

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-CP-01470-COA

COPY

CARLOS JACKSON

APPELLANT

FILED

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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

VS.

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF FOR APPELLANT

The State of Mississippi has filed its brief in this case and responding to the issues set out in Appellants pro se brief.

The law is clear that pro se pleadings are entitled to liberal construction. Appellant presented his claims as best as possible without the assistance of an attorney or someone trained in the law. Appellant is confined in a maximum state facility, indigent and without the ability to retain professional help.

ISSUE ONE

Appellant Jackson was clearly denied due process of law where the trial court failed to enter separate judgments of conviction in the multiple count indictment and where the law requires that separate judgments be entered. Such action, as a matter of law, invalidates the judgments of conviction and requires vacation of the illegal sentencing order. Appellee's

first misstep is to distort this claim. *This Court should not accept the argument made by Appellee but should apply the law.*

The law is clear that where a multiple count indictment is being proceeded under, as in this case, there must be a separate judgment and sentence for each such count of the indictment in which the defendant is convicted and sentenced thereunder. Miss. Code Ann §99-7-2 provides the following statutory language:

(1) Two (2) or more offenses which are triable in the same court may be charged in the same indictment with a separate count for each offense if: (a) the offenses are based on the same act or transaction; or (b) the offenses are based on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan.

(2) Where two (2) or more offenses are properly charged in separate counts of a single indictment, all such charges may be tried in a single proceeding.

(3) When a defendant is convicted of two (2) or more offenses charged in separate counts of an indictment, the court shall impose separate sentences for each such conviction.

(4) The jury or the court, in cases in which the jury is waived, shall return a separate verdict for each count of an indictment drawn under subsection (1) of this section.

(5) Nothing contained in this section shall be construed to prohibit the court from exercising its statutory authority to suspend either the imposition or execution of any sentence or sentences imposed hereunder, nor to prohibit the court from exercising its discretion to impose such sentences to run either concurrently with or consecutively to each other or any other sentence or sentences previously imposed upon the defendant.

Sources: Laws, 1986, ch. 444, eff from and after July 1, 1986.

Also see Miss. Unif. Cir. and County Ct. Rule 7.07(d).

The trial Court did not enter separate judgments and sentences in this case and as required by Miss. Code Ann. §99-7-2. This Court should,

therefore, find that the convictions, judgment and sentences being imposed upon appellant are illegal as being rendered outside the Requirements of Miss. Code Ann. §99-7-2.

As cited above, the Mississippi Supreme Court has firmly held that a claim of illegal sentence or illegal judgment is not procedurally barred by the provisions of Miss. Code Ann. §99-39-5(2). Moreover, such a claim would suffice over any bar as being fundamental in nature and a denial of due process of law. Appellant's convictions and sentences should be vacated and set aside and these cases should proceed to trial under the original charges. Appellant's claims are not frivolous and have arguable basis in law. Each claim is supported by statutory and case law decision.

In the instant case, where the clerk filed separate papers containing a verdict on each count, the trial court failed to enter separate corresponding judgments on each count of the indictment. (R. 27-29) The law in this instance places the burden upon the state to prove multiple counts and requires that the Court, if proven, enter separate judgments and the jury enter separate verdicts. Hughes v. State, 665 So. 2d 852 (Miss. 1995).

The law was not followed in this case and the judgment entered should be vacated and set aside.

ISSUE TWO

The Appellee has failed to refute the claim that Appellant was denied due process of law and equal protection of the law by unknowingly having violated the speedy trial statutory law causing unnecessary waiver by no fault of his own while being represented by counsel, and by the Court which used trickery tactics to lead Appellant to acknowledge voluntariness of waiving the speedy trial rights while entering a plea of guilty. This Court should reject the state's unsupported argument and should reverse and remand this claim to the trial court for an evidentiary hearing and prompt disposition.

Appellant was denied due process of law and equal protection of the law by unknowingly having violated the speedy trial statutory law causing unnecessary waiver by no fault of his own while being represented by counsel, and by the Court which used trickery tactics to get him to acknowledge voluntariness of waiving his speedy trial rights while entering a plea of guilty.

In the instant case, the prosecution after the passage time required to bring the case to trial under the speedy trial clause of the constitution of the State of Mississippi and the constitution of the United States. Until the termination of defense counsel's assistance in this case, appellant was bound by the acts of his attorney and was unable to present any claims on his own accord. Turner v. State, 665 So.2d 852 (Miss. 1995)

Appellant's convictions and sentences also rests upon the voluntary actions of his attorney waiving the right to speedy trial without making appellant aware of such a waiver and securing a waiver from appellant.

