

**IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI
STATE OF MISSISSIPPI**

VS. NO. 28251

ROBERT SHULER SMITH DEFENDANT

MOTION TO DISMISS

COMES NOW defendant, pursuant to *Williams v. State*, 184 So.3d 908 (2014), and moves the court to dismiss the indictment herein and would show the following, to wit:

As established in *Williams v. State*, "neither Mississippi's Constitution —silent with regard to the power of duties of the attorney general — nor the common law authorizes the attorney general to usurp or encroach upon the constitutional or the statutory power of the local district attorney in a criminal case where the attorney general's assistance is not requested by the district attorney...." *Id.* at 912. If the attorney general were to intervene "regarding whether or not to prosecute a criminal case," it would constitute "an impermissible diminution of the statutory power of the district attorney." *Id.* at 913. Finally, Mississippi law does not allow a district attorney to be replaced by the attorney general "where the district attorney has decided, in the lawful exercise of his discretion, not to prosecute a criminal case." *Id.* at 917.

The defendant in this cause is the duly elected and serving District Attorney for the Seventh Circuit Court District of Mississippi, composed of Hinds County, Mississippi. As in *Williams*, the defense asserts, upon information and belief, that the Honorable Michael Guest, District Attorney for the Twentieth Circuit Court District, composed of Rankin and Madison Counties, Mississippi, neither requested, nor consented to, the involvement of the attorney general in the prosecution of the Hinds County District Attorney. Upon information and belief, the defense asserts that Mr. Guest was presented with this case and declined to prosecute District Attorney Smith. The attorney

general overreached the boundaries established by the Mississippi Constitution, and interpreting case law by pursuing the indictments against District Attorney Smith. Based upon the controlling legal precedent established in *Williams v. State*, this court should dismiss the indictment herein.

WHEREFORE, PREMISES CONSIDERED, defendant prays that the court shall dismiss the indictment herein.

Respectfully submitted,
Robert Shuler Smith, Defendant

BY:

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CERTIFICATE OF SERVICE

I certify that I transmitted a copy of the document to the Honorable Robert G. Anderson, Assistant Mississippi Attorney General, P.O. Box 220, Jackson, MS, 39202-0220, on August 30, 2017, by first class U.S. mail, postage prepaid.

John R. Reeves
