

IN THE MISSISSIPPI SUPREME COURT /
MISSISSIPPI COURT OF APPEALS

COPY

JIMMY LEE LONG

PETITIONER /APPELLANT

Vs.

FILED

APPEAL No.

2007-^{CP}~~TS~~-00582-COA

STATE OF MISSISSIPPI

AUG 30 2007

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

RESPONDENTS/APPELLEES

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APPELLANT'S REPLY BRIEF

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MS. BETTY W. SEPHTON, CLERK
OFFICE OF THE CLERK
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MISSISSIPPI COURT OF APPEALS
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Dear Clerk ,

Please find here is the APPELLANT'S REPLY BRIEF in the aboved styled and numbered case for filing . A Certificate of Correction(s) appears following the Certificate of Interested persons for clarification . Your usual attention in this matter is well appreciated.

Thank You for your time and consideration in this matter.

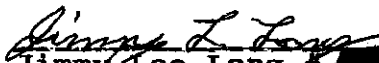
Cc.

Hon. JIM HOOD, M.A.G. by
STEPHINIE B. WOOD (SAAG)

HON. SHARION R. AYCOCK, Judge
Circuit Court of LEE, County, Ms.

HON. JOHN R. YOUNG, District Atty.
Circuit Court of LEE County, Ms.

RESPECTFULLY SUBMITTED
Appellant


Jimmy Lee Long # [REDACTED]
CMCF-III/3, Unit A-1
Post Office Box 88550
Pearl, Ms. 39288-88550

Enclosures
FLIP
FILE
BCCI:

Total No. of pages 11

CERTIFICATE OF INTERESTED PERSONS

The following is a list of interested persons in order to determine possible disqualifications or recusals. These persons have a vested interest in the outcome of the forgoing proceedings.

1. Jim Hood, The Mississippi Attorney General .
2. Ms. Sharion Aycock, The Judge for the Circuit Court of Lee County ,Mississippi .
3. Hon. John R. Young, District Attorney For the Circuit Court of Lee County, Mississippi .
4. Hon. William c. Stennett, Shelton and Associates ,Attorney for the Defendant .
5. Jimmy Lee Long ,Petitioner /Appellant [REDACTED] .

Jimmy Lee Long ,Appellant

Vs.

Appeal Number 2007-TS-00582-COA

STATE OF MISSISSIPPI

CERTIFICATE OF CORRECTIONS

Comes Now, Jimmy Lee Long, Without the Assistance of counsel, with this his certificate of Correction(s) to the Appellant's Brief in the Matter of Substance to the appeal, to clarify his issue ; so that this court or the Appellees will not mis-intrepreted the Question (s) presented .

These representations have not been made to consume time, or cost to the court ,or cause undue delay to these proceedings .

CORRECTION(S).

1.

Expung:HON. DENNIS H.FARRIS (Pg. 1, L.26-27)
Add:Honorable John R.Young (pg.1,L.26-27)

2.

Expung:Hon. Dennis H.Farris (Pg.2, L.8-9)
Add:Honorable John R.Young (pg.2,L.8-9)

3.

Amend: CLAIMS FOR RELIEF at...[III] :

THAT MISSISSIPPI CODE ANNOTED DOES APPLY PROSPECTIVELY TO CASES CHARGED,INDICTED,BEFORE THE COURT'S PRONOUNCATION OF JOHNSON, SUPRA, According to GOSS V. STATE, 721 So.2d 144 (Miss. 1998) as Precedence according to Mississippi Code Annotated §47-7-33 .

at:(Pg 3, L.6-10) Expunging the word [not] in Line [6] .

4.

Amend:"you" to "Your" at(pg 6 line 5)

5.

Amend:"Presedence"to"Precedence" at (pg. 7 Line 17)

6.

Amend:"Mississippi , "to "Mississippi . "(at pg 10 L.)

7.

Amend: "Allow Acess" to "Allowed Access" (at pg.10 L.19)

8.

Amend:"vefore" ...to "Before" (at pg.10, L. 28)

9.

Expung thr first "to" (at pg 11 L. 34)

CERTIFICATE OF CORRECTION Cont....

10.

Amend,"Legilature"to"Legislature" (at pg.12,L. 6)

11.

Amend: "Expresses" to "Express" (at pg 12,L. 9)

12.

