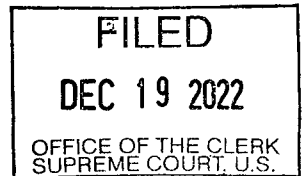


No. 22 - 6929



IN THE  
Supreme Court of THE United States

FORREST THOMAS III

Petitioner

VERSUS

BRANDON M. Smith

Respondent

ON Petition For A Writ of CERTIORARI To  
THE United States Court of Appeals, Fifth Circuit

Petition For Writ of CERTIORARI

FORREST THOMAS III, #129391 C/25  
CARROLL Montgomery Regional Care Facility  
33714 Hwy 35  
VAIDEN, MS 39176

## Questions Presented

- 1) Does requiring THOMAS, A PARENT, CONVICTED OF KIDNAPPING HIS OWN biological child, where there was absolutely NO sexual motivation, to be classified as a 'SEX OFFENDER', pursuant to MCA § 45-33-23, bear a reasonable and rational relationship to a legitimate governmental purpose?
- 2) Whether substantive due process can invalidate sex offender classification policies 'as-applied' to PARENTS, CONVICTED OF KIDNAPPING their own biological child, where there was absolutely NO sexual motivation for the offense?
- 3) Whether THOMAS HAS A RIGHT, UNDER THE EQUAL PROTECTION CLAUSE, to HAVE his sentence computed in the SAME MANNER, AS SIMILARLY SITUATED PRISONERS, CONVICTED OF 'KIDNAPPING OF MINOR' UNDER MCA § 97-3-53?
- 4) Whether the trial court 'breached the plea agreement' by sentencing THOMAS for kidnapping, pursuant to MCA § 45-33-23(g)(1), a non-punitive civil, regulatory statute?

## List of Parties

\* ALL Parties appear in the caption of the case on the cover page.

## Related Cases

- THOMAS v. Miss. Dept. of Corrections, 248 So. 3d 786 (2018)
- Motion For Judicial Review in the Marshall County Circuit Court  
Submitted on June 23, 2015 (unpublished)

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IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENT BELOW.

OPINIONS BELOW

- THE OPINION OF THE UNITED STATES COURT OF APPEALS APPEARS AT APPENDIX A TO THE PETITION AND IS REPORTED AT THOMAS V SMITH, NO. 22-60203
- THE OPINION OF THE UNITED STATES DISTRICT COURT APPEARS AT APPENDIX B TO THE PETITION AND IS REPORTED AT THOMAS V TAYLOR, NO. 3:18-CV-238
- THE OPINION OF THE MISSISSIPPI SUPREME COURT APPEARS AT APPENDIX D TO THE PETITION AND IS REPORTED AT THOMAS V MDOC, NO. 2017-CR-00152-SC
- THE OPINION OF THE MARSHALL COUNTY CIRCUIT COURT IS UNPUBLISHED.

## Jurisdiction

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED MY CASE WAS, SEPTEMBER 21, 2022.

THE DATE ON WHICH THE UNITED STATES DISTRICT COURT DECIDED MY CASE WAS, MARCH 22, 2022.

\* THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 USC § 1254(G).

# Constitutional AND Statutory Provisions Involved

- 1<sup>st</sup> Amendment to the U.S. Constitution
- 8<sup>th</sup> Amendment to the U.S. Constitution
- 14<sup>th</sup> Amendment to the U.S. Constitution
- U.S. Const., Art. VI, Clause 2
- SORNA, 42 USC § 16911
- Administrative Procedure Act, 5 USC § 553(D); 706(1)(2)
- MCA § 45-33-23
- MCA § 45-33-23(g)(6)
- MCA § 97-3-53
- MCA § 97-3-51
- MCA § 47-7-3
- MCA § 47-5-138
- MCA § 47-5-139
- Williston on Contracts § 3:3
- MCA → Mississippi Code Annotated

## Statement of the Case

In the case at bar, the Marshall County Circuit Court has functioned as an appellate court for review of an on-the-record adjudication by an administrative agency, i.e., Mississippi Department of Corrections, concerning the continuous revocation and deprivation of THOMAS' acquired and accumulated trusty earned time/meritorious earned time credits, as well as, his eligibility for parole. see Mangum v Mississippi, 76 So.3d 762 (2011)

On February 13, 2015, THOMAS submitted an inmate request to MR. Lang, Chief Casemanager, at MCF, requesting the restoration of his acquired and accumulated earned time credits toward his kidnapping conviction pursuant MCA § 97-3-53. This request was denied.

Aggrieved, on February 19, 2015, THOMAS submitted AR #MCF-15-82.

On 3 June 2015, MDOC entered a final decision in this action.

On 23 June 2015, THOMAS submitted a Motion for Judicial Review which was filed in the Marshall County Circuit Court.

On 17 January 2017, the Honorable Andrew Howarth entered an order denying THOMAS' Motion for Judicial Review.

On 31 January 2017, THOMAS submitted a Notice of Appeal which was filed in the Marshall County Circuit Court.

On 25 May 2017, THOMAS submitted an Appellate Brief in the Mississippi Supreme Court.

On 19 March 2018, THOMAS' Appellate brief was denied in part, and reversed in part and remanded to the Marshall County Circuit Court with two(2) dissents favoring THOMAS.

On 25 October 2018, THOMAS submitted this Habeas Corpus petition in the United States District Court, For The Northern District of Mississippi.

On 22 March 2022, THOMAS' petition for a writ of Habeas Corpus was denied, AND his Certificate of Appealability was denied.

On 22 April 2022, the Honorable Debra M. Brown, denied THOMAS' Motion To Proceed In Forma Pauperis On Appeal in the U.S. Court of Appeals, For The Fifth Circuit.

On 21 September 2022, the Honorable Jerry E. Smith, denied THOMAS' Motion For Certificate of Appealability AND Motion To Proceed On Appeal In Forma Pauperis in the U.S. Court of Appeals For The Fifth Circuit

On 19 December 2022, THOMAS submitted his initial Petition For Writ of Certiorari to the U.S. Supreme Court

On 4 January 2023, THOMAS was granted sixty (60) day extension to submit Petition For Writ of Certiorari to the U.S. Supreme Court  
see exhibit A

## REASONS FOR GRANTING THE PETITION

Does requiring THOMAS, a PARENT, convicted of kidnapping his own biological child, where there was absolutely NO sexual motivation, to be classified as a 'sex offender' pursuant to MCA§ 45-33-23 bear a reasonable and rational relationship to a legitimate governmental purpose?

