IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DOUG M. CARROLL — Appellant

VS.

NO. 2006-CP-01406

STATE OF MISSISSIPPI — Appellee

REPLY BRIEF FOR THE APPELLANT

DOUG CARROLL, M PRO SE COUNSEL

MS STATE PENITENTIARY, UNIT 32-B B-ZONE T-5 BOX 29, PARCHMAN, MS 38738

TABLE OF CONTENT(S)

TABLE OF AUTHORITES

SUMMARY

REPLYING ARGUMENT(S)

PROPOSITION ONE — WHETHER CARROLL(S) SENTENCE IS ILLEGAL BECAUSE THE COURT JUDGE LACKED AUTHORITY TO SUSPEND IMPOSITION OF HIS SENTENCE IN LIGHT OF THE FACT THAT HE HAD PREVIOUSLY BEEN CONVICTED OF A FELONY

PROPOSITION TWO — WHETHER OR NOT CARROLL WAS DENIED HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL AS GUARANTEED BY THE SIXTH (6TH) AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 3, SECTION 26 OF THE MISSISSIPPI CONSTITUTION OF 1890

STATE STATUTE(S)

MISS. CODE ANN. § 99-35-101

MISS. CODE ANN. § 47-7-34

MISS. CODE ANN. § 47-7-33

SUMMARY

The State contends that Carroll's appeal should be dismissed under THE MISSISSIPPI RULES OF APPELLATE PROCEDURE, pursuant to Rule 2 (a)(1), stating that it appears that the defendant's NOTICE OF APPEAL was untimely filed, over two months later, ON September 6TH, 2006; beyond the 30-day's required by MRAP 4.

Therefor, the Appellant, Carroll points this court to the Record before it, which reflects that Carroll's NOTICE OF APPEAL was already filed by the Supreme Court Clerk as early as August 23rd. 2006, IN an NOTICE informing Carroll that this court had yet to receive a copy of the Certificate of Compliance IN accordance with M.R.A.P. 11 (b) (1) (R. Vol 1/10, 21).

Further, the Appellant states that the Circuit Court's Clerk General Docket sheet must be misstated or perhaps, inaccurate. Thereby, IN addition the Appellant's Application to Proceed in Forma Pauperis, IN the Court's of the State of Mississippi was signed by the Institutional Authorized Officer as early as July 18TH. 2006. Therefor, while it bears's no postmark; it does indicate the time of it's delivery to prison officials, was appropriately dated by the Appellant on July 2, 2006, and mailed (R. Vol 1/4-5).

Therefor, IN the normal course of events the Appellant's Notice of Appeal, was received by the Circuit Clerk within the 30-day requirement of MRAP 4, SEE Fallen v. United States, 378 U.S. 139; 84 S. Ct. 1689; 12 L. Ed. 2d 760; 1964 U.S. LEXIS 819.

CONCLUSION

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

FEDERAL CASE(S)

BARKER V. WINGO, 407 U.S. 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972)

FALLEN V. UNITED STATES, 378 U.S. 139; 84 S. Ct. 1689; 12 L. Ed. 2d 760; 1964 U.S. LEXIS 819

STATE CASE(S)

BURNS V. STATE, 344 So. 2d 1189 (MISS. 1977)

COOPER V. STATE, 737 So. 2d 1042 (MISS. 1999)

GOSS V. STATE, 721 So. 2d 144 (MISS. 1998)

RUBY V. STATE, 861 So. 2d 368, 1189 (MISS. 2003)

ROWE V. STATE, 735 So. 2d 399, 402 (MISS. 1999)

SWEAT V. STATE, 912 So. 2d 458, 461 (MISS. 2005)

TROTTER V. STATE, 554 So. 2d 313 (MISS. 1989)

WEAVER V. STATE, 785 So. 2d 1085 (MISS. CT. APP. 2001)

YATES V. STATE, 342 So. 2d 310 (MISS. 1977)

Further, the State contends that CARROLL(s) appeal should be Dismissed for lack of jurisdiction because Carroll pleaded guilty to those charges against him. The State cited MISS. CODE ANN. § 99-35-101, for support which states:

> Any person convicted of an offense in a circuit court may appeal to the supreme court, provided, however, an appeal from the Circuit Court to the Supreme Court shall not be allowed in any case where the defendant enters a plea of guilty.

However, in Trotter v. State, 554 So. 2d 313 (MISS. 1989) that court held the findings found in Burns v. State, 344 So. 2d 1189 (MISS. 1977), where that court implied that, "an appeal from a sentence imposed pursuant to a guilty plea is not equivalent to an appeal from the guilty plea itself."

Therefore, Carroll is challenging the legality of the sentence imposed subsequent to the guilty plea, and not the guilty plea itself.

