IN THE COURT OF APPEALS FOR THE STATE 0F MISSISSIPPI

NO. 2008-CA-01962-COA

TERRANCE CHANDLER — APPELLANT

VS.

STATE OF MISSISSIPPI — APPELLEE

APPELLANT'S BRIEF

APPEAL FROM THE CIRCUIT COURT OF OKTIBBEHA COUNTY
CAUSE NO. 2008-0057-CV

ORAL ARGUMENT REQUESTED

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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 Court of Appeals may evaluate possible disqualification or recusal:

(a) Terrance Chandler
Appellant

(b) Judge James T. Kitchens Jr.
P.O. Box 1387
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(c) Honorable Rhonda Hayes-Ellis
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This the 1st day of June 2009.

Imhotep Alkebu-lan

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STATEMENT OF THE CASE

A. Course of the proceedings below:

On April 26, 2006, Terrance Chandler entered his plea of guilty to the charge of possession of cocain in an amount greater than 30 grams, within 1500 feet of a church, with intent to distribute. On May 5, 2006, the trial court sentenced Chandler to serve thirty (30) years in the Mississippi Department of Corrections (MDOC). Chandler was ordered to pay a fine in the amount of $5000 plus the cost of court. At the completion of his 30 years sentence, Chandler would be placed on 5 years post-release supervision.[1]

On October 27, 2006, Chandler filed his Motion to Correct Judgement and Sentence.[2] On November 1, 2006. Chandler filed his First Amended Motion to Correct Judgment and Sentence.[3] The appropriate fee was paid and this matter was filed as a motion for post-conviction relief. On November 5, 2008 the trial court entered its Order denying Chandler's motion for post-conviction relief to amend the judgment and sentence.[4] On December 1, 2008, Chandler timely filed his Notice of Appeal.[5]

B. Statement of the Facts:

At Chandler's May 5, 2006 sentencing hearing, the trial court asserted, prior to announcing the sentence, that the court had made a call to check and whatever sentence

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[1] R.E. 70-72. In this Brief R.E. refers to Record Excerpt:Page(s):Line(s).

[2] R.E. 2-4.

[3] R.E. 5-18.

[4] R.E. 53-54.

[5] R.E. 55-56.

Chandler receives he'll serve 25% of the sentence. [6] The trial court pronounced that the charge Chandler had plead guilty to no longer required him to serve 85% of the sentence but that he will serve 25% of the sentence.[7] The trial court recognized that even if Chandler was sentence to serve the maximum punishment of 60 years he would only have to serve 15 years.[8] In considering Chandler's sentence, the court recognized that Chandler had pending a capital murder and aggravated assault charges.[9] That it was the trial court's intent that by sentencing Chandler to serve 30 years in MDOC Chandler would serve 7½ of his sentence. Chandler subsequently learned that he would have to serve more than 25% of his sentence as the court pronounced at his sentencing hearing.[10] At the time the court denied Chandler's motion for post-conviction relief, Chandler's capital murder and aggravated assault charges were dismissed.

SUMMARY OF THE ARGUMENT

Through the court's own research, the court learned that whatever sentence Chandler received, he would serve 25% and not 85% of his sentence. With this knowledge, the court understood that if he sentence Chandler to serve the maximum sentence of 60 years Chandler would serve 15 years of the sentence. Therefore, the court knew and it was the court's intent that if Chandler was sentenced to 30 years in the MiDOC he would serve

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[6] R.E. 16:1-5.

[7] R.E. 13:7-9.

[8] R.E. 13:9-11.

[9] R.E. 14:26-29; 15:1-3.

[10] R.E. 4.

25% or 7½ years of his sentence. After learning that Chandler would serve more than 25% of his sentence, it was error for the trial court to deny Chandler's post-conviction motion that his judgment and sentence be corrected to reflect the intent of the court that he serve 25% of his sentence. Furthermore, It was error for MDOC to require Chandler to serve more than 25% of his sentence.

STATEMENT OF THE ISSUES

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED CHANDLER'S FIRST AMENDED MOTION TO CORRECT JUDGMENT AND SENTENCE.

At Chandler's May 5, 2006 sentencing hearing, the trial court stated that the Mississippi Legislature has change this offense from where a defendant would now serve 25 per cent of the sentence instead of 85 per cent of the sentence.[11] The court went on to further pronounce that it had made a call and confirm that whatever sentence Chandler receives he'll serve 25% of the sentence.[12] As an example, the court further pronounced that if Chandler were sentence to 60 year he would serve 15 years.[13] Accordingly, after making his call and being made aware of how much of his sentence Chandler would serve, the trial court sentenced Chandler to serve 30 years in the Mississippi Department of Corrections (MDOC). After the completion of his sentence, Chandler was ordered to serve 5 years of post-release supervision. Chandler was further fined $5000 plus the cost of

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[11] R.E. 13:7-9.

[12] R.E. 16:1-5.

[13] R.E. 13:9-11.

court.[14] The court further reiterated to both parties that Chandler could have been sentenced to 60 years which meant that he would have to served a total of 15 years. Because Chandler had cooperated with law enforcement, Chandler was given some credit.[15]

In Chandler's post-conviction relief motion to correct judgment and sentence, he informed the trial court that he would not serve 25 per cent of his sentence as the court pronounced but a much larger percentage.[16] In the trial court's Order denying the post-conviction motion to correct judgment the court concluded that Chandler "misinterpreted certain of the Court's comments concerning the percentage of time the Petitioner would have to serve on his sentence."[17]

Chandler was not the only one who supposedly "misinterpreted certain of the Court's comments concerning the percentage of time the Petitioner would have to serve on his sentence." The next day after Chandler was sentenced, May 6, 2006, the local newspaper, Starkville Daily News, reported that under state law, Chandler will have to serve at least 25 percent of the sentence, or at least seven and a half years.[18] It is also of note that Chandler's capital murder and aggravated assault charges pending at the time of his sentence were dismissed at the time the trial court issued its Order denying the post-

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[14] R.E. 16:11-15.

