IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ANTHONY JAVON ROBINSON — APPELLANT

VS. — NO. 2007-CP-0296

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VS. **NO. 2007-CP-0296**

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STATEMENT OF THE CASE

This is an appeal from the denial of Post - Conviction Collateral Relief Act of the Circuit Court of Marion County, Mississippi, in which the Appellant, Anthony J. Robinson, pled guilty and was sentenced for the felony crime of **ARMED ROBBERY**, Mississippi Code Annotated § 97-3-79 (1972).

STATEMENT OF FACTS

On or about 27th day of December, 1997, with a deadly weapon, a firearm, the Appellant, Anthony J. Robinson (Robinson) did wilfully, unlawfully, feloniously rob, take, steal, and carry away from the presence of Jimmy Berry and Melanee Berry of real property in the amount of four hundred dollars ($400.00). The armed robbery concurred at B & W Cash & Carry, 67 Highway 35 South, Sandy Hook, Mississippi, 39478.

SUMMARY OF THE ARGUMENT

I., II., III., IV., and V are combined.

NO DENIAL OF DUE PROCESS OCCURRED.

Uniform Circuit and County Court Rules 8.04 (A)(3) states that:

> Before the trial court may accept a plea of guilty, the court must determine that the plea is voluntarily and intelligently made and that there is a factual basis for the plea. A plea of guilty is not voluntary if induced by fear, violence, deception, or improper inducements. A showing that a plea of guilty was voluntarily and intelligently made must appear in the records.

THE ARGUMENT

PROPOSITIONS I., II., III., IV., and V are combined.

NO DENIAL OF DUE PROCESS OCCURRED.

Firstly, Appellant alleges that his sentence for gun **ARMED ROBBERY** is a violation of due process of law, because he should be eligible for parole. (Appellant Brief 3). This is not the case.

The law in Mississippi is that there is no parole for gun **ARMED ROBBERY**.

Mississippi Code Annotated § 47-7-3 (1)(d)(ii) holds:

> (ii) No person shall be eligible for parole who shall, on or after October 1, 1994, be convicted of robbery, attempted robbery or carjacking as provided in Section 97-3-115 et seq., through the display of a firearm or drive-by shooting as provided in Section 97-3-109. The provisions of this subparagraph (d)(ii) shall also apply to any person who shall commit robbery, attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the display of a deadly weapon;

This sub - issue brought by the Appellant is therefore lacking in merit.

Uniform Circuit and County Court Rules 8.04 (A)(3) states that:

> Before the trial court may accept a plea of guilty, the court must determine that the plea is voluntarily and intelligently made and that there is a factual basis for the plea. A plea of guilty is not voluntary if induced by fear, violence, deception, or improper inducements. A

showing that a plea of guilty was voluntarily and intelligently made must appear in the records.

North Carolina v. Alford, 400 U.S. 25, 40 (U.S. N.C. 1970) holds:

"Ordinarily, judgment of conviction resting on plea of guilty is justified by defendant's admission that he committed crime charged against him and his consent that judgment be entered without trial of any kind. Guilty plea which represented voluntary and intelligent choice among alternatives available to defendant, especially where he was represented by competent counsel, was not compelled within meaning of Fifth Amendment merely because plea was entered to avoid possibility of death penalty. Standard of validity of guilty plea is whether plea represents voluntary and intelligent choice among alternative courses of action open to defendant."

The State contends that Robinson did not have to admit to this crime because this was an "Alford Plea." Every element of an "Alford Plea" has been met and is satisfied. Alford held that one does not have to say he is guilty to be and plead guilty.

Appellant intelligently, knowingly, and voluntarily signed the Petition to Enter Guilty Plea. (R. E. 5-10 and 16-41).

Appellant alleges that he was not advised of the correct law. (Appellant Brief 3). In short, there is no record evidence that the Appellant could not or did not understand, or lacked knowledge of the legal proceedings in this case. The lower court questioned him extensively regarding his knowledge of both the crimes charged and the consequences of pleading guilty to those crimes. In short, the record plainly belies Owens instant claim that his plea was anything but voluntarily and intelligently (knowingly) made.

This sub - issue brought by the Appellant is therefore lacking in merit.

Appellant alleges that he was denied due process of law, because the indictment which charged petitioner with armed robbery failed to set forth where the crime occurred. (Appellant Brief 3). The aforementioned is not true. The indictment has on it Marion County, and the gun **ARMED ROBBERY** took place in Sandy Hook, Marion County, Mississippi.

Furthermore, Appellant continues to allege that the indictment was insufficient. (Appellant Brief 3 - 4).

Reid v. State, 910 So.2d 615, 624 (Miss. App. 2005) holds that an indictment which is substantially in the language of the statute is sufficient; so long as from a fair reading of the indictment, taken as a whole, the nature and cause of the charge against the accused are clear, the indictment is legally sufficient. Fuqua v. State, 938 So.2d 277, 2006 WL 540549 (Miss. App. 2006) holds that for an indictment to be sufficient, it must contain the essential elements of the crime charged.

