

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COPY

JEFFREY EARL JONES

APPELLANT

VS.

FILED

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SUPREME COURT
COURT OF APPEALS

NO. 2006-CP-1880

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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vs.

CAUSE No. 2006-CP-01880-COA

THE STATE OF MISSISSIPPI

APPELLEE

BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI

STATEMENT OF THE CASE

This is an appeal against an Order of the Circuit Court of Hinds County, Mississippi, First Judicial District, in which relief on the prisoner's motion in post - conviction relief was denied.

STATEMENT OF FACTS

The Appellant, in 2001, entered pleas of guilty to five charges under the Uniform Controlled Substances Act. He was convicted on his pleas and sentenced. It appears that the prisoner was sentenced to five separate terms of imprisonment, to be served consecutively, for a total of eighteen years. One provision of the sentence was that the prisoner was to be placed on post - release supervision for a period of five years after release from the Department of Corrections. (R. Vol. 1, pp. 55 - 79).

In August 2004, the prisoner filed a motion in post - conviction relief in the trial court.

The court directed the State to file an answer on or about 6 April 2005. (R. Vol. 1, pg. 51).

While it does not appear that this record contains the pleadings regarding that filing, specifically the pleadings that would have indicated what grounds were pursued, it does appear that the Circuit Court ultimately denied relief on that motion. (R. Vol. 1, pg. 95).

On 13 March 2006, the prisoner filed yet another motion in post - conviction relief. In this filing, he asserted that his sentences were ambiguous and perhaps illegal. Apparently, the prisoner thought the five - year period of post - release supervision added five years to the sentence recommended by the prosecution. (R. Vol. 1, pp. 31 - 46).

The Circuit Court denied relief on this successive motion. (R. Vol. 1. Pg. 95).

STATEMENT OF ISSUES

1. DID THE CIRCUIT COURT ERR IN DENYING RELIEF ON THE PRISONER'S MOTION IN POST - CONVICTION RELIEF?

SUMMARY OF ARGUMENT

THAT THE CIRCUIT COURT DID NOT ERR IN DENYING RELIEF ON THE PRISONER'S MOTION IN POST - CONVICTION RELIEF

ARGUMENT

THAT THE CIRCUIT COURT DID NOT ERR IN DENYING RELIEF ON THE PRISONER'S MOTION IN POST - CONVICTION RELIEF

A Circuit Court may deny relief on a prisoner's motion in post - conviction relief without an evidentiary hearing where "... it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief." Miss. Code Ann. Section 99-39-11(2) (Rev. 2007). This Court will not disturb a Circuit Court's decision to deny relief on a motion in post - conviction relief absent a showing that the Circuit Court's decision was clearly erroneous. *Epps v. State*, 926 So.2d 242 (Miss. Ct. App. 2005).

As pointed out by the Circuit Court, the motion filed by the prisoner which is the subject of the instant appeal was a successive motion. As such, it was properly denied for that reason. Miss. Code Ann. Section 99-39-23(6) (Rev. 2007). Moreover, the prisoner's motion was time - barred. Miss. Code Ann. Section 99-39-5(2) (Rev. 2007). He was convicted on 26 September 2001; the motion involved in this appeal was filed on 13 March 2006. This filing was far past the expiration of the time in which to file such a motion.

The prisoner did not assert some cause for relief from the operation of the successive writ bar and the statute of limitations. He does not do so here. But even if he had done so, no relief would be available to him under the facts here. The record demonstrates that the prisoner sought post - conviction relief some time ago, before he filed the instant one. It was in that motion that he should have raised his complaints about his sentence. For aught the record shows, he may well have done so.

In any event, while it may be that there are certain exceptions to the application of the successive writ bar and the statute of limitations, these exceptions surely cannot be available where one has previously sought and been denied post - conviction relief. Any complaint about the alleged illegality of the prisoner's sentence could have been addressed in the original post - conviction proceeding. Regardless of whether the prisoner brought his present complaints about his sentence in the original motion, he was bound to have done so. The State invokes the doctrines of collateral estoppel or res judicata with respect to these claims: They could and should have been raised in the original motion in post - conviction relief.

In the event the Court should consider the prisoner's complaints, notwithstanding the foregoing reasons why it should not, there is no merit in them.

As to the claim that the sentencing judge effectively imposed a twenty - three year

sentence, rather than an eighteen - year sentence, by ordering a five - year term of post - release supervision, this is simply untrue. But even if it were true that the court imposed a twenty - three year sentence, it would have been well within its authority to do so.

Under Section Miss. Code Ann. 47-7-34 (Rev. 2004), the limitation concerning a “to serve” sentence and a period of post - release supervision is that the two periods may not exceed the maximum imposable prison sentence. Here, the prisoner could have been sentenced up to thirty years on each of the charges he pled guilty to. Miss. Code Ann. Section 41-29-139(a)(1), (b)(1) (Rev. 2005). What he was sentenced to, though, was a series of three - year sentences, to be served consecutively. Taken either in sum or individually, they did not come close to reaching the statutory maximum, and in no way did the provision of the five - year period of post - conviction relief offend the limitation set out in Section 47-7-34. In no way did the provision of a five - year period of post - release supervision amount to an illegal sentence. Even if it is assumed that the Circuit Court imposed a twenty - three year sentence, such a sentence would have been well within the maximum sentence allowed by law for any one of the prisoner’s felonies.

The prisoner also appears to contend that the Circuit Court imposed more in sentencing than the State recommended. This is not supported by the record, though. The only aspect of the sentence that was not part of the recommendation by the State was the requirement imposed by the trial court that the prisoner undergo mandatory alcohol and drug dependency treatment. (R. Vol. 1, pg. 76). In any event, a recommendation by the State with regard to sentencing is not binding upon a court. The prisoner knew this. (R. Vol. 1, pg. 83). The prisoner also specifically knew that the State would recommend a period of five years on post - release supervision. (R. Vol. 1, pg. 83).

The prisoner then contends that there could be problems with revoking post - release supervision. However, it does not appear from this record that the prisoner has been revoked. These concerns of the prisoner should not be addressed until his post- release supervision is revoked.

The prisoner claims that the sentences imposed by the Circuit Court are ambiguous. They are not. The court imposed separate sentences for each of the prisoner's felonies, to be served consecutively. The court's intention is very clear.

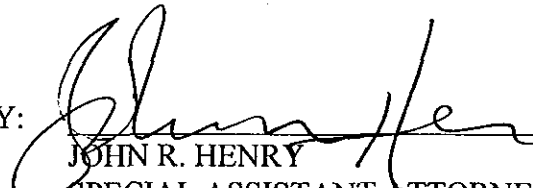
CONCLUSION

The Court should affirm the Circuit Court's denial of post - conviction relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

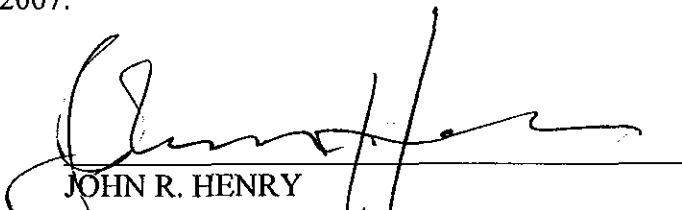
I, John R. Henry, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 15th day of November, 2007.



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