

In The Court of Appeals
of The State of Mississippi
Cause No: 2002-0686 CRI

FILED COPY

AUG 31 2007
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Daniel Lewis Jones
-VS-
State of Mississippi

Appellant
Appellee 2007-CP-260

Reply Brief

Comes now Daniel Lewis Jones, here after referred to as appellant, by and through himself, States the fact of his Appeal as to wit:

Jurisdiction

Appellant respectfully states this court having Jurisdiction over person and subject matter pursuant to Miss. Code Ann: Section 99-39-1 et seq, Miss. Code Ann Section 99-39-5 et seq. and Miss Code Section 99-39-2 et seq.

I

That the Petitioner who was arrested Nov. 1st 2004 for count 1 of possession of Oxycodone under subsection 41-29-139 of the indictment and count 2 possession of M.D.M.A. indicted by Miss. Code Ann. 41-29-139 Count 1 was retired to the file by the State.

II

That the Petitioner whose address is 1203 11th Ave. South Columbus, Ms. 39701 and being subjected to an ex post-facto law on the possession of M.D.M.A. by the indictment under 41-29-139 tracking this language and not 99-19-c as required by procedure under state or federal law.

III

That according to our Constitutional Law and the Supremacy Clause the Courts of Mississippi Trial & Supreme Court & Court of Appeals has authority to review a particular sentence in light of constitutional principles of proportionality is a function of the Supremacy Clause U.S. Const. Art. VI, Cl. 2 How obtained 11-43-9

IV

That Mississippi Court Rules of Civil Procedure Rule 3(c) is asserted by the petitioner Daniel Lewis Jones and it accords with Miss. Code Ann. § 11-53-17 (1972) in allowing indigents to sue without depositing security for costs. Citing Burrs v Ohio 360 U.S. 252, 257 (1959); Smith v Bennett 365 U.S. 708 (1961)

Argument In Support of Petition for Relief

Because the state and Federal Courts have recognized that "adequate and effective appellate review" is impossible without a trial transcript or adequate substitute, it is held that states must provide trial records to inmates unable to buy them. Griffin v Illinois 352 U.S. 12, 20 (1956) (Citing Eskridge v. W. Va.

Prison Bd. 337 U.S. 214 (1958) (provision of trial transcript may be conditioned on approval of judge); That the petitioner Jones has a constitutional right of access to the courts. Essentially these standards of access were applied in Johnson v Avery 393 U.S. 409 (1969) which struck down a regulation prohibiting prisoners from assisting each other with habeas corpus applications and other legal matters. Since inmates had no alternative form of legal assistance available to them, the courts have reasoned that it cannot ban jailhouse lawyers to effectively help prisoners who were "unable themselves, with reasonable adequacy to prepare their petitions". From challenging the legality of their confinements Id. At 489. Johnson was unanimously extended to cover assistance in civil rights actions in Wolff v. McDonnell, 418 U.S. 539, 577, 580 (1974) (citing McDonnell v. State 465, so ad. 1077, 1985 Miss. Leds 1983.

Subject Matter & Jurisdiction V

This court has exclusive jurisdiction over the person and subject matter pursuant to Federal Constitution Art. I § 9 CL 2. 11-48-3, and pursuant to Miss. Code Ann 99-39-1 et seq. The courts are to do well to bear in mind the extraordinary prestige of the court writ, habeas corpus an subjiciendum see e.g. Carbo v. U.S. 364 U.S. 611; Price v. Johnson 334 U.S. 266. in Anglo American jurisprudence! "The most celebrated writ in the English law" 3 Black Stone Commentaries 129. It is a writ antecedent to statute, and throwing its roots deep into the genius of our common law ... It is perhaps the most

writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial antiquity, an instance of its use occurring in the thirty third year of Edward I." Secretary of State for Home Affairs v. O'Brien (1923) A.C. 603, 609 (H.L.). Received into our law in the colonial period re church, Habeas Corpus (1884) 38-45; given explicit recognition in the Federal Constitution as stated above. It incorporated in the first grant of Federal court jurisdiction, Act of Sept. 24th, 1789, C. 20, § 14, 1 state 81-82, habeas corpus was early confirmed by Chief Justice John Marshall to be a great constitutional privilege "Ex parte Bollman and Swartout, 4 Cranch 75, 95, 17. The privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.

