

23-7638

ORIGINAL

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C. 20543

Supreme Court, U.S.
FILED

JAN 31 2024

OFFICE OF THE CLERK

In Re NEAN C. BOYD PRO-SE — PETITIONER
(Your Name)

VS.

MERIT HEALTH GROUP HOSPITAL - RESPONDENTS

ON PETITION FOR A WRIT OF HABEAS CORPUS

FROM THE UNITED STATES COURT OF APPEALS AND U.S. DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

PETITION FOR WRIT OF HABEAS CORPUS

NEAN C. BOYD PRO-SE
(Your Name)

(MSP) UNIT 31, B-ZONE, BED 13, P.O. BOX 1057
(Address)

PARCHMAN, MISS. 3873
(City, State, Zip Code)

662-745-6611
(Phone Number)

QUESTION(S) PRESENTED

- 1). WHETHER IF THERE HAD BEEN A EVIDENTIARY HEARING AND/OR A SPEARS HEARING THERE LIE A STRONG PROBABILITY THAT THERE WOULD HAVE BEEN A TOTALLY DIFFERENT OUTCOME IN THIS CASE.
- 2). WHETHER THE STATUTE OF LIMITATION IN THIS CASE WERE TOLLED WHEN HE FIRST FILED HIS CASE JUNE 13, 2022, IN THE HINDS COUNTY CIRCUIT COURT WITH THE CLERK BARABRA DUNN AT COURT HOUSE 407 PASLACGULA STREET, P.O. BOX 327, JACKSON, MISS. 39205-0327, WHEN PETITIONER WAS NOT AWARE HINDS COUNTY, MISS., HAD TWO (2) CIRCUIT COURTS.
- 3). WHETHER PETITIONER'S COMPLAINT WERE TIMELY FILED IN THE CIRCUIT COURT OF HINDS COUNTY, MISS., WITH CIRCUIT CLERK BARABRA DUNN AT COURT HOUSE 407 PASLACGULA STREET, P.O. BOX 327, JACKSON, MISS. 39205-0327, AND THEREAFTER, HIS CASE WERE TRANSFERRED TO HIND COUNTY SECOND CIRCUIT COURT AT P.O. BOX 327, JACKSON, MISS. 39205 BY THE CIRCUIT CLERK BARABRA DUNN.
- 4). WHETHER THE DISTRICT COURT ERRORED BY GRANTING DEFENDANT'S MOTION TO DISMISS ALLEGING PETITIONER DID NOT SUB DEFENDANT MERIT HEALTH GROUP HOSPITAL IN HINDS COUNTY, MISS. WITHIN THE STATUTES OF LIMITATIONS.
- 5). WHETHER THE DEFENDANT MERIT HEALTH GROUP HOSPITAL SHOULD BE HELD LIABLE FOR PETITIONER'S SUFFERING INJURIES AND SUSTAINED DAMAGES AS A RESULT OF THE NEGLECTS MEDICAL MALPRACTICE TREATMENT THAT HE RECEIVED AS A PATIENT AT MERIT HEALTH GROUP HOSPITAL IN JACKSON, MISS.
- 6). WHETHER THE DISTRICT COURT ERRORED BY DENYING PETITIONER'S SEVENTH AMENDMENT WHICH GUARANTEE JURY TRIAL PURSUANT TO: FED. RULE CIVIL PROCEDURE UNDER RULE 38, A VIOLATION OF PETITIONER'S SEVENTH AMENDMENT.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

I. DEAN C. BOYD - PETITIONER

II. MERIT HEALTH GROUP HOSPITAL IN JACKSON, MISS. - RESPONDENT

RELATED CASES

- BOYD vs. GADDIS, 3:20-CV-420-TSL-RPM, U.S. DISTRICT COURT SOUTHERN-DISTRICT OF MISSISSIPPI, Judgment entered DEC 6, 2022.

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STATUTES AND RULES:

FIFTH AMENDMENT OF THE CONSTITUTION
 SEVENTH AMENDMENT OF THE CONSTITUTION
 EIGHTH AMENDMENT OF THE CONSTITUTION
 FOURTEENTH AMENDMENT OF THE CONSTITUTION

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue.

