

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CHESTER SMITH, JR.

APPELLANT

VS.

CAUSE NO. 2007-CA-01934-COA

STATE OF MISSISSIPPI

APPELLEE

ON APPEAL FROM THE CIRCUIT COURT
OF DESOTO COUNTY, MISSISSIPPI

BRIEF OF THE APPELLANT

John D. Watson
Counsel for Appellant
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MSB [REDACTED]

I. CERTIFICATE OF INTERESTED PERSONS

I hereby certify that the following persons have an interest in this proceeding:

Chester Smith, Jr.
Appellant

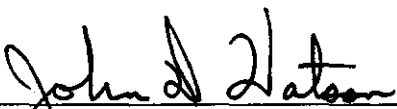
Honorable John D. Watson
Counsel for Appellant
P.O. Box 1366
Southaven, MS 38671

Honorable Rhonda M. Amis
Assistant District Attorney
365 Loshier Street, Suite 210
Hernando, MS 38632

Honorable Robert P. Chamberlin
Circuit Court Judge

Honorable George B. Ready
Former Circuit Court Judge

Appellant certifies that he knows of no other person, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case.



Certifying Attorney

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IV. STATEMENT OF THE ISSUES

- I. THE APPELLANT'S DUE PROCESS RIGHTS WERE VIOLATED WHEN THE TRIAL COURT RE-SENTENCED HIM OR REVOKED HIS SUSPENDED SENTENCE.
- II. THE TRIAL COURT ERRED IN SENTENCING APPELLANT TO THIRTY YEARS TO SERVE IN THE MDOC WHICH VIOLATED HIS CONSTITUTIONAL RIGHTS AS IT WAS AN UNNECESSARILY DISPARATE SENTENCE AND DISPROPORTIONATE.

V. STATEMENT OF THE CASE PROCEDURAL HISTORY

Chester Smith, Jr. (“Appellant”) was indicted by the grand jury of DeSoto County, Mississippi for Armed Robbery and Conspiracy to Commit Armed Robbery. Appellant pled guilty to Armed Robbery on August 9, 2004, and was sentenced the same day. The Circuit Court sentenced Appellant to serve twenty(20) years in the MDOC followed by ten(10) years of post release supervision, and then later that day sentenced Appellant to serve thirty(30) years in the MDOC. T. at 70. On August 7th, 2007, the Appellant filed his Petition for Post Conviction Relief. The Trial Court denied the Post Conviction Relief without a hearing on September 21st, 2007. Appellant filed his Notice of Appeal on October 22nd, 2007.

SUMMARY OF ARGUMENT

The Court violated Appellant’s Due Process Rights and the sentence was grossly disproportionate.

ARGUMENT

ISSUE NO. 1:

WHETHER THE APPELLANT'S RIGHTS TO DUE PROCESS WERE VIOLATED WHEN THE TRIAL COURT RE-SENTENCED HIM.

Smith pled guilty to armed robbery and was originally sentenced to serve twenty(20) years in the MDOC followed by ten(10) years of post release supervision. T. at 47. Later that day, the State produced testimony that Smith, whom was cuffed and shackled, made comments about killing someone when he was being transported from the courthouse to the jail. T. at 60. Smith objected to this evidence prior to the hearing. T. at 59. The hearing resulted in Smith being sentenced to serve thirty(30) years in the MDOC. T. at 70. The trial court stated that if any appellate court felt like it was a mistake then it is harmless error because it would be treated like a petition to revoke suspended sentence. T. at 70.

Smith claims that his due process rights guaranteed by the Fifth Amendment of the United States Constitution were violated in that he was not given written notice of the petition to violate if the proceedings are considered a revocation of a suspended sentence. "The minimal requirements of due process applicable in a final revocation hearing were cited in Gagnon: (1) written notice of the claimed violations of probation or parole." Riely v. State, 562 So.2d 1206, 1210(Miss. 1990) citing Gagnon v. Scarpelli, 411 U.S. 18, 101 S.Ct. 2153(1981). Clearly, Smith's rights to due process guaranteed by the US Constitution were violated if the additional ten(10) year sentence is the result of a revocation. In Lambert v. State, 904 So.2d 1150(Miss.Ct.App. 2004), the Court of Appeals quoted Riely "The minimum requirements of due process, applicable in a revocation hearing, include

written notice of the claimed violations of probation, disclosure to the probationer of evidence against him, an opportunity to be heard and to present witnesses and evidence, the right to confront and cross-examine adverse witnesses, a neutral and detached hearing body, and a written statement by the factfinders as to the evidence relied on and the reasons for revoking probation.” The Court stated that the trial judge complied with these requirement and Lambert failed to object to any further proceedings, thus Lambert’s due process rights were not violated. Lambert at 1150. That is different from the case at bar since Smith objected and was not provided with written notice of the claimed violations.

The trial court in denying Smith his PCR and an evidentiary hearing relied upon Ales v. State, 921 So.2d 1284(Miss.App.Ct. 2006). Ales referenced Ethridge v. State, 800 So.2d 1221(Miss.Ct.App. 2001), Leonard v. State, 271 So.2d 445(Miss. 1973), and Lambert. In all of these cases, evidence was produced that either the defendant’s had committed additional crimes or new evidence about the crime had come to light after the original sentencing. There is one striking difference between Smith and the defendants in the cases listed above. As Smith’s counsel pointed out at the revocation, Smith has not committed any new crimes. The record is clear that if one believes Smith made the comments that he made(the trial court found that he did), at the time of the comments Smith was shackled and chained and they were not directed at the persons who heard him make the comments. The trial court had heard testimony of perceived threats during the original sentencing hearing. T. at 15. All of those factors were considered in sentencing Smith to serve twenty(20) years in the MDOC instead of ten(10) or less which the State had offered. It is abundantly clear that Smith’s due

process rights were violated and he requests that the Court grant him relief from the revocation proceeding.

ISSUE NO. 2

WHETHER THE SENTENCE WAS GROSSLY DISPROPORTIONATE.

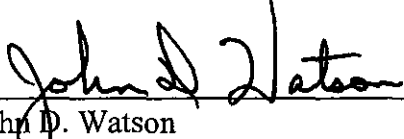
After reviewing the requirements of Hoops v. State, 681 So.2d 521(Miss. 1996), Appellant concedes that he cannot overcome the burden to show that the sentence was grossly disproportionate.


VIII. CONCLUSION

Based upon the foregoing arguments and authorities, the Appellant hereby urges the court to reverse and render on the ten(10) years that the trial court revoked.

Respectfully submitted,

This the 8th day of May, 2008.



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XI. CERTIFICATE OF SERVICE

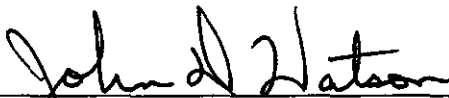
I, John D. Watson, counsel for Appellant, hereby certify that I have this day mailed with postage prepaid a true and accurate copy of the Appellant's Brief to the following persons:

Honorable Rhonda M. Amis
Assistant District Attorney
365 Loshier Street, Suite 210
Hernando, MS 38632

Honorable Robert P. Chamberlin
Circuit Court Judge

Honorable Jim Hood
Attorney General
Carrol Gartin Justice Building
450 High Street
Jackson, MS 39201

This 8th day of May, 2008.



John D. Watson
Certifying Attorney