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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2007-KP-02170-SCT

TREY ALLEN BEAMON

APPELLANT

FILED

AUG 18 2008

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

V.

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLANT

BY:



Trey Allen Beamon, #136290

SMCI #2

P. O. Box 1419

Leakesville, MS 39451

ORAL ARGUMENT NOT REQUESTED

PRO SE PRISONER BRIEF

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CERTIFICATE OF INTERESTED PERSONS

The undersigned Appellant, Trey Allen Beamon, certifies that the following listed persons have an interested in the outcome of this case. The representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Trey Allen Beamon, Appellant pro se.
2. Honorable Jim Hood, and staff, Attorney General.
3. Honorable Marcus Gordon, Circuit Court Judge.
4. Honorable Jack Thames, Assistant District Attorney.

Respectfully Submitted,

BY:



Trey Allen Beamon, #136290

SMCI #2

P. O. Box 1419

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Appellant

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2007-KP-02170-SCT

TREY ALLEN BEAMON

APPELLANT

V

STATE OF MISSISSIPPI

APPELLEE

STATEMENT OF ISSUES

ISSUE ONE:

Whether sentencing Appellant to maximum term of imprisonment constitutes a disproportionate sentence in view of the first offender status and in view of the co-defendant being older than Appellant and being a multiple offender, and whether, under such circumstances, the sentence constitutes a denial of due process if law in violation of Fifth and Fourteenth Amendments to U. S. Constitution and Article 3, §14, of the Constitution of State of Mississippi.

ISSUE TWO:

Whether sentence imposed upon Appellant violate the 5th and 14th Amendment constitutional protections and, when aggregated, constitute a

disproportionate sentence and was unduly harsh where trial court failed to explain why the court imposed the maximum sentence upon a first time offender.

STATEMENT OF INCARCERATION

The Appellant is presently incarcerated and is being housed in the Mississippi Department of Corrections and assigned to the South Mississippi Correctional Facility in Leakesville, Mississippi, in service of a prison term imposed. Appellant has been continuously confined in regards to such sentence since date of conviction and imposition of sentence by trial court..

STATEMENT OF CASE

Trey Beamon was indicted on April 26, 2007, in the Circuit Court of Neshoba County, Mississippi for the offense of robbery by exhibition of a deadly weapon. April Foster was indicted along with Appellant. Appellant was represented by Honorable Chris Collins in this case.

That on November 6, 2007, Appellant appeared before the trial court and entered a plea of guilty to strong armed robbery through advice of counsel.

That Appellant was sentenced to a term of 15 years in the custody of the Mississippi Department of Corrections.

STANDARD OF REVIEW

The correct standard of review in this appeal is the direct appeal standard where Appellant has appealed the sentence imposed upon him rather than the plea and conviction.

In the instant case the law dictates that the sentence of law where timeliness of sentence caused it to be fundamentally unfair and clearly an abuse of discretion.

SUMMARY OF ARGUMENT

The sentence imposed upon Trey Beamon is fundamentally unfair where trial court imposed maximum sentence of 15 years upon first time offender who was 21 years of age and imposed 15 years upon co-defendant who was 26 years of age with co-defendant having jurisdiction to resentence retained over case for a period of one (1) year. The sentence imposed upon Appellant was disproportionate to the offense.

ARGUMENT

ISSUE ONE

Whether sentencing Appellant to maximum term of imprisonment constitutes a disproportionate sentence in view of the first offender status and in view of the co-defendant being older than Appellant and being a multiple offender, and whether, under such circumstances, the sentence constitutes a denial of due process if law in violation of Fifth and Fourteenth Amendments to U. S. Constitution and Article 3, §14, of the Constitution of State of Mississippi.

The imposition of the maximum sentence upon Appellant constituted a denial of due process of law where Appellant was 21 years of age at the time of the offense and a first offender. Such action violated the due process clause under the 5th and 14th Amendments to the United States Constitution and Article 3, §14, of the Constitution of the State of Mississippi.

The defendant entered a plea of guilty to strong armed robbery at the advice of his attorney. Appellant was sentenced to the maximum sentence of 15 years upon such plea. The co-defendant entered the same plea, was 5 years older than Appellant, and was sentenced to the same term with the court retaining jurisdiction to resentence.

