

25-5918

No. _____

ORIGINAL

SUPREME COURT OF THE UNITED STATES

TOMMY PAGE

PETITIONER

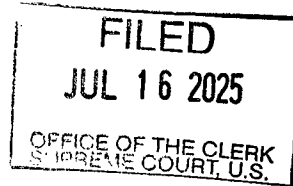
v.

STATE OF MISSISSIPPI

RESPONDENT

On Petition for a Writ of Certiorari to
the Mississippi Supreme Court

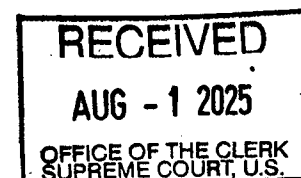
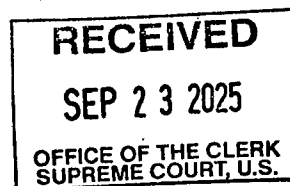
PETITION FOR A WRIT OF CERTIORARI



BY:

Tommy Page

Tommy Page
MCCF, MDOC# 31385
P. O. Box 5188
Holly Springs, MS 38634



I.

Question Presented

1) Whether the Mississippi habitual offender amendment to Page's indictment was illegal and void since the motion to amend Page's indictment was not filed until after the date in which the court had firmly set as the deadline for motions and where such amendment which effected Page's sentence, was never approved by the grand jury which returned the indictment.. Thus, the sentence is excessive and illegal since it exceeds the amount Page could be sentenced to without the habitual amendment; and
2) Whether Tommy Page has been improperly and illegally found to have committed a prior crime of violence since on the date Page was sentenced, and found to be in such violation, Mississippi had no statute identifying crimes of violence and did not create and establish such law until 2014. See Mississippi HB 585 (2014); Miss. Code Ann. Sec. 97-3-2 (2014).

II.

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IV.

Petition for Writ Of Certiorari

On January 22, 2001, Tommy Page was indicted by an Oktibbeha County Grand Jury for one count of aggravated assault in violation of M.C.A. § 97-3-7. 1 Ex. 1. On January 25, 2001, the trial court filed it's pre-trial scheduling order setting deadline for filing of all motions at March 29, 2001. Ex. 2. On July 25, 2001, the prosecution moved to amend the indictment to charge Tommy Page as a habitual offender. Ex. 3. The motion was granted over objection (T:121-22) after Page's trial and he was sentenced as a habitual offender to life imprisonment without the possibility

of parole. Ex. 4. The indictment contained another count for burglary which was retired to the file. The Mississippi Court of Appeals affirmed Tommy's conviction and sentence on April 15, 2003. *Page v. State*, 843 So.2d 96 (Miss.Ct.App. 2003). Tommy Page has served approximately 24 years in prison. Page's Post Conviction Motion on the issues presented in this petition was denied by the Mississippi Supreme Court on May 5, 2025.

THIS PETITION IS TIMELY. See Appendix "1", Attached.

V.

Opinions Below

The decision by the Mississippi Supreme Court.

ORDER

Before the panel of Randolph, C.J., Griffis and Sullivan, JJ., are Tommie Lee Page's "Appeal from the Judgment of Habitual Status of the Petitioner by the Oktibbeha County Circuit Court Cause No. 2001-0085-CR and Application for Leave to File Petition for Post Conviction Relief and for Leave to Proceed in the Trial Court, or in the Alternative, Motion to Vacate Finding of Crime of Violence Entered Prior to Enactment of MCA 97-3-2" (hereinafter application) and his "Motion for Order Allowing Present Motion to be Filed as Separate Action" (hereinafter motion).

The application is in the nature of a post-conviction application and will be treated as such. See *Knox v. State*, 75 So. 3d 1030, 1035 (Miss. 2011) (citing *Edmond v. Miss. Dep't of Corrections*, 783 So. 2d 675, 677 (Miss.2001)).

