

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

REGINALD FOWLER

APPELLANT

VS.

NO. 2007-KM-0881

FILED

DEC 05 2007

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

REGINALD FOWLER

APPELLANT

VERSUS

NO. 2007-KM-00881

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

REGINALD FOWLER, a forty-six-(46)-year-old Caucasian male (Exhibit 3), prosecutes an appeal from the Circuit Court of Tunica County, Mississippi, Albert B. Smith, III, Circuit Judge, presiding.

One (1) issue is raised on appeal to this Court:

“The Circuit Court of Tunica County erroneously denied Appellant his right to a trial *de novo* on the merits following his appeal from the Justice Court, contrary to Mississippi law.” (Brief of the Appellant at ii, 1, 6)

Victor W. Carmody, Jr., a practicing attorney in Jackson, represented Fowler quite effectively in the circuit court and on appeal as well.

STATEMENT OF FACTS

On the 23rd day of November, 2006, Reginald Fowler, a resident of Memphis, received a traffic citation on Highway 61 in Tunica County for careless driving and DUI, first offense. (Vol. I - C.P. at 9-10; Supp. Vol. at 3-4; Exhibit 3)

On December 21, 2006, Fowler entered a voluntary plea of guilty in Justice Court to both DUI, first offense, and careless driving. (Vol. I - C.P. at 14) Fowler, who voluntarily waived his right to a lawyer (Vol. I - C.P. at 13), was fined \$503.00 for DUI and \$50.00 for careless driving and assessed court costs. (Vol. I - C.P. at 14) Fowler was also ordered to spend 48 hours in jail, suspended, followed by 11 months and 29 days probation and participation in the MASEP program. (Vol. I - C.P. at 14)

On January 10, 2007, the justice court judge issued an order denying Fowler's motion to set aside judgment. (Supp. Vol. at 7)

Fowler subsequently executed an appeal bond (Supp. Vol. at 16) and appealed to the circuit court for trial *de novo* " . . . pursuant to Rule 12.02 of the Mississippi Uniform Criminal Rules of Circuit Court Practice." (Supp. Vol. at 16)

On January 16, 2007, the case was set for trial for Tuesday, April 10, 2007. (C.P. at 17) A subpoena was issued on March 30, 2007, for the law enforcement officer involved in filing the charges. (C.P. at 30)

Fowler never got to trial. Rather, following a brief hearing on April 10th the circuit judge opined " . . . that when they plead guilty in the lower court, . . . that they don't have the right to appeal." (R. 3) Judge Smith entered an order on April 16, 2007, finding as a fact and concluding as a matter of law that Fowler's plea of guilty was freely and voluntarily entered and affirming the decision of the justice court. (C.P. at 33-34; appellee's exhibit A, attached.

On April 25, 2007, Fowler filed a motion for reconsideration of the order of the court dismissing Fowler's appeal. (C.P. at 36-39) It was denied on May 1, 2007. (C.P. at 43)

On May 1, 2007, Fowler, feeling aggrieved over the ruling of the trial court dismissing his appeal, filed his notice of appeal to this Court. (C.P. at 44-45)

SUMMARY OF THE ARGUMENT

Appeals from justice court to circuit court are tried *de novo*, and require that the State go forward with the burden of proof of beyond a reasonable doubt. **Meeks v. State**, 800 So.2d 1281 (Ct.App.Miss. 2001). *See also Ferrell v. State*, 785 So.2d 317 (Ct.App.Miss. 2001) citing Rule 12.02 Uniform Circuit and County Court Rules.

We are inclined to agree with Fowler that by pleading guilty in justice court, he did not waive, forfeit, or surrender his right to a trial *de novo* on the merits. **Ball v. State**, 202 Miss. 405, 32 So.2d 195, 196 (1947); **Jenkins v. State**, 98 Miss. 717, 54 So.158, 159 (1911).

ARGUMENT

WE AGREE WITH APPELLANT THAT BY PLEADING GUILTY IN JUSTICE COURT, FOWLER DID NOT WAIVE HIS RIGHT TO TRIAL *DE NOVO* IN COUNTY OR CIRCUIT COURT.

Miss.Code Ann. §99-35-101 reads as follows:

Any person convicted of an offense in a circuit court may appeal to the supreme court, provided, however, an appeal from the circuit court to the supreme court shall not be allowed in any case where the defendant enters a plea of guilty.