THOMAS contends that the State and Federal Courts of Mississippi have abdicated their responsibility to determine whether there is a rational basis for requiring PARENTS convicted of kidnapping their own biological child, where there was absolutely NO sexual motivation, to be subjected to the classification and conditions of a 'sex offender' pursuant to Mississippi's sex offender registration statute, MCA§ 45-33-23(g)(i). See MCA§ 45-33-23(g)(i) As a parent of the victim, THOMAS asserts that fundamental right is implicated and a 'suspect class' has been disadvantaged in violation of the 1st amend. and 14th amend. to the U.S. Constitution. See Village of Willowbrook v. Oltch, 528 U.S. 562 (2000)

THOMAS pleads that MCA§ 45-33-23 intentionally discriminates against PARENTS because the facial neutral law was motivated by a discriminatory animus and has an adverse effect upon PARENTS, convicted of kidnapping their own biological child, where there was absolutely NO sexual motive, NATIONWIDE.

\* In the State of Mississippi, PARENTS convicted of 'kidnapping their own biological child' under MCA§ 97-3-53, are (1) classified as 'sex offenders' pursuant to MCA§ 45-33-23(g)(i); (2) required to serve a mandatory, day-for-day sentence; (3) ineligible for parole and earned-time deductions; and (4) must register for a minimum twenty-five (25) years. However, PARENTS convicted of 'interstate removal of a child under fourteen' pursuant to MCA§ 97-3-51, are NOT. More important, Mississippi is the only state that requires PARENTS to register as 'sex offenders' for kidnapping their own child, without a concomitant sexual component. As such, any PARENT, convicted of kidnapping their own biological child in other jurisdictions, that visits or relocates to Mississippi, will be required to register as a 'sex offender' pursuant to MCA§ 45-33-23(g)(i). See MCA§ 45-33-23(g)(i)

THOMAS notes, that BOTH offenses involves a 'non-custodial parent unlawfully taking custody of their own biological child'; yet, MCA§ 97-3-51 is NOT a 'sex offense'. See Ferrell v. State, No. 2013-CP-01836 (2013)

In Ferrell, the Miss. Ct. of Appeals held that interstate removal of a child under MCA§ 97-3-51 is NOT a 'sex offense', and carries no mandatory sentence or ineligibility for parole or earned-time deductions. Ferrell v. State, No. 2013-CP-01836 (2013)

THOMAS asserts, that it is utterly apparent that 'interstate removal of a child under (14) pursuant to MCA§ 97-3-51 is NOT a 'sex offense' because of (1) the familial relationship between the offender/victim; (2) the lack of a sexual motivation for the offense. See MCA§ 97-3-53; 97-3-51; 45-33-23

THOMAS URGES, that this 'exemption' should also be extended to PARENTS, convicted of kidnapping their own biological child under MCA § 97-3-53, where there was absolutely NO sexual motivation for the offense, as U.S. Congress suggested.  
See SORNA § 16911

"The equal protection clause is designed to assure that those who are similarly situated will be treated similarly". Hicks v. Oklahoma, 447 U.S. 343 (1980); Williams v. Taylor, 529 U.S. 362 (2000)

THOMAS CONTENDS that MCA § 45-33-23 is unconstitutional 'as-applied' to THOMAS, as being over-broad and over-inclusive, because it unlawfully differentiates between convictions for MCA § 97-3-53 and MCA § 97-3-51, when BOTH offenses involve 'A non-custodial PARENT unlawfully taking custody of their own biological child, with NO sexual motivation, whatsoever'. See MCA § 97-3-53, 97-3-51, 45-33-23 (9c.)

"AN 'as-applied' challenge calls on the court to consider whether a statute can be constitutionally applied to the defendant under the facts of the case, not hypothetical facts in other situations". Village of Willowbrook v. Olech, 528 U.S. 562 (2000)

\* IT IS AN UNDISPUTED FACT, that THOMAS<sup>①</sup> is the biological father of Trenton Thomas and Maryann Thomas; (2) carried his children directly to his mother, Joyce King, and informed officers of their whereabouts at the scene; ~~AND~~ (3) that there was absolutely NO sexual conduct, contact, or behavior involved whatsoever.

THOMAS asserts, that the inquiry should focus upon 'whether the legislative classification of 'sex offense', based upon a conviction for kidnapping, by the PARENT of the victim, where there was absolutely NO sexual motivation, is rationally related to the object of the legislation?

\* THOMAS notes, that the sex offender registration statutes are intended to ① alert the public to the presence of sex offenders in their midst; and ② assist law enforcement. See MCA § 45-33-23 and, Mississippi has a legitimate interest in protecting the public. However, where the accused is the 'PARENT of the Victim', and it is clear that the crime is totally devoid of any sexual motivation; such rational basis is LOST.

"THE general rule for equal protection is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." City of Cleburne v. Cleburne, 473 U.S. 432 (1985)

\* THOMAS asserts, that for PARENTS, convicted of kidnapping their own biological child, to be (1) classified as a 'sex offender'; (2) forced to serve a mandatory day-for-day sentence; (3) ineligible for parole and earned-time deductions; and (4) to comply with the registration and reporting requirements for twenty-five (25) years, where there was absolutely NO sexual motivation; bears NO rational relationship to the purposes of the statute.

"Recognizing that the relationship between parent and child is constitutionally protected." Quilloin v. Walcott, 434 U.S. 246 (1978)

"The right of a parent to the custody and control of his child has long been recognized as fundamental." Stanley v. Illinois, 405 U.S. 645 (1972)

THOMAS asserts, that the phrase 'sex offense' is one that the average person can be expected to understand as referring to an offense that is committed with a sexual motivation or purpose. And, the labeling of PARENTS convicted of kidnapping their own child, where there was absolutely NO sexual motivation as a 'sex offender' confounds this ordinary understanding of the words used, and is therefore unreasonable and arbitrary. See MCA§ 45-33-23

"Defining 'sexual offender' to include defendants convicted of 'kidnapping of minor' and requiring defendant to register where it is clear that the predicate crime is totally devoid of a sexual component violates equal protection rights because not rationally related to state's 'interest in protecting the public from sex offenders'." Raines v. State, 805 So.2d 999 (2001)

"Absent evidence that defendant committed the 'kidnapping of the minor' victim with sexual motivation, denominating defendant a 'sex offender' is not rationally related to a legitimate state interest of 'alerting citizenry to the presence of sex offenders within their midst', and thus violates substantive due process and equal protection." State v. Small, 162 Ohio App.3d 375 (2005)

"The state's stated purpose of statutes requiring registration of persons convicted of 'sex offenses', which is the protection of the victims and potential victims of sex offenders is not furthered by the inclusion of crimes that are not sexually motivated and defendant's equal protection and substantive due process rights violated." N.M. City of Albuquerque, 139 N.M. 761 (2006)

THOMAS asserts, for MCA§ 45-33-23 to include PARENTS, convicted of kidnapping their own biological child, in the definition of 'sex offender', without a concomitant sexual component, renders the Mississippi Sex Offender Registration Statute, MCA§ 45-33-23(g)(i) unconstitutional 'as-applied' to THOMAS, as being over-broad and over-inclusive. See MCA§ 45-33-23(g)(i)