OPINIONS BELOW

☐ For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix G+H to the petition and is

- ☐ reported at U.S. COURT OF APPEALS (FIFTH CIRCUIT); or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix D+E to the petition and is

- ☐ reported at U.S. DISTRICT COURT SOUTHERN DISTRICT OF MISSISSIPPI; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

- ☐ reported at Circuit Court of Hinds County, Mississippi; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the STATE COURT OF MISSISSIPPI court appears at Appendix A+E to the petition and is

- ☐ reported at Circuit Court of Hinds County, Mississippi; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MAY 16th 2024, SEE.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was REMOVAL FROM STATE CT. MAY 17, 2023.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: DECEMBER 7, 2022, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1). PETITIONER'S FIFTH AMENDMENT TO THE CONSTITUTION WHICH GUARANTEES DUE PROCESS OF LAW WAS VIOLATED WHEN THE DISTRICT COURT GRANTED DEFENDANT MOTION TO DISMISS WITHOUT AN EVIDENTIARY HEARING AND/OR SPEARS HEARING BECAUSE PETITIONER'S COMPLAINT WAS TIMELY FILED WITHIN THE STATUTE OF LIMITATION. SEE, APPENDIX - B^c.
- 2). PETITIONER'S SEVENTH AMENDMENT OF THE CONSTITUTION WHICH PRESERVE AND GUARANTEE JURY TRIAL; DEMANDS PURSUANT TO: FED. RULE OF CIVIL PROCEDURE UNDER RULE 38(A) WAS DENIED BY THE DISTRICT COURT ON JUNE 26th 2023. SEE, APPENDIX - C^c.
- 3). PETITIONER WERE VIOLATED OF MISSISSIPPI CONSTITUTION ART. 3 & 24(1890) WHICH PROVIDE ALL COURTS SHALL BE OPEN; AND EVERY PERSON FOR AN INJURY DONE HIM IN LANDS; GOODS; PERSON REPUTATIONS SHALL HAVE REMEDY BY DUE COURSE OF LAW, AND JUSTICE SHALL BE ADMINISTERED WITHOUT SALE DENIAL OR DELAY.
- 4). PETITIONER'S EIGHTH AMENDMENT OF THE CONSTITUTION WHICH FORBIDS CRUEL AND UNUSUAL PUNISHMENT, DELIBERATE INDIFFERENCE AS WELL AS A FAILURE TO PROTECT WERE VIOLATED WHEN HE WAS A PATIENT AT MERIT HEALTH GROUP HOSPITAL IN JACKSON, MISSISSIPPI, WHERE PETITIONER SUFFERED INJURIES AND SUSTAINED DAMAGES AS A RESULT OF THE NEGLIGENCE MEDICAL MISPRACTICE AT THIS HOSPITAL (MIGED LEAVING HIM A DOUBLE PARALYSIS WITH ONLY LIMITED USE OF HIS RIGHT ARM. SEE, APPENDIX - B^c).
- 5). PETITIONER'S FOURTEENTH AMENDMENT OF THE CONSTITUTION WHICH GUARANTEES EQUAL PROTECTION OF THE LAW WHEN AN INITIAL ORDER TELEPHONIC CASE MANAGEMENT CONFERENCE SET FOR SEPTEMBER 29, 2023, AT 11:00 AM, BEFORE MAGISTRATE JUDGE F. KEITH BALL WERE CANCEL BY THE DISTRICT COURT, SEE, APPENDIX - B^c COMPLAINT AS WELL AS APPENDIX - C^c CIVIL DOCKET FOR CASE; THIS CANCELLATION PREJUDICE PETITIONER'S CASE, AND VIOLATED HIS FOURTEENTH AMENDMENT.

