

Supreme Court Number NO. 2007-CP00122
COPY

IN The COURT of Appeals of the State of Mississippi

Kevin R Sowell
Defendant / Appellant

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COURT OF APPEALS

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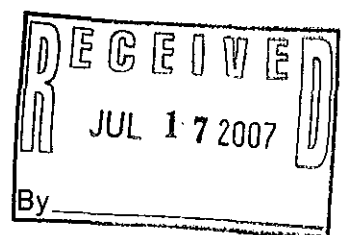
State of Mississippi

Plaintiff / Appellee

ON Appeal from the Circuit Court of Tate County
before The Honorable Judge ANDREW BAKER

The State of Mississippi Cause NO
2007-CP00122
Argument

Kevin Sowell
Pro See Appellant
26AE288
D. M. HMAN MS



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ARGUMENT Proposition 1

The Defendant/Petitioner has offered more than enough facts in Previous Brief that he would be wasting the court time to the hearing that was held in sept + OCT, it is my understanding that the Motion should have been made before and decided in this case at the bar the order was made before the motion the Defendant was never given opportunity to object. To any of the previous conviction The NCIC was incorrect to the information. in (Vince US State 8445020510.) Paragraph 17, HNS The indictment must include both the principal charge and a charge of Previous Conviction. The Indictment must allege with particularity the nature or description of the offense constituting the previous conviction, the state or federal jurisdiction of any previous conviction and the DATE of judgment. The DATE of judgment was incorrect on the NCIC Report Also in Vince paragraph 23-24 Ficklin v State 12000 Court of Appeal Case stating that the computer printouts of the NCIC Report were admissible and legally to amend the indictment. (24) This statement is incorrect according to the Court Decision the accuracy of what cannot necessarily be certified by the NCIC computer. The NCIC took the place of Judgment of Conviction. All of this was addressed in first Brief.

The Due Process was in ERROR on 4 different Rpts of CCRP, Rule No. 702
 709.604 1103 The Hearing of Sept 1 and Oct 31. To where inscript. in was order
 To Amend The indict. But Th Motion was made in Oct 31. The Defendant was
 Not aware of this until April 25 2007 To include that This Court of State
 Court Has Hampered The Process of This whole Case try to hide The Constitution
 Error. I Also would like This court To Review The Complete Transcript of the
 Hearing. on pg 25) MRS Brewer ASK MR Green about prior convictions AND
 on Line 19-23) The Trial Judge Note that "They may be marked and received
 into the Court Record. when I ask The Lower To send me a copy of the file
 all They sent was the Transcript. when Due Process is NOT protected The Laws
 of the Land Does not sit. The Defendant Rights was Tolly Edgwooded The U.S.
 Constitution AND Mississippi Constitution was emptyly Disregarded.

Argument Proposition III

The Appellee state that The Defendant was luckily that he is NOT serving a life sentence. This is True But MR Franks Told the Defendant for \$10000 he would get him Probation. This case could have Been Simple Possess of a Controlled substance. Because of the amount of Controlled Substance I ask on many Times How much weight Did I Have. He would Told Me He did not meet His Duties AS outline in original Brief.

MR Franks Did not object to the NOIC he never Brought To my attention that that was the state Relied on for prior conviction, and Did He inform The Defendant that The court Had Relied on this Demand since the NOIC until I got my sentence order on my way to MDX. He never Told me my sentence was uncertain. I have wrote the State BAR He still has not got back in touch with me.

January 29, 2007

Dear Sir:

I am writing in regard to Mr. James Franks. He was my lawyer on a charge of Possession of a Controlled Substance and a DUI, first offense. After I explained the events of my arrest, he told me I had a good chance of beating the charge because the car I was driving was not mine, and the fact that a field test was not conducted the night of my arrest. The Tate County sherriff charged me with DUI, Driving on a Suppended License, and Failure to yield to Blue Lights. I made bond. Six weeks later, I was arrested on a Possession of a Controlled Substance. No bond was set at this time, and I obtained Mr. Franks' service. Mr. Franks was able to make the court set a bond at \$20,000 and house arrest. I paid \$5000 and was released.

