NO. 2007-CP-02071-COA

JESSIE MONTRELL OLIVER

STATE OF MISSISSIPPI

APPELLANT

FILED

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AUG 1 3 2008

OFFICE OF THE CLERK SUPREME COURT COURT OF APPEALS

APPELLEE

REPLY BRIEF FOR APPELLANT

Jessie Montrell Oliver,

Mississippi State Penitentiary

Unit 29-A

NO. 2007-CP-02071-COA

JESSIE MONTRELL OLIVER

APPELLANT

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STATE OF MISSISSIPPI

APPELLEE

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

While the Court attempted to justify the sentence by using the case of <u>Gardner v. State</u>, 864 So.2d 1005, 1009 (Miss. App. 2004), this decision is not dispositive of Appellant's claim. <u>Gardner</u> 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,

Jesaie Montrell Oliver

Mississippi State Penitentiary

Unit 29-A

Parchman, MS 38738

BY:

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 Losher Street Ste 210 Hernando MS 38632

This, the 13th day of August 2008.

BY:

Jessie Montrell Oliver

Mississippi State Penitentiary

Unit 29-A

NO. 2007-CP-02071-COA

JESSIE MONTRELL OLIVER

APPELLANT

٧.

OCT 2 \$ 2008

STATE OF MISSISSIPPI

Office of the Clerk Supreme Court Court of Appeals

APPELLEE

ADDITIONAL EXHIBIT'S TO REPLY BRIEF FOR APPELLANT

BY:

Jessie Montrell Oliver,

Mississippi State Penitentiary

Unit 29-A

NO. 2007-CP-02071-COA

JESSIE MONTRELL OLIVER

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STATE OF MISSISSIPPI

APPELLEE

ADDITIONAL EXHIBIT'S TO REPLY BRIEF FOR APPELLANT

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.

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'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 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 Losher Street Ste 210 Hernando MS 38632

This, the 27th day of October, 2008.

BY:

Jessie Montrell Oliver,

Mississippi State Penitentiary

Unit 29-F

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

Se	nter	ices
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DATE CAUSE/COUNT OFFENSE	COMMITTED	COUNTY	ŞERVE H	OUSE PROBATI	ON 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		· L	2006-222/1
10/30/06 2006-222/3 1288:ARMED ROBBERY	07/30/05	Desoto	10Y	5Y	N _i		1	2006-222/2

First Time Offender

Pre Trial/Pre Sentence Jail Time:

FROM TO DAYS

Total Jail Time: 0

Óverride: 432

Computation Details:

DATE	DESCRIPTION	
10/20/06	2008-222/1 1288-ARMED ROBBERY	107

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

Total Term To Serve: 30Y

Total Earned Time: 0D

Earned Time Lost: 0

ΛD

08/17/2035

Total MET Earned: 0D

08/17/2035

Total Trusty Time Earned: 0D

Comments:



STATE OF MISSISSIPPI

In the Circuit Court of DESOTO	Cau	use/Case No. CR2006-0222CD1
TO TH	B MISSISSIPPI DEPARTMENT OF CORRECT	TIONS:
	NOTICE OF CRIMINAL DISPOSITION	
You are hereby notified that at the		
Judge Robert P Chamberlin		sposition was
imposed for the crime(s) hereinafte		
	X Prisoner Commitment X Suspende	_
	RevocationAcquitta	ll _ Other
A-1. Provisional Sentence	_ Non-Adjudication _ RID	Shock Probation
	_ Bad Check Div. Pgm Restitui	on in CNTY
	House Arrest/ISP Parchman	Alcohol & Drug Program
B. Conviction as a Result of:	X Guilty PleaGuilty F	Plea after days Trial
	Jury Verdict after Days in T	rial _ Rev. Hearing
II. Name JESSIE MONTRELL OLIVER SSN 412431695 Race B Sex M	Alias MONEY	
SSN 412431695 Race B Sex M	Date of Birth 05/16/1979	
Last Known Residence 6220 Sand	hurst	
	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 Cr	edit for Time Served (ONLY these o	harge(s)) 432 days
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Co	unt III 10YRS SUSPENDED PROBATION	METHOD OF DISP.
Co TO BE SERVED	unt III 10YRS SUSPENDED PROBATION	METHOD OF DISP.
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Office of the Clerk Supreme Court Court of Appeals

