

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COPY

JAMES ALLEN RAMSEY

APPELLANT

VS.

FILED

AUG 13 2007

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

NO. 2005-CP-0667-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

BY: W. GLENN WATTS
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [REDACTED]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE FACTS	3
SUMMARY OF THE ARGUMENT	5
ARGUMENT	7
PROPOSITION I	
RAMSEY'S GUILTY PLEA WAS VOLUNTARILY AND	
INTELLIGENTLY ENTERED.	7
PROPOSITION II	
RAMSEY RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.	10
PROPOSITION III	
RAMSEY WAS PROPERLY PROVIDED WITH A BOND	13
PROPOSITION IV	
RAMSEY'S SENTENCES WERE WELL WITHIN THE	
GUIDELINES FOR SALE OF COCAINE.	15
CONCLUSION	16
CERTIFICATE OF SERVICE	17

TABLE OF AUTHORITIES

FEDERAL CASES

Boykin v. Alabama, 395 U. S. 238, 242 (1969)	8
Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064-65, 80 L. Ed. 2d 674, 693-95 (1984)	10, 11, 14

STATE CASES

Ahmad v. State, 603 So. 2d 843, 848 (Miss. 1992)	10
Alexander v. State, 605 So. 2d 1170, 1172 (Miss. 1992)	8
Barnwell v. State, 567 So. 2d 215, 221-222 (Miss. 1990)	15
Branch v. State, 347 So. 2d 957, 958 (Miss. 1977)	14
Byrd v. State, 522 So. 2d 756, 760 (Miss 1988)	15
Clark v. State, 503 So. 2d 277, 280 (Miss. 1987)	14
Johnson v. State, 154 Miss. 512, 122 So. 529 (1929)	14
Johnston v. State, 730 So. 2d 534, 538 (Miss. 1997)	11
Leatherwood v State, 473 So. 2d 964, 968 (Miss. 1985)	11
Lindsay v. State, 720 So. 2d 182, 184	11
McQuarter v. State, 574 So. 2d 685, 687 (Miss. 1990)	10
Mohr v. State, 584 So. 2d 426, 430 (Miss. 1991)	11
Moody v. State, 644 So. 2d 451, 456 (Miss. 1994)	14
Myers v. State, 583 So. 2d 174, 177(Miss	8
Nicolau v. State, 612 So. 2d 1080, 1086 (Miss. 1992)	10
Smith v State, 490 So. 2d 860 (Miss. 1986)	11
Stringer v. State, 454 So. 2d 468, 476-477 (Miss. 1984)	10

Whitley v. State, 511 So. 2d 929, 932(Miss	15
Wilson v. State, 577 So. 2d 394, 396-97(Miss	8

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JAMES ALLEN RAMSEY

APPELLANT

VS.

NO. 2005-CP-0667-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

PROCEDURAL HISTORY:

On June 16, 2003, Ramsey entered “an open plea” of guilty to three counts of sale of cocaine in Panola County. R. 49 . The trial court found that his guilty plea was voluntarily and intelligently entered. R. 58. Ramsey was sentenced to serve three consecutive five year sentences, with ten years of post release supervision, five years reporting. C.P. 19

On November 24, 2004, Ramsey filed for Post Conviction Relief, claiming that his due process rights were violated when he was denied bond for two months and he was entrapped as well as other unsupported issues. C.P. 6-14. The trial court denied relief, finding no merit to Ramsey’s unsupported claims. C.P. 19-20.

Ramsey filed notice of appeal to the Supreme Court. C. P. 21.

ISSUES ON APPEAL

I.

WAS RAMSEY'S PLEA VOLUNTARILY ENTERED?

II.

**WAS RAMSEY GIVEN EFFECTIVE GUILTY PLEA
COUNSEL?**

III.

**WAS RAMSEY DENIED DUE PROCESS WHEN HE WAS
WITHOUT BOND?**

IV.

WAS RAMSEY'S SENTENCES CRUEL AND UNUSUAL?

STATEMENT OF THE FACTS

Ramsey was indicted for three sales of cocaine in Panola County by a Panola County Grand jury on October 3, 2002. C.P. 32-33. Ramsey was served with a copy of that indictment. C.P. 34.

On June 16, 2003, Ramsey pled guilty to three counts of sale of cocaine before the Circuit Court of Panola County, the Honorable Ann Lamar presiding. Ramsey was represented by Mrs. Sally Jubb. C.P. 49.

