

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

EDWARD BYROM

APPELLANT

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VS.

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

NO. 2007-CP-0638-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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PROCEDURAL HISTORY:

On June 21, 2001, Edward Byrom, "Byrom" pled guilty to conspiracy to commit capital murder, accessory before the fact of grand larceny and accessory before the fact of burglary of dwelling with intent to commit assault and/or murder before the Circuit Court of Tishomingo County, the Honorable Thomas J. Gardner, III presiding. C.P. 87. Byrom's pleas were found to be voluntarily and intelligently entered. C.P. 156. He was given a combined fifty with twenty years suspended sentence in the custody of the Mississippi Department of Corrections. C.P. 151.

On November 14, 2006 Byrom filed a motion for post conviction relief. C.P. 2-14. The trial court denied relief, finding no merit to any of Byrom's claims. C.P. 169. Byrom filed notice of appeal to the Mississippi Supreme Court. C.P. 20.

ISSUES ON APPEAL

I.

WAS BYROM TIME BARRED UNDER THE UPCCRA?

II.

WAS BYROM SUBJECTED TO DOUBLE JEOPARDY?

BECAUSE HE BELIEVES THE ELEMENTS OF CONSPIRACY TO COMMIT MURDER ARE THE SAME AS THE ELEMENTS FOR ACCESSORY TO BREAKING AND ENTERING A DWELLING WITH INTENT?

II.

WAS BYROM SUBJECTED TO DOUBLE JEOPARDY?

BECAUSE HE BELIEVES THE ELEMENTS OF ACCESSORY BEFORE THE FACT OF GRAND LARCENY ARE THE SAME AS ACCESSORY BEFORE THE FACT OF BURGLARY WITH INTENT TO ASSAULT?

STATEMENT OF THE FACTS

On June 21, 2001, Byrom was charged by criminal information affidavit with conspiracy with his mother and Mr. Joey Gillis to commit capital murder on June 4, 1999 by the District Attorney of Tishomingo County. C.P. 29. This crime involved assisting his mother and the alleged actual assassin, Joey Dale Gillis, in murdering Byrom's father in order to assist in collecting and then sharing in the life insurance benefits his mother would receive. C.P. 205. Byrom, with the benefit of counsel, waived the need for indictment by a grand jury on the charge. C.P. 30; 93. Byrom was also charged by criminal information affidavit with accessory before the fact of grand larceny, and accessory before the fact of burglary of a dwelling with intent to commit assault. C.P. 74; 119. Byrom with the benefit of counsel waived the need for indictment on these charges as well. C.P. 93; 120.

On June 26, 2001, Byrom with the benefit of counsel pled guilty before the Circuit Court of Tishomingo County, the Honorable Thomas J. Gardner presiding. C.P. 87-115. Byrom was represented by Mr. Roy J. Farrell. C.P. 87. Byrom admitted that he had waived indictment on these three charges. C.P. 91. After being sworn, Byrom and his counsel were advised and questioned by the trial court as to Byrom's understanding of the charges against him, and the possible consequences of his plea. C.P. 89-92. Byrom admitted that he knew the Constitutional rights he was waiving by pleading guilty. This included his right to a jury trial with right of cross examination and the right against self incrimination. C.P. 90-92. Byrom admitted knowing the maximum sentences for his three separate offenses. C.P. 96-97. They were twenty for conspiracy to commit capital murder, five for grand larceny, and twenty five for accessory before the fact of burglary of a dwelling. C.P. 96-97.

Byrom admitted that he was guilty of the three separate felony charges. C.P. 96. He admitted that he was guilty of conspiracy to commit capital murder of his father, accessory before the fact

of grand larceny, and accessory before the fact of burglary with intent to assault and/or murder. C.P. 96. Byrom admitted that he had not been coerced or promised anything in exchange for his guilty plea. C. P. 90. He admitted that he was not under the influence of alcohol or drugs. C.P. 89. He admitted he had a tenth grade education, was 21 years old, and could read and write and understood the significance of the court proceedings. C.P. 88-90.

After advising and questioning Byrom, and Mr. Roy J. Farrell, his guilty plea counsel, the trial court found that Byrom's guilty pleas were voluntarily and intelligently entered. C.P. 110. Byrom was sentenced to serve consecutive sentences of twenty five, twenty, and five years in the custody of the MDOC. The twenty five year consecutive sentence included twenty years suspended on condition of good behavior. C.P. 113-114.

On November 14, 2006, Byrom filed for post conviction relief. C.P. 3-14. Byrom claimed that he had been subjected to double jeopardy and cumulative punishment.

On February 22, 2007, the trial court denied relief, finding no merit to any of Byrom's claims. C.P. 109. Byrom filed notice of appeal to the Mississippi Supreme Court. C.P. 167.

SUMMARY OF THE ARGUMENT

1. Byrom's motion came more than three years after entry of his judgments of convictions. The record reflects that he pled guilty and was sentenced on June 21, 2001. C.P. 87-114. His motion for post conviction relief was filed on November 14, 2006. C.P. 2. In Byrom's motion with the trial court, he admitted that he was filing more than three years after entry of judgment of conviction. C. P. 7. He does not state any statutory acceptable reason under the UPCCRA , M. C. A § 99-39-5(2) for why the statute of limitation should not apply in his case. C.P. 2-14. There was no statement about any intervening case, or any newly discovered applicable evidence for such a claim. There was no attempt at providing any basis for being excluded from the three year statute of limitations. Therefore, under M. C. A. § 99-39-5(2) of the Post Conviction Relief Act, Byrom was time barred.
2. The record reflects there is no merit to any of Byrom's claims for relief. As found by the trial court, Byrom's claims of double jeopardy were not valid. C.P. 109. The elements of conspiracy to commit capital murder, accessory before the fact of grand larceny and accessory before the fact of burglary of a dwelling with intent are different from each other and not in any conceivable way all the same, as claimed by Byrom in his out of time motion. The sentences for these felonies are for different criminal convictions. Therefore, the Appellee would submit that this court should affirm the trial court's denial of relief.

