives in apartment #1023."

This material statement is false, uncorroborated, and lacks any kind of indicia of veracity. State v. Woods, 866 So. 2d 422, 426-27 (Miss. 2003); Gillet v. State, 56 So. 3d 469 (2010) MBI Wallace knowingly and intentionally fabricates the above illustration to create an illusion of an element for the Magistrate to consider probable cause. As an unquestionable fact, an interview conducted by Law Enforcement of family members of the victim, specifically Mr. Anthony Wright Sr., [Exhibit # 5] revealed that Mr. Wright Sr. had received a "text message" from the victim "earlier in the day" of September 18, 2011. The material information revealed in the interview would be the most compelling evidence Mr. Wright Sr. would have no concern as to the well-being of the victim since he had received a text message from the victim earlier in the day of September 18, 2011. Moreover, the same revelation would establish that the "victim" was "alive" at least up to the early hours of September 18, 2011 [Exhibit # 6] substantiating the death certificate [Exhibit # 7] illustrating the "time of death as ten o'clock PM (10:00 PM) on September 17, 2011" was also fabricated to create a nexus to Pro Se Benitez: A material element of probable cause to be considered by the signing Magistrate. Even more perplexing of the revelation is the fact Mr. Wright Sr. states he "did not answer the text message." [Exhibit # 8] This would assuredly establish that Mr. Wright Sr. neither wanted to speak or communicate with the victim and would have no need to contact Officer Steven Ramsey to inquire as to the well-being of the victim.

The documented material information exhibits a preliminary denial of fundamental constitutional due process rights by showing MBI Wallace knowingly and intentionally provided false, fabricated, material information to the signing Magistrate and was reckless in the creation of a circumstance which cannot be corroborated and is easily refuted by the interview of Mr. Wright

conducted by responsible and credible Law Enforcement Officers. Simmons v. State, 805 So. 2d 452, 481-82 (Miss. 2001); Smith v. State, 504 So. 2d 1194, 1196 (Miss. 1987)

The fourth false statement to the signing Magistrate by MBI Wallace is in the second paragraph of the Underlying Facts and Circumstances Sheet:

"On September 18, 2011 approximately 1208 hours, D'Iberville Police Officers responded to 11059...in reference to a welfare concern."

Pro Se Benitez asserts, this statement was knowingly and intentionally false due to the fact 11059 Lamey Bridge Road was already established as a crime scene since approximately 1030 hours of the exact date of September 18, 2011. [Exhibit # 9] There can be no contention MBI Wallace did not create the Underlying Facts and Circumstances Sheet illustrating "military time" as his Law Enforcement and military experience history is instilled in his report writing: "hours" instead of "o'clock AM or PM." Furthermore, the above material illustration is fabricated and misleads the signing Magistrate to contemplate the victim's whereabouts were a concern. In fact, MBI Wallace knew the victim was found and pronounced deceased in the very same apartment in which MBI Wallace continues his knowingly and intentional false material illustrations which he makes with a reckless disregard for the truth:

"D'Iberville Police Officer Lee Donald knocked on apartment #1023 door with no answer. After attempting to locate additional information with negative results, Officer Donald left the apartment complex."

The fact is; MBI Wallace knowingly and intentionally created this false material illustration of police action to mislead the signing Magistrate to believe or take into consideration material which was not and cannot be corroborated or supported by any credible Law Enforcement source, confidential informant, eye witness, neighbor, or any other. [Exhibit # 10] Simmons v. State, 805 So. 2d 452, 481-82 (Miss. 2001); Miss. Code Ann. 97-11-1

Pro Se Benitez has shown the confirmed fabrication of police action which establishes MBI Wallace was reckless to disregard the truth in the attempt to create a scenario that did not exist and can be easily discredited by multiple "state prosecution" sources:

1. D'Iberville Police Dispatcher
2. D'Iberville Police Officer Fore
3. D'Iberville Police Officer Donald
4. D'Iberville Inspector Marty Griffin
5. D'Iberville Police report
6. D'Iberville Fire Department (First Responders)
7. Apartment Complex Courtesy Officer Ramsey
8. MBI Wallace

The detailed information exhibits not only a preliminary showing but an uncontestable factual showing of the denial of fundamental constitutional rights of due process by MBI Wallace knowingly and intentionally providing the signing Magistrate with false, sworn to, material information and was reckless in creating a fabricated police action for the sole purpose of creating an element to be considered probable cause for the illegal search warrant. Batiste v. State, 121 So. 3d 808 (2013); Smith v. State, 504 So. 2d 1194, 1196 (Miss 1987)

Finally, the fifth egregious false material statement provided to the signing Magistrate by MBI Wallace is illustrated in the first paragraph of the Underlying Facts and Circumstances Sheet:

“Affiant Joel Wallace is an Investigator with the Mississippi Highway Patrol.”

This is a false statement presented to the signing Magistrate, under oath, due to the fact MBI Wallace was a credentialed Officer of the Mississippi Bureau of Investigations (MBI). MBI Wallace knew he was not an Officer of the Mississippi Highway Patrol (MHP) and knew his chain-of-command did not include reporting or answering to anyone in the chain-of-command of MHP. MBI Wallace was also reckless in the following three (3) regards:

1. MBI Wallace exhibits his MBI credentials to the signing Magistrate identifying him as MBI, while illustrating himself as Mississippi Highway Patrol on the sworn to Underlying Facts and Circumstances Sheet. [Exhibit # 11]
2. MBI Wallace created the document(s) in his office under no exigent conditions and had plenty of time to review and correct any misrepresentations. Miss. Code Ann. 97-11-1
3. MBI Wallace used a standard MHP template or had a MHP Officer create the Underlying Facts and Circumstances Sheet for him who had no material information pertaining to Pro Se Benitez.

Given the totality of the circumstances, this material information exhibits a preliminary showing that MBI Wallace knowingly and intentionally provided the signing Magistrate with false material information and was reckless in denying Pro Se Benitez fundamental constitutional rights of due process in the creation of the document(s) submitted for the purpose of the issuance for an illegal search warrant and establishing his credibility. Illinois v. Gates, 462 US 213 (1983); Giordenello v. United States, 357 US 480, 486, 78 S.Ct. 1245, 1250, 2 L. Ed 1503 (1958)

DOES THE PREPONDERANCE OF THE EVIDENCE SHOW THE
WARRANT IS TO BE VOIDED AND THE FRUITS EXCLUDED

There can be no clearer showing that the Underlying Facts and Circumstances Sheet, created by MBI Wallace, is the sole based affidavit submitted to the signing Magistrate for the issuance of a search warrant:

“Based upon the aforementioned Underlying Facts and Circumstances,
the affiant hopes and prays a search warrant will be issued...”

The fabricated Underlying Facts and Circumstances Sheet created knowingly and intentionally with a reckless disregard for the truth, by MBI Wallace, does not comply with the United States Constitution’s Fourth Amendment, Mississippi’s Constitution Article 3 sec 23, Miss. Code Ann. 41-29-157, 99-25-15, 99-25-17. It is most evident that the document(s) used as the sole base for a search warrant cannot be sufficient to support neither probable cause or substantiation for a legal warrant for anyone other than its illustrated and sworn to target [**victim**], particularly describing the victim’s address, apartment number, and registered vehicle:

“...a search warrant will be issued to “discover and determine” evidence of aforementioned crime is located at this residence [**11059 Lamey Bridge Road Apt. # 1023**] and all vehicles, registered to the victim and parked at the residence.”