APPELLEE

APPELLANT

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BY:

Jessie Montrell Oliver,

Mississippi State Penitentiary

Unit 29-A

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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

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

Se	ente	nc	es

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		1		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:

DAYS TO FROM

Total Jail Time: 0

Óverride: 432

Computation Details:

DESCRIPTION 2006-222/1 1288:ARMED ROBBERY 10Y 10/30/06

2006-222/2 1288;ARMED ROBBERY 10Y CS to 2006-222/1

2006-222/3 1288:ARMED ROBBERY 10Y CS to 2006-222/2

Summary:

Tentative Discharge Max Discharge Begin Date House Arrest Date Tent. ERS Date Parole Date **End Date**

08/24/2005 08/17/2035 08/17/2035

Total Term To Serve: 30Y Total Earned Time: 0D Earned Time Lost: Total MET Earned: 0D Total Trusty Time Earned: 0D

Comments:



STATE OF MISSISSIPPI

in the circuit court of DESOTO	Cause/Case No. CR2006-0222CD1
	PPI DEPARTMENT OF CORRECTIONS:
	CRIMINAL DISPOSITION
You are hereby notified that at the OCTOBER 2 Judge Robert P Chamberlin pres	
imposed for the crime(s) hereinafter describe	i:
	Commitment X Suspended Sentence/Probation
Revocation A-1. Provisional Sentence Non-Adjusted Bad Check	
B. Conviction as a Result of: X Guilty P.	
B. Conviction as a result of. A duffly r	dict after Days in Trial Rev. Hearing
Oury ver	Alina MONEY
II. Name JESSIE MONTRELL OLIVER SSN 412431695-Race B Sex M Date of	MITAS MONEI
	BILCH 03/10/13/3
Last Known Residence 6220 Sandhurst	2002
Horn Lake MS	
Place of Birth MEMPHIS, TN Count	try of Cicizenship
Alien Registration/Immigration #	
III. Count I Charge CONSPIRACY TO COMMIT A	
Indicted MS Code 97-1-1(A)	sentenced Ms Code 97-1-1(A)
Count 11 Charge ARMED ROBBERY	Through The State of the State
Count II Charge ARMED ROBBERY Indicted MS Code 97-3-79 Count III Charge ARMED ROBBERY	sentenced Ms Code 97-3-79
Count III Charge ARMED ROBBERY	Sentenced MS Code 97-3-79
Indicted MS Code 97-3-79	Sentenced MS Code 97-3-79
	ime Served (ONLY these charge(s)) 432 days
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Count III 10	7D C
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Count I Count II 10YRS Count III 10YRS Conc: Cons: COUNT 3	PROBATION METHOD OF DISP. RTF GPA GPA COUNT 4 COUNT 3 Chological/Psychiatric Alcohol/Drug to to to to to to Restitution Court Costs 376.50 RELEASE Dale K. Thompson
Count I Count II 10YRS Count III 10YRS Conc: Cons: COUNT 3	PROBATION METHOD OF DISP. RTF GPA GPA COUNT 4 COUNT 3 Chological/Psychiatric Alcohol/Drug to to to to to to Restitution Court Costs 376.50 RELEASE Dale K. Thompson Desoto County Circuit Court
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Count I Count II 10YRS Count III 10YRS Count III 10YRS Conc: Cons: COUNT 3 COUNT 2 Conditions of Sentence: Habitual Psy Other: V. Dates Confined to to Released on Bond Pending Appeal Currently Housed In DESOTO COUNTY JAIL VI. Fine Indigent Fee I Conditions of Payment \$100.00 MTH 60 DAYS Send Prisoner Commitments, Provisional Sentence Records Department Court S	PROBATION METHOD OF DISP. RTF GPA GPA COUNT 4 COUNT 3 rchological/Psychiatric Alcohol/Drug to to to to to to Restitution Court Costs 376.50 RELEASE Dale K. Thompson Desoto County Circuit Court By: November 01, 2006 Re Orders and Revocation Orders To: Retatistics Division
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NO. 2007-CP-02071-COA

