

No. \_\_\_\_\_

---

---

**In The  
Supreme Court of the United States**

—◆—  
CARLOS JACKSON,

*Petitioner,*

v.

STATE OF MISSISSIPPI,

*Respondent.*

—◆—  
**On Petition For Writ Of Certiorari  
To The Supreme Court Of Mississippi**

—◆—  
**PETITION FOR WRIT OF CERTIORARI**

—◆—  
WILLIAM C. BELL  
BELL LAW FIRM, PLLC  
443 Northpark Drive  
Suite B  
Ridgeland, MS 39157  
(601) 956-0360  
WilliamBell.Law@Gmail.Com  
*Attorney for Carlos Jackson*

**QUESTIONS PRESENTED**

- I. WHETHER THE RETROACTIVITY RULE FOR CRIMINAL PROCEDURE APPLIES TO THE STATE OF MISSISSIPPI.**
- II. WHETHER THE FAILURE TO MAKE A COMPETENCY INQUIRY WHEN COMPETENCY IS AN ISSUE RENDERS VOID A SUBSEQUENT CONVICTION AND SENTENCE.**

## **PARTIES TO THE PROCEEDING**

Petitioner Carlos Jackson was the defendant in a state court criminal trial in the Circuit Court of Pike County, Mississippi. In 2008, Mr. Jackson was convicted and sentenced to five (5) consecutive sentences totaling 80 years.

Respondent, the State of Mississippi, prosecuted Mr. Jackson in the Circuit Court of Pike County, Mississippi.

## **RELATED CASES**

*State of Mississippi v. Carlos Jackson*, case number 2007-526-PKS, Circuit Court of Pike County, Mississippi, judgment entered December 17, 2008;

*Carlos Jackson v. State of Mississippi*, 52 So.3d 1203 (Miss.Ct.App. 2010) (reported) (convictions affirmed September 28, 2010);

*Carlos Jackson v. State of Mississippi*, Court of Appeals of the State of Mississippi, case number 2009-KA-00173, September 28, 2010 (mandate issued February 24, 2011);

*Carlos Jackson v. State of Mississippi*, 2015 post-conviction relief filing, case number 2015-M-0019 (denied March 11, 2015);

*Carlos Jackson v. State of Mississippi*, 2022 post-conviction relief filing, case number 2022-M-0757 (denied by 3 justice panel of the Mississippi Supreme Court September 21, 2022).

## TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED .....	i
PARTIES TO THE PROCEEDING.....	ii
RELATED CASES .....	ii
TABLE OF CONTENTS .....	iii
TABLE OF AUTHORITIES.....	v
OPINIONS BELOW.....	1
JURISDICTION.....	1
PETITION FOR A WRIT OF CERTIORARI .....	2
STATUTES AND CONSTITUTIONAL PROVI- SIONS INVOLVED.....	3
INTRODUCTION AND STATEMENT OF THE CASE .....	5
REASONS FOR GRANTING THE PETITION .....	8
I. WHETHER THE RETROACTIVITY RULE FOR CRIMINAL PROCEDURE APPLIES TO THE STATE OF MISSISSIPPI .....	8
II. WHETHER THE FAILURE TO MAKE A COMPETENCY INQUIRY WHEN COM- PETENCY IS AN ISSUE RENDERS VOID A SUBSEQUENT CONVICTION AND SENTENCE .....	16
CONCLUSION.....	23

## TABLE OF CONTENTS – Continued

	Page
APPENDIX	
Order (Mississippi Supreme Court denying Application and Amended Application for Post Conviction Collateral Relief).....	App.1
Agreed Order for Psychological/Psychiatric Examination .....	App.3
Sentence of the Court After Jury Trial .....	App.6
Amendment XIV, and Supremacy Clause, Constitution of the United States .....	App.8
Miss. Unif. Cir. & Cty. R. 9.06.....	App.9
Amended Application for Leave to Proceed On Filing Petition For Post Conviction Relief in The Trial Court (with exhibits) .....	App.10
Amended Petition for Post Conviction Collateral Relief (proposed) (with exhibits).....	App.43
Motion for Reconsideration and to Suspend the Rules .....	App.76
Order (Denying Motion for Reconsideration and to Suspend The Rules) .....	App.87

