

23-7067

IN THE SUPREME COURT OF THE UNITED STATES

IN RE TIMOTHY STRATTON

CASE # _____

PETITION SEEKING A WRIT OF
HABEAS CORPUS

Timothy Stratton, 176336, PRO SE

SMCI-2 A-2 #3

P.O. Box 1419

Leakesville, MS 39451

FILED

NOV 15 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

QUESTIONS PRESENTED FOR REVIEW

Though fraught with a very real and haunting undercurrent of prejudice, Stratton's case and cause brings only two questions for this Court's review. Both are summarily compelling. SEE APERCU

1. CAN A JURY BE CHARGED TO FIND GUILT WHERE ALL OF THE NECESSARY ELEMENTS OF A CRIME ARE NOT INCLUDED IN THE JURY'S CHARGE?
2. IS THERE ANY POSSIBLE REALM OF THE IMAGINATION WHERE A SENTENCE OF TWO (2) LIFETIMES FOR REFUSING A PLEA BARGAIN WHERE THE PROFFER WAS ONLY THREE YEARS ACTUALLY INCARCERATED WITH AN ADDITIONAL TWO YEARS PROBATION, AS IS THE CASE WITH STRATTON, FAILS TO BE THE CLASSIC AND SEMINAL DEFINITION OF VINDICTIVE RETRIBUTION?

LIST OF PARTIES

- 1 Mississippi Department of Corrections
Mr. Burl Cain, Commissioner
301 N. Lamar St.
Jackson, MS 39201

TABLE OF CONTENTS

Page

- i Questions Presented For Review
- ii List of Parties
- iii Table of Contents
- 1. Table of Authorities
- 3. Citations of the Official and Unofficial Reports of Opinions
and Orders Entered in the Case
- 7. Statement of the Basis For Jurisdiction
- 11. Constitutional Provisions
- 13. Statement of the Case
- 14. Reasons for Granting the Writ

APPENDIX

- 16. Aperçu
- 21. The Questions - Argued
- 33. Conclusion
- Exhibits
- Attachments
- Averz

TABLE OF AUTHORITIES

Authority	Page(s)
1. Murphy v. Waterfront Comm. of New York Harbor, 378 U.S. 52 (1964) - - - - -	19
2. Palko v. State of Connecticut, 302 U.S. 319 (1937) - - -	19
3. Dobbs v. Jackson Women's Health Organization --- S.Ct. --- (2022) - - - - -	19
4. Roe v. Wade, 410 U.S. 113 (1973) - - - - -	19
5. Booth v. Churner, 532 U.S. 731 (2001) - - - - -	19
6. Jones v. Bock, 549 U.S. 199 (2007) - - - - -	19
7. 42 U.S.C.A. 1983 - - - - -	20
8. Black's Law Dictionary, Fourth Pocket Edition, Copyright © 1996 - - - - -	21, 22
9. United States v. Valenzuela, --- F.3d --- February 24, 2017 (First Circuit) - - - - -	23
10. United States v. Murgio, --- F.Supp.3d --- September 19, 2016 - - - - -	23
11. Sandifer v. State, 136 Miss. 836 (1924) - - - - -	23, 24
12. Rogers v. State, 95 So.3d 623 (2012) - - - - -	23
13. Jackson v. State, 246 So. 2d 553 (1971) - - - - -	23
14. Ussery v. State, 154 Miss. 704, 706 123 So. 854 (1929) - -	24
15. Overstreet v. Mertos 570 So.2d 1196 (1990) - - - - -	24, 25
16. Webster's New World Dictionary and Thesaurus, Second Edition, Michael Agnes Editor in Chief, Copyright © 2013 - - - - -	28

