

COPY

IN THE COURT OF APPEALS OF
THE STATE OF MISSISSIPPI

FILED

John Griffin Bowie
VS
State of Mississippi

AUG 28 2007
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SUPREME COURT NO. 2007-CP-0898-COA
COURT OF APPEALS
Appellant
Appeal **EE**

REPLY BRIEF FOR THE APPELLANT

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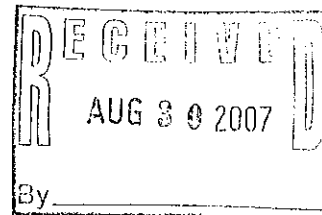


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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JOHN GRIFFIN BOWIE

APPELLANT

VS

NO.2007 CP 0898 COA

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF FOR THE APPLANT STATEMENT OF THE CASE

THIS IS AN APPEAL FROM A DENIAL OF CONVICTION COLLATERAL RELIEF ACT OF THE CIRCUIT COURT OF HARRISON COUNTY ,MISSISSIPPI IN WHICH THE APPELLANT JOHN G. BOWIE PLED GUILTY AND sentenced for the felony crime of burglary, miss. Code ann. 97 -17-33 (1972).

Statement of Facts

On April 4, 1998 John Griffin Bowie signed an affidavit in Cause Number 22,595 which was a waiver of indictment to the charge of burglary. (R.6.) Appellant was found guilty based upon the facts offered to the court and ,the court adjudicated the defendant ~~TO BE~~ guilty of the charge of burglary . (R6.) Appllant filed a motion for post conviction relief . Relating to the informentioned cause number(R.6.) the circuit court of Harrison County denied the motion as time barred(R.21-22)

Appellant filed A second motion for post conviction relief on January 10'2007/(R33.) the court found this motion to be successive writ as set out in MISS. Code ANN.99-39-23 and so order on MARCH5,2007 (R.42.) only the seconed denial of Bowie's post-conviction relief did he appeal on March 14, 2007.(R.43.) sentence in cause number B2401-2002-00756. and that motion was denied May 13,2005(.21.)

SUMMARY OF THE ARGUMENT

The Appellant was procedurally barred from bring A motion for post –conviction relief to reduce sentence and counsel was ineffective assistance.

Miss. Code ANN.99-39-23-(6) reads impertinent part; The order as provided in subsection (5)of this section or any order dismissing the prisoner's motion or otherwise denying relief under this article is a final judgment and shall be conclusive until reversed. It shall be a bar to a second or successive motion under this article--- (Excepted from this prohibition are those cases in which the prisoner can demonstrate either that there has been an intervening decision of the Supreme Court of ether the State of MISSISSIPPI or the UNITED STATES which would have actually adversely affected the out come of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of trial ,which is of such nature that 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.

Argument

Proposition 1 ;

Bowie submit these exceptions under Mississippi code annotated section 99-39-23 (6) allow a prisoner to file a successive writ only if the claim presented within the writ which falls under the two exceptions allowed for a prisoner to defeat the successive writ bar;

- (1) Where there has been an intervening decision by the UNITED STATES Supreme court ,or the MISS SUPREME COURT ,IN WHICH THE PRISNOR CAN SHOW ADVERSLY AFFECTED the out come of his conviction or sentence ,or that he has newly discovered evidence which if it had been introduced at trial would have caused a different result;
- (2) Where the prisoner claims that his sentence has expired or his probation ,parol, or conditional release has been unlawfully revoked .Freshwater VS State ,914 SO 2d 328 (Miss.2005)

It is true that an exception to procedural bars may be found if a fundamental constitutional right would other wise be denied. Scott VS. State ,791SO 2d 313 (Miss. 2001) held Miss. Code ANN 99-39-5(2) Rev.2000.), the statute waives the time bar when the Miss .Supreme Court or of the UNITED STATES Supreme court has handed down a decision that would

have changed the outcome of the case when new and newly conclusive exculpatory evidence is presented that had not been reasonably discoverable at the time of trial, or when the argument is that the sentence has expired or that probation or parole has been improperly revoked. *Supra*.

Motion for post conviction relief based on allegedly ineffective assistance of counsel required evidentiary hearing where defendant alleged that counsel misrepresented length of sentence that would be imposed for guilty plea and after trial and that he would not have pleaded guilty if he had known actual consequences of plea. *Readus VS State*, 837 SO.2d 209 (Miss 2003).

In the instant case, Counsel's performance was deficient upon misrepresentation of the length of sentence that would be imposed for guilty plea. MISSISSIPPI Uniform rule of circuit and county court practice, rule 8.04 (4) (B) provide in pertinent part;

That the accused understands the nature and consequences of the plea, and the maximum and minimum penalties provided by law.

Bowie asserted that counsel failure to advise if plea guilty, the possible sentence is seven years maximum without parole, or probation possible be imposed in the instant petition to enter plea of guilty, Subsection (R.36)

Additionally, counsel failure to present information, the instant petition to the court that Bowie was under the influence of drugs at the time the alleged crime was committed. Subsection (10) (R.37). Also that Bowie was on medication while entering a plea of guilty at his hearing.

Bowie submit the instant petition lacking substantial compliance information for trial court to except a defendant plea of guilty

In *Alexander VS State*, 605 SO 2d 1170 (Miss 1992) the defendant plea guilty was entitled to evidentiary hearing for purpose of determining whether plea was made knowingly voluntarily and intelligently; transcript of the defendant's plea hearing did not reflect that he was advised concerning rights of which he allegedly claimed ignorance.

Bowie's voluntary plea was made in ignorance presumed that his attorney advised him to the best of counsel knowledge. And that counsel deprived Bowie of a fair trial. This court has held ineffective assistance of counsel can rise to the level of violation of a fundamental constitutional right. *Shorter VS State* 946 SO 2d 815, 819, (Miss. Ct. App. 2007)

Bowie asserted that his claim show good cause for indigent a transcript under (Miss. Code ANN-99-15-15-(1972)) Bowie was not provided a defense to his claim to support proof by preponderance of the evidence.

Conclusion

Based upon the arguments and lack of record of the trial proceeding transcript .Bowie *BElieVE* the lower court was unfair in supported a transcript and grant Bowie a evidentiary hearing and any other relief deem.

RESPECTFULLY SUBMITTED


JOHN G. BOWIE

CERTIFICATE OF SERVICE

I John Griffin Bowie do hereby certify that I have this day mailed , postage prepaid a true and correct copy of the above and forgoing reply brief for the appellant to the following;

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THIS THE 28 DAY OF AUGUST 2007