REPLYING ARGUMENT
PROPOSITION ONE

WHETHER CARROLL(s) SENTENCE IS ILLEGAL BECAUSE THE COURT JUDGE LACKED AUTHORITY TO SUSPEND IMPOSITION OF HIS SENTENCE IN LIGHT OF THE FACT THAT HE HAD PREVIOUSLY BEEN CONVICTED OF A FELONY

The Appellee for the State, stated that it is apparent from the transcript everyone was aware of CARROLL, being an previously convicted felony, however, it further urges(s) that Carroll(s) sentence is not prejudicial, and for its support

cites Sweat v. State, 913 So. 2d 458, 461 (Miss. 2005) "there is no prejudice suffered when a defendant receives an illegally lenient sentence." However, it fails to explain how CARROLL(s) sentence is an illegally lenient sentence. In Sweat, the supreme court held that the "law which relieves defendant(s) from the burden of an illegal sentence applies to situation(s) where the defendant is forced to suffer a greater sentence rather than the luxury of a lesser sentence." Therefor, CARROLL does not urge with that court(s) holdings.

Whereas, in sentencing CARROLL the circuit court granted Carroll, a prior convicted felon, a suspended sentence. However, to comply with Section 47-7-34, the circuit court went further and made it abundantly clear that the suspended portion of Carroll(s) sentence would be served under certain condition(s), very similar to unsupervised probation. CARROLL is subject to the very same conditions(s) that the circuit judge clearly imposed in subparagraphs (2) through (9) of his sentencing order (R. Vol 1/38-34).

In doing so, the circuit court made it obvious that if CARROLL violates(s) any of the condition(s) then he could be required to serve the entire suspended portion of his sentence. The essence of that order is that CARROLL, as a prior convicted felon, will receive the benefit of a lenient sentence but only as long as he complies with the condition(s); contrary to Miss. Code Ann. § 47-3-33; which state(s) that "if a defendant has a prior felony conviction the Judge has no authority to give him a suspended sentence." See Weaver v. State, 785 So. 2d 1065 (Miss. Ct. App. 2001); Cooper v. State, 737 So. 2d 1042 (Miss. 1999); Goss v. State, 721 So. 2d 144 (Miss. 1998).

REPLYING ARGUMENT
PROPOSITION TWO

WHETHER OR NOT, CARROLL WAS DENIED HIS CONSTITUTIONAL

RIGHT TO A SPEEDY TRIAL AS GUARANTEED BY THE SIXTH (6TH) AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 3, SECTION 26 OF THE MISSISSIPPI CONSTITUTION OF 1890

THE STATE CONTENDES) that SINCE CARROLL pled guilty, he WAIVED) his right to a speedy trial, whether that right is of Constitutional or Statutory, it CITES) IN support ROWE V. State, 735 So. 2d 399, 400 (MISS. 1999).

HOWEVER, IN Raby v. State, 861 So. 2d 368, 1189 (MISS. 2003) that court stated that "a valid guilty plea admits all elements of a formal criminal charge and operates as a WAIVER of all NON-jurisdictional defect contained in an indictment against a defendant. The question of a petitioner's guilt will not be litigated on appeal." Therefor, that court further held that, "IN the context of a guilty plea and possible NON-jurisdictional defects, they must be timely asserted or they are waived. Clearly they may not be raised for the very first time IN an application for post-conviction relief or, for that matter, on direct appeal, absent a showing of cause and actual prejudice."

Therefor, the Appellant states that he timely asserted and preserved his right during an Hearing held on the Motion To Dismiss For Lack Of Speedy Trial decided on (June 19TH. 2006) when he petitioned the court, as stated by the Appellee in the STATE'S brief.

Further, IN Yates v. State, 342 So. 2d 313 (MISS. 1977), that court apparently recognized that the imposition of sentence is part of the trial for sixth amendment purpose. Without explicitly holding to that effect, this court applied the speedy trial analysis ENUNCIATED IN Barker v. Wingo, 407 U.S. 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972), to determine whether the appellant had been denied his right to a speedy trial.

With all due respect, the Appellant, CARROLL states that in this context(s), a plea of guilty does not waive subject matter jurisdiction. Therefor, in accordance with the record before this Court the Appellant has inclusion for designation in the record on appeal for an transcript of the Hearing of a Motion to Dismiss the Indictment and Pending Charge, for want of Prosecution and Violation of the Right to a Speedy Trial. Wherefore, the Appellant makes(s) this statement in hopes(s) of Sanctions(s), in that this Honorable Court would take jurisdiction.

Conclusion

The Appellant, Respectfully Pray The Honorable Court To Reverse The Judgement Of Conviction In The Circuit Courts(s) Order of Incarceration With Post-Release Supervision.

Respectfully submitted,

Appellant

CERTIFICATE OF SERVICE

I, DOUG CARROLL, M, PRO SE COUNSEL for the Appellant, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing Reply Brief for the Appellant to the following:

HON. Betty W. Sephton
Post Office Box 349
Jackson, MS 39205-0349

HON. Thyllis Stanford
Post Office Box 298
New Albany, MS 38652

HON. Jim Hood, Attorney General

Jeffrey A. Klingfuss
Post Office Box 220
Jackson, MS 39205-0220

This the 9TH day of NOVEMBER, 2007.

Doug Carroll M
Appellant

UNIT 32-B B-ZONE T-5 B0079
MS STATE PENITENTIARY
PARCHMAN, MS 38738