

IN THE MISSISSIPPI COURT OF APPEALS

No. 2006-CA-01497-COA

COPY

AZIKIWE KAMBULE

APPELLANT

FILED

VS.

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SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI

APPELLEE

REBUTTAL BRIEF OF APPELLANT

Appeal from the Circuit Court of Madison County, Mississippi

Julie Ann Epps (MS Bar No. [REDACTED])
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LAW AND ARGUMENT

The trial court's determination that Kambule's guilty plea was voluntary and knowing was erroneous and should be reversed.

The State argues that Kambule, at the plea hearing and in his petition to plead guilty, expressed satisfaction with his attorneys. This, however, is not really relevant to the issue here. First of all, when Kambule stated that he was happy with the representation he had received, he had not yet been sentenced. His lawyers' predictions had yet to be proved false. Secondly, Kambule's background which resulted in his being extremely deferential to authority, made it unlikely that he would express anything but satisfaction with his counsel.

The issue here is whether Kambule's plea was knowing and voluntary given his background and where Kambule was given information by his attorneys that turned out to be untrue.

A guilty plea may not be induced by a false premise or unfulfillable promise. When a defendant enters a guilty plea in reliance on a plea agreement, he must be made aware of and understand the actual value of the commitments that have been made to him. *Brady v. United States*, 397 U.S. 742, 755, 90 S.Ct. 1463 (1970).

In this case, the record clearly shows that Kambule's guilty plea was induced by a promise that his sentence would likely be less than the maximum.

No one explained To Kambule that his attorneys' promises were illusory. The United States Supreme Court has clearly established that a defense attorney's failure to render effective assistance may render a guilty plea involuntary. The trial court's conclusion that Kambule's attorneys rendered effective assistance of counsel was erroneous.

To satisfy Due Process requirements, a guilty plea "must, of course, be voluntary and knowing[.]" *Santobello v. New York*, 404 U.S. 257, 261, 92 S.Ct. 495 (1971). A plea is voluntary only when the defendant is made aware of "the actual value of any commitments made to him by the court, prosecutor, or his own counsel." *Brady v. United States*, 397 U.S. at 742. A plea induced, in whole or in part, by a false premise or unfulfillable promise is involuntary and cannot stand. *Santobello*, 404 U.S. at 262; *Mabry v. Johnson*, 467 U.S. 504, 509 (1984); *Brady*, 397 U.S. at 755; *Marchibroda v. United States*, 368 U.S. 487, 493, 82 S.Ct. 510 (1962).

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A guilty plea may also be involuntary and unknowing if the person entering the plea did not receive effective assistance of counsel. *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366 (1985). Counsel's performance is ineffective when (1) it falls below an objective standard of reasonable professional competence and (2) there is a reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-94, 104 S.Ct. 2052 (1984). In the context of a guilty plea, the second prong of the Strickland test is met when there is a reasonable probability

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that, but for counsel's errors, the accused would not have pleaded guilty and would have gone to trial. *Hill*, 474 U.S. at 59; *Smith v. McCotter*, 786 F.2d 697, 703 (5th Cir. 1986). In this case, Kambule's attorneys all but guaranteed him that he would get less than the maximum sentence if he pleaded guilty. Since Kambule was induced to plead guilty based on these assurances, his plea was neither knowing or voluntary despite the fact that he expressed satisfaction with his counsel at the plea hearing.

Conclusion

For the above and foregoing reasons, Azikiwe Kambule's guilty plea and sentence must be vacated and his case remanded.

Respectfully submitted,

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CERTIFICATE OF MAILING AND SERVICE

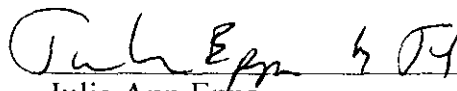
I, Julie Ann Epps, hereby certify that I have this day mailed by first-class mail, postage prepaid, the original, three copies and a copy on disc of the foregoing Rebuttal Brief of Appellant to the Clerk of the Mississippi Supreme Court as well as one copy to each of the following:

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This, the 15th day of September, 2008.


Julie Ann Epps