

Serial: 243468

IN THE SUPREME COURT OF MISSISSIPPI
No. 2022-M-00757

CARLOS JACKSON

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

ORDER

(Filed Sep. 21, 2022)

The instant matter is before the panel of Randolph, C.J., Maxwell and Chamberlin, JJ., on the Application for Leave to Proceed on Filing Petition for Post Conviction Collateral Relief in the Trial Court and the Amended Application for Leave to Proceed on Filing Petition for Post Conviction Collateral Relief in the Trial Court filed by Carlos Jackson. The panel finds that Jackson's request to file a motion for post-conviction relief in the trial court is untimely and successive and that it does not qualify under any of the exceptions to the bars of the Uniform Post-Conviction Collateral Relief Act. Miss. Code Ann. §§ 99-39-5 and 99-39-27(9) (Rev. 2020). Jackson relies on case law that was overruled by ***Pitchford v. State***, 240 So. 3d 1061 (Miss. 2017), and his due process claim has no arguable basis. Therefore, after due consideration, the panel finds that Jackson's application and amended application should be denied.

IT IS THEREFORE ORDERED that the Application for Leave to Proceed on Filing Petition for Post

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Conviction Collateral Relief in the Trial Court and the Amended Application for Leave to Proceed on Filing Petition for Post Conviction Collateral Relief in the Trial Court filed by Carlos Jackson are denied.

SO ORDERED.

DIGITAL SIGNATURE James D. Maxwell II
Order#: 243468 James D. Maxwell II, Justice
Sig Serial: 100006063
Org: SC
Date: 09/21/2022

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DEC 13 2007

**IN THE CIRCUIT COURT OF
PIKE COUNTY, MISSISSIPPI**

THE STATE OF MISSISSIPPI

VERSUS

CAUSE NUMBERS:
07-024-PKS
07-225-PKT-PKS
07-526-PKS

CARLOS JACKSON

**AGREED ORDER FOR PSYCHOLOGICAL/
PSYCHIATRIC EXAMINATION**

This cause having come on to be heard this day on the District Attorney's Motion for Psychological/Psychiatric Examination, and the Court, having heard and considered said Motion, is of the opinion that Defendant should be examined by a qualified psychiatrist at the State Hospital at Whitfield, to determine whether the Defendant is now mentally competent to stand trial and to make a rational defense, and whether on June 10, 2006, the date on which Defendant is alleged to have committed the crimes of Aggravated Assault on A Law Enforcement Officer and Unlawful Possession Of At Least One Tenth but Less Than Two Grams of Cocaine, and on June 10, 2007, the date on which the Defendant is alleged to have committed the crimes of Sexual Battery (2 counts), Aggravated Assault, Armed Robbery and Burglary of A Dwelling, charged therein respectively he was mentally capable of distinguishing between right and wrong.

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IT IS THEREFORE ORDERED that, Defendant, Carlos Jackson, be transferred to the State Hospital at Whitfield, at which facility a qualified psychiatrist shall be, and is hereby, appointed to treat Defendant, Carlos Jackson, and to determine whether he is now mentally competent to stand trial and to make a rational defense, and whether on June 10, 2006 and June 10, 2007, the dates on which the indictments allege that Defendant committed the respective crimes for which he has been charged therein, he was mentally capable of distinguishing between right and wrong. The aforesaid examinations of Defendant shall include, but not be limited to, the following:

- a. The M'Naughten Test to determine his competency to stand trial as set forth by the Mississippi Supreme Court;
- b. The MMPI-2 battery of tests;
- c. The Minnesota Malingering Test; and,
- d. Any other tests the psychiatrist at the State Hospital at Whitfield determines to be feasible to aid in determining Defendant's ability to stand trial for the charges set forth in the indictment herein.

IT IS FURTHER ORDERED that the psychiatrist, at the State Hospital at Whitfield, shall make a written report of the findings of his examinations to the Court, the district attorney, and to the defendant's attorney.

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SO ORDERED AND ADJUDGED this the 12 day
of December, 2007.

/s/ DAVID STRONG
DAVID STRONG
CIRCUIT JUDGE

AGREED BY:

By /s/ [Illegible]
Dee Bates,
District Attorney

/s/ Ronald W. Whittington
Ronald L. Whittington,
Attorney for Defendant

***IN THE CIRCUIT COURT OF
PIKE COUNTY, MISSISSIPPI***

THE STATE OF MISSISSIPPI

VS. 07-526-PKS

CARLOS JACKSON

SENTENCE OF THE COURT AFTER JURY TRIAL

Came the District Attorney who prosecutes for the State and the defendant, Carlos Jackson, in his own proper person and represented by counsel and who was found GUILTY by a jury to a charge of Sexual Battery (Two Counts), Aggravated Assault (Count Three), Armed Robbery (Count Four), and Burglary of a Dwelling (Count Five).

It is therefore considered by the Court and so Ordered and Adjudged that the said defendant for such his crime of Sexual Battery (Two Counts), Aggravated Assault (Count Three), Armed Robbery (Count Four), and Burglary of a Dwelling (Count Five) be sentenced into the custody of the Mississippi Department of Corrections for and during the space of TWENTY (20) YEARS ON COUNT ONE, TWENTY (20) YEARS ON COUNT TWO, TEN (10) YEARS ON COUNT THREE, FIFTEEN (15) YEARS ON COUNT FOUR, AND FIFTEEN (15) YEARS ON COUNT FIVE WITH ALL COUNTS TO RUN CONSECUTIVE. It is further ordered that COUNT ONE AND COUNT TWO BE SERVED DAY FOR DAY WITHOUT POSSIBILITY OF PROBATION, PAROLE OR EARLY RELEASE.

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The defendant is ordered to pay a fine in the amount of \$5,000.00 per count for a total fine of \$25,000.00 and court costs

SO ORDERED AND ADJUDGED this the 17th day of December, 2008.

/s/ DAVID STRONG
CIRCUIT JUDGE

Filed the 17th day of December, 2008.

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Due process clause:

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.

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Mississippi Rule governing competency hearings:

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.

**IN THE SUPREME COURT OF
THE STATE OF MISSISSIPPI**

Trial Court: Circuit Court of Pike County,
Mississippi: Case Number 2007-0526-PKS

CARLOS F. JACKSON **PETITIONER**
V. **CASE NO. 2022-M-757**
STATE OF MISSISSIPPI **RESPONDENT**

**AMENDED APPLICATION FOR LEAVE
TO PROCEED ON FILING PETITION
FOR POSTCONVICTION COLLATERAL
RELIEF IN THE TRIAL COURT**

*Amended to correct scrivener's error, affidavit, and clarify middle initial [e.g.-the appeal in 2009-KA-00173 uses Carlos "F." Jackson, but Mr. Jackson's middle initial is "E").

Carlos E. Jackson, for the reasons stated in this Amended Application and his proposed Amended Petition for Postconviction Collateral Relief, moves under Mississippi Code Annotated sections 99-39-7 and 99-39-27 for leave to proceed in the trial court to file for postconviction relief. Jackson's proposed Petition for Postconviction Collateral Relief is attached as **Exhibit 1**, and includes a supporting affidavit, along with the sworn declaration of Mr. Jackson.

Because Carlos Jackson directly appealed his conviction and sentence, he is required to obtain this Court's leave prior to filing a petition for postconviction collateral relief § 99-39-7. *Carlos F. Jackson v. State*, 2009-KA-00173 (direct appeal affirming convictions).

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Carlos Jackson also previously filed an unsuccessful PCR application in this Court. Case Number 2015-M-0119. Carlos Jackson's previous attorneys never raised and argued the competency hearing issue that is set out in this Application. Carlos Jackson therefore files this Application asking for this Court's leave to file for postconviction relief.

Carlos Jackson's claims and arguments are based on the procedural and substantive due process guarantees to Mr. Jackson that are set out in the 14th Amendment to the *Constitution of the United States*. Mr. Jackson also is guaranteed due process by Article 3, Section 14 of the *Mississippi Constitution*.

Carlos Jackson was never afforded the due process guarantees that were set out in Rule 9.06 of the Uniform Circuit and County Court Rules. Rule 9.06 was in full force and effect during the entirety of Mr. Jackson's 2007 and 2008 trial court proceedings in the Circuit Court of Pike County, Mississippi. "Errors affecting fundamental constitutional rights are excepted from the procedural bars of the UPCCRA." *Williams v. State*, 158 So.3d 1171, 1173, ¶4 (Miss. Ct. App. 2014). "The due process right not to stand trial or be convicted while incompetent is a fundamental right not subject to the PCR procedural bars." *Lay v. State*, 305 So.3d 1229, 1232, ¶11 (Miss. Ct. App. 2020). "We take this opportunity to hold, unequivocally, that error affecting fundamental constitutional rights are excepted from the procedural bars of the UPCCRA." *Rowland v. State*, 42 So.3d 503, 506-19 (Miss. 2010).

The Trial Court Ordered A Competency Evaluation And Never Held A Hearing

Carlos Jackson's trial was held in the Circuit Court of Pike County, and resulted in a judgment of conviction and sentence on December 17, 2008. The Court of Appeals affirmed Mr. Jackson's conviction on September 28, 2010, and denied rehearing on January 11, 2011. The Court of Appeals mandate was issued on February 24, 2011. See: docket entries and opinion: *Carlos F Jackson v. State of Mississippi*, 2009-KA-00173. The Mississippi Supreme Court issued its opinion in *Sanders v. State* on May 28, 2009, while Carlos Jackson's appeal was pending. *Sanders v. State*, 9 So.3d 1132 (Miss. 2009).

The conviction and sentence of Carlos Jackson must be reversed and vacated because the trial court ordered a competency evaluation, but never held a hearing. The trial court ordered a competency evaluation for a reason that does not come up very often in criminal cases: the State of Mississippi through the District Attorney moved the trial court for a competency evaluation. See: Exhibit "1."

