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IN THE SUPREME COURT OF MISSISSIPPI

THOMAS LITTLETON APPELLANT

Vs. Case No. 2006-CA-01545

STATE OF MISSISSIPPI APPELLEE

COURT APPEALED FROM: CIRCUIT COURT

COUNTY: YAZOO

TRIAL JUDGE: MIKE SMITH

TRIAL COURT#: 25-9702

GUY N. ROGERS, JR.
ATTORNEY FOR APPELLANT
2679 CRANE RIDGE DR., SUITE B
JACKSON, MISSISSIPPI 39216
(601)982-1455
(601)982-1458
MSB#[redacted]

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CERTIFICATE OF INTERESTED PERSONS

I, GUY N. ROGERS, JR., ATTORNEY FOR THE APPELLANT THOMAS LITTLETON, DO HEREBY CERTIFY THAT THE FOLLOWING PERSONS HAVE AN INTEREST IN THIS CASE:

1. ATTORNEY GENERAL JIM HOOD
   CARROL GARTIN JUSTICE BUILDING
   450 HIGH ST., FIFTH FLOOR
   JACKSON, MISSISSIPPI 39201

2. HONORABLE JUDGE MIKE SMITH
   P.O. BOX 108
   YAZOO CITY, MISSISSIPPI 39194

3. HONORABLE JAMES H. POWELL III,
   DISTRICT ATTORNEY
   P.O. BOX 108
   YAZOO CITY, MISSISSIPPI 39194

4. THOMAS LITTLETON, APPELLANT
   MDOC # 49627
   UNIT 42 R217-A
   PARCHMAN, MISSISSIPPI 38738

I FURTHER CERTIFY THAT I HAVE THIS DAY MAILED BY U.S. MAIL, POSTAGE PREPAID, AND A TRUE AND CORRECT COPY OF APPELLANT'S BRIEF TO THE INDIVIUALS LISTED HEREIN.

THIS, THE 30 DAY OF APRIL, 2007.

TABLE OF CASES AND OTHER AUTHORITIES

ISSUES ON APPEAL

I. THE TRIAL COURT ERRED BY NOT FOLLOWING THE PLEA RECOMMEDATION OF THE DISTRICT ATTORNEY-THE SENTENCE IMPOSED WAS BASED ON PERSONAL PREJUDICE AND IRRELEVANT, INFLAMMATORY, AND PREJUDICAL REMARKS MADE BY THE DISTRICT ATTORNEY AND THE COURT AT SENTENCING

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FACTS-PROCEDURAL HISTORY

On August 15, 2006, Appellant Thomas Littleton entered a guilty plea in the Circuit Court of Yazoo County, Judge Mike Smith presiding, to possession with intent to distribute approximately 0.5 grams of cocaine in Yazoo City. The Appellant was sentenced to eight (8) years, with two (2) years suspended, and upon release, placed on five (5) years of supervised probation.

Prior to the entry of the plea, the District Attorney for Yazoo County had recommended that Appellant receive a sentence of ten (10) years, suspended, two (2) years house arrest (intensive supervision), one (1) year of supervised probation following house arrest, pay all court costs, court-appointed attorney fees, laboratory fees, and to reimburse the "buy" money. See Plea Petition at p. 25, Clerks Papers.

Following the entry of the plea and the District Attorney's recommendation, Judge Mike Smith stated that Appellant did not qualify for house arrest and the state responded that MDOC had accepted previous defendants into the house arrest program for the crime of possession with intent and then told Judge Smith that the State

was willing to offer the Appellant "the lesser-included offense of simple possession." TR, p. 11.

The State then proceeded to inject prejudicial remarks about the Appellant's family-"the dope-dealingest family in Yazoo City"-while at the same time stating that they had no objection to the Court imposing sentence on the lesser charge because of the Appellant's serious disability and physical condition. This Court should be aware that the Appellant had both of his legs cut off just below his torso due to a tragic accident that occurred many years before. He has been confined to a bed for the past fifteen (15) years. He rarely ever leaves his home.

Following much discussion with the District Attorney and William Martin of the MDOC as to whether a defendant is eligible for house arrest on a possession with intent to distribute drugs charge, Judge Smith proceeded with sentencing on another defendant, Lee Whitaker, II, wherein he accepted the plea recommendation of the District Attorney.

Judge Smith then proceeded to discuss the Appellant's background and criminal history with the Assistant District Attorney Mr. Waldrup. See TR, p. 19.

At this point, Judge Smith, after hearing the District Attorney talk about the "Littleton family" of "dope dealers," stated that he was not going "to slap him [Appellant] on the wrist" and "I'm not going to send a message that if there's something wrong with you, you're going to be a dope dealer and get slapped on the wrist." TR, p. 19.

