

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

THOMAS LITTLETON

APPELLANT

FILED

VS.

AUG 06 2007

NO. 2006-CA-1545

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

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APPELLANT

VERSUS

NO. 2006-CA-1545

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

This case involves an appeal from the Circuit Court of Clay County, wherein Thomas Littleton was charged with sale of cocaine. (C.P.2) He pleaded guilty to the lesser-included offense of possession of cocaine with intent to distribute and was sentenced to a term of eight years in the custody of the Mississippi Department of Corrections with six years to serve and two years suspended. (C.P.28) Thereafter, Littleton filed in the circuit court a Motion to Withdraw/Set Aside Guilty Plea and Sentences, which the court denied summarily. (C.P.31-36) Aggrieved by the judgment rendered against him, Littleton has perfected an appeal to this Court.

SUMMARY OF THE ARGUMENT

Littleton has failed to show that the circuit court abused its discretion in denying his motion to withdraw his guilty plea. The judgment entered below should be affirmed.

PROPOSITION:

LITTLETON HAS FAILED TO SHOW THAT THE CIRCUIT COURT ABUSED ITS DISCRETION IN DENYING HIS MOTION TO WITHDRAW HIS GUILTY PLEA

In his Motion to Withdraw/Set Aside Guilty Plea and Sentences, Littleton made claims summarized as follows: 1) that his counsel provided ineffective assistance in failing to inform him that the court was not bound to follow the sentencing recommendation of the prosecution; 2) that the sentence imposed was disparate and disproportionate to the crime; 3) that the defendant, a paraplegic, would not receive proper care in any state prison facility; and 4) that the court's failure to follow the state's recommendation undermined the plea-bargaining process and violated the doctrine of separation of powers. (C.P.32)

The circuit court denied the motion with the following findings and conclusions:

1. The defendant, Thomas Littleton, on August 15, A.D., 2006, filed a sworn Petition to Enter a Plea of Guilty in which he acknowledged he could be sentenced to up to 30 years and fined up to \$1,000,000.00 and that the final decision as to the sentence rests with the Court.

2. Upon once again being placed under oath, said defendant answered that he understood "that a guilty plea waives all of the above rights and placed him in a position where he could be sentenced by the Court to up to the maximum penalty provided by law.

3. Further, said defendant stated he understood "that the Court is not a part of the plea bargaining process and is not bound by any promise or recommendation made by anyone else."

4. That said defendant's attorney, Guy M. Rogers, certified that he discussed all the contents of the above cited petition to plea with the defendant and that he was satisfied that the defendant fully understood the same and executed the same knowingly and voluntarily.

5. The defendant acknowledged he fully understood all of his rights and the Court, having observed the defendant to be mentally alert, found that the defendant had knowingly, willingly, freely, voluntarily and intelligently entered his guilty plea and that there existed factual basis for the plea, and accept said defendant['s] plea and found him guilty. The Court the sentenced the defendant well within the maximum penalty provided by law.

6. That the sworn petition and the Court informed said defendant that he could be sentenced up to the maximum penalty and that the Court was not a part of the plea bargaining process and not bound by anyone else's agreement or promise.

7. That this Court knows from having sentenced other paraplegics that the Mississippi Department of Corrections has a special medical care unit in Rankin County that provides proper adequate care for the defendant's like.

8. That this Court, having observed the defendant and being acquainted with the facts and the law, may and hereby does, rule summarily.

9. That said motion lacks merit as the said defendant now denies what he has previously sworn twice to and as his attorney now denies what he has previously certified to.

(C.P.35-36)

The court's order is not subject to reversal "absent a finding" that it "was clearly erroneous." *Taylor v. State*, 766 So.2d 830, 832 (Miss. App. 2000), citing *Kirksey v. State*, 728 So.2d 565, 567 (Miss.1999). Furthermore, URCCC 8.04(A)(5) provides that "[i]t is within the discretion of the court to permit or deny a motion for the withdrawal of a guilty plea." The

state contends the court's ruling, supported by the record and controlling case law, was not an abuse of judicial discretion.

At the outset, the state submits the order denying relief reveals that the court carefully considered each of the claims presented in the Motion to Withdraw.¹ The court correctly noted that claims 1) and 4) were contradicted by the defendant's statements under oath, those submitted in the Petition to Enter a Plea of Guilty and those made during the plea colloquy.² (C.P.22-27) (T.7-9) Where, as here, the movant's claims are belied by unimpeachable documentary evidence, no hearing is required. *Hoyt v. State*, 952 So.2d 1016, 1022-23 (Miss. App.2007); *McNabb v. State*, 915 So.2d 478, 481 (Miss. App. 2005).

Regarding the remaining issue, the state submits there is nothing in this record to support Littleton's claim that the sentence "is grossly disproportionate to the sentences meted out by Judge Smith in Yazoo County." (Brief for Appellant 9) "This Court can act only on the basis of the contents of the official record, as filed after approval by counsel for both parties. It may not act upon statements in briefs or arguments of counsel which

¹Only those claims raised below are properly before this Court at this juncture. E.g., *Rivers v. State*, 807 So.2d 1280, 1281 (Miss. App. 2002); *Patterson v. State*, 594 So.2d 606, 609 (Miss.1992); *Gardner v. State*, 531 So.2d 805, 808-09 (Miss. 1988).

²During the plea colloquy, the court informed Littleton of the statutory minimum and maximum penalties for this offense, and asked him, "Do you understand that the Court is not a part of the plea bargaining process and is not bound by any promise or recommendation made by anyone else?" Littleton answered, "Yes, sir." (T.8-9)

are not reflected by the record." *Porter v. State*, 749 So.2d 250, 256 (Miss. App. 1999), quoted in *Triggs v. State*, 803 So.2d 1229, 1238 (Miss. App. 2002).

The circuit court correctly found that the claims presented in Littleton's motion to withdraw his guilty plea were contradicted by his sworn statements made in the petition to enter a plea of guilty and during the plea colloquy. It follows that the court did not abuse its discretion in denying this motion summarily.


CONCLUSION

The state respectfully submits Littleton's motion to withdraw his guilty plea was facially devoid of merit and was properly denied without a hearing. The judgment entered below should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

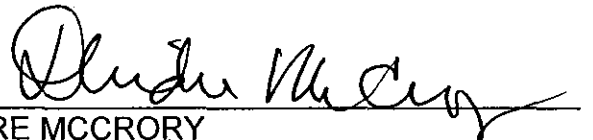
I, Deirdre McCrory, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 6th day of August, 2007.



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