

**SUCCESSFUL *JOHNSON v. MISSISSIPPI* CASES**  
**(Updated September 2017)**

**I. CAPITAL CASES**

***Duest v. Singletary*,  
967 F.2d 472 (11th Cir. 1992); 997 F.2d 1336 (11th Cir. 1993), cert. denied, 114 S.Ct.  
1107 (1994) and cert. denied, 114 S.Ct. 1126 (1994)**

Duest was convicted of capital murder and sentenced to death. At the sentencing phase of appellant's trial, the state introduced evidence that Duest had two prior convictions; one for armed robbery and the other for armed assault with intent to murder. Subsequently, one of these convictions was vacated and one was *nolle prossed*. On appeal, the state did not dispute that error occurred in this case but, instead contended that the error was harmless. The court found error based on the evidence that the jury had seriously considered the two convictions. During deliberations, the jury asked to see the vacated convictions. The court also emphasized the likelihood that the assault conviction which involved murderous intent would have likely had a particularly adverse impact on a jury deciding to recommend life or death. *Duest v. Singletary*, 967 F.2d 472 (11th Cir. 1992). The Supreme Court later vacated the court of appeals' judgment and remanded the case back to the Court of Appeals for further consideration in light of *Brecht v. Abrahamson*, 507 U.S. 619, (1993), which adopted a relaxed harmless error standard. *Duest v. Singletary*, 997 F.2d 1336 (11th Cir. 1993). Under *Brecht*, actual prejudice to the defendant occurs when constitutional error has a substantial and injurious effect or influence in determining the jury's verdict. Habeas relief is thus justified if just one juror who voted for the death sentence was likely substantially influenced by the evidence of Duest's prior conviction. The court found that such a likelihood existed in Duest's case based on several factors: the jury requested to see the vacated convictions, the sentencing hearing only took one day, there was a close jury vote (7-5), and the evidence improperly considered was materially inaccurate.

***Harris v. Blodgett*,  
853 F.Supp. 1239 (D. Wash. 1994)**

At the penalty phase of his capital trial, Harris' prior convictions for manslaughter and assault were admitted into evidence in the form of a judgment and sentence for each conviction. At the time of his murder trial, the manslaughter conviction had already been dismissed. Nonetheless, the conviction was admitted into evidence without objection from defense counsel. Moreover, there was no pre-trial hearing to consider the validity of this guilty plea prior conviction. Referring to *Johnson*, the court held that the legal effect of the dismissal should have been determined. At the very least, the dismissal should have been presented to the jury along with the judgment and sentence to comply with due process. Moreover, there was no definition of manslaughter presented to the jury. This omission exacerbated the injurious nature of the prosecutor's statements to the jury that the defendant had killed before leaving them to believe that the manslaughter conviction was tantamount to a murder conviction. There was serious

constitutional error and influence on the jury's verdict which required that the habeas writ be granted.

**NOTE:** Habeas relief was granted on other grounds concerning Harris' capital conviction. The Superintendent did not appeal the grant of sentencing relief. The grant of relief as to the capital conviction was affirmed. *Harris v. Wood*, 64 F.3d 1432 (9<sup>th</sup> Cir. 1995).

***Gillet v. State*,  
148 So.3d 260 (Miss. 2014)**

In this post-conviction capital case, the Mississippi Supreme Court remanded for a new sentencing hearing because the jury considered evidence in support of an improper aggravator. On direct appeal the Mississippi Supreme Court had found that Gillet's prior conviction for escape did not support the "previous-violent-felony" aggravating factor because the escape did not necessarily involve violence. The Court nevertheless upheld the death sentence after finding that the mitigating evidence did not outweigh the three valid aggravating factors. In this post-conviction proceedings, Gillet argued that the Court's reweighing violated his due process rights, citing *Brown v. Sanders*, 546 U.S.212 (2006). The Court accepted that argument and found that it applied the wrong standard on direct appeal because it did not find the error harmless beyond a reasonable doubt. Reviewing the claim in this posture, it concluded that it could not find the error harmless beyond a reasonable doubt. But also, although a state statute allows the Mississippi Supreme Court to reweigh the aggravators and mitigating factors itself, it declined to perform this analysis because it concluded that appellate courts are not in the best position to do so because of its reliance on a cold, hard record (citing *Caldwell v. Mississippi*, 472 U.S. 320 (1985)), and because of the Court's long-standing recognition that "[t]he right to a jury determination of the penalty of death is a substantial substantive right long held in this State." *Woodward v. State*, 726 So.2d 524, 542 (Miss.1997).

