

**COPY**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE NO. 2007-<sup>CP</sup>TS-01857-COA

TONYA D. BELL

**FILED**

APPELLANT

APR 03 2008

VS.

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT

Tonya Bell #N5843  
CMCF 1A A-bldg. A-Hall #4  
P.O. Box 88550  
Pearl, MS 38288

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE NO. 2007-TS-01857-COA

TONYA D. BELL

APPELLANT

VS.

STATE OF MISSISSIPPI

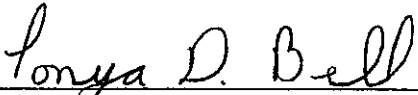
APPELLEE

**CERTIFICATE OF INTERESTED PARTIES**

COMES NOW, Tonya D. Bell, Appellant in the above styled and numbered case and certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Tonya D. Bell

THIS 3 day of April 2008

  
\_\_\_\_\_  
Tonya D. Bell  
Appellant

## **Table of Contents**

Certificate of Interested Person	I
Table of Contents	II
Table of Authorities	III
Statement of Issues	Page 1
Facts	Pages 1-2
Summary of the Argument	Page 3
Argument	Pages 3-4
Issue No. 1	Pages 3-4
Conclusion	Page 5
Certificate of Service	Page 6

## **TABLE OF AUTHORITIES**

Hawthorne v. State, 881 So. 2d 234 (Miss. 2003)

George v. State, 812 So. 2d 1103 (P13) (Miss. Ct. App. 2001)

McClain v. State, 625 So. 2d 774, 781 (Miss. 1993)

Gerlach v. State, 446 So. 75, 79 (Miss. 1985)

## **STATEMENT OF THE ISSUES**

ISSUE NO. I: WHETHER THE APPELLANT WAS FOUND GUILTY AND SENTENCED TO SERVE (8) YEARS ACCORDING TO EVIDENCE.

## **FACTS**

In the said case, **Cause No. CRO4-060**, I, Tonya D. Bell, am guilty as charged. On September 30, 2003, in the Booneville Sunflower Housing Projects, a white female by the name of Angela Robinson, pulled up to the drive-way of a friend of mine's home and I ran to see what she was "looking" for. Ms. Robinson said she needed a "forty dollar piece of crack cocaine". I then turned and asked the guy standing near if he has a "forty piece of dope" and he said yes. So I ran over and got the two pieces of "crack rock" and brought them back to Ms. Robinson. I opened the bag and gave Ms. Robinson what I wanted her to have and I kept the rest for myself. Ms. Robinson then gave me two (2) twenty dollar bills. I got out of Ms. Robinson's car and went my way and she went hers. This was caught on video and audio tape. I viewed this tape with my lawyer and it was as I have stated.

In the said case, **Cause No. CRO3-198**, I, Tonya D. Bell plead guilty. On April 4, 2003, I left my grandmother's house walking to town to meet with my Parole Officer, Darrell Saylors. I took a shortcut off of Cedar Street, cutting through the Booneville Sunflower Housing Projects. As I proceeded up the hill I saw Anthony Sullivan standing at what I believe to have been a white Honda vehicle. Riding in the vehicle were three white males. I had no idea at the time that Mr. Sullivan was in the middle of a drug transaction.

I was running late this day, and Mr. Saylors had forewarned me not to be late again. So I figured if I took the path through the housing projects that I could get a ride from someone. There stood Anthony Sullivan, and sure enough his ride was waiting for him.

I walked up to the car where Mr. Sullivan was and asked him what he was doing because I needed a ride. When I saw what it was that Mr. Sullivan was doing I told him he was "stupid" and to hurry up because I

needed a ride. He then proceeded to get in to the back seat of the white Honda. This angered me because I was in a rush and I did not want to be caught standing there during a drug deal.

I told him to hurry up and to get out of the car, and again I called him "stupid". Mr. Sullivan made his sell, got out of the car, and we walked over to his vehicle. Mr. Sullivan got into the front seat of the truck and I got into the back. We left the housing projects, and Mr. Sullivan dropped me off downtown at my Parole Officer's office and that was the last I saw of Mr. Sullivan.

## **SUMMARY OF THE ARGUMENT**

The Appellant was wrongfully accused, charged, and sentenced to serve eight (8) years. Being under the influence at the time and out of fear of going to trial, she plead guilty to the said charge, **Cause No. CRO3-198**. In viewing her transcript for the first time ever on January 9, 2008, she discovered new evidence that shows that she was wrongfully accused.

## **ARGUMENT**

**ISSUE NO. 1:** Whether the Appellant was charged and sentenced to serve (8) years according to the evidence.

In pleading guilty to the said charge, **Cause No. CRO3-198**, the Appellant had no idea that she was pleading guilty to an unlawful, feloniously sell and transfer to Jeff Collins, a quantity of cocaine, with Anthony Sullivan. Also, in Appellant's Motion of Discovery there was no mention of this charge.