**STATEMENT OF THE CASE
& RULE 20.4(A) STATEMENT**

1). That the Petitioner is a offender in the custody of the Mississippi Department of Correction ("MDOC") at time of the incident giving rise to the action. He was incarcerated at Central Mississippi Correctional Facility (CMCF) in Pearl, Mississippi. For the first failed neck surgery on the 11th day of September, 2019, the second failed neck surgery was on the 10th day of February, 2020; he was incarcerated at Mississippi State Penitentiary (MSP). Both his spine injuries were at the location of Merit Health Group Hospital (MHGH) 1860 Chadwick Dr. Suite 256, Jackson, Miss. 39204-3904. Performed by (MHGH) Doctor Mienavia Nixon Caddis that has left Petitioner a double paraplegic with only limited usage of his right arm.

2). Petitioner avers on or about the 3rd day of May, 2021, he prepared a Summons Notice for a Mississippi Tort Claim/Action ninety (90) day Notice Requirement upon the Attorney General for the State of Mississippi; he also mailed his Summons Notice for a Mississippi Tort Claim/Action ninety (90) day Notice Requirement pursuant to: Miss. Code Sec 11-46-11(2) upon the Chief Officer Barry Moss at the location of Merit Health Group Hospital (MHGH) 1860 Chadwick Dr. Suite 256, Jackson, MS. 39204-3904. See on Appendix A Summons.

3). Petitioner avers that after the ninety (90) day notice had expired on the 13th day of June, 2022, he mailed a Complaint (Lawsuit) against (MHGH) with the Circuit Court Clerk BARBARA DUNN in Hinds County, Mississippi, at Courthouse 407 PASADOUA STREET, P.O. Box 327, Jackson, Miss. 39205-0327, see on Appendix B Complaint, when Petitioner began prosecuting his lawsuit with correspondence, motions etc... unaware that Hinds County, Mississippi had two (2) Circuit Courts, until February, 2023, when was apprised by the Circuit Court Clerk BARBARA DUNN at Courthouse 407 PASADOUA STREET, P.O. Box 327, Jackson, Mississippi in Hinds County, at this point Petitioner immediately mailed a Summons and Complaint to the Hinds County, Miss. Circuit Court Clerk ZACK WALLACE at the First District, P.O. Box 327, Jackson, Miss. 39205. See on Appendix A Summons by that time the Hinds County, Miss. Circuit Court Clerk BARBARA DUNN at Courthouse 407 PASADOUA ST., P.O. Box 327, Jackson, Miss. had already removed his Complaint (Lawsuit) to the Hinds County Circuit Court Clerk ZACK WALLACE at the First District, P.O. Box 327, Jackson, Mississippi 39205.

4). Petitioner avers that his Complaint (Lawsuit) was removed from one Hinds County, Miss. Circuit Court at Courthouse 407 PASADOUA ST., P.O. Box 327, Jackson, Miss. 39205 Clerk BARBARA DUNN to Hinds County, Miss. First District, P.O. Box 327, Jackson, Miss. 39205 with Circuit Court Clerk ZACK WALLACE and Petitioner's Complaint (Lawsuit) was placed under Cause No. 25C11:23-CV-0141-DHG, see Appendix C Civil Docket for Case.

When Petitioner's Complaint (Lawsuit) Cause Number was Case No. 25C11:21-CV-0024-TTG Document # 5 Filed 09/07/2021 Page 13 of 18 in the Hinds County, Miss. Circuit

COURT WHERE THE CIRCUIT COURT CLERK WAS BARBARA DUNN AT COURTHOUSE 407 PASTAGOLA STREET,
P.O. BOX 327, JACKSON, MISS. 39205-0327, (SEE TOP OF PAGE AT APPENDIX A SUMMONS).

5). PETITIONER AVERS ON THE 17TH DAY OF MAY, 2023, (MTHG) FILED WITH THE COURT A NOTICE OF
REMOVAL FROM CIRCUIT COURT OF HINDS COUNTY, MISS. UNDER CASE NUMBER 25CI1:23-CV-
0141-DHG (FILING RECEIPT NUMBER AMS80C-511817D) (SEE ON APPENDIX 'E' CIVIL DOCKET
FOR CASE), GIVING PETITIONER NO OPPORTUNITY TO PROSECUTE HIS CASE IN THE CIRCUIT COURT WHEN
HIS CASE WERE MOVED TO THE UNITED STATE DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISS., NOR-
THEAST DIVISION (SEE ON APPENDIX 'C' CIVIL DOCKET FOR CASE).

