


SUPREME COURT OF MISSISSIPPI

HERMAN LEE WILLIAMS

APPELLANT

VS.

NO. 2007--00270


STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF

ORAL ARGUMENT REQUESTED

OF COUNSEL:

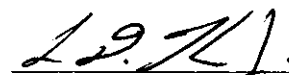
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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

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Respectfully Submitted,



LEE D. THAMES, JR., ATTORNEY FOR
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TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

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| <u>Bailey v. State</u> , 463 So. 2d 1059 (Miss. 1985) | 3 |
| <u>Beavers v. State</u> , 498 So. 2d 788(Miss. 1986) | 3 |
| <u>Burgers v. State</u> , 473 So. 2d 432 (Miss. 1985) | 3 |
| <u>Fisher v. State</u> , 532 So. 2d 992 (Miss. 1988) | 2, 3 |
| <u>Durden v. State</u> , 924 So. 2d 562 (Miss. App. 2005) | 6, 7 |
| <u>Simmons v. State</u> , 805 So. 2d 452 (Miss. 2001) | 5 |
| <u>Surplus Trading Co. v. Cook</u> , 281 U.S. 647 (1930) | 4 |

ORAL ARGUMENT REQUESTED

Pursuant to M.R.A.P. 34, the Appellant Herman Williams, through counsel, requests oral argument in this matter. This case addresses the very important constitutional issue of a right to a speedy trial. The Appellant Herman Williams believes that the right to a speedy trial was violated and denied. The trial Court clearly refused to follow precedent in denying the claim for a right to a speedy trial. Therefore, this matter of constitutional importance regarding whether or not the right to a speedy trial still exists in this State merits oral argument.

Oral argument is also necessary because this case deals with a case of first impression with regards to jurisdiction on cases which predate the Mississippi statute dated 1906 as argued by the State. Furthermore, some fact issues may need further elaboration that the Appellant may help this Court with in addressing the jurisdictional issue between federal vs. state.

Finally, the Appellant, Herman Williams, argues that the sentence is unconstitutional and disproportionate to other drug sentences in Warren County. The Defendant/Appellant Herman Williams presented an Exhibit "2" at trial which is very encompassing and oral argument may help this Appellate Court understand the disproportionate nature in the sentences between Herman Williams' sentence and those listed in Exhibit "2".

LEGAL ARGUMENT

I. THE DEFENDANT WAS DENIED HIS RIGHT TO A SPEEDY TRIAL

The State of Mississippi argues that Herman Williams officially waived his right to a speedy trial because he did not timely preserve his right to a speedy trial. In other words, Herman Williams did not “timely assert his right to a speedy trial.” (State’s Brief Pg. 4) However, the facts are very clear that Herman Williams did not learn of the indictment for the sale of cocaine until July 21, 2006, more than one year and eleven days from the time that he was arrested. Therefore, Herman Williams could not have asserted his right to a speedy trial for a felony charge to which he had no knowledge that he had been indicted.

Once Herman Williams ultimately found out about the indictment, he immediately preserved his right to a speedy trial at the arraignment and thence his attorney subsequently filed a motion for speedy trial within the next few days. Please note that Herman Williams’ attorney, the Hon. Lee D. Thames, Jr., was not appointed to represent Herman Williams until July 21, 2006, the day of arraignment. (CP 10) Therefore, Herman Williams could not have asserted his right to a speedy trial based on the fact that he was unaware of an indictment of the sale of cocaine and furthermore, he did not have an attorney until one year and eleven days after the arrest.

The State also argues that the right to a speedy trial was not violated because Herman Williams was incarcerated on charges other than the charge at hand. This is precisely the reason the trial Court Judge denied Herman Williams’ right to a speedy trial. However, that argument fails to address Fisher v. State, 532 So. 2d 992 (Miss. 1988). Fisher specifically states that the time the Defendant was serving for another conviction still counts against the time for a speedy

trial claim. This was argued in the original brief and I certainly don't want to re-argue in rebuttal other than to show that the State of Mississippi failed to address Fisher v. State, or Beavers v. State, "Incarceration via parole revocation, however, is not a legitimate reason for the prosecutors failure to bring an accuser to trial. Burgers v. State, 473 So. 2d at 433-34; Bailey v. State, 463 So. 2d 1059 (Miss. 1985)." Beavers v. State, 498 So. 2d 788, 790-91 (Miss. 1986).

The most significant issue before this Court is the right to a speedy trial. If the Court upholds the ruling that the right to a speedy trial was not denied in this matter, then this Court should simply let all defense attorneys and prosecutors and trial courts know that the right to a speedy trial no longer exists. This is the precise issue on why this Court should grant oral argument in this matter as well. I can think of no more egregious right to a speedy trial violation in the ten years in criminal defense in my law practice than the case at hand. This case clearly falls under the laws and protections afforded by the Mississippi and U.S. Constitution upon which Herman Williams was denied his right to a speedy trial and now is serving twenty four years in prison, day for day, without right of parole. Therefore, this writer respectfully requests that this Court grant oral argument and/or find that Herman Williams' right to a speedy trial has been violated and dismiss the conviction.

II. THE STATE COURT DID NOT HAVE JURISDICTION

The State of Mississippi's Brief fails in any way to address the arguments made by Herman Williams' appellant brief. The State of Mississippi, in fact, argues a brand new case that was never brought up at trial. The State of Mississippi's argument fails to prove beyond a reasonable doubt that the State has jurisdiction over the territory in question, the Navy Circle, and therefore, this Court should either dismiss the conviction, or remand for a new trial.