## TABLE OF AUTHORITIES

	Page
CASES	
<i>Bolton v. City of Greenville</i> , 178 So.2d 667 (Miss. 1965) .....	13
<i>Bryant, Inc. v. Walters</i> , 493 So.2d 933 (Miss. 1986) .....	19
<i>Carter v. Fenner</i> , 136 F.3d 1000 (5th Cir. 1998) ....	18, 23
<i>Drope v. Missouri</i> , 420 U.S. 162 (1975).....	10, 11
<i>Dusky v. United States</i> , 362 U.S. 402 (1960) .....	11
<i>Edwards v. Vannoy</i> , 593 U.S. ___, 141 S. Ct. 1547 (2021) .....	9, 11, 16
<i>Kulko v. California Superior Court</i> , 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978) .....	17
<i>Lester v. Miller</i> , 76 Miss. 309, 24 So. 193 (Miss. 1898) .....	18, 19
<i>Manning v. State</i> , 929 So.2d 885 (Miss. 2006) .....	12
<i>McCain v. State</i> , 81 So.3d 1055 (Miss. 2012) .....	12
<i>New York Life Ins. Co. v. Brown</i> , 84 F.3d 137 (5th Cir. 1996) .....	18, 23
<i>Overbey v. Murray</i> , 569 So.2d 303 (Miss. 1990) .....	19
<i>Pate v. Robinson</i> , 383 U.S. 375 (1966) .....	<i>passim</i>
<i>Pennoyer v. Neff</i> , 95 U.S. 714, 24 L.Ed. 565 (1878) .....	17
<i>Pitchford v. State of Mississippi</i> , 240 So.3d 1061 (2017) .....	<i>passim</i>
<i>Ring v. Arizona</i> , 536 U.S. 584 (2002) .....	12
<i>Schriro v. Summerlin</i> , 542 U.S. 348 (2004) .....	9, 12

## TABLE OF AUTHORITIES – Continued

	Page
<i>Sanders v. State</i> , 9 So.3d 1132 (Miss. 2010).....	14, 15
<i>Thompson v. City of Vicksburg</i> , 813 So.2d 717 (Miss. 2002) .....	12
<i>Volkswagen Corporation v. Woodson</i> , 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980) .....	18
<i>Williams v. New Orleans Pub. Serv., Inc.</i> , 728 F.2d 730 (5th Cir. 1984).....	18
<i>Windsor v. McVeigh</i> , 93 U.S. 274, 23 L.Ed. 914 (1876).....	19, 22

## CONSTITUTION

Miss. Const. art. III, §14 .....	21
Miss. Const. art. VI, §145-B.....	21
U.S. Const. amend. XIV .....	<i>passim</i>
U.S. Const. art. I (Supremacy Clause) .....	<i>passim</i>
U.S. Const. art. VI, cl. 2.....	4

## COURT RULES

Supreme Court Rule 10(c).....	2
-------------------------------	---

## UNIFORM RULES OF CIRCUIT AND COUNTY COURT

Miss. Unif. Circ. & Cty. R. 9.06.....	<i>passim</i>
---------------------------------------	---------------

## TABLE OF AUTHORITIES – Continued

	Page
STATUTES	
28 U.S.C. §1257(a).....	1
Mississippi Code Ann. §99-13-11 (1972).....	4, 16
Mississippi Code Ann. §§99-39-1, et seq. (post-conviction relief statutes) .....	<i>passim</i>



## CITATIONS OF OPINIONS AND ORDERS

Carlos Jackson's appeal of his conviction is cited at *Carlos Jackson v. State of Mississippi*, 52 So.2d 1203 (Miss. Ct. App. 2011).

Other relevant Mississippi Supreme Court and state court orders are not reported/cited, but are included in the Appendix.



## JURISDICTION

The order sought to be reviewed was entered by the Mississippi Supreme Court on September 21, 2022. This petition is timely, and this Court has jurisdiction under 28 U.S.C. §1257(a), because Carlos Jackson has invoked in the Mississippi Supreme Court his due process rights under the Fourteenth Amendment to the Constitution of the United States; along with his right to have the Mississippi courts follow the Supremacy Clause of the Constitution of the United States. The highest court in the State of Mississippi summarily rejected Mr. Jackson's assertions of his rights under the Constitution of the United States. The highest court in the State of Mississippi ignored this Court's jurisprudence regarding competency to stand trial; and ignored this Court's jurisprudence regarding the criminal procedure retroactivity rule.