The State conceded at trial in the context of the insanity defense that Carlos Jackson had mental problems:

I have no doubt in my mind that Carlos Jackson has some mental problems. See: Exhibit "3" (transcript excerpt of argument by Assistant D.A. Rodney Tidwell).

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The trial court ordered a competency evaluation for Carlos Jackson at the request of the District Attorney by order signed December 12, 2007. *See: Exhibit 1: Affidavit of trial counsel, the Honorable Ronald Whittington.* Dr. Criss Lott performed an evaluation, and reported to the trial court judge in a report that, in his opinion, Carlos Jackson was competent to stand trial. There was no competency evaluation conducted on behalf of the defense. There was no competency hearing at any time before trial. There was no competency hearing during trial, and there was no competency hearing at any time during Mr. Jackson's Circuit Court criminal case. *See again: Affidavit of Ronald Whittington, Esquire (Exhibit "1").* Sending a report to the judge does not satisfy the due process mandate in place in 2007 and 2008 that the Court must hold an on-the-record competency hearing.

The December 12, 2007 order for a competency evaluation does not appear in the official record of Mr. Jackson's appeal and PCR filing in this court. *See: Carlos F. Jackson v. State, 2009-KA-00173 (appeal), and 2015-M-0119 (unsuccessful PCR filing).*

Current counsel for Mr. Jackson asked the Circuit Clerk of Pike County for a certified copy of the December 12, 2007 "Agreed Order for Psychological/Psychiatric Examination" for purposes of the instant post-conviction relief ("PCR") filings. Counsel was told in person by an employee of the Pike County Circuit Clerk's office in Magnolia, Mississippi on July 21, 2022 that they could not find the order, because the

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December 12, 2007 competency evaluation order was never filed.

The case proceeded to trial in December of 2008, without any competency hearing. Carlos Jackson was convicted and sentenced at the age of 29 to a total of 80 years in the custody of the Mississippi Department of Corrections, with each of five (5) sentences to run consecutively. Carlos Jackson's sentence was a life sentence, for all practical and actuarial purposes.

Current counsel for Mr. Jackson did obtain on July 21, 2022 a certified copy of the official Circuit Clerk's docket of the trial court case. The trial court docket shows: [1] that the December 12, 2007 "Agreed Order for Psychological/Psychiatric Examination" was not filed [consistent with the Circuit Clerk employee's representation on July 21, 2022]; and [2] there was no docket entry showing that there was ever a competency hearing, or a court order, or any finding at all by the trial court, that resolved the competency issue that the District Attorney raised. *See: Exhibit "2" [July 21, 2022 certified trial court docket].*

At the time of Carlos Jackson's 2007 and 2008 trial court proceedings, the rule in Mississippi was that the trial court "shall" hold a competency hearing if competency is an issue. Competency was obviously an issue, because, as set out above, the court ordered a competency and insanity evaluation ". . . [O]n the District Attorney's motion for a psychological/psychiatric evaluation." *See again: Exhibit "1": Affidavit of Ronald Whittington, Esquire, with a true and correct copy*

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of the psychological/psychiatric evaluation order attached.

The trial court never followed Rule 9.06 of the Uniform Circuit and County Court Rules—which mandated that the trial court hold a competency hearing, and which mandated that the trial court make an on-the-record competency finding. *See: “Law” arguments and discussions, infra.*

The failure to hold a competency hearing, after the court ordered a competency evaluation, was and is fatal to the conviction and sentence. Due process of law requires reversal of Carlos Jackson’s conviction. Due process of law requires that a court reverse and vacate Carlos Jackson’s 80-year sentence.

Law

The Fourteenth Amendment to the Constitution of the United States guarantees that the State cannot deprive Carlos Jackson of his liberty without due process of law:

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

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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.

Article 3, Section 14 of the Mississippi Constitution also guarantees due process to Carlos Jackson.

At the time of Carlos Jackson's trial court case and his appeal in 2007, 2008, 2009, and 2010, Rule 9.06 of the UCCCR was the governing due process procedural rule that mandated how a trial court was to resolve competency issues:

Rule 9.06 of the Uniform Rules of Circuit and County Court Practice provided at all relevant times during Carlos Jackson's trial court case and appeal as follows:

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

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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.

Rule 9.06 is a procedural rule and is not a rule of substantive law. Rule 9.06 mandates that the trial court only decide competency “After hearing all the evidence . . .” UCCCR 9.06. 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”). *Id.* 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, this 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).

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This Court handed down its ruling in *Rowland v. State* on July 29, 2010, while Carlos Jackson's appeal was pending. Therefore, the ruling in *Rowland v. State* was and is the controlling rule about post-conviction claims: "We take this opportunity to hold, unequivocally, that error affecting fundamental constitutional rights are excepted from the procedural bars of the UPCCRA." *Rowland v. State*, 42 So.3d 503, 506, ¶9 (Miss. 2010). There is no procedural bar to Carlos Jackson filing for post-conviction relief under the UPCCRA.

When competency to stand trial is an issue, the failure of the trial court to hold a hearing deprives the defendant 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).

The Supremacy Clause of the Constitution of the United States requires that this Court follow the law as set out in decisions from the United States Supreme Court:

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*.

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This Court recognizes that decisions of the United States Supreme Court must be followed:

[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 requires that this Court follow *Pate v. Robinson*. The end result is that Carlos Jackson's conviction and sentence must be reversed and vacated, because since 1966, *Pate v. Robinson* has been the supreme law of the land on competency hearings. "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).

This Court's ruling in *Sanders v. State*, 9 So.3d 1132 (Miss. 2009) applies to Carlos Jackson's case. While Carlos Jackson's appeal was pending (until 2011), this Court handed down *Sanders v. State*, 9 So.3d 1132 (Miss. 2009). *Sanders v. State* applied and applies to Carlos Jackson's case, because Mr. Jackson's appeal was pending when this Court issued the *Sanders* opinion, prior to the issuance of Carlos Jackson's February 24, 2011 appellate mandate.

In *Sanders*, this Court recognized that in *Pate v. Robinson*, “The Supreme Court explicitly rejected the State’s argument that the defendant had waived the defense of his competence to stand trial by failing to ask for a hearing on the issue.” *Sanders v. State*, at 1136, ¶14.

In *Sanders v. State*, this 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).

The failure to hold a competency hearing for Carlos Jackson 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). When a court acts without due process, the order or judgment is void, and must be vacated:

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We must first address what is required for a judgment to be valid. The federal courts interpreting Mississippi Rule of Civil Procedure 60(b)(4) have held that a valid judgment requires (1) jurisdiction of the subject matter, or of parties, and (2) due process of law.

If a court lacks jurisdiction or the requirements of due process are not met, the judgment is void and must be vacated (emphasis added).

Reichert v. Reichert, 807 So.2d 1282, 1286 (¶ 15) (Miss.App.2002).

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). “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).

There is no amount of time that could cure the Carlos Jackson conviction and sentence, which were handed down without due process of law (no competency hearing):

... [N]o amount of time or delay may cure a void judgment. 7 J. Moore & J. Lucas, *Moore's Federal Practice* p 60.25 2d ed. 1987; 11 C. Wright & A. Miller, *Federal Practice and Procedure* Sec. 2862 (1973); *In re Whitney-Forbes, Inc.*, 770 F.2d 692 (7th Cir.1985); *Triad Energy Corp. v. McNeil*, 110 F.R.D. 382 (S.D.N.Y. 1986). 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).

When the trial court moved forward with Carlos Jackson's criminal trial without holding a competency hearing, after the court ordered a competency evaluation, the court acted without due process of law. If a court acts "in a manner inconsistent with due process of law" a judgment is void, and "it must be set aside." *Id. (Overbey v. Murray at 306).*

Consistent with *Sanders v. State*, this Court must reverse 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* at 1135, ¶11.

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Whether this Court travels under the argument that Carlos Jackson's conviction and sentence are void for want of due process; or this Court travels under the applicable rule in *Sanders v. State* . . . or both . . . the result is the same: the Court must reverse Carlos Jackson's conviction and sentence, and remand for a new trial. "A rule which is not enforced is no rule." *Box v. State*, 437 So.2d 19, 21 (Miss. 1983) (reversing and remanding when the State failed to follow the discovery rules).

Conclusion

For these reasons, and for the reasons given in his proposed PCR petition, Carlos Jackson's conviction and sentence must be vacated and reversed. Respectfully, this Court should order and direct that Carlos Jackson may file and pursue the attached PCR petition in the Circuit Court of Pike County, Mississippi.

Carlos Jackson prays for such other relief to which he may be entitled.

Respectfully submitted,

/s/ Carlos Jackson
Carlos Jackson

Presented by:

/s/ William C. Bell

William C. Bell, bar no. 9328
Bell Law Firm, PLLC
443 Northpark Drive, Suite B
Ridgeland, MS 39157
Mail: PO Box 1876
Ridgeland, MS 39158
Phone: 601-956-0360

STATE OF MISSISSIPPI
COUNTY OF Hinds

This day personally appeared before me, the undersigned authority in and for the aforesaid county and state, within my jurisdiction, CARLOS JACKSON, who having been by me first duly sworn, stated on oath that the matters, facts, allegations, and things contained and set forth in the above and foregoing *Amended Application for Leave to Proceed on Filing Petition for Postconviction Collateral Relief in the Trial Court* are true and correct as therein stated.

Also: My correct middle initial is "E." My appeal in 2009-KA-0173 mistakenly lists my middle initial as "F."

/s/ Carlos Jackson
Carlos Jackson

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SWORN TO AND SUBSCRIBED before me, this
the 10th day August, 2022.