Authority	Page(s)
17. Bordenkircher v. Hayes, 434 U.S. 357 (1978) - - -	29
18. United States v. Jackson 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed. 2d 138 (1968) - - -	29
19. North Carolina v. Pierce, 359 U.S. 711, 89 S.Ct. 2027, 23 L.Ed. 2d 656 (1969) - - -	29
20. Chaffin v. Stynchcombe, 412 U.S. 17, 32 n. 20, 93 S.Ct. 1977, 1986, 36 L.Ed. 2d 714 (1973) - - -	29, 30
21. Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed. 2d 747 (1970) - - -	30
22. Pepper v. State, 96 So. 3d 780 (2012) - - -	31

CITATIONS OF THE OFFICIAL AND UNOFFICIAL
REPORTS OF OPINIONS AND ORDERS ENTERED
IN THE CASE

SPECIAL EXPLANATION

This heading will additionally show why adequate relief cannot be obtained in another form or court and why Stratton did not re-apply to the District Court. And, while Stratton does not argue such specifically, it also informs in support of this Court using its discretionary powers.

A few weeks before Virgil Breeden agreed to help Petitioner Timothy Stratton prepare his meritorious Petition seeking a writ of habeas corpus, Stratton's housing unit was subjected to a "prison shakedown". Conducted properly, such a shakedown is an important subjunction to prison security.

Unfortunately, in Mississippi prisons, and particularly here at the South Mississippi Correctional Institution, a shakedown can result in a prisoner's legitimate property, clothing, and/or legal work being taken, destroyed, or simply vanishing with no explanation.

Attempts to find or regain such property are

often met with derision and condescension.

Almost all of Stratton's legal paperwork disappeared in the recent shakedown and no explanation has been given.

Breeden had read some of the Court orders and was familiar with numerous elisions, misinterpretations, and misrepresentations of constitutional, statutory, and common law. Had all of those documents been available Breeden could clearly and ineluctably have illumed an abundance of error.

Now, Stratton cannot even get a copy of his docket from the Fifth Circuit Court of Appeals without paying a copy fee which, as a pauper, he doesn't have and obviously there is no way for Stratton to obtain copies of that court's orders and documents in re. See attachment 1.

The District Court (Northern District MS) will only allow documents to be had through the PACER (Public Access To Court Electronic Records) Program. Stratton of course has no attorney nor access to a computer or online services. And, the Inmate Legal Assistance Program Office here will not access pertinent documents because there is

an associated fee. See attachment 2.

Stratton has exhausted all legal avenues beginning with Direct Appeal after conviction and continuing with Petition for Rehearing in the Miss. COA, Certiorari to the MS Sup. Court, Federal Habeas in the District Courts and Appeal to the Fifth Circuit. Stratton has also been denied the right to appeal through a post conviction submission.

It is fortunate that this Court's discretionary powers are summoned by the strength of Stratton's case and the unyielding connate documentation.

In reference to the Citations requisite of this heading, Stratton submits the only entities available to him: Court dockets from the Lee County Circuit Court and the Mississippi Supreme Court and Court of Appeals. See attachments 3 and 4 respectively

Though Stratton's case stands its own redoubt in sc; if this Court were to order the lower courts to provide Stratton with the condign relevant legal documents Breeden will clearly explain the multiple errors which have led to Stratton's

failure to be relieved which now so cogently
brings the instant case to this Court's
demeanor and curtilage.

JURISDICTION

This Court is afforded Jurisdiction to hear and decide Stratton's case under 28 U.S.C. § 1651 (2) and under 28 U.S.C. § 2241. Such is supported under this Court's own rules.

IN ADD TO THE COURT'S APPELLATE JURISDICTION

Because of the remarkable extent in the use of plea bargains in this Country, where there is no constitutional foundation or framework for same, the controlling constitutional commands of (inter alia) due process under the law, equal protection under the law, cruel and unusual punishment, and protection against self incrimination augment and give significant aid to this Court's Appellate Jurisdiction in the necessary prevention of judicial and prosecutorial abuse as so clearly demonstrated in Stratton's case.

As Stratton's formal argument states, there is an entire universe separating the dispensation of punishment where one reflects only three years of actual incarceration and the other takes away an entire lifetime. The difference therestated, with great immediacy, presumptively predicates vindictive retribution.