**PETITION FOR A WRIT OF CERTIORARI**

Carlos Jackson petitions for a writ of certiorari to review the order of the Supreme Court of Mississippi entered September 21, 2022. App.1-2. Pursuant to Supreme Court Rule 10(c), the Court should grant this petition because:

- (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Rule 10(c), United States Supreme Court.

The Mississippi Supreme Court rejected Mr. Jackson's request for post-conviction relief by citing a 2017 criminal procedure death penalty case styled as *Pitchford v. State of Mississippi*, 240 So.3d 1061 (2017). Mr. Jackson's appeal was complete on February 24, 2011 on issuance of the mandate from the Mississippi Court of Appeals.

The retroactivity rule for criminal procedure cannot be used by the State of Mississippi and by the Mississippi courts to retroactively defeat Carlos Jackson's due process claim that his 2008 conviction and sentence are void for lack of due process, where the trial court failed to hold a competency hearing and make an inquiry into Mr. Jackson's competency to stand trial. Mississippi's approach conflicts with this Court's jurisprudence regarding the retroactivity rule, because criminal procedure changes cannot be

used retroactively by the state against antecedent due process claims.

The Court should also grant certiorari to the Supreme Court of Mississippi to require that Mississippi follow the Supremacy Clause as it relates to this Court's jurisprudence regarding competency to stand trial. The Supreme Court of Mississippi refused to follow this Court's competency jurisprudence by ignoring *Pate v. Robinson*, 383 U.S. 375 (1966), which holds that "The failure to make such (competency) inquiry thus deprived Robinson (the defendant) of his constitutional right to a fair trial." This Court should grant this petition to hold and settle that the due process violation of failing to make a required competency inquiry voids any subsequent conviction and sentence for want of due process.

---

◆

### STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the Constitution of the United States; the Supremacy Clause; and Rule 9.06 of the Mississippi Rules of Circuit and County Court (competency to stand trial) which provide as follows:

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof,

are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment XIV, Constitution of the United States.

Supremacy Clause:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Law of any State to the Contrary notwithstanding.

Article VI, Clause 2, Constitution of the United States.

Mississippi Competency Procedural Rule:

If before or during trial the court, of its own motion or upon motion of an attorney, has reasonable ground to believe that the defendant is incompetent to stand trial, the court shall order the defendant to submit to a mental examination by some competent psychiatrist selected by the court in accordance with § 99-13-11 of the Mississippi Code Annotated of 1972.

After the examination the court shall conduct a hearing to determine if the defendant is

competent to stand trial. After hearing all the evidence, the court shall weigh the evidence and make a determination of whether the defendant is competent to stand trial. If the court finds that the defendant is competent to stand trial, then the court shall make the finding a matter of record and the case will then proceed to trial.

Miss. Unif. Circ. & Cty. R. 9.06 (Mississippi Uniform Circuit and County Court Rules).

Mississippi post-conviction relief statutes:

*Mississippi Code* §§99-39-1, et seq.

---

◆

## INTRODUCTION AND STATEMENT OF THE CASE

The trial court judge signed an *Agreed Order for Psychological/Psychiatric Examination* on December 12, 2007 directing that Carlos Jackson be evaluated by a psychiatrist at the Mississippi State Hospital regarding his insanity defense, and regarding Mr. Jackson's competency to stand trial. App.3-5. Mr. Jackson's competency to stand trial was before the trial court on the state's motion. App.3. There was a report from a psychologist that Mr. Jackson was competent, but there was no competency hearing. Assistant District Attorney Rodney Tidwell acknowledged to the jury in closing argument that, in the context of the insanity defense: "I have no doubt in my mind that Carlos Jackson has some mental problems." App.38-41.

The trial court did not hold a competency hearing, and there is no entry in the court docket showing an adjudication that Mr. Jackson was competent to stand trial. App.26-27 (trial counsel affidavit); and App.31-38 (trial court docket). Carlos Jackson was then convicted of five (5) felony counts, and sentenced to consecutive sentences totaling 80 years. App.6-7.

None of Mr. Jackson's trial attorneys or his former appellate attorneys ever raised the issue of the trial court's failure to hold a competency hearing and failure to adjudicate Mr. Jackson's competency.