A rational argument could be made by analogy that an appeal to the circuit court will not lie where, as here, the defendant enters a plea of guilty in justice or police court.

Rule 12.02 of the Uniform Circuit and County Court Rules, and Miss.Code Ann. §99-35-1,

on the other hand, would seem to contradict and/or dispel this theory.

Fowler, citing both rule 12.02, and 99-35-1, contends the circuit court abused its judicial discretion in dismissing his appeal for trial *de novo*. (Brief of the Appellant at 1, 5) Claiming neither the rule nor the statute makes a distinction between a conviction following trial by jury and a conviction via guilty plea, he argues he was entitled under the law to a trial *de novo* as opposed to a review and determination of the voluntariness of his guilty plea. (Brief of the Appellant at 7)

“ * * * Mississippi, by statute and rules of procedure, allows one adjudged guilty in a justice or municipal court the right to appeal to the County Court (or Circuit Court, if there is not a County Court, such as in this case). Further, Mississippi case law clearly recognizes the right of one to appeal a justice or municipal court conviction, even if one has pleaded guilty in a justice or municipal court. Fowler submits that the denial of such a right results in a deprivation of one’s constitutionally protected right to fundamental fairness inherent in the right to due process.” (Brief of the Appellant at 5)

Put another way, Fowler argues that neither the rules of procedure nor our statutes distinguish between a guilty plea, a *nolo* plea, or a judgment after a hearing in the justice court; they simply say that any one adjudged guilty of a criminal offense in the justice court may appeal to the county or circuit court having jurisdiction for a trial *de novo*.

Prior decisions of this Court appear to suggest, if not assert outright, that Fowler is correct. *See Meeks v. State, supra*, 800 So.2d 1281, 1283 (Ct.App.Miss. 2001) [“Appeals from justice court in circuit court are tried *de novo*, and still require that the State go forward with the burden of proof of beyond a reasonable doubt.”]; *Ferrell v. State, supra*, 785 So.2d 317, 319-320 (Ct.App.Miss. 2001) citing *McGowan v. State*, 181 Miss. 42, 45, 178 So.2d 594, 595 (1938) which stated “. . . that a misdemeanor case brought to the circuit court by appeal is there triable *de novo*, and the person charged has the same right to a trial by an appearance and defense through the agency or his attorney.”]

We find in **Little v. Wilson**, 189 Miss. 825, 199 So. 72, 73 (1940), the following:

An appeal may be had to the Circuit Court, or to the county court where there is one, and a trial there had *de novo* from a conviction in the court of a justice of the peace or police justice, even though the defendant may there have plead guilty. *N[e]blett v. State*, 75 Miss. 105, 21 So. 799; *Jenkins v. State*, 96 Miss. 461, 50 So. 495.

Thirty years earlier, in **Jenkins v. State**, 98 Miss. 717, 54 So.158, 159 (1911), the Court opined:

* * * By section 87, Code 1906, persons convicted of criminal offenses are given the right of appeal to the circuit court, where there is a trial *de novo*. It is held in *N[e]blett v. State*, 75 Miss. 105, 21 South. 799, that a person pleading guilty to a criminal offense before a justice of the peace is not barred from appealing to the circuit court. On the trial in the circuit court the state may introduce the record of the justice of the peace, showing the plea of guilty, as testimony tending to establish the guilt of the defendant. Such record, however, is not conclusive of guilt. The defendant may contest it after having pleaded not guilty.

Finally, in **Ball v. State**, 202 Miss. 405, 32 So.2d 195, 196 (1947), this Court, citing **Jenkins**, stated the following:

In the case at bar, the appellant as defendant in the court of the justice of the peace, pleaded not guilty, but was convicted and fined, as pointed out *supra*. **However, even if he had pleaded guilty in the justice court, he would not thereby have estopped himself from appealing to the circuit court.** *Jenkins v. State*, 98 Miss. 717, 54 So.158. [emphasis ours]

See also Neblett v. State, supra, 75 Miss. 105, 21 So. 799 (1897).

Accordingly, we respectfully submit this case should be reversed and remanded for trial *de novo*.

CONCLUSION

Judge Smith found there was “. . . no basis to set aside the guilty plea entered by the appellant and . . . affirm[ed] the lower court judgment based on the records from the Justice Court.”