Generally, if a sentence falls within the limits provided by statute, it will not be disturbed on appeal. *Wallace v. State*, 607 So.2d 1184, 1188 (Miss. 1992).

However, where the sentence is “grossly disproportionate” it will be viewed to

determine if it violates the Eight Amendment prohibition on cruel and unusual punishment. The sentence imposed upon Appellant in this case is grossly disproportionate to the crime which was alleged to have been committed and to the offender who was a first offender.

It is well settled that a trial court has broad discretion in sentencing. Davis v. State, 742 So.2d 342, 344 (Miss. 1998). Wis. 2d 653, 681-82, 499 N.W.2d 631 (1993). A court's discretion, however, is not unfettered. The due process clauses of the state and federal constitutions restrain a court's discretion by conferring several rights on defendants at sentencing. Bruneau v. State, 77 Wis. 2d 166, 174-75, 252 N.W.2d 347 (1977). Included in those protections is the right to be sentenced on the basis of true and correct information. *Townsend v. Burke*, 334 U.S. 736, 740-41 (1948); State v. Skaff, 152 Wis. 2d 48, 54, 447 N.W.2d 84 (Ct. App. 1989). If a court relies upon inaccurate information at sentencing, it also errs in its exercise of discretion. Bruneau, 77 Wis. 2d at 175. A defendant has a due process right at sentencing to be present and afforded the right of allocution, and to be represented by counsel. State v. Borrell, 167 Wis. 2d 749, 772, 482 N.W.2d 883 (1992).

In this case, the trial court violated Appellant's due process right to be sentenced on accurate information and erred in its exercise of discretion because the Court relied upon the unverified statements made by April Foster, a co-defendant

who had an interest in Appellant being convicted and sentenced, without allowing Appellant an opportunity to cross examine the statements or to offer his version of the events. The court believed, erroneously, that April Foster was not involved and because Foster was white and Appellant was black, the Court never allowed Appellant to question Foster and simply took Foster's word. Foster was over five years older than Appellant and did bring Appellant to the location of the victim of the crime. According to Foster, she was not a participant. The Court reserved the right to vacate and set aside Foster's sentence. This was a luxury which the Court did not extend to Appellant even though Appellant was a first time offender and entered a plea of guilty. The error was material because when the court imposed the maximum, sentences in this case, it did so with the belief that Foster was not involved and had been forced by Appellant to be a participant or be present at the crime scene. Either the Court did not see the error or simply did not want to see it. Either way, the real facts were not considered. The court's misunderstanding violated Appellant's right to due process and constitutes an erroneous exercise of discretion.

A defendant who is sentenced on the basis of inaccurate information is entitled to resentencing. United States v. Tucker, 404 U.S. 443 (1972). The defendant has the burden of proving by clear and convincing evidence the

following: (1) that particular information was inaccurate; and (2) that the court actually relied on the inaccurate information in sentencing. If the defendant meets that burden, the burden shifts to the state to prove beyond a reasonable doubt that the information was accurate. Nelson v. State, 626 So.2d 121 (Miss. 1993) Whether a defendant was denied due process at sentencing is a question of law that a court should review *de novo*. There can be no dispute that both the trial court and prosecutor had an erroneous view of Appellant because of the information provided by April Foster in order to aid her own interest in getting her sentence reduced. There can also be no serious dispute that the trial court “actually relied on the inaccurate information in the sentencing The second prong, like the first, is proven by the words from the Court record. The Court asked Appellant:

Q. Did you and April Foster take from the Hispanics their property?

A. No, sir -- yes, sir.

Guilty plea transcript, pp 6.

April Foster testified as follows:

Q. Your indictment you ant Trey Allen Beamon on the 16th day of April, 2007, did take or attempt to take from the presence of several persons money by the exhibition of a gun. Did you do that?

A. I didn't sir. Trey Beamon did. I was inside the house.

Q. Inside of what house?

A. The Mexicians' house in the bathroom with one of the guys having sex for money. Trey Beamon and three other guys came inside --

Q. I don't understand a word you're saying.

A. I was inside the house having sex for money

Q. Having sex for money?

A. Yes, sir. And Trey Beamon and JoJo and his brothers come inside the house with guns and held the Mexicans at gunpoint and Trey Beamon hit one of the guys in the head with a gun.

