

COPY
IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

PATRICK O'NEAL COOK

APPELLANT

VS.

FILED

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NO. 2006-CP-2166

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

PATRICK O'NEAL COOK

APPELLANT

vs.

CAUSE No. 2006-CP-02166-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 Pike County, Mississippi in which relief was denied on the prisoner's motion in post - conviction relief.

STATEMENT OF FACTS

The prisoner was indicted by a Grand Jury in Pike County for the felonies of sale of more than an ounce of marijuana and for possession of less than an ounce of marijuana with the intention distribute same. (R. Vol. 1, pp. 2 - 3). The prisoner subsequently entered pleas of guilty to these felonies, and he was convicted and sentenced on those pleas. (R. Vol. 1, pg. 4 - 5).

As night follows day, though, the prisoner then filed a motion in post - conviction relief. (R. Vol. 1, pp. 6 - 29). In this motion, the prisoner sought to set aside his convictions and

sentences, alleging that: (1) his attorney was ineffective because he “ . . . advised the petitioner to plead guilty to indictment without having first challenged the legality of indictments since regarding the maximum sentence indictment was facially illegal in its attempt to mental coerce Petitioner to enter a plea of guilty (*sic*)”; (2) that he had been denied due process and equal protection of the law; and (3) that the Circuit Court failed to advise the prisoner that he might appeal a sentence imposed in consequence of a guilty plea. (R. Vol. 1, pp. 2 - 3).

In a detailed finding of fact and Order, the Circuit Court denied relief on the prisoner’s motion without an evidentiary hearing. (R. Vol. 1, pp. 34 - 36).

SUMMARY OF ARGUMENT

THAT THE CIRCUIT COURT DID NOT ERR IN DENYING RELIEF ON THE PRISONER’S MOTION IN POST - CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING

ARGUMENT

THAT THE CIRCUIT COURT DID NOT ERR IN DENYING RELIEF ON THE PRISONER’S MOTION IN POST - CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING

A trial court may deny relief on a motion in post - conviction relief without an evidentiary hearing where it plainly appears from the face of the motion, attached exhibits and the prior proceedings in the case that the prisoner is not entitled to relief. Miss. Code Ann. Section 99-39-11(2) (Rev. 2000). This Court will not disturb such a finding by the Circuit Court unless it is clearly erroneous. *Smith v. State*, 806 So.2d 1148, 1150 (Miss. Ct. App. 2002).

The first claim raised in the Circuit Court, set out above, is a recondite one indeed. The indictment exhibited against the prisoner is not defective. It sufficiently states the felonies charged against him. As for the balance of the prisoner’s oddly stated claim, we must say that we simply have no idea what the prisoner intended to complain of.

It could possibly have something to do with a statement of alleged facts concerning the alleged circumstances of the prisoner's arrest. (R. Vol. 1, pp. 20; 23 - 25). Stated briefly, the prisoner appears to complain that the marijuana he was charged with having sold and possessed was not his; that he only said it was in order to protect a romantic interest of his; that law enforcement officers told the prisoner that he could "cut his time" if he admitted that the marijuana was his. It is said that the defense attorney was ineffective for having challenged the indictments for these and other such reasons.

These alleged facts constituted no basis to challenge the "legality" of the indictment. The alleged facts amount to a potential defense to the crimes charged in the indictment. By his plea of guilty, the prisoner waived such a defense. Beyond this, a plea of guilty waives all objections to an indictment save two: (1) lack of subject matter jurisdiction and (2) the failure to allege an essential element of the crime charged. *Morgan v. State*, 966 So.2d 204 (Miss. Ct. App. 2007). Neither exception is present in the case at bar.

The claim of ineffective assistance of counsel is not before the Court in any event. The prisoner did not attach any affidavit other than possibly his own. In the course of the guilty plea, he expressed complete satisfaction with his attorney. (Supp. Vol. pg. 4). The Circuit Court, in its Order denying relief on the prisoner's motion, specifically pointed out the prisoner's responses during the plea colloquy concerning his attorney's effective representation. (R. Vol. 1, pg. 34). The prisoner thus failed to state a viable ineffective assistance of counsel claim. *Vielee v. State*, 653 So.2d 920 (Miss. 1995).

The second claim the prisoner raised was that he had been denied due process of law and the equal protection of the laws. This claim is an obscure one as well. If what the prisoner means to say is that his alleged defense to the indictment should have been presented, we say

then that he should have elected trial rather than having pleaded guilty.

In the final claim, it is said that the trial court erred in informing the prisoner that he could not appeal from a guilty plea. Amusingly, the prisoner also complains that the transcript of the guilty plea was not made a part of the record before the Court.

Unhappily for the prisoner, the transcript of the guilty plea is a part of this record. When one examines it, one finds that the Circuit Court said nothing about an appeal from guilty pleas. The court did indicate to the prisoner that he had the right to appeal a jury's verdict of guilty, but after having gone through this transcript several times we fail to find where the court ever mentioned anything about an appeal from a conviction resulting from a plea of guilty.

Even had the Circuit Court misspoken about the ability to appeal a sentence imposed in consequence of a guilty plea, any such error would have been harmless. The sentences imposed were well within that permitted by statute. There would have been no purpose to such an appeal, save perhaps to waste the appellate courts' time.

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 11th day of March, 2008.



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