

Supreme Court Number 2007-TS-00295

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JEFFREY EARL EVANS
Defendant/Appellant

Vs.

STATE OF MISSISSIPPI
Plaintiff/Appellee

FILED
MAR 23 2007
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

On Appeal from the Circuit Court of Itawamba
County before the Honorable Thomas Gardner, III,
Circuit Judge.

The State of Mississippi Cause No. CV06-III(G)I

Brief of Appellant

Jeffrey Earl Evans
Pro Se Appellant
Unit 26-A, E-277
Parchman, Ms. 38738

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	Point of Error-1	

Indictment is defective and Trial Court erred in dismissing Post Conviction Petition Without granting an evidentiary hearing on this assignment of error.

A. Applicable Law and Standard Review

B. The Trial Court erred in denying Appellant's Post Conviction Petition because there is no Judgements of Convictions or Sentencing Orders to fulfill 99-19-81.

Conclusion _____ 16

Certificate of Service

Certificate of Interested Persons

The Undersigned Appellant 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 disqualification or recusal.

1. Jeffrey Earl Evans # 30556, 26-A, E-277,
Parchman, Ms. 38738
2. Hon. David Daniels, Asst. District Attorney,
P.O. Box 7237, Tupelo, Ms. 38802

Respectfully Submitted,
Jeffrey Earl Evans
Jeffrey Earl Evans # 30556

Table of Authorities

1. Record of Proceedings in Cause No. CV06-111(G)I
2. Uniform Rules of Circuit, County Court Practice
(Rule 11.03.1)
3. Branning v. State 224 So. 2d 579
4. Vince v. State 2001-KA-01376-COA
5. Lay v. State 310 So. 2d 908
6. Miss. Code Ann. 99-19-3
7. Ard v. State 403 So. 2d 875
8. McIlwain v. State 700 So. 2d 586, 589
9. Smith v. State 477 So. 2d 191
10. Wilson v. State 248 So. 2d 802

Statement of the Issues

1. The Trial Court erred in relying on false documents.
2. The Trial Court erred in dismissing Petitioners Post Conviction Petition in lieu of granting an evidentiary hearing to hear assignments on the Merits.
3. There Were no Judgements of Convictions or Sentencing Orders to Justify enhancement pursuant to MCA 99-19-81 as alleged in Indictment Cause Number CR04-034(G)I.

Statement of the Case

This appeal is currently before the Court of Appeals for the State of Mississippi upon Order dismissing Appellant's Petition for Post Conviction Collateral Relief filed January 26, 2007 and Subsequent notice of Appeal filed February 16, 2007.

Jeffrey Earl Evans, was indicted by the Grand Jury of Itawamba County, Mississippi, July 2004 Vacation Term, on one Count, namely, Grand Larceny (Motor Vehicle) in violation of MCA 97-17-42(i)

Jeffrey Earl Evans, was convicted by entry of a Guilty plea on advice of Counsel on September 9, 2004 and sentenced that same day to serve a term of 5 years in the Mississippi Department of Corrections pursuant to MCA 99-19-81 without the possibility of reduction of sentence, parole, etc.

Statement of the Case

The Appellant was Ordered to pay fines and Court Cost in the amount of 10,000.00 dollars with 8,000.00 Suspended and 271.00 Court Cost for a total of 2,271.00 within 30 days of his release.

On September 8, 2006 the Appellant filed a timely petition for Post Conviction Collateral Relief Stating grounds as follows:

1. Violation of 5th Amendment of the United States Constitution and Article 3, Section 14 of the Mississippi State Constitution.
I've been deprived of life and Liberty without due process of Law.
2. Violation of 8th Amendment of the United States Constitution and Article 3, Section 28 of the Mississippi State Constitution.
I'm suffering Cruel and Unusual punishment due to an illegal Sentence.

Statement of the Case

3. Violation of 14th Amendment of the United States Constitution.

It's my fundamental right to be free from an illegal Sentence.

This Appeal is Currently before the Court.