/s/ William C. Bell
NOTARY PUBLIC

My commission expires:

11/23/2023

[SEAL]

CERTIFICATE OF SERVICE

I, William C. Bell, attorney for Carlos Jackson, hereby certify that I have this day served via first class mail, a true and correct filed copy of the above *Amended Application for Leave to Proceed on Filing Petition for Postconviction Relief in the Trial Court*, together with the attached *Amended Petition for Postconviction Collateral Relief* on the Attorney General as follows:

Honorable Lynn Fitch
Office of the Mississippi Attorney General
550 High Street, Suite 1200
Jackson, Mississippi 39205-5025

So certified, this the 10th day of August, 2022.

s/ William C. Bell
By: William C. Bell
Attorney for Carlos Jackson

/s/ William C. Bell
William C. Bell, bar no. 9328
Bell Law Firm, PLLC
443 Northpark Drive, Suite B
Ridgeland, MS 39157
Mail:
PO Box 1876
Ridgeland, MS 39158
Phone: 601-956-0360

AFFIDAVIT OF
RONALD L. WHITTINGTON. ESQUIRE

1. My name is Ronald L. Whittington. I am a member of the Mississippi Bar in good standing. I have personal knowledge of the facts set out in this Affidavit. I am competent to testify regarding the matters in this Affidavit.
2. I was trial counsel for Carlos F. Jackson in a criminal case in the Circuit Court of Pike County, Mississippi styled: *State of Mississippi vs. Carlos F. Jackson*, case number 2007-526-PKS.
3. I represented Carlos Jackson during the entire case through the argument of the post-trial motion.
4. On December 12, 2007, the trial court entered an order styled “Agreed Order for Psychological/Psychiatric Examination.” A true and correct copy of this Order is attached.

[EXHIBIT 1]

5. The trial court did not hold a competency hearing before the trial.
6. The trial court did not hold a competency hearing during the trial.
7. The trial court did not hold a competency hearing at any time in this case.

ACKNOWLEDGEMENT

STATE OF MISSISSIPPI

COUNTY OF _____

This day personally appeared before me, the undersigned authority in and for the aforesaid county and state, within my jurisdiction, RONALD L. WHITTINGTON, ESQUIRE, who having been by me first duly sworn, stated on oath that the matters, facts, allegations, and things contained and set forth in this *Affidavit* are true and correct as therein stated.

/s/ Ronald L. Whittington
Ronald L. Whittington

SWORN TO AND SUBSCRIBED before me, this 21st day of July, 2022.

/s/ Chantly Clouatre McDaniel
NOTARY PUBLIC

My commission expires:
Jan 12, 2026

[SEAL]

DEC 13 2007

**IN THE CIRCUIT COURT OF
PIKE COUNTY, MISSISSIPPI**

THE STATE OF MISSISSIPPI

VERSUS

CAUSE NUMBERS:
07-024-PKS
07-225-PKT-PKS
07-526-PKS

CARLOS JACKSON

**AGREED ORDER FOR PSYCHOLOGICAL/
PSYCHIATRIC EXAMINATION**

This cause having come on to be heard this day on the District Attorney's Motion for Psychological/Psychiatric Examination, and the Court, having heard and considered said Motion, is of the opinion that Defendant should be examined by a qualified psychiatrist at the State Hospital at Whitfield, to determine whether the Defendant is now mentally competent to stand trial and to make a rational defense, and whether on June 10, 2006, the date on which Defendant is alleged to have committed the crimes of Aggravated Assault on A Law Enforcement Officer and Unlawful Possession Of At Least One Tenth but Less Than Two Grams of Cocaine, and on June 10, 2007, the date on which the Defendant is alleged to have committed the crimes of Sexual Battery (2 counts), Aggravated Assault, Armed Robbery and Burglary of A Dwelling, charged therein respectively he was mentally capable of distinguishing between right and wrong.

IT IS THEREFORE ORDERED that, Defendant, Carlos Jackson, be transferred to the State Hospital at Whitfield, at which facility a qualified psychiatrist shall be, and is hereby, appointed to treat Defendant, Carlos Jackson, and to determine whether he is now mentally competent to stand trial and to make a rational defense, and whether on June 10, 2006 and June 10, 2007, the dates on which the indictments allege that Defendant committed the respective crimes for which he has been charged therein, he was mentally capable of distinguishing between right and wrong. The aforesaid examinations of Defendant shall include, but not be limited to, the following:

- a. The M'Naughten Test to determine his competency to stand trial as set forth by the Mississippi Supreme Court;
- b. The MMPI-2 battery of tests;
- c. The Minnesota Malingering Test; and,
- d. Any other tests the psychiatrist at the State Hospital at Whitfield determines to be feasible to aid in determining Defendant's ability to stand trial for the charges set forth in the indictment herein.

IT IS FURTHER ORDERED that the psychiatrist, at the State Hospital at Whitfield, shall make a written report of the findings of his examinations to the Court, the district attorney, and to the defendant's attorney.

App. 30

SO ORDERED AND ADJUDGED this the 12 day
of December, 2007.

/s/ DAVID STRONG
DAVID STRONG
CIRCUIT JUDGE

AGREED BY:

By /s/ [Illegible]
Dee Bates,
District Attorney

/s/ Ronald W. Whittington
Ronald L. Whittington,
Attorney for Defendant

**Mississippi Electronic Courts
Fourteenth Circuit Court District
(Pike Circuit Court)
CRIMINAL DOCKET FOR
CASE #: 57C11:07-cr-00526-1
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Case title: THE STATE OF MISSISSIPPI
JACKSON, CARLOS Date Filed: 09/07/2007
 Date Terminated: 12/17/2008

Assigned to: David H. Strong

Defendant (1)

CARLOS JACKSON
TERMINATED:
12/17/2008

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Upcoming Settings:
None Found

represented by

Ronald Lee Whittington
Whittington Law Firm PC
PO Drawer 1919
229 Main Street
MCCOMB, MS 39649
601-684-8888
Fax: 601-684-9709
Email: legalassistant@
rwhittingtonlaw.com
ATTORNEY TO
BE NOTICED

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Counts

(1) - 97-3-95.F - Crimes Against Person:
Sexual Battery; Definition/Indictment
Offense Date: 6/10/2007

Count Action

[EXHIBIT 2]

(2) - 97-3-95.F - Crimes Against Person:
Sexual Battery; Definition/Indictment
Offense Date: 6/10/2007

(3) - 97-3-7(2)(a).F - Crimes Against
Person: Aggravated Assault
Offense Date: 6/10/2007

(4) - 97-3-79.F - Crimes Against Person:
Robbery; Using deadly weapon (Armed
Robbery)
Offense Date: 6/10/2007

(5) - 97-17-23(1).F - Burglary - Dwelling,
breaking and entering with intent
Offense Date: 6/10/2007

Plaintiff

State of Mississippi represented by
Dewitt T Bates, Jr
District Attorney's Office
14th District
223 W Bay Street
MAGNOLIA, MS 39652
601-783-6677
Fax: 601-783-5646
Email: districtattorney@
msda14.us
ATTORNEY TO
BE NOTICED

Date Filed	#	Docket Text
01/01/1900		Count 1: 97-3-95 - SEXUAL BATTERY Sentencing: Statute: - SEXUAL BATTERY Imposed: 20 YEARS

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- 20 YEARS To Serve: 20 YEARS
DAY FOR DAY
Count 2: 97-3-95 - SEXUAL BATTERY Sentencing: Statute: - SEXUAL BATTERY Imposed: 20 YEARS
- 20 YEARS To Serve: 20 YEARS
DAY FOR DAY
Count 3: 97-3-7(2)-AGGRAVATED ASSAULT Sentencing: Statute: - AGGRAVATED ASSAULT Imposed: 10 YEARS - 10 YEARS To Serve: 10 YEARS
Count 4: 97-3-79-ARMED ROBBERY Sentencing: Statute: - ARMED ROBBERY Imposed: 15 YEARS - 15 YEARS To Serve: 15 YEARS
Count 5: 97-17-23 - BURGLARY OF A DWELLING Sentencing: Statute: - BURGLARY OF A DWELLING Imposed: 15 YEARS - 15 YEARS To Serve: 15 YEARS (Entered: 01/01/2017)

01/01/1902		Trial (Entered: 01/01/2017)
09/07/2007	1	Indictment Filed (Entered: 01/01/2017)
09/14/2007	2	Capias Issued (Entered: 01/01/2017)
10/04/2007	3	Indictment Served, Capias Executed (Entered: 01/01/2017)
12/06/2007	4	Arraignment and Plea of Not Guilty (Entered: 01/01/2017)
06/02/2008	5	Omnibus Order Filed (Entered: 01/01/2017)

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12/05/2008	6	Subpoenas Issued to CV Glennis for Dr. T. Summers 12/5/08 J.Hampton (Entered: 01/01/2017)
12/05/2008	7	Subpoena Request State (Entered: 01/01/2017)
12/05/2008	8	Subpoenas Issued to PCSO for J.Kenney 12/8 D.Reynolds P.Andrews 12/10 K.Montgomery (Entered: 01/01/2017)
12/10/2008	9	Subpoena Request State (Entered: 01/01/2017)
12/10/2008	10	Subpoena Issued for A. Andrews NS (Entered: 01/01/2017)
12/15/2008	11	Jury Instruction C1 (Entered: 01/01/2017)
12/15/2008	12	Jury Instructions S1 through S9 Inclusive (Entered: 01/01/2017)
12/17/2008	13	Jury Instructions Given Court - C1 (Entered: 01/01/2017)
12/17/2008	14	Jury Instructions Given State -S1,S2, S3,S4,S5,S6,S7,S8,S10, S11 (Entered: 01/01/2017)
12/17/2008	15	Jury Instructions Denied State - S9 (Entered: 01/01/2017)
12/17/2008	16	Jury Instructions Given Deft. - D1,D2,D5,D9 (Entered: 01/01/2017)
12/17/2008	17	Jury Instructions Denied Deft. - D3,D6,D8 (Entered: 01/01/2017)
12/17/2008	18	Jury Instructions Withdrawn Deft. D4,D7 (Entered: 01/01/2017)
12/17/2008	19	Verdict of the Jury (Entered: 01/01/2017)

