

COPY

IN THE COURT OF APPEALS OF MISSISSIPPI

NO. 2007-CP-0840

FILED

OCT 23 2007

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

BRIAN SNEED

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF OF APPELLANT



Brian Sneed, pro se.

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APPELLANT'S REPLY

The Appellant maintains that he was not informed of the habitual amendment and he never received notice of being charged as a habitual offender.

The State has falsely alleged "The prisoner further admitted in the plea colloquy that he knew the court had amended the indictment and knew the consequences of that amendment." (Brief for the Appellee pg. 3) This simply is not true, Sneed never made any such admission because he did not know of any amendment.

Apparently, the State is relying on Sneed not being able to support his claims because the record does not include the criminal file in this matter. Sneed has petitioned this court, as well as the trial court, to include the criminal file into the record. However, at the time of this filing the record has not been modified. Therefore, Sneed has attached, as excerpts, certified copies of the relevant documents from the criminal record.

The first issue Sneed will address is the failure of notice of the habitual.

On August 2, 2004, Sneed was indicted in cause no. 2004-0019 on two (2) counts of business burglary. The indictment did not charge Sneed as a habitual.

On August 10, 2004, Sneed was taken before the Circuit Court for arraignment and David Tisdell was appointed as Sneed's counsel.

On March 9, 2005, Sneed was transported to the Quitman County Courthouse to meet with his appointed counsel for the first time. Sneed was informed of a plea offer totaling a fifteen (15) year sentence and that the offer would be withdrawn if Sneed did not accept it right then. Counsel made no mention of any amendment or habitual charge. Sneed accepted the offer and entered a written agreement wherein he would receive two (2) seven (7) year sentences in cause no. 2004-0019. The Petition to Enter Plea of Guilty did not make any reference or inform

Sneed that the sentences would be as an habitual (See attached Petition to Enter Plea of Guilty pg. 4).

There appears now to be some dilemma that the trial court made some type of reference to the indictments being amended. (R. Vol. 1, pg. 25) The only response Sneed can make is the reference must have been very brief and Sneed wasn't paying attention because he had just entered a written agreement that made no mention of the sentence being habitual or any habitual charge. The first clue Sneed had of the habitual was when the prosecutor recommended to the Court that the sentences be as habitual. When Sneed heard this charge in the sentence recommendation he turned to his appointed counsel for guidance. Counsel raised his finger to his lip and motioned for Sneed to remain quiet.

The State would have this court to believe "The prisoner does not trouble himself to suggest how or in what way he might have been unfairly surprised." (Brief for Appellee pg. 4) The unfair surprise should be obvious, Sneed had no idea that he was charged as a habitual, and he entered into a written agreement to plead guilty that did not inform him he would receive habitual sentences. Had Sneed known of the possibility of receiving habitual sentences he would not have entered into the plea agreement.

This Court in **Forkner v. State, 902 So. 2d 615, 624 (2004) (Miss. App. 2004)** citing **Ellis v. State, 469 So. 2d 1256 (Miss 1985)** has clearly established that the defendant must be "fully aware" of the State's intentions during the plea negotiations. In the case at hand the State has failed to meet these requirements.

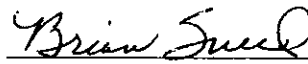
The second issue on appeal is that the exhibit attached to the State's motion to Amend the Indictment is fraudulent. The State appears to have avoided the issue of the exhibit claiming to have been returned by the grand jury. (See attached Motion to Amend the Indictment, Exhibit "A")

Sneed had no knowledge of the motion and exhibit at the time of his plea, and he did not know of the Order Amending Indictment. However, Sneed asserts that the trial court should have stricken the exhibit from the motion for fraudulently alleging to have been handed down and/or returned by the grand jury. There was no hearing on the motion; it was all done by mail without Sneed's knowledge.

CONCLUSION

Sneed's Counsel and the State failed to inform Sneed that he was charged as a habitual. Sneed entered into a written plea agreement that did not inform him he would be sentenced as a habitual. Sneed was unfairly surprised when the State changed the sentence recommendation after he had entered guilty pleas. The subsequent issue of the fraudulent Motion Exhibit should render the amendment void as well.

