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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JAMIE L. MILLER

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APPELLANT

VS.

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SUPREME COURT
COURT OF APPEALS

NO. 2007-CP-0563-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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NO. 2007-CP-0563-COA

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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 Winston County, Mississippi, in which the Appellant, Jamie Lamar Miller, pled guilty and was sentenced for the felony crime of **SALE OF COCAINE**, Mississippi Code Annotated section 41-29-139(a)(1)(b)(1), Code of 1972.

STATEMENT OF FACTS

On or about the 11th day of March, 2005, in Winston County, Mississippi, Jamie L. Miller ("Miller") sold cocaine to David Wiley, a confidential informant working for the Mississippi Bureau of Narcotics. (Tr. 13). Miller was charged with three counts of the crime of Sale of Cocaine. (Tr. 8). He entered pleas of "not guilty" to each of those charges and subsequently appeared before the Court to change those pleas to "guilty". (Tr. 8, 14). The court advised Miller of all his legal and constitutional rights and the consequences of a guilty plea and Miller knowingly, freely and voluntarily waived his constitutional rights. (Tr. 9-13). When asked if satisfied with his legal representation, Miller responded "yes, sir." (Tr. 12). In addition, Miller's counsel was present during

his plea.

On October 19, 2006 Miller was sentenced to serve fifteen (15) years with five (5) of those years suspended, therefore giving him ten (10) years to serve with the Mississippi Department of Corrections as well as a five thousand dollar (\$5,000) fine with four thousand dollars (\$4,000) suspended.

Miller filed a Motion for Post-Conviction Relief on March 7, 2007. (R. 31). After examining Miller's motion and plea transcript, the Court found that his Motion for Post-Conviction Relief was without merit and was therefore denied. This order was granted on March 14, 2007. (R. 31).

SUMMARY OF THE ARGUMENT

I.

THE APPELLANT'S MOTION FOR POST-CONVICTION RELIEF TO REDUCE SENTENCE WAS PROPERLY DENIED.

Mississippi Code Annotated section 99-39-23(6) states:

The order as provided in subsection (5) of this section or any order dismissing the prisoner's motion or otherwise denying relief under this article is a final judgment and shall be conclusive until reversed. It shall be a bar to a second or successive motion under this article. Excepted from this prohibition is a motion filed pursuant to Section 99-19-57(2), Mississippi Code of 1972, raising the issue of the convict's supervening insanity prior to the execution of a sentence of death. A dismissal or denial of a motion relating to insanity under Section 99-19-57(2), Mississippi Code of 1972, shall be res judicata on the issue and shall likewise bar any second or successive motions on the issue. Likewise excepted from this prohibition are those cases in which the prisoner can demonstrate either that there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of trial, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence. Likewise excepted are those cases in which the prisoner claims that his sentence has expired or his probation, parole or conditional release has been unlawfully revoked.

THE ARGUMENT

PROPOSITION I.

THE APPELLANT'S MOTION FOR POST-CONVICTION RELIEF TO REDUCE SENTENCE WAS PROPERLY DENIED.

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The trial court's order denying post-conviction relief is "a bar to a second or successive motion" under Mississippi Code Annotated section 99-39-23(6) (Supp. 2005) and Necaise v. State, 916 So.2d 553, 556 (Miss. App. 2005). Jordan v. State, 935 So.2d 1083, 1084 (Miss. App. 2006) held that because movant's previous motions for post-conviction relief had been denied, his successive motion for post-conviction relief was barred.

Miller claims that his motion is not barred because he "has not previously presented these claims to any court of law and had some heard and denied on the merits collaterally estopped because such claims are based upon a fundamental due process violation claim." (R. 26). However, where Appellant's previous motions for post-conviction relief have been denied, Appellant's

successive motion for post-conviction relief is barred. Jordan v. State, 935 So.2d 1083 (Miss. App. 2006); Page v. State, 918 So.2d 853, 854 (Miss. App. 2005).