Ramsey, with assistance from his guilty plea counsel, filled out and filed a "Petition To Enter a Guilty Plea." C.P. 34-40. In that Petition, Ramsey admitted to being 23 years old, and having completed eleven years of school. R. 34. He was represented by Mr. Pearson and Mrs. Sally Jubb. Ramsey knew he was entering an "open plea." He was pleading guilty to sale of cocaine without any recommendation by the state. Ramsey admitted knowing "the thirty year" maximum sentence for sale of cocaine. C.P. 36.

Ramsey acknowledged knowing the Constitutional rights he was waiving by pleading guilty. These rights included his right to a trial with cross examination of witnesses and a right against self incrimination. R. 35.

On June 16, 2003, a guilty plea hearing was held before the Circuit Court of Panola County, the Honorable Ann H. Lamar presiding. R. 48. Ramsey was sworn in before the court. He admitted that everything in his petition "was true and correct." R. 50. Ramsey agreed with the factual account presented by the prosecution as to three separate sales of cocaine to undercover agents by Ramsey. These sales occurred on January 15, 2002, February 8, 2002, and June 14, 2002 in Como, Panola County. R. 51.

Ramsey admitted that he had not been promised anything or coerced into pleading guilty. R. 57. Ramsey also admitted that he was "satisfied with the help and assistance" provided by his guilty

plea counsel. R. 57.

After advising and questioning Ramsey and his counsel about whether Ramsey understood the Constitutional rights he was waiving by pleading guilty, the maximum thirty year sentence for a sale of cocaine and whether he was admitting to three sales of cocaine, the court found that Ramsey's plea was voluntarily and intelligently entered. R. 58. At the time of the hearing, Ramsey was out on bond. C.P. 49.

Ramsey was sentenced to serve three consecutive five year sentences , with ten years of post release supervision, five years reporting. C.P. 19.

On November 24, 2004, Ramsey filed for post conviction relief, claiming that his "due process" rights were violated when he was denied bond for two months and was entrapped as well as other unsupported issues. C.P. 6-14. The trial court denied relief, finding no merit to any of Ramsey's unsupported claims. C.P. 19-20.

Ramsey filed notice of appeal to the Supreme Court. C. P. 21.

SUMMARY OF THE ARGUMENT

1. The record reflects there was sufficient evidence for determining that Ramsey's guilty plea were voluntarily and intelligently entered. C.P. 48-59. The record of Ramsey's guilty plea hearing indicates that the trial court correctly found that Ramsey understood "the nature of the charges against him and the consequences of his plea." She reached this conclusion after advising and questioning Ramsey on the record. Ramsey admitted under oath to understanding the rights he was waiving by pleading guilty, the thirty year maximum sentence for sale of cocaine, and that he had not been coerced or promised anything in exchange for his guilty pleas. C.P. 19-20. He admitted that he was entering an "open plea" with no recommendation from the prosecution. C.P. 56.
2. The record reflects that Ramsey was provided effective assistance of counsel by his guilty plea counsel. Instead of three separate thirty year sentences for sale of cocaine, Ramsey received three consecutive five year sentences followed by supervised probation. Ramsey admitted that he was guilty of the three separate sales of cocaine and that he was "satisfied with the help and assistance" of his guilty plea counsel. C.P. 52; 57. He admitted that he was out on bond at the time of the guilty plea hearing. C.P. 49.

There were no affidavits or other evidence in support of Ramsey's claim included with his Motion. There was therefore no evidence of either deficient performance or of prejudice to his defense.

3. There is a lack of evidence for holding that Ramsey was improperly denied an opportunity to make bond. Rather the record reflects that Ramsey was "out on bond" at the time of his guilty plea hearing. R. 49. There are no affidavits or any other support for Ramsey's claims about his being denied an opportunity for a bond hearing at some other earlier date.

4. Ramsey's five year sentences were well within the guidelines provided for one found guilty of sale of cocaine. Ramsey admitted that he knew the thirty year sentence for sale of cocaine. He also knew he was entering an "open plea." His five year consecutive sentences were therefore not "cruel and unusual" or excessive given his multiple convictions.

ARGUMENT

PROPOSITION I

RAMSEY'S GUILTY PLEA WAS VOLUNTARILY AND INTELLIGENTLY ENTERED.

Ramsey stated in his motion for post conviction relief that his guilty plea was not intelligently and voluntarily entered. Appellant's brief page 7.

To the contrary, the record of Ramsey's guilty plea hearing included in this cause indicates, as found by the trial court, that Ramsey's plea was voluntarily and intelligently entered. R. 58. This was determined after Ramsey and his guilty plea counsel, Ms. Sally Jubb, were questioned by the trial court. They were questioned about their understanding of the nature of the sale of cocaine charges and the possible consequences of Ramsey's open plea.

