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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JULIUS ALCENO HOLMES, JR.

FILED

APPELLANT

VS.

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SUPREME COURT
COURT OF APPEALS**

NO. 2007-CP-0385

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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NO. 2007-CP-0385

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STATEMENT OF THE ISSUES

- I. THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION FOR POST CONVICTION RELIEF AS HIS SENTENCE IS WITHIN THE STATUTORY GUIDELINES.

STATEMENT OF THE CASE

On September 16, 2005, Julius Holmes, Jr. [hereinafter "Holmes"], a fifty-six year old man, pled guilty to statutory rape as defined by Mississippi Code Annotated §97-3-65(1)(b). (Record p. 20). He was sentenced to serve twenty years in the custody of the Mississippi Department of Corrections. (Record p. 20). On February 8, 2007, he filed a "Motion for Reduction of Sentence" requesting that the trial court "reconsider the sentence originally imposed, and to reduce the sentence to a level which is more representative of rehabilitative goals of the criminal justice system." (Record p. 10 - 18). Said motion was dismissed by the trial court via an Order entered on February 13, 2007, stating that "the Court finds that it plainly appears from the face of the motion and the prior proceedings that movant is not entitled to any relief." (Record p. 35). Holmes appeals that decision.

SUMMARY OF THE ARGUMENT

The trial court properly denied Holmes's Motion for Post Conviction Relief in that Holmes's sentence is within the statutory guidelines.

ARGUMENT

The trial court's denial of a motion for post-conviction relief should not be reversed "absent a finding that the trial court's decision was clearly erroneous." *Crowell v. State*, 801 So.2d 747, 749 (Miss. Ct. App. 2000) (citing *Kirksey v. State*, 728 So.2d 565, 567 (Miss. 1999)). Holmes claims that "the trial court erred in failing to reconsider the reduction of petitioner's sentence to a level which is more representative of rehabilitative goals of the criminal justice system." (Appellant's Brief p. 1). However, this Court has held that "[s]entencing is generally within the sound discretion of the trial judge and the trial judge's decision will not be disturbed on appeal if the sentence is within the term provided by statute." *McKenzie v. State*, 856 So.2d 344, 353 (Miss. Ct. App. 2003).

Holmes' sentence is within the statutory guidelines. He pled guilty to statutory rape under Mississippi Code Annotated §97-3-65(1)(b) which defines the crime as "sexual intercourse with a child who is under the age of fourteen." Mississippi Code Annotated §97-3-65(3)(c) provides that "upon conviction for statutory rape, the defendant shall be sentenced . . . if eighteen (18) years of age or older and convicted under subsection (1)(b) of this section, to imprisonment for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years." Holmes was sentenced to twenty years, the minimum allowed by the statute. Accordingly, the trial court did not abuse its discretion in sentencing Holmes. See *Smith v. State*, 935 So.2d 412 (Miss. Ct. App. 2006).

Holmes also claims that "the twenty-year sentence, in effect, amounts to a life sentence because he was fifty-six at the time of sentencing." (Appellant's Brief p. 4). However, just as in

McKenzie, Holmes's sentence is also within the statutory guidelines:

McKenzie alleges that his sentence was tantamount to a life sentence because of his age. We do not know when he or anyone else will die. His sentence was within the statutory guidelines and was not as long as it could have been under the sentencing statute. McKenzie may be subject to what he perceives as a life sentence, but our perception is different.

856 So.2d at 353. As such, the trial court's decision to deny Holmes's motion should be affirmed.

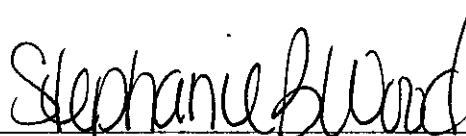
CONCLUSION

The State respectfully requests that this Honorable Court affirm the Order of the trial court denying Holmes's Motion for Post Conviction Relief as his sentence is within the statutory guidelines.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Stephanie B. Wood, 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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This the 28th day of June, 2007.



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