After being picked up on the 27<sup>th</sup> day of April 2004 for, "sell of controlled substance", Appellant was told by her lawyer that she was being charged with "sell of cocaine", but that it would be reduced to "possession" because they (narcotics) knew that she had nothing to do with the sell, but they assumed that she was Mr. Sullivan's "look out man". Appellant was told that this charge would be run consecutive with the said charge, **Cause No. CRO4-060** and retired to the files and further investigated if she got into any future trouble.

Appellant's lawyer told her that he had reviewed the video tape in the said case, **Cause No. CRO3-198**, and that there was nothing to it. She trusted what her attorney said so she never viewed the tape for herself. Appellant was advised by her lawyer that if she took this case to trial and was found guilty, she could serve a total of (16) years. So, she took a guilty plea for what she thought was (8) years for both charges.

If the video tape in the said case was truly viewed, evidence should have shown that the Appellant was simply in the wrong place at the wrong time. Evidence should have shown that Mr. Sullivan was in the middle of the said sell and transfer when Appellant walked up. Substantial evidence

should show that Appellant had nothing what so ever to do with what took place between Anthony Sullivan and Jeff Collins on the 27<sup>th</sup> day of April 2004.

**See Hawthorne v. State 881 So. 2d 234 (Miss. 2003)**

Hawthorne was convicted to serve fifteen (15) years in the custody of Mississippi Department of Corrections with seven (7) years suspended. Hawthorne appealed to the court asserting the following issue:

**The evidence at trial was insufficient as a matter of law to support the jury's verdict.**

In the said case, **Cause No. CRO4-060 GPR**, Appellant was charged and sentenced to eight (8) years and it was suspended. In the said case, **Cause No. CRO3-198-GPR**, Appellant was sentenced to serve eight (8) years ISP/HAR. She was also ordered by the Court to check into a Rehabilitation Center, in which she had thirty days to do so. At this time Appellant was still using and in desperate need of help. She did not meet the Court's deadline and was violated with "dirty urine" in August 2005, and was sent to Central Mississippi Correctional Facility to back up suspended time of sixteen (16) years.

Appellant filed reconsideration on the 29<sup>th</sup> day of August 2007, asking the Judge to run her charges concurrent. It was dismissed because of failure to raise meritorious issues in her motion. But now, based on new evidence, after receiving and viewing her transcript, Appellant is asking the Court to review the evidence which was erred in the said case, Cause No. CRO3-198 GPR.

**See George v. State, 812 So. 2d 113 (p13) (Miss. Ct. App. 2001)**

If the Trial Court denies the motions and that denial is raised as an issue on appeal, the Court is charged to review the evidence by the same standard to determine whether the trial erred in so ruling. **McCain v. State, 625 So. 2d 774, 781 (Miss. 1993)**

Evidence will prove that Appellant was just a "walk-up bystander", who was in the wrong place at the wrong time. Appellant is now serving the suspended sentence of sixteen (16) years for violation of ISP with "dirty urine". Appellant is asking the Court to dismiss this charge against her, leaving her to serve out the sentenced time of eight (8) years in the said case, **Cause No. CRO4-060 GPR.**

Law states that <sup>if</sup> ~~is~~ the Court's determination is not supported by substantial evidence that the Court will reverse. See **Gerlach v. State, 466 So. 2d 75, 79 (Miss. 1985)**



### **CONCLUSION**

Based on the argument in Appellant's Brief, the Appellant, Tonya D. Bell, respectfully requests this Court to review the erred substantial evidence in which she was wrongfully accused, and reverse or dismiss this charge and sentence that has been brought against her.

Date: April 3, 2008

Respectfully Submitted,

Tonya D. Bell  
Tonya D. Bell  
Appellant

**CERTIFICATE OF SERVICE**


PLEASE BE AWARE THAT A TRUE AND CORRECT COPY OF  
THIS DOCUMENT HAS BEEN MAILED TO THE FOLLOWING:

Honorable Judge Thomas Gardner III  
P.O. Drawer 1100  
Tupelo, MS 38802-1100

John Young, District Attorney  
P.O. Box 212  
Corinth, MS 38835

Supreme Court of Mississippi  
Court of Appeals of the State of Mississippi  
Betty W. Sephton  
P.O. Box 249  
Jackson, MS 39205-0249

EXECUTED THIS THE 3 DAY OF April, 2008

  
\_\_\_\_\_  
Tonya D. Bell

I, TONYA D. BELL, DECLARE UNDER THE PENALTY OF PERJURY  
THAT THE ABOVE AND FORGOING IS TRUE AND CORRECT.

Tonya D. Bell

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS  
THE 3 DAY OF April, 2008

Christie E. Scott