Ineffective Assistance of Counsel

To successfully claim ineffective assistance of counsel, the defendant must meet the two-prong test set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984). This test has also been recognized and adopted by the Mississippi Supreme Court. Alexander v. State, 605 So.2d 1170, 1173 (Miss. 1992); Knight v. State, 577 So.2d 840, 841 (Miss. 1991); Barnes v. State, 577 So.2d 840, 841 (Miss. 1991); McQuarter v. State, 574 So.2d 685, 687 (Miss. 1990); Waldrop v. State, 506 So.2d 273, 275 (Miss. 1987), aff'd after remand, 544 So.2d 834 (Miss. 1989); Stringer v. State, 454 So.2d 468, 476 (Miss. 1984), cert. denied, 469 U.S. 1230 (1985).

The Mississippi Supreme Court visited this issue in the decision of Smith v. State, 631 So.2d 778, 782 (Miss. 1984). The Strickland test requires a showing of (1) deficiency of counsel's performance which is, (2) sufficient to constitute prejudice to the defense. McQuarter 506 So.2d at 687. The burden to demonstrate the two prongs is on the defendant. Id; Leatherwood v. State, 473 So.2d 964, 968 (Miss. 1994), *reversed in part, affirmed in part*, 539 So.2d 1378 (Miss. 1989), and he faces a strong rebuttable presumption that counsel's performance falls within the broad spectrum of reasonable professional assistance. McQuarter, 574 So.2d at 687; Waldrop, 506 So.2d at 275; Gilliard v. State, 462 So.2d 710, 714 (Miss. 1985). The defendant must show that there is a reasonable probability that for his attorney's errors, defendant would have received a different result. Nicolaou v. State, 612 So.2d 1080, 1086 (Miss. 1992); Ahmad v. State, 603 So.2d 843, 848 (Miss. 1992). See Strickland v. Washington, 466 U.S. 668, 687 (1984).

Speedy Trial

The provisions of law which requires a speedy trial in the State of Mississippi provides the following:

§ 99-17-1. Indictments to be tried within 270 days of arraignment.

Unless good cause be shown, and a continuance duly granted by the court, all offenses for which indictments are presented to the court shall be tried no later than two hundred seventy (270) days after the accused has been arraigned.

The Courts have determined that this 270 days time allotment starts from the date of initial arrest and with the defendant being held for the charge.

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For constitutional purposes, the right to a speedy trial attaches and time begins to run with arrest. The statutory right to a speedy trial set forth in this section attaches with arraignment; calculation of statutory time requires exclusion of the date of arraignment and inclusion of the date of trial and weekends, unless the last day of the 270-day period falls on Sunday. Any delays in prosecution attributable to a defendant under either the constitutional or statutory scheme tolls the running of time. Any continuances for "good cause" will toll the running of time unless "the record is silent regarding the reason for delay," in which case "the clock ticks against the State because the State bears the risk of non-persuasion on the good cause issue." The statutory 270-day rule is satisfied once the defendant is brought to trial, even if that trial results in a mistrial. Handley v. State, 574 So. 2d 671 (Miss. 1990).

Constitutional right to speedy trial exists separately from the statutory right. Simmons v. State, 678 So. 2d 683 (Miss. 1996).

The state failed to respect Jackson's constitutional or statutory right to a speedy trial in this case and for that reason this Court should vacate the conviction and the sentences with prejudice. Moreover, ineffective assistance of counsel should also be found. Since the right to a fair trial, as well as a speedy trial, is a fundamental and essential right, under form of our government, Johnson v. State, supra, there shall be no procedural bar to these assignments of error, which collectively denied Carlos Jackson his constitutional fundamental right to a fair trial and a fast and speedy trial, being raised for the first time in a post-conviction setting. Gallion v. State, 469 So.2d 1247 (Miss. 1985).

ISSUE THREE

That the sentence of life imprisonment which was imposed upon Appellant by the trial court, without the providence of a jury, constitutes a discriminatory practice where, under Mississippi law, a jury is required to determine whether a life sentence is to be imposed after the conviction of the crime of murder or capital murder. The failure of the law to require that a jury make the determination of the sentence in the case of murder

constitutes a violation of the equal protection of the 14th Amendment to the United States Constitution.

The State of Mississippi has not presented ample record or law to show that the trial court was correct in its actions in this claim. The Court should reverse and remand this case to the trial court.

ISSUE FOUR

The Court committed plain error by failure to include in the record, after having been sentenced pursuant to a guilty plea, by subjecting Carlos F. Jackson to a denial of due process of law where the trial court failed to advise Jackson of the right to a direct appeal of the imposed sentence to the Supreme Court.

ISSUE FIVE

The Court shall review Jackson's assignment of errors as "Cumulative Errors".

CONCLUSION

Jackson would respectfully ask this Court to reject the state's argument and find that Appellant suffered a violation of his constitutional rights under the 5th and 14th Amendments. The Court should reject the

arguments advanced by the State of Mississippi.

Respectfully submitted,

BY: Carlos Jackson
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CERTIFICATE OF SERVICE

This is to certify that I, Carlos Jackson, pro se, have this date
delivered a true and correct copy of the above and foregoing Appellant's

Reply Brief, to:

Honorable Jim Hood
P. O. Box 220
Jackson, MS 39205

This, the 21 day of July, 2008

BY: Carlos Jackson
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