The Court of Appeals affirmed Page's aggravated-assault conviction and sentence as a habitual offender to life without parole. *Page v. State*, 843 So. 2d 96, 97 (Miss. Ct. App. 2003). The mandate issued on May 6, 2003. Since then, he has filed nine post-conviction applications. See Order, *Page v. State*, No. 2013-M-01645, at *1 (Miss. July 21, 2022). The Court has "restricted [him] from filing further applications for post-conviction collateral relief (or pleadings in that nature) that are related to []his [aggravated-assault] conviction and sentence in forma pauperis." En Banc Order, *Page v. State*, No. 2013-M-01645, at *4 (Miss. Mar. 14, 2019). He paid the docket fee for this

filing.

In the application, Page asserts two claims. First, he claims that his sentence is illegal because the prosecution moved to amend the indictment to charge him as a habitual offender after the motion deadline had passed. Second, he claims that, in sentencing him as a habitual offender, the trial court unlawfully found that his prior armed robbery was a crime of violence.

After due consideration, we find that the claims are time barred, waived, and successive. See Miss. Code Ann. §§ 99-39-5(2), -21 (1), -27(9) (Rev. 2020). No statutory exception is met. See *Howell v. State*, 358 So. 3d 613, 615-16 (Miss. 2023). And even if an exception were met, the claims have no arguable basis. See *Fluker v. State*, 170 So. 3d 471, 475 (Miss. 2015) (quoting *Means v. State*, 43 So. 3d 438, 442 (Miss. 2010)).

In the motion, Page asks that his application be assigned a new cause number. After due consideration, we find that the motion should be denied.

IT IS THEREFORE ORDERED that the application and motion are denied.

IT IS FURTHER ORDERED that the informia pauperis restriction remains in effect.

En Banc Order, *Page v. State*, No. 2013-M-01645,

SO ORDERED, this the 5th day of May, 2025. SEE APPENDIX 1 ATTACHED

VI

Jurisdiction

Mr. Page's Post Conviction Motion was denied in the Mississippi Supreme Court on May 5, 2025. Mr. Page invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Mississippi Supreme Court's judgment.

VII.

Constitutional Provisions Involved

United States Constitution,
Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution,
Amendment XIV:

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

VIII.

Statement of the Case

The facts of Page's aggravated assault conviction case were drawn strictly and exclusively from the testimony of prosecution witnesses. The defense rested without putting on any evidence.

Karen Hendrix, the victim, testified that she was lured into the back room of a coin-operated laundry by Page on the pretext that he could show her how to operate the dryers without putting in money. According to Hendrix, as she stood in the door, Page pulled her into the room and approached her with a drawn knife. They struggled and Hendrix grabbed the knife in an attempt to defend herself. Hendrix cried out for help, but before anyone else arrived, Page fled the building, apparently using a rear door. Hendrix suffered a cut to her hand that she said was obtained as she attempted to defend herself from Page's attack. Though Hendrix was not personally acquainted with her assailant, she was able to identify him for investigating officers from a photographic lineup. Several other witnesses reported that Hendrix, in an agitated state immediately after the incident, repeatedly made a claim to the effect that "[h]e tried to stab me." Witnesses also reported seeing Page in the laundry facility just moments before the incident but no one saw the actual attack or witnessed Page fleeing the

scene. The State offered into evidence a police photograph showing the nature of the injury to Hendrix's hand.

The defense moved for a directed verdict of acquittal at the close of the State's proof. The motion was denied. At that point, the defense chose to rest without calling any witnesses, thereby procedurally preserving its challenge to the legal sufficiency of the evidence. The jury returned a verdict of guilty. After Page's trial, he was sentenced as a habitual offender to life imprisonment without the possibility of parole.

Page filed his post conviction motion in the Mississippi Supreme Court upon the basis of a constitutional and additional claim which is separate and distinct from the facts of his case and which deals with due process of law.

IX.

REASONS FOR GRANTING THE WRIT

MISSISSIPPI HAS FAILED TO ADHERE TO IT'S OWN STANDARDS OF LAW

A robbery, committed before the effective date of the statute

classifying such crime as a crime of violence was not per se a prior crime of violence to justify a sentence as a habitual criminal under §99-19-83, Miss. Code of 1972 when the principal crime occurred prior to the effective date of the statute as well, when during the principal crime presentation prosecution presented no evidence that the prior crime actually involved violence.