THOMAS' equal protection claim is grounded on the notion that, in the State of Mississippi, PARENTS convicted of kidnapping their own biological child under MCA§ 97-3-53, where there was absolutely NO sexual motivation, are classified as 'sex offenders' pursuant to MCA§ 45-33-23; when PARENTS convicted of interstate removal of a child under fourteen under MCA§ 97-3-51, are NOT. See MCA§§ 97-3-53, 97-3-51; 45-33-23

"The equal protection clause of the 14th AMEND. COMMANDS that 'No state shall deny to any person within its jurisdiction the equal protection of laws, which is essentially, a direction that all persons similarly situated should be treated alike'. City of Cleburne v Cleburne, 473 U.S. 432 (1985)

Furthermore, THOMAS contends that the Mississippi Department of Corrections failed to comply with the 'Notice and Hearing' requirements of the Administrative Procedure Act before implementing the 'Final Rule' making persons convicted of kidnapping a minor, after the year 2000, ineligible for parole and earned-time deductions pursuant to MCA § 45-33-23(g)(i); contrary to the Administrative Procedure Act, 5 USC § 553. see 5 USC § 553(d); 706(1)(2)

\* THOMAS notes, In 2000, Section 45-33-23(g)(i) defined the kidnapping of a person below the age of eighteen as a 'sex offense'. However, MDOC did not invoke MCA § 45-33-23(g)(i) until 2009, after the state of Mississippi was in full compliance with SORNA. see US v Johnson, 632 F.3d 912 (2011)<sup>5th cir</sup>; SORNA 42 USC § 16911

As such, THOMAS contends that MDOC failed to undertake the required steps to implement this interim rule and convert it into a 'Final Rule', as it relates to MCA § 45-33-23(g)(i), which would have included providing notice and responding to comments by interested persons, such as THOMAS; thus rendering MCA § 45-33-23(g)(i) unenforceable, pursuant to the Administrative Procedure Act, 5 USC § 553(d).

"The Administrative Procedure Act requires: An agency must provide thirty (30) days notice of its intent to issue the rule, publish a summary and explanation of the rule, and afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing". see 5 USC § 553(d); US v Johnson, 632 F.Supp.2d 720 (2009)

"The Administrative Procedure Act defines an Administrative rule as 'an agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure, or practice requirements of an agency'. see Doc. Foritz, 662 A.2d 367; 5 USC § 553(d)

\* THE RECORD reflects, in August, 2009, the Mississippi Department of Corrections, unlawfully classified THOMAS as a 'sex offender' pursuant to MCA § 45-33-23(g)(i), without notice/hearing, and revoked THOMAS' acquired and accumulated good-time credits, contrary to the Administrative Procedure Act. see 5 USC § 553; Wolff v McDonnell, 418 U.S. 39 (1974)

\* THOMAS ASSERTS, THAT MDOC HAD NO AUTHORITY TO CLASSIFY PARENTS, CONVICTED OF KIDNAPPING THEIR OWN BIOLOGICAL CHILD, AS A 'SEX OFFENDER', PURSUANT TO MCA§45-33-23(g)(i). THOMAS CONTENTS THAT MDOC'S FAILURE TO COMPLY WITH THE 'NOTICE AND HEARING' REQUIREMENTS OF SUSC§53, IS CONTRARY TO, AND AN UNREASONABLE APPLICATION OF THE ADMINISTRATIVE PROCEDURE ACT, AND THUS, IS VIOLATIVE OF THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION. SEE BROWN V MARYLAND, 23 US. 419 (1827); U.S. CONST. ART VI, CLAUSE 2

"THE U.S. SUPREMACY CLAUSE REQUIRES ALL COURTS TO RECOGNIZE FEDERAL LAW ——— INCLUDING STATUTES ENACTED BY CONGRESS — AS THE SUPREME LAW OF THE LAND". BROWN V MARYLAND, 23 US. 419 (1827); U.S. CONST. ART VI, CLAUSE 2

AS SUCH, THOMAS CONTENTS THAT HIS SENTENCE FOR KIDNAPPING HIS OWN BIOLOGICAL CHILD, WHERE THERE WAS ABSOLUTELY NO SEXUAL MOTIVATION; IS BEING UNLAWFULLY COMPUTED BY MDOC, AND AS A RESULT, THOMAS IS BEING FORCED TO REMAIN IN CONFINEMENT LONGER THAN LEGALLY REQUIRED.

2) WHETHER SUBSTANTIVE DUE PROCESS CAN INVALIDATE SEX OFFENDER CLASSIFICATION POLICIES 'AS-APPLIED' TO PARENTS, CONVICTED OF KIDNAPPING THEIR OWN BIOLOGICAL CHILD, WHERE THERE WAS ABSOLUTELY NO SEXUAL MOTIVATION FOR THE OFFENSE?

\* IN THE STATE OF MISSISSIPPI, PARENTS CONVICTED OF 'KIDNAPPING THEIR OWN BIOLOGICAL CHILD' UNDER MCA§97-3-53, ARE (1) CLASSIFIED AS 'SEX OFFENDERS' PURSUANT TO MCA§45-33-23(g)(i); (2) REQUIRED TO SERVE A MANDATORY DAY-FOR-DAY SENTENCE; (3) INELIGIBLE FOR PAROLE AND EARNED-TIME DEDUCTIONS; AND (4) MUST REGISTER FOR A MINIMUM TWENTY-FIVE (25) YEARS.

AS A PARENT OF THE VICTIM, THOMAS ASSERTS THAT A FUNDAMENTAL RIGHT IS IMPLICATED AND A 'SUSPECT CLASS' HAS BEEN DISADVANTAGED IN VIOLATION OF THE 1<sup>ST</sup> AMEND. AND 14<sup>TH</sup> AMEND. TO THE U.S. CONSTITUTION. SEE VILLAGE OF WILLOWBROOK V OLECH, 528 US. 562 (2000)

IT IS AN UNDISPUTED FACT, THAT THOMAS (1) IS THE BIOLOGICAL FATHER OF TRENTON THOMAS AND MARYAM THOMAS; (2) CARRIED HIS CHILDREN DIRECTLY TO HIS MOTHER, JOYCE KING, AND INFORMED OFFICERS OF THEIR WHEREABOUTS AT THE SCENE; AND (3) THAT THERE WAS ABSOLUTELY NO SEXUAL CONDUCT, CONTACT, OR BEHAVIOR INVOLVED WHATSOEVER.

THE RECORD REFLECTS, THAT THOMAS' PLEA-PETITION EXPLICITLY INFORMED THOMAS THAT HE WOULD BE SENTENCED TO FIFTEEN (15) MANDATORY YEARS FOR KIDNAPPING, PURSUANT TO MCA§45-33-23(g)(i); A NON-PUNITIVE, CIVIL, REGULATORY STATUTE.

