

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

COPY

NO. 2007-CP-02071-COA

JESSIE MONTRELL OLIVER

APPELLANT

FILED

V.

AUG 13 2008

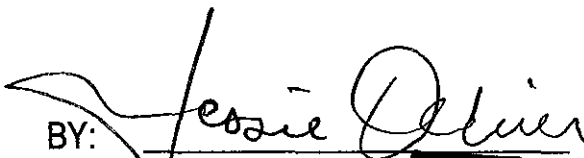
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF FOR APPELLANT

BY:



Jessie Montrell Oliver, [REDACTED]
Mississippi State Penitentiary
Unit 29-A
Parchman, MS 38738

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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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 was subjected to denial of due process in court's information as to appeal of sentence;

b) Appellant was subjected to a denial of due process in the trial court's actions imposing a sentence which was essentially a life sentence without the court having acknowledged that a 40 year sentence for a 27 year old African-American male whose statistical life expectancy is 55.4 would in all probability amount to a death sentence without the court ever specifying it as such. The trial court's order denying the PCR fail to recognize Appellant's assertion, the sentences, combined together, exceeds the life expectancy.¹

¹ While the Court attempted to justify the sentence by using the case of Gardner v. State, 864 So.2d 1005, 1009 (Miss. App. 2004), this decision is not dispositive of Appellant's claim. Gardner was sentenced as a habitual offender where the court was required by law to impose the maximum sentence. Appellant was not sentenced as a habitual offender. The trial Court referred to Gardner in the Order denying the PCR as having been previously convicted but there was no proof of prior offender status presented at the guilty plea proceedings.

c) Appellant was subjected to plain error and a violation of his fundamental due process rights;

d) The trial court erred in failing to conduct an evidentiary hearing;

While the law is clear that where a sentence falls within a range permitted by statute then it will not be disturbed on appeal. Willis v. State, 911 So.2d 951 (Miss. 2005); Wallace v. State, 607 So.2d 1184, 1188 (Miss. 1992). However, a sentence may be reviewed for a proportionality analysis under the Eighth Amendment even where the sentence falls within the statutory amount. Towner v. State, 837 So.2d 221 (Miss. App. 2003).

In the instant case Appellant was sentenced to terms amounting to 40 years under changes which mainly consist of the same charge broken down into several components. While the court made much of the changes being multiple, actually it was the same offense made into multiple crimes in order to lengthen the sentence. The argument put forth by the state on this claim should be rejected. In the instant case the sentence could not be proportionate where the co-defendant, Ms. Jefferson, was sentenced to 5 years and the Appellant, for the exact same charges and same involvement, was sentenced to 40 years. Even the trial Court Judge referred to it as being a big day for the co-defendant. (Plea Tr. 24) This Court should find that the trial court should have conducted a proportionality analysis upon the defendant being sentenced to such a severe sentence and one which greatly exceeded that of the co-defendant.

Next the state argues that the trial court was correct in summarily dismissing the PCR without an evidentiary hearing on the ineffective assistance of counsel claim. Appellant would assert that the trial court erred in such action where Appellant demonstrated several deficient actions of counsel which caused prejudice to case. Had defense counsel put forth the speedy trial violation before the court and before the plea was entered then the case could have been disposed of in dismissal of the charges. The speedy trial claim was a viable issue that held merit and should have been presented prior to advising Appellant to plead guilty. This court should reject the state's argument on this point.

While there is no obligation by law to advise the defendant who is pleading guilty of the fact that he is waiving the right to appeal the sentence, the law requires that the defendant be told he is waiving the right to appeal the conviction. It follows that before a defendant can knowingly give up any right he should be told of the existence of such right. If Appellant was ignorant to his right to appeal his sentence to the court on direct then the trial court was obligated to make Appellant aware of this constitutional right before accepting the plea of guilty. The Supreme Court have established that there is a right to appeal. Trotter v. State, 554 So. 2d 313, 315 (Miss. 1989). The sentence may be appealed independently of the plea itself. Once the constitutional error has been established, the burden is on the state to demonstrate the error is harmless beyond reasonable doubt. Arizona v. Fulminante, 499 U.S. 279, 296 (1991). Not only have the state not demonstrated

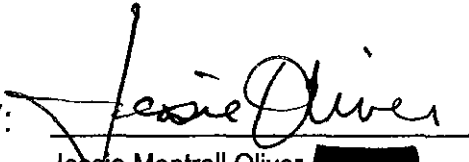
harmless error in this instance the state has denied that the error actually happened. This court should reject the state's position where the fact that there is a right to perfect an appeal directly from a sentence imposed upon a guilty plea firmly established by the court.