The plain language of Mississippi Code Ann. § 99-39-5(1)(d) (Rev. 2015) provides standing to "any person sentenced by a court of record of the State of Mississippi, including ... if the person claims that the sentence exceeds the maximum authorized by law.

Post conviction relief is available to "any person sentenced by a court of record of the State of Mississippi." Miss. Code Ann. § 99-39-5(1)(d) (Rev. 2015); see also *Brown v. State*, 83 So.3d 459 462-64 (Miss. Ct. App. 2012).

Miss. Code Ann. Sec. 99-39-5 (2)(a)(i) provides the following:

(2) A motion for relief under this article shall be made within three (3) years after the time in which the petitioner's direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three (3) years after entry of the judgment of conviction. Excepted from this three-year statute of limitations are those cases in which the petitioner can demonstrate either:

(a)

(i) That there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence or that he has evidence, not reasonably

discoverable at the time of trial, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence; or

Petitioner would aver that his motion challenged FUNDAMENTAL CONSTITUTIONAL issues of legality of the sentence and parole eligibility status and is entitled to the exception set out in Miss. Code Ann. Sec. 99-39-5 (1), notwithstanding the decision rendered in *Howell v. State*, 358 So.3d 613 (Miss 2024).

On January 22, 2001, Tommy Page was indicted by an Oktibbeha County Grand Jury for one count of aggravated assault in violation of M.C.A. § 97-3-7. 1 Ex. 1. On January 25, 2001, the Mississippi trial court filed it's pre-trial scheduling order setting deadline for filing of all motions at March 29, 2001. Ex. 2. On July 25, 2001, the prosecution moved to amend the indictment to charge Tommy Page as a habitual offender. Ex. 3. The motion was granted over objection. (T:121-22) After Page's trial, he was sentenced as a habitual offender to life imprisonment without the possibility of parole. Ex. 4. The indictment contained another count for burglary which was retired to the file. The Mississippi Court of Appeals affirmed Tommy's conviction and sentence on April 15, 2003. *Page v. State*, 843 So.2d 96 (Miss.Ct.App. 2003). Tommy Page has served approximately 24 years in prison.

Page has been a model prisoner for 24 years and never had a Rule Violation Report ("RVR") and has received multiple certificates and other accomplishments. Page has broad support from people inside and outside the Mississippi MDOC. At the time when the crime was committed and when Page was convicted, Mississippi law allowed an exception to the three-year limitation which existed when fundamental constitutional rights are involved. *Rowland v. State*, 42 So.3d 507 (Miss. 2010). Fundamental rights include "(2) the right to be free from an illegal sentence; (3) the right to due process at sentencing." *Salter v. State*, 184 So.3d 944, 950 (Miss.Ct.App. 2015). Mississippi law provides that an illegal sentence is one that does not conform to the applicable penalty statute. See e.g., *Kennedy v. State*, 626 So.2d 103 (Miss. 1993).

The Mississippi state trial court judge could not amend Page's indictment to charge as habitual offender without action by grand jury

(a) The Sixth Amendment promises that "[i]n all criminal prosecutions the accused" has "the right to a speedy and public trial, by an impartial jury." Inherent in that guarantee is an assurance that any guilty verdict will issue only from a unanimous jury. *Ramos v. Louisiana*, 590 U. S. 83, 93. The Fifth Amendment further promises that the government may not deprive individuals of their liberty without "due

process of law.” It safeguards for criminal defendants well-established common-law protections, including the “ancient rule” that the government must prove to a jury every one of its charges beyond a reasonable doubt. Together, these Amendments place the jury at the heart of our criminal justice system and ensure a judge’s power to punish is derived wholly from, and remains always controlled by, the jury and its verdict. *Blakely v. Washington*, 542 U. S. 296, 306.