Ramsey, with assistance from his guilty plea counsel, had filled out and filed a "Petition To Enter a Guilty Plea." C.P. 34-40. In that Petition, Ramsey admitted to being "23 years old," and having completed "eleven years" of school. R. 34. He was represented by Mr. Pearson and Mrs. Jubb. Ramsey knew he was pleading guilty to sale of cocaine without any recommendation by the state. R. 34. It was an "open plea." He understood that "a thirty year" sentence was the maximum sentence for one convicted for sale of cocaine. C.P. 36.

Ramsey acknowledged knowing the Constitutional rights he was waiving by pleading guilty. These rights included his right to a trial with cross examination of witnesses and a right against self incrimination. R. 35.

On June 16, 2003, a guilty plea hearing was held before the Circuit Court of Panola County, the Honorable Ann H. Lamar presiding. R. 48. Ramsey was sworn in before the court. He admitted that his guilty plea counsel had gone over the information in his Petition with him, He admitted that

everything in his petition was “true and correct.” R. 50. Ramsey agreed with the factual account presenting by the prosecution as to three separate sales of cocaine committed by Ramsey. These were sales to undercover agents on January 15, 2002, February 8, 2002, and June 14, 2002 in Como, Panola County. R. 51.

Ramsey admitted that he had not been promised anything or coerced into pleading guilty. R. 57. Ramsey also admitted that he was “satisfied with the help and assistance” provided by his guilty plea counsel. R. 57.

After advising and questioning Ramsey and his counsel, the trial court found that Ramsey understood the Constitutional rights he was waiving by pleading guilty, and the maximum thirty year sentence for a sale of cocaine. There was a factual basis for the plea. Ramsey admitted to having committed the three sales of cocaine. He also admitted that he had not been coerced or promised anything in exchange for his guilty plea. After determining these facts to be the case, the Court found that Ramsey’s plea was “freely and voluntarily given” and there was a “factual basis to support these charges against you.” R. 58.

In **Alexander v. State**, 605 So. 2d 1170, 1172 (Miss. 1992), this Court found, in accord with **Boykin v. Alabama**, 395 U. S. 238, 242 (1969), that a defendant must be advised and understand “the nature of the charge against him and the consequences of the plea.” This is necessary if the plea is to be accepted on the record as voluntarily and intelligently entered.

A plea of guilty is not binding upon a criminal defendant unless it is entered voluntarily and intelligently. **Myers v. State**, 583 So. 2d 174, 177(Miss. 1991). A plea is deemed “voluntary and intelligent” only where the defendant is advised concerning the nature of the charge against him and the consequences of the plea. See **Wilson v. State**, 577 So. 2d 394, 396-97(Miss. 1991). Specifically, the defendant must be told that a guilty plea involves a waiver of the right to a trial by jury, the right to confront adverse witnesses, and the right to protection against self incrimination. **Boykin v. Alabama**, 395 U.S. 238, 23 L. Ed. 2d 274, 89 S. Ct. 1709 (1969). Rule 3.03 of the Uniform Criminal Rules of Circuit Court Practice

additionally requires, inter alia, that the trial judge “inquire and determine” that the accused understands the maximum and minimum penalties to which he may be sentenced.

The Appellee would submit that we have cited sufficient evidence for determining that the trial court correctly found that Ramsey’s plea was voluntarily and intelligently entered. This issue is lacking in merit.

PROPOSITION II

RAMSEY RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.

Ramsey also claimed that he did not receive effective assistance of counsel from Mrs. Sally Jubb, his guilty plea counsel. Appellant's brief page 7.

To the contrary, the record indicates that Ramsey admitted under oath that he was "satisfied with the help and assistance" provided by his guilty plea counsel. R. 57.

For Ramsey to be successful in his ineffective assistance claim, he must satisfy the two-pronged test set forth in **Strickland v. Washington**, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064-65, 80 L. Ed. 2d 674, 693-95 (1984) and adopted by this Court in **Stringer v. State**, 454 So. 2d 468, 476-477 (Miss. 1984). Ramsey must prove: (1) that his counsel's performance was "deficient," and (2) that this supposed deficient performance "prejudiced" his defense. The burden of proving both prongs rests with Ramsey. **McQuarter v. State**, 574 So. 2d 685, 687 (Miss. 1990). Finally, Ramsey must show that there is "a reasonable probability" that but for the alleged errors of his counsel, the sentence of the trial court would have been different. **Nicolau v. State**, 612 So. 2d 1080, 1086 (Miss. 1992), **Ahmad v. State**, 603 So. 2d 843, 848 (Miss. 1992).

