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In The Mississippi Supreme Court of Appeals

APPELLANT

Cause No: 2007-CP-00563-CQ

APPELLEE

JAMIE L. MILLER

VS.

State of Mississippi

FILED

JUN 12 2007

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

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SUPREME COURT
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APPELLANT BRIEF

By: Pro SE Jamie L. Miller
L.C.R. 11A C-26
399 CO. Brooks Street
Carthage, MS 39051

TABLE OF Authorities Cases

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Other Authorities

Miss. Code ANN. Section 41-29-134 (a)(1)(b)(1)	
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IN THE MISSISSIPPI SUPREME COURT OF APPEALS

Jamie L. Miller
vs.
State of Mississippi

Appellant
Cause No. : 2007-CP-00563-COA
Appellee

BRIEF FOR THE APPELLANT

COMES NOW, Jamie L. Miller, Appellant, Pro Se, layman at Law, and lay as to Attorney files this his "Brief for the Appellant" pursuant to M.R. App. P. rules 31, and 28 as to an section 99-37-1 of Miss. Code Ann. for Post-Conviction Relief to Reduce a Sentence".

Miss. Code Ann. sections [13-3-1 ; 13-3-3 ; 99-35-1] A-Priori

I.

JURISDICTION

Appellant was Convicted on or about the 19th. day of October, 2006 in the Circuit Court of Winston County, Mississippi pursuant to a plea of guilty on Felony Charge of Sale of Cocaine and was sentenced (Rvol 2 Transcript of Defendant, Petitioner, and Appellant's Plea of Guilty in open Court before Honorable Judge GE "CEM" Morgan, III, Judge of the Fifth Circuit Court District of Mississippi.

Appellant filed his "Motion for Post-Conviction Relief to Reduce a Sentence" in the Winston Circuit Court Clerk's Office of Mississippi on or about the 27th. day of February, 2007 in which was denied on or about the 12th. day of March, 2007.

Appellant then Appealed to the Mississippi Supreme Court of Appeals on or about the 3rd. day of April, 2007 in which this Honorable Court has asked this petitioner to file this his Brief in which pursuant to M.R. App. P. Rules 31, and 28 of this Honorable Court.

II.

IDENTITY OF PROCEEDINGS IN WHICH PETITIONER WAS CONVICTED

Petitioner was charged, by indictment, in the Circuit Court of WINSTON COUNTY, MISSISSIPPI, pursuant to a (3 count indictment such indictment being Filed by the Circuit Court CLERK Hon. KIM T. MING ON MARCH 28 2006.

III.

DATE OF ENTRY / JUDGEMENT OF CONVICTION

Petitioner was convicted of (3) Sale of Cocaine under §41-29-139(a) (1) (b) (1) pursuant to a plea of guilty, on or about the 19th day of October 2006.

IV

CONCISE STATEMENT OF THE CLAIM AND GROUNDS UPON WHICH MOTION IS BASED (part 1)

Petitioner would base his Motion on 99-39-1 & 99-39-5 1(h)
99-39-5 provides Motion For relief; grounds; limitations

(1) Any prisoner in custody under Sentence of a court of record of the State of Mississippi who claims:

(h) That he is entitled to an out-of-time appeal; or

CONCISE STATEMENT OF THE CLAIM AND GROUNDS
UPON WHICH MOTION IS BASED (part 2)

(2) A motion for relief under this article shall be made within three (3) years after the time in which the prisoners direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three (3) years after entry of the judgment of conviction. Excepted from this three-year statute of limitations 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, hearing 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. Likewise excepted are filings for post-conviction relief in capital cases which shall be made within (1) year after conviction.

3. This motion is not a substitute for, nor does it affect, any remedy incident to the proceedings in the trial court, or direct review of the conviction or sentence, subject to the provisions of 99-19-42 [Pg. 3.]

MEMORANDUM OF LAW IN SUPPORT Petitioner's Motion

Mississippi Code Annotated Section 99-7-2 (effective July 1, 1986) provides the following relevant statutory provisions: When two or more offenses may be charged in single indictment, trial, verdict and sentences.

(1) ONE, 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 based on (2) two or more acts or transactions connected together or constituting parts of a common scheme or plan. THE indictment in Petitioner's Jamie L. Miller case never carried the language of 99-7-2(1). Therefore the alleged offenses to which petitioner plead guilty, did not follow this statute, as charged in the multi-count indictment. The state had the burden of placing by a PRIMA FACIE showing that the offenses charged under 41-29-139(2)(1)(b)(1) in the multi-count indictment are within the language of the multiple count indictment statute CF. HUGHES V STATE 665 So.2d 852 (Miss 1995). This denied this here defendant right to be tried on an indictment and sentence that was legally sufficient, which is part of due process and equal protection under the law 14th Amendment(s) right, and can be considered as a downward departure to reduce his current 10 year sentence with 5 years Post-Release Supervision upon release and \$1,000 fine \$596.50 court costs all to be paid within two (2) years of his release from incarceration (Ruel 2 pg 8,9,10) Transcript of Guilty PLEA [P.4]

