

IN THE SUPREME COURT OF MISSISSIPPI

MICHEAL L. HILL

PETITIONER/APPELLANT

VS.

APPEAL NO: 2007-CA01094


STATE OF MISSISSIPPI
(CITY OF WIGGINS)

RESPONDENTS/APPELLEE

**BRIEF OF APPELLANT
MICHEAL L. HILL**

**ON APPEAL FROM
CIRCUIT COURT OF STONE COUNTY, MISSISSIPPI
CAUSE NO. B6601-2007-0012**

SUBMITTED BY:

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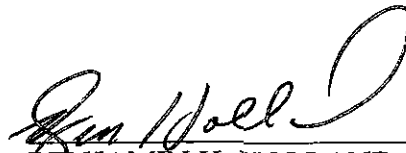
RESPONDENTS/APPELLEE

CERTIFICATE OF INTERESTED PERSONS

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 disqualifications or recusal.

- 1) Micheal L. Hill, Appellant.
- 2) State of Mississippi (City of Wiggins), Appellee.
- 3) Honorable Lisa P. Dodson, Circuit Judge.
- 4) Tadd Parsons, Parsons Law Office, Post Office Box 6, Wiggins, MS 39577, Attorney for Appellant.
- 5) Benjamin H. Holland, Parsons Law Office, Post Office Box 6, Wiggins, MS 39577, Attorney for Appellant.
- 6) Thomas M. Matthews, Jr., 116 W. college Avenue, Wiggins, MS 39577

THIS the 4th day of October, 2007.



BENJAMIN H. HOLLAND, ATTORNEY
FOR APPELLANT, MICHEAL L. HILL

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I. STATEMENT OF ISSUE

The issue to be considered by the Court is whether the trial court committed reversible error by dismissing Micheal L. Hill's appeal for failure to post bond in accordance with URCCC 12.02.

II. STATEMENT OF THE CASE

This case arises from the arrest of Micheal L. Hill by the Wiggins Police Department for a violation of Mississippi Code Annotated Section 63-11-30 (Revised 2000) on February 3, 2007. The trial of the matter was set for March 26, 2007 in the City of Wiggins Municipal Court. At the trial of the matter Micheal L. Hill pled guilty to the DUI offense. Subsequently, Micheal L. Hill paid all fines assessed by the Municipal Court. Thereafter, Mr. Hill decided to appeal the Municipal Courts decision to the Circuit Court of Stone County, Mississippi. A *de novo* trial was set in the Circuit Count in Stone County, Mississippi for May 29, 2007. Prior to a trial of the matter on the merits, the Appellee moved to dismiss the appeal on the basis of Rule 12.02 of the Uniform Rules of Circuit and County Court Practice. Specifically, Appellee alleged that Mr. Hill's appeal was deficient to the failure of Mr. Hill to post bond as required in Rule 12.02(a). The Circuit Court of Stone County, Mississippi granted the motion. Feeling aggrieved, Micheal L. Hill perfected this appeal to the Mississippi Supreme Court.

III. SUMMARY OF THE ARGUMENT

Micheal L. Hill argues that the Circuit Court of Stone County erred in dismissing his appeal. Specifically, Mr. Hill argues that the prepayment of any and all fines assessed by the Municipal Court coupled with the payment of the filing fee in the Circuit Court satisfied the bond requirements of URCCC 12.02.

IV ARGUMENT

1. THE CIRCUIT COURT IMPROPERLY DISMISSED THE MICHEAL L. HILL APPEAL FROM THE MUNICIPAL COURT OF WIGGINS, MISSISSIPPI

The City of Wiggins Motion to Dismiss the Appeal from the Municipal Court of Wiggins, MS was based solely on Uniform Circuit and County Court Rule 12.02 which states in pertinent part that:

"Any person adjudged guilty of a criminal offense by a justice or municipal court may appeal to county court or, if there is no county court having jurisdiction, then to circuit court by filing simultaneously a written notice of appeal and cost bond within 30 days of such judgment with the clerk of the circuit court having jurisdiction. This written notice of appeal and posting cost bond perfects the appeal. The failure to post any bond required by this rule shall be grounds for the court, on its own motion or by motion of another, to dismiss the appeal with prejudice and with costs. The clerk of the court shall not accept, file and docket the written notice of appeal without the accompanying cost bond, unless the court has allowed the defendant to proceed in forma pauperis."

The Circuit Court agreed with the City of Wiggins' contention that Mr. Hill's appeal was deficient for failure to post the necessary bond and dismissed Mr. Hill's appeal. The Appellant is aware of case law wherein the dismissal of an appeal based on the failure of the Appellant to post a bond has been upheld. *Spencer v. State*, 880 So.2nd 1044 (Miss. 2004); *Riley v. Town of Lambert, Mississippi*, 856 So.2nd 721 (Miss. 2003). Nevertheless, the factual scenario presented by the particular facts of this case make it easily distinguishable from those cases. First, it should be noted that upon his guilty pleas in the lower court, Mr. Hill paid any and all fines assessed by the Municipal Court prior to his appeal. R.E 46¹ The fact that Mr. Hill paid all of monies

¹ It should be noted that the R.E. 46 is not part of the certified record of the Circuit Court of Stone County. Counsel for Mr. Hill obtained the receipt from the City of Wiggins Municipal Court. The receipt has been included as a record excerpt pursuant to MRAP 30(b).

assessed against him in the Municipal Court is undisputable. Further, it cannot be disputed that Mr. Hill paid a “fee” of \$100.00 upon the filing of his Notice of Appeal.² Accordingly, Mr. Hill paid all the monetary penalties associated with his conviction prior to his appeal thus making an Appeal Bond unnecessary according to applicable Mississippi Law. In essence, any necessary bonds were prepaid by Mr. Hill prior to or at the time of the filing of his appeal to the Circuit Court.