Nonetheless, the Trial Judge stated the search warrant, based on knowingly and intentionally false material information, by MBI Wallace with a reckless disregard for the truth, and sworn to a signing Magistrate, was legal explaining the following:

“...[c]onsidering the totality of the circumstances, this court finds that the warrant was issued by a detached and neutral Magistrate, the description of what was sought was specific to a reasonable certainty. The affiant adequately described the area to be searched with sufficient [particularity], [and] the variance between the Underlying Facts and Circumstances and the affidavit, the warrant, and [Officer Wallace’s] supplement was not a material variance as to render the search warrant illegal.”

Pro Se Benitez acknowledges the Trial Judge is afforded a great deal of discretion. However, discretion must be substantiated by law, facts, and constitutionality. Thus it is inconceivable an Underlying Facts and Circumstances Sheet created on knowingly and intentionally false material information, sworn to be the sole base in the application for a search warrant, with the targeted subject being the “victim” and particularly describing the address, apartment number, and vehicle of the victim, not be a material variance to render the search warrant illegal for Pro Se Benitez. United State v. Matlock, 415 US 164, 94 S.Ct. 988, 39 L. Ed 2d 242; Illinois v. Rodriguez, 497 US 177, 186, 110 S.Ct. 2763, 111 L. Ed 2d 148

The Trial Court’s ruling sets precedence for Law Enforcement to seek and obtain search warrants for “any person” in the United States even if the targeted person is not the person they issue the warrant to. Boyd v. United States, 116 US 616, 635, 6 S.Ct. 524, 29 L. Ed 746 (1886) Thus eliminating the Fourth Amendment of the United States Constitution in its entirety along with any related

Constitutional Articles of all State Constitutions, which violate fundamental constitutional due process rights and takes our form of Government back to the dark ages. Moreover, upholding the Trial Court's discretion, bypasses the only two methods of amending the Constitution:

1. A new Constitutional Convention
2. Both Houses of Congress approve a proposal by two-thirds majority

The US Constitution by Tim Harper 2007

~~The discretion declared by the Trial Judge could not be based on law, fact, or constitutionality but~~
on pure unrestrained inherent power: that of a King.

“...we have the inherent authority to say so
and why do we have this inherent authority?
Because we say so.”

Hall v. State, 539 So. 2d 1338, 57 USLW 2511 (1989) footnote

The alleged oral supplementation the Trial Judge accepts from MBI Wallace was never substantiated or corroborated by any means or source to justify the Trial Judge's declaration of not being a material variance. Bell v. State, 2 So. 3d 747 (Miss. Ct. App. 2009); Chatham v. State, 323, GA. App. 51, 52, 746 S.E. 2d 605 (2013)

MBI Wallace created all the documents for the issuance of the search warrant in his office located in Gulfport, MS. MBI Wallace then drives approximately three (3) hours to Pearl, MS to have the local Magistrate sign a warrant with a based Underlying Facts and Circumstances Sheet particularly describing the address, apartment number, and vehicle of the victim located in D'Iberville, MS.

Pro Se Benitez specifically asserts, it is unfathomable how MBI Wallace could provide the signing Magistrate additional oral supplementation upon his arrival in Pearl, MS since MBI Wallace obtained all his information from D'Iberville Investigator Griffin while in his office in Gulfport, MS before creating the document(s).

Pro Se Benitez similarly asserts, MBI Wallace only made three (3) calls and received none in route to Pearl, MS:

1. 1st call to Investigator Charles Hill to request his assistance
2. 2nd call to Investigator Stacey Smith to request her assistance
3. 3rd call to Investigator Charles Hill to establish a meeting place

Since it has been established MBI Wallace had no personal knowledge of the crime, location, victim, Pro Se Benitez, or residence of Pro Se Benitez, it was impossible for MBI Wallace to provide the signing Magistrate additional oral supplementation as MBI Wallace had not obtained additional information from anyone or any source during his drive to Pearl, MS. Lyons v. State, 942 So. 2d 247, 250 (Miss. Ct. App. 2006); Brown v. State, 19 So. 3d 85-86 (Miss. Ct. App. 2006)

Asserted differently, MBI Wallace knowingly, intentionally, and with a reckless disregard for the truth, omits the only substantive material information from the based Underlying Facts and Circumstances Sheet sworn and provided to the signing Magistrate. Thus establishing MBI Wallace committed fraud by definition:

“A knowing misrepresentation of the truth or concealment
of a material fact to induce another to act to his or her detriment.”

Black's Law Dictionary (9th Ed. 2009)

The Trial Judge's declaration that an unsupported and uncorroborated testimony of MBI Wallace was sufficient to render the search warrant legal was erroneous and violates the fundamental constitutional due process rights of Pro Se Benitez. Gillet v. State, 56 So. 3d 469 (2010); Hughes v. State, 90 So. 3d 613 (2012); Batiste v. State, 121 So. 3d 808 (2013)

Even more egregious than the error by the Trial Judge is the fact the signing Magistrate never reads any of the sworn document(s) presented by MBI Wallace in the application of seeking a search warrant. MBI Wallace testifies [Exhibit # 12] to the following on cross examination:

"After I explained it to the Judge, then the Judge reviewed my documents, signed them, and we parted our ways and proceeded on, sir.

Q. So he never read your actual Underlying Facts and Circumstances before signing the search warrant?

A. Before signing it?

Q. Correct

A. No, sir

MBI Wallace continues to testify and confirms the signing Magistrate did not sign the illegal search warrant as a detached and neutral Magistrate but as a Magistrate who absolutely abandons his/her Judicial role by rubber stamping the illegal search warrant. [Exhibit # 13]:

Q. He must—Did he just rely on what you orally told him that evening? Is that all he relied on in issuing the search warrant?

A. It appears that's what he did, yes, sir

O'Bean v. State, 184 So. 2d 635 (1966); Lo-Ji Sales Inc. v. New York, 442 US 319, 99 S.Ct. 2319, 60 L. Ed 920 (1979); United States v. Lefkowitz, 285 US 452, 464, 52 S.Ct. 420, 423, 76 L. Ed 877, 82 A.L.R. 775

The testimony of MBI Wallace provides the preponderance of evidence that the warrant was signed by a Magistrate who absolutely abandons his/her office and therefore renders the search warrant illegal. Pro Se Benitez has made a factual showing that the illegal search warrant and fruits, to include but not limited to, statements, seizures, and evidence is to be rendered illegal and as such voided. Trejo v. State, 76 So. 3d 702 (Miss. Ct. App. 2010); Mosley v. State, 89 So. 3d 41 (Miss Ct. App. 2011); Parasi v. State, 119 So. 3d 1061 (Miss. Ct. App. 2012); People v. Bernard, 2015 II App. (2d) 140451 20 N.E. 3d 205 (II App. Ct. 2d dis 2015); United States Constitution's Fourth Amendment; Mississippi Constitution's Article 3 sec 23; United States v. Moscatiello, 771 F. 2d 589, 609 (1st cir. 1985); Murray v. United States, 487 US 533, 542, 108 S.Ct. 2529, 101 L. Ed 2d 472 (1988); United States v. Siciliano, 578 F. 3d 61, 64 (1st cir. 2009); Issacks v. State, 350 So. 2d 1340, 1345 (Miss 1977); Carney v. State, 525 So. 2d 776 (1988); Eaddy v. State, 63 So. 3d 1209 (2011); White v. State, 735 So. 2d 221 (Miss 1999);