6). FURTHERMORE, PETITIONER AVERS ON THE 12TH DAY OF JUNE, 2023, (MTHG) FILED A MOTION
TO DISMISS AS WELL AS A MEMORANDUM IN SUPPORT OF MOTION TO DISMISS (SEE ON APPENDIX
DIX-C' CIVIL DOCKET FOR CASE), ON THE GROUNDS THAT "AT THE VERY INTEREST FEBRUARY 10, 2020 WAS
THE DATE STATUTE OF LIMITATIONS BEGAN RUNNING AS TO ANY CLAIM AGAINST (MTHG) FOR
MEDICAL NEGLIGENCE PLAINTIFF HAS FAILED TO FILE SUIT WITHIN THE TWO (2) YEAR PERIOD
PRESCRIBED BY § 15-1-36 (MISS. CODE ANN.) FOR PURSUING A MEDICAL NEGLIGENCE CLAIM."

PETITIONER AVERS THAT (MTHG) IS TOTALLY INCORRECT WITH ITS FINDING IN THIS CLAIM.
AS STATED ABOVE ON THE 2ND DAY OF MAY, 2021, HE PREPARED AND MAILED A SUMMONS NOTICE
FOR A MISSISSIPPI TORT CLAIM/ACTION NINETY (90) DAY NOTICE REQUIREMENT UPON THE MISSISSIPPI
ATTORNEY GENERAL AS WELL AS UPON THE DEFENDANT (MTHG) UNDER CAUSE NUMBER 25CI1:21-
CV-00024 - TFG DOCUMENT, SEE ON APPENDIX 'A' SUMMONS, AND THEREAFTER, PETITIONER
MAIL HIS COMPLAINT (LAWSUIT) INTO HINDS COUNTY, MISS. CIRCUIT COURT CLERK BARBARA DUNN AT
COURTHOUSE 407 PASTAGOLA STREET, P.O. BOX 327, JACKSON, MISS. 39205-0327, AND IT WAS FILED
UNDER CASE NUMBER 25CI1:21-CV-00024 - TFG, SEE ON APPENDIX 'B' COMPLAINT WHICH WERE FILED
THE 13TH DAY OF JUNE, 2022, CAUSING PETITIONER'S COMPLAINT (LAWSUIT) TO BE MAILED AND FILED
TIMELY.

7). PETITIONER AVERS THAT HE TIMELY RESPONDED IN OPPOSITION (OBJECTION) TO DEFENDANT
(MTHG) MOTION TO DISMISS AS WELL AS TO DEFENDANT'S (MTHG) MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS ON THE 23RD DAY OF JUNE, 2023, SEE ON APPENDIX 'C' CIVIL DOCKET
FOR CASE. THEREAFTER, PETITIONER MAILED A MOTION FOR LEAVE OF COURT IN A REQUEST
FOR JURY TRIAL DEMAND PURSUANT TO FED RULE CIVIL PROCEDURE UNDER RULE 38(A) THAT WERE
NEVER ANSWERED. PETITIONER MAILED THIS MOTION ON THE 26TH DAY OF JUNE, 2023. A SECOND
MOTION FOR LEAVE OF COURT IN A REQUEST FOR JURY TRIAL DEMAND PURSUANT TO FED RULE
CIVIL PROCEDURE UNDER RULE 38(A) ON THE 26TH DAY OF OCTOBER, 2024, WAS NEVER ANSWERED
ALSO, NOR WAS A INITIAL ORDER TELEPHONIC CASE MANAGEMENT CONFERENCE SET FOR THE
29TH DAY OF SEPTEMBER, WHICH WAS TERMINATED ON THE 9TH DAY OF AUGUST, 2023. (SEE ON
APPENDIX 'C' CIVIL DOCKET FOR CASE).