Mitchell v. Parker, 804 So.2d 1066 (Miss. 2001) bears a striking resemblance to the instant case. On February 12, 1996, Mitchell appealed three convictions he received in the Municipal Court of Harrison County to the County Court of Harrison County. *Id* at 1068. Like Mr. Hill in the instant case, Mitchell prepaid all fines assessed in the Municipal Court as well as a “filing fee” to the Circuit Court of Harrison County. *Id*. For different reasons than are present in the case at bar, the Court accomplished a comprehensive analysis of URCCC 12.02. In this analysis, the Court determined that two types of bonds are required by the rule when a litigant appeals a decision from a municipal court to the circuit or county court. One bond is considered an appearance bond and the other is considered a bond to cover the costs of the appeal. In *Mitchell*, the Court contemplated the notion of the whether mandates of URCCC 12.02 were met in the factual situation presented by Mitchell's situation. The Court held that the prepayment of the fines and the payment of the filing fee were sufficient in meeting the mandates of the Rule. Specifically, the Court ruled that the filing fee coupled with the previous payment of all fees assessed by the Municipal Court met the burden of URCCC 12.02. *Id* at 1071. The Court stated

² A check in the amount of \$100.00 dollars was issued to the Circuit Clerk upon the filing of the Notice of Appeal. However, a copy of the check and/or a copy of the cancelled check reflecting payment could not be located at the time of the filing of this brief.

"We agree that since Mitchell could not appeal without posting a bond of between \$100.00 and \$1000.00 to secure costs, this \$100.00 per conviction fee may properly be recast as the necessary bond." Id.

Uniform Circuit and County Court Rule 12.02 also states that "the clerk of the court shall not accept, file and docket the written Notice of Appeal without the accompanying cost bond, unless the Court has allowed the Defendant to proceed in *forma pauperis*." Here, the Clerk undisputedly accepted Mr. Hill's Notice of Appeal. Accordingly, any objections as to the deficiency of the appeal were waived by the aforementioned acceptance. Furthermore, Uniform Circuit and County Court Rule 12.02(c) states that "In appeals from Justice or Municipal Court when the maximum possible sentence is six months or less, the case may be tried without a jury at the Court's discretion. The record certified to the Court on appeal from the lower Court is competent evidence. **However, no motions may be allowed which deprive the accused of the right to a trial on the merits. Amendments will be liberally allowed so as to bring the merits of a case to trial.**" (emphasis added) Mr. Hill asked the Circuit Court to allow him to correct any deficiencies in his appeal at the hearing of this matter. R.E.42.³ As a result, the Circuit Court's decision to dismiss Mr. Hill's appeal was in clear violation of Rule 12.02(c) because it wholly deprived Mr. Hill a trial on the merits of his case.

Dixon v. State, 528 So. 2d 832 also cast considerable light upon the issue presented by the case at bar. Because the Opinion is short and concise, the Appellant quotes the entire opinion:

"Cliff Dixon was convicted for petit larceny in justice court in Monroe County and fined \$50 on June 10, 1983. He duly noticed his appeal to the circuit court and filed an appearance bond in the amount of \$250. Dixon signed the bond, but no signatures of sureties appear on the bond. The bond was approved, however, by the justice court judge. After appeal time had run, the State moved to dismiss

the appeal for lack of jurisdiction, in that the bond did not comport with the requirements of § 99-35-3, Miss. Code Ann. (1972). The circuit judge granted the State's motion, denying an ore tenus motion by Dixon to amend the bond. Aggrieved, Dixon appeals, arguing that the lower court erred in dismissing his bond. We agree, and reverse the decision of the circuit court to deny Dixon time to amend his bond. Here, the bond, though imperfect, was filed and approved by the justice court judge. The circuit court, upon Dixon's request, should have granted him a hearing and an opportunity to correct any deficiencies. See, *Smith v. Boykin*, 61 Miss. 110 (1883).

We reverse and remand to the circuit court for reinstatement of Dixon's appeal to that court. Dixon is granted thirty (30) days from the date of this opinion in which to tender proper bond, failing which his appeal will be properly dismissed."

The *Dixon* case is virtually indistinguishable from the case at bar. *Dixon* clearly mandates that where bond is deficient in some way, the appellant should have the opportunity to remedy the deficiency and proceed with a trial on the merits.

V. Conclusion

Mr. Hill paid any and all fines and/or fees associated with his DUI conviction in the Municipal Court of Wiggins. Mr. Hill paid the Circuit Court any and all fees it deemed proper for the filing of his initial appeal. Mississippi Law clearly indicates that the payment of these fees satisfies the requirements of URCCC 12.02. A contrary position on the law cannot be reasonably argued. Accordingly, Mr. Hill's appeal should be reinstated in the Circuit Court of Stone County and this matter should proceed to trial on the merits.

RESPECTFULLY SUBMITTED;
MICHAEL L. HILL, Appellant

BY: 
BENJAMIN HOLLAND, Attorney

CERTIFICATE OF SERVICE

I, BENJAMIN HOLLAND, of counsel for Appellant, do hereby certify that I have this date mailed a true and correct copy of the above and foregoing BRIEF OF APPELLANT to the following at their respective addresses listed below:

Thomas M. Matthews, Jr., Esquire
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Wiggins, MS 39577

Judge Lisa Dodson
District II Circuit Court
P.O. Box 7575
Gulfport, MS 39506

Betty Stephen, Clerk
Mississippi Supreme Court
P.O. Box 117
Jackson, MS 39205

THIS, the 4th day of October, 2007.



BENJAMIN HOLLAND, Attorney for Appellant

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