\* THOMAS ASSERTS, THAT THIS IS EXACTLY WHAT THE TRIAL COURT INTENDED AND ACCOMPLISHED BY ORCHESTRATING AND FACILITATING THE USE OF MCA§45-33-23(g)(i) TO TRIGGER

AND INVOLVE the ENHANCEMENT statutes MCA §§ 47-7-3, 47-5-138, AND 47-5-139 to unlawfully DENY THOMAS parole eligibility AND eligibility for EARNED-TIME deductions, contrary to Smith v Doe AND Wolff v McDonnell. See Smith v Doe 538 U.S. 84 (2003); Wolff v McDonnell, 418 U.S. 39 (1974)

"Due process guarantees all defendants the right to be sentenced pursuant to their statute of conviction, with an accurate understanding of the law".

Hicks v Oklahoma, 447 U.S. 343 (1980)

\* THOMAS contends that the trial court has transformed MCA § 45-33-23(g)(i) into a criminal penalty by using this statute to ENHANCE the sentence of PARENTS convicted of kidnapping their own biological child; with absolutely NO regard toward the relationship of the offender to the victim, the lack of a concomitant sexual component, OR the lack of any sexual motivation for the offense. See Culbert vpps, 120 So.3d 983 (2016)

"MCA § 45-33-23(g)(i) is a civil, regulatory statute, AND CAN ONLY subject an offender to a duty to register". Doe v Fortenberry, 2006 U.S. Dist. Lexis 53912; Williams v State, 2015 Miss. App. Lexis 195

"THE duty to register as a sex offender does NOT, AND CANNOT be used to ENHANCE a defendant's sentence for kidnapping". State v Ward, 123 Wn.2d 488 (1994)

\* THOMAS asserts, the mere fact that MCA § 45-33-23(g)(i) CAN ONLY be invoked upon an offenders' release, AND MCA §§ 47-7-3, 47-5-138, 47-5-139 CAN ONLY be applied to offenders 'in custody'; makes it unconstitutional AND fundamentally unfair to combine these statutes, to enhance the sentence of PARENTS, convicted of kidnapping their own biological child. See MCA §§ 45-33-23, 47-7-3, 47-5-138, 47-5-139

"THE provisions of the sex offender registration statutes become operative ONLY upon the release of the offender". U.S. v Young, 385 F.3d 199 (2009) <sup>5th Cir.</sup>

THOMAS notes, that MCA § 45-33-23 does NOT define either 'sex offense' OR 'sex offender'. AND most relevant here, the words 'sex offense' OR 'registrable offense' being used to label the offenses plainly demonstrates the Mississippi State Legislature's intent to distinguish between "sex crimes", AND other, NON-sexual crimes committed against minors for which registration is required. See MCA § 45-33-23

\* THOMAS asserts, that the wording of the statute, MCA § 45-33-23 clearly indicates that there is a bright-line distinction between 'sex offense' AND a 'non-sexual registrable offense' as it relates to the enhancement statutes MCA §§ 47-7-3, 47-5-138, 47-5-139.

FURTHERMORE, THOMAS contends that MCA §§ 47-7-3, 47-5-138, 47-5-139 ARE unconstitutional 'AS-APPLIED' to THOMAS, AS being over-broad AND over-inclusive, because these enhancement statutes SPECIFICALLY provide that an offender be convicted of a "SEX CRIME" for them to be invoked.

"MCA § 47-7-3 provides - NO PERSON WHO IS CONVICTED OF A 'SEX CRIME' SHALL BE ELIGIBLE FOR PAROLE". Dukes v Epps, 2011 WL 4047335

"MCA § 47-5-138 provides - AN OFFENDER IN TRUSTY STATUS SHALL NOT BE ELIGIBLE FOR A REDUCTION OF SENTENCE UNDER THIS SECTION IF THE OFFENDER WAS CONVICTED OF A 'SEX CRIME'.  
Dukes v Epps, 2011 WL 4047335

"MCA § 47-5-139 provides - AN INMATE SHALL NOT BE ELIGIBLE FOR MERITORIOUS EARNED TIME ALLOWANCE IF THE INMATE WAS CONVICTED OF A 'SEX CRIME'. Dukes v Epps, 2011 WL 4047335

THOMAS NOTES, EVEN THE MISSISSIPPI COURTS HAS ACKNOWLEDGED THAT 'KIDNAPPING IS NOT A 'SEX CRIME' AFTER the implementation of MCA § 45-33-23(g)(i) AND HAS CONSISTENTLY BESTOWED EARNED-TIME REDUCTIONS AND PAROLE ELIGIBILITY TO OFFENDERS CONVICTED OF KIDNAPPING PURSUANT TO MCA § 97-3-53. SEE Culbert v Epps, 120 So.3d 983 (2012); Norwood v State, 2001 Miss. App. Lexis 489 (2001); HENDERSON v State, 2014 Miss. App. Lexis 465

IN NORWOOD, THE MISSISSIPPI COURT OF APPEALS HELD 'THE CRIME OF KIDNAPPING IS NOT A 'SEX CRIME'; AND ONE CONVICTED OF KIDNAPPING OF MINOR IS NOT PRECLUDED FROM BEING PAROLED PURSUANT TO MCA § 47-7-3". Norwood v State, 846 So.2d 1048 (2003); Norwood v State, 2001 Miss. App. Lexis 489 (2001)

IN ROBINSON, THE COURT HELD 'WHERE DEFENDANT WAS CONVICTED OF CARJACKING AND KIDNAPPING A BABY GIRL, BUT HAD NOT ENGAGED IN ANY SEX ACT UPON OR IN THE PRESENCE OF THE CHILD, HE SUCCESSFULLY CHALLENGED THE CONSTITUTIONALITY OF Fla. Stat. § 775.21 AS BEING 'OVER-INCLUSIVE'. " State v Robinson, 873 So.2d 1205 (2004)

\* AS SUCH, 'KIDNAPPING OF A MINOR' IS NOT A 'SEX CRIME' FOR THE PURPOSE OF DETERMINING INELIGIBILITY FOR PAROLE AND EARNED TIME REDUCTIONS PURSUANT TO MCA § 47-7-3, 47-5-138, AND 47-5-139. SEE U.S. v MEDINA, 757 F.3d 425 (2014) <sup>5th Cir.</sup>; JOHNSON, JUNE 14, 2002  
ATT. GEN. OPINION #02-0336

"SORNA, 42 USC § 16911, PROVIDES: 'SEX CRIME' IS A CRIMINAL OFFENSE THAT HAS AN ELEMENT INVOLVING A 'SEXUAL ACT OR SEXUAL CONTACT WITH ANOTHER'. " U.S. v MEDINA, 757 F.3d 425 (2014) <sup>5th Cir.</sup>  
42 USC § 16911

IN WALDMAN, THE COURT HELD 'ALTHOUGH WALDMAN WAS CONVICTED OF 'KIDNAPPING OF A MINOR', HE WAS NOT 'CONVICTED OF A 'SEX CRIME'. Waldman v Thomas, 2015 WL 7755415

