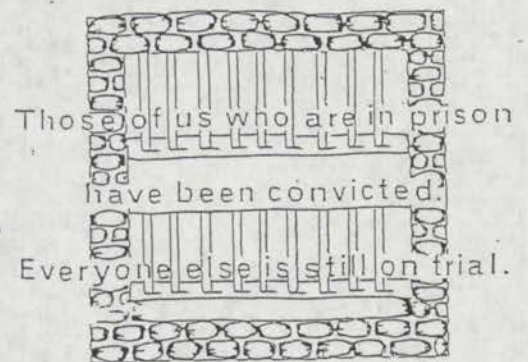


"THE MISSOURI LEGISLATORS & MISSOURI COURT SYSTEM ARE "BUSTED" FOR THEIR OPEN VIOLATIONS OF PRISONERS RIGHTS DURING THEIR FIRST APPEALS AS OF RIGHT, THAT'S GUARANTEED BY THE SIXTH AND THE FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION!"

By: SHEIKH FREDRICO LOWE BEY, G.S.



In the State of Missouri prior to January 1, 1996, prisoners were forced to file with the court convicted in, their Post-Conviction 29.15 claims of "Ineffective Assistance of Trial Counsel," "Prosecutorial Misconduct," etc. Prisoners are according to the United States Supreme Court Laws, are entitled to counsel during the First and only Appeal of right as guaranteed. Herein, Missouri Legislators took prisoners rights herewith and consolidated them with that right guaranteed during the First and only Appeal as of right. Once this is conducted the Missouri Court of Appeals then reviews those claims presented in the Post-Conviction 29.15 and those that are reviewed during the "Direct Appeal" process and the decision is thereby rendered after review of those issues.

Claims as raised by many prisoners as well myself, asserting "my rights" to the 'effective assistance of counsel and due process and equal protection of law' were violated, by appellate counsel's abandonment of my claims during the direct appeal process, which none of my Post-Conviction 29.15 issues had ever been reviewed during this First and Only appeal procedures. In Missouri prior to January 1, 1996, that a criminal defendant is not entitled to the full protection of the United States Constitution. Also, that effective assistance of counsel and due process and equal protection of law is not guaranteed on this first and only appeal guaranteed Missouri prisoners.

These challenges were presented to the Missouri Supreme Court and Eighth Circuit Court of Appeals, *Lowe Bey v.*

Groose, 28 F.3d 816 (8th Cir. 1994). Herein, the Eighth Circuit's decision had found that, Missouri had developed a "complicated, hybrid scheme" which consolidates the direct appeal from a criminal conviction and civil appeal from the denial of Post-Conviction relief as one appeal. Nevertheless, due to the State Legislator's creating and classified Missouri Rule of Criminal Procedure 29.15 as an alleged "Post-Conviction" collateral proceeding, that's completely opposite of the United States Supreme Court's determination, it held that one is not entitled to the protection of the Constitution, even though intertwined with counsel on the first and only appeal guaranteed the defendant.

Moreover, the Eighth Circuit Court of Appeals ruled, even if **Lowe Bey's** direct appeal counsel had handled an hybrid appeal, **Lowe Bey** would have only been entitled to the "effective assistance of counsel" on that portion of the hybrid appeal that was devoted to direct appeal issues because he has no right to the effective assistance of counsel on that portion of the hybrid appeal devoted to the appeal of his Rule 29.15 claims and cited **Coleman v. Thompson**, 111 S.Ct. 2546, 2566 (1991). **Coleman**, never applied to my case and said application of such conflicts with prior Supreme Court precedents, as well the Supremacy Clause of the United States Constitution, Artical VI, clause 2. The Supreme Court in **Coleman**, premised its decision on the fact, that **Coleman's** conviction had long since became "final" upon exhaustion of the appeallate process, and cited **Pennsylvania v. Finley**, 107 S.Ct. 1990 (1987). Based upon the "specific .," the **Coleman** Court found that no Sixth Amendment right to counsel attached "when mounting collateral attacks upon his conviction." Clearly, under these [s]pecific facts, the Court based its sole decision on the fact that **Cole** had been provided his "first appeal of right." **Lowe Bey's** first and only appeal was consolidated while exhausting his 29.15, that unquestionably reveal, that his appellate process had never been exhausted.