The present case of course, concerns only the ad subjiciendum form

VI

Identity of proceeding in which petitioner was convicted

Petitioner was charged by indictment in the Circuit Court of Loudes County in cause no. 2002-0686-CR1 pursuant to a two count indictment pursuant to 41-29-139, count 1 possession of oxycodone and count 2 possession of M.D.M.A. also pursuant to the same section. But not the habitual section as prescribed by 99-19-81 (citing Clowers v. State 532 So. 2d. 762, 1988). Petitioner is being subjected to an ex post-facto law or Bill of Attainder which means under article I, § 9, cl. 1, U.S. Const.

provides that neither congress nor any state shall pass an ex post facto law Art. I § 9 CL 3, Art. I § 10 CL 1. Although the Latin phrase "Ex post Facto" literally encompasses any law passed, the fact it has been recognized... that the constitutional prohibition on ex facto laws applies to penal statutes as here sentencing under 99-19-81 on Jones which disadvantage him the offense affected by them. Collins v. Youngblood 497 U.S. 37, 41, 110 S. Ct. 2715, 2718, 111 L. Ed 2d. 30 (1990) (see exhibit (C) indictment tracking 41-29-139 and not 99-19-81 as required by law is null & void as to the habitual portion of his sentence.

VII

Date of Entry / Judgement of Conviction
Petitioner was convicted of possession of MDMA of count 2 of the indictment under subsection 41-29-139 pursuant to a plea of guilty on or about Nov. 18 2004. with the charge of count 1 possession of Oxycodone retired to the files under 41-29-139. Petitioner was sentenced to eight (8) years mandatory sentence and is serving an illegal sentence by law. Citing Wright v. State 821, So. 2d 141 (p3) Miss. C.L. App. 2002) C.F. Toney v. Gammon, 79 F.3d, 693 Cir 14987

CONCISE STATEMENT OF THE CLAIMS AND GROUNDS UPON WHICH PETITION OF MOTION IS BASED M.C.A. 9-1-19

Civil Procedure > Judgments > Criminal Law & Procedure > Post-Conviction Proceeding > Appeals > Reviewability > Time Limitations

Petitioner has suffered a violation of his fundamental due process right to being subjected to an Ex-Post-Facto law and an illegal sentence in the indictment required by 99-19-81 hereby de jure. C.F. Terry Stinson v. State of Miss. 443 So. 2d 869; 1983 Miss. In the instant case the indictment did not charge 99-19-81. See 27 AM Jur. 2d Mississippi Post-Conviction Relief statute provides the sole state procedural avenue for collateral attack on a conviction or sentence. Miss Code ANN. 99-39-1 et. seq. A final judgment against seeking such relief. Miss Code ANN. 99-39-27(9) (2000) (see Walker v. State 555 So. 2d 738, 740 (Miss 1990) 99-39-23 (6))

STATEMENT OF ISSUES

1. Petitioner would assert that errors affecting fundamental constitutional rights, such as the right to a legal sentence may be excepted from procedural bars which would otherwise prevent their consideration. Lockett v. State 522 So. 2d 428 430 Miss 1987
2. The Sixth Amendment of the U.S. Constitution provides that in all criminal prosecutions, the accused shall enjoy the right to the assistance of counsel for his defense. This right means the right to the effective assistance of counsel. Petitioner was denied effective assistance because counsel did not object sentencing

IX

under the order of 99-19-81 and this is cause and prejudice which is required according to, The Sixth Amendment to the United States Constitution under the Strickland test that his attorneys deficient performance prejudiced him in sentencing. The Sixth Amendment under or State and Federal LAW provides: "In all criminal prosecutions, the accused shall enjoy the right. . . to have the assistance of Counsel for his defense." U.S. Const. amend. VI. By the Fourteenth Amendment this right is made obligatory upon the States (see Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L. Ed. 799 (1963)) This right means "the right to the effective assistance of Counsel." McMann v. Richardson, 397 U.S. 759, 771 n.14 90 S.Ct. 1441 25 L. Ed. 2d 763 (1970)

The Sixth Amendment recognizes the right to the assistance of Counsel because it envisions Counsel's playing a role that is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair. Strickland v. Washington 466 U.S. 668, 685, 104 S.Ct. 2052, 80 L. Ed. 2d 674 (1984) (emphasis added).

The Article 3, S 26 of our Constitution provides: "In all criminal prosecutions the accused shall have a right to be heard by himself or Counsel, or both. . ." Our Supreme Court of STATE OF MISSISSIPPI has held that the Mississippi Constitution's right to counsel embraces all rights guaranteed to a criminally accused defendant by the Sixth Amendment.