In 2022, based on the trial court's failure to hold a competency hearing and adjudicate competency, Carlos Jackson's current counsel filed in the Mississippi Supreme Court for leave to pursue post-conviction relief under the Uniform Post Conviction Civil Relief Act (UPCCRA). App.10-42 (Mississippi Code §§99-39-1, et seq.). The Mississippi UPCCRA requires that Mr. Jackson must first obtain permission from the Mississippi Supreme Court before pursuing his claims in the trial court, when the criminal case was already final on appeal. If granted permission, the UPCCRA petition would then be filed in the trial court as an original civil action.

The Mississippi Supreme Court did not direct the State of Mississippi to respond, and Mississippi did not file any response.

Carlos Jackson made the following arguments in his UPCCRA filings that support Mr. Jackson's claims and this petition:

1. The criminal procedure retroactivity rule prevents the State of Mississippi from using post-appeal criminal law procedural changes to defeat Mr. Jackson's trial court due process claims; and

2. Mr. Jackson's 2008 conviction and 80 year sentence are void for lack of due process, because the trial court failed to inquire into competency, failed to hold a competency hearing and failed to adjudicate Mr. Jackson's competency to stand trial. Mr. Jackson argued to the Mississippi Supreme Court that a void judgment can be attacked at any time, and the passage of time never cures a judgment that is void for lack of due process. App.10-42.

By order entered September 21, 2022, the Mississippi Supreme Court denied Mr. Jackson's UPCCRA petition, citing *Pitchford v. State*, 240 So.3d 1061 Miss. 2017). The Mississippi Supreme Court held that Mr. Jackson was not entitled to any relief on his due process claims because *Pitchford* in 2017 "overruled" the 2010 case upon which Mr. Jackson relied, *Sanders v. State*, 9 So.3d 1132 (Miss. 2010) (requiring reversal when competency is before the court, and the court fails to hold a competency hearing). App.1-2. When state courts ignore this Court's jurisprudence on competency by failing to make even the most basic due process competency inquiry, this Court should hold, and settle as a matter of constitutional law, that any resulting conviction and sentence are void for want of due process.

This petition is filed within 90 days of the Mississippi Supreme Court's September 21, 2022 denial of Mr. Jackson's UPCCRA amended application for post-conviction relief. App.1-2. Mr. Jackson, through counsel, filed a *Motion for Reconsideration and To Suspend the Rules*, asking the Mississippi Supreme Court to address these issues, and the Mississippi Supreme Court summarily refused by order entered November 1, 2022. App.87.



## REASONS FOR GRANTING THE PETITION

### I. WHETHER THE RETROACTIVITY RULE FOR CRIMINAL PROCEDURE APPLIES TO THE STATE OF MISSISSIPPI.

If the shoe were on the other foot, and there was a 2017 post-mandate criminal procedure rule change that favored Carlos Jackson, the retroactivity rule for criminal procedure would foreclose Mr. Jackson from asking any Court to retroactively apply this hypothetical (favorable) procedural rule change. The retroactivity rule is a double-edged sword: when post-mandate procedural changes are off limits for criminal defendants and for persons convicted of crimes. . . . due process demands that the same procedural retroactivity rule also applies to the State of Mississippi.

In 2021, the United States Supreme Court summarized this Court's retroactivity principles (which prohibit the State from using *Pitchford v. State* to deprive Mr. Jackson of his due process claims):



To summarize the Court's retroactivity principles: New substantive rules alter "the range of conduct or the class of persons that the law punishes." *Summerlin*, 542 U.S. at 353, 124 S.Ct. 2519. Those new substantive rules apply to cases pending in trial courts and on direct review, and they also apply retroactively on federal collateral review. **New procedural rules alter "only the manner of determining the defendant's culpability." Ibid. Those new procedural rules apply to cases pending in trial courts and on direct review.** But new procedural rules do not apply retroactively on federal collateral review.

*Edwards v. Vannoy*, 593 U.S. \_\_\_, 141 S. Ct. 1547, 1562 (2021) (emphasis added). *Edwards v. Vannoy* reflects the controlling law-of-the-land regarding the retroactivity rule, and is totally consistent with the retroactivity approach in Mississippi and federal courts for years preceding Carlos Jackson's trial and appeal.

*Pitchford v. State*, 240 So.3d 1061 (Miss. 2017) cannot be retroactive to Carlos Jackson's case, because in 2017, when the Mississippi Supreme Court handed down *Pitchford*, Carlos Jackson's direct appeal had already concluded more than six (6) years earlier in 2011. *Carlos Jackson v. State of Mississippi*, Court of Appeals of the State of Mississippi, case number 2009-KA-00173 (mandate issued February 24, 2011).

