

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

COPY

JAMIE CHRISTIE

APPELLANT

VS.

FILED

CAUSE NO. 2007-CA-0373

STATE OF MISSISSIPPI

AUG 29 2007

APPELLEE

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

REPLY BRIEF OF APPELLANT

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Attorney for Appellant
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EXHIBIT A

In The Circuit Court of Marion County Mississippi

No. 2004-0331P(PC)

NOV 22 2004

Jamie Christie II

JESSE LOFTIN, CLERK
By Movant D.C.

vs.

Cause No. K03-0055 EP

State of Mississippi

Respondent

Motion for post-conviction relief requesting specific performance to remedy a breach of plea agreement, or in the alternative, motion to modify, correct or to amend sentence pursuant to M.C.A. Section 99-39-5 (d) and (i)

Comes now the movant, Jamie Christie II, in prose and proper person, pursuant to Miss. Code Ann. Sec. 99-39-1 ct. seq. Viz. Sec. 99-39-9 as amended (1972), and files this, his motion for an order modifying, correcting and amending the judgements of sentence imposed in this cause; or in the alternative, motion for order vacating and setting aside guilty plea and sentences. In support of this motion he would show unto the court the following facts and law, to wit:

I

Jurisdiction

This court's jurisdiction is invoked pursuant to the provisions of section 99-39-1 st. seq, commonly referred to as the "Mississippi Uniform Post-Conviction Collateral Relief Act" (1994). And as applied and interpreted by the Mississippi Supreme Court in *McDonald v. State*, 465 so.2d 1077, 1078 (Miss. 1985) and *Harris v. State*, 768 so. 2d 354 (2000).

II

Identity of the proceedings in which the movant was convicted and sentenced

The movant, Jamie Christie II, entered a plea of guilty on May 25, 2004. Through it he was convicted and sentenced for the alleged offenses of burglary of a dwelling in cause numbers K03-0055EP and K03-0056EP [see attached copies of indictments exhibits A and B] in the Circuit Court of Marion County, Mississippi. The movant was sentenced to a total term of thirty (30) years. I.e. ten (10) years in cause no. K03-0055EP and twenty (20) years in cause no. K03-0056EP consecutive to the sentence in the former cause. The judgements and sentences were entered on May 25, 2004. [see attached exhibits C and D copies of the judgements]

III

Concise statements of the claims upon which this motion is based

The movant asserts that his motion is based on violations of state and federal law claims which are listed as follows:

- [1] Whether or not the total sentence received as a result of the movants guilty plea, constitutes a breach of the plea agreement in violation of article 3 Sec. 14 of the Miss. Constitution and the 14th amendment to the U.S. Constitution?
- [2] Whether the final judgements relative to the total sentence accurately reflect the amount of time that the prosecution agreed to recommend to this court as the sentence the movant would receive for his full cooperation with the state, and whether the state fulfilled its obligation when the court accepted part of the agreement but rejected the sentence recommendation while there was an 'oral understanding' translated to the movant through the advice of his counsel that the prosecution would recommend a sentence not in excess of ten years for his full cooperation?
- [3] Whether or not the total sentence of thirty (30) years is excessive and disproportionate to the offenses when compared to the sentences meted out and received by similarly situated first time offenders sentenced in the Circuit Court Marion County?
- [4] Whether or not this movants counsel was ineffective for failing to seek specific performance of the oral understanding that if Christie pled guilty his sentence would not exceed ten years?

IV.

Statement of facts within the movants personal knowledge

- [1] The movant was arrested, tried and convicted of two counts of burglary of a dwelling. There were no violent acts or circumstances attendant. He was convicted as a first time offender, with a substance abuse problem and he entered a guilty plea.
- [2] That the movant, prior to the court accepting his plea, had relied to his detriment upon the advice of his counsel and the agreement of the state that his sentence would not exceed ten (10) years. (See attached exhibit E) A verifiable copy of a statement taken from him under oath by the state in the presence of, and with the advice of his counsel prior to the entry of the plea. (See attached exhibits F, G, H and I) Sworn affidavits from credible witnesses who sat in on periods of conversations with him and counsel, or who will attest to the fact that he was led to believe that his sentence for fully cooperating with the state, would not exceed ten (10) years.
- [3] The movant, as a first time convicted offender was sentenced to ten (10) years on one indictment to run consecutive to a twenty (20) year sentence on the other indictment. A total of thirty (30) years. This sentence is not commensurate with other sentences

meeted out to first time convicted offenders similarly situated in the Circuit Court of Marion County, sentenced for burglary.