[15] 17:18-24.

[16] R.E. 4.

[17] R.E. 53 (¶ 2).

[18] See Appendix.

conviction motion to correct verdict.

THE LAW

It must be recognized that the pronouncement of sentence constitutes the judgment of the court and that the written judgment and commitment is merely evidence of the sentence. Where the record definitely establishes what the oral pronouncement was, it must prevail.[19] The court speaks through its judgment, and not through any other medium.[20] The oral pronouncement of sentence constitutes the judgment of the Court.[21]

The only sentence known to law of a Court of record is the sentence or judgment that is entered upon the record of such Court.[22] What a sentencing judge states in open Court, at the time of sentence, other than the pronouncement of the terms thereof, is no part of the official judgment of the Court.[23]

The judgment of the court establishes a defendant's sentence, and that sentence may not be increased by an administrator's amendment.[24] The only cognizable sentence, "is the one imposed by the judge; [a]ny alteration to that sentence ..., is of no effect."[25]

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[19] *U.S. v. Buchannan,* 195 F. Supp. 713 (E.D. Ky. 1961) citing *Gilliam v. United States,* 106 U.S.App. D.C. 103, 269 F. 2d 770 (1959); *Kennedy v. Reid,* 101 U.S.App. D.C. 400, 249 F.2d 492 (1957).

[20] *U.S. v. Blue,* 874 F.Supp. 409, 412 (D.D.C. 1995).

[21] Id.

[22] *Hill v. United States, ex rel Wampler,* 298 U.S. 460 56 S.Ct. 760, 80 L.Ed. 1283.

[23] Id.

[24] *Willett v. Berbary,* 456 F.Supp.2d 404, 409 (W.D. N.Y. 2006) citing *Earley v. Murray,* 451 F.3d 71, 75 (2d Cir. 2006).

[25] Id.

It is well settled in the 5th Circuit that where there is any variation between the oral and written pronouncements of sentence, the oral sentence prevails.[26] If the oral sentence is ambiguous, then, in an attempt to discern the intent of the district court at the time it imposed sentence, the reviewing court may consider extrinsic evidence.[27] Where there was an ambiguity or uncertainty in the sentence of a defendant, that ambiguity or uncertainty should be resolved in favor of the defendant.[28]

Therefore, when there is a conflict between a written sentence and an oral pronouncement, the oral pronouncement controls.[29] If, however, there is merely an ambiguity between the two sentences, the entire record must be examined to determine the district court's true intent.[30]

Sentences in criminal cases should reveal with fair certainty the intent of the court and exclude any serious misapprehensions by those who must execute them. The elimination of every possible doubt cannot be demanded.[31]

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[26] *United States v. Martinez,* 250 F.3d 941 (5th Cir. 2001).

[27] *United States v. Chair,* 901 F.2d 975, 977 (11th Cir. 1990).

[28] *Hall v. Schaeffer,* 556 F.Supp 539 (E.D. Pa. 1983) citing *Gaddis v. United States,* 280 F.2d 334, 336 (6th Cir. 1960).

[29] *United States v. De La Pena-Juarez,* 214 F.3d 594, 601 (5th Cir. 2000).

[30] See Id.

[31] *United States v. Daugherty,* 269 U.S. 360, 363, 46 S.Ct. 156, 157, 70 L.Ed. 309 (1926).

ANALYSIS

Chandler's term of imprisonment was authorized not by the sentence as calculated by MDOC but by the trial court's oral pronouncement at sentencing. The trial court's oral pronouncement of sentence constitutes the judgment of the Court.

Herein, the courts pronouncement that he had called and verified that Chandler will have to serve 25% of his sentence where previously a defendant would have to serve 85% of his sentence, was the court's pronouncement of the terms of Chandler's sentence. This pronouncement was therefore a part of the official judgment of the Court.

MDOC is a part of the executive branch of the government. Its later addition to the terms of Chandler's sentence, how much additional time he would serve on his 30 years sentence, was a nullity. Only the judgment of a court, as expressed through the sentence imposed by a judge, has the power to constrain a person's liberty. Thus, any determination that the additions to Chandler's sentence by MDOC was permissible is contrary to clearly established federal law as determined by the United States Supreme Court.

Considering the overall context in which the court imposed Chandler's sentence, making a call to verify how much time Chandler would serve on a sentence the court imposed, and the information before the court at that time, that Chandler would serve 25% of the sentence the court imposed, it was clearly the intent of the court that Chandler serve 7½ of the sentence. The court's intent is crystal clear. Crystal clear enough for the local newspaper to report the next day that Chandler would have to serve at least 7½ years before being eligible to be released.

The entire record must be examined to determine the district court's true intent. Where the record definitely establishes what the oral pronouncement was, it must prevail.

Chandler must be eligible for release after serving 25% of his sentence.

CONCLUSION

The court's intent in sentencing Chandler to serve 30 years in MDOC is crystal clear. There is no misinterpretation of the Court's comments concerning the percentage of time Chandler would have to serve on his sentence. Chandler and the local newspaper clearly understood the court's intent. Any ambiguity or uncertainty in the terms of Chandler's sentence should be resolved in Chandler's favor. Because the court's pronouncement that this was a 25% crime Chandler would have to serve 25% of his sentence. This oral pronouncement must prevail. This court must order that Chandler be released after serving 25% of his sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the below date a true and correct copy of the foregoing was mailed first class, postage prepaid, to the following individuals:

Jim Hood
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This the 1st day of June 2009.

Imhotep Alkebu-lan