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12/17/2008	20	Order Incorporating the Jury Verdict - Count One (Entered: 01/01/2017)
12/17/2008	21	Order Incorporating the Jury Verdict - Count Two (Entered: 01/01/2017)
12/17/2008	22	Order Incorporating the Jury Verdict - Count Three (Entered: 01/01/2017)
12/17/2008	23	Order Incorporating the Jury Verdict Count Four (Entered: 01/01/2017)
12/17/2008	24	Order Incorporating the Jury Verdict -Count Five (Entered: 01/01/2017) 1
12/17/2008	25	Sentence of the Court Filed (Entered: 01/01/2017)
12/23/2008	26	Motion For A New Trial (Entered: 01/01/2017)
01/06/2009	27	Commitment Issued cc total 25305.50 (Entered: 01/01/2017)
01/12/2009	28	Order Allowing Payment For Fees & Suites cc: Regina 1/13/09 (Entered: 01/01/2017)
01/16/2009	29	Notice of Appeal cc: Supreme Court, DA, Marie Boyd and Morris 1/29/09 (Entered: 01/01/2017)
01/23/2009	30	Notice of Appeal To Official Court Re- porter of the Aforesaid Court and Designation of Record (fax) (Entered: 01/01/2017)
01/23/2009	31	Certificate of Compliance With Rule 11(b)(1) (fax) (Entered: 01/01/2017). Notice of Appeal to Official Court Re- porter of the Aforesaid Court and Designation of Record (Entered: 01/01/2017)
01/26/2009	32	Notice of Appeal to Official Court Re- porter of the Aforesaid Court and Designation of Record (Entered: 01/01/2017)

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01/26/2009	33	Certificate of Compliance (original) (Entered: 01/01/2017)
01/29/2009	34	\$100.00 Appeal Fee rec#48117 (Entered: 01/01/2017)
01/29/2009	35	Appeal Survey (Entered: 01/01/2017)
02/02/2009	36	Copy of Letter From Supreme Court To Marie Boyd (Entered: 01/01/2017)
02/05/2009	37	\$1675.00 Appeal Costs (Entered: 01/01/2017)
02/06/2009	38	Notice of Motion Hearing (Entered: 01/01/2017) Order Allowing Payment For Fees
02/17/2009	39	\$2250.00 to W. Criss Lott, Ph.D. cc: Regina 2/18/09 (Entered: 01/01/2017)
02/25/2009	40	Amended Motion For New Trial (Entered: 01/01/2017) Order Denying Motion For New Trial
03/04/2009	41	cc: DA and Whittington 3/9/09 (Entered: 01/01/2017) Amended Notice of Appeal cc: Supreme
03/13/2009	42	Court (BRW) 4/2/09 cc: DA and Marie Boyd 4/2/09 (Entered: 01/01/2017) Designation of Record cc: Supreme
03/13/2009	43	Court (BRW) 4/2/09 cc: DA & Marie Boyd 4/2/09 (Entered: 01/01/2017) Certificate of Complaince With Rule
03/13/2009	44	11(b)(1) cc: Supreme Court (BRW) 4/2/09 cc: DA and Marie Boyd 4/2/09 (Entered: 01/01/2017)
03/31/2009	45	Copy of Letter From Supreme Court To Marie Boyd (Entered: 01/01/2017)

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04/06/2009	46	Copy of Letter To Marie Boyd From Supreme Court (Entered: 01/01/2017)
04/22/2009	47	Notice to Parties of Completion of Record (Entered: 01/01/2017)
05/13/2009	48	Motion For Extension of Time For Appellant's Review of Record (Entered: 01/01/2017)
05/18/2009	49	Motion For Extension of Time For Appellant's Review of Record emailed copy to Daniel Morris 5/27/09 (Entered: 01/01/2017)
05/20/2009	50	Order Granting Extension of Time For Appellant's Review of Record emailed copy to Daniel Morris 5/27/09 (Entered: 01/01/2017)
06/08/2009	51	Record to Supreme Court (Entered: 01/01/2017)
09/29/2010	52	Supreme Court Decision (Entered: 01/01/2017)
01/12/2011	53	Supreme Court Order (Entered: 01/01/2017)
02/25/2011	54	Mandate (Entered: 01/01/2017)
12/05/2011	55	Motion For New Trial (Entered: 01/01/2017)
12/06/2011	56	Order Denying New Trial CC: Whittington, DA 12/7/11 (Entered: 01/01/2017)
12/08/2011	57	Letter To Clerk From Morris with attachments (Entered: 01/01/2017)
05/02/2013	58	Supreme Court Order (Entered: 01/01/2017)

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07/19/2013 59 EVIDENCE INVENTORY (Entered: 01/01/2017)
08/23/2013 60 Motion For A New Trial Based On Perjury and Newly Discovered Evidence (Entered: 01/01/2017)
02/20/2014 61 Order To Transport (Entered: 01/01/2017)
03/18/2014 62 Subpoenas issued To Daniel Morris for D. Reynolds D. Hunley R. Tate S. Montague (Entered: 01/01/2017)
04/22/2014 63 Order cc: DA and Whittington 4/22/14 cc: Morris 4/28/14 (Entered: 01/01/2017)
03/30/2017 64 Order CC: DA, WHITTINGTON, MORRIS 3/30/17 (Entered: 01/01/2017)

IN THE CIRCUIT COURT OF
PIKE COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI
VS. CAUSE NO. 007-526-PKS
CARLOS JACKSON

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE TRIAL OF THE ABOVE STYLED AND NUMBERED CAUSE, BEFORE THE HONORABLE DAVID H. STRONG, JR., CIRCUIT JUDGE,

[EXHIBIT 3]

ON DECEMBER 15-17, 2008, AND SENTENCING
ON DECEMBER 17, 2008.

Present and representing the State:

HONORABLE RODNEY TIDWELL,
Assistant District Attorney
HONORABLE BRENDAN ADAMS,
Assistant District Attorney
284 East Bay Street
Magnolia, Mississippi 39652

Present and representing the Defendant:

HONORABLE RONALD L. WHITTINGTON
P. O. Drawer 1919
McComb, MS 39649-1919

Reported By:
MARIE BOYD, CSR #1162
Official Court Reporter

CLOSING ARGUMENT BY MR. TIDWELL

* * *

[437] would you tell the victim of the crime that you better not know who I am? Because he knew if she knew who he was, that he would be in trouble. Think about the very nature of the crime, counts one and two. They are of a sexual nature, of a gratification for him. He wanted personal gratification. Now does that sound like someone that didn't know right from wrong? No, ladies and gentlemen, it doesn't.

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As the Court instructed you, you are to use your good, common sense and sound honest judgment. And if you do that, there is no way that you can say that this Defendant, Carlos Jackson, on the night of June 9 and 10, or the early morning of June 10, 2007, did not know right from wrong. He clearly did.

And as I said, I have no doubt. Several things I have no doubt about in this case. I have no doubt that Carlos Jackson committed the acts. You have no doubt about that. They're basically admitted. I have no doubt in my mind that Carlos Jackson has some mental problems. I have no doubt in my mind that he uses drugs. And I have no doubt in my mind that that exacerbates his problems. But the Judge just instructed you that voluntary intoxication is not a defense. Legal insanity as defined to you by the Court is the only defense that is available in this case.

The Court instructed you that you have the duty to determine the believability of the witnesses. I will take the witnesses that I usually don't speak about first, and that is the defense case. We heard – and I'll not take them in order – but we heard from the defendant's parents. And I feel sorry for them. I do. I know that Carlos has been a burden on them all of his life. And I do feel sorry for them, and I know what they told you about

* * *

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COURT REPORTER'S CERTIFICATE

STATE OF MISSISSIPPI
COUNTY OF PIKE

I, Marie M. Boyd, Official Court Reporter for the Fourteenth Circuit Court District of the State of Mississippi, do hereby certify that, to the best of my skill and ability, I have reported the proceedings had and done in the TRIAL, SENTENCING, and MOTION J.N.O.V. of STATE OF MISSISSIPPI VS. CARLOS JACKSON, being No. 07-526-PKS, on the docket of the Circuit Court of Pike County, Mississippi, and that the above and foregoing four hundred seventy-nine (479) pages contain a true, full, and correct transcript of my stenographic notes and tape taken in said proceedings.

This is to further certify that I have this date filed the original and one copy of said transcript, along with one (1) 3.5" electronic disk of said transcript in Word-Perfect language, for inclusion in the record of appeal, with the Clerk of the Circuit Court of Pike County, Mississippi, and have notified the attorneys of record, the Circuit Clerk, and the Supreme Court Clerk of my actions herein.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

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This the 20th day of April 2009.

/s/ Marie M. Boyd
MARIA M. BOYD, CSR 1162
Official Court Reporter

COURT REPORTER'S FEE: \$1149.60

**IN THE CIRCUIT COURT OF
PIKE COUNTY, MISSISSIPPI**

CARLOS JACKSON PETITIONER
V. CAUSE NO.: 2007-0526-PKS
STATE OF MISSISSIPPI RESPONDENT
Supreme Court Case No.: 2022-M-757

**AMENDED PETITION FOR
POSTCONVICTION COLLATERAL RELIEF**

*Amended to correct scrivener's error and affidavit

COMES NOW Carlos Jackson, and moves the court to vacate his judgment of conviction, and to vacate his sentence, and for a new trial, for any or all of the following reasons, under the Mississippi Uniform Postconviction Collateral Relief Act, codified as Mississippi Code Annotated §§ 99-39-1 to 99-39-29. In addition, the Mississippi Rules of Civil Procedure apply upon the acceptance and filing of this Petition in the trial court. Carlos Jackson is also entitled to have his conviction and sentence set aside and vacated, as permitted by Rule 60(b)(4) of the MRCP, and as permitted by Rules 60(b)(5), and 60(b)(6).