WITH THE AFFIDAVIT'S FALSE MATERIAL SET TO ONE SIDE,

DOES THE AFFIDAVIT'S REMAINING CONTENT

ESTABLISH PROBABLE CAUSE

The factual material information, thus far presented, exhibits the remaining content is insufficient to support probable cause. Therefore, a knowingly, intentionally, recklessly submitted Underlying Facts and Circumstances Sheet which was fabricated by MBI Wallace in disregard for the truth was the base for the application of an unread, sworn to, signed illegal search warrant by a Magistrate who abandons his/her Judicial role of detachment and neutrality. Miss. Code Ann. 97-11-1; 3 MS Prac. Encyclopedia MS Law sec 19:82; 3 MS Prac. Encyclopedia MS Law sec 19:84

Pro Se Benitez asserts, the Underlying Facts and Circumstances Sheet, even if not removed of its false and fabricated material, does not follow the requirements of the United States Constitution's Fourth Amendment, Mississippi Constitution's Article 3 sec 23, nor Mississippi statues 41-29-157, 99-25-15, and 99-25-17. Thus it is a fortiori that the document(s) used as a base unread, sworn to, signed illegal search warrant, was infelicitous with Mississippi Law and denies Pro Se Benitez fundamental constitutional rights of due process. MSPRAC-Enc. Sec 19:82; MSPRAC-Enc. Sec 19:84; MS. Const. Article 3 sec 23; Haddox v. State, 636 So. 2d 1229, 1237 (Miss. 1994); Graves v. State, 708 So. 2d 858, 864 (Miss. 1997); Reobuck v. State, 915 So. 2d 1132, 1137 (Miss. Ct. App. 2005);

Flake v. State, 948 So. 2d 493 (Miss. Ct. App. 2007); Eaddy v. State, 63 So. 3d 1209, 1213 (Miss. 2011); Galloway v. State, 122 So. 3d 614, 669 (Miss. 2013); Chesney v. State, 165 So. 3d 498 (2015)

Nevertheless, the false and fabricated material factually shown, when set to one side, leaves nothing for the signing Magistrate or this Court to form an inference of probable cause to exist for a search warrant for Pro Se Benitez. Furthermore, the affiant's, MBI Wallace, reckless disregard for the truth removes his credibility entirely and the signing Magistrate relinquishes the duty of their office by accepting the determination of MBI Wallace instead of their own. Velardi v. Walsh, 40 F.

3d 569 n. 1 (2nd cir. 1994); United States v. Tzannos, 460 F. 3d 128, 136 (1st cir. 2006); United States v. Kearney, 672 F. 3d 81, 88-89 (2012); US v. Gifford, 727 F. 3d 92 (2013); Lo-Ji Sales Inc. v. New York, 442 US 319, 99 S.Ct. 2319, 60 L. Ed 920 (1979); O'Bean v. State, 184 So. 2d 635 (1966); Abreu-Guzman v. Ford, 241 F. 3d 69, 73 (1st cir. 2001); Golino v. New Haven, 950 F. 2d 864, 871 (2nd cir. 1991); Wilson v. Russo, 212 F. 3d 781, 783 (3rd cir. 2000); Olson v. Tyler, 771 F. 2d 277, 282 (7th cir. 1985); Deloach v. Bevers, 992 F. 2nd 618, 622 (10th cir. 1990); Franks v. Delaware, 438 US 154, 98 S.Ct. 2674, 57 L. Ed 2d 667 (1978)

CONCLUSION

Indigent Pro Se Petitioner Ruben Orlando Benitez supports all of the questions of fact required to warrant the granting of this Motion for Post-Conviction Collateral Relief to include but not ~~limited to an Evidentiary Hearing with the specific and detailed proof of falsity included in the base~~ of the search warrant application prescribed for the “victim” with sufficient particularity: not for Pro Se Benitez. Bell v. State, 2 So. 3d 747 (Miss. Ct. App. 2009) United States v. George, 975 F. 2d 72, 75-76 (2nd cir. 1992); United States v. Morris, 977 F. 2d 677, 682 (1st cir. 1992); United States v. Kow, 58 F. 3d 423, 428-29 (9th cir. 1995); US v. Sells, 463 F. 3d 1148 (2006); Mayes v. Till, 266 So. 2d 578, 580 (Miss. 1972); Flake v. State, 948 So. 2d 493 (Miss. Ct. App. 2007); Mississippi Com’n on Judicial Performance v. Britton, 936 So. 2d 898, 905 (Miss. 2006); Mississippi Com’n on Judicial Performance v. Justice Court Judge T.T., 922 So. 2d 781, 785 (Miss. 2006); United States Constitution’s Fourth Amendment; Mississippi Constitution’s Article 3 sec 23:

“A flat ban on impeachment of veracity could denude the probable cause requirement of all real meaning. The requirement that a warrant not issue but on probable cause supported by oath or affirmation, would be reduced to nullity if a Police Officer was able to use deliberately falsified allegations to demonstrate probable cause...”

Franks v. Delaware, 438 US 154, 155-68, 98 S.Ct. 2674, 57 L. Ed 2d 667 (1978)

Pro Se Benitez also points out the application adopted from, United States v. Leon, 468 US 659, 104 S.Ct. 3405, 82 L. Ed 677 (1984), is inapplicable even as a question of law. US v. Campbell, 603 F. 3d 1218 (2010); Herring v. United States, 555 US 135, 129 S.Ct. 695, 172 L. Ed 2d 496 (2009) The application of *Leon* is based on "*good faith*" which at no instance was exhibited by the credentialed Law Enforcement, Mississippi Bureau of Investigator Joel Wallace who knowingly and intentionally submitted and swore to false and fabricated material document(s), in a reckless disregard for the truth, to a signing Magistrate who absolutely abandons the duty of his/her office which violated the fundamental constitutional due process rights of Pro Se Benitez. Miss. Code Ann. 97-11-1; O'Bean v. State, 184 So. 2d 635 (1966); United States v. Lefkowitz, 285 US 452, 464, 52 S.Ct. 420, 423, 76 L. Ed 877, 82 A.L.R. 775; Lo-Ji Sales Inc. v. New York, 442 US 319, 99 S.Ct. 2319, 60 L. Ed 920 (1979)

Wherefore premises considered, the illegal sentence of Indigent Pro Se Petitioner, Ruben Orlando Benitez, is to be reversed, vacated, and rendered with a judgment of acquittal due to fruits of the poisonous tree doctrine and double jeopardy. Thus releasing Pro Se Benitez from the custody of the Mississippi Department of Corrections (MDOC), specifically from the illegal sentence at, Southern Mississippi Correctional Institution (SMCI) in which Pro Se Benitez is housed in Area 2 Bldg D-1 Zone B Bed 194 where serving an illegal life sentence violating fundamental constitutional due process rights and the peace and dignity of justice. Morales v. State of N.Y., 396 US 102, 90 S.Ct. 291, 24 L. Ed 2d 299 (1969); Davis v. Mississippi, 394 US 721, 89 S.Ct. 1394, 22 L. Ed 2d 679; Davis v. State, 29 So. 3d 788 (Miss. Ct. App. 2009); Parasi v. State, 119 So. 3d 1061 (Miss. Ct. App 2012); Mosley v. State, 89 So. 3d 41 (Miss. Ct. App. 2011); Trejo v. State, 76 So. 3d 702 (Miss. Ct. App. 2010); Bennett v. State, 990 So. 2d 155 (Miss. 2008); White v. State, 735 So. 2d 221 (Miss.

