

COPY

IN THE MISSISSIPPI COURT OF APPEALS

WILLIE S. THOMAS

STATE OF MISSISSIPPI

CASE NUMBER

APPELLANT

APPELLEE

2007-CP-2064-COA

FILED

APPELLANT'S REPLY BRIEF

FEB 13 2008

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

APPELLANT submits this brief to the HONORABLE court to clarify inconsistencies presented by the OFFICE OF THE ATTORNEY GENERAL in its Brief For The Appellee.

①, APPELLANT WAS NOT FACED with the Possibility OF AN ENHANCED PENALTY AS A HABITUAL OFFENDER AS HE WAS WRONGFULLY AND ERRONEOUSLY ADVISED by his appointed Counsel, Stephanie Mallette, AND AS THE OFFICE OF THE ATTORNEY GENERAL CONTENDS in its brief.

THE RECORD Reflects the Appellant in fact only SERVED ONE Prior Period OF incarceration For A

①.

A PERIOD OF 1 YEAR OR MORE AS IS REQUIRED
by statute to be FACING habitual OFFENDER
status. JUDGE LEE HOWARD Relied upon this
False claim in his ORDER DENYING Postconviction
Relief to the Appellant, as he states, "As to any
threats made by petitioners' COUNSEL, they do not
seem to be threats since they were true
statements of Fact", and he further states, "the
Petitioner could have recieved A Hefty sentence
if he Did not Agree to the states plea-bargain
Agreement since he could have recieved the
maximum sentence For three sales of COCAINE
AND could have had his indictment AMENDED to
Reflect his habitual OFFENDER status". THIS IS
THE Information presented to the court by the
OKTIBBEHA County District Attorney, and the
same information STEPHANIE Mallette threatened
the Appellant with, as well as what's
presented in Reply by the ATTORNEY GENERAL'S
OFFICE, AND it's completely false, It WAS
STEPHANIE Mallette's Responsibility AS THE

APPELLANT'S ATTORNEY, TO ENSURE THAT CORRECT STATEMENTS WERE PRESENTED AS EVIDENCE, NOT TO TAKE THESE TAINTED FACTS AND THREATEN HIM WITH THEM HERSELF, FOR HER TO TELL THE APPELLANT "HE FACES UP TO 120 YEARS" AS A METHOD TO PERSUADE HIM TO ACCEPT THE STATE'S PLEA-OFFER, IS DECEPTIVE

PRACTICE AND IMPROPER INDUCEMENTS - APPELLANT

IN FACT HAD 2 PRIOR CONVICTIONS AS WAS STATED BY THE COURT, BUT AS THE RECORD

REFLECTS, THE 1ST CONVICTION WAS FOR A RECEIVING STOLEN PROPERTY CHARGE IN WHICH

HE WAS SENTENCED TO 5 YEARS PROBATION, WHICH HE VIOLATED WHEN HE WAS CONVICTED

OF SALE OF MARIJUANA, AT THAT POINT HE WAS ORDERED TO SERVE A 6 YEAR

SENTENCE WITHIN M.D.O.C., THIS IS HIS ONLY PERIOD OF INCARCERATION AS APPLICABLE

TO THE HABITUAL OFFENDER STATUTE, HE WAS NOT SUBJECT TO THIS STATUTE BECAUSE

2 SEPERATE TERMS OF IMPRISONMENT IS A PREREQUISITE, AND STEPHANIE MALLETTE SHOULD

HAVE RESEARCHED THE MATTER, AND PRESENTED ACCURATE ACCOUNTS BEFORE THE COURT, THIS WAS HER RESPONSIBILITY, SHE IN FACT MISLED THE APPELLANT IN THESE ACTIONS, HER REPRESENTATION FAILS MISERABLY ON THE STRICKLAND STANDARD, AND FURTHER SUPPORTS APPELLANTS CONTENTIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL, AND INVOLUNTARY GUILTY PLEA, TAINTED BY DECEPTION.

THESE ACTIONS WERE AND ARE CONTRARY TO THE DICTATES OF RULE 8.04 OF THE MISSISSIPPI CODE, SUBHEADING (3) "VOLUNTARINESS" - BEFORE THE TRIAL COURT MAY ACCEPT A PLEA OF GUILTY, THE COURT MUST DETERMINE THAT THE PLEA IS VOLUNTARILY AND INTELLIGENTLY MADE AND THAT THERE IS A FACTUAL BASIS FOR THE PLEA. A PLEA IS NOT VOLUNTARY IF INDUCED BY FEAR, VIOLENCE, DECEPTION OR IMPROPER INDUCEMENTS, WITHDRAWAL OF APPELLANT'S GUILTY PLEA IS WARRANTED IN THE INTEREST OF JUSTICE, AND THE ESSENCE OF FUNDAMENTAL FAIRNESS, BASED ON THE FOREGOING EXAMPLES OF DECEPTION.

CONCLUSION

APPELLANT HAS "SHOWN", that counsel's performance was deficient by the erroneous instructions she gave to him, and that it prejudiced his defense, there is also a "reasonable probability" that the result of the proceeding would have been different if not for counsel's unprofessional errors, where she made him believe he faced twice as much time as he actually faced as a maximum penalty, if she would have provided accurate, honest information, he would not have pleaded guilty to a 20 year term, let alone a 40 year term.

THE TRIAL COURT'S DENIAL OF RELIEF SHOULD BE REVERSED FOR the reasons cited in this Reply brief and his Appellant brief.

RESPECTFULLY SUBMITTED,

Willie L. Thomas, Appellant
(5).

CERTIFICATE OF SERVICE

I, Willie S. THOMAS, do hereby certify
that I have this day mailed, postage prepaid,
true and correct copies of the foregoing,
to the following parties of interest:

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THIS THE 13th DAY OF FEBRUARY 2008