

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-CP-1377

COPY

JERMAINE MCKINNEY

APPELLANT

VS.

STATE OF MISSISSIPPI

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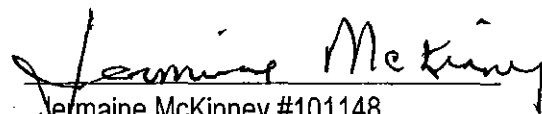
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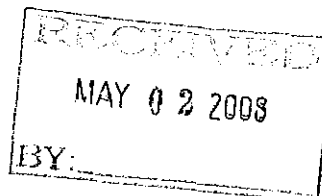
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COURT OF APPEALS

APPELLEE

REPLY BRIEF FOR APPELLANT

BY:


Jermaine McKinney #101148
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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 Jermaine McKinney was denied effective assistance of counsel during the pretrial proceedings where counsel advised appellant to plead guilty to indictment without having first challenged legality of a multiple counts indictment since the indictment was factually illegal where it failed to state the jurisdiction which the alleged crimes were committed, and where the counts of indictment contradicted the facts alleged in the record, and by mentally coercing Appellant to enter a plea of guilty without giving McKinney a clear notice of the charges against him. Defense counsel failed to object to the indictment recorded under Cause No. 8807.

B.

Defense counsel was ineffective where counsel failed to object to the multiple count indictment under Cause No. 8807, which was used to mentally coerce Appellant to enter plea of guilty while counsel was aware and had knowledge that the indictment was illegal due to violation of the 4th, 5th, 6th, and 14th Amendment to the United States Constitution.

C.

The sentence imposed upon Jermaine McKinney constitutes a denial of due process of law and equal protection of the law as guaranteed him under the 4th, 5th and 14th Amendments of the United States Constitution where trial court imposed sentence under a two tier sentencing scheme.

D.

Appellant was subjected to a denial of due process of law where the trial court failed to advise McKinney of the correct law in regards to appealing a sentence rendered upon a plea of guilty to the Supreme Court. Appellant McKinney was never told that, under applicable law, his sentence could be appealed to the Supreme Court for direct review independent to the plea of guilty to the charge.

E.

The trial court erred in failing to grant an evidentiary hearing order denying the PCR motion where there was facts in dispute and the requirements for conducting an evidentiary hearing.

REPLY A'

The argument advanced by the state that Appellant McKinney was not properly advised that if he pleaded guilty to the charge, his sentence could be appealed to the Supreme Court for direct review independent to the plea of guilty to the charge.

As previously pointed out by the initial brief, the Court has continuously held that it is committed to the principle that a defendant who pleads guilty to a crime is entitled to a fair and accurate presentation of the facts and circumstances of the case.

petition which meets basic requirements is sufficient to mandate an evidentiary hearing unless it appears beyond doubt that the petitioner can prove no set of facts in support of his claim which would entitle him to relief. Alexander v. State, 605 So.2d 1170, 1173 (Miss. 1992); Horton v. State, 584 So.2d 764, 768 (Miss. 1991); Wilson v. State, 577 So.2d 394, 397 (Miss. 1991); Myers v. State, 583 So.2d 174, 178 (Miss. 1991); Miller v. State, 578 So.2d 617 (Miss. 1991); Wright v. State, 577 So.2d 387 (Miss. 1991); Billiot v. State, 515 So.2d 1284 (Miss. 1987).

In the instant case Appellant presented issues which, if proven at a hearing, would have warranted relief from the conviction.

When the State appeals the guilty plea, it could have been made aware of the issues presented to the

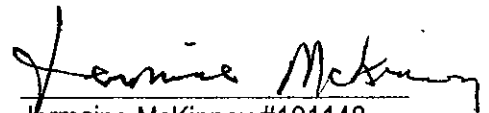
The Court made clear in Flowers that there was an established right to appeal the sentence In the instant case, Appellant has asserted that he desired to appeal the sentence on the basis of legality. Appellant should have been advised of the requisite knowledge of such an appeal by the trial court. This Court should reverse this matter to the lower court for an evidentiary hearing.

CONCLUSION

McKinney would respectfully ask this Court to reject the state's argument and find that Appellant suffered a violation of his constitutional rights under the 14th Amendment by refusing to allow him to pursue a Post Conviction Motion. This court should reject the state's argument.

Respectfully submitted,

BY:



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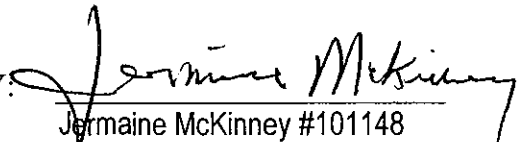
CERTIFICATE OF SERVICE

This is to certify that I, Jermaine McKinney, 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
P.O. Box 220
Jackson, MS 39205

This, the 30th day of April 2008.

BY:



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