THOMAS CONTENDS THAT HE HAS A RIGHT, UNDER THE EQUAL PROTECTION CLAUSE OF THE U.S. CONST., TO HAVE HIS SENTENCE COMPUTED IN THE SAME MANNER, AS SIMILARLY SITUATED PRISONERS, CONVICTED OF 'KIDNAPPING OF A MINOR' UNDER MCA § 97-3-53. SEE Village of Willowbrook v Olech, 528 U.S. 62 (2000)

"A prisoner can be deprived of his liberty such that due process is required in two(2) contexts: when a change in the prisoner's conditions of confinement is so severe that it essentially exceeds the sentence imposed by the court; (2) when the state has consistently bestowed certain benefits to prisoners, usually through statute or administrative policy and the deprivation of that benefit imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life". Sandin v Conner, 515 U.S. 472 (1995)

THOMAS notes, in Culbert, the defendant was convicted on 10 September 1997, on a charge of kidnapping a child under the age of ten(10) under MCA§ 97-3-53, where the child was sexually abused. Culbert v Epps, 120 So.3d 983 (2012)

\* In Culbert, the court held that under the appropriate version of the Mississippi Code, Culbert's kidnapping conviction is not defined as a 'sex offense'. Culbert committed his crime before the implementation of MCA§ 45-33-23(g)(i); thus, Culbert's crime of kidnapping of a minor is not considered a 'sex offense' and his sentence is not mandatory. Culbert v Epps, 120 So.3d 983 (2012)

\* THOMAS notes, that the Mississippi Court of Appeals, has clearly sanctioned and promoted the unlawful usage of MCA§ 45-33-23(g)(i), a non-punitive, civil, regulatory statute to trigger and invoke the enhancement statutes MCA§ 47-7-3, 47-5-138, 47-5-139 to make 'kidnapping of a minor', a mandatory offense, contrary to Smith v Doe, Sandin v Conner, and Wolff v McDonnell. Thus, THOMAS has systematically been denied due process / equal protection of law. THOMAS adamantly declares, that he was not convicted of a 'sex crime', as that term is normally understood, that would force THOMAS to serve a mandatory sentence, for kidnapping his own biological child, where there was absolutely no sexual motivation for the offense, whatsoever. Therefore, MCA§ 47-7-3, 47-5-138, 47-5-139 are unconstitutional 'as-applied' to THOMAS, as being over-broad and over-inclusive.

Furthermore, the inescapable conclusion is, that the trial court has transformed MCA§ 45-33-23(g)(i), a non-punitive, civil, regulatory statute, into a criminal penalty, by using this statute to trigger and invoke the enhancement statutes MCA§ 47-7-3, 47-5-138, 47-5-139, to unlawfully and unconstitutionally deny THOMAS eligibility for parole and earned-time reductions, contrary to Smith v Doe, Sandin v Conner, and Wolff v McDonnell.

\* THOMAS notes, that MCA§ 47-7-3, 47-5-138, 47-5-139 are punitive statutes and specifically make 'sex crimes' ineligible for parole and earned-time reductions. As such, before the 2020 amendment of MCA§ 47-7-3, these enhancement statutes did not encompass the crime of 'kidnapping of minor'. Furthermore, this amendment is inapplicable to THOMAS, and its application would be violative of ex post facto law.

\* THE 2020 AMENDMENT OF MCA § 47-7-3 PROVIDES: SECTION 47-7-3 (Xb), SEX OFFENDERS.  
ANY PERSON WHO HAS BEEN SENTENCED FOR A SEX OFFENSE AS DEFINED IN SECTION  
45-33-23(H) SHALL NOT BE RELEASED ON PAROLE ... AS AMENDED July 1, 2020.  
SEE MCA § 47-7-3, AS AMENDED 2020

\* THE RECORD REFLECTS, THOMAS URGED THE MISSISSIPPI STATE LEGISLATURE TO AMEND THIS statute to accommodate 'KIDNAPPING OF MINOR' ON PAGE 33, LINE 10-18 OF HIS INITIAL HABEAS CORPUS petition in 2018. SEE THOMAS v. TAYLOR, No. 3:18-CV-238

\* THOMAS ASSERTS, THAT THIS 2020 AMENDMENT TO MCA § 47-7-3 WAS ABSOLUTELY NECESSARY, FOR THESE ENHANCEMENT STATUTES TO ENCOMPASS 'NON-SEXUAL REGISTRABLE OFFENSES', SUCH AS, 'KIDNAPPING OF MINOR'. AS SUCH, AS ORIGINALLY WRITTEN, THE ENHANCEMENT STATUTES MCA § 47-7-3, 47-5-138, 47-5-139 WERE INSUFFICIENT.

"PENAL STATUTES ARE INTERPRETED STRICTLY 'AGAINST THE STATE' AND ARE CONSTRUED LIBERALLY IN FAVOR OF THE ACCUSED". STATE v. TAYLOR, 100 MISS. 544 (1911)

THOMAS CONTENTS THAT MCA § 47-7-3, 47-5-138, 47-5-139 ARE UNCONSTITUTIONAL 'AS-APPLIED' TO THOMAS, AS BEING OVER-BROAD AND OVER-INCLUSIVE; BECAUSE THERE WERE NO FACTS ADDUCED OR EVEN SUGGESTED, TO SHOW THAT THOMAS' CONVICTION FOR KIDNAPPING HIS OWN BIOLOGICAL CHILD HAD ANY SEXUAL MOTIVE, INVOLVED ANY SEXUAL ACTS, OR HAD ANY CONCOMITANT SEXUAL COMPONENT, WHATSOEVER.

THOMAS ASSERTS, THAT A CONVICTION FOR 'KIDNAPPING OF MINOR', AT BEST, ESTABLISHES A 'NON-SEXUAL REGISTRABLE OFFENSE, BUT IT IS NOT A 'SEX CRIME', FOR THE PURPOSE OF DETERMINING ELIGIBILITY FOR PAROLE, OR EARNED-TIME DEDUCTIONS PURSUANT TO MCA § 47-7-3, 47-5-138, 47-5-139. SEE ATT. GEN. OPINION # 02-0336

"ATT. GENERAL OPINION # 02-0336 PROVIDES: A VIOLATION OF MCA § 97-29-63, WHICH PROHIBITS PHOTOGRAPHING OR FILMING ANOTHER, WITHOUT PERMISSION, WHERE THERE IS AN EXPECTATION OF PRIVACY IS NOT A 'SEX CRIME' FOR THE PURPOSE OF DETERMINING ELIGIBILITY FOR PAROLE UNDER MCA § 47-7-3, 47-5-138, 47-5-139, OR THE INTENSIVE SUPERVISION RELEASE PROGRAM."

SEE JOHNSON, JUNE 14, 2002, ATT. GEN. OP. # 02-0336

\* THOMAS NOTES, THAT MCA § 97-29-63 IS NOT LISTED AS A 'SEX OFFENSE' UNDER MCA § 45-33-23.

3) WHETHER THOMAS HAS A RIGHT, UNDER THE EQUAL PROTECTION CLAUSE, TO HAVE HIS SENTENCE COMPUTED IN THE SAME MANNER, AS SIMILARLY SITUATED PRISONERS, CONVICTED OF 'KIDNAPPING OF MINOR' UNDER MCA § 97-3-53?

