

COPY

IN THE SUPRME COURT OF THE STATE OF MISSISSIPPI

EDWARD BYROM

APPELLANT

VERSUS

SEP 18 2007
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SUPREME COURT
COURT OF APPEALS
NO. 2007-CP-00638-COA

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S BRIEF

Submitted By:

Edward Byrom, Pro Se
#K7064 Unit 29-E
Parchman, Mississippi 38738

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Statement of the Case

Tishomingo County Grand Jury indicted the Appellant, Edward Byrom, for the crimes 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 to commit assault*. After intense negotiations between Byrom's attorney and the District Attorney, Byrom entered a plea of guilty to all three counts on June 21, 2001.

The Tishomingo County Circuit Court sentenced Byrom to a term of twenty (20) years on Count I (*Conspiracy to commit capital murder*); five (5) years on Count II (*Accessory before the fact of grand larceny*); and to twenty-five (25) years on Count III (*Accessory before the fact of burglary of a dwelling with intent to commit assault*). The sentences imposed were run consecutively for a total term of fifty (50) years to serve in the custody of the Mississippi Department of Corrections.

Statement of the Issues

The Appellant, Edward Byrom, submits the following constitutional claims as the issues to be considered by this Honorable Court.

1. Byrom has been denied his rights under the Mississippi and United States Constitutions against double jeopardy.
2. Byrom has been denied his rights under the Mississippi and United States Constitutions against cumulative punishments.
3. Byrom avers that when a defendant is charged with multiple offenses, and that the elements of one are included within the others, and/or are a part of a second greater offense, double jeopardy intervenes.

Summary of the Argument

Appellant Edward Byrom submits that he has been denied his right to be free from double jeopardy. Appellant claims he received three consecutive sentences, when in fact there should have only been one sentence, for one conviction. Appellant Byrom would further claim that the consecutive sentences fall in the category of multiple punishments since they were run consecutively and not concurrently. In sum, Appellant Byrom is requesting his convictions be reviewed under the standards of the Double Jeopardy Clause and appropriate, corrective action be taken.

Argument

Appellant Byrom was charged, convicted and sentenced for the crime of capital murder for hire, and thereafter convicted and sentenced consecutively for the crimes of breaking and entering a dwelling house with the intent to commit the crimes of assault and/or murder. Byrom submits that the crime of breaking and entering a dwelling house with the intent to commit the crime of assault and/or murder and capital murder for hire are not subject to separate sentences for purposes of double jeopardy.

Byrom avers that when breaking and entering a dwelling, as charged in an indictment or bill of information, it is not charged as a substantive offense but as demonstrative of assaultive or murderous intent. The crime of breaking and entering a dwelling with intent to assault and/or murder was not subject to a separate sentence. Furthermore, larceny is a lesser-included offense of breaking and entering.

This argument must begin with homage to *Blockburger v. United States*, 284 U.S. 299, 303, 52 S.Ct. 180, 76 L.Ed 304, 306 (1931), which Byrom is certain is this Court's most durable gloss when considering claims of double jeopardy. *Blockburger* arose in the context of multiple punishments imposed for a single offense. It holds that the courts may not impose for one *de jure* offense more than lawful the prescribed punishment. See also, *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969).

The double jeopardy clause provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." See, *United States Constitution, Article 5*. It protects against three different governmental abuses: a second prosecution

for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense. When multiple punishments are imposed at a single trial, the Supreme Court as a matter solely of statutory construction has consistently described their propriety. The legislature may impose whatever punishments it sees fit for any combination of crimes subject only to the limitations of the Eighth Amendment. A court, therefore, may impose consecutive sentences whenever the legislature intended them. If the legislature intent is clear, the Constitution requires only that it be obeyed by the sentencing court. See *United States v. Rodriguez*, 612 F.2d 906, 925-30 (5th Cir. 1980), wherein Justin Rubin held:

In my view, the sounder method of statutory construction would permit the imposition of only a single sentence for a single criminal act, even if the defendant is convicted under more than one statute.

See also, *Albernaz v. United States*, 450 U.S. 333, 101 S.Ct. 1137, 67 L.Ed.2d 275 (1981). If the legislature's intent is uncertain, however, the Supreme Court has instructed that courts apply the test of *Blockburger*, as a "rule of statutory construction" to determine whether the legislature intended that the two (or three in this case) offenses be punished cumulatively. *Blockburger* upheld the imposition of multiple sentences imposed at one trial, holding that "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 that the other does not." The Court has further specified that the *Blockburger* test is to be applied to the elements of proof required by the statute and not to the actual evidence or proof adduced at trial in a given case.

In the case *sub judice*, Byrom was charged with capital murder for hire, burglary of a dwelling with intent to commit assault and/or murder, and charged with grand

larceny. All three of these offenses were alleged to have been committed on June 4, 1999. The Criminal Information for the capital murder offense reads as follows:

In said County and State on or about the 4th day of June, 1999, did willfully, unlawfully and feloniously conspire with Michelle Byrom, and Joey Dale Gillis to commit the crime of capital murder in that they did agree to kill or cause the death of Edward Louis Byrom...

The Criminal Information for the offense of breaking and entering the dwelling house of Edward Louis Byrom reads as follows:

In said County and State on or about the 4th day of June, 1999, did willfully, unlawfully, feloniously (as an accessory before the fact and as an accomplice to Joey Dale Gillis) break and enter the dwelling house of Edward Byrom Sr. with the intent to commit a crime therein, to wit: the crime of assault and/or murder and in furtherance thereof did provide a 9mm Luger pistol, a deadly weapon to the said Joey Dale Gillis who did purposely, knowingly and feloniously cause or attempt to cause bodily injury to Edward Byrom Sr. with said 9mm Luger pistol...