- [4] That the movants counsel was surprised by this sentence of the court but did not object to the sentences running consecutive to each other, which results in the movant serving in excess of the ten (10) years the prosecution informed him through counsel that it would recommend.
- [5] The inducement was detrimentally relied upon by this movant.
- [6] The movant further states that he did not know at the time what he could do about the unfulfilled portion of the agreement. If he had known he would not have failed to assert his rights to due process at that time.
- [7] The movant would prove that there was an oral understanding that the prosecution would recommend a sentence not in excess of ten (10) years by calling as witnesses his attorney, Shirlee Fager Baldwin; Assistant D.A., Haldon J. Kittrell; the movants mother, Allison B. Christie; his grandmother, Betty C. Breland; his grandfather, Donald Christie and his aunt, Susan B. Wallace. He would also testify to this fact himself.

Further movant sayeth naught.

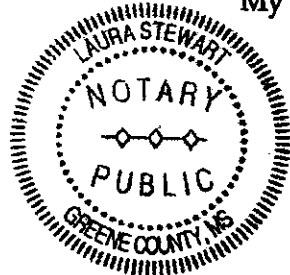
Jamie Christie II
Movant / Affiant

Subscribed and sworn before me the undersigned authority this 16 day of Nov 2004.

Laura Stewart
Notary Public

My commission expires _____

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE
MY COMMISSION EXPIRES: June 2, 2006
BONDED THRU NOTARY PUBLIC UNDERWRITERS



V

Statement of the facts that are not within the movants personal knowledge

- [1] The movant does not know why his counsel of record, Shirlee Baldwin, did not object to the sentences being ran consecutively. As such sentencing requires the movant to serve in excess of the ten (10) years that counsel informed him that the state was recommending.
- [2] The movant does not know the reason for counsels failure to represent him to the full extent of her skills during the plea agreement stages, and after sentence was imposed when counsel knew that the state had not fully completed its obligations and he had relied upon the inducement to plead to his detriment.
- [3] The movant does not know why the judge accepted part of the agreement and rejected the other part. The court accepted the dismissal of other pending charges but rejected the ten (10) year recommendation: sentencing the movant to a consecutive twenty (20) year sentence after the first ten (10) years.

VI

Identity of previous proceeding

The movant, Jamie Christie II, asserts that there have been no previous motions filed in state or federal court in connection with his convictions by plea of guilty in the Circuit Court of Marion County, Mississippi.

VII

Facts and supporting legal arguments

- [1] This motion complies with MCA section 99-39-11. Judicial examination of motion and records. The movant, Jamie Christie II, provides evidentiary facts and allegations in sworn form sufficient on it face to be entitled to a hearing on post-conviction motion alleging that the state failed to perform a specific provision of the agreement he made to plead guilty. He does not seek to withdraw his plea. What he seeks is specific performance of the "oral understanding" that the state would recommend that his sentence not exceed ten (10) years. *Laushaw v. State*, 791 So. 2d 854 (2001) [supporting affidavits]
- [2] See attached exhibits F, G, H and I. Affidavits of Betty Breland, the movants grandmother, who communicated with his lawyer, Shirlee Baldwin. The lawyer informed her that the movant would have to serve some time, as many as ten years. See affidavit of Allison B. Christie, the movants mother. She also communicated with Attorney Shirlee Baldwin, via the telephone, and was told that the sentence would probably be ten (10) years. She was surprised that they were run consecutive. See also the affidavit of the movants aunt, Susan B. Wallace, she was present before and after the sentence was pronounced. She heard Attorney Shirlee Baldwin express her dismay,

surprise and disappointment because the sentence exceeded the ten (10) years counsel expected.