\* THOMAS CONTENDS THAT HE HAS BEEN 'IRRATIONALLY TREATED DIFFERENTLY FROM SIMILARLY SITUATED INDIVIDUALS' AS REQUIRED TO STATE A 'CLASS OF ONE' EQUAL PROTECTION CLAIM, CONTRARY TO WILLOWBROOK. SEE Village of Willowbrook v. Oltch, 528 U.S. 562 (2000)

"TO STATE A CLAIM FOR SELECTIVE ENFORCEMENT OF A LAW UNDER A 'CLASS OF ONE' EQUAL PROTECTION THEORY, A DEFENDANT MUST ALLEGE FACTS DEMONSTRATING THAT HE WAS TREATED DIFFERENTLY FROM SIMILARLY SITUATED INDIVIDUALS AND THAT THE REASON FOR THE DISPARATE TREATMENT WAS BASED ON 'IMPERMISSIBLE CONSIDERATIONS'." Doer v. Abbott, 345 F.Supp.3d 763 (2018)

\* THE RECORD CLEARLY REFLECTS, THAT THOMAS PLEA GUILTY TO KIDNAPPING HIS OWN BIOLOGICAL CHILD, AND THERE WAS ABSOLUTELY NO SEXUAL CONTACT, CONDUCT, OR BEHAVIOR INVOLVED WHATSOEVER.

THOMAS ASSERTS, THAT THE MISSISSIPPI DEPARTMENT OF CORRECTIONS HAS ERRONEOUSLY DETERMINED THAT THOMAS WAS CONVICTED OF A 'SEX CRIME', AND HAS UNLAWFULLY APPLIED THE ENHANCEMENT STATUTES MCA§ 47-7-3, 47-5-138, 47-5-139 TO REVOKE THOMAS' ACCUMULATED GOOD-TIME CREDITS, AND RENDER HIM INELIGIBLE FOR PAROLE, CONTRARY TO SANDIN AND WOLFF.

"A SENTENCE EXCEEDED IN AN UNEXPECTED MANNER GIVES RISE TO PROTECTION BY THE DUE PROCESS CLAUSE OF ITS OWN FORCE". SANDIN v. CONNER, 513 U.S. 472 (1995)

"THE REVOCATION OF 'GOOD-TIME' CREDITS EQUATES TO AN 'INCREASE' IN THE PRISONER'S SENTENCE". WOLFF v. McDONNELL, 418 U.S. 539 (1974)

\* THOMAS CONTENDS THAT MCA§ 47-7-3, 47-5-138, 47-5-139 ARE UNCONSTITUTIONAL 'AS-APPLIED' TO THOMAS, AS BEING OVER-BROAD AND OVER-INCLUSIVE, BECAUSE THESE ENHANCEMENT STATUTES SPECIFICALLY PROVIDE THAT AN OFFENDER BE CONVICTED OF A 'SEX CRIME' FOR THEM TO BE TRIGGERED AND INVOKED:

"MCA§ 47-7-3 PROVIDES - NO PERSON WHO IS CONVICTED OF A 'SEX CRIME' SHALL BE ELIGIBLE FOR PAROLE". Dukes v. Epps, 2011 WL 4047335

"MCA§ 47-5-138 PROVIDES - AN OFFENDER IN TRUSTY STATUS SHALL NOT BE ELIGIBLE FOR A REDUCTION OF SENTENCE UNDER THIS SECTION IF THE OFFENDER WAS CONVICTED OF A 'SEX CRIME'. Dukes v. Epps, 2011 WL 4047335

"MCA§ 47-5-139 PROVIDES - AN INMATE SHALL NOT BE ELIGIBLE FOR MERITORIOUS EARNED-TIME ALLOWANCE IF THE INMATE WAS CONVICTED OF A 'SEX CRIME'. Dukes v. Epps, 2011 WL 4047335

\* THOMAS NOTES, THAT THE MISSISSIPPI COURTS HAS ACKNOWLEDGED THAT 'KIDNAPPING IS NOT A 'SEX CRIME' AFTER THE IMPLEMENTATION OF MCA§ 45-33-23(g)(i) AND HAS CONSISTENTLY BESTOWED EARNED-TIME DEDUCTIONS AND PAROLE ELIGIBILITY TO OFFENDERS CONVICTED OF KIDNAPPING PURSUANT TO MCA§ 97-3-53: SEE Culbert v. Epps, 120 So. 3d 983 (2012); NORWOOD v. STATE, 2001 MISS. APP. LEXIS 489 (2001); HENDERSON v. STATE, 2014 MISS. APP. LEXIS 463 (2014)

\* More important, 'SORNA', 42 USC § 16911, provides: 'sex crime' is a criminal offense that has an element involving a 'sexual act or sexual contact' with another". U.S. v. Medina, 757 F.3d 423 (2014) (5th Cir.)

In Culbert, the defendant was convicted on 10 September 1997, on a charge of kidnapping a child under the age of ten (10) under MCA § 97-3-53, where the child was sexually abused. See Culbert v. Epps, 120 So. 3d 983 (2012)

In Culbert, the Mississippi Court of Appeals held that under the appropriate version of the Mississippi Code, Culbert's kidnapping conviction is not defined as a 'sex offense'. Culbert committed his crime before the implementation of MCA § 45-33-23(g)(i); thus, Culbert's crime of kidnapping of a minor is not considered a 'sex offense' and his sentence is not mandatory". Culbert v. Epps, 120 So. 3d 983 (2012)

THOMAS notes, in Culbert, the Mississippi Court of Appeals, has clearly sanctioned and promoted the unlawful usage of MCA § 45-33-23(g)(i), a non-punitive, civil, regulatory statute to trigger and invoke the enhancement statutes MCA § 47-7-3, 47-5-138, 47-5-139 to make 'kidnapping of a minor', a mandatory offense, contrary to Smith v. Doe, Sandin v. Conner, and Wolff v. McDonnell. Thus, THOMAS has been systematically and judicially denied due process and equal protection of law.

THOMAS also notes, that the Mississippi Supreme Court held MCA § 43-33-23 is applicable to all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of MCA § 45-33-23(g)(i)". Garrison v. State, 950 So. 2d 990 (2006); Smith v. Doe, 538 U.S. 84 (2003)

\* Therefore, due to the retroactivity of MCA § 43-33-23(g)(i), Culbert would also be subject to the ramifications of MCA § 47-7-3, 47-5-138, 47-5-139 for his conviction of 'kidnapping of a minor'. See Culbert v. Epps, 120 So. 3d 983 (2012) that is, if they can be legally applied to THOMAS?