1999); Eaddy v. State, 63 So. 3d 1209 (2011); United States v. Sumlin, 567 F. 2d 684; People v. Bernard, 2015 IL App. (2d) 140451 20 N.E. 3d 205 (IL App. Ct. 2d Dis. 2015)

In the alternative, resume the responsibility of the illegal abduction and incarceration of Pro Se Benitez, United States v. Garcia-Zambrano, 530 F. 3d 1249, 1254 (10th cir. 2008); United States v. Kennedy, 131 F. 3d 1371, 1376 (10th cir. 1997), obtained through fabricated police action and false, omitted, material information which was made knowingly and intentionally with a reckless disregard for the truth, under oath, by a credentialed, sworn Law Enforcement employee of the Mississippi Bureau of Investigation Joel Wallace, who wholly violated the fundamental constitutional due process rights afforded to Pro Se Benitez, Miss. Code Ann. 11-46-1, 11-46-5, 11-46-7, and 11-46-9 and grant an Evidentiary Hearing requiring the validity of the claim. Pro Se Benitez is entitled to an Evidentiary Hearing when:

“Making a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause.”

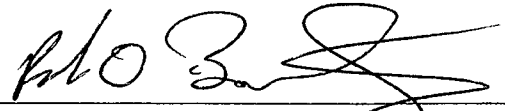
Franks v. Delaware, 438 US 154, 155-56, 98 S.Ct. 2674, 57 L. Ed 2d 667 (1978); People v. Bak, 45 Ill 2d 140, 144-146, 258 N.E. 2d 341, 343-344 (1970); State v. Melson, 284 So. 2d 873, 874-875 (1973); United States v. Reeves, 210 F. 3d 1041, 1044 (9th cir. 2000); United States v. Craighead, 539 F. 3d 1073, 1080 (9th cir. 2008); Fulgham v. State, 47 So. 3d 698 (Miss. 2010)

A denial of this Motion or of the illustrated remedies can only intensify the spoken words of Henty Berry in the Virginia House of Delegates in 1832;

“We have as far as possible, closed every avenue by which light may enter their minds. If we could extinguish the capacity to see the light, our work would be complete; They would then be on a level with the beast of the field and we should be safe.”

From Brown America, The Story of a New Race by Edwin R. Embree 1931 The Viking Press

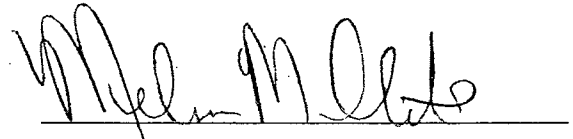
Very Respectfully Submitted,



Ruben Orlando Benitez

MDOC # 182157

Sworn to and subscribed before me, this the 1st day of April, 2021



Notary



CERTIFICATE OF SERVICE

I Indigent Pro Se Petitioner, Ruben Orlando Benitez, do hereby certify that I have this day, caused to be mailed by MDOC ILAP, this "Application for leave to Proceed Into Trial Court"- with – "Motion for Post-Conviction Collateral Relief" attached, by U.S. mail postage prepaid true and correct copies of the foregoing instrument to the following:

Clerk of the MS Supreme Court/Court of Appeals

P. O. Box 249
Jackson, MS 39205

Connie Ladner---Clerk of the Harrison Co. Cir. Court

P. O. Box 235
Biloxi, MS 39533

Honorable Joel Smith----MS C.O.A. Justice

P. O. Box 249
Jackson, MS 39205

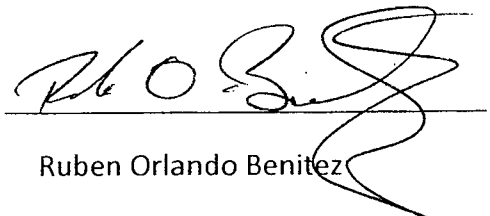
Done this the 01st day of April, 2021

Lynn Fitch---MS Attorney General

P. O. Box 220
Jackson, MS 39205

Crosby Parker—Harrison County D. A.

P. O. Box 235
Biloxi, MS 39533



Ruben Orlando Benitez

MDOC # 182157

S.M.C.I.

Bldg. D-1 B-zone Bed 194

P. O. Box 1419

Leakesville, MS 39451

IN THE SUPREME COURT OF THE UNITED STATES

RUBEN ORLANDO BENITEZ
PETITIONER

V.

CAUSE NUMBER: _____

STATE OF MISSISSIPPI
RESPONDANT

APPENDICES

B

IN THE CIRCUIT COURT OF HARRISON COUNTY IN THE STATE OF MISSISSIPPI

RUBEN ORLANDO BENITEZ

PETITIONER

V.

CAUSE NUMBER: _____

STATE OF MISSISSIPPI

RESPONDANT

EXHIBITS

1-13

UNDERLYING FACTS AND CIRCUMSTANCES

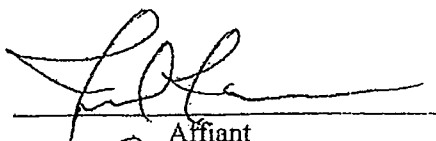
Affiant Joel Wallace is an Investigator with the Mississippi Highway Patrol. Investigator Wallace has been a trooper officer for over twelve years. Investigator Wallace has arrested numerous individuals for illegal narcotic violations and criminal investigations in his career. Investigator Wallace is a 1999 graduate of the Mississippi Highway Patrol Training Academy, which consisted of 400 hours of training. Investigator Wallace also has completed various classes dealing with the detection, investigation and apprehension of drug violators and criminal cases.

~~On September 18, 2011~~ approximately 1208 hours, D'Iberville Police Officers responded to 11059 Lamey Bridge Road apartment # 1023 in reference to a welfare concern. D'Iberville Police Officer Lee Donald knocked on apartment 1023 door with no answer. After attempting to locate additional information with negative results, Officer Donald left the apartment complex.

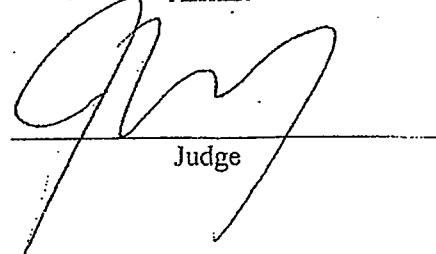
Later that morning, between 0800 and 0900 hours, Officer Steven Ramsey, courtesy officer for the Landmark Apartment complex, received a call from a male identifying himself as the husband. The husband requested Officer Ramsey check on his wife, Stacey Wright, who lives in apartment #1023. Officer Ramsey proceeded to the apartment and noticed the door was closed but unlocked. Officer Ramsey requested another on duty police officer. Officer Joey Fore arrived on scene. As the Officers opened the door, they discovered a black female lying in the vestibule on her back and she appeared to be deceased.