A review of prior Supreme Court rules

and precedents unquestionably establish that the nature and the extent that the Missouri Courts as interpreted, by both the Eighth Circuit and Missouri Supreme Court, is "totally in conflict and contrary to federal laws," to wit:

The Supreme Court in **Pennsylvania v. Finley**, 107 S.Ct. 1990 (1987), held as follows:

... "Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further. Thus, we have rejected suggestions that we establish a right to counsel on discretionary appeals." (Cases Omitted) "We think that since a defendant has no federal constitutional right to counsel when pursuing a discretionary appeal on direct review of a conviction, a fortiori, he has no such right when attacking a conviction that has long since become final upon exhaustion of the appellate process." *Id.* at 1993. "It is a collateral attack that normally occurs only after the defendant has failed to secure relief through direct review of his conviction." at 1994.

In **Allen v. Hardy**, 106 S.Ct. 2878 (1986), the Supreme Court set forth the legal standard in determining when a conviction has become final and/or when a collateral attack upon the conviction begins:

"By final we mean where the judgment of conviction was rendered, the availability of appeal exhausted, and time for petition for certiorari had elapsed." *Id.* at 2889 n. 1...

Clearly, the facts set forth in **Lowe Bey's** case is a clear differentiation of the facts of **Coleman**. It is well established law that the Supremacy Clause Art. VI, Clause 2, invalidates State laws and/or Rules that interfere with, is contrary to, or conflicts with the established federal laws. **Hillsborough County, Fla. v. Auto Med. Labs.**, 105

2371 (1985). The Eighth Circuit Court of Appeals and Missouri Supreme Court, in their failure to afford the proper relief and devotion to the prisoners in the State of Missouri prior to January 1, 1996, they've violated all rights as guaranteed Lowe Bey and those under the same rulings rendered, because they've made Lowe Bey's case the standard case to deny all other the relief entitled. As it is "totally" observed, they've misapplied **Coleman** in their denial of these rights to all the prisoner, because January 1, 1996, the Missouri Legislators took after the Eighth Circuit Court of Appeals in **Lowe Bey v, Groose**, 28 F.3d 816 (8th Cir. 1994), argued the "unconstitutionality of the Court, and changed the proceedings to comply with those of **Coleman**.

Under Missouri law, both appellate and Post-Conviction issues are presented on the first and only appeal guaranteed as of right, in a single brief, subject to a single page limitation, so that the function of the appellate counsel with respect to "winnowing out" his client's most meritorious claims cannot be easily separated into appellate and collateral issues. Why would the Missouri Legislators just up and change the 29.15 Post-Conviction proceedings if it was in violation of prisoners rights as raised by Lowe Bey? According to the United States Supreme Court precedents, an attorney writing a brief on an appeal under Missouri Supreme Court Rule 29.15(1), and deciding what claims to present therein, is that counsel functioning as the Constitutionally mandated counsel. **Evitts v. Lucey**, 469 U.S. 387 (1985), and that status is unaffected by the fact that some of the omitted claims could have been present in the alleged collateral Post-Conviction proceeding, which comes far before the direct appeal is ever close to being decided by the Missouri Court of Appeals. Could it be that when Lowe Bey argued that the proceedings guaranteed him protection, they got that he was absolutely right?

In the State of Missouri the State laws as implimented by the Legislators are directly targeted at the so-called African American communities, in that they knowing knew that they had sentenced many to the Missouri prisons with extended times such as Prior, Persistant and Class X Offender status, [y]et, under these criterias presented herewith, the truth is the only thing that changes not, because **they** had gone behind all the backs of those they've violated herein, and placed the procedures in the light of the United States Supreme Court's decision of Coleman.

In closing, does these clear violations rise to a fundamental miscarriage and manifest injustice, forcing prisoners to be denied relief on a process the Court system and Missouri Legislators knowingly knew was wrong in misapplication to the many kept **locked** away due to this injustice? If there's anyone out there reading this, not the Law experts at St. Louis University or any other persons contacted by these prisoners in Missouri prison system under these false rulings, gave a damn about what has been done to us. [Y]et, it's obviously clear that they not only continue to this very day, to violate our rights by holding us under their control. Why? We have nobody that'll voice our concerns, even though they knowingly know they've wronged so many of us! Peace & Allah's Love & Mercy!


Humbly submitted,

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