In Norwood, the defendant was convicted in 2000, where he pleaded guilty to 'kidnapping of a minor'. See Norwood v. State, 2001 Miss. App. Lexis 489 (2001); Norwood v. State, 846 So. 2d 1048 (2003)

In Norwood, the Mississippi Court of Appeals held the crime of kidnapping is not a 'sex crime' and one convicted of kidnapping of a minor is not precluded from being paroled pursuant to MCA § 47-7-3". Norwood v. State, 846 So. 2d 1048 (2003); Norwood v. State, 2001 Miss. App. Lexis 489 (2001)

\* In HENDERSON, the defendant was convicted of 'Kidnapping of minor' in 2009.

See HENDERSON v State, 2014 Miss. App. Lexis 463 (2014)

In HENDERSON, the Mississippi Court of Appeals held HENDERSON was 'acting as a parent' and he was not considered 'sex offender'. See HENDERSON v State, 2014 Miss. App. Lexis 463

THOMAS contends, that he has a right, under the Equal Protection Clause of the U.S. Constitution, to have his sentence computed in the same manner as similarly situated prisoners convicted of 'Kidnapping of minor' under MCA § 97-3-53, contrary to Olech. See Village of Willowbrook v. Olech, 528 U.S. 562 (2000)

\* THOMAS adamantly declares, that he has met the criteria for Olech, by demonstrating the existence of a 'comparator' i.e. Jimmy Culbert, Norwood, and Henderson — someone who is prima facie identical — who is being treated differently, where there is no rational basis for the disparate treatment. See Village of Willowbrook v. Olech, 528 U.S. 562 (2000)

\* THOMAS notes, kidnapping pursuant to MCA § 97-3-53 is not a mandatory offense. "A prisoner has a right, under the Equal Protection Clause, to have his sentence computed in the same way as 'similarly situated prisoners'". Hicks v. Oklahoma, 447 U.S. 343 (1980)

4) Whether the trial court 'breached the plea agreement' by sentencing THOMAS for kidnapping, pursuant to MCA § 45-33-23(g)(i), a non-punitive, civil, regulatory statute?

\* The plea-petition explicitly states, in pertinent part:

Plea offer: The defendant agrees to enter a plea of guilty to kidnapping of a child under sixteen. The defendant understands and agrees that the sentence imposed for kidnapping pursuant to MCA § 45-33-23(g)(i) is a mandatory day-for-day sentence.

THOMAS notes, in THOMAS v. Outlaw, the U.S. District Court held "THOMAS agreed to a plea offer that explicitly informed THOMAS that he would be sentenced pursuant to MCA § 45-33-23(g)(i)". THOMAS v. Outlaw, 2014 WL 3699922 (2014)

\* Here, THOMAS gave up his right to a jury trial in exchange for the prosecution recommending that THOMAS serve a mandatory fifteen (15) year sentence for kidnapping, pursuant to MCA § 45-33-23(g)(i), a non-punitive, civil regulatory statute. See MCA § 45-33-23(g)(i); see Smith v. Doe, 538 U.S. 84 (2003)

\* BECAUSE the law precludes the trial court to sentence THOMAS for kidnapping, pursuant to MCA § 45-33-23(g)(i); there was a failure of consideration flowing to THOMAS. In essence, the promise made by the prosecutor in the plea agreement, PROMISED NOTHING, AND WAS THEREFORE, ILLUSORY, CONTRARY TO BRADY AND SANTOBELLO.

"ORDINARY CONTRACT PRINCIPLES GOVERN PLEA AGREEMENTS". SANTOBELLO v NEW YORK, 404 U.S. 237 (1971)

"AN ILLUSORY PROMISE CANNOT BE THE CONSIDERATION FOR THE RETURN PROMISE".  
BRADY v U.S., 397 U.S. 742 (1970)

\* THOMAS NOTES, THAT THE U.S. SUPREME COURT HAS BEEN EXTREMELY CLEAR ABOUT 'PROSECUTORIAL MISREPRESENTATIONS IN PLEA-PETITIONS'. "SEE SANTOBELLO v NEW YORK, 404 U.S. 237 (1971); VON MOLTKE v GILLIES, 332 U.S. 708 (1948)

"PLEA BARGAINING IS A FUNDAMENTAL PART OF OUR CRIMINAL JUSTICE SYSTEM; THEREFORE, THE MOST METICULOUS STANDARDS OF BOTH PROMISE AND PERFORMANCE MUST BE MET BY PROSECUTORS ENGAGING IN PLEA BARGAINING". SANTOBELLO v NEW YORK, 404 U.S. 237 (1971)

"PROSECUTORIAL MISREPRESENTATIONS ARE UNACCEPTABLE, EVEN THOUGH MADE IN GOOD FAITH, RENDERS THE PLEA-PETITION UNENFORCEABLE". VON MOLTKE v GILLIES, 332 U.S. 708 (1948)

\* MOST IMPORTANT, "ANY HARMLESS ERROR ANALYSIS OF A PLEA AGREEMENT BREACH IS FORECLOSED". SANTOBELLO v NEW YORK, 404 U.S. 237 (1971)

THOMAS ASSERTS, THAT THOMAS IS AN INDIVIDUAL WHOSE 'CONTRACTUAL' RELATION WITH THE STATE OF MISSISSIPPI IS GOVERNED BY THE CONSTITUTION OF THE UNITED STATES, AS WELL AS, THE CONSTITUTION OF THE STATE OF MISSISSIPPI, WHOSE 'CONTRACT LAWS' ARE BY FAR, THE MOST STRINGENT IN THIS COUNTRY. THUS, THE DETERMINATION OF THOMAS' RIGHTS AND RESPONSIBILITIES UNDER THIS PLEA AGREEMENT IS CONTROLLED BY CONTRACT LAW AND BY THE PRINCIPLES OF FUNDAMENTAL FAIRNESS IMPOSED BY THE DUE PROCESS CLAUSE.

"THE INTEREST OF JUSTICE AND STANDARDS OF GOOD FAITH IN NEGOTIATING PLEA BARGAINS REQUIRE REVERSAL WHERE A PLEA BARGAIN IS BREACHED. A LESSER STANDARD WOULD PERMIT THE GOVERNMENT TO MAKE A PLEA BARGAIN ATTRACTIVE TO A DEFENDANT, SUBSEQUENTLY VIOLATE THE AGREEMENT AND THEN ARGUE HARMLESS ERROR, THEREBY DETRAVING THE DEFENDANT".  
SANTOBELLO v NEW YORK, 404 U.S. 237 (1971); PUCKETT v U.S., 556 U.S. 129 (2009)

"A State court decision failing to apply 'Contract Law' principles to a breach of a plea claim is 'contrary to clearly established Federal law'." Santobello v New York, 404 U.S. 257 (1971)

"A plea agreement is 'contractual' in nature; and when a plea agreement is breached, the agreement is terminated as if it never existed". Mabry v Johnson, 467 U.S. 504 (1984)

\* Thomas notes, that the 'statute for conviction' of kidnapping is MCA § 97-3-53.  
See MCA § 97-3-53

"A defendant has a substantial and legitimate expectation that he will be deprived of his liberty only to the extent determined by his statute of conviction".