***State v. Bowman*,  
337 S.W.3d 679, 691 (Mo. 2011)**

Death sentence reversed where jury found and weighed six aggravating factors two of which related to vacated murder convictions. "Even if the prosecution's evidence regarding the underlying facts of Bowman's two prior murder convictions were properly admissible as non-statutory aggravating prior bad acts, the Court cannot assume that the jury's weighing process and sense of responsibility were unaffected by its knowledge that Bowman previously had been convicted of two murders. A sentence resting on invalid sentencing factors is invalid."

***Estrada v. State*,  
313 S.W.3d 274 (Tex. Crim. App. 2010)**

Defendant, a youth pastor, was convicted of capital murder for killing a member of his youth group and their 13-week-old unborn child. During the penalty phase of defendant's capital trial, a State's expert witness unintentionally presented false testimony that an inmate who was sentenced to life without parole for capital murder could, after 10 years, obtain a less restrictive prison classification than those to which a defense expert testified defendant would be subject. During deliberations, the jury sent out a question asking the trial court whether "there is a possibility that the defendant would be eligible for a less restrictive status after 10 years (or some other period of time)." The trial court responded, "you have the law and evidence. Please continue your deliberations." On appeal, the Texas Court of Criminal Appeals took judicial notice of a Texas Department of Criminal Justice regulation that both parties agreed unambiguously shows that defendant would not be eligible for less restrictive status at any time if sentenced to life without parole. Furthermore, the State conceded that, in the interest of justice, it believed defendant was entitled to a new trial on punishment due to this error. The Texas Court of Criminal Appeals agreed, citing *Johnson v. Mississippi*, among others, in support of its conclusion that the United States Supreme Court would find this error to be constitutionally intolerable. Remanded for a new punishment hearing.

***State v. Kilgore,*  
976 So.2d 1066 (Fla. 2008)**

Acknowledging that a defendant is entitled to prosecute a collateral claim attacking his 1978 conviction utilized as an aggravator in his capital case but ruling that the defendant is not entitled to representation by the same counsel appointed to represent him in the capital case.

***State v. McFadden,*  
216 S.W.3d 673 (Mo. 2007)**

Jury's consideration of defendant's prior invalid felony convictions and death sentence in unrelated case as aggravating factors supporting the imposition of death penalty in first-degree murder trial was clearly prejudicial, so as to render imposition of the death penalty invalid, where state's evidence during the penalty phase regarding the prior unrelated convictions and death sentence was voluminous, narrated in detail by witness testimony, and illustrated by over a dozen exhibits. The Court rejects the State's argument that defendant's prior convictions and death sentence were not critical to the jury's decision-making process because there were other aggravating factors present. "[W]hen the sentencing body is told to weigh an invalid factor in its decision, a reviewing court may not assume that it would have made no difference if the thumb had not been removed from death's side of the scale." *Brown v. Sanders*, 546 U.S. 212 (2006).

***Armstrong v. State,*  
862 So.2d 705 (Fla. 2003)**

Death sentence reversed where prior felony conviction that jury considered as an aggravating

circumstance was vacated after petitioner was sentenced to death. "Given the nature of the crime underlying the vacated conviction--a sexual offense upon a child--and the detailed testimony given by the young victim of that crime at Armstrong's penalty phase, we cannot say that the consideration of Armstrong's prior felony conviction of indecent assault and battery on a child of the age of fourteen constituted harmless error beyond a reasonable doubt."