BY MR. HARRIS: Did you take money from one of the Mexicans and give it to Trey.

BY THE DEFENDANT, APRIL FOSTER: The Mexican that came out of the house -- out of the bathroom with me handed me his money, and I handed it straight to Trey because I didn't want anything to do with it.

BY MR. HARRIS: But did you ride there with Trey?

BY THE DEFENDANT, APRIL FOSTER: Trey dropped me off.

BY MR. HARRIS: And did you leave with Trey?

BY THE DEFENDANT, APRIL FOSTER: Trey held a gun and told me I had to leave with him.

Guilty Plea Transcript of April Foster, pp. 5-6.

Trey Beamon, the Appellant, was never allowed to be present while Foster made these statements or allowed to cross examine Foster in regards to such statements. The Court heard these statements from Foster prior to the plea and sentencing of Appellant.

From the court's own sentencing decision, it is clear that the court relied on the inaccurate information in the sentencing. This is all which Appellant must show to establish a due process violation at sentencing. The fact that the trial court itself, with help from the prosecutor, inserted the erroneous information into the sentencing proceeding only enhances Appellant's claim. Unlike cases in which, for example, inaccurate information appears in the presentence report, the task of determining whether the court relied upon the inaccuracy is simplified because the error appears as part of the court's sentencing decision. A court's own false assumptions about a defendant's actions during the course of the incident giving rise to the crime clearly fall within the gamut of inaccurate information at sentencing that due process protects against. In fact, in the first case in which the United States Supreme Court recognized a right to be sentenced on accurate information, the defendant's due process rights were violated precisely because the trial court relied on its own false assumptions about the defendant's prior record. Townsend, 334 U.S. at 740-41. There, the judge sentenced the defendant with the belief that he had more prior convictions than he really did. *Id.* Similarly here, the

facts are somewhat different, the point is that the trial court allowed this misleading information to enter the case and bias the Court without allowing Appellant an opportunity to cross examine or to be present during the presentation. The state may argue that the trial court did not actually rely on the false information to impose the sentence in this case. However, this court should reject any such argument, however, because it is directly contradicted by what the record indicates in this case. Appellant is entitled to resentencing because, as shown below, the state cannot prove that the error was harmless.

The state carries a heavy burden. If this court agrees that Appellant's due process rights were violated, he is entitled to resentencing unless the state can prove beyond a reasonable doubt that the error was harmless. An error is harmless only if there is no reasonable probability that the error contributed to the outcome. State v. Dyess, 124 Wis. 2d 525, 543, 370 N.W.2d 222 (1985).

Although the trial court had broad discretion when sentencing Appellant, it had a constitutional duty to sentence him on the basis of accurate information. Instead, the court imposed the maximum, consecutive sentences with the erroneous belief that Appellant had been the aggressor in the robbery, had committed an assault during the robbery, had kidnapped Foster, an admitted prostitute, at gun point. The United States Supreme Court has recognized a defendant's interest in the integrity of the sentencing process:

The defendant has a legitimate interest in the character of the procedure which leads to the imposition of sentence even if he may have no right to object to a particular result of the sentencing process.

Gardner v. Florida, 430 U.S. 349, 358 (1977).

In the instant case, the court's misunderstanding of Appellant's involvement was not harmless but, rather, compromised the integrity of the sentencing process. Appellant is entitled to resentencing.

ISSUE TWO:

Whether sentence imposed upon Appellant violate the 5th and 14th Amendment constitutional protections and, when aggregated, constitute a disproportionate sentence and was unduly harsh where trial court failed to explain why the court imposed the maximum sentence upon a first time offender.

Appellant Beamon has a created right to appellate review of his sentence.

Trotter v. State, 554 So.2d 313 (Miss. 1989). The trial court attempted to Before taking such an appeal as of right. Appellant need not move the trial court to modify its sentence as would be required in a direct criminal appeal from the conviction. There is no provisions in the law requiring such motion before perfecting an appeal from the sentence. Decisions from other jurisdictions provide that in reviewing whether the sentence was unduly harsh, the court should engage in a two-step inquiry. The first question is whether the trial court properly exercised its discretion in imposing the sentence. Even if it did, the second question is whether the trial

court erroneously exercised that discretion by imposing a disproportionate sentence. State v. Glotz, 122 Wis. 2d 519, 524, 362 N.W.2d 179, 182 (Ct. App. 1984).