Statement of the Facts

On the 16th day of May 2004, Jeffrey Earl Evans Was arrested by the Fulton Police and Charged With Grand Larceny (Motor Vehicle) in Violation of MCA 97-17-42(1).

On the 9th day of September 2004, this Cause Came to be heard by the Itawamba County Circuit Court, the Honorable Thomas Gardner III presiding, in the form of an entry of guilt by the Appellant in Open Court.

The Appellant was Convicted of the Crime of Grand Larceny (Motor Vehicle) the Same day by way of a guilty plea.

On the 9th day of September 2004, Judgement of Conviction was entered and the Appellant was Sentenced by Sentencing Order to Serve a term of 5 years in the M.D.C. pursuant to MCA 99-19-81. Appellant was Ordered to pay fines in the amount of \$10,000.00 With \$8,000.00 Suspended and \$271.00 Court Cost for a total of \$2,271.00 Within 30 days of release.

Statement of Facts Cont.

On September 8, 2006, the Appellant filed for Post Conviction Collateral Relief in the Circuit Court of Itawamba County, Ms.

This came to be known as Jeffrey Earl Evans Vs. State of Mississippi, Cause No. CV06-111(G)I.

On January 26, 2007 an Order dismissing the Appellant's petition for Post Conviction Collateral Relief by the Honorable Thomas Gardner III in the Circuit Court of Itawamba County.

On February 16, 2007, the Appellant filed notice of Appeal in this Cause and initiated the Appeal in this process against the Order to dismiss entered by the Itawamba Circuit Court on January 26, 2007.

Summary of the Argument

The indictment is fatally defective in Charging the Conviction of a Second offense. Whereas, there are no Judgements of Convictions or Sentencing Orders on any date alleged in the indictment.

There are two (2) Statements from the Itawamba County Circuit Clerk Stating: " There are no Judgements of Convictions or Sentencing Orders on either alleged date.

The Trial Court erred in dismissing Appellant's Post-Conviction Petition Without granting the Appellant an evidentiary hearing When an applicable Question of law Was raised.

In the Order dismissing Appellant's Post-Conviction Petition, The Trial Court Cited the Wrong indictment and /or Cause No. CR98-151, Which has Nothing to do with the Case at bar.

Assignment of Error Improper Indictment

The Petitioner in this Cause was never formally indicted as a Habitual Offender and the Circuit Court erred in enhancing the Petitioner's Sentence as a 99-19-81 Habitual Offender. The Trial Court erred in dismissing Petitioner's Post-Conviction Petition without granting an evidentiary hearing on this Assignment of Error.

Applicable Law. Standard of Review
Mississippi Uniform Rules of Circuit and County Court Practice, Rule 11.03.1 States:

1. The indictment must include both the principal charge and a charge of previous convictions. The indictment must allege with particularity the nature or description of the offense constituting the previous convictions, the state or federal jurisdiction of any previous conviction, and the date of judgment.

Applicable Law. Standard of Review

Assignment of Error Improper Indictment

It is necessary in an indictment not only to charge the previous convictions but also make proof thereof in order to fit the case within a statute on habitual offenders.

Branning vs. State 224 So. 2d 579

Applicable Law: Standard of Review

Whereas the court found that "As for sentencing the appellant court found that it was constrained to note plain error in the habitual offender charge."

The court went on to further stipulate, "We cannot leave this aspect of the case, however, without further observing the long standing admonition of the Supreme Court warning against the tendency to routinely allow the state to produce some documentation of prior offenses and for the trial court to perfunctorily find the defendant a habitual offender."

Jerry Vince vs. State of Mississippi 2001-KA-01376-COA

Assignment of Error Improper Indictment

Applicable Law. Standard of Review

The decisions of the Mississippi Supreme Court Construing Statutes authorizing enhanced punishment for second or subsequent offences permit trial on the principal charge and the charge of previous convictions in a single proceeding, although the issues involved are essentially independent of each other. Under Mississippi practice, if enhanced punishment is sought, the indictment or affidavit must include both the principal charge and a charge of previous convictions and both charges proved before punishment may be enhanced.