***People v. Horton,***  
**47 Cal.Rptr.2d 516 (Cal. 1995)**

There were two aggravating circumstances in this case: armed robbery and a previous conviction for murder. At the end of the guilt phase of defendant's trial, counsel moved to strike the prior conviction special circumstance on the grounds that defendant's constitutional rights had been violated in numerous ways during the pendency of the previous murder trial. The trial court acknowledged several irregularities in the proceeding in question but denied the motion to strike. Notably, the defendant's earlier trial occurred when he was a juvenile. The defendant's lawyer asked to be absent when the jury returned its verdict. The jury came back deadlocked and the court was on the verge of granting a mistrial when the prosecution convinced the judge to send the jury back for further deliberations. The lawyer for Horton's co-defendant was present and also objected to the granting of a mistrial. The jury acquitted the co-defendant but found the defendant guilty. The court relied heavily on *Johnson v. Mississippi* in finding that the trial court erred in refusing to strike the prior conviction special circumstance on the grounds that the prior conviction had been obtained in an unconstitutional manner (denial of assistance of counsel). Because the prosecution relied entirely on the prior conviction for aggravation at the penalty phase, the court set aside the death sentence notwithstanding the validity of the other special circumstance (armed robbery).

***State v. Shepherd,***  
**902 S.W.2d 895 (Tenn. 1995)**

There were three aggravating circumstances presented in this case: a previous conviction of a felony involving violence to the person, the murder was especially heinous, atrocious etc., and the murder was committed during the commission of a felony. The felony conviction involving violence to another person was reversed. Relying on *Johnson v. Mississippi*, the court found that it had no alternative but to remand the case for resentencing. In so finding, the court noted that one of the other aggravators (that the murder was committed during the commission of a felony) was not supported by the evidence though the jury found it to be true. The cumulative effect of finding two invalid aggravators in the face of potentially substantial mitigating proof eliminated the possibility the error was harmless.

***Greene v. State,***  
**878 S.W.2d 384 (Ark. 1994)**

During the sentencing phase of appellant's trial, the state introduced evidence that appellant had been convicted in North Carolina of the murder of his brother. That conviction was later reversed. The state conceded there was *Johnson* error but maintained the error was harmless. The state court concluded it could perform a harmless error test only if the jury found no mitigating circumstances. Because the jury unanimously found four mitigating circumstances, the court vacated the death sentence.

***Ward v. State,***  
**827 S.W.2d 110 (Ark. 1992)**

The defendant alleged error in the trial court's admission of a collection of documents relating to his prior manslaughter conviction in Pennsylvania. Even though Ward was convicted only of manslaughter, and there was no proof that he had raped or robbed the victim, the documents introduced into evidence contained a felony information charging appellant with murder, and an affidavit alleging that appellant raped and robbed the Pennsylvania victim. The state offered no collateral proof appellant committed the offenses of murder, rape, or robbery, thus the court the court held that mere allegations do not constitute proof. Therefore the documents were improperly admitted and Ward was entitled to a new sentencing hearing.

***Sanders v. State,***  
**824 S.W.2d 353 (Ark. 1992), cert. denied, 115 S.Ct. 1126 (1995)**

The jury found two aggravating circumstances, one of which was that the defendant previously committed a felony for which he received a death sentence. The capital murder conviction supporting the aggravator was later overturned. The court concluded there was reversible error under *Johnson*, stating it could not surmise how much the jury relied upon the felony conviction. The fact that the jury foreman came out and asked if the jury could consider the prior conviction was persuasive evidence that the error was in fact prejudicial.

***State v. Burr,***  
**576 So.2d 278 (Fla. 1991)**

Appellant was convicted of capital murder and sentenced to death. During the guilt phase of the proceedings, evidence of collateral crimes was introduced to establish the identity of the perpetrator. This evidence was presented in the form of live testimony from the victims of the three crimes; no evidence offered in the form of a certified judgment. The three victims' statements suggested that a similar modus operandi had been used in those crimes as that used in the crime for which Burr was now being tried. Later, in imposing the sentence, the trial court

relied expressly on the collateral crimes evidence as supporting the existence of several aggravating factors. Subsequently, Burr was acquitted of one of the collateral crimes and the other was dismissed by *nolle prosequi*. The court determined that the admission of the collateral crimes at the guilt phase was harmless. However, because the trial judge, in rejecting the jury's recommendation of life imprisonment, relied upon the collateral crimes evidence, the defendant was entitled to a new sentencing hearing.

