IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CHARLES RUDD

Appellant

V.S

No.: 2006-CP-1249

STATE OF MISSISSIPPI

Appellee

COPY

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REPLY TO APPELLEE'S BRIEF

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Reply To Appellee's Brief

Comes now, Charles Rudd, Petitioner, acting Pro-Se, and files this Reply To Appellee's Brief, and in support therefore would show unto this Honorable Court the following, to-wit:

Preliminary Statement

1.) Appellant filed a motion for post conviction for the charge of Armed Robbery on or about Oct 2004, which was filed Dec. 2004 by Trial Court.

2.) In order to challange his second indictment, Appellant filed another motion for Post Conviction Relief, March 4, 2005 for the charge of Attempted Escape, which was later changed to an Escape charge.

3) This second filing was the only motion to be ruled on April 5, 2005. (see Order Denying Relief cp. 46)

4) Later, when appellant amended the first filed petition of 2004, in Dec. 2005, this amended petition was held has time barred.

5.) Appellant was sentenced on Oct. 17, 2003 which is the final judgment and the only time he is allowed to petition the courts, after he has been sentenced and that should be where the time start making Oct. 17, 2006 the deadline to file all petitions within the 3 years allowed.

6) The bases of this reply is centered around the order that was entered Jan. 2006, dismissing petition for Post Conviction Relief after appellant previously submitted the same filed motion Dec. 2004 and in an attempt to amend errors found on prima facie, appellant resubmitted petition within the scope of law granted to pro se litigants.

7) The resubmitted motion was not a refiled motion to be held as successive, but as an attempt to amend the original Dec. 2004 motion, yet it was dismissed as time barred (Jan. 2006).

8) Appellant was sentenced on Oct. 17 2003 which is the date on that he was able to start petitioning the courts and that would mean appellant had until Oct. 2006 to file any and all petitions within the 3 years given to file.

STATEMENT OF FACTS

Appellant was sentenced Oct. 17, 2003 He filed a petition to challenge his 1st indictment and conviction on Oct. 2, 2004, which was filed in trial court on Dec. 6, 2004 (C.p. 27-45) This motion was never ruled on.

Appellant filed a second petition for Post Conviction Relief to challenge his second indictment and conviction on March 4, 2005 (C.p. 7-21). This motion was denied April 8, 2005 (C.p. 46) to which appellant failed to file an appeal to challenge the dismissal and/or denial of this motion

Appellant, later, after sending several letters to the trial court concerning the 1st filed petition challenging the 1st conviction, filed another motion to amend form errors in Dec. 2005, and that motion was held as time barred.

SUMMARY OF THE ARGUMENT

Appellant argues that time to file any and all petition should not have expired until Oct. 2006, which is in fact 3 years after sentencing

Appellant argues that Trial Court over looked his 1st filed petition and this is where the un-warranted confusion has entered.

Appellant also argues that the said second petition for Post Conviction Relief was not time barred, Nor was it a successive petition, but an amend to the first unruled upon petition.

Appellant futher argues that he was allowed to amend his petition before it had been ruled on, or responded to.

Finally, Appellant argues that whether time to file petition for Post Conviction started on Oct. 2003 day of sentencing or on July 17, 2002 date of the said plea agreement, he should not be time barred because either way he has a filed petition posted Dec. 2004 and amended Dec. 2005 petition both within

the time frame allowed.

ARGUMENT

In the brief for the Appellee, it was said that defendant did file a motion for post-conviction Dec. 6, 2004. That would "appear" was supplemented by yet another petition March 2005.

The appellee was correct in parts. The said supplemented petition of March 2005 was in fact a seperate motion which was meant to argue only the charge and conviction of Attempted Escape which was later changed without notice, to the more severe charge of Escape. Yet this motion is not in question.

These (2) motions (Dec. 6, 2004 & March 4, 2005) where filed to challenge two different convictions and only (1) had been ruled upon (March 4, 2005) when appellant resubmitted a motion with amends made to errors made on the prima facie of the original motion filed (Dec. 6, 2004)

According to Fed. R. Civ. P. 15. In amending the Dec. 6, 2004 filed motion, the amended motion should have been held as an amended motion stemming from the original motion. (C.p. 25-45).

In the summary of argument, appellee stated that the petition the appellant submitted second for post-conviction relief was time barred and successive.

Appellant protest that the petition that was denied was in fact the second petition and it was meant to challenge appellant's second conviction, while the first was to challenge the first conviction.

Appellee stated in argument that appellant was operating under several misapprehension of law.

Appellant agrees with appellee in stating he the appellant has a limited knowledge of the law and this is what appellant argues have been used against him from the very begining and through this "loosing" process as the appellee put's it.

However, appellant argues that when there is a showing of an illegal sentence, that in itself has no limited time, yet he was still well beyond the time bar with his first petition that was never ruled on, making it possible to be amended.

Appellant argues this limited knowledge of the law is why pro se litigants are allowed some degree of flexibility in pleading his action in Boguslavsky v. Kaplan, 159 F.3d 715 (2nd Cir. 1998);

also see McCormick v. City of Chicago, 230 F3d 319 (7th Cir. 2000); Boag v. MacDougall, 454 US 364, 70 LEd2d 551, 102 SCt 700 (1982); Haines v. Kerner, 404 US 519, 30 LEd2d 652, 92 SCt 594 (1972), which state Pro se litigants pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with pleading requirements.

Appellee stated that in Dec. 2007, after time had expired for filing, defendant filed a second, successive, petition for relief.

Appellant argues this statement is not true as seen in the record of the last and final motion filed for relief was Dec. 2, 2005 as resubmitted and notice of appeal was filed on or about Feb. 6, 2006 and re-submitted about Sept. 26, 2006, all stringing from the previously filed petition back from Dec. 2004, where it appears the trial court has been ever lacking.

According to M.R.C.P. 60(b) Relief From Judgment or Order. which states: (b) Mistake; Inadvertence Newly Discovered Evidence; Fraud, etc. On motion and upon such terms are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) fraud, misrepresentation, or other misconduct of an adverse party;

(2) accident or mistake;

(3) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) the judgment is void;

(5) the judgment has been satisfied, released or discharged or prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(6) any other reason justifying relief from the judgment.

Appellant does not fall under all six of the reasons mentioned but he does fall under (1)(2)(4) & (6). The reasons are as followed:

(1) Appellant argues he has shown he was misrepresented by trial lawyer as well as misconduct of act.

STATE OF MISSISSIPPI)

)SS.

COUNTY OF SUNFLOWER)

VERIFICATION

PERSONALLY Appeared before me, the undersigned authority in and for said jurisdiction, the within named petitioner, Charles Rudd, who, after first being duly sworn, stated on oath that the statements set forth in the foregoing petition and/or Reply Brief, are true and correct as therein stated.

Charles Rudd

Charles Rudd #L7678

SWORN TO AND ~~SUBSCRIBED~~ BEFORE ME, this the 28 day of April 2008.

DIANN B. WILSON NOTARY PUBLIC STATE OF MISSISSIPPI COUNTY OF SUNFLOWER MY COMMISSION EXPIRES NOV 2, 2008 BONDED THRU STEGALL NOTARY SERVICE

(Notary Public)