Amend:"Appelate" to "Appellate" (at pg 12,L.21)

13.

Amend:"To Which the Legislature" to "For Which The Legislaature
does not have....." (at Pg 13, L.10)

14.

Amend: "because" To "Was" (at pg 13, L. 22)

15.

Amend: then" to "Maybe" (at pg 13, L.23)

16.

Expung: " The Defendant himself was under the Doctors Care" at
(pg. 14,L.13-14)

17.

Amend:"Hon.Dennis H.Farris"to "Hon.John R.Young " .

These Seventeen Corrections have been made to clarify
to this Court the Brief of the Appellant and His Reply, the
Appellant is Proceeding in Forma Pauperis without the assistance
of Counsel, but does believe that the Questions he presents to
this court are not frivolous or Maliciously brought forth .

Thank You For Your Time and Consideration in this matter.

Appellant
Jimmy Lee Long

IN THE MISSISSIPPI COURT OF APPEALS

JIMMY LEE LONG

PETITIONER/APPELLANT

Vs.

APPEAL No. 2007-TS-00582-COA

STATE OF MISSISSIPPI

RESPONDENT/APPELLEES

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APPELLANT'S REPLY BRIEF

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Comes Now The Appellant With this his Reply to the Three (3) Questions that He presented to this Court : And, Defendant's Answer; And, With Ample Explanation, To Wit :

I.

THAT MISSISSIPPI CODE ANNOTED §47-7-34 does not apply retroactively to cases charged, indicted, before the Court's pronouncement of JOHNSON V. STATE, 925 So.2d 86 (Miss.2006) .

Even though the Appellees have combined all of the issue(s) here on appeal into one issue, Appellant prays this court considers each issue on it's own merit, as this "REPLY" attempts to simplify the issues, rather than combine them, for explanation purposes.

In the Alternative, if any of the issues combined would give to Long the relief he seeks, the cumulative effect of both , and/or all would caluminate .

REPLY THE APPELLEES ARGUMENT
IN PERTINATE PART

Was the Trial Courts decision to deny Post-Conviction Relief Clearly Erroneous ? Moreover was the Trial Court imposition of Long's Present Sentence, Illegal, and/or Statutorily Ambiguous ?

Last, That Sentences that are within the Sentencing range of Criminal Activity, and the Statue, May Still violate a Fundamental Principle of Due Process: Accordingly, Does a sentencing Judge have the authority to give a defendant , elderly Defendant, upon a plea a sentence that in essence equals a Life Sentence ? That "Deal", would in all actuality be no deal at all .

Found at CLERK'S PAPERS (Hereinafter C.P.) page 14 (ORDER INCARCERATION WITH POST RELEASE SUPERVISION is Expressed as [" Defendant Shall be placed on SUPERVISED probation for the first five years of Said Sentence....".] although in the Case of MILLER, SUPRA the Appellee distinguishes MCA §47-7-33 from , MCA §47-7-34 and as gouted by Appellees: Page [3] of Appellees Brief

["Supervised Probation and Post-Release Supervision are totally Different Statutory Creatures § 47-7-33 provides for Supervised Rprobation While §47-7-34 Provides for Post Release Supervision "]

Here the Sentencing Court has Utilized the opposite Language accordiong to the Statue it choose to impose on the Defendant Long.

There is No Such Term as [" Five Years Supervised Probation "] Pursuant to Mississippi Code Annotated MCA §47-7-34 . And this Court Has Opined that Contracts (plea Agreements) Contrary to Public Policy (State Court Statues) are unenforcable . The Language in the ["ORDER INCARCIRATION WITH POST-RELEASE SUPERVISION"] does not appear to be binding . This Court shuold carefully examine .

Further, Long's sentence althoughit may fall witin the require-ments Facially of 47-7-34 because the alleged felony was comitted after June 30, 1995 the enactment of MCA §47-7-34, Case Such as ROBINSON, SUPRA, 585 So.2d 757; and /or COOPER, Supra, 737 So.2d

still operate under the "SUPERVISED PROBATION" which still is a function of the Mississippi Dept. of Corrections under MCA §47-7-33; (2) although the court imposed a total of eight (8) years incarceration the total number of years under imposition of sentencing for Long is (20) years. Long was 63 when sentenced, and would be subjected to the sentence for (20) Twenty years .