***Preston v. State,***  
**564 So.2d 120 (Fla. 1990), cert. denied, 113 S.Ct. 1619 (1993)**

The trial court found four aggravating circumstances, one of which was the conviction of a prior felony involving the use of or threat of violence to another. This conviction was later vacated because of ineffective assistance of counsel. Preston filed a petition for habeas corpus based upon *Johnson*. The court noted that the Supreme Court had not precluded a harmless error analysis in cases where the conviction for a prior felony that formed the basis for an aggravating circumstance is set aside, but reasoned that such an error is likely to be harmful because evidence has been admitted which has been found to be materially inaccurate. The court noted the fact that the prosecutor placed special emphasis on the importance of the prior felony at issue, and reversed the death sentence.

***Commonwealth v. Karabin,***  
**559 A.2d. 19 (Pa. 1989)**

At the defendant's murder trial, the jury found the aggravating circumstance of "a history of felonies." The sole evidence for the history of felonies circumstance consisted of the introduction of a conviction for aggravated assault in 1979. The evidence was offered in the form of testimony by the clerk of court reading a docket entry that the defendant pled guilty and was sentenced to the charge on the specified dates. What really happened is a different story. On the day that defendant was sentenced, he filed a petition to withdraw his guilty plea. The trial court denied the petition and defendant appealed. While that appeal was pending, defendant's capital trial took place and he was sentenced to death, in part, based on the aggravating circumstance of history of felonies. The capital conviction was later found invalid on appeal and his death sentence was vacated. The court held that no prior conviction had actually occurred that could support the aggravating circumstance of a history of felonies. Subsequently, defendant's aggravated assault appeal did become a conviction. The state then sought to have the death sentence reinstated. The court declined to reinstate the death sentence because technically the conviction occurred after the sentencing in the capital case. Therefore, there was no conviction to support the finding of an aggravating circumstance.

***Teague v. State,***  
**772 S.W.2d 915 (Tenn.Crim.App. 1988), cert. denied, 493 U.S. 874 (1989)**

At the sentencing hearing, the jury found, inter alia, the aggravating circumstance that Teague had been convicted of the prior felony of accessory before the fact to second degree murder. On the same day that the court of criminal appeals issued the decision at hand, it issued a separate decision finding the prior felony conviction to be void. The court addressed the issue of whether petitioner's death sentence should be vacated where another aggravating circumstance was unaffected and still valid. Referring at length to *Johnson*, the court determined that *Johnson* left it unclear as to whether or not harmless error was applicable pointing out that in *Johnson*, the Supreme Court held that it was "plainly justified" in not applying the harmless error test in view of the fact that the prosecutor argued, as the prosecutor did in the this case, that the jury should return a death sentence on the basis of the infirm aggravating circumstance. Assuming it was required, the court of criminal appeals conducted harmless error analysis and concluded that "it cannot be said that the admission of a void and constitutionally infirm conviction for the offense of being an accessory before the fact to murder second degree at the second sentencing hearing was harmless beyond a reasonable doubt."

## **II. NON-CAPITAL RELATED CASES**

***Mateo v. United States,***  
**398 F.3d 126 (1<sup>st</sup> Cir. 2005)**

The state court's vacation of the prior state conviction rendered Mateo's federal sentence subject to correction under 28 U.S.C. § 2255 insofar as it was enhanced by the state conviction.