The second prong of the **Strickland v. Washington**, 466 U.S. 668, 685, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) is to determine whether there is "a reasonable probability" that but for the alleged errors of Mrs. Jubb, the result of Ramsey's guilty plea would have been different. This is to be determined from "the totality of the circumstances" involved in his case.

Appellee would submit that based upon the record we have cited, there is a lack of evidence for holding that there is "a reasonable probability" that Mrs. Jubb erred in assisting Ramsey in filing out a guilty plea petition and pleading guilty before Judge Ann Lamar.

Instead of facing three thirty year sentences for sale of cocaine, Ramsey received three five year sentences. He admitted he knew he was entering “an open plea” with no recommendation by the prosecution. C.P. 56. He admitted that he was guilty of the three separate sales.

As stated in **Strickland**: and quoted in **Mohr v. State** , 584 So. 2d 426, 430 (Miss. 1991): Under the first prong, the movant ‘must show that the counsel’s performance was deficient and that the deficient performance prejudiced the defense. Here there is a strong presumption of competence. Under the second prong, the movant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.’ The defendant must prove both prongs of the test. *Id.* 698.

Ramsey bears the burden of proving that both parts of the tests have been met.

Leatherwood v State, 473 So. 2d 964, 968 (Miss. 1985).

The burden of proving ineffective assistance of counsel is on the defendant to show that the counsel’s performance was deficient and that the deficient performance prejudiced the defense.

When an appeal involves post conviction relief, the Mississippi Supreme Court has held, “that where a party offers only his affidavit, then his ineffective assistance of counsel claim is without merit.” **Lindsay v. State**, 720 So. 2d 182, 184 (6 (Miss. 1998); **Smith v State**, 490 So. 2d 860 (Miss. 1986). There is no affidavits or any other evidence indicating that his guilty plea counsel mislead him or provided him with any erroneous advise and counsel. C.P. 6-14.

In **Johnston v . State**, 730 So. 2d 534, 538 (Miss. 1997), the Court stated that the burden of showing prejudice could not be met by merely alleging it.

Additionally, there is a further requirement which Johnston must hurdle, prejudice. Claims alleging a deficiency in the attorney performance are subject to a general requirement that the defendant affirmatively prove prejudice. **Strickland**, 466 U. S. at 693., 104 S. Ct. at 2067. However, Johnston fails to make any allegations of prejudice. As in **Earley**, Johnson must affirmatively prove, not merely allege that prejudice resulted from counsel’s deficient performance. *Earley*, 595 So. 2d at 433. Johnston has failed on the second prong of **Strickland**. Having failed to meet either prong of the **Strickland** test, we find that there is no merit to the ineffective

assistance of counsel claim raised by Johnston.

Based upon the record in the instant cause, the Appellee would submit that the trial court correctly found neither evidence of a deficient performance or of any prejudice to any defense Ramsey had to the charges in the instant cause. This issue is also lacking in merit.

PROPOSITION III

RAMSEY WAS PROPERLY PROVIDED WITH A BOND

Ramsey believes that his right to due process was violated because he was held in jail sixty five days before he was given an opportunity to have bond set for his release. Appellant's brief page 7.

The record reflects that there were no affidavits or other support for any of Ramsey's allegations included with his motion. C.P. 6-14. The record also reflects that at the time of the hearing, Ramsey was already out on bond. C.P. 49.

The trial court denied relief, finding that there was no support for any of Ramsey's claims. In addition, Ramsey's claim of being entrapped was contradicted by his sworn statements at his guilty plea hearing. He admitted that he had committed the three different sales of cocaine to undercover agents in Como, Panola County. R. 57-58. Likewise, he admitted that he was "satisfied" with the services provided by his guilty plea counsel and that he had not been coerced or promised anything by anyone in exchange for his guilty plea. R. 57.

Q. Are you satisfied with the help and the assistance that's been provided to you by Mrs. Jubb in this case?

A. Yes, ma'am.

Q. Have you any complaints against her or the way she's handled your case, or anything you want to bring to my attention?