The Court ruled against Miller's first Motion for Post-Conviction Relief to Reduce a Sentence stating that the motion was without merit. (R. 31). Both the first and the subsequent motion plead the same issue(s).

The Appellant does not plead an issue that is afforded relief under Mississippi Code Annotated section 99-39-23(6), and since this Motion is a second or successive motion that the Court has already ruled upon, it is procedurally barred according to the aforementioned code section.

Furthermore, it is well settled that in reviewing a trial court's decision to deny a motion for post-conviction relief, the standard of review is clear that the trial court's denial will not be reversed absent a finding that the trial court's decision was clearly erroneous. Smith v. State, 806 So.2d 1148, 1150 (Miss. App. 2002); Myers v. State, 2007 WL 1816283, ¶ 3 (Miss. App. 2007). Miller has presented no evidence to prove that the trial court's decision was clearly erroneous.

Lastly, Miller argues that his multi-count indictment never carried the language of Mississippi Code Annotated Section 99-7-2(1) where he contends the State has the burden of placing a prima facie showing that the offenses charged under Mississippi Code Annotated Section 41-29-138(a)(1)(b)(1) in the multi-count indictment are within the Multiple Count Indictment Statute. (Tr. 21). It is Miller's contention that this alleged error denied him the right to be tried on an indictment and sentence that is legally sufficient which violated his due process rights. (Id.). Here, Miller's argument fails because an indictment is sufficient if it tracks the language of the relevant criminal statute. Holifield v. State, 852 So.2d 653, 657 (Miss. App. 2003). It is well settled that:

[A]n indictment must provide 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 against him; furthermore, as a general rule, an indictment which

tracks the language of a criminal statute is sufficient to inform the defendant of the charge against him.

Ford v. State, 911 So.2d 1007, 1012 (Miss. Ct. App. 2005).

Case law does not demand that the indictment carry the exact language of the relevant criminal statute. Parisie v. State, 848 So.2d 880, 885 (Miss. Ct. App. 2002); Reining v. State, 606 So.2d 1098, 1103 (Miss. 1992). In Miller's case, the relevant criminal statute is Mississippi Code Annotated Section 41-29-139(a)(1)(b)(1), Code of 1972. (Tr. 2-3). However, since Miller was indicted on three (3) counts of Sale of Cocaine, the indictment does fall within the purview of Mississippi Code Annotated Section 99-7-2, Code of 1972, the Multiple Count Indictment Statute. Section 99-7-2(1) of which the Appellant makes reference in his brief (R. 21) reads:

Two (2) or more offenses which are triable in the same court may be charged in the same indictment with a separate count for each offense if (a) the offenses are based on the same act or transaction; or (b) the offenses are based on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan.

Clearly, this section is meant to authorize the use of a multi-count indictment when practicable and the inclusion of language from this section is not necessary in the indictment.

In addition, Miller's indictment fully adheres to the Section 99-7-2 in its entirety. (Tr. 2-3). Each offense was brought as a separate count satisfying subsection (1)(a); because Miller sold the Confidential Informant Cocaine on three occasions constituting a common scheme or plan, subsection (1)(b) is satisfied; the three separate offenses charged in separate counts of the one indictment were brought before the Court in a single proceeding satisfying subsection (2); separate sentences were imposed for each count Miller plead guilty to satisfying subsections (3) and (4); and nothing prohibited the court from exercising its statutory authority to suspend a sentence or impose such sentences to run either concurrently or consecutively as evidenced by Miller receiving five (5) years suspended and his sentences to run concurrently.

Therefore, the indictment is sufficient and Miller was not denied his due process and equal protection rights.

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

CONCLUSION

Based upon the arguments presented herein as supported by the record, the State would ask this court to affirm the order denying the Motion for Post Conviction Relief.

Respectfully submitted,

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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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This the 30th day of July, 2007.



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