Following this statement by Judge Smith, counsel for the Appellant, realizing that the plea offer was in jeopardy, asked Judge Smith if he was going to accept the State's plea offer and Judge Smith responded "No, sir." TR, p. 19-20.

Counsel for Appellant then attempted to withdraw the guilty plea which was denied, Judge Smith stating that he was not going to send the message that if a person has a physical disability, they will get a lighter sentence. TR, p. 20-21.

Defense counsel then asked for a trial based on the fact that the State would have a difficult burden obtaining a conviction. This was also denied. TR, p. 23. Judge Smith further commented that "I have just got a hang-up about that. I'm sorry but I've got it." TR, p. 24.

Appellant then filed a Motion to Withdraw/Set Aside Guilty Plea and Sentence, CP, p. 31-33, which was denied by Judge Smith in his

Order denying Motion to Withdraw or set Aside Guilty Plea and Sentence entered on August 31, 2006. CP, p. 35-36. Appellant now appeals from this denial and other issues that warrant a reversal and remand of this case back to the lower Court for sentencing.

SUMMARY OF THE ARGUMENT

Appellant would show that the sentence imposed by the lower court was excessive and grossly disproportionate based on other sentences meted out by Judge Smith in the Circuit Court of Yazoo County.

The sentence of 8 years with 6 years to serve for possession with intent to distribute 0.5 grams of cocaine was not only excessive and disproportionate but was based on personal prejudice and vindictive and prejudicial remarks made by the State and the Court.

At such time as Appellant submits his Reply Brief, the Court will be informed of all other sentences imposed by Judge Smith for same or similar crimes wherein the sentences were much less harsh than in the instant case. This will further support the argument of the excessive and disproportionate sentence.

ARGUMENT AND LAW APPLIED TO THE FACTS

I. THE TRIAL COURT ERRED BY NOT FOLLOWING THE PLEA RECOMMEDATION OF THE DISTRICT ATTORNEY-THE SENTENCE IMPOSED WAS BASED ON PERSONAL PREJUDICE AND IRRELEVANT, INFLAMMATORY, AND PREJUDICAL REMARKS MADE BY THE DISTRICT ATTORNEY AND THE COURT AT SENTENCING

The major issue in this case is not the more common argument of "vindictive prosecution" but the argument of vindictive, prejudicial, and disproportionate sentencing by the Yazoo County Circuit Court presided over by Judge Mike Smith in the instant case.

It is clear from the trial transcript in this matter that the sentence imposed by the Court of 8 years, 6 to serve, 2 suspended is excessive in view of the two (2) years house arrest offered by the District Attorney in the plea bargain. See Plea Offer, CP, p.22, RE, p. 5.

The statements made by the District Attorney and Assistant District Attorney and the Court clearly show that the failure to follow the plea recommendation was based on

vindictive and personal prejudice on the part of the Court and State.

The State made the following inflammatory and irrelevant remarks to the Court that laid the foundation the grossly disproportionate sentence:

1. "It's just with the Littleton name around town, the Littleton's have been, the dope-dealingest family in Yazoo City." TR, p. 12, lines 1-4.
2. "It's because of the Littleton reputation that it was two (2) year house arrest on a first offender, followed by one year supervised probation, with the potential of serving seven years. That's why." TR, p. 12, lines 10-15.
3. "It's his family." This colloquy between the Assistant District Attorney and the Court is found at TR, p.19, lines 1-14.
4. "Family business." (District Attorney Powell) TR, p.19, line 18.

The Court made the following remarks that show that the sentence imposed was based on personal prejudice and vindictiveness:

1. "Got your head screwed on good?" TR, p.4, lines 29 TR, p.15, line 1.
2. "All right. What kind of history? Has he been doing this for a while and you just now caught him? TR, p.18, lines 27-29.
3. "Kind of like the Martins in Summit, Mississippi..." This statement by the Judge is found at TR, p.19, lines 19-25.
4. "No, sir...The complete statement of Judge Smith is found at TR, p. 20, lines 25-29 and TR, p. 21, lines 1-2.
5. TR, p. 23, lines 23-29, and TR, p.24, lines 1-3.
6. TR, p.24, lines 27-29.

While it is not only clear from the trial transcript that the sentence imposed by the trial court was excessive and disproportionate, it is also clear that from the statements made by the State and the Court that this sentence was the result of personal prejudice and vindictiveness.

In the United States Supreme Court decision Solem vs. Helm, 463 U.S. 277, 103 S. CT. 3001, 77 L.Ed.2d 637 (1983), the Court declared that a criminal sentence must not be disproportionate to the crime for which the defendant is being sentenced. Appellant recognizes the holding in Solem that legislatures and sentencing courts

should be given "substantial deference" and combining this with the need for individualized sentencing results in a "wide range of constitutional sentences". Citing Seely vs State, 451 So.2d 213 (Miss. 1984).