This court should reject the state's argument and should find that a defendant who is ignorant to the fact of his right to appeal the sentence imposed on a guilty plea should be told that if he is aggrieved with the sentence then he may perfect an appeal within 30 days. Otherwise, the court would be a participant in the procedure to cover up and hide the defendant's rights in securing a plea of guilty in a process which should be a fair process.

CONCLUSION

Jessie Oliver 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 of law and this court should vacate the trial court ruling. Appellant would ask the Court to find that pleas were not shown to be voluntary and vacate and set aside same or in the alternative to remand this case to the trial court for a proper showing and for hearing.

Respectfully submitted,

BY: 
Jessie Montrell Oliver
Mississippi State Penitentiary
Unit 29-A
Parchman, MS 38738

CERTIFICATE OF SERVICE

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

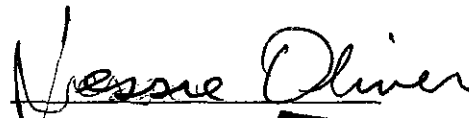
Honorable Jim Hood
Attorney General
5th Floor, Justice Gartin Building
Jackson, Mississippi 39205

Honorable Robert Chamberlin
Circuit Court Judge
P. O. Drawer 280
Hernando MS 38632

Honorable John Champion
District Attorney
365 Loshier Street Ste 210
Hernando MS 38632

This, the 13th day of August 2008.

BY:


Jessie Montrell Oliver [REDACTED]
Mississippi State Penitentiary
Unit 29-A
Parchman, MS 38738

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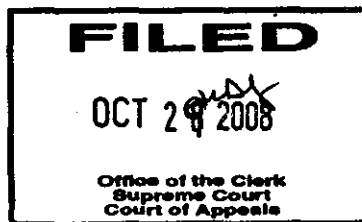
NO. 2007-CP-02071-COA

JESSIE MONTRELL OLIVER

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APPELLEE

ADDITIONAL EXHIBIT'S TO
REPLY BRIEF FOR APPELLANT

BY:

Jessie Oliver
Jessie Montrell Oliver, [REDACTED]
Mississippi State Penitentiary
Unit 29-A
Parchman, MS 38738

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**ADDITIONAL EXHIBIT'S TO
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Comes Now Appellant, Jessie Oliver, and files the attached Exhibit's in support of his motion for rehearing filed in this case. Appellant would show that such Exhibits will demonstrate the genuine of the claims and argument presented in this appeal and within the motion for rehearing and will support that the decision rendered in this matter be reconsidered and reversed.

Appellant would ask this Court to allow the motion for rehearing to be amended and the exhibits attached hereto be included as if same was written within the motion.

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Jessie Oliver 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 of law and this court should vacate the trial court's ruling. Appellant would ask the Court to find that pleas were not shown to be voluntary and vacate and set aside same or in the alternative to

remand this case to the trial court for a proper showing and for hearing.

Respectfully submitted,

BY: Jessie Oliver
Jessie Montrell Oliver, #R9549
Mississippi State Penitentiary
Unit 29-F
Parchman, MS 38738

CERTIFICATE OF SERVICE

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

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

Honorable Robert Chamberlin
Circuit Court Judge
P. O. Drawer 280
Hernando MS 38632

Honorable John Champion
District Attorney
365 Loshier Street Ste 210
Hernando MS 38632

This, the 27th day of October, 2008.

BY: Jessie Oliver
Jessie Montrell Oliver, [REDACTED]
Mississippi State Penitentiary
Unit 29-F
Parchman, MS 38738

**Mississippi Department of Corrections
Inmate Time Sheet**

Offender: OLIVER, JESSIE M R9549

Housing: MSP, UNIT 32, BLD E, ZONE A4, BED 0237

Computation Date: 01/03/2007 13:54

Date Printed: 01/12/2007 11:58

Sentences:

DATE	CAUSE/COUNT	OFFENSE	COMMITTED	COUNTY	SERVE	HOUSE	PROBATION	HAB	DEFERRED	OVERRIDE	CONCURRENT	CONSECUTIVE
10/30/06	2006-222/1	1288:ARMED ROBBERY	06/24/05	Desoto	10Y			N				
10/30/06	2006-222/2	1288:ARMED ROBBERY	07/24/05	Desoto	10Y			N				2006-222/1
10/30/06	2006-222/3	1288:ARMED ROBBERY	07/30/05	Desoto	10Y		5Y	N				2006-222/2

☐ First Time Offender

Pre Trial/Pre Sentence Jail Time:

FROM TO DAYS

Total Jail Time: 0

Override: 432

Computation Details:

DATE	DESCRIPTION
10/30/06	2006-222/1 1288:ARMED ROBBERY 10Y
10/30/06	2006-222/2 1288:ARMED ROBBERY 10Y CS to 2006-222/1
10/30/06	2006-222/3 1288:ARMED ROBBERY 10Y CS to 2006-222/2