The State basis its sole argument on Surplus Trading Co. v. Cook, 281 U.S. 647 (1930). Cook addressed the purchase of blankets on an army training supply station owned by the United States within the State of Arkansas. The Cook Court actually recongnized that the United States may have exclusive jurisdiction over property it owns in a State. In fact, the U.S. Supreme Court held in Cook that “the State erred in holding that her tax laws could be applied to personal property within Camp Pike....” Cook, 281 U.S. at 657.

The State of Mississippi has failed to meet its burden of proof. The laws argued by at the State at trial were laws passed subsequent to the actual conveyance of the property to the United States on the property in question. This Court must reverse the conviction and either dismiss the case with prejudice and/or remand for a new trial to include the issue of whether the United States has exclusive or concurrent jurisdiction with Mississippi regarding the Navy Circle. The State of Mississippi failed at the trial Court level and through its Appellee Brief to show that the State of Mississippi retained concurrent jurisdiction over the Navy Circle.

III. THE SENTENCE WAS UNCONSTITUTIONAL AND DISPROPORTIONATE

The State of Mississippi never addressed the fact that the sentence of twenty four years, day for day, without possibility of parole, was disproportionate to other sentences in Warren County. Arguably, the State of Mississippi in its Brief made arguments that there are sentences in other counties wherein Defendants received a severe penalty for drug crimes. However, the law is clear that the State must prove the proportionality of the sentence within a particular jurisdiction, namely Warren County. The State of Mississippi has failed to prove or failed to argue that Herman Williams’ sentence of twenty-four years, day for day, is not disproportionate

to all of the sentences presented to the trial Court and made of record in Defendant's Exhibit "2". The State makes no arguments and basically fails to rebut the premise that Herman Williams' drug conviction was clearly disproportionate to other drug convictions in Warren County. Therefore, this Court should rule that the sentence is unconstitutional, and therefore resentence Herman Williams to a more proportional sentence.

V. HERMAN WILLIAM WAS DENIED THE ADVICE OF COUNSEL AND DUE PROCESS

The State's position pursuant to Simmons v. State, 805 So. 2d 452, 486 (Miss. 2001), is that the trial Court has a right to orderly courtroom decorum and procedure and therefore a defendant does not have the right to consult his attorney indiscriminately. Herman Williams does not contest such an issue. Herman Williams contests that once the Court determined that he had waived his right to be questioned about prior convictions based on a prior Court order granting a motion in limine, Herman Williams was entitled to at least confer with his counsel to understand exactly what the ruling was and what the ruling meant. Herman Williams is not an attorney.

The Court was already in recess. Counsel only needed three to four minutes to advise Herman Williams on what the ruling meant. The jury was already in recess and out of the courtroom and therefore there would not have been any disorderly break of the trial as the jury had already been sent to the jury room for a break. Herman Williams does not contest he does not have a right to consult with an attorney after every question on cross examination, but clearly when the Court has overruled a motion in limine of such significance as to allow the prosecution to seek questions about prior criminal record, a defendant has a right to counsel to understand such matters. Therefore, the Court should remand for a new trial.

IX. THE TRIAL COURT MANIFESTLY ERRED IN STRIKING PART OF JURY

INSTRUCTION D-4

The trial Court struck the language “the presumption of innocence attends Herman Williams throughout the trial and prevails at its close unless overcome by the evidence which satisfied the jury of Herman Williams’ guilt beyond a reasonable doubt.” This language clearly is the law of the United States and the Mississippi Constitution. The trial Court struck the matter citing a Dubois case but stated, “I don’t necessarily agree with their [Supreme Court] reasoning, but I’m not going to go against what they have said.” (T.R. 291) The trial Court further stated, “I’m going to strike that one sentence, I can agree with your reasoning, but I can’t go against that case and I wish we would adopt model jury instructions so we can clarify some of these issues. The cases are not consistent, I don’t think, on their interpretation, but be that as it may.” (T.R. 292) Clearly, the language stricken is the law and the trial Court felt hindered by the Dubois case and therefore struck the language even though the trial Court disagreed with the Dubois case.

I was unable to find the Dubois case referenced by the trial Court other than a 1929 case which is not on point. Obviously, the attorney general’s office could not find the Dubois case either because they did not cite a Dubois case in their brief. However, the State did cite Durden v. State, which does allude to some of the language used in Jury Instruction D-4. However, the reason why the language was denied in the Durden case was because it was cumulative, repetitive and unnecessary. Durden v. State, 924 So. 2d 562, 567 (Miss. App. 2005) However, Durden doesn’t stand for the principle that the language struck in D-4 was an improper statement of the law. Therefore, this Court should rule that the Court manifestly erred by redacting the language of D-4 and remand for a new trial. The trial Court did not strike the language simply

because it was repetitive, but rather, the trial Court ruled that the language was improper.

Therefore, the argument as presented by the State in its Appellee Brief pursuant to Durden does not hold merit, and therefore this Court should reverse and remand.

As to issues in IV, VI, VII, VIII, and X, this Defendant believes the Court should reverse and/or render or remand as argued in the original brief. However, since this is a Rebuttal Brief, not the Brief on direct appeal, the Defendant does not wish to waste the Court's time simply re-arguing what was argued before the Court previously and the State did not raise any issue worth rebutting.

CONCLUSION

In conclusion, the case should be dismissed based on the violation of Herman Williams' constitutional right to a speedy trial and/or the Court's lack of proper jurisdiction over this matter. Alternatively, the Court should remand the matter for a new trial or new sentencing based on the above stated arguments.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I have this day personally delivered a copy of the foregoing Brief to the following:

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Dated this the 7th day of March, 2008.



LEE D. THAMES, JR.