

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JOHN GRIFFIN BOWIE

APPELLANT

Vs.

CAUSE NO. 2007-TS-00898

STATE OF MISSISSIPPI

APPELEE

BRIEF FOR THE APPELLANT

BY: JOHN G. BOWIE, PRO SE
MSP # 39966

S.C.R.C.F.

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OTHERS: Miss. CODE ANN 99-39-23 : 99-39-5

STATEMENT OF THE CASE

BOWIE APPEALS THE JUDGMENT OF CONVICTION FOR BURGLARY FROM THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI

COURSE AND DISPOSITION OF THE CASE IN THE CIRCUIT COURT

BOWIE WAIVER THE INDICTMENT FOR BUSINESS BURGLARY OF A BUILDING (R. Vol. 1, 35) A HEARING WAS HELD BEFORE THE COURT BOWIE APPEARING IN PERSON AND REPRESENTED BY COUNSEL, HAVING FILED A PETITION TO ENTER A PLEA OF GUILTY, THEREUPON FOUND GUILTY BASED UPON THE FACTS OFFERED TO THE COURT AND THE COURT ADJUDICATES THE DEFENDANT IS HEREBY SENTENCED TO SERVE SEVEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTION SAID SENTENCE IS TO RUN CONCURRENT WITH THE SENTENCE IMPOSED IN CAUSE NUMBER 22, 596. (R. Vol. 1, 16).

STATEMENT OF THE FACTS

BOWIE FILED A MOTION FOR POST-CONVICTION RELIEF AND THE COURT FINDS IT IS A SUCCESSIVE WRIT AS SET OUT IN MISS. CODE ANN. § 99-39-23 THE COURT ALSO FOUND IT TO BE TIME BARRED, BOWIE HAS COMPLETED THE SENTENCE IN CAUSE NUMBER 22, 595. AND CURRENTLY INCARCERATED, SERVING A SENTENCE IN CAUSE NUMBER B2401-2002-00756 (R. Vol. 1, 42).

BOWIE'S PETITION TO ENTER PLEA OF GUILTY IN SUBSECTION PARAGRAPH 13, REQUESTED THE COURT TO ACCEPT HIS PLEA OF GUILTY, AND THAT THE COURT FAILURE TO REVIEW BOWIE'S PETITION IN ALL RESPECTS ACCURATE AND TRUE ON THE BASIS INVOLVING IN THE CRIME WHICH BOWIE DID NOT MAKE ANY STATEMENT CONCERNING THE CHARGE (R. Vol. 1, 19). BOWIE CURRENTLY FILED FOR POST-CONVICTION RELIEF TO CORRECT HIS SENTENCE CLAIM HIS SENTENCE HAS EXPIRED DUE TO INVOLUNTARY MADE PLEA AND NOW ENHANCED HIS CURRENTLY SENTENCE IN CAUSE NUMBER B2401-2002-00756.

ARGUMENT

BOWIE SUBMIT UNDER MISS. CODE ANN. 99-39-5

(2). PROVIDES THAT SENTENCES THAT HAVE EXPIRED ARE EXCEPTED FROM THE TIME AND SUCCESSIVE WRIT BARS. SNEED V. STATE, 722 SO. 2d 1255 (MISS. 1998). WHERE THERE ARE ONLY 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 MISSISSIPPI SUPREME COURT, IN WHICH THE PRISONER CAN SHOW ADVERSELY AFFECTED THE OUTCOME 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, AND (2). WHERE THE PRISONER CLAIMS THAT HIS SENTENCE HAS EXPIRED OR HIS PROBATION, PAROLE, OR CONDITIONAL RELEASE HAS BEEN UNLAWFULLY REVOKED. FRESHWATER V. STATE, 914 SO. 2d 328 (MISS. 2005).

THE FIRST EXCEPTION, SUBSECTION (1) APPLIES TO QUESTION OF LAW GOVERNS THE CLAIMS AND DICTATES THAT COURT CAN GRANT POST-CONVICTION RELIEF.

BOWIE ARGUMENT HE CAN DEMONSTRATE CAUSE AND ACTUAL PREJUDICE. BY SIGNED THE "PETITION TO ENTER PLEA OF GUILTY," THE CONSTITUTION GUARANTEES HIM ALL MATTER SET FORTH IN THE INSTANT PETITION SET IN PARAGRAPH 1. WHICH BOWIE HEREBY WAIVE THEM AND DESIRED TO ENTER A PLEA OF GUILTY; IN EXPLAINING THE "CAUSE" NECESSARY FOR EXCUSING A DEFAULT, THE SUPREME COURT INSTRUCTED THAT "THERE MUST BE SOMETHING EXTERNAL TO THE PETITIONER, SOMETHING THAT CANNOT FAIRLY BE ATTRIBUTED TO HIM." COLEMAN, V. U.S. AT 753 (EMPHASIS IN ORIGINAL),

BOWIE SUBMIT IN PARAGRAPH 13. (R. Vol. 1, 19). REQUESTED THE COURT TO ACCEPT HIS PLEA OF GUILTY AND TO HAVE ENTERED HIS PLEA ON THE BASIS INVOLVEMENT IN THE CRIME. THE RECORD SHOW A SILENT CONFESSION WHICH THE ACCUSED DID NOT ADMITTED HE DID VARIOUS ACTS, WHICH THE TRIAL COURT FAILURE TO REVIEW THE PETITION. "RESULTED AS A INVOLUNTARY MADE PLEA. "ADMISSIBILITY OF A CONFESSION MUST BE BASED ON A RELIABLE DETERMINATION ON THE VOLUNTARINESS ISSUE WHICH SATISFIES THE CONSTITUTIONAL RIGHT OF THE DEFENDANT. THE REQUIREMENT THAT THE PROSECUTION