Stratton's punishment, as clearly presaged and stated by the trial judge was meted because Stratton chose to exercise his Constitutional Right to a trial before a jury of his peers when the court demanded the convenience of a plea bargain and quick sentence. We can only pray that there will never be a law which affords any form of punishment where a citizen demands any or all of his Constitutional Rights, as happened in the case at bar.

Even the laity has long understood the horrors of the above stated abuse. In fact, to use something of a colloquial conceptual approach, there was a song released some years ago by Country Singer Reba McEntyre and one line (particularly) therein strikes at the very heart of the beast with which Stratton grapples.

A man in the song was executed unjustly on very short notice (with some suggestion of culpability on the part of the judge) where the judge said:

"...supper's waitin at home and I
got to get to it."

And, regardless of any other consideration, the judge executed a man simply to achieve convenience. A fantasy, perhaps, but certainly not

unreflective of reality; Stratton's reality.

Mississippi Judges, Mississippi Courts, and those courts ancillary thereto try to cover their tracks by stating that no punishment can be held as vindictive retribution if said punishment is within statutory allowance regardless of the circumstance. But, EVERY member of this inveterate Bench knows well that such is simply not true.

If PLEA BARGAINING effloresced from a constitutional foundation, perhaps Stratton's case would already have found relief, but it doesn't. It is, indeed, the circumscription of so many constitutional adjuncts which beckon this Court's appellate intervention and, in turn, so firmly abets its APPELLATE JURISDICTION.

Additionally, the above clearly defines the cogency of the EXCEPTIONAL CIRCUMSTANCES WARRANTING THE EXERCISE OF THE COURT'S DISCRETIONARY POWERS.

Lest Stratton be remiss he must add that an elision can be just as damning as an inclusion. And where Stratton's jury was (as clearly founded in Stratton's formal argument and exhibits) instructed to find guilt without one of the essential elements of the crime, and where all of the puisne courts have avoided or misinterpreted the connate legal command, this

Court's discretionary powers are definitively invoked
and most heartily buoyed.

CONSTITUTIONAL PROVISIONS

Petitioner Timothy Stratton was denied the most fundamental and precious rights given to our citizenry under the Eighth and Fourteenth Amendments to our Constitution.

THE EIGHTH AMENDMENT

There is neither novelty nor uncertainty that the ascription of a quantum of punishment meted by a judge (and stated as such) as retribution upon a Defendant for demanding his Constitutional right to a trial by a jury of his peers, rather than on that measure available under statutory law or controlling paradigm, because the Defendant refused to allow the Court the convenience of a simple "plea bargain" conviction and forgoing his right; particularly where the punishment given and what was offered reflect, literally, a lifetime of difference, is decidedly and definitively the CRUEL AND UNUSUAL punishment proscribed in the Eighth Amendment and in the ethos of the people it protects.

THE FOURTEENTH AMENDMENT

The fourteenth amendment guarantees each of us the right to the due process of law and to equal protection under the law

These are separate and severable entities explained abundantly well in the literature of legaldom.

Stratton was denied both.

The due process of law requires Courts to insure that EVERY ESSENTIAL ELEMENT of a charged crime be presented to and found by the trier of fact; in Stratton's case: the jury. This did not happen.

To insure equal protection under the law would have required that the Stratton jury, like every other jury, be apprised of each and every essential element of the alleged crime. This did not happen.

All of the above is thoroughly explained in the body of Stratton's submission.

STATEMENT OF THE CASE

Petitioner Timothy Stratton's (Stratton herein) case circumscribes two distinct entities:

1. Clear failure of Stratton's jury to be charged with finding guilt on all of the essential elements of the crime.

The related factual basis for Stratton's claim in re is founded on one clear and decided document: the Court's jury instruction C-5. Such is illumed in the body of Stratton's argument.