Rescue personnel responded and attempted to administer Cardiopulmonary Resuscitation (CPR) and it was confirmed the female is deceased. First responders noticed blood on the walls inside the apartment. Therefore, it is believed this death was caused by murder.

Based upon the aforementioned facts and circumstances, the Affiant hopes and prays a Search Warrant will be issued to discover and determine evidence of aforementioned crime is located at this residence and all vehicles, registered to the victim and parked at the residence.


Affiant

19 SEPT 2011
Date


Judge

9-19-11
Date

SEARCH WARRANT

STATE OF MISSISSIPPI
COUNTY OF RANKIN

AGENCY CASE # 11-35767

TO ANY LAWFUL OFFICER OF RANKIN COUNTY,

WHEREAS, MBI INVESTIGATOR JOEL WALLACE

KNOWN TO ME TO BE CREDIBLE PERSONS, HAVE THIS DAY MADE COMPLAINT ON OATH BEFORE ME AS FOLLOWS:

1. THAT AFFIANTS HAVE GOOD REASON TO BELIEVE AND DO BELIEVE THAT CERTAIN THINGS HEREAFTER DESCRIBED ARE NOW BEING CONCEALED IN OR ABOUT THE FOLLOWING PLACE IN THIS COUNTY:

330 CROSS PARK DRIVE #135 PEARL, MS. 39208. TWO STORY BRICK BUILDING ON THE SECOND FLOOR BORDERED BY A PARKING LOT TO THE EAST. 2006 CADILLAC CTS BLACK IN COLOR BEARING ILL TAG A664233 AND IS PARKED OUTSIDE THE AFOREMENTIONED APARTMENT.

TOGETHER WITH ALL APPROACHES AND APPURTENANCES THERETO.

2. THAT THE PLACE DESCRIBED ABOVE IS OCCUPIED AND CONTROLLED BY:
RUBEN ORLANDO BENITEZ DOB 09/14/1966 SSN#319-68-1604

3. THAT SAID THINGS ARE PARTICULARLY DESCRIBED AS FOLLOWS:

SHARP EDGE INSTRUMENT, HANDGUNS LIKELY TO PRODUCE DEATH OR ANY OTHER EVIDENCE SUPPORTING THE CRIME OF MURDER IN VIOLATION OF MS CODE 97-3-19

4. THAT POSSESSION OF THE ABOVE DESCRIBED THINGS IS IN ITSELF UNLAWFUL (OR THE PUBLIC HAS A PRIMARY INTEREST IN, OR PRIMARY RIGHT TO POSSESSION OF, THE ABOVE DESCRIBED THINGS), IN THAT SAID THINGS ARE:

EVIDENCE SUPPORTING THE CRIME OF MURDER MS CODE 97-3-19

5. THE FACTS TENDING TO ESTABLISH THE FOREGOING GROUNDS FOR ISSUANCE OF A SEARCH WARRANT ARE SHOWN ON A SHEET HEADED "UNDERLYING FACTS AND CIRCUMSTANCES" WHICH IS ATTACHED HERETO, MADE A PART HEREOF AND ADOPTED HEREIN BY REFERENCE.

6. THIS COURT, HAVING EXAMINED AND CONSIDERED SAID AFFIDAVIT, AND ALSO HAVING HEARD AND CONSIDERED EVIDENCE IN SUPPORT THEREOF FROM THE AFFIANTS NAMED THEREIN DOES FIND THAT PROBABLE CAUSE FOR THE ISSUANCE OF A SEARCH WARRANT DOES EXIST.

THEREFORE, YOU ARE HEREBY COMMANDED TO PROCEED AT ANY TIME IN THE DAY OR NIGHT TO THE PLACE DESCRIBED ABOVE AND TO SEARCH FORTHWITH SAID PLACE FOR THE THINGS SPECIFIED ABOVE, MAKING KNOWN TO THE PERSON OR PERSONS OCCUPYING OR CONTROLLING SAID PLACE, IF ANY, YOUR PURPOSE AND AUTHORITY FOR SO DOING, AND IF THE THINGS SPECIFIED ABOVE BE FOUND THERE TO SEIZE THEM, LEAVING A COPY OF THIS WARRANT AND A RECEIPT FOR THE THINGS TAKEN; AND BRING THE THINGS SEIZED BEFORE THIS COURT INSTANTLY; AND PREPARE A WRITTEN INVENTORY OF THE THINGS SEIZED; AND HAVE THEN AND THERE THIS WRIT, WITH YOUR PROCEEDINGS NOTED THEREON.

7. DO NOT INTERPRET THIS WRIT AS LIMITING YOUR AUTHORITY TO SEIZE ALL CONTRABAND AND THINGS THE POSSESSION OF WHICH IN ITSELF IS UNLAWFUL WHICH YOU FIND INCIDENT TO YOUR SEARCH, OR A LIMITING YOUR AUTHORITY TO MAKE OTHERWISE VALID ARREST AT THE PLACE DESCRIBED ABOVE.

WITNESS MY HAND THIS, 14 DAY OF September 2011.

OFFICIAL TITLE

AFFIDAVIT FOR SEARCH WARRANT

STATE OF MISSISSIPPI
COUNTY OF RANKINAGENCY CASE # 11-35767

THIS DAY PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED JUDICIAL OFFICER OF SAID COUNTY.

MBI INVESTIGATOR JOEL WALLACE,

KNOWN TO ME TO BE CREDIBLE PERSONS, WHO AFTER HAVING BEEN FIRST DULY SWORN, DEPOSE AND SAY:

1. THAT AFFIANT HAVE GOOD REASON TO BELIEVE AND DO BELIEVE THAT CERTAIN THINGS HEREAFTER DESCRIBED ARE NOW BEING CONCEALED IN OR ABOUT THE FOLLOWING PLACES IN THIS COUNTY: *HERE PARTICULARLY DESCRIBE THE PLACE TO BE SEARCHED.*

330 CROSS PARK DRIVE #135 PEARL, MS. 39208. TWO STORY BRICK BUILDING ON THE SECOND FLOOR BORDERED BY A PARKING LOT TO THE EAST. 2006 CADILLAC CTS BLACK IN COLOR BEARING ILL TAG A664233 AND IS PARKED OUTSIDE THE AFOREMENTIONED APARTMENT.

TOGETHER WITH ALL APPROACHES AND APPURTENANCES THERETO.