Hicks v Oklahoma, 447 U.S. 343 (1980)

\* Thomas contends that he pled guilty, under the mistaken belief, that he could be sentenced for kidnapping pursuant to MCA § 45-33-23(g)(i), a sentence offered and fostered by the prosecution; thereby, renouncing Thomas' waiver of indictment and plea of guilty to kidnapping unknowing, unintelligent, and involuntary.

"Where a defendant reasonably could believe in the existence of a given term of the plea agreement, the mistake precludes defendant from knowingly and voluntarily entering in the plea". U.S. v Carasco, 786 F.2d 1452 (1986); Santobello v New York, 404 U.S. 257 (1971)

"A situation in which a defendant is induced by deception, an unfulfillable promise, or misrepresentation of the law to enter a guilty plea does not meet the standard of voluntariness articulated by the U.S. Supreme Court". Brady v US, 397 U.S. 742 (1970); Boyd v Alabama, 395 U.S. 238 (1969); Henderson v Morgan, 426 U.S. 677 (1976)

\* "A plea agreement states all of the 'agreements and understandings' that exists between the defendant, defense counsel, and the prosecutor, and no other agreement exists between himself and the prosecutor except those contained in the written plea agreement".  
Santobello v New York, 404 U.S. 257 (1971)

Thomas contends that the trial court could not legally give Thomas the sentence as outlined in the plea-petition because the fifteen (15) year mandatory sentence for kidnapping, pursuant to MCA § 45-33-23(g)(i), a non-punitive, civil, regulatory statute, is not authorized by law. Thus, that portion of the plea bargain having become impossible for the court to perform, the trial court must permit Thomas to withdraw his plea of guilty to kidnapping, pursuant to Santobello. see Santobello v New York, 404 U.S. 257 (1971)

\* "The plea agreement is construed strictly 'Against the government'." U.S. Purser, 747 F.3d 284 (2014) (5th Cir.); Santobello v New York, 404 U.S. 257 (1971)

"The court must enforce the plea-petition based on the defendant's 'reasonable understanding of the agreement'." U.S. Addison, 2015 U.S. Dist. Lexis 34312 (2015) (2nd Cir.); Santobello v New York, 404 U.S. 257 (1971)

\* THOMAS asserts, that he contracted with authorized agents of the State of Mississippi to plead guilty to kidnapping, and the prosecutor breached its 'contractual obligations' by misrepresenting the law, i.e., recommending that THOMAS be sentenced for kidnapping his own biological child, pursuant to MCA § 45-33-23(g)(i), a non-positive, civil, regulatory statute. As such, the State of Mississippi is accountable for any misrepresentations which the prosecutor made in the plea agreement regarding THOMAS' sentence for kidnapping. see Santobello v New York, 404 U.S. 257 (1971)

\* "The government must bear the burden of any 'lack of clarity' in the plea agreement, and any ambiguities should be resolved in favor of the defendant". GUZMAN v Couture, 2003 U.S. Dist. Lexis 753 (2003)

"A court cannot enforce an illegal provision in a plea agreement that was specifically promised; the breach is fatal, it being impossible of fulfillment, renders the plea-petition unenforceable". Santobello v New York, 404 U.S. 257 (1971)

"A plea agreement which cannot be fulfilled, based on a legal impossibility, must be vacated in its entirety". BRADY v US, 397 U.S. 742 (1970); Santobello v New York, 404 U.S. 257 (1971)

\* THOMAS contends, that 'there was no clear meeting of the minds' of the parties concerning the plea agreement because the prosecutor applied an incorrect, and unlawful legal standard to the sentence. Therefore, the 'voluntary bilateral consent to the contract' never existed because the plea-petition made explicit provisions for a sentence that was not in accordance with the law; thereby, rendering the plea-petition automatically and utterly void because the contract was never validly concluded.

"As a general rule, both the object for which a contract is formed, and the consideration for which a promise is given must be lawful". Santobello v New York, 404 U.S. 257 (1971); Williston on Contracts § 3:3

"Plea bargain contracts which circumvent statutory penalties are void, as against public policy". Puckett v US, 336 U.S. 129 (2009)

\* THOMAS contends that he was denied procedural due process and substantive due process, as guaranteed by our Federal Constitution, when the trial court caused THOMAS to forfeit his Constitutional right to a jury trial, based upon misapprehension and a misrepresentation of the law in his plea agreement; thereby creating an improper inducement to plead guilty to kidnapping, contrary to Santobello and Mabry. Thus, rendering THOMAS' waiver of indictment, and plea of guilty to kidnapping unknowing, unintelligent, and involuntary.

"It is the defendant's rights which are being violated when the plea agreement is broken or meaningless. It is the defendant's waiver of constitutional rights which must be voluntary and knowing". Santobello v New York, 404 U.S. 257 (1971); McCarthy v U.S., 394 U.S. 459 (1969); Mabry v Johnson, 467 U.S. 504 (1984)

\* THOMAS notes, that the U.S. Supreme Court rejected the same argument presented by the U.S. District Court in the case at bar, in Santobello.

In Santobello, the court held 'even if the judge indicated that the improper recommendation was not the basis of the sentence, a reversal is still required in 'the interest of justice and appropriate recognition of the duties of the prosecution in relation to promises and agreements made in the negotiation of pleas of guilty'. Santobello v New York, 404 U.S. 257 (1971)

\* AND HERE, WHERE THOMAS CANNOT legally be sentenced pursuant to MCA § 43-33-23(g)(6). THOMAS is entitled to withdraw his plea of guilty to kidnapping, pursuant to Santobello.

## CONCLUSION

The United States Constitution is a remarkable, beautiful gift; but it's really just a piece of parchment. It has no power on its own. We, the people give it power. We the people give it meaning — when we respect and enforce, the RULE OF LAW.

THOMAS prays that the Justices of this honorable court, will have the COURAGE to rule in accordance with the 'RULE OF LAW' and grant the relief THOMAS seeks.

\* RELIEF SOUGHT: THOMAS seeks a new trial for the offense of kidnapping.

Under 28 USC § 1746, I declare under the penalty of perjury, that the foregoing is true and correct, executed on the 22 day of February 2023. Signed, Forest Thomas  
Forest Thomas

PETITIONER, PLEADS HIS CAUSE UNDER Haines v Kerner, 404 US 519 (1972),  
WHERE-IN PRO SE LITIGANTS ARE HELD TO LESS STRINGENT STANDARDS IN  
THEIR PLEADINGS BEFORE THE COURT.

So certified, this the 22 DAY OF February 20 23.

Respectfully submitted,

Forrest Thomas #

FORREST THOMAS III, #129391 C/25  
Carroll Montgomery Regional Corr. Facility  
33714 Hwy 35  
VAIDEN, MS 39176

Under 28 USC § 1746, I declare under the penalty of perjury that  
the foregoing is true and correct, executed on the 22 DAY OF February  
20 23. Signed, Forrest Thomas #