***United States v. Walker,***  
**198 F.3d 811 (11th Cir. 1999)**

District court properly reduced petitioner's federal sentence that had been enhanced under the Armed Career Criminal Act where petitioner filed a habeas corpus petition pursuant to 28 U.S.C. § 2255, challenging the sentence after one of his three predicate state court convictions has been vacated in a state habeas action due to a violation of *Boykin v. Alabama*. In affirming, the appeals court observed that "[s]ince *Custis* was decided in 1994, seven other circuits, all that have considered the issue, have also held, or indicated without expressly deciding, that pursuant to federal habeas corpus, a district court may reopen and reduce a federal sentence, once a federal defendant has, in state court, successfully attacked a prior state conviction, previously used in enhancing the federal sentence." See *United States v. Pettiford*, 101 F.3d 199, 201 (1st Cir.1996); *United States v. Cardoza*, 129 F.3d 6 (1st Cir.1997); *Young v. Vaughn*, 83 F.3d 72 (3d Cir.1996); *United States v. Bacon*, 94 F.3d 158, 162 n. 3 (4th Cir.1996); *United States v. Nichols*, 30 F.3d 35, 36 (5th Cir.1994); *United States v. Rogers*, 45 F.3d 1141, 1143 (7th Cir.1995); *Clawson v. United*

*States*, 52 F.3d 806, 807 (9th Cir.1995); *United States v. Cox*, 83 F.3d 336, 339 (10th Cir.1996); *United States v. Garcia*, 42 F.3d 573, 581 (10th Cir.1994).

***United States v. Pettiford*,  
101 F.3d 199 (1st Cir. 1996)**

District court correctly reduced petitioner's sentence where he successfully raised *Boykin v. Alabama* challenges in state court to eight of nine prior state convictions that had been the basis for sentencing petitioner pursuant to the Armed Career Criminal Act.

***United States v. Cox*,  
83 F.3d 336 (10th Cir. 1996)**

District court erred in refusing to reopen defendant's sentence after his prior state convictions, which were considered in determining sentence, were dismissed or expunged.

***McGee v. Estelle*,  
732 F.2d 447 (5th Cir. 1984)**

After a jury trial, the defendant was convicted of theft of property, a third degree felony. This 1977 sentence was enhanced by two prior felony convictions obtained in 1960 and 1969. He was sentenced to life imprisonment in accordance with sentencing guidelines set forth in the Texas Penal Code. Petitioner contended that the 1960 theft conviction was constitutionally infirm and therefore could not be relied upon to enhance his sentence. The court concluded that use of the 1960 conviction was not harmless, and remanded to the district court for determination as to the constitutionality of the 1960 conviction.

**NOTE:** this case preceded the Supreme Court's ruling in *Lackawanna County District Attorney v. Coss*, 121 S.Ct. 1567 (2001).

***Bryan v. Davis*,  
2005 WL 1009561 (W.D.Tenn. March 31, 2005)**

State prisoner who entered a guilty plea and was sentenced in 1986 as a "persistent offender" was entitled to habeas relief where the sole basis of his "persistent offender" status was the prisoner's void 1983 convictions.

***Candelaria v. United States*,  
247 F.Supp.2d 125 (D. R.I. 2003)**

Where petitioner received an enhanced sentence as a Career Offender due in part to a prior Massachusetts conviction which was subsequently vacated in habeas proceedings because of a



deficient plea colloquy, he was entitled to resentencing by the federal court

***U.S. v. Payne,***  
**894 F.Supp. 534 (D. Mass. 1995)**

Payne was convicted of unlawful possession of a firearm and sentenced under the Armed Career Criminal Act (ACCA) based on his prior convictions for armed robbery and larceny from the person. Payne returned to the state court that issued his prior larceny conviction and successfully acted its validity on the ground that the judge had engaged in an inadequate colloquy in violation of *Boykin v. Alabama*, 395 U.S. 238 (1969). Because the prior larceny conviction was invalidated, Payne's sentence under the ACCA was constitutionally infirm and he was entitled to resentencing.