The trial court misused its discretion in ruling on Appellant's motion to proceed in forma pauperis on appeal. The Court denied that motion and asserted that no appeal from a guilty plea was allowed where the notice of appeal plainly stated that the appeal was from the sentence, not the actual plea and conviction. It is readily seen from such action that the court was attempting to prevent review of the sentence on direct. This is a clear indication that the trial court knew the sentence would not withstand constitutional muster or a challenge.

Neither in pronouncing sentence nor in denying Appellant's motion to proceed with the appeal as an indigent did the court address why the maximum sentence was required under the circumstances. There were mitigating circumstances which the trial court should have considered in imposing the sentence. Those circumstances were as follows:

- (1) did not plan this robbery in advance;
- (2) no real evidence that Appellant was armed where charge was reduced to simple robbery;
- (3) did not use the money on himself or for illegal purposes;
- (4) no real evidence that Appellant assaulted, battered or hurt the victim;
- (5) expressed remorse even before being apprehended;

- (6) admitted and took responsibility for the offense;
- (7) waived trial;
- (8) others were implicated in the same crime by the testimony given in court by one of the co-defendants but were not charged
- (9) cooperated in the presentence report;
- (10) apologized to the victim at sentencing; and
- (11) conducted himself appropriately in court proceedings.

Other jurisdictions have mandated that “A criminal sentence should represent the minimum amount of custody consistent with the factors of the gravity of the offense, the character of the offender and the need to protect the public.” State v. Setagord, 211 Wis. 2d 397, 416, 556 N.W.2d 506 (1997); State v. Borrell, 167 Wis. 2d 749, 764, 482 N.W.2d 883 (1992). Misuse of sentencing discretion occurs when the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances. Ocanas v. State, 70 Wis. 2d 179, 185, 233 N.W.2d 457, 461 (1975). When a trial court imposes a maximum (or even a near-maximum) sentence, the court should state its “reasons why a lengthy, near-maximum sentence was appropriate.” McCleary, 49 Wis. 2d at 282. A sentence is not justifiable if the trial court considered irrelevant or improper factors. See *id.* While the three primary

considerations are the gravity of the offense, the character of the offender and the need to protect the public, the court may also consider the defendant's personality, character and social traits. The weight to be given each of these factors lies within the court's discretion. This is why the trial court should justify the sentence on the record and indicate what factors or evidence was considered in arriving at such sentence. The trial court did not follow this procedure in this case.


In McCleary v. State, 49 Wis.2d 263, 182 N.W.2d 512 (1971), a Wisconsin trial court sentenced the defendant to nine years for forgery, ten being the maximum. The state trial court gave reasons for its sentence without attempting "to explain why the near-maximum sentence was appropriate in the circumstances." *Id.* at 270, 182 N.W.2d at 516. The Wisconsin Supreme Court vacated the nine-year sentence and imposed a five-year sentence. *Id.* at 291, 182 N.W.2d at 526.

The Wisconsin Courts have agreed that an erroneous exercise of discretion occurs if the sentencing court fails to state, on the record, the factors influencing its decision. State v. Larsen, 141 Wis. 2d 412, 428, 415 N.W.2d 535 (Ct. App. 1987). The record must show that the court engaged in a logical process of reasoning based on the facts of record and proper legal standards. McCleary, 49 Wis. 2d at 277. In this case, the trial court did not explain why the 15 year sentence maximum sentence should be imposed or any sentence less than the maximum should not be imposed or would be inadequate to protect the public and address

CERTIFICATE OF SERVICE

This is to certify that I, Trey Beamon, have this date served a true and correct copy of the above and foregoing Brief for Appellant, by United States Postal service, first class postage prepaid, to: Honorable Jim Hood, Attorney General, 5th Floor of Gartin Justice Building, Jackson, MS 39205; Honorable Marcus D. Gordon, Circuit Court Judge, P. O. Box 220, Decatur, MS 39327 and a copy to: Honorable Mark Duncan, District Attorney, P. O. Box 603, Philadelphia, MS 39350.

This, the 18, day of August, 2008.



Trey Beamon, #136290

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Appellant