ARGUMENT OF Petitioner IN support of HIS Motion

Under our 'Mississippi Uniform Post-conviction Collateral Relief Act, a motion for post-conviction relief which meets basic pleading requirements is sufficient to mandate an evidentiary hearing unless it appears beyond doubt that the petitioner can prove no set of facts in support of a claim which would entitle him to relief. (See Taylor V State, 782 So. 2d 166, 168 (Miss Ct. App, 2000) citing Robertson V State, 669 So. 2d 11, 13 (MZZS 1996). In addition the trial judge has discretion in allowing an evidentiary hearing Miss. Code Ann. 99-39-11(2), (3). To consider Petitioner's Motion for Post-Conviction Relief TO REDUCE A SENTENCE. CF. Wallace V State 607 So. 2d 1184, 1191 (MZZS 1992). Where the Supreme Court has reviewed the grant or denial of motions for resentencing under an abuse of discretion standard.

Constitutional LAW > Supremacy Clause > General Overview
Criminal LAW & Procedure > Sentencing > Appeals > Proportionality Review

Petitioner would assert to this Honorable Court, that 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. CF. Bolton V City of Greenville, 253 MZZS. 656, 666 178 So. 2d 667, 672 (1965). Here the trial court is properly invoked to exercise that authority to reduce Petitioner's Sentence of 10 years to serve with 5 years Post-Release Supervision. (See Irving V State 498 So. 2d 305, 308 (MZZS 1986))

STATEMENT OF RELEVANT LAW AND PROCEDURE

MISSISSIPPI RULES OF CIVIL PROCEDURE CHAPTER II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, Pleadings, MOTIONS, AND ORDERS

RULE 3. COMMENCEMENT OF ACTION

Petitioner Jamie L. Miller here would assert (a) Filing of Complaint or his Motion for Post-conviction Relief To Reduce A Sentence in Cause No. 2006-25-CR entered in the Circuit Court of WINSTON County Mississippi on the 19th day of October 2006 which state:

A civil action is commenced by filing a complaint with the court. A costs deposit shall be made with the filing of the complaint, such deposit to be in the amount required by the applicable Uniform Rule governing the court in which the complaint is filed.

The purpose of Rule 3(a) is to establish a precise date for fixing the commencement of a civil action. The first step in a civil action is the filing of the complaint with the clerk or judge. Accord *Bacon v. Gardner*, 23 Miss. 60 (1851) see Miss. Code Ann. § 11-7-33 (1972). Service of process upon the defendant is not essential to commencement of the action.

FACTS WITHIN PETITIONERS PERSONAL KNOWLEDGE

1. Petitioner was indicted on March 28 2006 Grand Jury Recalled From October Term, 2005 by the STATE OF MISSISSIPPI WINSTON COUNTY IN CAUSE NO: 2006-25- CR
2. Petitioner plead guilty on the 19th day of October 2006 to a Felony charge OF SALE OF COCAINE
3. Petitioner came before this Court on a Petition to change his plea From not guilty to one OF guilty.
4. Further affiant sayeth not.

Jamie Mueley
JAMIE L. MILLER #124687
LEAKE County Correctional Facility
399 C.O. Brooks St. Room C-34
Carthage, MS. 39051

STATE OF MISSISSIPPI
COUNTY OF LEAKE

PERSONALLY APPEARED BEFORE ME, the undersigned authority,
a Notary Public, in and for the jurisdiction aforesaid,
the above name Jamie L. Miller #124687 who, after first being
duly sworn on his oath, states that he is Movant/Petitioner in the
Foregoing Motion For Post-conviction Relief To Reduce A Sentence
and that the Facts stated herein and above are true and correct
to the best of his knowledge and belief.

Jamie Miller
Jamie L. Miller / Affiant

SWORN AND SUBSCRIBED TO BEFORE ME, this 27 day of
February 2007.

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

MY COMMISSION EXPIRES

Cynthia J. Hanks
NOTARY PUBLIC

IV

STATEMENT OF FACTS WITHIN PETITIONER'S PERSONAL KNOWLEDGE

Petitioner would assert that there are no facts of this case
which are not within his personal knowledge and that the claims
are true to the best as given him by the STATE OF Mississippi

VI

PREVIOUS PROCEEDINGS, IN STATE OR FEDERAL COURT,
WHICH PETITIONER HAS TAKEN TO SECURE RELIEF FROM
HIS CONVICTION OR SENTENCE

Petitioner ~~Jamie~~ L. Miller 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.

WHEREFORE THESE PREMISES CONSIDERED, Petitioner requests that this Honorable Court order the state to file an answer or other proceeding and that this Court entertain his Motion For Post-conviction Relief To REDUCE A SENTENCE. And direct that this matter be allowed an evidentiary hearing and the appointment of counsel for indigents 99-15-15, 99-39-23 et. seq. Petitioner would also pray that the Court allow Petitioner the right to present any motion for discovery or other actions which is incident to any hearing.

Executed this 27th day of February
2007.

Respectfully submitted,
Jamie L. Miller
Jamie L. Miller # 124687
L.C.R.C.F. Dorm C-34
399 C.O. Brooks Street
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