

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

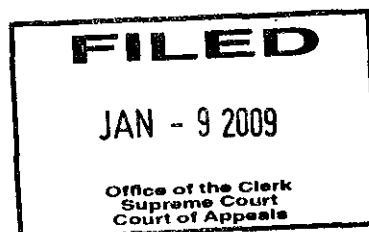
NO. 200~~8~~⁹-~~10~~⁸⁸-0034-SCT

CHRISTOPHER JASON BURROUGHS

APPELLANT

VS.

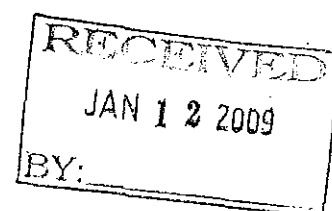
STATE OF MISSISSIPPI



APPELLEE

REPLY BRIEF FOR APPELLANT

BY: Christopher Burroughs
Christopher Jason Burroughs
HHRCF, #120707
23234 Hwy. 12 East
Lexington, MS 39069



IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2006-KP-0034-SCT

CHRISTOPHER JASON BURROUGHS

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S REPLY BRIEF

The State of Mississippi has filed its brief in this case and has failed to refute Appellant's claims that:

A.

Appellant Burrough was denied due process of law where he was convicted of the offense of a felony crime of Burglary of a Dwelling House by enter a plea guilty before the court, based upon his signed "Petition to Enter Plea of Guilty", by which the court failed to consider the factual basis for and why defendant Burrough decided to enter a plea of guilty, and defense count was ineffective for failure to object.

B.

Appellant was subjected to a denial of due process of law where the trial court failed to advise Burrough of the correct law in regards to appealing a sentence rendered upon a plea of guilty to the Supreme Court. Appellant Burrough was never told that, under applicable law, his sentence could be appealed to the Supreme Court for direct, and defense counsel was ineffective for failure to bring this error to the court's attention.

C.

Appellant would assert that the trial court violated due process of law when trial court increased the sentence and rejected the plea recommendation after Court had initially sentenced petitioner under the mistaken belief that there was no plea agreement and recommendation. Trial Court should have sentenced petitioner to the recommended sentence or allowed the plea to be withdrawn before proceeding to impose a more lengthy sentence than that which the state had recommended in exchange for the guilty plea, and counsel was ineffective for failure to object.

D.

Appellant would assert that cumulative error require that this case be reversed.

The state relies upon a catchall argument rather than addressing the claims individually as they were presented. This Court should conclude that counsel rendered ineffective assistance of counsel and that such ineffectiveness consisted of Counsel's failure to challenge or object to the indictment where that were valid claims for objection. Appellant's conviction upon his guilty plea and sentence must be reversed and the Appellant herein must be discharged from his illegal incarceration. The Brief filed by Appellant is concise and sets out the claims adequately. The state's argument under Edwards v. State, 2008 WL 3311843 (Miss. App. 2008) is not on point. Admitting guilt to the charge is not a substitute to admitting a factual basis to support the guilty plea. This issue is not procedurally barred as the state argues in its brief.

CONCLUSION

Burroughs would respectfully ask this Court to reject the state's argument and find that Appellant suffered a violation of his constitutional rights to due process of law and this court should vacate the trial court ruling. Appellant would ask the Court to find that pleas were not shown to be voluntary and vacate and set aside same or in the alternative to remand this case to

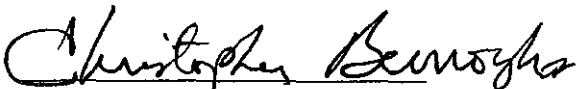
the trial court for a proper showing and for hearing. Each and every claim presented to this Court in the Brief for Appellant was presented the trial court on PCR. The state's arguments to the contrary is misplaced. The Supreme Court of Mississippi initially answered this issue in Trotter v. State, 554 So.2d 313, 315 (Miss. 1989). Trotter found such an appeal of the sentence rendered by a guilty plea to be a right. A defendant should be advised of all rights associated with the guilty plea before the plea is accepted. If the right has not been told to the defendant then it clearly cannot be waived under the theory that a defendant has the presumption that he has pleaded guilty.

The state's argument on the trial court's failure to accept the plea recommendation is not adequate. If a trial judge does not intend to sentence the defendant in accordance with the recommendation accompanying the plea bargain, the judge should advise the defendant of such intentions prior to accepting a guilty plea, or if already accepted, afford the defendant an opportunity to withdraw the guilty plea if they so chose. When confronted with the latter of the two pleas the court need only ensure that the defendant clearly and unequivocally understands that the prosecution is making no recommendation and that the defendant is at the mercy of the court. Never should the two be mixed, as would seem to have occurred in the present case.. These procedural protections are not unique. A negotiated plea agreement between the State and a criminal defendant is a contractual relationship. Allen v. State, 465 So.2d 1088, 1090 (Miss. 1985). Whether that relationship actually comes into being must be judged by the same standards as any other contractual relationship. Those standards include: (1) the intent to make an agreement, (2) the capacity to make a agreement, (3) mutual understanding of the agreement, and (4) some consideration for the agreement. Rotenberry v. Hooker, 864 So.2d 266, 270 (¶13) (Miss. 2003). The absence of any of these negates the formation of a contract. Littleton v. State, ____ So.2d ____ (Miss. App. 2008) 2008-MS-0723.

In this case, Burroughs and the district attorney had: (1) the intent to make an agreement, (2) the capacity to make an agreement, and (3) a mutual understanding of the agreement, (4) Consideration to the agreement. Consideration is defined as "[s]ome right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other." Black's Law Dictionary, 306 (6th ed. 2000). In this case Burroughs gave up his right to plead not guilty in exchange for the prosecution recommending a certain sentence. The law did not preclude the sentence which was agreed upon by the prosecution and Burroughs. If the trial court properly applied the law, it could have accept the recommended sentence from the district attorney. In essence, the promise made by the district attorney was legal and could have been fully carried out. The agreement was not improper and therefore should haveen accepted by the trial court or the plea of guilty should have been set aside and Burroughs allowed to plead anew. If the trial court had no intentions of accepting the plea if Burroughs failed to comply with the trial court's rules then the court should have told Burroughs he would have the opportunity to withdraw his plea or to stand before the court without a contract. The trial court did not do this. Therefore, Burroughs should have been allowed to withdraw his guilty plea.

Wherefore, the argument advanced by the State of Mississippi on this issue should be rejected.

Respectfully submitted,

BY: 
Christopher Jason Burroughs
HHRCF, #120707
23234 Hwy. 12 East
Lexington, MS 39095

CERTIFICATE OF SERVICE

This is to certify that I, Christopher Jason Burroughs, Appellant pro se, have this date delivered a true and correct copy of the above and foregoing Appellant's Reply Brief, to:

Honorable Jim Hood
Attorney General
P. O. Box 220
Jackson, MS 39205

This, the 9 day of January, 2009.

BY: Christopher Burroughs
Christopher Jason Burroughs
HHRCF, #120707
23234 Hwy 12 East
Lexington, MS 39095