

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COPY

NO. 2007-CP-01360-COA

CHRISTOPHER LASHAWN HARRIS

APPELLANT
FILED

VS.

APR 01 2008
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S REPLY BRIEF

The State of Mississippi has filed its brief in this case and has failed to refute Appellant's claims that:

a) Appellant was subjected to an involuntary plea of guilty as well as a denial of due process of law. Christopher Harris sworn testimony within the PCR Motion supports Harris claim that the plea was not knowingly and voluntarily made. While the state asserts that the record refutes Harris claim. The record do not demonstrate such. The state has pointed out that "Harris was advised of the nature of the charges against him and the consequences of his plea," there is no showing that there was a factual basis for the plea established on the record. Garner v. State, ____ So.2d ____ (Miss. App. 2005) (No. 2005-CP-01520-COA). The constitutionality of a guilty lea is threatened by ignorance, incomprehension, coercion, terror or other inducements. Boykin v. Alabama, 395-U.S. 238, 242-43 (1969).

Therefore, before accepting a guilty plea, the trial court must inquire as to the voluntariness of the plea. URCCC 8.04(A). The accused must be advised concerning the nature of the charge and the consequences of the plea. Alexander v. State, 605 So.2d 1170, 1172 (Miss. 1992). The trial court may assure itself that the accused understands the elements of the crime charged by explaining the elements to the accused or by counsel's representation to the court that the elements of the crime have been explained to the accused. Bradshaw v. Stumpf, 542 U.S. 175, 183 (2005). The court must inform the accused of the maximum and minimum sentences that may be imposed for the charged crime. URCCC 8.04(A)(4)(b). The court must also ascertain that the accused is competent to understand the nature of the charge. URCCC 8.04(A)(4)(a). Moreover, the accused must be informed that a guilty plea waives certain constitutional rights such as the right to a trial by jury, the right to confront adverse witnesses, and the right to protection against self-incrimination. Alexander, 605 So.2d 1172.

Clearly, as the record demonstrates in this case there was not an adequate factual basis established for the plea. In order for a court to accept a guilty plea the record must contain "enough that the court may say with confidence the prosecution could prove the accused guilty of the crime charged." Gaskin v. State, 618 So.2d 103, 106 (Miss. 1993) (quoting Corley v. State, 585 So.2d 765, 767 (Miss. 1991)). In order to form an adequate factual basis, it is not necessary to flesh out details that would be shown during trial. *Id.* The factual basis must be formed by any evidence before the court, or otherwise in the

record before the court. Id. In the instant case the evidence before the court was not adequate to show :

a. factual basis for the plea. This court should reject the state's arguments on this claim and should grant the relief requested.

b. Appellant's next proposition is not procedurally barred and does have merit.

Harris would assert that he was denied effective assistance of counsel within the requirements of Strickland v. Washington , 466 U.S. 668, 104 S. Ct. 2052 (1984). The state has failed to demonstrate that counsel for Appellant was effective. The points in the brief on this claim has not been refuted. This court should find that the trial court was incorrect in failing to reverse the plea and sentence and to summarily dismiss the motion.

CONCLUSION

Harris would respectfully ask this Court to reject the state's argument and find that Appellant suffered a violation of his constitutional rights to due process in sentencing. Appellant would ask the Court to find that the trial court erred in summarily dismissing the motion and that the ruling should be vacated.

Respectfully submitted,

By: Christopher Harris
Christopher Harris, #167477
WCCF
P.O. Drawer 958
Louisville, MS. 39339

CERTIFICATE OF SERVICE

This is to certify that I, Christopher Harris, Appellant pro se, have this date delivered a true and correct copy of the above and foregoing Appellant's Reply Brief, to:

Honorable Jim Hood
Attorney General
5th Floor, Justice Gartin Building
Jackson, Mississippi 39205

This, the __1__ day of April, 2008.

BY: Christopher Harris
Christopher Harris, #167477
WCCF
P.O. Drawer 958
Louisville, MS. 39339