This United States Supreme Court has repeatedly cautioned that trial and sentencing practices must remain within the guardrails provided by these two Amendments. Thus in *Apprendi v. New Jersey*, 530 U. S. 466, the Court held that a novel “sentencing enhancement” was unconstitutional because it violated the rule that only a jury may find “facts that increase the prescribed range of penalties to which a criminal defendant is exposed.” *Id.*, at 490. This principle applies when a judge seeks to issue a sentence that exceeds the maximum penalty authorized by a jury’s findings as well as when a judge seeks to increase a defendant’s minimum punishment. See, e.g., *Alleyne v. United States*, 570 U. S. 99, 111–113. Pp. 5–10.

(b). As the law cited herein recognizes, virtually “any fact” that “increase[s] the prescribed range of penalties to which a criminal defendant is exposed” must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea). *Apprendi*, 530 U. S., at 490. Here, the sentencing court made a factual finding that Mr. Page’s habitual sentencing eligibility by authorizing an amendment of Pagres’ indictment to charge him as a habitual offender, a status that increased the sentence, without the approval of the grand jury. Such action by the Mississippi trial court had the effect of increasing both the maximum and minimum sentence Mr. Page faced. Thus, Mr. Page was entitled to have a jury resolve the request to amend his indictment unanimously and beyond a reasonable doubt. This Court can decide such issue. Pp.10–12.

(c) It has been argued that *Almendarez Torres v. United States*, 523 U. S. 224, permits a judge to find certain facts related to a defendant’s past offenses, including whether he committed them on different occasions. That decision is an outlier. And the *Apprendi* Court has described it as “at best an exceptional departure” from historic practice. *Apprendi*, 530 U. S., at 487. It persists as a “narrow exception” permitting judges to find only “the fact of a prior conviction.” *Alleyne*, 570 U. S., at 111, n. 1. Pp. 13–15.

It does not permit a judge to amend the indictment to bring a habitual status which has not been alleged by the grand jury.

ARGUMENT

Exemptions from Procedural Bars

1.

As a PCR Movant, Tommy Page bears the burden to demonstrate his claims are not procedurally barred because an exception applies. *McComb v. State*, 135 So.3d 928, 931-32 (Miss. Ct. App. 2014). Movant Tommy Page asserts the statutory, "fundamental and constitutional rights exception" to overcome the three-year statutory time bar and successive writ bar. Miss. Code Ann. § 99-39-5() and § 99-39-23(6), respectively. *Means v. State*, 43 So.3d 438, 441 (Miss. 2010); *Howell v. State*, 358 So.3d 613 (Miss. 2023).

Page would argue and present to this Court that:

1) The habitual amendment to his indictment is illegal and void since the motion to amend Page's indictment was not filed until after the date in which the court had firmly set as the deadline for motions. Thus, the sentence is excessive and illegal since it exceeds the amount Page could be sentenced to without the habitual amendment; and

2) Tommy Page has been improperly and illegally found to have committed a prior crime of violence since on the date Page was sentenced, and found to be in such violation, Mississippi had no statute identifying crimes of violence and did not create and establish such law until 2014. See HB 585 (2014); Miss. Code Ann. Sec. 97-3-2 (2014).

Applying the Bar to Page's claims were illegal

Page should not be barred from bringing this fundamental claim. See: Smith v. State, 477 So.2d 191, 195 (Miss.1985) (providing that an exception to procedural bars exists for assertions of errors affecting certain constitutional rights). (Claim of illegal sentencenot time-barred or barred by res judicata); Lockett v. State, 582 So.2d 428,430 (Miss.1991) (denial of due process in sentencing is an exception to time bar); Grubb v. State, 584 So.2d 786,789 (Miss.1991) (illegal sentence exception to procedural bars); Smith, 477 So.2d at 95 (a deprivation of due process in sentencing "too significant a deprivation of liberty to be subjected to a procedural bar").

No person can be deprived of his liberty except by due process of law. Section 14, Article 3, Mississippi Constitution. This prohibition is intended to guarantee the protection of fundamental and constitutional

rights. Where fundamental and constitutional rights are ignored, due process does not exist, and a fair trial in contemplation of the law cannot be had.