***U.S. v. Gray,***  
**773 F.Supp. 86 (N.D.Ill. 1990)**

Defendant was convicted of being a felon in possession of a firearm. The government sought enhancement of defendant's sentence based on four prior convictions. Gray argued that no enhancement should be permitted because two of the four prior convictions were based on guilty pleas that were not knowing or voluntary. The state offered certified documents containing evidence of defendant's convictions. The court considered the documents offered by the state to contain certain inconsistencies, factual inaccuracies, and missing pieces. The documents, therefore, did not constitute a prima facie case of the constitutionality of the defendant's convictions. The defendant also claimed ineffective assistance of counsel. Counsel in neither trial could remember the defendant or the case as the events in both occurred in 1966 and 1967 respectively. The court heard live testimony by the defendant as to the events that transpired at both of those trials, found him to be quite credible and denied the state's request for sentence enhancement.

***Thompson v. State,***  
**583 S.E.2d 14 (Ga. 2003)**

The court of appeals erred when it upheld the trial court's consideration of Thompson's three prior habitual violator convictions in aggravation of his sentence where the prosecutor conceded that the prior convictions had been uncounseled.

***State v. Payne,***  
**69 P.3d 889 (Wash. App. 2003)**

Trial court properly refused to consider prior Canadian conviction in sentencing defendant because the conviction was unconstitutional in that Canada did not provide a right to a jury trial.

***State v. Shimabukuro,***  
**60 P.3d 274 (Hawaii 2002)**

Trial court erred by denying motion to dismiss habitual DUI charge where one of the predicate prior convictions had been vacated because it was unconstitutionally obtained.

***People v. Cabassa,***  
**717 N.Y.S.2d 487, 496-497 (N.Y. Sup. 2000)**

After jury trial, defendant was convicted of sale of a controlled substance. His sentence was enhanced based on a prior federal conviction for possession with intent to distribute cocaine and possession of a firearm during a drug trafficking crime. That conviction, however, was later vacated on Fourth Amendment grounds. On defendant's motion for new trial and/or sentencing, the court remanded for a new sentencing because "it cannot be said that defendant's sentence was not directly enhanced, at least in part, based upon the fact of the conviction."

***State v. Herret,***  
**965 S.W.2d 363 (Mo. App. 1998)**

Defendant's sentences for first-degree robbery and armed criminal action were vacated due to the trial court's reliance on a previously vacated conviction for first-degree robbery in finding that defendant was a prior and persistent offender and sentencing him on the basis of that determination.

***Commonwealth v. Palmer,***  
**700 A.2d 988 (Penn. 1997)**

Defendant was convicted of rape, involuntary deviate sexual intercourse, and corrupting the morals of a minor. He was sentenced as a repeat felony offender, a classification which required a prior record score of 6. Defendant's prior record score was only 5, thus the sentence was vacated and remanded.

***People v. Howie,***  
**41 Cal.App.4th 729 (Cal. App. 1995)**

In 1993, defendant was convicted of robbery, commercial burglary, assault with a deadly weapon or by means of force likely to cause great bodily injury, and assault. The jury found three prior serious felony convictions which enhanced the defendant's sentence by a total of fifteen years (five years for each offense). One of these three felonies consisted of a 1973 robbery conviction which was later declared unconstitutional in 1979. The 1973 prior conviction was struck because of the trial court's failure to inform the defendant of his *Boykin-Tahl* rights before he pled guilty

to robbery. Prior to the trial for the 1993 robbery, defendant filed a pre-trial motion to strike the 1973 prior on grounds of collateral estoppel. This motion and subsequent motions to exclude and strike the prior were denied. The jury then found the 1973 conviction to be true and defendant's sentence was thus enhanced by five years (in addition to the other enhancements). California case law and the doctrine of collateral estoppel prevent the trial court from using the constitutionally invalid 1973 robbery conviction to enhance defendant's sentence.

***McNaulty v. State,***  
**826 P.2d 567 (Nev. 1992)**

Defendant was sentenced as a habitual criminal pursuant to his stipulation with the state as to two prior felony convictions. Defendant plea bargained with the state to one count of grand larceny. He also agreed to stipulate to the two felony convictions as a part of the plea agreement. The court held that for enhancement purposes, it is essential that convictions be constitutionally valid. The defendant cannot stipulate to their constitutional validity. Thus the inquiry may not end with a stipulation. No matter what the plea bargain, it is up to the district court to determine the constitutional validity of a prior conviction.