(3) although facially (20) years does not exceed the Maximum Sentence authorized by MCA 41-29-139 (CONTROLLED SUBSTANCE ACT) Maybe the plea of a 63 (sixty-three year old man) exceptance of such amounts to a life sentence ? (4) Appellees attempt to re-word the Order and insert [Supervised Post Relief Supervision] which is slightly misleading . (5) Long has not [quitletly enjoyed the benifits of an illegally lenient sentence, and later attack it when it is in his interest to do so] The Appellees reliance on Thonas/Pruitt, Supra, is misguided. These cases DEMONSTRATE the Attack of Previous Conviction(s) used to enhance predicate conviction(s) presently being served. Here, Long is not attacking a previous conviction.

II.

THAT MISSISSIPPI CODE ANNOTED §47-7-33 does apply prospectively to cases charged, indicted, before the court's pronouncation of JOHNSON, Supra, according to GOSS V. STATE, 721 So.2d 144 (Miss.1998) as Precedence according to MISSISSIPPI CODE ANNOTED §47-7-33 ?

The federal courts have devised a "test" when no clear "Precedence" is in line with the holding. This test must be consistent with Due Process. See, LOCKYER V. ANDRADE, 538 U.S. 63... See Also MITCHELL V. ESPARZA, 540 U.S. 12 (2003).

See, also SAWYER V. SMITH, 497 U.S. 227 (1990); SAFFLE V. PARKS, 494 U.S. 484, 488-489 (1990) .

[" was convicted of a drug offense under §41-29-139(a) and sentenced under §41-29-139(b), (f) or (g). This includes sell, barter, transfer, distribute, dispense, manufacture, delivery, production, possession with intent, trafficking, attempting to commit any of these crimes"] SOP Number 15-02-01 pg. 3 of 4 .

Further, The Department seeks to have this court mislead to believe that Long is Eligible for "EARNED TIME" under 15-01 , the original Policy at Line 17 which States:

["EARNED RELEASE SUPERVISION PROGRAM (15%-after July 1,1995) "]

Plainly Long has demonstrated with State Statute that Pursuant but not limited to MCA §47-7-47 that mandatory sentences are not eligible for the earned Probation Program . Is Earned Supervision and Earned Probation One in the Same? The Case of Miller here cited By the Appellees Seems to Demonstrate No .

The State's Misreliance on the Citation has proven to be the Key to the illegality of Long's Sentence.

Conclusion The Case of Jacob Stewart V.State, in which Stewart, Supra, received a term of seventy-five (75) years by a Judge in the absense of a Jury Recommendation was not the foundation for the appellant's argument here. The Sentence Is in Visisble Conflict with several Statues and Because Long Cannot Receive Any "EARNED" time as demonstatrated by the Statues the Lenght of his sentence is what it says it is, may exceed his life expectancy; therefore, it may be illegal because it not only exceeds Long's Life Expectancy Long's Conviction is For Controll Substance Act Crimes in Violation of 41-29-139. In the Mississippi Dept. of Corrections Possesion with intent to Sell ,Barter, Ect..... is a Crime with a Mandatory sentence. This is why Long's Sentence Amount's to Life Sentence, he can never earn anytime to decrease it .

CERTIFICATE OF SERVICE

I Jimmy Lee Long, Mississippi Prisoner Number R7788 , do hereby certify that I have this Day Forwarded an [APPELLANT'S REPLY BRIEF] to the Following listed Person(s) U.S. Postage Prepaid.

1. Hon. JIM HOOD, The Mississippi Attorney General Care of SREPHINIE B.WOOD (SAAG) , Office of the Mississippi Attorney General , Post Office Box 220, Jackson, Ms. 39205-0220.
2. The Mississippi Supreme Court Clerk, Ms. Betty W. Sephton, Office of the Mississippi Supreme Court/Mississippi Court of Appeals Clerk , Post Office Box 249, Jackson, Ms. 39205-0249
3. Honorable Sharion Aycock, Circuit Court Judge For Lee County, Mississippi, Post Office Drawer 1100, Tupelo, Ms. 38802-1100
4. Hon. John R. Young , District Attorney, Post Office Box 212 , Corinth, Ms. 38834

This the 30th of AUGUST 2007

By: Jimmy L. Long
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