8). PETITIONER AVERS THAT HE FILED NUMEROUS MOTIONS AND RESPONSES IN OPPOSITION
OBJECTIONS THROUGHOUT THE YEAR OF 2023 AS MIRRORRED IN APPENDIX 'C' CIVIL DOCKET FOR
CASE, AND ON THE 19TH DAY OF JANUARY, 2024, THE DISTRICT COURT GRANTED DE-

Defendant's (NATHAN) motion to dismiss, and dismissed Petitioner's Complaint with prejudice. See on, Appendix-C Civil Docket for case as well as Appendix-G Judgment, 9). Thereafter, Petitioner filed his Notice of Appeal with USDO Prison's Inmate Assistance Program on the 5th day of February, 2024 to be mailed to the district court. See on, Appendix-E Notice of Appeal.

Thereafter, the District Court denied under 28 U.S.C. § 1915(a) Petitioner's motion for leave to proceed in forma pauperis on appeal into the U.S. Court of Appeal Fifth Circuit on the 12th day of February, 2024, see on Notice of Appeal Appendix D - Judgment order, and on the 10th day of April, 2024, the District Court denied Petitioner's motion for new trial, see on, Appendix-E Judgment order. Petitioner appeal the district court denial of his complaint to the United States Court of Appeal (Fifth Circuit) on the 22nd day of February, 2024, see on, Appendix-G Judgment order, but Petitioner's motion for new trial was still pending in the district court, on the 23rd day of April, 2024, Petitioner received a order stating that "they had received the district court's order denying his motion to proceed in forma pauperis, that the Courts of this Circuit previously have dismissed 3 or more of your civil cases as frivolous. There fore, pursuant to the three strikes provision of 28 USC § 1915 you are required to pay the full appellate docketing fee for filing your Notice of Appeal must be paid within 15 days from the date of this letter to the clerk of the district court \$605.00 e.o.g, see Appendix-G Judgment order. Petitioner avers that is an indigent person and there is an impossibility for him to pay the full appellate docketing fee for \$605.00, also see on Appendix-H Judgment order.

10). Petitioner avers that he filed his application into the district court of the district in which he were held, but he was prejudice by the district court refusing to review all his past documents from state court up into the district court that suffice that his complaint were timely filed in the Hindu County, Miss-Circuit Court on the 3rd day of May, 2021. See on, Appendix-A Summons. Petitioner avers that the above statements of this complaint (lawsuit) suffice that there exist exceptional circumstances warrant the exercise of the court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. This writ should be granted.

REASONS FOR GRANTING THE PETITION

1.) PETITIONER AVERS that the reason for granting the petition is because the District Court was in error for granting defendant's (MITCH) motion to dismiss and dismissing with prejudice Petitioner's complaint. (SEE ON, Appendix C - Civil docket for case on the 19th day of January, 2024, when the District Court has entered a decision in conflict with the Petitioner's documents which suffice that his complaint were timely filed in the State Court of Hinds County, Miss. Circuit Court under cause number: 25CI1-21-CV-00024-TTG, SEE ON Appendix B' Complaint, filed on the 13th day of June, 2022. Prior to filing his complaint with the Circuit Court Clerk of Hinds County, Miss., Petitioner prepared a summons that was mailed by (MSP) Prison inmate (62-A) assistance program to Miss. Attorney General as well as to the defendant (MITCH). (SEE ON, Appendix - A' Summons) on the 3rd day of May, 2021. Petitioner filed his June 13th 2022 complaint into the Circuit Court Clerk of Hinds County, Miss., BARBARA DUNN at: Court house 407 Paskagoula Street, P.O. Box 39205-0327, when Petitioner were not aware that Hinds County, Miss., had two (2) Circuit Courts and/or if it even matter if you file a claim/complaint in either/or, so Petitioner immediately began prosecuting his complaint. The compelling reasons that exist for the exercise of this court's discretionary jurisdiction as the highest court is to review the district court findings in error or not. Petitioner avers the district court has served him an injustice when they granted defendant's (MITCH) motion to dismiss, and dismissing his Petitioner's complaint with prejudice, and in granting this writ will be in aid of the court's appellate jurisdiction for granting the petition in this writ, demonstrating the power of decision or choice, and concluding the compelling reasons exist where Petitioner's documents attached in the Appendix suffice that his complaint was timely filed into the Hinds County, Miss., Circuit Court on the 13th day of June, 2022 and finding that the district court were in error for granting defendant's (MITCH) motion to dismiss, and dismissing Petitioner's complaint with prejudice,