ARGUMENT

PROPOSITION I

BYROM'S MOTION WAS BARRED BY THE STATUTE OF LIMITATIONS.

Byrom's motion came more than three years after entry of his judgments of convictions. The record reflects that he pled guilty and was sentenced on June 21, 2001. C.P. 87-114. His motion for post conviction relief was filed on November 14, 2006. C.P. 2. There was no statement of any reason for providing a basis for being excluded from the three year statute of limitations. Therefore, under M. C. A. § 99-39-5(2) of the Post Conviction Relief Act, Byrom was time barred by the statute of limitations.

In *Odom v. State*, 483 So. 2d 343, 344 (Miss. 1986), the court stated under the Uniform Post Conviction Collateral Relief Act, a prisoner only has three years to apply for relief. Unless, his case falls under one of the exceptions provided, which are for newly discovered evidence or for a relevant intervening decision, he is time barred.

We would also point out that in dismissing the petition, the trial judge erroneously applied the three year statute of limitations provided for under the Mississippi Uniform Post-Conviction Collateral Relief Act (UPCCRA), Miss. Code Ann. Sect. 99-39-1 et seq (Supp 1985). This act applies prospectively from its date of enactment, April 17, 1984. Individuals convicted prior to April 17, 1984, have three years from April 17, 1984, to file their petition for post conviction relief. Those individuals convicted after April 17, 1984, generally have three (3) years in which to file a petition for relief as provided for in the UPCCRA, Miss Code Ann. Sect 99-39-5(2)(Supp. 1985)...

The Appellee would submit that the record reflects that Byrom's motion for post conviction relief in 2006 came long after June 21, 2001, the date of the entry of his judgment of conviction. Therefore, his motion was time barred.

PROPOSITION II

BYROM WAS NOT SUBJECTED TO DOUBLE JEOPARDY.

Byrom believes that he was subjected to double jeopardy. He believes that the elements of his three separate charges were improperly combined. Byrom believes that the elements of accessory to breaking and entering a dwelling with intent to commit assault are incorporated in the charge of conspiracy to commit capital murder. He also thinks that the elements of the crime of grand larceny are included in the breaking and entering charge. Appellant's brief, and C.P. 2-14.

The trial court in its motion denying relief found no merit to Byrom's claim that the elements of conspiracy to commit capital murder were the same as the elements for accessory for breaking and entering a dwelling with intent to commit an assault. As the trial court pointed out, while some elements of these two charges may be the same or similar, they, nevertheless, each have separate, distinct factual elements. As stated in the order denying relief:

Petitioner entered a guilty plea on June 21, 2001 and was convicted of the crimes of count 1 conspiracy to commit capital murder. Count II, accessory before the fact of grand larceny, and count III, accessory before the fact of burglary of a dwelling with intent to commit assault, with each sentence running consecutive. Petitioner argues that double jeopardy should intervene because the elements of breaking and entering a dwelling with intent to commit assault are incorporated in the charge of conspiracy to commit capital murder. This is simply not accurate. Each of these crimes require different elements. Similarly, petitioner also contends that the essential elements of the crime grand larceny are included in the breaking and entering charge. This is also not correct. Burglary of a dwelling with the intent to commit assault is completely different than the crime of grand larceny and requires proving of completely different elements. The Court is of the opinion that petitioner's claim is without merit. C.P. 169.

In **Blockburger v. United States**, 284 U. S. 299, 304 (1932), the Supreme Court of the United States stated the applicable rule for analyzing double jeopardy claims:

The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional

fact which the other does not.

In **Keyes v. State** 708 So. 2d 540, *544 (Miss.1998), the Mississippi Supreme Court stated that it had accepted the “same elements” test for analyzing double jeopardy claims.

The “same-elements” methodology of **Blockburger** has been applied by this Court to analyze claims under both the Federal and State Double Jeopardy Clauses. See, e.g., **Shook v. State**, 552 So.2d 841, 848 (Miss.1989); **Smith v. State**, 429 So.2d 252, 253-54 (Miss.1983).

As stated by the trial court the factual elements for establishing the crime of conspiracy to commit capital murder differ from the factual elements for establishing the crime of accessory before the fact of breaking and entering a dwelling with intent to commit an assault or murder. For example, the conspiracy charge requires evidence of an agreement with others, in this case Byrom’s mother and the actual alleged assassin, to assist them in their plan to murder for financial gain Byrom’s father. Whereas accessory to the breaking and entering was for assisting in breaking and entering a building in order to enable the assassin to murder his father. The elements for accessory before the fact of grand larceny included evidence of assisting the assassin by providing him with a handgun stolen from the victim and then driving the assassin to the home where the father was residing, and picking up the shooter after the father had been killed. C.P. 207-208.

Therefore, the Appellee would submit that the trial court correctly found that no merit to Byrom’s claim that the elements for his three different offenses were the same. These issues are not only time barred, they are lacking in merit.

CONCLUSION

This Court should affirm the trial court's denial of relief for the reasons cited in this brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, W. Glenn Watts, 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 12th day of October, 2007.



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