Carlos Jackson's claims and arguments are based on the procedural and substantive due process guarantees to Mr. Jackson that are set out in the 14th Amendment to the *Constitution of the United States*. Mr. Jackson also is guaranteed due process by Article 3, Section 14 of the *Mississippi Constitution*.

Carlos Jackson was never afforded the due process guarantees that were set out in Rule 9.06 of the Uniform Circuit and County Court Rules. Rule 9.06 was in full force and effect during the entirety of Mr. Jackson's 2007 and 2008 trial court proceedings in the Circuit Court of Pike County, Mississippi. "Errors affecting fundamental constitutional rights are excepted from the procedural bars of the UPCCRA." *Williams v. State*, 158 So.3d 1171, 1173, ¶4 (Miss. Ct. App. 2014). "The due process right not to stand trial or be convicted while incompetent is a fundamental right not subject to the PCR procedural bars." *Lay v. State*, 305 So.3d 1229, 1232, ¶11 (Miss. Ct. App. 2020). "We take this opportunity to hold, unequivocally, that error affecting fundamental constitutional rights are excepted from the procedural bars of the UPCCRA." *Rowland v. State*, 42 So.3d 503, 506, ¶9 (Miss. 2010).

In support of this Petition, Carlos Jackson states the following:

1. Procedural History

On September 7, 2007, Carlos Jackson was indicted in a five (5) count indictment in the Circuit Court of Pike County, Mississippi, case number 2007-0526-PKS. The trial was held beginning December 15, 2008. Carlos Jackson was found guilty, and on December 17, 2008 the trial judge entered a judgment of conviction, and sentenced Carlos Jackson to 80 years in the custody of the Mississippi Department of Corrections.

Prior to trial, the State raised the issue of Mr. Jackson's competency, and the trial court judge ordered a competency evaluation. The trial court's December 12, 2007 "Agreed Order for Psychological/Psychiatric Examination" is attached as part of the Affidavit of Mr. Jackson's trial counsel. *See: Exhibit "1" to this Petition.* Pursuant to this agreed order, Dr. Criss Lott rendered a report that Mr. Jackson was, in his opinion, competent. The trial court never held a competency hearing, and the case proceeded to trial.

The Mississippi Court of Appeals affirmed the conviction in case number 2009-KA-00173 (mandate issued February 24, 2011). The Mississippi Supreme Court denied a subsequent PCR Application and Petition on March 11, 2015. *See: Mississippi Supreme Court case number 2015-M-0119.* There has been no known federal court filing by Carlos Jackson regarding his conviction and sentence. At no time in the appeal or the prior PCR proceeding did any attorney argue the instant claim: that Carlos Jackson was deprived of due process and a fair trial because the trial court did not hold a competency hearing.

Claim And Grounds for Relief

The court should vacate and set aside Carlos Jackson's conviction and sentence, because the court ordered a competency evaluation on motion of the District Attorney, but the court did not hold a competency hearing. *See again: Exhibit "1" (Affidavit of Ronald*

Whittington, Esquire, with the attached “Agreed Order for Psychological/Psychiatric Examination”).

The State conceded at trial in the context of the insanity defense that Carlos Jackson had mental problems:

I have no doubt in my mind that Carlos Jackson has some mental problems. See: Exhibit “3” (transcript excerpt of argument by Assistant D.A. Rodney Tidwell).

The trial court ordered a competency evaluation for Carlos Jackson at the request of the District Attorney by order signed December 12, 2007. *See: Exhibit 1: Affidavit of trial counsel, the Honorable Ronald Whittington.* Dr. Criss Lott performed an evaluation, and reported to the trial court judge in a report that, in his opinion, Carlos Jackson was competent to stand trial. There was no competency evaluation conducted on behalf of the defense. There was no competency hearing at any time before trial. There was no competency hearing during trial, and there was no competency hearing at any time during Mr. Jackson’s Circuit Court criminal case. *See again: Affidavit of Ronald Whittington, Esquire (Exhibit “1”).* Sending a report to the judge does not satisfy the due process mandate in place in 2007 and 2008 that the Court must hold an on-the-record competency hearing, and then make an on-the-record finding about competency.

The December 12, 2007 “Agreed Order for Psychological/Psychiatric Examination” does not appear in the official record of Mr. Jackson’s appeal, or in the

PCR filing. See: *Carlos F. Jackson v. State*, 2009-KA-00173 (direct appeal); and 2015-M-0119 (unsuccessful PCR filing in the Mississippi Supreme Court).

Current counsel for Mr. Jackson asked the Circuit Clerk of Pike County for a certified copy of the December 12, 2007 “Agreed Order for Psychological/Psychiatric Examination” for purposes of the instant post-conviction relief (“PCR”) filings. Counsel was told in person by an employee of the Pike County Circuit Clerk’s office in Magnolia, Mississippi on July 21, 2022 that they could not find the order, and could not provide a certified copy, because the December 12, 2007 competency evaluation order was never filed.

The case proceeded to trial in December of 2008, without any competency hearing. Carlos Jackson was convicted and sentenced at the age of 29 to a total of 80 years in the custody of the Mississippi Department of Corrections, with each of five (5) sentences to run consecutively. Carlos Jackson’s sentence was a life sentence, for all practical and actuarial purposes.

Current counsel for Mr. Jackson did obtain on July 21, 2022 a certified copy of the official Circuit Clerk’s docket of the trial court case. The certified trial court docket shows: [1] that the December 12, 2007 “Agreed Order for Psychological/Psychiatric Examination” was not filed [consistent with the Circuit Clerk employee’s representation on July 21, 2022]; and [2] there was no docket entry showing that there was ever a competency hearing, or a court order, or any finding at all by the trial court, that resolved the competency issue that

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the District Attorney raised. *See: Exhibit “2” [July 21, 2022 certified trial court docket].*

At the time of Carlos Jackson’s 2007 and 2008 trial court proceedings, the rule in Mississippi was that the trial court “shall” hold a competency hearing if competency is an issue. Competency was obviously an issue, because, as set out above, the court ordered a competency and insanity evaluation “ . . . [O]n the District Attorney’s motion for a psychological/psychiatric evaluation.” *See again: Exhibit “1”: Affidavit of Ronald Whittington, Esquire, with a true and correct copy of the December 12, 2007 “Agreed Order for Psychological/Psychiatric Examination.”*

The trial court never followed Rule 9.06 of the Uniform Circuit and County Court Rules that was in place during the trial and appeal—which mandated that the trial court hold a competency hearing. Rule 9.06 also mandated that the trial court make an on-the-record competency finding. *See: legal arguments and discussions, infra.*

The failure to hold a competency hearing, after the court ordered a competency evaluation, was and is fatal to the conviction and sentence. Due process of law requires reversal of Carlos Jackson’s conviction. Due process of law requires that a court reverse and vacate Carlos Jackson’s 80-year sentence.

2. Facts Within The Personal Knowledge of Petitioner

In my criminal case, there never was a hearing about whether I was competent to go to trial. The first and only time I was taken to court for a hearing, there was a jury in the courtroom, and my trial began. The only defense that I know about that I had at trial was that I was crazy.

3. Facts Not Within Carlos Jackson's Personal Knowledge

Other relevant facts are set out in the attached Affidavit of Mr. Jackson's trial counsel, the Honorable Ronald Whittington. Mr. Whittington's Affidavit shows that he is competent to testify about, and has personal knowledge of the facts in the Affidavit, and that the December 12, 2007 "Agreed Order for Psychological/Psychiatric Examination" is a true and correct copy. Mr. Whittington's Affidavit contains the substance of Mr. Whittington's personal knowledge and proposed testimony about the total lack of any competency hearing at any time in the trial court.

Other relevant facts that are not within the personal knowledge of Carlos Jackson are set out in the certified docket attached as Exhibit "2." These docket entries do not show a docket entry for the December 12, 2007 "Agreed Order for Psychological/Psychiatric Examination," do not show that there was a competency hearing, and do not show any order from the trial

court regarding a competency finding by the trial court.

4. Legal Argument

The Fourteenth Amendment to the Constitution of the United States guarantees that the State may not deprive Carlos Jackson of his liberty without due process of law:

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, Section 1, Constitution of the United States.

Article 3, Section 14 of the Mississippi Constitution also guarantees to Carlos Jackson the same due process protections.

At the time of Carlos Jackson's trial court case and his appeal in 2007, 2008, 2009, and 2010, Rule 9.06 of the UCCCR was the governing due process procedural

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rule that mandated how a trial court was to resolve competency issues.

Rule 9.06 of the Uniform Rules of Circuit and County Court Practice provided at all relevant times during Carlos Jackson's trial court case and appeal as follows:

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.

Rule 9.06 is a procedural rule and is not a rule of substantive law. Rule 9.06 mandates that the trial court only decide competency "After hearing all the evidence . . ." UCCCR 9.06. 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"). *Id.* 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 Supreme 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 ...". *Schrivo v. Summerlin*, 542 U.S. 348 (2004), citing *Ring v. Arizona*, 536 U.S. 584 (2002) (cited in *Manning v. State* at ¶34).

The Mississippi Supreme Court handed down its ruling in *Rowland v. State* on July 29, 2010, while Carlos Jackson's appeal was pending. Therefore, the ruling in *Rowland v. State* was and is the controlling rule about post-conviction claims: "We take this opportunity to hold, unequivocally, that error affecting fundamental constitutional rights are excepted from the procedural bars of the UPCCRA." *Rowland v. State*, 42 So.3d 503, 506, ¶9 (Miss. 2010). There is no procedural

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bar to Carlos Jackson filing for post-conviction relief under the UPCCRA.