Respectfully Submitted

A handwritten signature in cursive script, reading "Brian Sneed", is written over a horizontal line.

Brian Sneed, pro se.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY, that I, Brian Sneed, have this day mailed a true and correct copy of the attached and foregoing **REPLY BRIEF OF APPELLANT**, via U.S. Postal Service, postage prepaid, to the following persons:

Honorable Jim Hood
Attorney General
P.O. Box 220
Jackson, MS 39205-0220

SO CERTIFIED, this the 23rd day of October, 2007.



Brian Sneed, pro se.
BCRCF, MDOC # 72219
2792 Hwy. 8 West
Cleveland, MS 38732

IN THE CIRCUIT COURT OF Quitman COUNTY, MISSISSIPPI

_____ JUDICIAL DISTRICT

STATE OF MISSISSIPPI

PLAINTIFF

VS.

CAUSE NO. 2004-0019

Brinn Sneed

DEFENDANT

PETITION TO ENTER PLEA OF GUILTY

The defendant, after having been first duly sworn, on his/her Oath represents and states unto the Court the following:

1. My full true name is Brian Ellis Sneed
I am also known as _____, and
I request that all proceedings against me be in my true name.

2. (a) I am a white (race) male (male/female) person.

(b) I was born on April 20, 1966; my present age is 38.

(c) My place of birth is Clarksdale, Mississippi.

(d) My home address is 91 Sneed Ave, Marks, MS.

(e) My Social Security Number is 587-38-8619.

(f) I completed 11 years in school and 0 years in college.

(g) I (can ☒) (cannot ☐) read and write.

3. At this time I am not under the influence of drugs or alcohol, nor am I suffering from any mental disease.

4. I am mentally competent to make this petition.

5. I am currently confined at Quitman County; my prison number is _____; my FBI No., if any, is _____; I have been released on bond pending trial in the amount of \$ _____.

Brinn Sneed
SIGNATURE OF DEFENDANT

CERTIFIED A TRUE COPY
of records on file in this office.

Brenda A. Wiggs, D.C.
Brenda A. Wiggs, Circuit Clerk
Quitman County, Mississippi

FILED
MAR 04 2005

Quitman Co. Circuit Clerk
Brenda A. Wiggs

By Brenda A. Wiggs

6. My attorney: David L. Tisdell f Tunica, MS

7. I petition and state to the Court that I wish and desire to plead GUILTY to the crime(s) of I - Burglary of a Business
II - Burglary of a Building

as charged against me in the indictment/information in this cause, or which is a lesser included offense or reduction of the original charge or amended charge. I was initially charged with the crime(s) of _____

8. I plead GUILTY and request the Court to accept my plea of GUILTY on the basis that (state the defendant's involvement in crime):

9. In connection with my plea of guilty to the charge(s) as stated in Paragraph 7, above, I am making this petition with the assistance of and in the presence of my attorney in order to show and demonstrate to this Honorable Court, that I am knowingly, intelligently, understandingly, freely and voluntarily entering my plea of guilty to this/these crime(s). I am making this petition truthfully and under Oath. I understand that false or untrue statements to this Court can result in my prosecution for the crime of perjury, for which the maximum sentence, according to the appropriate statute is (10) years within the custody and control of the Mississippi Department of Corrections.

10. I have previously been convicted of the following crimes: Burglary of Building x 3 Grand Larceny x 2 Burglary of Building

11. I am am not on probation or parole. I understand that my pleading guilty in this case could cause full or partial revocation of my probation or parole, if any. I also understand that if part or all of my suspended sentence is revoked, the

Brian Smith
SIGNATURE OF DEFENDANT

reinstated fine may be ordered to run consecutively to a subsequent or later sentence.

