

IN THE COURT OF APPEALS OF THE STATE
OF MISSISSIPPI

COPY

WILLIAM EDMONDSON

APPELLANT

VS

STATE OF MISSISSIPPI

FILED
NOV 19 2008
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

NO. 2007-CP-2213-COA

APPELLEE

APPELLANT'S REBUTTAL BRIEF

WILLIAM EDMONDSON

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ARGUMENT 1.

APPELLANT STANDING AND
TRIAL COURT'S JURISDICTION

UNDER MISS. CODE ANN. 99-39-5(1)(b) THE APPELLANT HAS STANDING IN THAT THE TRIAL COURT WAS WITHOUT JURISDICTION TO SENTENCE APPELLANT. (MISS. CODE ANN. 99-1-5).

UNDER MISS. CODE ANN. 99-39-5(1)(e) THE APPELLANT HAS STANDING IN THAT FROM 1994 (TIME OF INDICTMENT) TO 2001 (TIME OF SENTENCE) THE APPELLANT DID NOT ABSCOND NOR FLEE. RETAINED COUNSEL AND BOND COMPANY KNEW WHERE APPELLANT WAS. ALSO TWO TRAFFIC ARRESTS SHOWED NO OUTSTANDING WARRANTS. HAD APPELLANT BEEN ALLOWED DISCOVERY THESE FACTS WOULD HAVE BEEN PROVED. (POST CONVICTION PETITIONER ENTITLED TO COMPULSORY PROCESS OF THE COURT TO THE EXTENT THAT DISCOVERY WAS ALLOWED RUSSELL V STATE 819 SO2D 1177).

UNDER MISS. CODE ANN. 99-39-5(1)(i) APPELLANT HAS STANDING AS THE SENTENCE IS ILLEGAL AND SUBJECT TO ATTACK ON ERROR. (POST CONVICTION RELIEF STATUTE PROVIDES THE SOLE PROCEDURAL AVENUE FOR COLLATERAL ATTACK ON A CONVICTION, SMITH V STATE 773 SO2D 410).

APPELLEE'S ARGUMENT THAT APPELLANT IS NOT IN CUSTODY IS WITHOUT MERIT. APPELLANT IS SERVING CONSECUTIVE SENTENCES. (FOR THE PURPOSE OF HABEAS CORPUS, PETITIONER IS IN CUSTODY UNDER ANY ONE OF THEM, PEYTON V ROWE 391 US 54). THE CASE OF GARLOTTE V FORDICE 515 US 39

EXTENDED PAYTON TO CONSECUTIVE SENTENCES ALREADY SERVED.

ARGUMENT 2.

DID APPELLANT WAIVE HIS

RIGHT TO A SPEEDY TRIAL

IN THE CASE AT BAR THERE WAS SOME SIX YEARS FROM INDICTMENT (1994) TO SENTENCE (2001). FIRST, THE TRIAL COURT HAD LOST JURISDICTION TO HEAR A PLEA OR HAVE TRIAL. (MISS. CODE ANN. 99-1-5). (IMPOSITION OF SENTENCE IS PART OF THE TRIAL FOR THE PURPOSE OF THE U. S. CONST. AMEND.VI SPEEDY TRIAL GUARANTEE, JUAREZ-CASARES V US 496 F2D 190).

SECOND, IN ORDER TO MEET CONSTITUTIONAL STANDARDS A PLEA WAIVER MUST BE OF INFORMED AND KNOWING RIGHT. (THE VOLUNTARINESS OF A QUILTY PLEA IS DETERMINED BY A PREPONDERANCE OF THE EVIDENCE, SCHMITT V STATE 560 SO2D 148).

APPELLANT WOULD STATE THAT THE GRIST OF THE CASE AT BAR IS THAT DUE TO THE 6 YEAR SPAN FROM 1994 TO 2001 THE COURT DID NOT HAVE PROPER JURISDICTION TO HEAR THE CASE. (POTENTIALLY MERITORIOUS CLAIMS OBVIOUS FROM THE MOTION FOR POST CONVICTION RELIEF SHOULD NOT BE LOST BECAUSE INARTFULLY DRAFTED, GRAY V STATE 819 SO2D 542).

IN CONCLUSION

MISS. CODE ANN. 99-39-1 ET ESQ IS THE ONLY STATE PROCEDURE AVAILABLE FOR COLLATERAL ATTACK AS 99-39-3(1) ABOLISHED COMMON LAW

WRITS OF HABEAS CORPUS.

MISS. CODE ANN. 99-1-5 TIME LIMIT ON PROSECUTIONS ESTABLISHED A 2
YEAR LIMIT ON PROSECUTIONS.

APPELLANT COULD NOT WAIVE A RIGHT HE WAS NOT INFORMED OF AND
THE COURT HAD NO JURISDICTION OVER.

WHEREFORE PREMISS CONSIDERED, APPELLANT PRAYS THE COURT WILL
ADDRESS HIS PRO SE MOTION THAT DUE TO THE CONSECUTIVE SENTENCES
THAT GIVE HIM "IN CUSTODY" STATUS FOR THE PURPOSE OF HABEAS RELIEF.

RESPECTFULLY


WILLIAM EDMONDSON

CERTIFICATE OF SERVICE

I, WILLIAM EDMONDSON, DO HEREBY STATE THAT I HAVE CAUSED TO BE MAILED, VIA FIRST CLASS PREPAID POSTAGE, A TRUE AND CORRECT COPY OF THE FOREGOING, TO THE BELOW LISTED PERSON(S).

CLERK OF SUPREME COURT (COA)

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A handwritten signature in black ink, appearing to read "William Edmondson", written over a horizontal line.

WILLIAM EDMONSON