

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CLARENCE MARIO KEITH

APPELLANT

VS.

CLARENCE MARIO KEITH
JAN 02 2007
OFFICE OF THE ATTORNEY GENERAL
JULIENNE G. HENRY
COURT OF APPEALS

NO. 2006-CP-1070

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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CLARENCE MARIO KEITH

APPELLANT

vs.

CAUSE No. 2006-CP-1070-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 was denied on the prisoner's motion in post - conviction relief.

STATEMENT OF FACTS

The prisoner entered pleas of guilty to the felonies of manslaughter and armed robbery on 19 March 2002 and was on that day convicted and sentenced for those felonies. (R. Vol. 2, pp. 6 - 7). On 17 March 2005, the prisoner filed his motion in post - conviction relief in the Circuit Court, alleging that his convictions should be set aside. Grounds alleged were that the State failed to establish a factual basis for the pleas, that the pleas were the result of coercion, that he was denied the right to counsel, and ineffective assistance of counsel. (R. Vol. 1, pp. 2 - 24).

The Circuit Court denied relief on this motion, without an evidentiary hearing, on 5 June 2006, finding that the prisoner failed to attach affidavits other than his own to his pleadings. (R. Vol. 1, pp. 28A - 28B).

STATEMENT OF ISSUES

DID THE CIRCUIT COURT ERR IN DENYING RELIEF ON THE PRISONER'S MOTION IN POST - CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING?

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

The prisoner's motion was not supported with affidavits, not even his own. (R. Vol. 1, pg. 21). It is clear that a Circuit Court need not grant an evidentiary hearing or relief on a motion in post - conviction relief under such a circumstance. *Trice v. State*, No. 2007-KA-00041-COA (Miss. Ct. App., Decided 15 December 2007, Not Yet Officially Reported). In any event, the claims raised in the motion in post - conviction relief were completely contradicted by the prisoner by his sworn statements in the plea colloquy. These sworn statements carry a strong presumption of verity. *Id.* (R. Vol. 2).

A factual basis for the prisoner's pleas was established. (R. Vol. 2, pp. 4 - 5). The prisoner, under oath, stated that he had no disagreement with the facts stated into the record.

Whether the facts suggested the felony of car jacking is neither here nor there. The facts also showed armed robbery. Where facts would support more than one theory of criminal liability, it is the State's choice as to which one to proceed under. *Butler v. State*, 608 So.2d 314, 320 (Miss. 1992).

As for the ineffective assistance of counsel claim, as we have said, this is not supported by affidavits other than the prisoner's own. Beyond that, under oath, he expressed satisfaction with his attorney. (R. Vol. 2, pg. 5). In any event, even if the defense attorney told the prisoner that he might be sentenced to life for having committed armed robbery, this would not have been incorrect advice. Miss. Code Ann. Section 97-3-59 (Rev. 2006).

The Circuit Court did not deny relief on the prisoner's motion because he filed it in the criminal action. The prisoner's error was not prejudicial to him.

As for the claim that the prisoner was not advised of the right to appeal in the event of an adverse jury verdict, he clearly was so advised. (R. Vol. 2, pg. 4). To the extent that he means to say that he was not advised that he could appeal his sentence to this Court, we are aware of no authority that requires a Circuit Court to advise an accused of this putative right. There was, in any event, no prejudice to the prisoner: the sentences imposed were well within those authorized by law.

The prisoner's sentence was not an habitual offender sentence. There was thus no need for a sentencing hearing. The fact that there is a mandatory "to serve" sentence for armed robbery occurs by operation of law, but the Circuit Court simply did not impose an enhanced sentence. (R. Vol. 2, pg. 7).

CONCLUSION

The Order of the Circuit Court denying relief on the prisoner's motion in post - conviction relief should be affirmed.

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:

Honorable Bobby Burt DeLaughter
Circuit Court Judge
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This the 2nd day of January, 2008.



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