When competency to stand trial is an issue, the failure of the trial court to hold a hearing deprives the defendant 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).

The Supremacy Clause of the Constitution of the United States requires that the Mississippi Supreme Court and the trial courts follow the law as set out in decisions from the United States Supreme Court:

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*.

The Mississippi Supreme Court recognizes that decisions of the United States Supreme Court must be followed:

[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

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abrogated by constitutional and legal procedures.

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

The supremacy clause requires that the Mississippi Supreme Court and the trial courts follow *Pate v. Robinson*. The end result is that Carlos Jackson's conviction and sentence must be reversed and vacated, because since 1966, *Pate v. Robinson* has been the supreme law of the land on competency hearings. "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 Mississippi Supreme Court's ruling in *Sanders v. State*, 9 So.3d 1132 (Miss. 2009) applies to Carlos Jackson's case. While Carlos Jackson's appeal was pending (until 2011), the Mississippi Supreme Court handed down *Sanders v. State*, 9 So.3d 1132 (Miss. 2009). *Sanders v. State* applied and applies to Carlos Jackson's case, because Mr. Jackson's appeal was pending when the Mississippi Supreme Court handed down the *Sanders* opinion, prior to the issuance of Carlos Jackson's February 24, 2011 appellate mandate.

In *Sanders*, the Court recognized that in *Pate v. Robinson*, "The Supreme Court explicitly rejected the State's argument that the defendant had waived the defense of his competence to stand trial by failing to ask for a hearing on the issue." *Sanders v. State*, at 1136, ¶14.

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).

The failure to hold a competency hearing for Carlos Jackson 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). When a court acts without due process, the order or judgment is void, and must be vacated:

We must first address what is required for a judgment to be valid. The federal courts interpreting Mississippi Rule of Civil Procedure 60(b)(4) have held that a valid judgment requires (1) jurisdiction of the subject matter, or of parties, and (2) due process of law.

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If a court lacks jurisdiction or the requirements of due process are not met, the judgment is void and must be vacated (emphasis added).

Reichert v. Reichert, 807 So.2d 1282, 1286 (¶15) (Miss.App.2002).

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). “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).

There is no amount of time that could cure the Carlos Jackson conviction and sentence, which were handed down without due process of law (no competency hearing):

. . . [N]o amount of time or delay may cure a void judgment. 7 J. Moore & J. Lucas, *Moore’s Federal Practice* p 60.25 2d ed. 1987; 11 C. Wright & A. Miller, *Federal Practice and Procedure* Sec. 2862 (1973); *In re Whitney-Forbes, Inc.*, 770 F.2d 692 (7th Cir.1985); *Triad Energy Corp. v. McNell*, 110 F.R.D. 382 (S.D.N.Y.1986). 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).

When the trial court moved forward with Carlos Jackson’s criminal trial without holding a competency hearing, after the court ordered a competency evaluation, the court acted without due process. If a court acts “in a manner inconsistent with due process of law” a judgment is void, and “it must be set aside.” *Id.* (*Overbey v. Murray* at 306).

Consistent with *Sanders v. State*, the court must reverse Carlos Jackson’s conviction and sentence. “This Court considers Sanders’s second issue, the competency hearing, to be diapositive in this case . . . we reverse and remand for a new trial based on the competency issue . . .”. *Sanders v. State* at 1135, ¶11.

Whether any court travels under the argument that Carlos Jackson’s conviction and sentence are void for want of due process; or a court travels under the applicable rule in *Sanders v. State* . . . or both . . . the result is the same: the court must reverse Carlos Jackson’s conviction and sentence. “A rule which is not enforced is no rule.” *Box v. State*, 437 So.2d 19, 21 (Miss.

1983) (reversing and remanding when the State failed to follow the discovery rules).

Conclusion

For these reasons, Carlos Jackson's conviction and sentence must be vacated and reversed.

Respectfully submitted,

/s/ Carlos Jackson
Carlos Jackson

/s/ William C. Bell

William C. Bell, bar no. 9328
Bell Law Firm, PLLC
443 Northpark Drive, Suite B
Ridgeland, MS 39157
Mail:
PO Box 1876
Ridgeland, MS 39158
Phone: 601-956-0360

STATE OF MISSISSIPPI

COUNTY OF Hinds

This day personally appeared before me, the undersigned authority in and for the aforesaid county and state, within my jurisdiction, CARLOS JACKSON, who having been by me first duly sworn, stated on his oath that the matters, facts, allegations, and things contained and set forth in the above and foregoing

Amended Petition for Postconviction Collateral Relief
are true and correct as therein stated.

/s/ Carlos Jackson
CARLOS JACKSON

SWORN TO AND SUBSCRIBED before me, this
the 10th day of August 2022.

/s/ William C. Bell
NOTARY PUBLIC

My commission expires:
11/23/2023

[SEAL]

AFFIDAVIT OF
RONALD L WHITTINGTON, ESQUIRE

1. My name is Ronald L. Whittington. I am a member of the Mississippi Bar in good standing. I have personal knowledge of the facts set out in this Affidavit. I am competent to testify regarding the matters in this Affidavit.

2. I was trial counsel for Carlos F. Jackson in a criminal case in the Circuit Court of Pike County, Mississippi styled: *State of Mississippi vs. Carlos F. Jackson*, case number 2007-526-PKS.

3. I represented Carlos Jackson during the entire case through the argument of the post-trial motion.

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4. On December 12, 2007, the trial court entered an order styled "Agreed Order for Psychological/Psychiatric Examination." A true and correct copy of this Order is attached.

5. The trial court did not hold a competency hearing before the trial.

6. The trial court did not hold a competency hearing during the trial.

7. The trial court did not hold a competency hearing at any time in this case.

ACKNOWLEDGEMENT

STATE OF MISSISSIPPI

COUNTY OF _____

This day personally appeared before me, the undersigned authority in and for the aforesaid county and state, within my jurisdiction, RONALD L. WHITTINGTON, ESQUIRE, who having been by me first duly sworn, stated on oath that the matters, facts, allegations, and things contained and set forth in this *Affidavit* are true and correct as therein stated.

/s/ Ronald L. Whittington
Ronald L. Whittington

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SWORN TO AND SUBSCRIBED before me, this 21st
day of July, 2022.

/s/ Chantly Clouatre McDaniel
NOTARY PUBLIC

My commission expires:
Jan 12, 2026 _____ [SEAL]

DEC 13 2007

**IN THE CIRCUIT COURT OF
PIKE COUNTY, MISSISSIPPI**

THE STATE OF MISSISSIPPI

VERSUS

CAUSE NUMBERS:
07-024-PKS
07-225-PKT-PKS
07-526-PKS

CARLOS JACKSON

**AGREED ORDER FOR PSYCHOLOGICAL/
PSYCHIATRIC EXAMINATION**

This cause having come on to be heard this day on the District Attorney's Motion for Psychological/Psychiatric Examination, and the Court, having heard and considered said Motion, is of the opinion that Defendant should be examined by a qualified psychiatrist at the State Hospital at Whitfield, to determine whether the Defendant is now mentally competent to stand trial and to make a rational defense, and

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whether on June 10, 2006, the date on which Defendant is alleged to have committed the crimes of Aggravated Assault on A Law Enforcement Officer and Unlawful Possession Of At Least One Tenth but Less Than Two Grams of Cocaine, and on June 10, 2007, the date on which the Defendant is alleged to have committed the crimes of Sexual Battery (2 counts), Aggravated Assault, Armed Robbery and Burglary of A Dwelling, charged therein respectively he was mentally capable of distinguishing between right and wrong.

IT IS THEREFORE ORDERED that, Defendant, Carlos Jackson, be transferred to the State Hospital at Whitfield, at which facility a qualified psychiatrist shall be, and is hereby, appointed to treat Defendant, Carlos Jackson, and to determine whether he is now mentally competent to stand trial and to make a rational defense, and whether on June 10, 2006 and June 10, 2007, the dates on which the indictments allege that Defendant committed the respective crimes for which he has been charged therein, he was mentally capable of distinguishing between right and wrong. The aforesaid examinations of Defendant shall include, but not be limited to, the following:

- a. The M'Naughten Test to determine his competency to stand trial as set forth by the Mississippi Supreme Court;
- b. The MMPI-2 battery of tests;
- c. The Minnesota Malingering Test; and,

d. Any other tests the psychiatrist at the State Hospital at Whitfield determines to be feasible to aid in determining Defendant's ability to stand trial for the charges set forth in the indictment herein.

IT IS FURTHER ORDERED that the psychiatrist, at the State Hospital at Whitfield, shall make a written report of the findings of his examinations to the Court, the district attorney, and to the defendant's attorney.

SO ORDERED AND ADJUDGED this the 12th day of December, 2007.