Brooks v. State, 46 So.2d 94,97 (Miss.1950).

1.

The habitual amendment to his indictment is illegal and void since the motion to amend Page's indictment was not filed until after the date in which the court had firmly set as the deadline for motions. Thus, the sentence is excessive and illegal since it exceeds the amount Page could be sentenced to without the habitual amendment.

The trial court rendered an Order on January 25, 2001, setting the motion deadline date for filing motions at March 29, 2001. See Ex. 2. The state did not file the motion to amend the indictment until July 25, 2001, which was far past the deadline date.

In Quick v. State, 569 So.2d 1197 (Miss. 1990), the defendant was indicted by the grand jury for the offense of aggravated assault pursuant to Miss.Code Ann. 97-3-7(2)(b). The original indictment charged that Quick "did willfully, unlawfully, feloniously, purposely and knowingly commit an aggravated assault upon one Gene Baker, a human being, with a deadly weapon." However, on the morning of trial the State moved to amend the indictment to include language from subsection (a) of Miss.Code Ann. § 97-3-7(2) which allowed the jury to convict if they found Quick "recklessly

caus[ed] serious bodily injury under circumstances manifesting extreme indifference to the value of human life.” Id. at 1199. This Court reversed the conviction, and concluded that the amendment “proposed a change of substance and not of form.” Id. at 1200. The case sub judice (Page's case) may be distinguished from Quick because the amendment in the present case does not alter the substance of the offense. As the State will likely point out, the statutes dealing with the sentencing of habitual criminals, Mississippi Code Annotated §§ 99-19-81 (Rev.1994) and 99-19-83 (Rev.1994), “are not criminal offenses and only affect sentencing.” Osborne v. State, 404 So.2d 545, 548 (Miss.1981). The amendment to the indictment charging Page as a habitual offender did not affect the substance of the crime of which he was charged, but only the sentencing. This Supreme Court held in Griffin v. State, 540 So.2d 17, 21 (Miss.1989) (quoting Reed v. State, 506 So.2d 277, 279 (Miss.1987)) that “[t]he test of whether an accused is prejudiced by the amendment of an indictment or information has been said to be whether or not a defense under the indictment or information as it originally stood would be equally available after the amendment is made and whether or not any evidence [the] accused might have would be equally applicable to the indictment or information in

the one form as in the other; if the answer is in the affirmative, the amendment is one of form and not of substance.” Clearly, the imposition of habitual offender status in this case was prejudicial to Page because the State had no jurisdiction to pursue it after March 29, 2001, had come and passed. The amendment changed Page's sentence from 20 years, with the possibility of parole, to life as a habitual to die in prison. A significant change.

"While no State may "deprive any person of life, liberty, or property, without due process of law, 'it is well settled that only a limited range of interests fall within this provision. Liberty interests protected by the Fourteenth Amendment may arise from two sources, the Due Process Clause and the laws of the States." *Hewitt v. Helms*, 459 U.S. 460 (1983). State law liberty interests are protected by the Due Process Clause. *Phillips v. Turner*, No. 4:20-CRP (N.D. Miss. Mar. 11, 2021). The procedural protections of the due process clause is triggered only where there has been a deprivation of life, liberty, or property. *Toney*, 779 F. 3d 330, 336 (5th Cir. 2015). In the instant case Page has a liberty interest in not being prosecuted by the State after the deadline date to do so had come and passed. It is a constitutionally protected procedural practice and right.

2.

Tommy Page has been improperly and illegally found to have

committed a prior crime of violence since on the date Page was sentenced, and found to be in such violation, Mississippi had no statute identifying crimes of violence and did not create and establish such law until 2014. See HB 585 (2014); Miss. Code Ann. Sec. 97-3-2 (2014).

In amending the indictment and charging Page as a habitual offender under Miss. Code Ann, Sec. 99-19-83 the State alleged that Page had been previously convicted of at least one crime of violence.