2.) PETITIONER AVERS for approximately eight (8) months from June 13th 2022, when he filed his complaint into the Hinds County Circuit Court to the clerk BARBARA DUNN at: Court house 407 Paskagoula Street, P.O. Box 39205-0327 (SEE ON, Appendix B - Complaint) until the 21st day of February, 2023, Petitioner was prosecuting his complaint (lawsuit). Then he was apprise by the Circuit Court Clerk BARBARA DUNN that she would be removing his case under case number: 25CI1-21-CV-00024-TTG to the other Circuit Court Clerk ZACK WALLACE at: FIRST DISTRICT, P.O. BOX 327 JACKSON, Mississippi, 39205. Petitioner's complaint was filed under cause number: 25CI1-23-CV-0441-DHG, and once again Petitioner began prosecuting his complaint (law-

suit in this second Hinds County, Miss. Circuit Court at: First District, P.O. Box 327, Jackson, Miss. 39205, the NATIONAL IMPORTANCE OF HAVING the Supreme Court decide the QUESTION INVOLVE is Plain: Should there be a conflict in filing a timely complaint in the Hinds County, Miss., Circuit Court or Courts when Hinds County, Miss. has two (2) Circuit Courts, Petitioner's time concerning the statute of limitation was tolled when he filed his complaint (lawsuit) with the Hinds County, Miss. Circuit Court Clerk BARABRA DUNN at: Courthouse 407 Paskagoula St., P.O. Box 327, Jackson, Miss. 39205-0327, and thereafter, about eight (8) months that Circuit Court BARABRA DUNN decided Petitioner's case under 25 CI 1:21-CV-00024-TTG should be move to Hinds County, Miss. First District, P.O. Box 327, Jackson, Miss. 39205, should not have unfilled Petitioner's complaint (lawsuit), and the District Court's decision was erroneous.

3). Petitioner avers that the District Court erred by granting Defendant (MHH) motion to dismiss, and dismissing Petitioner's complaint with prejudice, alleging "Petitioner did not sue Defendant (MHH) within the statutes of limitations, when the suit (lawsuit) had been tolled pending in the Circuit Court of Hinds County, Miss. at: Courthouse 407 Paskagoula St., P.O. Box 327, Jackson, Miss. 39205-0327 Circuit Court Clerk BARABRA DUNN, when Petitioner filed the complaint therein on the 13th day of June 2022. See, Appendix 'B' complaint, Petitioner's lawsuit was timely filed in the Circuit Court of Hinds County, Mississippi, Courthouse 407 Paskagoula St., P.O. Box 327, Jackson, Mississippi, 39205-0327, with the clerk BARABRA DUNN and this case should be reversed and this petition for a writ of habeas corpus should be granted in the interest of justice, see, Fallen vs. United States, 378 U.S. 139, 84 S. Ct. 1639, 12 L. ed 2d 760 (1964) where excusable neglect may be shown where a timely mailed notice was late because of unanticipated and uncontrolled delays in the mail, also see, Fair vs. State (Miss. 1990) 571 So. 2d 965 where defendant desiring out of time appeal must, at the very best, show that failure to timely perfect appeal was through no fault of his own, also see, Minnified vs. State (Miss. 1991) 585 So. 2d 720 where defendant was entitled to out of time appeal where defendant attempted, as best he could, given his incarceration, to communicate his desire to appeal within 30 days appeal period, Petitioner's complaint (suit) was timely. See, Appendix 'B' - complaint.