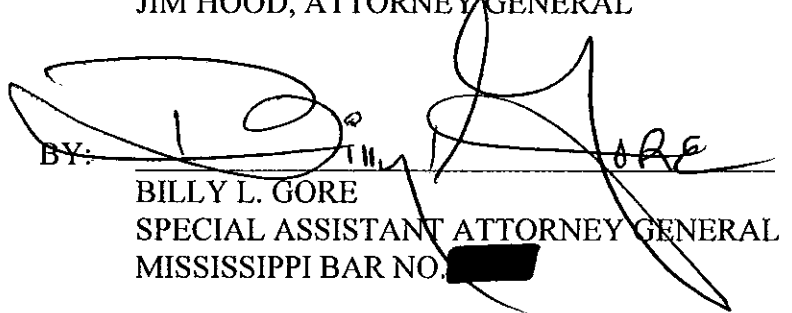

(R. 8)

Fowler, on the other hand, vigorously argues this cause should be remanded for trial *de novo*.

We submit the question to this Court for resolution of the issue fully, fairly, and finally.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

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IN THE CIRCUIT COURT OF TUNICA COUNTY, MISSISSIPPI

REGINALD FOWLER

APPELLANT

v.

CAUSE NO. 2006-0324

STATE OF MISSISSIPPI

APPELLEE

ORDER

This matter comes before this Court pursuant to an appeal from the Justice Court of Tunica County. After carefully considering the matter, the Court finds as follows:

The Appellant, Reginald Fowler, entered a plea of guilty in the Justice Court of Tunica County to the charge of DUI - First Offense. He also entered a signed waiver giving up his right to be represented by an attorney. The Appellant is now appealing his conviction and sentence rendered by the Justice Court of forty- eight (48) hours in jail, suspended; eleven (11) months, twenty-nine (29) days on unsupervised probation; and participation in the MASEP program.

At a hearing before this Court on April 10, 2007, the Court determined that the Appellant had knowingly, freely, and voluntarily entered his plea of guilty and there was no evidence to the contrary. The Court also determined that a valid waiver of counsel had been executed by the Appellant.

This Court is of the opinion that there is no valid basis to set aside the guilty plea entered by the Appellant. One possible basis may have been that he was unrepresented by counsel before the Justice Court, but he signed a waiver stating that he understood he had the right to an attorney and freely and knowingly gave up that right.

Having been given no other basis by the Appellant as to why his guilty plea was not valid, the Court hereby finds that the plea was knowingly, freely, voluntarily, and understandably given and should not be set aside.



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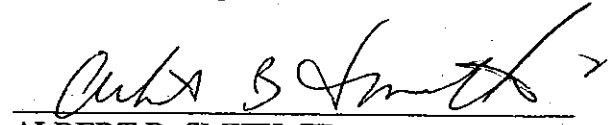
FILED

APR 16 2007

TUNICA COUNTY, MISS
SHARON CRANBERRY, CIRCUIT CLERK
BY *Ala. Rush*

Accordingly, the decision of the Justice Court is hereby AFFIRMED. The appeal in this matter is hereby DISMISSED.

SO ORDERED AND ADJUDGED this the 12 day of April, 2007.


ALBERT B. SMITH, III.
CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

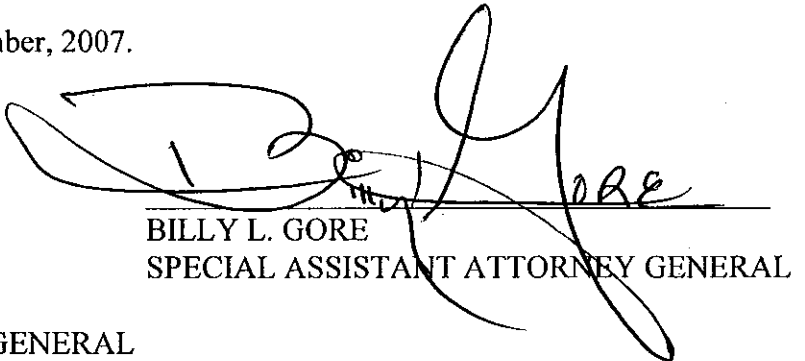
I, Billy L. Gore, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 5th day of December, 2007.



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