- [3] In *McCreary v. State*, 582 So. 2d 425 (Miss 1991) the court held that the defendant was entitled to a hearing on his motion for post-conviction relief on his allegation that a guilty plea was not knowingly and voluntarily made, (because the defendant presented on post-conviction relief action, in sworn form certain factual and conclusory allegations sufficient to pass pleadings test of post-conviction relief act) he was entitled to a hearing. Christie meets this standard.
- [4] The motion subjudice is sufficiently specific as to allege a substantial due process violation. On the relevant point of law this motion is contra-distinguishable from cases such as *Banks v. State*, 796 So. 2d 291 (Miss 2001) where the defendants motion was not sufficiently specific as to the alleged deficiency of counsels performance constituted prejudice to his defense, and thus did not sufficiently plead claim of ineffectiveness of counsel, even though motion was accompanied by defendants affidavit, where motion contained only general statements and vague allegations, affidavit did not contain names of anticipated witnesses or the substance of their testimony, and no affidavits were submitted by any potential witnesses. *Banks*, supra.
- [5] Here Christie asserts that there was an agreement between him and the prosecutor, but the prosecution breached part of the contract when it did not recommend a total ten (10) year sentence, and further that his counsel was ineffective for not objecting and moving for specific performance.
- [6] The record of the prior proceedings demonstrate that there was an agreement; part of which is spread on the record. It was an "oral understanding". This is indicated on the record. The obvious part of the agreement is that certain charges would be dismissed. [See attached exhibit E, which is described and titled "In the matter of defendant's statement under oath". This statement prior to the entry of the plea was required of the defendant by the state. That Christie detrimentally relied upon the inducements and agreement is evidenced by his statement under oath. Prior to this requirement of the state, Christie had given no statement inculcating himself or others. This statement confesses to accessory to a string of burglaries and resolves them for the state. Had not Christie opened his mouth incriminating himself no one would have been prosecuted for burglary. None of those involved were, except for the movant. See "In the matter of defendants statement under oath," attached exhibit E at p. 3, lines 14-22; also p. 13, lines 20-29. This is proof that the agreement existed and that Christie relied upon it to his detriment.
- [7] While the prosecution could not guarantee what Judge Prichard would do, they agreed to recommend "ten years" and the dismissal of other charges. (Because promise by a prosecutor is part of "consideration" for a guilty plea, government must fulfill agreement.) See *Santobello v. New York*, 404 U.S. 257, 262 (1971) and (defendant

seeking specific enforcement of plea agreement must show both the promisor had actual authority to make the promise and that the defendant detrimentally relied on it) *U.S. v. Flemmi*, 225 f. 3d 78, 84-85 (1st cir. 2000). Attached exhibit E and the recorded facts established by it, satisfies both prerequisites to securing specific enforcement of the plea agreement.

VIII

To be sure, the government breached the agreement with Christie, by not expressly requesting that he be sentenced to concurrent ten (10) year sentences or to five (5) year sentences running consecutive as this is the only way the fulfillment could have been performed by the court. See *U.S. v. Barnes* 278 f. 3d 644, 648-49 (6th cir. 2002) and see *U.S. v. Martin*, 287 f. 3d 609 622 (7th cir. 2002) ("court cannot accept part and reject part").

IX

In sum, although a plea agreement is analyzed and applied in a manner likened to contractual interpretation, analogy should not be taken so far that written agreement is read to contradict parties "oral understanding". See *U.S. v. Pielgo* 135 f. 3d 703, 709 (11th cir. 1998)

Conclusion

While there was no written agreement in this case the records, attached exhibits, and affidavits prove that such an agreement did exist, and specific performance would be an accepted remedy for the breach. See *U.S. v. Likse* 286 f. 3d 906, 910 and *U.S. v. Riggs* 287 f. 3d 221, 224-225 (1st cir. 2002). (The specific facts of each case determine what constitutes a breach.) Christie was promised that the prosecution would recommend ten (10) years and the state was bound by this. Due process requires that any ambiguity be construed against the government and in accordance with the defendant's reasonable understanding of the agreement. *U.S. v. Melton*, 930 f. 2d 1096, 1097-98 (5th cir. 1991). Breaches of plea agreements by the government not only violate the defendants constitutional rights, but call into question the "honor of the government, public confidence in the fair administration of justice, and the effective administration of justice in a federal and state scheme of government." *U.S. v. Lezine*, 166 f. 3d 895, 901 (7th cir. 1999) (quoting *U.S. v. Harvey*, 791 f. 2d 294, 300 (4th cir. 1986); see e.g. *U.S. v. Mondragon*, 228 f. 3d 978, 981 (9th cir. 2000) (integrity of judicial system requires that government must strictly comply with its obligations under plea agreement)

Request for relief

Wherefore premises considered the movant request the following relief:

- A) That pursuant to MCA section 99-39-9 the court will order this motion filed and placed on the docket.
- B) That pursuant to MCA section 99-39-11 (3), after examination of the motion, files, records and attached affidavits the court will order the state to file an answer within a reasonable period of time fixed certain by the court.
- C) That pursuant to MCA section 99-39-23, after the state files its answer, if there are any factual matters in dispute the court will set a date certain for an evidentiary hearing and appoint counsel to assist movant who is indigent pursuant to MCA section 99-15-15.
- D) That pursuant to MCA section 99-39-5, (d) and (i) at the conclusion of the hearing the court will vacate the judgement mandating that the two "10" year sentences be served concurrent in the interest of law and justice.

This the 16 day of Nov. 2004.

By:

Jamie Christie II
Jamie Christie, II