/s/ DAVID STRONG
DAVID STRONG
CIRCUIT JUDGE

AGREED BY:

By: /s/ [Illegible]
Dee Bates,
District Attorney

/s/ Ronald W. Whittington
Ronald L. Whittington,
Attorney for Defendant

**Mississippi Electronic Courts
Fourteenth Circuit Court District
(Pike Circuit Court)
CRIMINAL DOCKET FOR
CASE #: 57CI1:07-cr-00526-1
Internal Use Only
[Edit Case Data](#)
[Edit Case Participants](#)**

Case title: THE STATE OF MISSISSIPPI
JACKSON, CARLOS Date Filed: 09/07/2007
 Date Terminated: 12/17/2008

Assigned to: David H. Strong

Defendant (1)

CARLOS JACKSON
TERMINATED:
12/17/2008

[View Bond Info](#)

Upcoming Settings:
None Found

represented by

Ronald Lee Whittington
Whittington Law Firm PC
PO Drawer 1919
229 Main Street
MCCOMB, MS 39649
601-684-8888
Fax: 601-684-9709
Email: legalassistant@
rwhittingtonlaw.com
ATTORNEY TO
BE NOTICED

[Edit Counts](#)

Counts

(1) - 97-3-95.F - Crimes Against Person:
Sexual Battery; Definition/Indictment
Offense Date: 6/10/2007

Count Action

[EXHIBIT 2]

(2) - 97-3-95.F - Crimes Against Person:
Sexual Battery; Definition/Indictment
Offense Date: 6/10/2007

(3) - 97-3-7(2)(a).F - Crimes Against
Person: Aggravated Assault
Offense Date: 6/10/2007

(4) - 97-3-79.F - Crimes Against Person:
Robbery; Using deadly weapon (Armed
Robbery)
Offense Date: 6/10/2007

(5) - 97-17-23(1).F - Burglary - Dwelling,
breaking and entering with intent
Offense Date: 6/10/2007

Plaintiff

State of Mississippi represented by
Dewitt T Bates, Jr
District Attorney's Office
14th District
223 W Bay Street
MAGNOLIA, MS 39652
601-783-6677
Fax: 601-783-5646
Email: districtattorney@
msda14.us
ATTORNEY TO
BE NOTICED

Date Filed # Docket Text

01/01/1900 Count 1: 97-3-95 - SEXUAL BATTERY
Sentencing: Statute: - SEXUAL BATTERY
Imposed: 20 YEARS - 20 YEARS
To Serve: 20 YEARS DAY FOR DAY

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Count 2: 97-3-95 - SEXUAL BATTERY
Sentencing: Statute: - SEXUAL BATTERY Imposed: 20 YEARS - 20 YEARS
To Serve: 20 YEARS DAY FOR DAY
Count 3: 97-3-7(2)-AGGRAVATED ASSAULT Sentencing: Statute: - AGGRAVATED ASSAULT Imposed: 10 YEARS - 10 YEARS To Serve: 10 YEARS
Count 4: 97-3-79-ARMED ROBBERY
Sentencing: Statute: - ARMED ROBBERY Imposed: 15 YEARS - 15 YEARS
To Serve: 15 YEARS
Count 5: 97-17-23 - BURGLARY OF A DWELLING Sentencing: Statute: - BURGLARY OF A DWELLING Imposed: 15 YEARS - 15 YEARS To Serve: 15 YEARS (Entered: 01/01/2017)

01/01/1902 Trial (Entered: 01/01/2017)
09/07/2007 1 Indictment Filed (Entered: 01/01/2017)
09/14/2007 2 Capias Issued (Entered: 01/01/2017)
10/04/2007 3 Indictment Served, Capias Executed (Entered: 01/01/2017)
12/06/2007 4 Arraignment and Plea of Not Guilty (Entered: 01/01/2017)
06/02/2008 5 Omnibus Order Filed (Entered: 01/01/2017)
Subpoenas Issued to CV Glennis for Dr.
12/05/2008 6 T. Summers 12/5/08 J.Hampton (Entered: 01/01/2017)
12/05/2008 7 Subpoena Request State (Entered: 01/01/2017)

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Subpoenas Issued to PCSO for J.Kenney
12/05/2008 8 12/8 D.Reynolds P.Andrews 12/10
K.Montgomery (Entered: 01/01/2017)

Subpoena Request State (Entered:
12/10/2008 9 01/01/2017)

Subpoena Issued for A. Andrews NS
(Entered: 01/01/2017)
12/10/2008 10

Jury Instruction C1 (Entered:
01/01/2017)
12/15/2008 11

Jury Instructions S1 through S9 Inclu-
sive (Entered: 01/01/2017)
12/15/2008 12

Jury Instructions Given Court - C1
(Entered: 01/01/2017)
12/17/2008 13

Jury Instructions Given State -S1,S2,
12/17/2008 14 S3,S4,S5,S6,S7,S8,S10, S11 (Entered:
01/01/2017)

Jury Instructions Denied State - S9 (En-
tered: 01/01/2017)
12/17/2008 15

Jury Instructions Given Deft. -
D1,D2,D5,D9 (Entered: 01/01/2017)
12/17/2008 16

Jury Instructions Denied Deft. -
D3,D6,D8 (Entered: 01/01/2017)
12/17/2008 17

Jury Instructions Withdrawn Deft.
D4,D7 (Entered: 01/01/2017)
12/17/2008 18

Verdict of the Jury (Entered:
01/01/2017)
12/17/2008 19

Order Incorporating the Jury Verdict -
Count One (Entered: 01/01/2017)
12/17/2008 20

Order Incorporating the Jury Verdict -
Count Two (Entered: 01/01/2017)
12/17/2008 21

Order Incorporating the Jury Verdict -
Count Three (Entered: 01/01/2017)
12/17/2008 22

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12/17/2008 23 Order Incorporating the Jury Verdict Count Four (Entered: 01/01/2017)

12/17/2008 24 Order Incorporating the Jury Verdict - Count Five (Entered: 01/01/2017) 1

12/17/2008 25 Sentence of the Court Filed (Entered: 01/01/2017)

12/23/2008 26 Motion For A New Trial (Entered: 01/01/2017)

01/06/2009 27 Commitment Issued cc total 25305.50 (Entered: 01/01/2017)

Order Allowing Payment For Fees &

01/12/2009 28 Suites cc: Regina 1/13/09 (Entered: 01/01/2017)

Notice of Appeal cc: Supreme Court,

01/16/2009 29 DA, Marie Boyd and Morris 1/29/09 (Entered: 01/01/2017)

Notice of Appeal To Official Court Re-

01/23/2009 30 porter of the Aforesaid Court and Des-ignation of Record (fax) (Entered: 01/01/2017)

01/23/2009 31 Certificate of Compliance With Rule 11(b)(1) (fax) (Entered: 01/01/2017).

Notice of Appeal to Official Court Re-

01/26/2009 32 porter of the Aforesaid Court and Des-ignation of Record (Entered: 01/01/2017)

01/26/2009 33 Certificate of Compliance (original) (Entered: 01/01/2017)

01/29/2009 34 \$100.00 Appeal Fee rec#48117 (En-tered: 01/01/2017)

01/29/2009 35 Appeal Survey (Entered: 01/01/2017)

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02/02/2009 36 Copy of Letter From Supreme Court To
Marie Boyd (Entered: 01/01/2017)

02/05/2009 37 \$1675.00 Appeal Costs (Entered:
01/01/2017)

02/06/2009 38 Notice of Motion Hearing (Entered:
01/01/2017)

Order Allowing Payment For Fees

02/17/2009 39 \$2250.00 to W. Criss Lott, Ph.D. cc: Re-
gina 2/18/09 (Entered: 01/01/2017)

02/25/2009 40 Amended Motion For New Trial (En-
tered: 01/01/2017)

Order Denying Motion For New Trial

03/04/2009 41 cc: DA and Whittington 3/9/09 (En-
tered: 01/01/2017)

Amended Notice of Appeal cc: Supreme

03/13/2009 42 Court (BRW) 4/2/09 cc: DA and Marie
Boyd 4/2/09 (Entered: 01/01/2017)

Designation of Record cc: Supreme

03/13/2009 43 Court (BRW) 4/2/09 cc: DA & Marie
Boyd 4/2/09 (Entered: 01/01/2017)

Certificate of Complaince With Rule

03/13/2009 44 11(b)(1) cc: Supreme Court (BRW)
4/2/09 cc: DA and Marie Boyd 4/2/09
(Entered: 01/01/2017)

03/31/2009 45 Copy of Letter From Supreme Court To
Marie Boyd (Entered: 01/01/2017)

04/06/2009 46 Copy of Letter To Marie Boyd From Su-
preme Court (Entered: 01/01/2017)

04/22/2009 47 Notice to Parties of Completion of Rec-
ord (Entered: 01/01/2017)

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05/13/2009 48 Motion For Extension of Time For Appellant's Review of Record (Entered: 01/01/2017)

05/18/2009 49 Motion For Extension of Time For Appellant's Review of Record emailed copy to Daniel Morris 5/27/09 (Entered: 01/01/2017)

05/20/2009 50 Order Granting Extension of Time For Appellant's Review of Record emailed copy to Daniel Morris 5/27/09 (Entered: 01/01/2017)

06/08/2009 51 Record to Supreme Court (Entered: 01/01/2017)

09/29/2010 52 Supreme Court Decision (Entered: 01/01/2017)

01/12/2011 53 Supreme Court Order (Entered: 01/01/2017)

02/25/2011 54 Mandate (Entered: 01/01/2017)

12/05/2011 55 Motion For New Trial (Entered: 01/01/2017)

12/06/2011 56 Order Denying New Trial CC: Whittington, DA 12/7/11 (Entered: 01/01/2017)

12/08/2011 57 Letter To Clerk From Morris with attachments (Entered: 01/01/2017)

05/02/2013 58 Supreme Court Order (Entered: 01/01/2017)

07/19/2013 59 EVIDENCE INVENTORY (Entered: 01/01/2017)

08/23/2013 60 Motion For A New Trial Based On Perjury and Newly Discovered Evidence (Entered: 01/01/2017)

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02/20/2014 61 Order To Transport (Entered: 01/01/2017)
Subpoenas issued To Daniel Morris for
03/18/2014 62 D. Reynolds D. Hunley R. Tate S. Montague (Entered: 01/01/2017)
04/22/2014 63 Order cc: DA and Whittington 4/22/14 cc: Morris 4/28/14 (Entered: 01/01/2017)
03/30/2017 64 Order CC: DA, WHITTINGTON, MORRIS 3/30/17 (Entered: 01/01/2017)

IN THE CIRCUIT COURT OF
PIKE COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI
VS. CAUSE NO. 007-526-PKS
CARLOS JACKSON

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE TRIAL OF THE ABOVE STYLED AND NUMBERED CAUSE, BEFORE THE HONORABLE DAVID H. STRONG, JR., CIRCUIT JUDGE, ON DECEMBER 15-17, 2008, AND SENTENCING ON DECEMBER 17, 2008.