12. I have received a copy of the indictment or information filed against me in this case and have either read it myself or have had it read and explained to me. I fully understand the charge(s) against me.
13. I told my attorney all the facts and circumstances known to me about the charge(s) against me. I believe that my attorney is fully informed of all such matters. My attorney has counseled and advised me of the nature of each charge, including the elements of each charge that would have to be proven; of any and all lesser included charges; and of all possible defenses that I might have in this case.
14. I understand that I may plead Not Guilty to any offense(s) charged against me. If I choose to plead Not Guilty, the Constitution guarantees me:
 - (a) the right to a speedy and public trial by jury, at which a unanimous verdict is required;
 - (b) the right to see, hear and face in open court all witnesses called to testify against me, and the right to cross-examine those witnesses;
 - (c) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor;
 - (d) the right to have the assistance of a attorney at all stages of the proceeding;
 - (e) the presumption of innocence, i.e. the State must prove beyond a reasonable doubt that I am guilty;
 - (f) the right to testify at my trial, in which instance I would be subjected to direct and cross-examination, and I have the option of not testifying, in which instance the jury would be instructed that my failure to testify should not be held against me.
 - (g) the right to appeal my case to the State Supreme Court if I am convicted in a jury trial, at no costs to me if I cannot afford a attorney and appeal costs.
15. I understand that upon entering a guilty plea, I waive, which means I give up, the above rights and the protections they afford.

Knowing and understanding the Constitutional guarantees listed in item Fourteen (14), above, I hereby waive them and renew my desire to enter a plea of Guilty.


SIGNATURE OF DEFENDANT

16. I also understand that if I plead Guilty, the Court may impose the same punishment as if I had plead Not Guilty, stood trial, and was convicted by a jury. I know that the sentence that I will receive will be decided solely by the judge. Accordingly, Court is not required to follow the recommendation of the District Attorney, if any.

17. I have been informed of the minimum and maximum sentences for the offense(s) of which I have been charged.

(a) For the crime of Burglary of a Business each count
the minimum sentence is 6 years of imprisonment and a \$ 0 fine.
the maximum sentence is 7 years of imprisonment and a \$ 10,000 fine.

(b) For the crime of _____
the minimum sentence is _____ years of imprisonment and a \$ _____ fine.
the maximum sentence is _____ years of imprisonment and a \$ _____ fine.

(c) For the crime of _____
the minimum sentence is _____ years of imprisonment and a \$ _____ fine.
the maximum sentence is _____ years of imprisonment and a \$ _____ fine.

(d) For the crime of _____
the minimum sentence is _____ years of imprisonment and a \$ _____ fine.
the maximum sentence is _____ years of imprisonment and a \$ _____ fine.

(e) A reasonable and appropriate amount of restitution under M.C.A. 99-37-3.

18. Other than an agreement by the District Attorney to make a certain recommendation to the Court, no person has offered me any hope or promise or reward to get me to plead guilty. No one has made any threats either directly or indirectly to get me to plead guilty. **I AM PLEADING GUILTY BECAUSE I AM GUILTY OF THE CHARGE(S) AGAINST ME AND BECAUSE IT IS IN MY BEST INTEREST TO DO SO.**


19. As a result of "plea bargaining," my attorney and I have reached an agreement with the District Attorney's Office concerning my offer to plead guilty to the charge(s) mentioned earlier in this petition. It is my understanding that the District Attorney will recommend to the Court that I receive a sentence as follows:

I - 7 years (P)
II - 7 years (P)

20. I acknowledge that the State of Mississippi has presented to me, through my attorney, the facts and other evidence it would present at trial to prove my guilt beyond a reasonable doubt, all of which my attorney has explained to me, unless I have otherwise waived this right. (Initial if this right is waived: _____)