Summary:

Begin Date	House Arrest Date	Parole Date	Tent. ERS Date	Tentative Discharge	Max Discharge	End Date
08/24/2005				08/17/2035	08/17/2035	
Total Term To Serve: 30Y	Total Earned Time: 0D	Earned Time Lost: 0D	Total MET Earned: 0D	Total Trusty Time Earned: 0D		

Comments:

EXHIBIT

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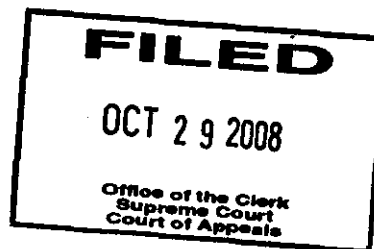
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10/30/06	2006-222/3	1288:ARMED ROBBERY	07/30/05	Desoto	10Y		5Y	N				2006-222/2

☐ First Time Offender

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FROM	TO	DAYS
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Comments:

EXHIBIT

A

STATE OF MISSISSIPPI

In the Circuit Court of DESOTOCause/Case No. CR2006-0222CD1

TO THE MISSISSIPPI DEPARTMENT OF CORRECTIONS:

NOTICE OF CRIMINAL DISPOSITION

You are hereby notified that at the OCTOBER 2006 Term of the Circuit Court,
 Judge Robert P Chamberlin presiding, the following disposition was
 imposed for the crime(s) hereinafter described:

I. A. Disposition(s) Reported: ☒ Prisoner Commitment ☒ Suspended Sentence/Probation
☐ Revocation ☐ Acquittal ☐ Other
 A-1. Provisional Sentence ☐ Non-Adjudication ☐ RID ☐ Shock Probation
☐ Bad Check Div. Pgm. ☐ Restituion in _____ CNTY
☐ House Arrest/ISP ☐ Parchman Alcohol & Drug Program
 B. Conviction as a Result of: ☒ Guilty Plea ☐ Guilty Plea after _____ days Trial
☐ Jury Verdict after _____ Days in Trial ☐ Rev. Hearing

II. Name JESSIE MONTRELL OLIVER Alias MONEY
 SSN 412431695 Race B Sex M Date of Birth 05/16/1979
 Last Known Residence 6220 Sandhurst

Horn Lake MS 38637

Place of Birth MEMPHIS, TN Country of Citizenship _____
 Alien Registration/Immigration # _____ FBI # _____

III. Count I Charge CONSPIRACY TO COMMIT A CRIME

Indicted MS Code 97-1-1(A) Sentenced MS Code 97-1-1(A)

Count II Charge ARMED ROBBERY

Indicted MS Code 97-3-79 Sentenced MS Code 97-3-79

Count III Charge ARMED ROBBERY

Indicted MS Code 97-3-79 Sentenced MS Code 97-3-79

IV. Date of Sentence 10/30/2006 Credit for Time Served (ONLY these charge{s}) 432 days

Sentence(s) Imposed by Order: Count I _____

Count II 10YRS

Count III 10YRS

	TO BE SERVED	SUSPENDED	PROBATION	METHOD OF DISP.
Count I				RTF
Count II	<u>10YRS</u>			GPA
Count III	<u>10YRS</u>			GPA

Conc: _____

Cons: COUNT 3 COUNT 2 COUNT 4 COUNT 3

Conditions of Sentence: ☐ Habitual ☐ Psychological/Psychiatric ☐ Alcohol/Drug

Other: _____

V. Dates Confined _____ to _____ to _____ to _____
 _____ to _____ to _____ to _____
 _____ to _____ to _____ to _____

Released on Bond Pending Appeal _____ to _____

Currently Housed In DESOTO COUNTY JAIL

VI. Fine _____ Indigent Fee _____ Restitution _____ Court Costs 376.50

Conditions of Payment \$100.00 MTH 60 DAYS RELEASE

Dale K. Thompson

Desoto County Circuit Court

By: T. Daniel

November 01, 2006

Send Prisoner Commitments, Provisional Sentence Orders and Revocation Orders To:

Records Department

MDOC (Fax: 601-973-3879)

P.O. Box 24388

Jackson, Ms 39205

Court Statistics Division

Administrative Office of Courts (AOC)

P.O. Box 117

Jackson, MS 39205-0117

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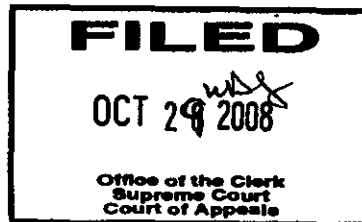
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