Page was convicted of aggravated assault and sentenced to life in prison without possibility of parole or reduction of sentence under § 99-19-83, Miss. Code of 1972. In the motion to amend indictment the state never charged that either of the crimes mentioned was a crime of violence but the only crime which could have been relied on by the prosecution was an armed robbery which Page pled guilty to and was convicted on January 31, 1978. The effective date of §97-3-2, Miss. Code of 1972, which classifies armed robbery as a crime of violence, was July 1, 2014. Armed robbery committed before then had no state legislative classification statute and were not per se crimes of violence. *Burleson v. State*, 166 So. 3d 499 (Miss. 2015); *Brown v. State*, 102 So. 3d 1087, 1092 (Miss. 2012). In the case before the Court, the state presented no evidence that the armed robbery actually involved violence. The state didn't even allege it was a crime of violence in their motion. This is a critical element of proof under

99-19-83.

Page's sentence should be vacated and he should be resentenced other than as a habitual offender under §99-19-83, Miss. Code of 1972. Page's plea of guilty and sentence occurred in 1978, long before the creation of Miss. Code Ann. Section 97-3-2, which was enacted in 2014. Such new law, if applied to Page to subject Page to the provisions of Miss. Code Ann. Section 99-19-83, would constitute an ex post facto violation, in accordance with the law and statutes set forth above in this Post Conviction Collateral Relief Motion.

Mississippi Code Section 99-19-1 clearly instructs which iteration of the law applies where Mississippi had no statutory classification provisions to identify armed robbery as a crime of violence either on date Page was convicted of such prior offense or on date Page was convicted of being a violent habitual offender in violation of Miss. Code Ann. Sec. 99-19-83.

Miss. Code Ann. Section 99-19-1 read at the time Page was convicted and sentenced on both occasions, armed robbery and aggravated assault:

No statutory change of any law affecting a crime or its punishment or the collection of a penalty shall affect or defeat the prosecution of any crime committed prior to its enactment, or the collection of any penalty, whether such prosecution be instituted before or after such enactment; and all laws defining a crime or prescribing its punishment, or for the imposition of penalties, shall be continued in operation for the purpose of

providing punishment for crimes committed under them, and for collection of such penalties, notwithstanding amendatory or repealing statutes, unless otherwise specially provided in such statutes.

Miss. Code Ann. § 99-19-1 (Rev. 2015) (emphasis added).

Applying Section 99-19-1 to the unavailability of the iterations of Section 97-3-2, this Court should hold that the unavailability of a violent crime classification statute in Mississippi at the time when Page was convicted of the armed robbery should prevent the State from use of such prior crime to establish the prior crime of violence needed to qualify Page's enhanced status and take by legal force Page's freedom for the remainder of the time he is above ground on this planet earth. Miss. Code Ann. Sec. 97-3-2 should not be applied for classification of crimes prior to its enactment. The state's motion to amend the indictment never identify the armed robbery as being a crime of violence because it had no statute at that time to classify such crime as being a crime of violence.

X.

CONCLUSION

For the foregoing reasons, Mr. Page respectfully requests that this Court issue a writ of certiorari to review the judgment of the Mississippi Supreme Court.

Tommy Page
Tommy Page, Affiant

Sworn and subscribed to, before me, this 15 day of July, 2025.

Kasie E. Fiore
Notary Public



STATE OF MISSISSIPPI)
) SS:
COUNTY OF MARSHALL)

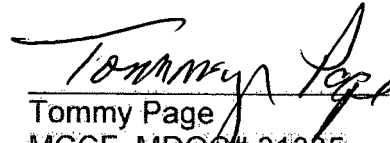
AFFIDAVIT OF POVERTY IN SUPPORT OF INDIGENCY

PERSONALLY APPEARED BEFORE ME, the undersigned authority, in and for the jurisdiction aforesaid affiant, Tommy Page, who, after being first duly sworn on this oath, does depose and sayeth: "I, Tommy Page, do solemnly swear that I am a citizen of the State of Mississippi and United States, and because of my poverty I am not able to

P. O. Box 220
Jackson, MS 39205

This, the 15 day of July, 2025

BY:


Tommy Page
MCCF, MDOC# 31385
P. O. Box 5188
Holly Springs, MS 38634