2. The Vindictive Retribution relied on by the trial judge if Stratton refused to accept the prosecution's tender of a plea,

REASONS FOR GRANTING THE WRIT
WHY THIS COURT SHOULD DECIDE THIS CASE

It amazes that such an incredible percent of American criminal jurisprudence is given to a single entity; the plea bargain, where there is no constitutional right to same and, indeed, not even a whisper of such to be found in our Constitution.

Further, because of the many and potentially varied factual predicates for abuse, we do not have l'étoile du nord as a guide. Even within certain related scenarios, each case in re stands its own redoubt.

Reports have suggested that plea bargains play a role in 92% of criminal cases, give or take a pittance.

As such, all courts, but especially this Court, must take great pains to prevent the myriad of abuses potential to such a legal complexity.

In light of the clear vindictive retribution relative to Stratton's sentence, this Court is

afforded the distinct opportunity to establish a seminal ruling which will portend import to all such cases in the American System.

Additionally, where established law demands that all ESSENTIAL ELEMENTS of an alleged crime be found by the trier of fact (the jury), this Court, of needs, in its sound judgement, must here remind our nation's judicature that the law stands, as does Themis with her instrument, blind to prejudice and even inadvertent erroneous application thereof must stand corrected

APERÇU

Petitioner Timothy W. Stratton (Stratton herein) comes entreating this Court to grant his Petition Seeking a Writ of Habeas Corpus. In this Court's words, "This writ is rarely granted," so Stratton begins at a decided disadvantage. Consider, too, that Stratton comes before this Bench as a Pro Se petitioner and, unfortunately, does not have the requisite educational background and fails the legal acumen sufficient to approach this venerable assembly with the cogency necessary to brace the legal arcana needed to allow him any realistic quarter in trying to advance what is a wholly meritorious and legitimate cause. As such, Stratton may suffer his third strike before he even begins. He is, of needs, relegated to the hands of a "Jailhouse Lawyer", much maligned in legal literature. In this particular case, one Virgil Breeden, Jr., M.D., who acts, of course, pro bono and has Stratton's best interest sincerely at heart, though that may not make a difference. Breeden certainly understands the Herculean activity faced by Stratton.

If heard, this Court can but find Stratton's case compelling of relief. And, it is not completely impossible that an indigent Pro Se Petitioner may be heard here. So, good or bad, Stratton clings to a moiety of hope and prays that it is not the hope envisioned in the words of Friedrich Nietzsche:

"Hope in reality is the worst of all evils, because it prolongs the torments of man."

None-the-less, Stratton hopes.

Brought before this Court are only two issues, but these are irrefragable and will found unquestionably that Stratton suffers a true miscarriage of justice.

Though there are only two issues (questions) presented herein, there yet remains a highly significant concomitant which Stratton holds as having some measure of addressable substance. And, this contiguity clearly illumines the genius loci which fomented the evolution of Stratton's case and has so apparently followed paripassu ever since.

Stratton sat in a smallish room at the Lee County Police Department. His counsel had stepped out. Just outside the door there was a voice which Stratton believed to be that of the Assistant District Attorney. Who the Assistant District Attorney spoke to, Stratton does not know. But, in response to something Stratton did not hear clearly (only a male voice), the Assistant District Attorney (if, indeed, it was her speaking, as Stratton believes) responded:

"In here? Oh, that's that goddamned New York Nigger!"

Considering the fact that the Assistant District Attorney was a black female, Stratton was disheartened to believe that she would use such an egregious phrase in describing a defendant and speak it with such a measure of contempt. But Stratton certainly believes the voice was hers and all that has been visited on Stratton since seems to echo not only her voice but the colocal attitude as well.

If this Court decides to hear Stratton's

case and cause, it will require the Court to re-visit established law (which was circumvented in the instant case).