JESSIE MONTRELL OLIVER

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STATE OF MISSISSIPPI



APPELLANT

APPELLEE

ADDITIONAL EXHIBIT'S TO REPLY BRIEF FOR APPELLANT

BY:

Jessie Montrell Oliver,

Mississippi State Penitentiary

Unit 29-A

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:

10/30/06 2006-222/1 1288:ARMED ROBBERY 06/24/05 Desoto 10Y N	
	06-222/1
10/30/06 2006-222/3 1288:ARMED ROBBERY 07/30/05 Desoto 10Y 5Y N 2006	06-222/2

First Time Offender

Pre Trial/Pre Sentence Jail Time:

TO FROM

Total Jail Time: 0

Óverride: 432

Computation Details:

DESCRIPTION 2006-222/1 1288:ARMED ROBBERY 10Y 10/30/06

2006-222/2 1288:ARMED ROBBERY 10Y CS to 2006-222/1

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

Total Term To Serve: 30Y

Total Earned Time: 0D

Earned Time Lost:

08/17/2035

Total MET Earned: 0D

08/17/2035

Total Trusty Time Earned: 0D

Comments:





STATE OF MISSISSIPPI

In c	he Circuit Court of DESOTO	Cause/C	ase No. <u>CR2006-0222CD1</u>
	•	B MISSISSIPPI DEPARTMENT OF CORRECTION NOTICE OF CRIMINAL DISPOSITION	ïS:
You		OCTOBER 2006 Term of the Circu	it Court.
Judo	e Robert P Chamberlin	presiding, the following disposi	tion was
impo	sed for the crime(s) hereinafter	r described:	
-		X Prisoner Commitment X Suspended Se	ntence/Probation
		Revocation Acquittal	
	A-1. Provisional Sentence	Non-Adjudication RID	_ Shock Probation
		Bad Check Div. Pgm. Restituion i	n CNTY
	-	House Arrest/ISP Parchman Alc	obol & Drug Program
	B. Conviction as a Result of:	X Guilty Plea Guilty Plea	after days Trial
		Jury Verdict after Days in Trial	Rev. Hearing
II.		Alias MONEY	
	SSN 412431695 Race B Sex M	Date of Birth 05/16/1979	· · · · · · · · · · · · · · · · · · ·
	Last Known Residence 6220 Sandi		
		MS 38637	
	Place of Birth MEMPHIS. TN	Country of Citizenship	
	Alien Registration/Immigration	# FBI #	
TTT.	Count I Charge CONSPIRACY TO	COMMIT A CRIME	
4,4,4,4		Sentenced MS Code 97-1-1((A)
	Count II Charge ARMED ROBBERY	37.1.1	
	Indicted MS Code 97-3-79	Sentenced MS Code 97-3-79	
	Count ITI Charge ARMED ROBBERY	Sentenced MS Code 97-3-79 Sentenced MS Code 97-3-79	· · · · · · · · · · · · · · · · · · ·
	Indicted MS Code 97-3-79	Sentenced MS Code 97-3-79	
TV_	Date of Sentence 10/30/2006 Cre	edit for Time Served (ONLY these charg	e(s)) 432 days
	Sentence(s) Imposed by Order: ((b), <u>132</u> (m)
		ount II 10YRS	
		mt III 10YRS	·
			METHOD OF DISP.
(TO BE SERVED	SUSPENDED PROBATION	METHOD OF DISP.
Co	TO BE SERVED	SUSPENDED PROBATION	RTF
Co	TO BE SERVED Count I 10YRS	SUSPENDED PROBATION	RTF GPA
Cot	TO BE SERVED Count I Dount II 10YRS Int III 10YRS	SUSPENDED PROBATION	RTF
Conc:	TO BE SERVED Count I Dunt II 10YRS Int III 10YRS	SUSPENDED PROBATION	RTF GPA GPA
Conc:	TO BE SERVED Count I Dunt II 10YRS Int III 10YRS COUNT 3 COUNT 2	SUSPENDED PROBATION COUNT 4 COUNT 3	RTF GPA GPA
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