In the case at bar, the sentence received by Appellant meets the criteria of being "grossly disproportionate" to the crime charged (0.5 grams of cocaine) and it is grossly disproportionate to the sentences meted out by Judge Smith in Yazoo County. This brief will be supplemented with documentation of these Yazoo County cases in Appellant's Reply Brief.

II. THE SENTENCE IMPOSED BY THE TRIAL COURT WAS EXCESSIVE AND DISPROPORTIONATE IN RELATION TO THE CRIME

III. THE SENTENCE IMPOSED WAS GROSSLY DISPROPORTIONATE TO THE SENTENCES RECEIVED BY OTHER DEFENDANTS CHARGED WITH THE SAME OR SIMILAR CRIMES IN THE CIRCUIT COURT OF YAZOO COUNTY DURING JUDGE SMITH'S TENURE ON THE BENCH

Appellant is not arguing that the sentence here is cruel and unusual under the Eighth (8th) Amendment to the U.S. Constitution, but that Truth-in-Sentencing statutes and laws were enacted to prevent this type of situation from occurring (proportionality) where one defendant receives a 20-year sentence and another receives probation for the same crime.

In the case of Davis vs State, 724 So.2d 342 (Miss. 1998), this Court recognized that it is properly in the purview of the Legislature to determine the range of sentences. Davis at p. 345.

However, this court went on to say that "[O]ccasionally however, cases come before us in which sentences may be so severe as to appear on the record inexplicable and justify remanding the matter to the trial court for further consideration." Id at 345.

In the instant case, there is no justification for the sentence on the face of the record on appeal, other than the glib comment by the trial judge "I have just got a hang-up about that." TR, p.24.

In the Davis case, the Defendant Mellissa Davis was indicted and sentenced (after jury trial) for the sale of two (2) rocks of crack cocaine

within 1,500 feet of a church. The Court imposed a sentence of 60 years in prison.

Davis argued that even if guilty as charged, that she was subjected to a sentence which was so excessive given the nature and details of her crime, as to be cruel and inhuman and disproportionate when viewed against similar sentences given for like offenses.

The Davis Court stated that "[w]hile a trial judge has, within the limits of the sentencing statutes, broad discretion as to the sentence given a particular defendant (Hoops vs State, 681 So. 2d 521@537 (Miss. 1996), and the decision to require a pre-sentencing investigation likewise is within his discretion, one cannot but be concerned about the severity of the sentence in this case in the absence of anything appearing in the record which reflects egregious circumstances. Davis at p. 345.

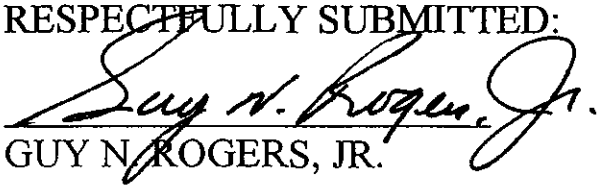
Appellant submits that while the instant case is not nearly as egregious as Davis, the sentence imposed was extreme in view of the recommendation of the State (2 years house arrest-late in the hearing, the State agreed to simple possession) and the sentences of other defendants similarly situated.

CONCLUSION

Appellant would respectfully request that this Court remand this case to the trial court for imposition of the sentence recommended by the State or at least for re-sentencing in conformity with the sentences received by other Yazoo County defendants meted out by the trial court under Judge Mike Smith.

Appellant would also note for the Court that further documentation will be submitted to this Court that relates to the actual sentences received by other defendants for the same or similar crime.

RESPECTFULLY SUBMITTED:



GUY N. ROGERS, JR.

GUY N. ROGERS, JR.
ATTORNEY FOR APPELLANT
2679 CRANE RIDGE DRIVE
SUITE B
JACKSON, MISSISSIPPI 39216
601-981-1455
601-982-1458
MSB#[redacted]

CERTIFICATE OF SERVICE

I, Guy N. Rogers, Jr., Attorney for Appellant Thomas Littleton, do hereby certify that I have this day mailed via United States mail, postage prepaid, a true and correct copy of the foregoing Brief of Appellant to the following:

ATTORNEY GENERAL JIM HOOD
CARROL GARTIN JUSTICE BUILDING
450 HIGH ST., FIFTH FLOOR
JACKSON, MISSISSIPPI 39201

HONORABLE JUDGE MIKE SMITH
P.O. BOX 108
YAZOO CITY, MISSISSIPPI 39194

HONORABLE JAMES H. POWELL III,
DISTRICT ATTORNEY
P.O. BOX 108
YAZOO CITY, MISSISSIPPI 39194

THOMAS LITTLETON, APPELLANT
MDOC # 49627
UNIT 42 R217-A
PARCHMAN, MISSISSIPPI 38738

THIS, the 9 day of May, 2007.

Guy N. Rogers, Jr.
GUY N. ROGERS, JR.