A. No, ma'am.

Q. Mr. Ramsey, do you, in fact, admit that on or about January the 15th, 2002, that you sold cocaine to Kelsey Harmon?

A. Yes, ma'am.

Q. Do you admit that on or about February the 8th, 2002, that you sold cocaine to Kelsey Harmon?

A. Yes, ma'am.

Q. And do you admit that on or about June 14th, 2002, that you sold cocaine to Tommy Edwards?

A. Yes, ma'am. R. 57-58.

The trial court in denying relief pointed out that there was no affidavits or any other evidence in support of Ramsey's claim of having his due process rights violated.

The essence of Ramsey's argument is that he was denied bond for over two months and he was entrapped. In the transcript of the plea, Ramsey admitted that he committed the crimes, he was satisfied with his attorneys' services, and he was not coerced into entering his plea. Ramsey provides no affidavits or other evidence to support any of his allegations. Ramsey has not proven ineffective assistance of counsel based on the requirements of **Strickland v. Washington**, 466 U. S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed 674 (1984); and **Moody v. State**, 644 So. 2d 451, 456 (Miss. 1994). Also, Ramsey has failed to show any Constitutional violations. C.P. 20.

In **Clark v. State**, 503 So. 2d 277, 280 (Miss. 1987), this Court stated there is a presumption that a trial court's judgement is correct. The burden is upon an appellant to prove otherwise.

We have held, 'There is a presumption that the judgment of the trial court is correct, and the burden is on the appellant to demonstrate some reversible error to this Court.' **Branch v. State**, 347 So. 2d 957, 958 (Miss. 1977). 'It is the duty of counsel to make more than an assertion, they should state reasons for their propositions, and cite authorities in their support...' **Johnson v. State**, 154 Miss. 512, 122 So. 529 (1929).

The Appellee would submit that the trial court correctly found no support for any of Ramsey's claims about having his due process rights violated. This issue is also lacking in merit.

PROPOSITION IV

RAMSEY'S SENTENCES WERE WELL WITHIN THE GUIDELINES FOR SALE OF COCAINE.

Ramsey also complains about his sentence being cruel and unusual and "much too lengthy."

To the contrary, the record reflects that Ramsey acknowledged knowing that the maximum sentence for sale of cocaine was "thirty years." He did so both in his Petition To Enter A Guilty Plea and under oath at his guilty plea hearing. R. 36; 56.

In **Barnwell v. State**, 567 So. 2d 215, 221-222 (Miss. 1990), this Court stated that when sentences are within the guidelines provided for punishment by the legislature, they would not be considered cruel and unusual punishment. As stated:

These principles are consistent with the Supreme Court's overriding theme expressed in both **Solem** and **Rummel**, of giving substantial deference to the legislature in determining the limits of punishment for crimes, as well as recognizing the discretion of trial courts in sentencing criminals. Further, they are consistent with our own prior case law on this subject.

Though no sentence is "per se" constitutional, this Court, in the context of our habitual statutes, as well as in sentencing other offenders, has recognized the broad authority of the legislature and trial court in this area and has repeatedly held that where a sentence is within the prescribed statutory limits, it will generally be upheld and not regarded as cruel and unusual. **Byrd v. State**, 522 So. 2d 756, 760 (Miss. 1988); **Whitley v. State**, 511 So. 2d 929, 932 (Miss. 1987)...

The record reflects that Ramsey's three consecutive five year sentences were within the statutory guidelines provided for one found guilty of sale of cocaine. Ramsey acknowledged knowing the thirty year maximum sentence. C.P. 36; 56. He knew his plea was an open plea with no recommendation from the prosecution. C.P. 56. Therefore, the trial court found there was a lack of evidence of any cruel and unusual sentence or excessive sentence in the instant cause. This issue is also lacking in merit.

CONCLUSION

The trial court's denial of relief should be affirmed for the reasons stated in this brief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:

W. GLENN WATTS
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [REDACTED]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE


I, W. Glenn Watts, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Ann H. Lamar
Circuit Court Judge
Post Office Box 707
Senatobia, MS 38668

Honorable John W. Champion
District Attorney
365 Loshier St., Ste. 210
Hernando, MS 38632

James Ramsey, #L6811
BCRCF
2792 Hwy 8, West
Cleveland, MS 38732

This the 13th day of Aug., 2007.



W. GLENN WATTS
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

I, W. Glenn Watts, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Jim McClure
Circuit Court Judge
Post Office Box 707
Senatobia, MS 38668

Honorable John W. Champion
District Attorney
365 Loshier St., Ste. 210
Hernando, MS 38632

James Ramsey, #L6811
BCRCF
2792 Hwy 8, West
Cleveland, MS 38732

This the 13th day of August, 2007.



W. GLENN WATTS
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680