

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JAMIE CHRISTIE

APPELLANT

VS.

CAUSE NO. 2007-CA-0373

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF OF APPELLANT

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CAUSE NO. 2007-CA-0373
JAMIE CHRISTIE V. STATE OF MISSISSIPPI


The undersigned counsel of record 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 Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

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STATEMENT OF THE ISSUE

- I. WHETHER OR NOT THE PETITION FOR POST CONVICTION RELIEF SHOULD HAVE BEEN DISMISSED AS BEING PROCEDURAL BARRED.

STATEMENT OF THE FACTS

Petitioner Christie filed a Petition for Post Conviction Relief in Case No. 0055 in the Circuit Court of Marion County, Mississippi as referred to in Appellee's brief. A copy of the Post Conviction Relief Petition is attached hereto as Exhibit "A".

Petitioner Christie cites in the heading on page 1 "Cause No. K03-005EP" he refers in the first paragraph that his motion is for an order modifying, correcting and amending the judgments of sentence imposed in this cause or in the alternative Motion for Order Vacating and Setting Aside Guilty Plea at Sentences.

This petition for proposed conviction relief was denied by the trial court without hearing and the Petitioner Christie appealed, pro se to the Mississippi Supreme Court. The Court of Appeals affirmed the order denying the relief sought. The Court of Appeals addressed the issues raised and agreed with the trial court as to their merit.

The Petitioner Christie filed a second petition for post conviction relief making a collateral attack on the judgment and sentence in Cause No. 0056 in the Circuit Court of Marion County. This petition was also summarily dismissed by the trial court citing in part that it was procedurally barred. This is now before this Court on appeal.

SUMMARY OF THE ARGUMENT

Petitioner Christie was convicted in the Circuit Court of Marion County, MS in two separate and distinct cases, being Case No. KO3-0055EP and Case No. KO3-0056EP. They each were charged by separate indictments. (R 30 – 46) They were not two counts from one indictment with one sentencing order. There were two sentencing orders. (R 11-14)

Petitioner Christie acting pro se made a collateral attack on Case No. 0055 (Ex. A). He necessarily made reference to each judgment in making his case for relief and did make an alternative plea concerning the two judgments.

The second petition for post conviction relief attacks Case No. 0056 and necessarily refers to each judgment but the relief sought only to Case No. 0056.

Petitioner Christie's second petition for post conviction relief is for totally different grounds. Res adjudicata would not apply.

Errors affecting fundamental constitutional rights may be excepted from procedural bars which would otherwise prohibit their consideration.

ARGUMENT

The Petitioner Christie in Case No. 0055 did make repeated references to judgment in 0055 and 0056 and in fact as an alternative did request relief under both judgments.

The confusion of the problem is that each petition for post conviction relief necessarily requires reference to and arguments concerning the combined effect of the two judgments.

This problem was created by the trial court in taking these separate and distinct cases created by separate and distinct indictments in a joint hearing. This procedure is often done and logically is a proficient way to conclude multiple cases against a defendant but in the context of the post conviction relief the joint nature of the entire proceeding creates an overlap in issues and grounds that necessarily must be addressed in a combined fashion in order to properly present each case.

In the first petition for post conviction relief filed by Petitioner Christie his claim was for specific performance and if there was merit to his argument it could have only resulted in setting aside the judgment in 0055 leaving 0056 intact thus resulting in the ten year sentence that the Petitioner Christie thought he was to receive.

The second or subsequent petition for post conviction relief goes solely to Case No. 0056, but again necessarily refers to each judgment and the entire process. There is no other way to properly present the case.

In the petition for post conviction relief now before this Court, the grounds for relief to vacate judgment entered in Cause No. 0056 are (1) Petitioner Christie's guilty plea under Cause No. 0056 was involuntarily (2) the Court lacked jurisdiction to impose that Petitioner Christie pay restitution and all costs in Cause No's. K030055EP, K03-0052EP, K03-0054EP, K03-0057EP, K03-0104E and K00-0298P. (This resulted in an illegal judgment against Petitioner Christie in violation of due process clause of the 14th Amendment of the United States Constitution and Article 3 Section 14 of the Mississippi Constitution) (3) the Court lacked jurisdiction to enter judgment against Petitioner Christie requiring him to pay old fines to the City of Columbia Municipal Court and to

pay old fines to Marion County Justice Court. He was denied his rights guaranteed under the double jeopardy clause of the 5th Amendment of the United States Constitution.

Constitutional rights in serious criminal cases rise above mere rules of procedure. Fisher v. State, 110 So. 361. Procedural bars of the post conviction collateral relief act do not prohibit of a claim of illegal sentencing Graves v. State, 822 So. 2d 1089 (Miss. Ct. of App. 2002).

No person can be deprived of his liberty except by due process of law. Section 14 under the Mississippi Constitution. This prohibition is intended to guarantee the protection of fundamental and constitutional rights. Brooks v. State, 46 So. 2d 94 (Miss. 1950), Lockett v. State, 582 So. 2d 428 (Miss. 1991)

The issues raised in the petition for post conviction relief and supported by affidavits and the transcript of the plea and sentencing support the contention of Petitioner Christie that he was denied his rights under the Constitution of the United States and the Constitution of the laws of the State of Mississippi. Fundamental constitutional rights may be excepted from procedural bars which would otherwise prohibit consideration Lockett at 430.

In Smith v. State, 477 So. 2d 191 (Miss. 1985) the defendant received a life sentence as a habitual offender under the greater of two repeat offender statutes. He did not challenge the constitutionality of his sentencing on appeal but rather on pro se post conviction motion to correct sentence. The State's indictment of the defendant indicated that the State was seeking to convict and sentence him under a statute for which the maximum sentence would be seven years in prison rather than a statute actually used to sentence him to life in prison. The Smith court refused to enforce a procedural bar

against a defendant's claim because the facts of the case indicated a clear denial of due process in the sentencing and that the comparison of a seven year sentence as opposed to a life sentence without probation or parole is too significant a deprivation of liberty to be subjected to a procedural bar.

A judgment of restitution, court costs and fines in other cases for which the Court has no jurisdiction, is an illegal sentence. A sentence in a criminal case is the action of the court fixing and declaring the legal consequences of predetermined guilt of a criminal offense. Petitioner Christie was denied his constitutional rights without due process of law.


CONCLUSION

Petitioner Christie asks this Honorable Court to reverse the trial court's denial of post conviction relief.

RESPECTFULLY SUBMITTED,



RAYMOND O. BOUTWELL, JR.,
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CERTIFICATE OF SERVICE

I, Raymond O. Boutwell, Jr., do hereby certify that I have this day forwarded via United States mail, postage prepaid, a true and correct copy of the Appellant's Response Brief to the following parties:

1. Honorable R. I. Prichard, III
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2. Honorable Jim Hood
Attorney General
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3. Honorable Haldon Kittrell
District Attorney
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This the 29th day of August 2007.


RAYMOND O. BOUTWELL, JR.