I feel Mr. Franks took this money and then quit on me. I got a sentence of 8 years with 3 suspended, 5 to serve as a habitual offender and 3 years post conviction supervision (99-18-81). Mr. Franks came to the jail and told me the D.A. was seeking a life sentence. I asked him on several occasions how the state could indict me on DUI, first offense as a felony, and how much weight the cocaine was. He never answered my questions, nor would he contact me to let me know what was going on with my case. One week before I went to court, he asked me to take a plea bargain. I asked him what about beating the charge. His reply was "Do you want to die in the state penitentiary? If you don't, take this, the D.A. will give you the habitual under 99-18-81. I was scared to death, so I took the deal.

These are the facts concerning why I am writing you:

- 1.) The D.A. did not include the 99-18-81 in the indictment. The law says the indictment MUST include the principle charge, previous charges, nature, date, and statute number which the state is seeking.
- 2.) The indictment was defective and Mr. Franks made no attempt to object to any of it.
- 3.) Mr. Franks never advised me that the state violated my U.S. Constitutional nor the Mississippi Constitutional rights. I did not know I had these rights until I got to Parchman.
- 4.) Mr. Franks did not ask for a bifurcated trial to the effect it was a 99-18-81 trial. In Lay vs State, this was a must and a record must be made.
- 5.) The only thing that was said came from transcripts, "the state has agreed as part of these plea negotiations to reduce the charge from 99-18-83 to a 99-18-81 habitual. The documents already as part of this hearing." The judge nor Mr. Franks asked to see this document, nor were the exhibits accepted or placed in the file by the judge.

- 6.) I was still asking how the state could indict me as a habitual offender.
- 7.) How could they charge me with a DUI first offense as a felony.
- 8.) My U.S. Constitutional 5th Amendment, and Article 3 section 27 of the Mississippi Constitution was violated, and Mr. Franks failed to advise me of this.
- 9.) My due process rights were violated and Mr. Franks offered no objection to any of this.
- 10.) After Mr. Franks failed to advise me, the court imposed an illegal sentence under the statute 99-18-81, the court was to sentence me to the maximum time with NONE suspended, reduced, no to be eligible for parole or probation. I was sentenced to 3 years suspended and 3 years post release probation.
- 11.) Mr. Franks made no objection to the entire sentence.

I am in the process of filing a postconviction relief. I have read case after case. These facts are surely a basis for ineffective assistance of counsel. In representing a criminal defendant, the lawyer owes a duty of advocate to the defendant's cause, a duty to consult with the defendant on important decisions, a duty to keep the defendant informed of important developments in the course of the prosecution, and a duty to bring to bear such skill and knowledge as will render the trial a reliable advisor in testing process, to protect the defendant's constitutional rights, to make sure due process is fulfilled to the tee.

It is clear that if Mr. Franks did what He was hired to do, the state could not have supported their motion, nor would i be serving an illegal sentence. I have written Mr. Franks for a motion of discovery and he has not replied. I have no more money, and am being forced to proceed myself. Mr. Franks' wife works in the D.A.'s office. This might be the reason he should be required to give me some of my money back. Is there any kind of legal aid available to an inmate. What is the process I need to follow to file the necessary motions in court.

My Attorney is: James Franks, 2584 Hy 51 south, Hernado, MS 38632

Sincerely



Kevin R. Sowell
Unit 26A E288
Parchman, MS 38738

ARGUMENT Proposition IV

The Mississippi Constitution IS CLEAR THAT UNDER 99-17-91 NONE SHALL
BE REDUCED OR SUSPENDED NOR SHALL SUCH PERSON BE ELIGIBLE FOR ~~parole~~ OR PROBATION
EVEN THE APPELLATE SAID THAT THE DEFENDANT WAS ENJOYING A REDUCED SENTENCE

AND TO THE DOUBLE JEOPARDY PART AS WHERE THE STATE SENTENCED HIM IN THIS SENTENCING
THE TURN AROUND A YEAR LATER SENTENCED HIM AGAIN. THE BOARD CLEARLY STATE THAT ON A
CHARGE NOT YET INDICTED WE HAVE AGREED TO SCAKE POST RELEASE PROBATION