***State v. Melancon,***  
**596 So.2d 331 (La. 1992)**

Defendant was convicted of distribution of cocaine and sentenced as a second-felony offender. After a careful reading of the record, the court could not find any evidence that the defendant had been convicted of a prior felony. The second offender status was thus vacated.

***Wisconsin v. Baker,***  
**485 N.W.2d 237 (Wis. 1992)**

The defendant was convicted of operating a vehicle after revocation of his license. The court was presented with four issues: May a defendant collaterally attack a prior conviction for operating a motor vehicle after revocation (hereafter OAR) in a subsequent OAR proceeding? If he may, is he limited to asserting a violation of right to counsel? If he is not so limited, may he collaterally attack the prior conviction on the grounds that he did not knowingly and voluntarily enter a guilty plea? The court concluded that a defendant may collaterally attack a prior OAR conviction allegedly obtained in violation of defendant's constitutional rights. Specifically, a defendant may, for sentencing purposes, collaterally attack a prior conviction obtained in violation of defendant's right to counsel if the prior conviction is used to enhance punishment or support guilt for another offense. A defendant is not restricted to asserting a violation of ineffective assistance of counsel. The court found that one of defendant's prior OAR convictions was constitutionally infirm because the plea entered into was not knowing, voluntary, or intelligent. A guilty plea accepted in violation of constitutional requirements raises doubts about the reliability of the conviction.

***State v. McJunkin,***  
**815 S.W.2d 542 (Tenn.Crim.App. 1991)**

Defendant was convicted of two counts of DUI. The jury was asked to decide whether the defendant was a second time offender based on proof offered by the state. The only proof offered was a certified copy of a January 1984 judgment from another court which had not been signed by the judge. The appeals court held that an unsigned judgment is void and may not be used as proof of a prior conviction for enhancement purposes.

***State v. Prince,***  
**781 S.W.2d 846 (Tenn. 1989)**

This case involved two defendants who were convicted of felonies triggering the habitual criminal statute and found to be habitual criminals. There were three issues in the case: (1) Did the defendants waive the right to challenge their prior guilty pleas by having failed to challenge them in a prior post-conviction petition attacking a sentence enhanced by those guilty plea convictions? As to this issue, the court held that because a defendant cannot make a collateral attack on prior guilty pleas in a post-conviction petition attacking a sentence enhanced by those prior guilty plea convictions, there was no waiver. (2) If there is no waiver for that reason, must the enhanced sentence be vacated if the guilty plea convictions are found to be void? The answer to this question is yes and the sentence is void. (3) Finally, does a defendant waive his right to vacate the enhanced sentence by having failed to establish any invalidity in the guilty pleas before filing his first petition attacking an enhanced punishment sentence? The court found that there was no waiver. The court remanded to the trial court for an evidentiary hearing on the merit's of Prince's 1976 guilty pleas. The trial court held the hearing and dismissed the petition. Prince appealed the dismissal of the petition. The court of appeals set aside his prior convictions because the trial court did not advise Prince of his constitutional rights. The court held that the burden was consequently on the state to prove that despite the failure of the trial court, Prince knew that he had the right to avoid self-incrimination. The state did not carry its burden and the court vacated his prior convictions. Thus, Prince could no longer be considered a habitual offender.

***Lacy v. People,***  
**775 P.2d 1 (Colo. 1989), cert. denied, Colorado v. Lacy, 493 U.S. 944 (1989)**

This is not a case that actually cites *Johnson* but it is relevant to the use of previous convictions as sentence enhancers. Defendant was convicted on three habitual counts. On appeal, he asserted that his guilty pleas to those three counts were constitutionally infirm and therefore could not be used as predicates for habitual criminality charges. The court agreed with him as to two of the habitual criminal counts, finding that a prior conviction obtained in a constitutionally invalid manner could not be used against a defendant in a subsequent proceeding to support guilt or to

increase punishment.