4). Petitioner avers that the defendant (MHH) should be held liable for Petitioner's suffering injuries and sustaining damages as a result of the negligent medical malpractice treatment that he received at (MHH) in Jackson, Miss., when he were injured by two (2) failed neck surgeries performed by medical doctor MENAHRVAR NIXON Gaddis (Gaddis) which Petitioner allowed and/or gave permission to perform two (2)

NECK SURGERIES ON THE 11th DAY OF SEPTEMBER 2019, WAS THE FIRST NECK SURGERY AND THE SECOND NECK SURGERY WAS ONLY FIVE (5) MONTHS APART ON THE 10th DAY OF FEBRUARY, 2020, IN AN ATTEMPT TO CORRECT THE FIRST FAILED SURGERY WHICH HAS LEFT PETITIONER QUADRIPELIC WITH LIMITED USAGE OF HIS RIGHT ARM, AND THE RIGHT SIDE OF HIS HEAD SWOLLEN THE SIZE OF A BASEBALL WITH A ONE (1) INCH LACERATION IN THE CENTER OF THE KNOT, WHEN IT HAS CAUSED PLAINTIFF A LOSS OF SOME VISION, HEARING, RIGHT SIDE OF FACE NUMB, DIZZINESS, VOMITING, PERIODS OF BLINDNESS, SEE, WILSON VS. SEITER, 501 U.S. 294, 297 U.S. CT. 232 L. ED 2d 271 (1991) "A 410 PRISON INMATE CAN DEMONSTRATE AN EIGHTH AMENDMENT VIOLATION BY SHOWING THAT A PRISON OFFICIALS REFUSE TO TREAT HIM, IGNORED HIS COMPLAINTS, INTENTIONALLY TREATED HIM INCORRECTLY EVINCING A WANTON DISREGARD FOR ANY SERIOUS MEDICAL NEEDS, ID AT 464 QUOTING FERRELL, 511 U.S. 825, 114 S. CT. 1976, 12 S. L. ED 2d 511 (1994) THE SUPREME COURT

PLAINTIFF/PETITIONER AVERS THAT (MCH) HELD AN OVERSEER DUTY FOR EACH AND EVERY PATIENT EVEN PETITIONER'S HEALTH AND SAFETY, SEE, SEA LOCK VS. COLORADO, 218 F.3d 1205 (2002) THE EIGHTH AMENDMENT FORBIDS UNNECESSARY AND WANTON INFLECTION OF PAIN. ALSO SEE, FERRELL VS. ROENMAN, 511 U.S. 825, 114 S. CT. 1976, 12 S. L. ED 2d 511 (1994) THE SUPREME COURT NOTED THAT IN ITS PROHIBITION OF CRUEL AND UNUSUAL PUNISHMENT THE EIGHTH AMENDMENT PLACE RESTRAINTS ON PRISON OFFICIALS, WHO MAY NOT FOR EXAMPLE USE OF EXCESSIVE PHYSICAL FORCE AGAINST PRISONERS, THE AMENDMENT ALSO IMPOSE DUTIES ON THESE OFFICIALS MUST TAKE REASONABLE MEASURES TO GUARANTEE THE SAFETY OF THE INMATES ALSO SEE, HARDER VS. SHOWER, 174 3d 716 (1999) THE CONSTITUTION DOES NOT MANDATE COMFORTABLE PRISON... BUT NEITHER DOES IT PERMIT INHUMAN ONES, AND IT IS NOW SETTLE THAT THE TREATMENT A PRISONER RECEIVES IN PRISON AND THE CONDITIONS UNDER WHICH HE IS CONFINED ARE SUBJECT TO SCRUTINY UNDER THE EIGHTH AMENDMENT.