2. THAT THE PLACE DESCRIBED ABOVE IS OCCUPIED AND CONTROLLED BY:

RUBEN ORLANDO BENITEZ DOB 09/14/1966 SSN#319-68-1604

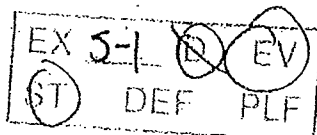
3. THAT SAID THINGS ARE PARTICULARLY DESCRIBED AS FOLLOWS: *HERE DESCRIBE THE THING OR THINGS TO BE SEIZED, TAKING CARE TO DESCRIBE ONLY THOSE THINGS WHICH AFFIANT HAVE PROBABLE CAUSE TO BELIEVE AND DO BELIEVE ARE CONCEALED AT THE PLACE DESCRIBED ABOVE, AND WITH ENOUGH PARTICULARITY TO INSURE THAT A UNINFORMED OFFICER WILL NOT SEIZE ONE THING UNDER A WARRANT DESCRIBING ANOTHER. HERE EVIDENCE IS NOT A PROPER SUBJECT OF A SEARCH AND SEIZURE. CERTAIN THINGS SUBJECT TO SEARCH AND SEIZURE INCLUDE, IN ADDITION TO THE SPECIFIC SUBJECT ENUMERATED IN THE CODE, ALL CONTRABAND; INSTRUMENTALITY'S USED IN THE COMMISSION OF A CRIME; AND BOOKS, WRITINGS, PICTURES AND PRINTS ADJUDGED IN A PROPER PROCEEDING BY A PROPER COURT TO BE OBSCENE.*

SHARP EDGE INSTRUMENT, HANDGUNS LIKELY TO PRODUCE DEATH OR ANY OTHER EVIDENCE SUPPORTING THE CRIME OF MURDER IN VIOLATION OF MS CODE 97-3-19

4. THAT POSSESSION OF THE ABOVE DESCRIBED THINGS IS IN ITSELF UNLAWFUL (OR THE PUBLIC HAS A PRIMARY INTEREST IN, OR PRIMARY RIGHT TO POSSESSION OF, THE ABOVE DESCRIBED THINGS), IN THAT SAID THINGS ARE: *HERE STATE BRIEFLY THE USE AND INTENTION FOR USE OF THE SPECIFIED THINGS, CITING THE APPROPRIATE CODE SECTION OR ORDINANCE BEING VIOLATED AND CHARGING ITS VIOLATION, AND A BRIEF NARRATIVE ACCOUNT OF THE OFFENSE BEING COMMITTED.*

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INFORMATION OBTAINED FROM INFORMANTS MUST BE DESCRIBED AS RELIABLE AND THE INFORMANTS IDENTIFIED AS CREDIBLE PERSONS. IT IS NOT ABSOLUTELY ESSENTIAL THAT THE IDENTITY OF THE INFORMANTS BE DISCLOSED, BUT THERE MUST BE SHOWN ENOUGH OF THE UNDERLYING FACTS AND CIRCUMSTANCES FROM WHICH THE AFFIANT CONCLUDE THAT THE INFORMANTS ARE CREDIBLE AND THEIR INFORMATION RELIABLE.

AVOID VAGUE RECITALS SUCH AS "SUSPECT WAS OBSERVED" AND "THE SHERIFF'S OFFICE RECEIVED INFORMATION." USE FACTUAL RECITALS SHOWING NAMES, PLACES, TIMES AND DATES, IN COMMON SENSE, NON-TECHNICAL LANGUAGE. BE SPECIFIC AND GIVE THE INFORMATION IN DETAIL.

6. WHEREFORE, AFFIANT REQUEST THAT A SEARCH WARRANT ISSUE DIRECTING A SEARCH OF THE ABOVE DESCRIBED PLACE AND SEIZURE OF THE ABOVE DESCRIBED THINGS.

File 19 Sept 2011
AFFIANT

AFFIANT

AFFIANT

AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME, THE 19th DAY OF Sept., 2011.

[Signature]
OFFICIAL TITLE

EXHIBIT

4

1 of 2

AFFIDAVIT FOR SEARCH WARRANT

STATE OF MISSISSIPPI
COUNTY OF RANKIN

AGENCY CASE # 11-35767

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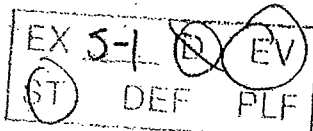
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EXHIBIT

4

20F2

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John 19 sep 2011
AFFIANT

AFFIANT

AFFIANT

AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME, THE

19th DAY OF Sept., 2011.

[Signature]
OFFICIAL TITLE

**D'IBERVILLE POLICE DEPARTMENT
CRIMINAL INVESTIGATIONS DIVISION**

Wayne A. Payne, Chief of Police

EXHIBIT

5

Officers of the D'Iberville Police Department began an immediate canvas of the area in an attempt to locate any potential witnesses, search for any possible evidence and potential suspects. Officers involved in the canvas's reports which detail the areas and apartments checked is part of the preliminary incident report located in this case file.

Officer Fore was relieved from recording the crime scene log to return to service at which point Officer Ramsey took possession of the log. Officer Fore then began to locate tenants of apartments in building ten (10). Officer Fore was able to locate one tenant, Shannara Collins, who lives in apartment number 1022. This apartment is located on the third floor of building ten which shares a common wall with the victim's apartment. Collins advised Officer Fore that on September 17, 2011 at approximately 2200 hours, she heard two screams and a loud "thud" on her wall that shook the towel holder in her bathroom. Collins went on to say that she placed her ear to the wall and heard a door open then close. Nothing else was heard by Collins from Wright's residence.

Officers of the D'Iberville Police Department continued a door to door canvas of the area in an attempt to locate any other potential witnesses as well as a search of all known garbage dumpsters and areas in the vicinity where any evidence may be located. No other potential witnesses or evidence was found during this canvas.

Anthony Wright Sr. had been notified by Ruben Benitez that his wife had been discovered deceased at which point he and his family traveled to Landmark Apartments in D'Iberville, MS arriving at approximately 1145 hours. They were then taken to the D'Iberville Police Department to be interviewed at approximately 1200 hours. At approximately 1230 hours on September 18, 2011, Chief Keith Davis of the Moss Point Police Department and Investigator Ray Wescovich of the D'Iberville Police Department conducted interviews with Anthony Wright Sr., husband of Stacey Wright, Anthony Wright Jr., son of Stacey Wright, Bria Wright, daughter of Stacey Wright and Felicia Williams, sister of Stacey Wright at the D'Iberville Police Department. Bria

EXHIBIT

6

**D'IBERVILLE POLICE DEPARTMENT
CRIMINAL INVESTIGATIONS DIVISION**

Wayne A. Pagan, Chief of Police

Wright was interviewed first due to her being the last known person to have spoken to Stacey Wright.

Bria Wright stated during the interview that her mother called her at 2157 hours on her cellular phone. The phone only rang one time, but displayed her mother's phone number. Bria Wright then called her mother right back. Stacey Wright answered the phone, but did not speak to Bria. Bria heard her mother yelling at someone that it was her daughter, "Bria", calling her and then heard an unknown male's voice say "just shut up and drive". Bria was then disconnected from the call. Bria then attempted to call her mother back several times, but was unable to reach her. All the calls to Stacey Wright's phone at that point were going to voice mail. Bria then told her father, Anthony Wright, of the incident at which point he and he told her to call back. This interview began at approximately 1211 hours and ended at approximately 1222 hours.

Anthony Wright Sr. was then interviewed. This interview began at approximately 1223 hours at which point Anthony Wright stated he moved Stacey Wright to the coast on August the sixth. He and Stacey were having marital problems and were contemplating a divorce. Stacey Wright returned to Jackson a few weeks ago for training. Anthony Wright said Stacey Wright declined to stay with the family and stayed at a hotel which the Transportation Security Administration had furnished for her which upset him at the time. They had not spoken much since then, but he did receive a text message earlier in the day of September 18, 2011. The text message was in reference to Stacey Wright wanting Anthony Wright Sr. to forward her mail to her address in D'Iberville. Anthony Wright did not answer the text message and did not know the address.