SPREAD ON THE RECORD THE PREREQUISITES OF A VALID WAIVER IS NO CONSTITUTIONAL INNOVATION. PRESUMING WAIVER FROM A SILENT RECORD IS IMPERMISSIBLE. THE RECORD MUST SHOW, OR THERE MUST BE AN ALLEGATION AND EVIDENCE WHICH SHOW, THAT AN ACCUSED WAS OFFERED COUNSEL BUT INTELLIGENTLY AND UNDERSTANDINGLY REJECTED THE OFFER. (EMPHASIS ADDED). **BOYKIN, 395 U.S. 238 (1969).**

BOWIE SUBMIT FROM THE INTERFERENCE BY THE OFFICIAL TRIAL COURT BY NOT REVIEWING HIS PETITION, SHOWING THAT THE FACTUAL OR LEGAL BASIS FOR THE PLEA OF GUILTY WAS NOT ADMISSIBILITY OF A CONFESSION, PARAGRAPH 13. IS BLANK." AND THAT BOWIE'S VOLUNTARY PLEA WAS MADE IGNORANCE, AND INCOMPREHENSION. PRESUME COUNSEL ADVISED HIM AN UNDERSTANDING OF THE LAW IN RELATION TO THE FACTS OFFERED TO THE COURT WHICH BOWIE PLEAD TO THE CHARGE OF "BURGLARY."

BOWIE ARGUES HE WAS PREJUDICE BY OFFICIALS BECAUSE, IF THE TRIAL COURT JUDGE WOULD HAVE READ OVER HIS PETITION TO ENTER PLEA OF GUILTY HE WOULD HAVE SEEN PARAGRAPH 13. WAS BLANK. AND THAT PETITIONER DID NOT MADE ANY STATEMENT FOR THE COURT TO ACCEPT

his PLEA AS TO ANY BASIS, FOR THE PLEA WHICH BOWIE IS ACTUAL INNOCENCE, AND THAT his CLAIMS SHOULD BE HEARD ON THE MERITS. AND SHOWS A "FUNDAMENTAL MISCARRIAGE OF JUSTICE." FOR THE CONSTITUTIONAL ERRORS, BOWIE WOULD NOT HAVE BEEN LEGALLY ELIGIBLE FOR THE SENTENCE HE CURRENTLY RECEIVED AS A HABITUAL OFFENDER RELATIVE IN CAUSE NUMBER B2401-2002-00756 WHICH ENHANCED his SENTENCE he NOW SERVING.

THEREFORE, A FUNDAMENTAL MISCARRIAGE OF JUSTICE RESULTED WITH PREJUDICE, IF NOT CONSIDERED ON THE MERITS. BECAUSE ADMISSIBILITY OF A CONFESSION MUST BE BASED ON A RELIABLE DETERMINATION ON THE VOLUNTARINESS ISSUE WHICH SATISFIES THE CONSTITUTIONAL RIGHT OF THE DEFENDANT. *BOYKIN, SUPRA.*

IT IS TRUE THAT AN EXCEPTION TO PROCEDURAL BARS MAY BE FOUND IF A FUNDAMENTAL CONSTITUTIONAL RIGHT WOULD OTHERWISE BE DENIED LUCKETT V. STATE, 582 SO.2d 428, 430 (MISS. 1991).

STANDARD OF REVIEW

MISS. CODE ANN § 99-39-23 (6) (SUPP. 1998) PROVIDES THAT SENTENCES THAT HAVE EXPIRED ARE EXCEPTED FROM THE TIME AND SUCCESSIVE WRIT BARS. SNEED V. STATE, 722 SO.2d 1255 (MISS. 1998): AN APPELLATE COURT REVIEW THE DENIAL OF POST-CONVICTION RELIEF UNDER AN ABUSE DISCRETION STANDARD. PHILLIPS V. STATE, 856 SO.2d 568 (MISS. 2003).

CONCLUSION

APPELLANT REQUESTS A EVIDENTIARY HEARING IN ORDER FOR HIM TO PRESENT THIS ISSUE. THAT HIS CASE FALLS INTO THE EXCEPTION TO THE STATUTE OF LIMITATIONS, WHICH ALLOWS A PETITIONER TO FILE AFTER THE STATUTE HAS RUN. IF A FUNDAMENTAL RIGHT INVOLVED. THIS COURT SHOULD REVERSE APPELLANT'S CONVICTION FOR BURGLARY AND DELETE THE HABITUAL PORTION IN RELATIVE TO CAUSE NUMBER B2401-2002-00756. DUE TO THE INVOLUNTARY MADE PLEA OF THE APPELLANT'S CONSTITUTIONAL RIGHTS. AND ANY OTHER RELIEF DEEM THIS COURT MAY ORDER.

CERTIFICATE OF SERVICE

I, JOHN GRIFFIN BOWIE, do hereby CERTIFY
THAT I HAVE THIS DAY MAILED BY UNITED STATES
MAIL. POSTAGE PREPAID, A TRUE AND CORRECT COPY
"BRIEF FOR THE APPELLANT:" TO THE FOLLOWING BELOW:

THE OFFICE OF THE DISTRICT ATTORNEY

JIM HOOD

POST OFFICE BOX 220

JACKSON, MS. 39205

OFFICE OF THE CLERK

BETTY W. SEPHTON

POST OFFICE BOX 249

JACKSON, MS. 39205

SO CERTIFIED THIS THE 6 DAY OF JULY, 2007.

John G. Bowie
JOHN G. BOWIE