5) PLAINTIFF/PETITIONER AVERS THE SUBSTANDARD CARE RENDERED BY (MCH) IN JACKSON, MISSISSIPPI, BY (GADDIS) AND ITS EMPLOYEES PROXIMATELY CAUSE OR WAS A PROXIMATE CONTRIBUTING CAUSE FOR PLAINTIFF INJURIES TO HIS SPINE THAT HAS RESULTED IN PETITIONER A QUADRIPELIC WITH LIMITED USAGE OF HIS RIGHT ARM, CAUSED A ONE (1) INCH LACERATION ON THE RIGHT SIDE OF HIS HEAD (TEMPLE AREA) CAUSE HIM TO ENDURE BLURRED VISION, A LOSS OF HEARING, RIGHT SIDE OF FACE NUMB, A QUADRIPELIC, BECAUSE (GADDIS) AND (MCH) EMPLOYEES DID NOT ACT IN GOOD FAITH TOWARD PETITIONER SERIOUS MEDICAL NEEDS, AND ACTED WITH INTENT UNETHICAL CONDUCT THAT CAUSED THE PETITIONER HARM, CAUSED HIM SERIOUS BODY HARM TO PLAINTIFF/PETITIONER, AND (MCH), (GADDIS) AND (MCH) EMPLOYEES SHOULD BE HELD LIABLE UNDER EXISTING STATE AND FEDERAL LAW, WHICH CAUSED PETITIONER TO ENDURE "CRUEL AND UNUSUAL PUNISHMENT, SEE, WILSON VS. MILLIAN, 503 U.S. 149 (1992) CITING ESTELLE, 429 U.S. 97, 97 S. CT. 270 (1976) PROSCRIBING TORTURE AND BARBAROUS PUNISHMENT WAS THE PRIMARY CONCERN OF THE PRIMARY CONCERN OF THE DRAFTER OF THE EIGHTH AMENDMENT, WILKERSON VS. UTAH 99 U.S. 130, 136 25 L. ED 345 (1879) IT IS SAFE TO AFFIRM THAT PUNISHMENT OF TORTURE... AND ALL OTHERS IN THE

the SAMELINE OF UNNECESSARY CRUEL AND ARE FORBIDDEN BY THE EIGHTH AMENDMENT CONSTITUTIONAL RIGHT AGAINST "DELIBERATE INDIFFERENCE AND 'UNUSUAL PUNISHMENT'".

67. PETITIONER AVERS THAT IF THERE HAD BEEN AN EVIDENTIARY HEARING HELD IN THIS LAWSUIT COMPLAINT THERE WOULD BE A STRONG PROBABILITY THAT THERE WOULD HAVE BEEN A TOTALLY DIFFERENT OUTCOME IN THIS CASE, BECAUSE A GENUINE DISPUTE OF MATERIAL RECORDS, DOCUMENTS ETC., THAT A REASONABLE JURY COULD RETURN A VERDICT. See: KAYAL VS. CCC & R TRESAR HOLDINGS, L.L. 736 F.3d 396, 400 (5th Cir. 2013) QUOTING ANDERSON VS. LIBERTY GLASS VS. INC. 447 U.S. 242, 248 (1986). PETITIONER'S COMPLAINT (LAWSUIT) CONTAINS SUFFICIENT FACTUAL MATTERS 556, ASHCRAFT VS. LOBAL, 556 U.S. AT 628 QUOTING BELL ATLANTIC CORPS. VS. TWOMBLY 550 U.S. 544 AT 702 PETITIONER'S PETITION FOR A WRIT OF HABEAS CORPUS SHOULD BE GRANTED.

LASTLY, PETITIONER'S APPEAL TO THE UNITED STATES COURT OF APPEAL (FIFTH CIRCUIT) FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI USDC NO: 3:23-CV-313 WERE DISMISSED AS OF MAY 16, 2024, FOR WANT OF PROSECUTION, BECAUSE PETITIONER IS INDIGENT AND WERE NOT ABLE TO TIMELY PAY THE FILING FEE, SEE, APPENDIX H, PETITIONER'S APPEAL FOR A WRIT OF HABEAS CORPUS SHOULD BE GRANTED.

CONCLUSION

The petition for a writ of habeas corpus should be granted.

Respectfully submitted,

DEAN C. ROY

Date: MAY 2024