"The indictment followed the wording of the statute and generally that is all that is necessary to advise an accused of the charge against him." Anthony v. State, 349 So.2d 1066, 1067 (Miss. 1977). An indictment that is "substantially" in the language of the statute is sufficient. State v. Labella, 232 So.2d 354 (Miss. 1970). *See also* Jones v. State, 856 So.2d 285 (Miss. 2003), reh denied [If criminal statute "fully and clearly" defines the offense, the statutory language is sufficient to provide notice of the crime charged.]; Stevens v. State, 808 So.2d 908 (Miss. 2002) [As a general rule, where an indictment tracks the language of a criminal statute, it is sufficient to inform the accused of the charge against him.]; Cummins v. State, 515 So.2d 869 (Miss. 1987) [If a statute "fully and clearly" defines a criminal offense, an indictment in the language of the statute is sufficient.]; Cantrell v. State, 507 So.2d 325, 329 (Miss. 1987)

"The major purpose of an indictment is to furnish the accused such a description of the

charges against him as will enable him to adequately prepare his defense." King v. State, 580 So.2d 1182, 1185 (Miss. 1991).

Rule 7.06 of the Uniform Rules of Circuit and County Court Practice governs indictments. It reads, in its pertinent parts, as follows:

> The indictment upon which the defendant is to be tried shall be a plain, concise and definite written statement of the essential facts constituting the offense charged and shall fully notify the defendant of the nature and cause of the accusation. Formal and technical words are not necessary in an indictment, if the offense can be substantially described without them.

The indictment was sufficient.

This sub - issue brought by the Appellant is therefore lacking in merit.

Having reviewed Appellant's motion for post-conviction collateral relief, the case file, and the transcript of the plea hearing, in conjunction with the applicable legal authorities, the circuit court found that it should be summarily denied.

The court's order is not subject to reversal "absent a finding" that it "was clearly erroneous." Taylor v. State, 766 So.2d 830, 832 (Miss. App. 2000), citing Kirksey v. State, 728 So.2d 565, 567 (Miss.1999).

Appellant fails to specially raise below or allege error(s) committed by the lower court; thus, this issue is barred. Furthermore, he overlooks the fact that this Court is an **appellate** court. In the recent case of Alexander v. State, 759 So.2d 411 (Miss. 2000), at ¶ 35, the Supreme Court quoted from the case of Leverett v. State, 197 So.2d 889, 890 (Miss. 1967), in holding, in pertinent part, as follows:

> "The Supreme Court is a court of appeals, it has no original jurisdiction, it can only try questions that have been tried and passed upon by the court from which the appeal is taken."
> Accord: Patterson v. State, 594 So.2d 606, 609 (Miss.1992).

The State assumes *arguendo*, however, that Robinson intended to argue that the lower court committed reversible error in failing to find that his post-conviction motion had merit. Such an argument must surely fail. The burden is not on the State, but on the one who is challenging the guilty plea, *viz.*, Robinson. Pursuant to Section, Mississippi Code Annotated § 99-39-23(7) (1972), as amended, of the Mississippi Uniform Post-Conviction Collateral Relief Act:

> No relief shall be granted under this chapter unless the prisoner proves by a preponderance of the evidence that he is entitled to such.

Accord: Rochell v. State, 748 So.2d 103, 110 (Miss. 1999); Billiot v. State, 655 So.2d 1, 12 (Miss.1995). If the prisoner loses in the lower court, he must show on appeal that the lower court's ruling is clearly erroneous. Rochell v. State, *supra*, 748 So.2d at 109.

Accordingly, it was Robinson's burden in the lower court to show that he was entitled to the relief he requested. He made no such showing. Similarly, it is Robinson's burden on appeal to show that the lower court's ruling on his motion is clearly erroneous. He makes no such showing.

The State contends as was held in Burch v. State, 929 So.2d 394, 2006 WL 1320494 (Miss. App. 2006) that the trial court may summarily dismiss a PCR "[i]f it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief····." Miss. Code Ann. § 99-39-11(2) (2000).

In short, there is no record evidence that Robinson could not or did not understand, lacked knowledge, of the legal proceedings in this case. The lower court questioned him extensively regarding his knowledge of both the crimes charged and the consequences of pleading guilty to those crimes. In short, the record plainly belies Robinson's instant claim that his plea was anything but voluntarily and intelligently (knowingly) made.

CERTIFICATE OF SERVICE

I, Deshun T. Martin, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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Circuit Court Judge
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Honorable Haldon J. Kittrell
District Attorney
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Anthony Robinson, #R9843
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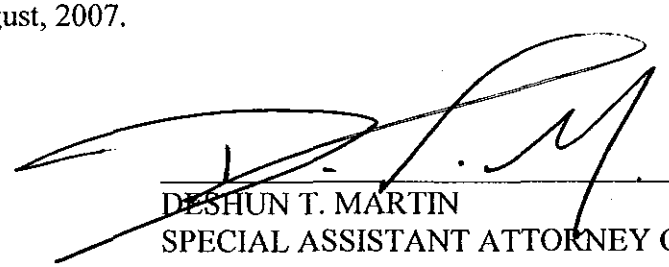
This the 23rd day of August, 2007.



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