

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COPY

JOHN ROLAND MYLES, JR.

APPELLANT

VS.

FILED NO. 2007-CP-1165-COA

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SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The grand jury of Rankin County indicted defendant, John Roland Myles, Jr. for House Burglary. In a plea negotiation, defendant petitioned the trial court to plead guilty to a lesser offense of Grand Larceny. (C.p., Transcript p.19). Defendant's guilty plea was accepted and was sentenced to 10 years in the custody of the Mississippi Department of Corrections.

Subsequently, and within the statutory period, defendant filed a motion for post-conviction relief. (C.p. 5-10). Shortly thereafter, the trial judge denied relief specifically addressing both issues raised in the petition. (Order denying relief, c.p. 28).

A timely notice of appeal was filed and this appeal was perfected.

STATEMENT OF FACTS

Defendant, having a prior conviction and not a stranger to the criminal justice system, was caught after burglarizing a home and stealing money. After a plea negotiation he was offered the opportunity for a plea deal if he pled to the lesser offense of grand larceny. Defendant, aided by counsel, meticulously requested to plead guilty, appeared in open court, answered freely and his guilty plea was accepted. He was sentenced to 10 years, plus fines, costs and fees.

SUMMARY OF THE ARGUMENT

I.

DEFENDANT HAD CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF COUNSEL.

Issue II.

THERE IS NOTHING IN THE RECORD TO INDICATE THAT DEFENDANT'S PLEA WERE ANYTHING BUT FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY GIVEN.

ARGUMENT

I.

DEFENDANT HAD CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF COUNSEL.

First, defendant claims, obliquely, that his counsel was ineffective because counsel, supposedly, told defendant he would be getting 5 years, and he got 10 years.

The law regarding such a claim of ineffective assistance is clear:

¶10. The standard of review for a claim of ineffective assistance of counsel was set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To bring a successful claim for ineffective assistance of counsel, pursuant to the court's ruling in *Strickland*, the defendant must prove that his attorney's overall performance was deficient and that this deficiency deprived him of a fair trial. *Id.* at 689, 104 S.Ct. 2052; *Moore v. State*, 676 So.2d 244, 246 (Miss.1996) (citing *Perkins v. State*, 487 So.2d 791, 793 (Miss.1986)). We must be mindful of the "strong but rebuttable presumption that an attorney's performance falls within a wide range of reasonable professional assistance and that the decisions made by trial counsel are strategic." *Covington v. State*, 909 So.2d 160, 162(¶ 4) (Miss.Ct.App.2005) (quoting *Stevenson v. State*, 798 So.2d 599, 602(¶ 6) (Miss.Ct.App.2001)). To overcome this presumption, the defendant must demonstrate "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694, 104 S.Ct. 2052; *Woodson v. State*, 845 So.2d 740, 742(¶ 9) (Miss.Ct.App.2003).

Jones v. State, 948 So.2d 499 (Miss.App. 2007).

In *Jones* defendant claimed of trickery in pleading guilty expecting a lesser sentence than received. The reviewing court citing to the record facts that belied those contentions did not find error.

In this transcript defendant, not unfamiliar with criminal process having pled guilty previously, (tr. 20), answered the questions posed in addition to the plea petition prepared by his attorney. In fact defendant was asked specifically if he was pleased with his attorney's performance. (Tr. 20). In fact a careful reading shows the attorney further helping clarify defendant's somewhat ambiguous answer to avoid just such a claim. Tr.23.

Defendant had Constitutionally effective assistance of counsel, who managed to get his previously convicted client a deal to a lesser offense.

The trial court was correct in finding defendant had not met either prong of *Strickland* in denying relief.

The State would ask that no relief be granted on this allegation of error.

Issue II.

THERE IS NOTHING IN THE RECORD TO INDICATE THAT DEFENDANT'S PLEA WERE ANYTHING BUT FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY GIVEN.

Defendant essentially admits his guilt but, as all prisoners, merely seeks less time or more favorable conditions. (Probation, house arrest, etc.) In seeking this relief defendant asserts his counsel was ineffective. The details are essentially that his attorney railroaded him through the process.

A look to the transcript show otherwise, first defendant was shown a video about the process, then brought into open court. The trial court made inquiry if he was satisfied with his attorney. Defendant was. The judge told him the sentence range. The judge asked defendant him if he was being tricked or promised anything to plead guilty. Tr. 24.

¶ 10. Law also argues that his plea of guilty was not voluntary due to his attorney's misrepresentation that he would receive a ten year sentence, as opposed to the twenty-five year sentence he actually received, if he would plea in open court. If the defendant is advised regarding the nature of the charge and the consequences of the plea, it is considered "voluntary and intelligent." *Richardson v. State*, 769 So.2d 230, 233(¶ 6) (Miss.Ct.App.2000). Additionally, "[s]olemn declarations in open court carry a strong presumption of verity." *Id.* ***Prior case law dictates that when the record shows that the trial court fully informed the defendant of a mandatory sentence and the defendant acknowledged the sentence, the defendant's claimed expectation for a more lenient sentence is rebutted.*** *Houston v. State*, 461 So.2d 720, 722 (Miss.1984). Furthermore, our supreme court in *Roland v. State*, 666 So.2d 747, 750 (Miss.1995), stated that the plea is rendered voluntary when the

defendant hears from the trial court what the effects and consequences of his guilty plea will be, despite the advice given to the defendant by his attorney. *Roland*, 666 So.2d at 750. See also *Smith v. State*, 636 So.2d 1220, 1225 (Miss.1994).

Law v. State, 822 So.2d 1006 (Miss.App. 2002)(Emphasis added).

Based upon the record, which amply supports the ruling of the trial court there is no error here and no relief should be granted.

CERTIFICATE OF SERVICE

I, Jeffrey A. Klingfuss, 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 30th day of November, 2007.



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