Certainly, this Court has and will address a pleading where there is real or perceived need to alter an interpretation of our Constitution and/or laws. Examples are prevalent enough in the precedent literature and representations are clear in the cases of Murphy v. Waterfront Comm. of New York Harbor, 378 U.S. 52 (1964) which reversed the holding (and generally the conceptual analysis) of Palko v. State of Connecticut, 302 U.S. 319 (1937) regarding the applicability of the Fifth Amendment to the states; and Dobbs v. Jackson Women's Health Organization --- S.Ct. --- (2022) which changes the regulating authority of states regarding abortion in contrast to the previously regnant Roe v. Wade, 410 U.S. 113 (1973).

Additionally this Court will re-visit where there is a defined need for clarification and further explanation of a previous standard. See (inter alia) Booth v. Churner, 532 U.S. 731 (2001) and Jones v. Bock, 549 U.S. 199 (2007) in re to this Court's adoption

of a Bright Line Rule demanding the exhaustion of an administrative procedural process prior to procession to a 42 U.S.C. § 1983 complaint and suit.

Fortunately, neither of Stratton's questions will require this Bench to reconsider the constitutionality nor the legal applicability of, nor even clarify and further define, established law. Stratton's case is relievable based solely on the law as it stands.

In the mind of some, Stratton may, indeed, be little more than "...that Goddamned New York Nigger." But, in the purview of humanity, he is a man who has suffered a true miscarriage of justice. In lieu thereof, Stratton asks as was asked in Sophocles's Oedipus Rex:

"... unto thee - For thou art very
near us - I am come.

Bringing these offerings, a
petitioner that thou afford us
fair deliverance."

THE QUESTIONS

As stated, Stratton approaches this Bench with only two questions

FIRST QUESTION

CAN A JURY BE CHARGED TO FIND GUILT WHERE ALL OF THE NECESSARY ELEMENTS OF A CRIME ARE NOT INCLUDED IN THE JURY'S CHARGE?

ARGUMENT

1. Generally the elements of a crime can be and usually are quite varied depending on the specific language of the statute being charged.
2. Venue, however, (the foundation of the instant question) is found passim in almost every criminal prosecution. And, subjoined to the above, the jury **MUST** be charged with that specific element to legally render a verdict in a criminal matter.
3. Venue is defined as follows in BLACK'S LAW

DICTIONARY, FOURTH POCKET EDITION, COPYRIGHT ©
1996:

"venue ... (16c) Procedure 1. The proper or a possible place for a lawsuit to proceed usu. because the place has some connection either with the events that gave rise to the lawsuit or with the plaintiff or defendant. 2. The territory, such as a county or other political subdivision, over which a trial court has **JURISDICTION**. 3. Loosely, the place where a conference or meeting is being held. In a pleading, the statement establishing the place for trial. 5. In an affidavit, the designation of the place where it was made." [emphasis added]

4. Given the immediate preceding, it is clear that, in a criminal proceeding, venue is jurisdictional.
5. There are actually two different standards used to establish venue. These are, however, fairly similar.

6. The federal standard is that venue must be proven by a "preponderance of the evidence at trial." The case law is myriad, but see, inter alia, United States v. Valenzuela, --- F.3d --- February 24, 2017, First Circuit; and United States v. Murgio, --- F. Supp. 3d --- September 19, 2016.
7. Mississippi, however, holds to a slightly more stringent standard in re to venue. Like any other essential element of a crime, venue, in a Mississippi Court, must be proven "beyond a reasonable doubt." See, inter alia, Sandifer v. State, 136 Miss. 836 (1924); and Rogers v. State, 95 So. 3d 623 (2012).
8. Additionally, Mississippi Judges are admonished to take great care in availing themselves ~~of the~~ of the consideration of "judicial notice" (judicial knowledge) in assigning or defining venue. The sound wisdom of Jackson v. State, 246 So. 2d 553 (1971) is clear and edifying:

"It is a dangerous practice to invoke the doctrine of judicial knowledge in trying criminal cases before a jury, and before

judicial knowledge can be availed of as to matters of places and locations of venue, it must be a matter of such general or common knowledge that every man may know it." See Ussery v. State, 154 Miss. 704, 706, 123 So. 854 (1929).