Present and representing the State:

HONORABLE RODNEY TIDWELL,
Assistant District Attorney

HONORABLE BRENDAN ADAMS,
Assistant District Attorney
284 East Bay Street
Magnolia, Mississippi 39652

Present and representing the Defendant:

HONORABLE RONALD L. WHITTINGTON
P. O. Drawer 1919
McComb, MS 39649-1919

Reported By:
MARIE BOYD, CSR #1162
Official Court Reporter

CLOSING ARGUMENT BY MR. TIDWELL

* * *

[437] would you tell the victim of the crime that you better not know who I am? Because he knew if she knew who he was, that he would be in trouble. Think about the very nature of the crime, counts one and two. They are of a sexual nature, of a gratification for him. He wanted personal gratification. Now does that sound like someone that didn't know right from wrong? No, ladies and gentlemen, it doesn't.

As the Court instructed you, you are to use your good, common sense and sound honest judgment. And if you do that, there is no way that you can say that this Defendant, Carlos Jackson, on the night of June 9 and 10, or the early morning of June 10, 2007, did not know right from wrong. He clearly did.

And as I said, I have no doubt. Several things I have no doubt about in this case. I have no doubt that Carlos Jackson committed the acts. You have no doubt about that. They're basically admitted. I have no doubt in my mind that Carlos Jackson has some mental problems. I have no doubt in my mind that he uses drugs. And I have no doubt in my mind that that exacerbates his problems. But the Judge just instructed you that voluntary intoxication is not a defense. Legal insanity as defined to you by the Court is the only defense that is available in this case.

The Court instructed you that you have the duty to determine the believability of the witnesses. I will take the witnesses that I usually don't speak about first, and that is the defense case. We heard – and I'll not take them in order – but we heard from the defendant's parents. And I feel sorry for them. I do. I know that Carlos has been a burden on them all of his life. And I do feel sorry for them, and I know what they told you about

* * *

COURT REPORTER'S CERTIFICATE

STATE OF MISSISSIPPI
COUNTY OF PIKE

I, Marie M. Boyd, Official Court Reporter for the Fourteenth Circuit Court District of the State of Mississippi, do hereby certify that, to the best of my skill and ability, I have reported the proceedings had and done in the TRIAL, SENTENCING, and MOTION J.N.O.V. of STATE OF MISSISSIPPI VS. CARLOS JACKSON, being No. 07-526-PKS, on the docket of the Circuit Court of Pike County, Mississippi, and that the above and foregoing four hundred seventy-nine (479) pages contain a true, full, and correct transcript of my stenographic notes and tape taken in said proceedings.

This is to further certify that I have this date filed the original and one copy of said transcript, along with one (1) 3.5" electronic disk of said transcript in Word-Perfect language, for inclusion in the record of appeal, with the Clerk of the Circuit Court of Pike County, Mississippi, and have notified the attorneys of record, the Circuit Clerk, and the Supreme Court Clerk of my actions herein.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

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This the 20th day of April 2009.

/s/ Marie M. Boyd
MARIA M. BOYD, CSR 1162
Official Court Reporter

COURT REPORTER'S FEE: \$1149.60

**IN THE SUPREME COURT OF
THE STATE OF MISSISSIPPI**

Trial Court: Circuit Court of Pike County,
Mississippi: Case Number 2007-0526-PKS

CARLOS F. JACKSON **PETITIONER**
V. **CASE NO. 2022-M-757**
STATE OF MISSISSIPPI **RESPONDENT**

Motion For Reconsideration
and to Suspend the Rules

COMES NOW Carlos Jackson, through counsel, pursuant to MRAP 2(c), and pursuant to this Court's inherent authority to reconsider and modify the Court's orders, and for the reasons set out in this motion, respectfully moves the Court to reconsider the September 21, 2022 Order and to suspend the rules under MRAP 2(c), as follows:

1. MRAP 2(c): For good cause shown, as set below in ¶2 and in ¶3, the Court should suspend any restriction in MRAP 27 that might limit reconsideration of the Court's September 21, 2022 Order denying Carlos Jackson's "Application for Leave to Proceed on Filing Petition for Post Conviction Collateral Relief in the Trial Court," and denying the "Amended Application for Leave to Proceed on Filing Petition for Post Conviction Collateral Relief in the Trial Court."

For the reasons set out in this motion, good cause exists for suspending MRAP 27, and reconsidering the denial of Carlos Jackson's UPCCRA Applications.

2. Uniform Post-Conviction Civil Relief Act (UPCCRA) applications require consideration by a quorum of this Court:

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 9939-1, 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.

Respectfully, the Court should reconsider Carlos Jackson's Application and Amended Application *en banc*, by convening a quorum of the Court. In so doing, the Court should grant Carlos Jackson's Application and Amended Application, and grant leave for Carlos Jackson to file and pursue his UPCCRA action in the trial court.

3. The 2017 *Pitchford v. State* procedural change does not apply retroactively to Carlos Jackson's trial court due process violations:

If the shoe was on the other foot, and there was a 2017 post-mandate procedural rule change that favored Carlos Jackson, the retroactivity rule would foreclose Mr. Jackson from asking this 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. . . . the same rule applies to the State of Mississippi.

Pitchford v. State, 240 So.3d 1061 (Miss. 2017) is not and cannot be retroactive to Carlos Jackson's case,

because in 2017, when this Court handed down *Pitchford*, Carlos Jackson's direct appeal had already concluded more than six (6) years earlier in 2011. *See*: docket entries and opinion: *Carlos F. Jackson v. State of Mississippi*, 2009-KA-00173. *Pitchford* does absolutely nothing to, in any way, prevent Carlos Jackson from invoking the due process protections and case law that were in place prior to his 2011 appellate mandate.

In his Application and Amended Application, Carlos Jackson argued that any changes in procedure after the February 11, 2011 mandate in Mr. Jackson's direct appeal could not be used retroactively against Mr. Jackson. *See*: Amended Application and Amended Petition (proposed) filed August 10, 2022; *see also*: Application and Petition (proposed) filed July 27, 2022. More specifically, Carlos Jackson specifically invoked and argued that the retroactivity rule prohibits the application of any post-mandate procedural changes to 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, this 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 . . . ”. *Schrivo 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: Amended Application, filed August 10, 2022, p.6; and see August 10, 2022 Amended Petition (proposed), pp.7-8.

The retroactivity rule that prohibits the State from using *Pitchford* against Carlos Jackson was already in place years before Mr. Jackson’s 2008 trial and subsequent appeal. Because the retroactivity rule was in place prior to Mr. Jackson’s trial and appeal, the rule prohibits the State from using *Pitchford* in any way to attack or defeat Mr. Jackson’s due process claims.

In 2021, the United States Supreme Court summarized the Court’s retroactivity principles (which prohibit the State from using *Pitchford* 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, ___ U.S. ___; 141 S. Ct. 1547, 1562 (2021) (emphasis added).

Edwards v. Vannoy is the controlling law of the land regarding the retroactivity rule, and is totally consistent with the retroactivity approach in Mississippi courts. The end result is that *Pitchford v. State* cannot apply retroactively to Carlos Jackson’s due process competency hearing claims, because Carlos Jackson’s case was not pending in the trial court, and his direct appellate review concluded on February 11, 2011 (mandate issued).

Respectfully, this Court is bound by the jurisprudence of the United States Supreme Court and the Supremacy Clause. *See: 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).

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).

As set out in his Application and Amended Application, 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 rule in Mississippi from 2009 (while Carlos Jackson’s appeal was pending), 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).

“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). 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).

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

WHEREFORE, PREMISES CONSIDERED, this Court should reconsider its September 21, 2022 Order, convene a quorum (preferably *en banc*) of the Court to consider Mr. Jackson’s UPCCRA claims, and direct that Carlos Jackson may file and pursue his UPCCRA proposed Amended Petition in the Circuit Court of Pike County, Mississippi.

Carlos Jackson prays for such other relief to which he may be entitled.

Respectfully submitted,
Carlos Jackson

By: /s/ William C. Bell
William C. Bell, bar no. 9328
Bell Law Firm, PLLC
443 Northpark Drive, Suite B
Ridgeland, MS 39157
Mail: PO Box 1876
Ridgeland, MS 39158
Phone: 601-956-0360

CERTIFICATE OF SERVICE

I, William C. Bell, attorney for Carlos Jackson, hereby certify that I have this day served via first class mail, a true and correct filed copy of the above *Motion for Reconsideration and to Suspend the Rules*, on the Attorney General as follows:

Honorable Lynn Fitch
Office of the Mississippi Attorney General
550 High Street, Suite 1200
Jackson, Mississippi 39205

(via hand delivery, and via MEC)

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So certified, this the 28th day of September, 2022 .

s/ William C. Bell
By: William C. Bell
Attorney for Carlos Jackson

Serial: **244156**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2022-M-00757

CARLOS JACKSON

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

ORDER

(Filed Nov. 1, 2022)

Now before the undersigned Justice is the Motion for Reconsideration and to Suspend the Rules filed by Carlos Jackson. On September 21, 2022, this Court denied Jackson's application for leave to file a motion for post-conviction relief and his amended application for leave to file a motion for post-conviction relief. *See* Order No. 243468. Jackson requests that this Court reconsider its ruling. Motions for reconsideration generally are not permitted. *See* M.R.A.P. 27(h). Jackson's motion does not meet any of the exceptions in Rule 27(h). After due consideration, the undersigned Justice finds that Jackson's motion should be denied.

IT IS THEREFORE ORDERED that the Motion for Reconsideration and to Suspend the Rules filed by Carlos Jackson is denied.

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SO ORDERED, this the 1st day of November,
2022.

/s/ James W. Kitchens
JAMES W. KITCHENS,
PRESIDING JUSTICE