*Pitchford v. State* in 2017 does absolutely nothing to, in any way, prevent Carlos Jackson from invoking

the due process claims and case law that were in place prior to his 2011 appellate mandate.

*Pitchford* brushes aside this Court’s jurisprudence regarding competency hearings and competency adjudications. “The court’s failure to make such (competency) inquiry thus deprived Robinson (the defendant) of his constitutional right to a fair trial.” *Pate v. Robinson*, 383 U.S. 375, 385 (1966). In 2017, in *Pitchford*, the Mississippi Supreme Court reversed field on competency hearings, and held that a retrospective competency hearing “ . . . does not violate a defendant’s due process rights when the facts of the case allow for it.” *Pitchford v. State*, 240 So.3d 1061, 1067-68 (¶29) (Miss. 2017).<sup>1</sup>

In *Pitchford*, the Mississippi Supreme Court recognized this Court’s decades-old competency jurisprudence about due process, competence, and a fair trial. *Pitchford v. State* at 1067 ¶30, citing *Pate v. Robinson*, 383 U.S. 375 (1966) (defendant deprived of his constitutional right to a fair trial when the court fails to inquire into competency); and citing *Drope v. Missouri*, 420 U.S. 162 (1975) (it is a violation of due process to try and convict an incompetent defendant) (also holding that retrospective competency hearings are not adequate due to the “ . . . inherent difficulties of such a *nunc pro tunc* determination under the most favorable circumstances, see *Pate v. Robinson*, 383 U.S. at 383

---

<sup>1</sup> In *Pitchford v. State*, the Mississippi District Attorney was Doug Evans, the same prosecutor who this Court is familiar with from the *Flowers* line of cases that culminated in *Flowers v. Mississippi*, 139 S.Ct. 2228 (2019).

U.S. 386-387; *Dusky v. United States*, 362 U.S. 402, 403 (1960), we cannot conclude that such a procedure would be adequate here)". *Drope v. Missouri* at 183.

Respectfully, the Mississippi Supreme Court wrongly used *Pitchford* in denying Carlos Jackson's request for post-conviction relief, ***because in Carlos Jackson's case, it is undisputed that the state court never held ANY competency hearing at all.*** App.26-27.

It is also critical to again point out that the competency to stand trial issue was raised not by the defense, ***but by the State of Mississippi.*** App.3. (Assistant District Attorney Rodney Tidwell acknowledges in his closing argument that "I have no doubt in my mind that Carlos Jackson has some mental problems"). App.38-41.

The State of Mississippi and the Mississippi courts cannot use *Pitchford* retroactively against Carlos Jackson to defeat Carlos Jackson's 2007-2011 due process claims. *Edwards v. Vannoy*, 593 U.S. \_\_\_, 141 S. Ct. 1547, 1562 (2021).

In his *Amended Application* (App.10-42), Carlos Jackson argued that any changes in procedure after the February 24, 2011 mandate in Mr. Jackson's direct appeal could not be used retroactively against Mr. Jackson.

More specifically, Carlos Jackson invoked and argued that the retroactivity rule prohibits the application of any post-mandate procedural changes to Carlos

Jackson's due process claims (and included citations to United States Supreme Court precedent that predated Carlos Jackson's due process claims):

Any case law that altered the application of Rule 9.06 after the February 24, 2011 mandate and conclusion of Carlos Jackson's appeal does not apply retroactively to Mr. Jackson's case. *McCain v. State*, 81 So.3d 1055, 1059, ¶8 (Miss. 2012) (internal citations omitted) (recognizing that the retroactivity rule applies "to cases that are pending trial or that are on appeal, and not final at the time of the enunciation").

See also: *Thompson v. City of Vicksburg*, 813 So.2d 717, 721, ¶¶13-16, (Miss. 2002) (recognizing that for a rule change to be retroactive to a case, the case must be pending in the trial court or on appeal). In 2006, the Mississippi Court held that "New rules of procedure, on the other hand, generally do not apply retroactively." *Manning v. State*, 929 So.2d 885, 899, ¶35 (Miss. 2006). The United States Supreme Court recognizes that a new procedural rule "... did not apply to death penalty cases already final on direct appeal ...". *Schriro v. Summerlin*, 542 U.S. 348 (2004), citing *Ring v. Arizona*, 536 U.S. 584 (2002) (cited by this Court in *Manning v. State* at ¶34).