9. So it is clearly decided that appropriate venue is a matter to be proven beyond a reasonable doubt and that it is exclusive to the trier of fact. And, in a jury trial, none but the jury may find, and they, indeed, must find, on this requisite essential element.

10. Ancillary and/or vicarious "proof" of venue cannot withstand the unfailing necessity of charging the jury that it must find on that element. Having correct venue stated on an indictment, an affidavit to obtain a warrant for arrest, or on the warrant itself, does not preclude the legal particular that venue must be submitted to the jury and that they must appropriately find in re. Sandifer v. State, supra, is, of course, a long standing seminal precedent firmly sealing the issue, and, as so cogently stated in Overstreet v.

Merlos, 570 So. 2d 1196 (1990):

"THE LAW DOES NOT DIE OF
OLD AGE." emphasis added

11. The presentation of all of the essential elements of a charged crime to a jury for finding is both *gnomon* and *sine quibus non* hereto.
12. The proof that the jury was not presented with (and thus could not find on) the issue of venue is relatively simple. Stratton submits to this Court a document labeled as Exhibit A which is the Circuit Court's own jury instruction marked as C-5. This is, of course, the judge's instruction to the jury as to the requirements which must be met ACCORDING TO THE LAW for the jury to return a verdict of guilty. And, failing to present VENUE, it is clearly REVERSIBLE ERROR.
13. Additionally, as with all trials, the jury had been instructed that each one of them must accept the instructions as presented, explained, and ordered by the judge, even if they disagreed or had an emotional response *au contraire*. And, in the

and, the jury swore its oath in re.

Yes, it would have been simple enough for the court to have correctly charged the jury to find on the unavoidable ESSENTIAL ELEMENT OF VENUE, but the court elected not to. SUCH REFLECTS THE QUINTESSENTIAL REVERSIBLE ERROR!

SECOND QUESTION

IS THERE ANY POSSIBLE REALM OF THE IMAGINATION WHERE A SENTENCE OF TWO(2) LIFETIMES FOR REFUSING A PLEA BARGAIN WHERE THE PROFFER WAS ONLY THREE YEARS TO SERVE WITH AN ADDITIONAL TWO YEARS PROBATION, AS IS THE CASE WITH STRATTON, FAILS TO BE THE CLASSIC AND SEMINAL DEFINITION OF VINDICTIVE RETRIBUTION?

ARGUMENT

1. The argument here is easily as decisive and incontestable as Stratton's argument in re to the issue of venue. But, while the prima facie substance is overarching in se, there also exists some measure of nuance and subtlety which descri an impassable totality of circumstance and this Court is clearly garrisoned to consider those entities.
2. Among others a little more extensive, one clear and acceptable definition for RETRIBUTION is found

in Webster's New World Dictionary and Thesaurus, Second Edition, Michael Agnes, Editor in chief, Copyright © 2013:

"RETRIBUTION n. PUNISHMENT
FOR EVIL DONE — RETRIBUTIVE ADJ."
[emphasis added]

3. So, in the instant case, the Retribution is aught but the two life sentences meted by the trial court. Nota bene, however, that it is the contiguity of "VINDICTIVE" which bears, by far, the greater impetus here.

4. Webster's, *supra*, defines VINDICTIVE:

"VINDICTIVE ADJ. — 1. REVENGEFUL
IN SPIRIT 2. SAID OR DONE IN
REVENGE." emphasis added

5 The question here, and, indeed, in any case where one has suffered the kind of vindictive retribution suffered by Stratton, is whether a learned salon can reasonably espouse a vindictive foundation for a

sentence. The answer, of course, need not be absolute, but within sustainable reason.