Anthony Wright also stated he thought his daughter Bria and her boyfriend Wilson Bert were to travel to the coast the weekend of the seventeenth of September, but when asked his daughter, Bria, stated she guessed not. Stacey Wright was to have an interview in Jackson Friday the seventeenth of September. This position within the Transportation Security Administration would have moved her back to the Jackson area. The interview was delayed and upon Bria

MISSISSIPPI STATE DEPARTMENT OF HEALTH
VITAL RECORDS

10094920

EXHIBIT

7

RECORD
DATE SEP 29 2011CERTIFICATE OF DEATH
STATE OF MISSISSIPPISTATE FILE (12) 2011-020275
NUMBER

NAME: Stacey Denise Wright		SEX: F	DATE OF BIRTH: 10:00 P.	DATE OF DEATH: SEPTEMBER 17, 2011
RACE: Black		AGE: 43	DATE OF BIRTH: January 07 1968 Mississippi	
PLACE OF BIRTH: HARRISON, MISSISSIPPI		(SECOND RESIDENCE)		
11059 LANEY BRIDGE ROAD #1023		D'IBERVILLE		HARRISON
MARRIAGE: Married		Anthony Wright		
587-23-5194		Security Supv.		
Mississippi		Hinds	Jackson	Yes 6324 Woodstock Dr.
John H. Scott, II		Gloria Dean Rhodes		
Anthony Wright		Husband 6324 Woodstock Dr. Jackson, MS 39206		
Burial		Garden Memorial Jackson, MS		
Lakeover Memorial 25H		FD394 1525 Beasley Rd. Jackson MS 39206		
GARY T. MARGROVE		P.O. BOX 4036, GULFPORT, MS 39502		
HARRISON COUNTY CORONER		SEPTEMBER 20, 2011		

CAUSE OF DEATH: MASSIVE INTERNAL HEMORRHAGE		11 STAB WOUNDS TO THE CHEST	
TRISE AND ABRASION TO THE LEFT SIDE OF FACE		STAB WOUND TO THE LEFT ARM	
HOMICIDE		DECEASED STABBED AT THE HANDS OF ANOTHER	
11059 LANEY BRIDGE ROAD #1023, D'IBERVILLE, MS		RESIDENCE	

10/4/2011

STATE REGISTRAR

WARNING:

VERIFY PRESENCE OF WATERMARK HOLD TO LIGHT TO VIEW

D'IBERVILLE POLICE DEPARTMENT
CRIMINAL INVESTIGATIONS DIVISION

Wayne A. Payne, Chief of Police

EXHIBIT
8

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EXHIBIT

9

**D'IBERVILLE POLICE DEPARTMENT
CRIMINAL INVESTIGATIONS DIVISION**

Wayne A. Payne, Chief of Police

reference to Stacey Wright. Lieutenant Blackwell briefed Officer Ramsey on the circumstances and Officer Ramsey then went to the business office of Landmark Apartments to locate a possible rental agreement in the name of Stacey Wright to verify an apartment number.

Officer Ramsey was able to locate the rental agreement which can be located in the exhibits and notes section of this case file tabbed number 4. After finding the apartment number Officer Ramsey called Lieutenant Blackwell at approximately 1010 hours to request assistance from an on duty officer to conduct the welfare check at apartment 1023, which had now been verified as Stacey Wright's apartment.

Officer Joey Fore was sent to assist Officer Ramsey in checking the residence. Officer Fore arrived at Landmark Apartments at approximately 1020 hours. Upon Officer Fore's arrival, he was met by Officer Ramsey and Jonathan Rhodes, Transportation Security Administration employee. Investigator Note: Jonathan Rhodes was on scene upon Officer Fore's arrival looking for Stacey Wright's apartment. It was later learned through the investigation Rhodes was sent there on the request of Ruben Benitez, but Rhodes was not given an apartment number which Benitez knew. At approximately 1021 hours, Officer's Fore and Ramsey then proceed to apartment 1023 with Rhodes standing near the stairway. Officer's Fore and Ramsey then knocked on the door of apartment 1023. After getting no response from inside the apartment, Officer Fore tried the door knob and found it to be unlocked. As Officer Fore was opening the door to announce himself as a police officer, Officer Fore observed a black female on her back with her head facing hallway wall.

Officer Fore immediately advised the Harrison County Communications Center he observed an unconscious female and called for medical personnel at 1023 hours. Officer Fore then entered the residence to search for other victims or persons in the residence. Upon Officer Fore's entry, he checked the victim which did not appear to be breathing. Officer Fore also observed what appeared to be jewelry beads on the floor next to the victim and what appeared to be blood

EXHIBIT

10

D'IBERVILLE POLICE DEPARTMENT
CRIMINAL INVESTIGATIONS DIVISION

Wayne A. Payne, Chief of Police

splatter. On the carpet under the victim's left arm, Officer Fore observed what appeared to be dried blood.

Officer Fore then continued to check the rest of the apartment. Officer Fore observed a Transportation Security Administration identification badge on a bed with a picture of the victim on it and the name Stacey Wright. After checking the rest of the residence, Officer Fore, along with Officer Ramsey, who had stepped inside the entry area of the apartment, exited the residence and shut the door.

The D'Iberville Fire Departments rescue personnel arrived on scene approximately four minutes later at 1027 hours. Fireman Heath Sidaway entered the residence escorted by Officer Fore. Firemen Kenny Dellenger and Phillip Albert remained at the entry door of the residence. After an initial examination of the victim, Sidaway was unable to provide any life saving measures. Officer Fore and Sidaway then exited the residence and shut the door.

Officer Fore then initiated the crime scene log and notifications were being made to the Criminal Investigations Division and all support personnel to include: Coroner Gary Hargrove, Mississippi Bureau of Investigations Agent Joel Wallace as a liaison due to the husband of Stacey Wright being a State Trooper, Assistant District Attorney Beth McFadden and the Biloxi Police Departments Crime Scene Investigators Mike Manna and Richard Britt. Investigator Marty Griffin arrived on scene at approximately 1130 hours and was assigned as case investigator.

Investigator Comment: It was learned during the investigation Stacey Wright had not updated her contact information since her transfer to the Gulfport Airport Transportation Security Administration employee, Charles N. Hocker, provided a statement in which Hocker received a phone call from Benitez on September 18, 2011, at 0200 hours requesting the address of Stacey Wright. Hocker informed Benitez he did not have updated address information for Wright due to her not updating it after transferring. Hocker told Benitez that he would continue to locate her address and Benitez requested to be called when the address was found. Hocker's full statement can be located in the exhibits and notes section of this file.

1 who I was and where I was coming from.

2 If my memory serves me correct, the judge
3 invited me inside the kitchen area from the outside of
4 the garage. And there I briefed him. I don't know
5 whether Mr. Hill was actually inside. I can't really
6 recall if he came in or did not or went back to Stacy.
7 But I briefed the judge inside his kitchen. I
8 presented all my documents to him there in the garage
9 area. We proceeded inside to the kitchen area where he
10 invited me in.

11 Q. First, did the judge review your documents
12 that you had or did he actually exam them?

13 A. To my memory not exactly at first, sir, no.
14 After I gave him the credentials, we had a brief
15 conversation about that I traveled away from home a
16 good distance. And he asked me what was it pertaining
17 to. I explained that to him. He had placed me under
18 oath. And then I explained that to him.