Brian Smith
SIGNATURE OF DEFENDANT

21. If no agreement has been reached with regard to a recommended sentence as a result of "plea bargaining," I understand and neither my attorney nor any other person can represent to me that I will receive any particular sentence if I plead guilty. The final decision as to the sentence will rest with Court (Judge) as I have previously acknowledged in this petition.
22. I understand that by being a convicted felon, I may lose certain civil rights due to my guilty plea and conviction in this case, such as the right to vote and serve on juries. I understand that my guilty plea and conviction in this case, together with any prior felony conviction, may be used against me on any future criminal charges for enhanced punishment and habitual offender status according to the applicable laws. **I understand that by being a convicted felon I lose the right to own, possess, carry or bear any type of firearm whatsoever under any circumstances.**
23. I further understand that if I am sentenced for robbery by displaying a deadly weapon or any such attempted offense, I will not be eligible for parole. I understand that if I am sentenced as a habitual criminal, I will not be eligible for parole. I understand that if I am sentenced for a sex crime, I will not be eligible for parole. I further understand that under the present law of Mississippi, since July 1, 1995, if I am sentenced for any crime, I am not eligible for parole and I must serve eighty-five percent (85%) of any sentence that I may receive.
24. I understand that if I am not eligible for parole, I will not receive "good time credits." I also understand that "earned time" or "good time credits" will not be applied to affect my parole eligibility date. I understand that this court has no control over earned time or good time, if any. I understand that these matters are governed by the Mississippi Department of Corrections as is provided by statute.
25. I understand that my plea of guilty may be withdrawn at any time prior to acceptance by the Court. I understand that if the plea of guilty herein tendered is not accepted this Court and a trial follows, any admissions made by me herein or during any hearing on this petition **would not** be admissible against me at trial.
26. I believe that my attorney has done all that he/she could do to counsel and assist me. **I AM SATISFIED WITH THE ADVICE AND ASSISTANCE THAT MY ATTORNEY HAS GIVEN ME.** I understand that any representations that may have been made by my attorney regarding non-adjudication, probation, or sentence, if any, not binding on the Court.
27. I am entering this plea without any threats, pressure, or coercion.


SIGNATURE OF DEFENDANT

28. I OFFER MY PLEA OF GUILTY FREELY AND VOLUNTARILY, OF MY OWN FREE WILL AND ACCORD, WITH FULL UNDERSTANDING OF ALL THE MATTERS SET FORTH IN THE INDICTMENT AND IN THIS PETITION, AND IN THE CERTIFICATE OF MY ATTORNEY WHICH IS ATTACHED TO THIS PETITION.
29. IN VIEW OF ITEM 28, ABOVE, I REQUEST THAT THE COURT ACCEPT MY PLEA OF GUILTY.
30. ATTORNEY FOR DEFENDANT SHALL MAKE A CHECK MARK IF THE SEX OFFENDER'S FORM IS APPLICABLE: ____ (check).
31. I HAVE READ THIS PETITION AND/OR MY ATTORNEY HAS FULLY EXPLAINED IT TO ME AND I UNDERSTAND ITS CONTENTS AND CONSEQUENCES.
32. I AM HEREBY INFORMED THAT EVERY PERSON WHO SHALL WILLFULLY AND CORRUPTLY SWEAR, TESTIFY, OR AFFIRM FALSELY TO ANY MATERIAL MATTER UNDER OATH, AFFIRMATION, OR DECLARATION LEGALLY ADMINISTERED IN ANY MATTER, CAUSE, OR PROCEEDING PENDING IN ANY COURT OR LAW OR EQUITY SHALL UPON CONVICTION BE PUNISHED BY IMPRISONMENT IN THE PENITENTIARY NOT EXCEEDING TEN (10) YEARS.

I WITNESS MY SIGNATURE on this 9 day of March, 2005.


SIGNATURE OF DEFENDANT

WITNESS: 
DEFENDANT'S ATTORNEY

STATE OF MISSISSIPPI

COUNTY OF Mississippi

Sworn and subscribed before me this the 9 day of March, 2005.

Circuit Clerk 

By: _____, Deputy Clerk

REGISTRATION OF SEX OFFENDERS
M.C.A. § 45-33-21 et seq.

In cases involving a sex offense:

Any person residing in Mississippi who has a conviction for any sex offense or attempted sex offense must register with the Mississippi Department of Public Safety. The following information is required for registration: (a) name; (b) address; (c) place of employment; (d) crime for which convicted; (e) date and place of conviction, adjudication, or acquittal by reason of insanity; (f) aliases used; (g) Social Security number; (h) date of birth; (i) age, race, sex, height, weight, and hair and eye colors; (j) a brief description of the offense or offenses for which the registration is required; (k) identifying factors; (l) anticipated future residence; (m) offense history; (n) photograph; (o) fingerprints; (p) for sexual predators, documentation of any treatment received for any mental abnormality or personality disorder of the person; (q) blood sample; (r) any other information deemed necessary.