The Criminal Information for the offense of grand larceny reads as follows:

In said County and State on or about the 4th day of June, 1999, did willfully, unlawfully and feloniously take steal and carry away a 9mm Luger pistol the personal property of Edward Byrom Sr. having a value greater than \$250.00, with the intent to permanently deprive the owner...

In this context, two or more statutes may prescribe the same conduct. This is viewed in the sense that the constituent elements of each offense mirrors the other. In the case *sub judice*, Byrom is focused with the lesser variants of the same offense. A man may arm himself and break and enter an occupied dwelling at night, and his conduct offends any one of several lesser burglary statutes (*Mississippi Code Annotated* § 97-17-19 and -21). Then there are the traditional lesser-included offenses, aggravated assault included within murder, trespass included within larceny, among others. See, *Jones v. State*, 66 Miss. 380, 384, 6 So. 231, 232 (1889).

In support of this contention, Byrom submits the case of *Bullock v. State*, 222 So.2d 692 (Miss. 1969), where *Bullock* was convicted on one count of burglary and one count of larceny. *Bullock* was sentenced to a term of five (5) years for the burglary, and three (3) years for the larceny. These sentences were run consecutively. This Court held that *Bullock's* sentence was in error. This Court held:

This sentence is error. See *Evans v. State*, 204 So.2d 570 (Miss. 1967) and *Bradshaw v. State*, 192 So.2d 387 (Miss. 1966), in each of which we held that the larceny charged in the indictment was charged not as a substantive offense, but as demonstrative of burglarious intent, and therefore, the charge of grand larceny was not subject to separate sentence. In each of these cases that part of the sentence related to larceny was deleted as surplusage.

Byrom submits that there is still yet another position in which this Court can consider. The United States Supreme Court in *Whalen v. United States*, 445 U.S. 684, 100 S.Ct. 1432, 63 L.Ed.2d 715 (1980), and *Harris v. Oklahoma*, 433 U.S. 682, 97 S.Ct. 2912, 53 L.Ed.2d 1054 (1977) make clear that when there is a violation of a complex statute, such as the case *sub judice*, the *Blockburger* test may be modified. In essence, this would require that the court examine only the relevant portions of the statute and the actual underlying felony. If the murder charge relied on proof of a specific felony, then that felony is a lesser-included offense, even though it might not always be essential to the murder charge because other felonies might also have supported a conviction. See, *Davis v. Herring*, 800 F.2d 513 (5th Cir. 1986).

Moreover, a statutory scheme that permits the prosecution to obtain three convictions and three sentences cannot be regarded as the equivalent of a statute that permits only a single conviction, whether or not that single conviction can result in a sentence of equal severity. The greater number of possible convictions, the greater the

risk the defendant faces. The defendant is *put in jeopardy* with respect to each charge against him.

Consider this, the very fact that the State could simply convict Byrom of one crime, and impose an appropriate punishment for that crime, demonstrates that it has no legitimate interest in any justice. However, the State would rather seek multiple convictions and multiple punishments simply because it can. The creation of multiple crimes serves only to strengthen the prosecution's hand. Moreover, it advances no valid state interest that could not just as easily be achieved without bringing multiple charges against the defendant.

In view of these considerations, the Double Jeopardy Clause cannot be reasonably interpreted to leave legislatures completely free to subject a defendant to the risk of multiple punishments, simply on the basis of what constitutes a single criminal transaction.

Byrom readily agrees that the State has wide latitude to define crimes and to prescribe the punishment for a given crime. However, the Constitution does not permit a State to punish as three crimes, conduct that constitutes only one offense, within the meaning of the Double Jeopardy Clause. If the Double Jeopardy Clause imposed no restrictions on a legislature's power to authorize multiple convictions and punishments, there would be no limit to the number of convictions and sentences a State could obtain on the basis of: the same act, same state of mind, and result. A State would be free to create substantively identical crimes differing only in name, or to create a series of greater and lesser included offenses, with the first crime a lesser-included offense of the second, the second a lesser-included offense of the third, and so on.

It is interesting to note that when Byrom raised this claim for the first time in the Tishomingo County Circuit Court, the Court conveniently altered the titles of his charges. The Court used the change in titles for the basis of denying post-conviction relief. There can be no misunderstanding of the charges Byrom was assigned. The Bill of Information, provided for each individual crime, are precise, concise, and accurate. The Circuit Court further alleged that "*Each of these crimes require different elements.*" (Record pp. 66). In other words, the Circuit Court admits that each crime *requires* different elements, however the Circuit Court failed to state that each crime does or does not have different elements

Conclusion

Wherefore, premises considered, Appellant Edward Byrom submits that he has been the victim of a violation of the double jeopardy clause, in that he received multiple sentences, running consecutively, for what is in essence one single act or crime. In any case, the sentences should have been run concurrently. Appellant Byrom respectfully moves this Honorable Court to grant relief by returning this action to the Tishomingo County Circuit Court for further consideration. In the alternative, Appellant Byrom would move this Court to grant such other relief as deemed appropriate under the circumstances of this cause and action.

THIS, the 18th day of September, 2007.

Respectfully submitted,

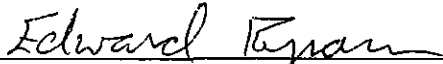
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Certificate of Service

This is to certify, that I, Edward Byrom, have this day mailed a true and correct copy of the foregoing and attached Appellant's Brief, via United States Postal Service, postage prepaid, to the individuals listed below:

Honorable Jim Hood
Mississippi Attorney General
Post Office Box 220
Jackson, MS 39205

So certified, this the 18th day of September, 2007.


Edward Byrom, Pro Se
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