SUMMARY OF Arguments

Petitioner Jones would assert that Habeas Corpus has always had other Functions besides inquiry into illegal detention with a view to an order releasing the petitioner. Blackstone names Four: habeas corpus ad respondendum; ad satis faciendum; ad prosequendum, testificandum, deliberandum, ad faciendum et recipiendum. 3 Commentaries 129-132. see e.g., Carbo v United States 364 U.S. 611, Price v Johnston, 334 U.S. 266. These are not extravagant expressions. Behind them may be discerned the unceasing contest between personal liberty and government oppression. It is no accident that habeas corpus has time and again played a role central in national crises, wherever the claims of order and of liberty clash most acutely, not only in England in the seventeenth Century (see 1 Holdsworth, History of English Law (1927), 227, 228; Chafee The Most Important Human Right in the Constitution 32 B.U.L. Rev. 143, 146-159 (1952) but also in America from ^{very} our beginnings, and today Ex Parte Bollman and Swartzout, *supra*. Although in form the Great Writ is simply a mode of procedure, its history is inextricably intertwined with the growth of fundamental rights of personal liberty. For its Function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints as here the case at bar. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment; if the imprisonment cannot be shown to conform with the fundamental requirements of Law, the individual is entitled to his immediate release. Thus there is nothing novel in the fact that today habeas corpus in the Federal Courts provides a mode of redress of denials of due process of Law, 28 U.S.C. 2254 (2)(b)(c) citing Kenny v State 626 So.2d 103, 105 (Miss 1993).

XI

Wherefore Premises Considered Petitioner prays that this Honorable Court would vacate the habitual portion of his sentence and discharge him for he'll be eligible for Earn Release Supervision according to 47-7-31 (citing Gray v. State 549 So.2d 1316, 1321 (Miss. (1989))

XII

Attorney General response hold no merit in this case.

Respectfully Submitted
by! Daniel Lewis Jones

% Leake County Correctional Facility
399 C.D. Brooks Street Dorm B-12
Canthage, Mississippi 39051

This the 31st August 2007 A.D. Previous Proceedings, In State or Federal Court, Which Petitioner Has taken to secure Relief from His Conviction of sentence none except this instant Petition here at bar.

Respectfully,
Daniel L. Jones
Daniel Lewis Jones

This day of 31st Month of August, 2007.

Certificate of Service

In the Affiant-Petitioner Daniel Lewis Jones have caused to be mailed in accordance with the Rule of Miss. Court, Circuit and County Court Practice Rule 2.06. A true and correct copy of this notice to Supreme Court and Court Appeals/Circuit Court Lowndes County. Petition for Writ of Habeas Corpus ad subjiciendum 11-43-3, 28 U.S.C. 2254 (A)(B)(C) 99-39-1 Miss. Const. Art. 3 ~~§21~~ and 99-39-5(2) on a matter from judgement entered Nov. 18th 2004 on possession of M.D.M.A. under Rule 7.06 Miss. Uniform Rules of Circuit Court Practice citing Miss. Rule of Evid 103 cd). Under his 1st, 5th, 6th, 8th and 14th Amend. Rights. A copy of this has been provided to the following persons.

C.C.

Office of Clerk / Ms. Betty Sephton
Supreme Court Clerk
P.O. Box 249
Jackson, Ms. 39205-0249

Jim Hood
c/o Paula H. Broome
Attorney General
State of Mississippi
Post Office Box 220
Jackson, Ms. 39205-0220

Respectfully
Daniel L. Jones
Daniel Lewis Jones

This Day of 31st Month of August, 2007

State of Mississippi)

County of Leake)

Verification of Petitioner

Personally Appeared Before Me, the Undersigned Authority, A Notary Public, in and for the jurisdiction Aforesaid, the above name Daniel Lewis Jones, who after first being duly sworn on his oath, states that he is Movar Petitioner in the foregoing Appellants Brief Motion and that the Acts stated herein and above are true and correct to the best of his knowledge and belief.

Daniel L. Jones

Daniel Lewis Jones, Affiant
Sworn and subscribed to before me, this 31st day of August, 2009

Notary Public State of Mississippi At Large
My Commission Expires: June 25, 2010
Bonded Thru Helden, Brooks & Garland, Inc.

My Commission Expires

Cynthia Hall
Notary Public