*See again:* Amended Application (for leave to file for post-conviction relief) at App.17.

The retroactivity rule prohibits the State from using the 2017 *Pitchford* case retroactively against

Carlos Jackson. Because the retroactivity rule was in place prior to Mr. Jackson's trial and appeal, the retroactivity rule prohibits the State from using *Pitchford* in any way to attack or defeat Mr. Jackson's due process claims.

The Mississippi Supreme Court is bound by the jurisprudence of the United States Supreme Court and the Supremacy Clause:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Law of any State to the Contrary notwithstanding.

Article VI, Clause 2, *Constitution of the United States*.

[T]his Court is under the authority of the United States Supreme Court. Our attitude toward a decision of that Court does not authorize or control its rejection or acceptance. We must follow the decision until it has been abrogated by constitutional and legal procedures.

*Bolton v. City of Greenville*, 178 So.2d 667, 672 (Miss. 1965).

The Supremacy Clause demands that Mississippi follow the rule in *Pate v. Robinson*. Carlos Jackson was deprived of a fair trial and due process when the trial court failed to hold a competency hearing. "The court's

failure to make such (competency) inquiry thus deprived Robinson (the defendant) of his constitutional right to a fair trial.” *Pate v. Robinson*, 383 U.S. 375, 385 (1966).

The Supremacy Clause also demands that Mississippi follow this Court’s jurisprudence regarding the criminal procedure retroactivity rule.

As set out in his Amended Application, at App.18-19, the deprivation of the fundamental due process right to a competency hearing voids Mr. Jackson’s conviction and sentence. *Sanders v. State*, which was the controlling procedural case and rule in Mississippi through Mr. Jackson’s appellate mandate in 2011, mandates reversal of Carlos Jackson’s conviction and sentence:

This Court considers Sanders’s second issue, the competency hearing, to be dispositive in this case . . . we reverse and remand for a new trial based on the competency issue. . . .

*Sanders v. State*, 9 So.3d 1132, 1135, ¶11 (Miss. 2009).

In *Sanders v. State*, the Mississippi Supreme Court specifically held:

Rule 9.06 requires an on-the-record hearing to determine competency once the court has reasonable ground to believe that the defendant is incompetent. The rule clearly uses the directive “shall” and not the permissive “may” language.

The rule requires that the trial court first, shall conduct a hearing to determine if the defendant is competent and, second, shall make the finding a matter of record.

URCCC 9.06.

***In the face of this plain language, it is evident that it would be error not to hold a competency hearing once a trial court orders a psychiatric evaluation to determine competency to stand trial.***

*Sanders v. State*, 9 So.3d 1132, 1136, ¶16 (Miss. 2009) (emphasis added).

Eight (8) years after *Sanders v. State*, and six (6) years after the 2011 conclusion of Carlos Jackson's appeal, the Mississippi Supreme Court moved the goal post, and changed the rules in *Pitchford v. State*. In *Pitchford*, the Mississippi Supreme Court rejected its precedent, and held that a retrospective competency hearing with a resulting finding of competency suffices for due process competency purposes. *Pitchford v. State*, 240 So.3d 1061 (Miss. 2017). In the instant case, it is undisputed that there was no competency hearing, retrospective or otherwise. *See again*: App.26-27 (affidavit of trial counsel).

The procedural due process failure to hold a competency hearing, and the failure to adjudicate competency once competency was before the trial court, deprived Mr. Jackson of a fair trial. *Pate v. Robinson* at 385. The State of Mississippi cannot retroactively apply 2017 changes in criminal procedure to block Carlos

Jackson's due process claims. *Edwards v. Vannoy*, 593 U.S. \_\_\_, 141 S. Ct. 1547, 1562 (2021). The retroactivity rule also applies to the State of Mississippi, just like it applies to defendants and those convicted of crimes.

This Court should grant this petition for certiorari and settle this important legal issue that has application in state courts across the country: the criminal procedure retroactivity rule also applies to the states.

## II. WHETHER THE FAILURE TO MAKE A COMPETENCY INQUIRY WHEN COMPETENCY IS AN ISSUE RENDERS VOID A SUBSEQUENT CONVICTION AND SENTENCE.