John Lay vs. State of Mississippi 310 So. 2d 908

Applicable Law. Standard of Review

Convictions obtained only by verdict or guilty plea - no punishment without legal conviction.

Miss. Code Ann. 99-19-3

Assignment of Error Improper Indictment

Applicable Law. Standard of Review

The Court held that an indictment was defective in charging the conviction of a second offense in order to fit under MCA 99-19-81 (Supp. 1980) (Mississippi) in that the indictment merely recited that the inmate was convicted of another felony. The Court held that the indictment did not meet the requirements of 99-19-81 because the indictment did not state, inter alia, a court in which the inmate was convicted, the date of judgment, or the nature or the description of the offense for which he was convicted. The Trial Court did not sentence the inmate as a habitual offender because the indictment did not meet the requirements of 99-19-81.

Billy Ard vs. State of Mississippi 403 So.2d 875

The Trial Court erred in not determining through clear and convincing proof that the petitioner in the instant cause was in fact a 99-19-81 habitual offender.

Assignment of Error Improper Indictment

The Petitioner has requested all documentation in the Court file pertaining to this Cause and has found no documentation to support the 99-19-81 Habitual Status.

The Court went on in "Vince" that we have regularly upheld sentences under the habitual Criminal Statutes where the proof of prior convictions was made by certified copies of the judgments of convictions. This accords with the basic principle that the best evidence of a conviction is the judgment of conviction.

Supporting this ruling the Court cited McIlwain Vs. State 700 So. 2d 586, 589 whereas it was stated

"A prosecuting attorney intent on proving prior convictions, would do well to heed this simple and straightforward advice from the Mississippi Supreme Court rather than needlessly testing

Assignment of Error Improper Indictment

the limits of the rules of evidence by attempting to Make do with increasingly remote and less reliable Methods of proof."

The Itawamba County Circuit Clerk Stated, that She has no Sentencing Orders or any Judgements of Convictions on either date alleged in the indictment, Cause No. CRD4-D34(G).I.

The Petitioner now asserts through this assignment of error that there was not a proper foundation for the Trial Court to Sentence the Petitioner as a Habitual and no procedural Substitution for Mississippi Law was fulfilled.

Petitioner's Sentence Must be Stripped of its enhanced Status.

Conclusion

The Supreme Court of Mississippi held in Smith vs. State (477 So. 2d 191; 1985) that "Post-Conviction relief in Mississippi is not granted upon facts and issues which could or should have been litigated at trial and on appeal.

Post Conviction proceedings are for the purpose of bringing to the trial Court's attention facts not known at the time of Judgement.

Questions not alleged and raised at trial and / or on direct appeal are procedurally barred and may not be litigated Collaterally in a Post-Conviction environment. However, errors affecting fundamental rights are exceptions to the rule that questions not raised in the trial Court cannot be raised for the first time on appeal.

Citizens may not be deprived of Constitutional rights without due process of law and that due process requires reasonable advance notice and a meaningful opportunity to be heard."

This is precisely the subject matter of the instant petition. The prosecution erred in not indicting the petitioner correctly.

CONCLUSION

The Trial Court Compounded the injustice by allowing the prosecution to proceed without adequately fulfilling the prosecutorial duties by Meeting the Criteria Outlined in Mississippi Uniform Rules of Circuit and County Court Practice 11.03.1.


The Petitioner Would respectfully request this Honorable Court to review Original Post-Conviction Petition (Indictment) and Court files and Strip the Petitioner's enhanced Status from his Sentence With the Vigilance the Mississippi Supreme Court displayed in Wilson Vs. State (248 So.2d 802) Where they declared, Disregard of the fundamental right in the guiltiest defendant, his Conviction in Violation of Settled Constitutional and legal Safeguards, Which are intended for the protection of all is not something that affects the particular defendant in a given Case alone but in its disastrous and far reaching Consequences involves future trials, the innocent and the guilty alike, Subverts Justice, and disorganizes Society.

Certificate of Service

I Jeffrey Earl Evans, do hereby Certify that I have this day Caused a True and Correct Copy of my Brief for Appellant to be Mailed via the U.S. Mail postage pre-paid to the following person(s).

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