

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT  
OF HINDS COUNTY, MISSISSIPPI**

**STATE OF MISSISSIPPI**

**VS.**

**CAUSE NO.**

**16-836**

**ROBERT SHULER SMITH**

**DEFENDANT**

**MOTION FOR IMMEDIATE BENCH TRIAL ON THE  
MISDEMEANOR CHARGE CONTAINED IN COUNT III**

**COMES NOW**, the State of Mississippi, by and through the Office of the Attorney General and submits this its motion for an immediate bench trial of Robert Shuler Smith on the misdemeanor charge contained in Count III of the indictment in the above styled and numbered cause. In support thereof the State of Mississippi would show the following:

(1) On September 7, 2016, the defendant, Robert Shuler Smith, along with co-defendant Jamie K. McBride, was indicted by a Hinds County grand jury on two felony counts of conspiracy to hinder prosecution in the first degree, in violation of Mississippi Code §§ 97-1-1 and 97-9-105. Plainly, the two conspiracy counts of the indictment are felony charges which require the State of Mississippi to establish that a conspiracy existed, and that the two named defendants, as co-conspirators, participated in the conspiracy. These conspiracy charges carry a penalty of five (5) years of imprisonment and a \$5,000.00 fine, or both.

(2) In a separate count, Mr. Smith was indicted for one misdemeanor count under Mississippi Code § 97-11-3, which makes it a crime for a district attorney to consult, advise or counsel a defendant. This third count of the indictment is a misdemeanor count which only requires the State to show that Smith consulted, advised or counseled a defendant charged with a crime or misdemeanor. The indictment charges that Smith consulted, advised or counseled Christopher Butler, who was at the time under indictment in Hinds County. This misdemeanor

charge against Smith carries a penalty of a \$500 fine, removal from office, and exclusion from thereafter filling any office of profit or honor in the State of Mississippi. Nothing contained in the language of § 97-11-3 indicates that a defendant charged under that provision is entitled to a jury trial.

(3) Count III of the indictment in this case charges a serious offense with respect to the administration of justice in Hinds County, which comprises the Seventh Circuit Judicial District. Indeed, for a district attorney to engage in acts involving consulting with, advising or counseling a criminal defendant is a matter which goes to the very heart of his responsibilities as district attorney, namely, assuring that the due administration of justice is not impeded or impacted by personal contact with defendants or with providing advice on behalf of indicted defendants. In this respect, while the case law concerning when a defendant is entitled to a jury trial makes a distinction between serious and petty offenses, the primary distinction relates to the potential penalty which a defendant may face upon conviction. It is worth noting that the concern generated by the arrest of Smith back on June 22, 2016, precipitated an Administrative Order from one of the Circuit Judges in Hinds County disqualifying Smith from participating in any grand jury proceedings in Hinds County. That prohibition was recently vacated on review by the Mississippi Supreme Court based on a finding that Smith was denied procedural due process.

(4) As the Mississippi Supreme Court made plain in *Harkins v. State*, 735 So.2d 317, 318 (Miss. 1999), there is a “presumption that offenses carrying maximum sentences of six months or less are ‘petty offenses’ to which the Sixth Amendment right to trial by jury does not apply.” *Id.*; see also *Blanton v. North Las Vegas*, 489 U.S. 538, 542-43 (1989). The Mississippi Supreme Court has held on many occasions that the Legislature has the authority to dispense with

jury trials. See generally, *State v. Sansome*, 133 Miss. 428, 97 So. 753 (1923); *Telheard v. Bay St. Louis*, 87 Miss. 580, 40 So. 326 (1906); *Coulter v. State*, 75 Miss. 356, 22 So. 872 (1898).

Additionally, Mississippi Code, § 99-33-9 also addresses the issue of when a criminal defendant is entitled to a jury trial. According to the language of § 99-33-9, a criminal defendant is *only* entitled to a jury trial “where the potential period of incarceration is more than six (6) months in jail.” Again, in regard to Mr. Smith’s misdemeanor charge, there is no potential for jail time at all; thus, the charge contained in Count III does not trigger the right to a jury trial and Smith is not entitled to a jury trial on Count III of the indictment. To the contrary, as § 99-33-9 plainly states: “If the potential of incarceration is less than six (6) months in jail, there shall be no jury trial.”

(5) In the case at bar, the only penalty Mr. Smith is facing on Count III is a fine not to exceed five hundred dollars (\$500.00) and removal from office, should he be convicted. Therefore, Mr. Smith is not entitled to a jury trial on the misdemeanor count. For this reason, the State of Mississippi moves the Court for an immediate bench trial on the misdemeanor, Count III.

Wherefore, premises considered, the State of Mississippi respectfully requests this honorable Court to issue an order granting an immediate bench trial on Count III in the above styled and numbered cause.

THIS the 11<sup>th</sup> day of October, 2016.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: s/ Robert G. Anderson  
Robert G. Anderson  
Special Assistant Attorney General  
MS Bar # 1589

Larry G. Baker  
Special Assistant Attorney General  
MS Bar # 100569  
Office of the Attorney General  
State of Mississippi  
Post Office Box 220  
Jackson, Mississippi 39205  
Telephone: (601) 576-4254  
E-mail: rande@ago.state.ms.us

---

**CERTIFICATE OF SERVICE**

I, Robert G. Anderson, hereby certify that I have this day filed the above and forgoing Motion for Immediate Bench Trial on the Misdemeanor Charge Contained in Count III via the Court's electronic case filing process, which caused a copy to be served upon Jim Waide, Attorney for the Defendant, Robert Shuler Smith, at his usual e-mail address of [waide@waidelaw.com](mailto:waide@waidelaw.com).

This the 11<sup>th</sup> day of October, 2016.

s/ Robert G. Anderson  
Robert G. Anderson  
Special Assistant Attorney General  
MS Bar No. 1589