At the time of Carlos Jackson's trial and appeal, the applicable criminal procedural rule regarding competency was Rule 9.06 of the Mississippi Rules of Circuit and County Court Practice:

If before or during trial the court, of its own motion or upon motion of an attorney, has reasonable ground to believe that the defendant is incompetent to stand trial, the court ***shall*** order the defendant to submit to a mental examination by some competent psychiatrist selected by the court in accordance with § 99-13-11 of the Mississippi Code Annotated of 1972.

After the examination the court ***shall*** conduct a hearing to determine if the defendant is competent to stand trial. ***After hearing all the evidence, the court shall*** weigh the evidence and make a determination of whether



the defendant is competent to stand trial. If the court finds that the defendant is competent to stand trial, then the court ***shall make the finding a matter of record and the case will then proceed to trial.***

Miss. Unif. Circ. & Cty. R. 9.06 (emphasis added).

Carlos Jackson was denied his due process right to a fair trial when the state court failed to follow the basic procedural process for adjudicating whether or not Mr. Jackson was competent to stand trial. “The court’s failure to make such (competency) inquiry thus deprived Robinson (the defendant) of his constitutional right to a fair trial”. *Pate v. Robinson*, 383 U.S. 375, 385 (1966).

When a state court deprives a defendant of a fair trial by skipping over the fundamental due process rights to a competency hearing and competency adjudication, the resulting conviction and sentence are void *ab initio*. This Court, in the civil arena, has held for decades that judgments rendered without due process are void:

The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a nonresident defendant. *Kulko v. California Superior Court*, 436 U.S. 84, 91, 98 S.Ct. 1690 1696, 56 L.Ed.2d 132 (1978). A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. *Pennoyer v. Neff*, 95 U.S. 714, 732-733, 24 L.Ed. 565 (1878).

*Volkswagen Corporation v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). Given that a violation of due process voids a civil judgment, then a violation of due process also voids a judgment that deprives one of his or her liberty.

“There is no time limit on an attack on a judgment as void.” *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 142-143 (5th Cir. 1996) (internal citations omitted). “A void judgment or order may be disregarded collaterally, as has been repeatedly held by this court, and the lapse of time will not help its invalidity.” *Lester v. Miller*, 76 Miss. 309, 24 So. 193, 194 (Miss. 1898).

Judgments and orders are void where the court acts in a manner inconsistent with due process of law. “An order or judgment is void even though a court has subject-matter jurisdiction if the court issuing the order or judgment did so ‘outside of its legal powers.’” *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998). An order “. . . is void . . . if the court . . . acted in a manner inconsistent with due process of law.” *Williams v. New Orleans Pub. Serv., Inc.*, 728 F.2d 730, 735 (5th Cir. 1984).

Carlos Jackson’s conviction and sentence are devoid of due process and are void:

In defining a void judgment, ***this Court has repeated the federal rule***, which states that “a judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, **or if it acted in a manner inconsistent with due process of**

**law.”** *Bryant, Inc. v. Walters*, 493 So.2d 933, 938 (Miss.1986).

The trial court has no discretion in dealing with a void judgment.

If the judgment is void, it must be set aside. *Walters*, 493 So.2d at 937.

*Overbey v. Murray*, 569 So.2d 303, 306 (Miss. 1990) (emphasis added) (internal citations omitted).

*Pitchford* does not salvage Carlos Jackson’s conviction and sentence. *Pitchford*, and “ . . . lapse of time will not help its invalidity.” *Lester v. Miller*, 24 So. at 194.

When a court enters a judgment of conviction and sentence without following the procedural due process protections that are guaranteed to a defendant after his competency to stand trial is before the trial court, just like the right to trial by jury, the judgment is void:

Departure from established modes of procedure will often render the judgment void; thus, the sentence of a person charged with felony, upon conviction by the court, without the intervention of a jury, would be invalid for any purpose.