19 After I explained it to the judge, then the
20 judge reviewed my documents, signed them, and we parted
21 our ways and proceeded on, sir.

22 Q. So he never read your actually underlying
23 facts and circumstances before signing the search
24 warrant?

25 A. Before signing it?

26 Q. Correct.

27 A. No, sir.

28 Q. He must -- did he just rely on what you
29 orally told him that evening? Is that all he relied on

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EXHIBIT
12

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EXHIBIT

13

1 OF 2

1 in issuing the search warrant?

2 A. It appears that's what's he did, yes, sir.

3 Q. And did you take any notes concerning this
4 conversation you had with the justice court judge?

5 A. Not that I can recall, no, sir.

6 Q. Do you recall if the justice court judge
7 took any notes during the time you were talking to him
8 before issuing this search warrant?

9 A. I'm not able to answer if he did or not,
10 sir. To my memory, I don't recall that.

11 Q. Do you recall if this particular justice
12 court judge requested that you leave a copy of the
13 search warrant with the underlying facts and
14 circumstances with him when you left?

15 A. With the judge?

16 Q. Yes.

17 A. I can't recall if he did or not.

18 Q. Do you recall if he later on requested that
19 when you did the return, you brought him back another
20 copy of what the return said and what other information
21 there was in connection with this search?

22 A. Yes, sir. I provided -- you asked if I
23 left an affidavit and a search warrant with the judge,
24 and then provided him a return to the court?

25 Q. Correct.

26 A. I believe I did, yes, sir. Well, I did. I
27 mean, I signed the return on that day and provided it
28 back to the judge, yes, sir, to the court.

29 Q. And did you go to justice court in Rankin

EXHIBIT

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2 of 2



Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Clerk's Docket

2013-CT-00469-SCT

Ruben Orlando Benitez v. State of Mississippi

Harrison Circuit Court District 2

Trial Court Case # B2402-2012-326

The Honorable John C. Gargiulo

Ruling Date: 03/07/2013

Appellant Attorneys

Ruben Orlando Benitez

Represented By:

George T. Holmes

Benjamin Allen Suber

Appellee Attorneys

State of Mississippi

Represented By:

John R. Henry Jr.

Jim Hood

LaDonna C. Holland

GENERAL DOCKET

03/19/2013	Notice of Appeal Filed
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03/21/2013	Trial Court Order received - Hon. Gayle Parker
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03/21/2013	Trial Court Order received - Hon. Gayle Parker
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03/21/2013	Designation of Record received - Hon. Gayle Parker
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03/22/2013	Notice of Assignment to Court of Appeals
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03/22/2013	The Court Assignment Letter has been sent.
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03/27/2013 Appearance Form received - George T. Holmes

03/27/2013 Court Reporter Transcript Due Date issued - Robin Michelle Casano

03/27/2013 Certificate of Compliance received - Trial Court Clerk - Hon. Gayle Parker

03/28/2013 Court Reporter Transcript Due Date issued

03/29/2013 Motion # 2013 - 859 Motion for Leave to Withdraw

04/02/2013 Order Entered Motion # 2013 - 859

07/12/2013 Record Filed

07/12/2013 Briefing Schedule Notice Issued.

07/26/2013 Appearance Form received - Benjamin Allen Suber

08/16/2013 Appellant's Brief filed on behalf of Ruben Orlando Benitez

08/16/2013 Record Excerpts filed on behalf of Ruben Orlando Benitez

09/16/2013 Appellee's Brief filed on behalf of State of Mississippi

09/17/2013 Appearance Form received - LaDonna C. Holland

01/07/2014 Case Submitted without Oral Argument

05/20/2014 DECISION: Affirmed

06/10/2014 Mandate Issued

07/08/2014 Motion # 2014 - 2738 Writ of Certiorari

08/21/2014 Order Entered Motion # 2014 - 2738

09/09/2014 Motion # 2014 - 3613 Motion To Suspend Order

Attachment added to motion - 2014-3613 -

10/03/2014 Resubmission of the Original Petition For Rehearing...

10/10/2014 Order Entered Motion # 2014 - 3613

10/10/2014 Attachment added to motion - 2014-3613 - Resubmission of the Resubmission of the Resubmission of the Resubmission of the Original Petition for Rehearing...

10/10/2014 Motion # 2014 - 5420 Resubmission of the Resubmission of the Resubmission of the Original Petition for Rehearing

10/20/2014 Motion # 2014 - 4291 Motion to Rescind Order

10/29/2014 Order Entered Motion # 2014 - 4291

01/09/2015 Correspondence Letter Issued.

01/15/2015 Motion # 2015 - 254 Out-of-Time Motion for Rehearing

02/25/2015 Correspondence Letter Issued.

03/30/2015 Order Entered Motion # 2015 - 254

07/28/2015 Mandate Recalled

07/28/2015 Order Entered - Motion # 2015 - 254

08/21/2015 Motion # 2015 - 3755 Motion to Quash Search Warrant

09/09/2015 Order Entered Motion # 2015 - 3755

09/22/2015 Correspondence Letter Issued.

10/13/2015 Rehearing Denied Motion # 2014 - 5420

10/23/2015 Motion # 2015 - 4760 Petition for Writ of Certiorari

01/14/2016 Order Entered Motion # 2015 - 4760

02/01/2016 Motion # 2016 - 464 Request for Written Opinion/Judgement

02/01/2016 Motion # 2016 - 465 Motion to Stay Mandate

02/10/2016 Order Entered Motion # 2016 - 465

05/15/2017 Motion # 2017 - 1858 On Petition for a Evedentuary Hearing Mississippi Supreme Court

IN THE SUPREME COURT OF THE UNITED STATES

RUBEN ORLANDO BENITEZ
PETITIONER

V.

CAUSE NUMBER: _____

STATE OF MISSISSIPPI
RESPONDANT

APPENDICES

C

Serial: 238789

IN THE SUPREME COURT OF MISSISSIPPI

No. 2017-M-00681

RUBEN ORLANDO BENITEZ
A/K/A RUBEN O. BENITEZ

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

ORDER

Before the undersigned Justice is the Motion for Rehearing filed pro se by Ruben Orlando Benitez. On June 29, 2021, a panel of this Court denied Benitez's Application for Leave to Proceed into Trial Court with Motion for Post-Conviction Collateral Relief, finding that it was barred by time and as a successive application for leave. Miss. Code Ann. §§ 99-39-5(2), 99-39-27(9). Further, the panel found Benitez's claims to be barred by the doctrine of *res judicata*. Miss. Code Ann. § 99-39-21(3). Benitez now seeks reconsideration, to which he is not entitled. M.R.A.P. 27(h).

IT IS, THEREFORE, ORDERED that the Motion for Rehearing is denied.

SO ORDERED.

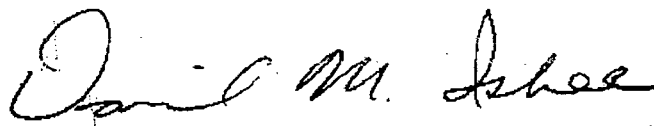
DIGITAL SIGNATURE

Order#: 238789

Sig Serial: 100004401

Org: SC

Date: 09/29/2021



David M. Ishee, Justice