If immediately incarcerated after conviction, upon release from incarceration, the Department of Corrections shall perform the registration duties at the time of release and forward the registration information to the Department of Public Safety within three (3) days.

If not immediately incarcerated after conviction, the court, at the time of entering the order, shall inform the person of the duty to register, obtain the registration information and forward the registration information to the Department of Public Safety within three (3) days.

An offender moving to or returning to this state from another jurisdiction shall notify the Department of Public Safety ten (10) days before the person first resides in or returns to a county in this state and shall register with the department within ten (10) days of first residing in or returning to a county of this state. The offender must then present himself to the sheriff of the county in which he intends to reside to provide the required registration information.

Failure to comply with any provision of this statute shall constitute a violation of said statute and shall be punishable by imprisonment or fine or both.

I have read the above paragraphs regarding the duty to register and this duty has been explained to me.

Date

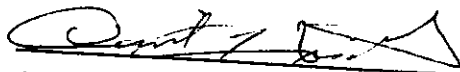
Defendant

CERTIFICATE OF COUNSEL

The undersigned, as attorney and counselor for the above defendant, hereby certifies:

1. I have read and fully explained to the defendant the allegations contained in the indictment in this case.
2. To the best of my knowledge and belief the statements, representations, and declarations made by the defendant in the foregoing petition are in all respects accurate and true.
3. I have explained the maximum and minimum penalties for each count to the defendant, and consider him competent to understand the charges against him and the effect of his petition to enter a plea of guilty.
4. The plea of GUILTY offered by the defendant in his Petition accords with my understanding of the facts he related to me and is consistent with my advice to the defendant.
5. In my opinion the plea for GUILTY as offered by the defendant in this Petition is voluntarily and understandingly made. I recommend that the Court accept the plea of GUILTY.
6. Having discussed this matter carefully with the defendant; I am satisfied, and I hereby certify, in my opinion, that the defendant is mentally and physically competent; there is not a mental or physical condition which would affect his understanding of these proceedings; further, I state that I have no reason to believe that he is presently operating under the influence of drugs or intoxicants. (Any exceptions to this should be stated by counsel on the record).
7. I further certify that I have told my client to tell the truth when addressing the Court in presenting the petition to enter a plea of guilty

Signed by me in the presence of the above-named defendant after full discussion of the contents of this certificate with the defendant on this 9th day of MAR, 2005.



Attorney for Defendant

IN THE CIRCUIT COURT OF QUITMAN COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2004-0019

BRIAN SNEED

DEFENDANT

MOTION TO AMEND THE INDICTMENT

COMES NOW, the State of Mississippi and moves this Honorable Court pursuant to URCCC 7.09 to amend the indictment in the cause referenced to charge the defendant Brian Sneed as an habitual offender as provided in Section 99-19-81 Miss. Code Annotated, as amended, and to specify the prior offense enhancements.

In support of said Motion to amend, the State of Mississippi would submit that these amendments are amendments as to form rather than substance, and that the defendant is not unfairly surprised thereby. Further, a copy of the proposed amendment, with regard to enhancement and change to habitual offender enhancement, is attached hereto as Exhibit "A" and is incorporated herein by reference.

WHEREFORE, PREMISES CONSIDERED, the State of Mississippi respectfully request that the Court amend the indictment in said cause charge the defendant as an habitual offender to specify the prior offense enhancement.

RESPECTFULLY SUBMITTED, this the 18th day of August, 2004.

CERTIFIED A TRUE COPY
of records on file in this office.

Brenda A. Wiggs, Circuit Clerk
Brenda A. Wiggs, Circuit Clerk
Quitman County, Mississippi

State of Mississippi
Office of the District Attorney
11th Circuit Court District
Post Office Box 848
Cleveland, MS 38732
(662)-843-8000

A. Leslie Flint
A. Leslie Flint
Assistant District Attorney
Bar No. MS #99155

FILED
AUG 20 2004
Quitman Co. Circuit Clerk
Brenda A. Wiggs
By [Signature]