*Windsor v. McVeigh*, 93 U.S. 274, 23 L.Ed. 914 (1876). Carlos Jackson’s conviction and 80 year sentence are void and invalid, because of Mississippi’s “ . . . departure from established modes of procedure. . . .” *Id.*

In his September 28, 2022 *Motion to Reconsider and Suspend the Rules* (App.76-86), Carlos Jackson

also asked the Mississippi Supreme Court to follow the statutory post-conviction process that requires the Mississippi Supreme Court to consider Mr. Jackson's claims sitting as a quorum, rather than as a 3-judge panel:

Mississippi Code §99-39-7 provides as follows:

**Filing motion in trial court; filing motion to proceed in trial court with supreme court.**

The motion under this article shall be filed as an original civil action in the trial court, except in cases in which the petitioner's conviction and sentence have been appealed to the Supreme Court of Mississippi and there affirmed or the appeal dismissed. Where the conviction and sentence have been affirmed on appeal or the appeal has been dismissed, the motion under this article shall not be filed in the trial court **until the motion shall have first been presented to a quorum of the Justices of the Supreme Court of Mississippi, convened for said purpose** either in term time or in vacation, and an order granted allowing the filing of such motion in the trial court.

The procedure governing applications to the Supreme Court for leave to file a motion under this article shall be as provided in Section 99-39-27.

Mississippi Code §99-39-7 (requiring that post-conviction relief applications must be presented to a quorum of Supreme Court of

Mississippi, “ . . . convened for said purpose . . . ”).

Respectfully, Carlos Jackson has a due process right under the Fourteenth Amendment to the Constitution of the United States, and under Article 3, Section 14 of the Mississippi Constitution, to have his Application and Amended Application considered and ruled upon by “a quorum of the Justices of the Supreme Court of Mississippi, convened for said purpose. . . .” *Id.*

The Mississippi Constitution establishes the minimum number of justices that must convene to constitute a quorum, and provides in relevant part as follows:

The Supreme Court shall consist of nine judges, that is to say, of three judges in addition to the six provided for by Section 145-A of this Constitution, any five of whom when convened shall constitute a quorum. Article 6, Section 145-B, Constitution of the State of Mississippi.

The Mississippi Rules of Appellate Procedure “incorporates the comprehensive procedure reflected in the Mississippi Uniform Post-Conviction Collateral Relief Act, codified at Section 99-39-1, et seq. of the Mississippi Code.” MRAP 22 (Comment, first sentence). Therefore, the controlling procedure for the Mississippi Supreme Court to consider Carlos Jackson’s Application and Amended Application is Section 99-39-7 (requiring consideration of the Application and

Amended Application by a quorum of this Court).

The Court's September 21, 2022 Order reflects that a three (3) judge panel denied Carlos Jackson's Application and Amended Application. Obviously, the Court disposes of many different matters using panels, as it should, to help move the Court's business along. However, the Court's rules, and the applicable statutes, cited *supra*, require that the Court consider all post-appeal UPCCRA applications with a quorum convened for the purpose of considering these UPCCRA claims.

App.76-86 (Motion to Reconsider and Suspend the Rules).

The Mississippi Supreme Court layered another due process violation on top of the competency due process violations when the Court used a panel instead of a quorum of the Court to consider Mr. Jackson's UPCCRA claims.

The failure of the Mississippi trial court to hold a competency hearing and make inquiry into whether Carlos Jackson was competent is an egregious and fundamental violation of due process. The lack of due process in Carlos Jackson's case voids his judgment and conviction. *Windsor v. McVeigh*, 93 U.S. 274, 23 L.Ed. 914 (1876) (" . . . departure from established modes of procedure will often render the judgment void. . . ."). The failure of the Mississippi court to hold a competency hearing and find that Mr. Jackson was competent to stand trial deprived Mr. Jackson of his due process

right to a fair trial. “The court’s failure to make such (competency) inquiry thus deprived Robinson (the defendant) of his constitutional right to a fair trial.” *Pate v. Robinson*, 383 U.S. 375, 385 (1966). “An order or judgment is void even though a court has subject-matter jurisdiction if the court issuing the order or judgment did so ‘outside of its legal powers.’” *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998). “There is no time limit on an attack on a judgment as void.” *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 142-143 (5th Cir. 1996) (internal citations omitted).

Carlos Jackson’s conviction and sentence are void for want of due process.

---

## CONCLUSION

Wherefore, for the foregoing reasons, the Court should grant Carlos Jackson’s *Petition for Writ of Certiorari*.

Respectfully submitted,

WILLIAM C. BELL  
 BELL LAW FIRM, PLLC  
 443 Northpark Drive  
 Suite B  
 Ridgeland, MS 39157  
 (601) 956-0360  
 WilliamBell.Law@Gmail.Com  
*Attorney for Carlos Jackson*

December 13, 2022