

IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

Myron Pollard

APPELLANT

Vs.

Action No.2008- CA- 0067~~8~~ - COA

State of Mississippi

APPELLEE

APPELLANT'S Reply BRIEF

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Certificate of Interested Persons in

No.2008- CA- 00679 - COA

Myron Pollard

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 the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Cheryl Ann Webster, Attorney of record for Myron Pollard

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APPELLEE

Statement of Issues

- 1) Whether or not the Circuit Court of Coahoma County, Ms. had jurisdiction to hear the Motion to set aside Pollard's involuntary guilty plea and Subsequent Sentencing Judgment and Motion demanding Trial?**

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Statement of the Case

Pollard was indicted May 29th, 2007, in a two count indictment. The first count was for possession of cocaine and second count was for possession marijuana. (CP 1)

July 13, 2006, Pollard entered into a petition to enter plea of guilty. (CP 5)

July 16th, 2007, The Order Adjudicating guilt and deferring sentencing was entered in order for him to make application to drug Court on. Pollard made a written application to enter into drug court.(T.12) This Application is not contained in his Coahoma County Circuit Court file.

Prior to August 20th, 2007, a presentence report was prepared. Pollard's presentence report is not made a part of his public records in the Circuit Court.

August 20th, 2007, the Court sentenced Pollard to 15 years in Count one with a five thousand dollar fine and sentenced Pollard to pay a fine of \$250.00 in Count two. (CP 16) This sentence is to run concurrent with the sentence in 2007-0042. (CP16) Reference is made to an armed robbery charge and a simple assault and disorderly conduct charge, both of which he has not been convicted .(CP 17)

August 30th, 2007, the sentencing judgment was filed. (CP18)

September 6, 2007, Cheryl Ann Webster made an appearance of record .(CP 21)

September 6th, 2007 Webster filed a motion to set aside his involuntary guilty plea and subsequent sentencing judgment and Motion demanding Trial , serving the same on the District Attorney. (CP 22)

March 12, 2008, the Court set the motion for hearing. The Court refused to allow Pollard to proceed with the Motion or to make a proffer of proof in support of his motion. (T.19)

March 14th, 2008, the Circuit Court entered an order denying Pollard's motion due to the lack of jurisdiction to hear this case.(CP 36)

Feeling aggrieved by the decision, Pollard appealed this case.

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Summary of the Argument

Issue One: Whether or not the Circuit Court of Coahoma County, Ms. the eleventh Circuit Court District had jurisdiction to hear the motion to set aside his involuntary guilty plea and Subsequent Sentencing Judgment and Motion demanding Trial?

Pollard relies on Uniform Circuit and County Court Practice Rule 10.05 New trials.

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Reply Argument

Issue One: Whether or not the Circuit Court of Coahoma County, Ms. had jurisdiction to hear the Motion to set aside his involuntary guilty plea and Subsequent Sentencing Judgment and Motion demanding Trial?

It is counsel's understanding that this is not an appeal of a guilty plea, but an appeal of a denial of an assertion of a right given through the Rules of Circuit Court Practice .

Pollard can file a motion for the Court's consideration with regard to his involuntary guilty plea and subsequent sentencing judgment and have it heard. Rule 10.05 New Trials included herein after with emphasis on the pertinent part of the rule, states:

"Rule 10.05 NEW TRIALS

The court on written motion of the defendant may grant a new trial on any of the following grounds:

1. If required in the interests of justice;
2. If the verdict is contrary to law or the weight of the evidence;
3. Where new and material evidence is recently discovered which would probably produce a different result at a new trial, and such evidence could not have been discovered sooner, by reasonable diligence of the attorney;

4. If the jury has received any evidence, papers or documents, not authorized by the court, or the court has admitted illegal testimony, or excluded competent and legal testimony;

5. If the jurors, after retiring to deliberate upon the verdict, separated without leave of court; and

6. If the court has misdirected the jury in a material matter of law, or has failed to instruct the jury upon all questions of law necessary for their guidance.

A motion for a new trial must be made within ten days of the entry of judgment. The trial judge may hear and determine a motion for new trial at any time and in any county or judicial district within the trial judge's jurisdiction.

The court may, with the consent of the defendant, order a new trial of its own initiative before the entry of judgment and imposition of sentence.

The court, on motion of a defendant, may vacate judgment and dismiss the case without prejudice if the indictment or complaint did not charge an offense, or if the court was without jurisdiction, and bind the defendant over to the action of the grand jury, or take other proper steps regarding the defendant.” Emphasis added

Mr. Pollard has a matter that was filed before the court by motion and requested a hearing on the same. Witnesses were subpoenaed and present. Pollard was present and prepared to testify under oath, but the court refused to hear anything, including a proffer, saying it did not have jurisdiction. If the Court did not have jurisdiction of this matter, regardless of the form or content of the motion, but for no other reason than lack of jurisdiction, then why is the last paragraph of the Uniform Rules of Circuit Court and County Court Practice: Rule 10.05 New Trial in the Rule Book?

Certainly the Court had jurisdiction to hear this. It was timely filed. Pollard wasn't even sentenced until after the close of the term which is common practice. But the fact that it was timely filed doesn't seem to matter, since it was just ignored. No reasons given other than counsel had filed this motion in error, because of lack of jurisdiction. I

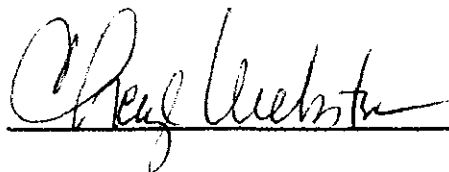
submit to the court that jurisdiction of a circuit court case lasts until ten days after the final order is filed. In this case, Judge Smith had jurisdiction until ten days after the sentencing order was filed. Mr. Pollard should have been given his opportunity to explain the sentencing Judge why Pollard's plea was involuntary and why he deserved to have it withdrawn and a be tried pursuant to Uniform Rules Circuit Court and County Court Practice Rule 8.04.

Rules trump statutes every time, not sometimes, but always. If there is a conflict, a lawyer and litigate are suppose to be able to rely on the rules. Regardless of what any statute says, this rule says that a Circuit Judge has jurisdiction of a timely filed motion.

Conclusion

Pollard asks this Court to remand his motion for hearing and that a record be made.

Respectfully submitted,

_____, Cheryl Webster

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the foregoing :

Appellant's Reply Brief to Circuit Court Judge Albert Smith, at Post Office Box 478, Cleveland, Ms. 38732 and District Attorney Laurence Mellen, at Post Office Box 848, Cleveland, Ms. 38732, and Jim Hood, Attorney General at POB 220, Jackson, MS. 39205-0220.

by hand delivering, mailing , faxing, or otherwise delivering electronically a copy of the same, postage prepaid, to the above stated addresses.

On this Tuesday, 21st of October, 2008.

By: 

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