6. Because of the varying factual predicates relative to the entire process of plea offers, plea bargaining, and the ultimate acceptance of a plea by either the defendant or the government, an absolute gnomon in re cannot be stood. However, Bordenkircher v Hayes, 434 U.S. 357 (1978) certainly deserves the ascription of a "seminal" case in genre.
7. Bordenkircher is actually distinguishable from the case at Bar because, here, Stratton's case conjoins vindictiveness of a judge while Bordenkircher relates to what is, in essence, allegations of prosecutorial malfeasance relative to a plea. None-the-less, Bordenkircher holds some inviting wisdom applicable hereto.
8. In his most compelling dissent in Bordenkircher, Mr Justice Powell cites (inter alia) United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed. 2d 138 (1968); North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed. 2d 656 (1969); and particularly, Chaffin v. Stynchcombe, 412 U.S. 17, 32 n. 20, 93 S.Ct. 1977, 1986, 36

L.Ed. 2d 714 (1973) where it was said:

"Jackson and Pearce are clear and subsequent cases have not dulled their force: if the only objective of a state practice is to discourage the assertion of constitutional rights it is 'patently unconstitutional'."

9. Mr Justice Powell also cites Brady v United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed. 2d 747 (1970) where it is said that the:

"... situation where the prosecutor or judge, or both, deliberately employ their charging and sentencing powers to induce a particular defendant to tender a plea of guilty."

is unacceptable.

10. Perhaps, most cogently, Mr Justice Powell in his own words, states:

"Implementation of a strategy

calculated solely to deter the exercise of constitutional rights is not a constitutionally permissible exercise of discretion."

11. In the Mississippi case of Pepper v. State, 96 So. 3d 780 (2012), Judge Ishee clearly defines that:

"... vindictive prosecution occurs when the defendant is punished for doing something that is within his right, such as turning down a plea bargain..."

12. As Stratton has stated, the chasm between an offer of three years to serve and two life sentences is not dimensionable. And, that offer certainly brings into play the prosecution's very real doubts as to guilt in the first place. More importantly, however, is that the grossly disproportionate nature of Stratton's sentence pushes well beyond the consideration of "reasonable doubt" in the mind of any Justice, Judge, or Magistrate.

13. Five years to serve, three incarcerated and two on paper. It seems as though Stratton should simply

have pled guilty but his own conscience would not allow such. Thus the fight continues.

14. Now there is yet another entity which gives unquestionable finality to Stratton's argument. The trial judge, becoming impatient, sent word through Stratton's lawyer who told Stratton that the judge said:

"IF YOU REFUSE THE PLEA BARGAIN,
I AM GOING TO SENTENCE YOU TO
LIFE."

15. The trial judge made it clear that he would sentence Stratton for refusing to accept a plea and exercising his sacred CONSTITUTIONAL RIGHT. That is exactly what he did!

16. Stratton submits a copy of a sworn affidavit subscribed by Earline Smith who was present when he (Stratton) was offered a plea bargain of five years, three incarcerated and two "on paper". Exhibit B. The original of that document is being held by the South Mississippi Correctional Institution here in Leakesville, MS. They refuse to release it. Exhibit C

CONCLUSION

In the end, there is no question that Stratton has suffered a miscarriage of justice. The clarity of such defies remonstrations.

Stratton's jury was never charged to find guilt based on the presentation of all **ESSENTIAL ELEMENTS** of his alleged crime. That failure is, in se, fatal error.

The trial judge sentenced Stratton for exercising his sacred legal right to trial by a jury of his peers and refusing the quick out of a plea bargain pressed by the judge himself. There is no clearer example of **VINDICTIVE RETRIBUTION**.

The merits of Stratton's case will defend any paragon. The **ONLY** question is whether this Court will hear the case of "...that Goddamned New York Nigger".

Stratton prays that it will.

Stratton begs that this Court will justly reverse and remand his case for a new trial or for any and all other relief held appropriate by the Bench.

Respectfully Submitted

Timothy W. Stratton

Timothy Stratton, 176336

SMCI 2 A-2 #3

P.O. Box 1419

Leakesville, MS 39451