

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

COPY

BENNIE STROUD, JR.

APPELLANT

v.

NO. 2006-CP-01908-COA

STATE OF MISSISSIPPI

APPELLEE

FILED

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BRIEF OF APPELLANT

BENNIE STROUD, JR., #45807
PRO-SE
CMCF 3A-1
PO BOX 88550
PEARL, MS 39288

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NO. 2006-CP-01908-COA

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CERTIFICATE OF INTERESTED PERSONS

The undersigned pro-se petitioner certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Court may evaluate possible disqualifications or refusal.

1. State of Mississippi
2. Bennie Stroud, Jr.

This the 25 day of July 2007.

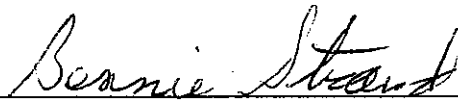

Bennie Stroud, Jr., Pro-se

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TABLE OF AUTHORITIES

CASES:

Corley v. State, 585 So. 2d 765

Brown v. State, 533 So. 2d 1118

Hill v. State, 388 So. 2d 143

Ball v. State, 437 So. 2d 423

Weaver v. State, 785 So. 2d 1085

Ivy v. State, 731 So 2d 601

Trotter v. State, 554 So. 2d 313

Strickland v. Washington, 466 US 668

Herrington v. Estelle, 491 F. 2d 125

OTHER AUTHORITIES:

URCCC 8.04(A)(3)

URCCC 3.03(2)

STATEMENT OF THE ISSUES

ISSUE NO. 1 Involuntary Guilty Plea

ISSUE NO. 2 Ineffective Assistance of Counsel

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Jackson County, Mississippi, and conviction for the crimes of: Shooting into a dwelling, aggravated assault, possession of a weapon by a convicted felon, possession of a controlled substance, and possession with intent. Bennie Stroud, Jr. is currently incarcerated with the Mississippi Department of Corrections at Pearl, MS.

FACTS

The facts of this case may be unclear since the petitioner to date, still does not recall the sequence of events resulting in the charges at hand. This case originates from guilty pleas of the petitioner to charges on aggravated assault, possession of a firearm by a felon and possession of a controlled substance. As a result of the most recent filing comes the filing of this his appeal brief. The petitioner is functionally illiterate and has previously been treated for mental illness.

ISSUE NO. 1: INVOLUNTARY GUILTY PLEA

Petitioner was denied due process of law because he was convicted of offenses in the indictment without having admitted to the elements to prove the crime had been

committed. He never stated that he willfully and knowingly participated in the alleged offenses.

According to URCCC 8.04 (a) (3), "before the trial court may accept a plea of guilty, the court must determine that the plea is voluntarily and intelligently made and that there is factual basis for the plea." In Corley v. State, 585 So. 2d 765 the Supreme Court of MS discussed URCCC 3.03(2) requiring that the trial court have before it substantial evidence that the accused did commit the legally defined offense to which he is offering the plea. See Flowers v. State 533 So 2d 1118.

The MS Supreme Court has long recognized that the courts of the State of MS are open to those incarcerated within MS Correctional Facilities and Institutions raising questions regarding the voluntariness of their pleas of guilty to criminal offenses or the duration of confinement. Some cases addressing this are: Hill v. State, 388 So. 2d 143 and Ball V. State 437 So. 2d 423. The MS Supreme Court has continuously recognized that a plea of guilty may be challenged for voluntariness by way of the MS Uniform Post-Conviction Collateral Relief Act. They have also held that errors affecting fundamental constitutional rights such as the right to a legal sentence may be exempt from procedural bars which would otherwise prevent their consideration. This was the case in Weaver v. State, 785 so. 2d 1085 and Ivy v. State, 731 So. 2d 601.

Petitioner was denied due process because the trial court failed to advise him of the right to appeal his sentence. Even upon a plea of guilty, the law would allow the petitioner a direct appeal of the sentence imposed. The law is clear that a defendant who pleads guilty has a right to directly appeal the sentence to the Supreme Court. See Trotter v. State, 554 So. 2d 313.

ISSUE NO. 2 INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner was denied his 6th amendment right to effective assistance of counsel where his attorney failed to adequately advise petitioner of possible defenses and object where trial court accepted pleas and imposed sentence without determining that petitioner knew and/or admitted elements or charges and without advising petitioner of the right to appeal the sentence.

In Strickland v. Washington, 466 us 668, the court held that following in regards to ineffective assistance of counsel:

Our standard of review for a claim of ineffective assistance of counsel is a two-part test: the defendant must prove under the totality of the circumstances that (1) his attorney's performance was deficient and (2) the deficiency deprived the defendant of a fair trial. Anyone claiming ineffective assistance of counsel has the burden of proving, not only that counsel's performance was deficient but also that he was prejudiced thereby.

Additionally, the defendant must show that there is a reasonable probability that, had it not been for his attorney's errors, he would have received a different result in the trial court. Finally, the court must then determine whether counsel's performance was both deficient and prejudicial based upon the circumstances.

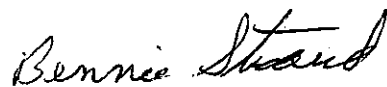
Petitioner would urge that he had the right to appeal the sentence and that he as a functional illiterate defendant, without admitting to State's account of crimes, should have not been allowed to enter a plea since there want any factual evidence. Moreover, defense counsel never made sure that petitioner was able to independently recall the

evidence connected with the offense with which he was charged. He did advise him that voluntary intoxication was not a defense; however, the petitioner's pain condition left him with no other choice, but to take prescribed narcotic medications which affected him mentally. Moreover, defense counsel never mentioned the elements of the offenses.

According to Herring v. Estelle, 491 f. 2d 125, a lawyer who is not familiar with the facts and laws relevant to the client's case cannot meet the constitutionally required level of effective assistance of counsel in the course of entering a guilty plea as analyzed under a test identical to the first prong of the Strickland analysis.

In conclusion, the petitioner, Bennie Stroud, Jr. is asking this court to address the issues at hand of involuntary guilty plea and ineffective assistance of counsel. Even through review of the transcripts of the plea and sentencing hearings, you can clearly recognize that his comprehension is not at a level where he may have fully understood the proceedings taking place. Even after his plea hearing he attempted to file motions, some of which may have not even been filed properly. Once referring to the sentencing hearing transcript page 28, his attorney at that time, Calvin Taylor goes on for about 7 pages speaking about the various issues that the petitioner has had to put him in his current situation. Petitioner respectfully asks the court to review the facts of this case and to at least grant an evidentiary hearing to establish the validity of the plea.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Bennie Stroud".

Bennie Stroud, Jr., #45807
Pro-Se
CMCF 3A-1
PO Box 88550
Pearl, MS 39288

CERTIFICATE OF SERVICE

This is to certify that I have this date, caused to be mailed, via United States Mail,
postage pre-paid, a true and correct copy of the above and foregoing pleading to:

Mississippi Supreme Court Clerk
PO Box 249
Jackson, MS 39205

Attorney General
PO Box 220
Jackson, MS 39205

So certified, this the 25 day of July, 2007.

Bernie Strand

Petitioner

45807

MDOC #

CMCF 3A1 POB 8550

Address

Pearl, MS 39288

City and Zip Code