

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

WILLIE RUDOLPH SMITH

APPELLANT

VS.

NO. 2008-CP-1088-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

Defendant pled guilty to the charge of transfer of a controlled substance as an habitual offender in violation of *Miss. Code Ann.* §§ 41-29-19-39(a)(1) & 99-19-83.

The trial court of Harrison County, First Judicial District denied a second petition for post-conviction relief filed in October 2007. (Order denying post-conviction relief, c.p. 20-23).

It is from that order denying post-conviction relief that defendant timely noticed this instant appeal.

STATEMENT OF FACTS

Defendant, aided by counsel, pled guilty to the crime. As is oft the case defendant waived many rights to plead guilty and got a good plea deal. (He was facing the potential of a life without parole sentence). And, as is too oft the case spent the ensuing years seeking relief by not recognizing salient facts and presenting less than full disclosure of what had in fact, actually happened.

The trial court denied the latest petition for post-conviction relief. The trial court was correct and defendant, still, is not entitled to any relief.

SUMMARY OF THE ARGUMENT

I.

**THIS ISSUE IS TIME BARRED, PROCEDURALLY BARRED
AND WITHOUT MERIT.**

II.

THE AMENDMENT OF THE INDICTMENT WAS PROPER.

III.

**DEFENDANT WAS AWARE OF HIS HABITUAL STATUS AND
THE CONSEQUENCES OF PLEADING GUILTY.**

IV.

THIS CLAIM OF AN ILLEGAL SENTENCE IS TIME-BARRED.

ARGUMENT

I.

**THIS ISSUE IS TIME BARRED, PROCEDURALLY BARRED
AND WITHOUT MERIT.**

Within this first allegation of error defendant asserts as he has, apparently for the last 10 years for so, is that the indictment was defective because it is not his name.

The trial court made a detailed and succinct finding of facts and conclusions of law in denying the latest presented petition for post-conviction relief.

With all due terseness, this issue is time-barred. *Miss. Code Ann.* § 99-39-5(2).

It is also, as the lower court noted, a successive writ. C.p. 21. The truth is not only was defendant time barred he was also successive writ barred. *Miss. Code Ann.* § 99-39-23(6).

Also, again, as found by the trial court any non-jurisdictional defects are waived by a valid guilty plea. As noted in the trial court's order denying relief, the spelling of a defendant's name may be amended. Plus, it is waived by the guilty plea of defendant. Interestingly, defendant never once has claimed he is not guilty. He has wasted a lot of court time and resources for no real reason. This issue about the name on an indictment has been heard before and found to be without merit. *Richardson v. State*, 769 So.2d 230 (Miss.App, 2000).

Absolutely no relief should be granted on this baseless allegation of error. Defendant answered to the court for his crime (by name, I am sure) and cannot now complain about a scrivener's error. To quote a case (out of context) defendant should just "get over it." *Department of Health/Ellisville State School v. Stinson*, 988 So.2d 933, 936 (¶12)(Miss.App. 2008).

II.

THE AMENDMENT OF THE INDICTMENT WAS PROPER.

Continuing the harangue defendant claims he was denied a hearing on the amendment to the indictment. Well, within defendant's own brief, he admits there was a hearing on August 4th, 1999, he was there and claims surprise. Once again, claiming that if there was a hearing (there was and defendant was there, with counsel) he could have shown that the indictment was flawed, his name was wrong, blah, blah, blah...

See issue, I, above.

This issue is time-barred. *Miss. Code Ann.* § 99-39-5(2).

This issue is successive writ barred. *Miss. Code Ann.* § 99-39-23(6).

This issue has been addressed by the reviewing courts of this state and found wanting.

¶ 2. We will not reverse the denial of a motion for post-conviction relief by a trial court absent a finding that the trial court's ruling was clearly erroneous. *Kirksey v. State*, 728 So.2d 565, 567(¶ 8) (Miss.1999) (citing *State v. Tokman*, 564 So.2d 1339, 1341 (Miss.1990)).

Elliott v. State, 993 So.2d 397 (Miss.App. 2008).

Under the fact and rationale of *Elliott* the State would ask that no relief be granted on this second claim of trial court error.

III.

DEFENDANT WAS AWARE OF HIS HABITUAL STATUS AND THE CONSEQUENCES OF PLEADING GUILTY.

Again, this issue is without merit, and procedurally barred. See, Issues I & II above.

Further, as the trial court noted, it is without merit in fact and law as defendant in his own signed petition to plead guilty acknowledged his habitual status, the potential sentence and that he was not coerced. C.p. 108-110.

As reviewing courts of this State have noted:

¶ 8. We find that Ross's sworn signature on his plea agreement and testimony during his plea hearing show that his plea of guilty was voluntary and intelligently given, and, as such, we cannot say that the lower court's holding was clearly erroneous.

Ross v. State, 936 So.2d 983, 987 (Miss.App. 2006).

No relief should be granted on this allegation of error.

IV.

THIS CLAIM OF AN ILLEGAL SENTENCE IS TIME-BARRED.

Here we are at the last claim, which the trial court denied. Defendant once again claims that since the indictment is flawed, his name is wrong and social security number is different and it was not properly amended to show habitual status his sentence has already run.

Okay, defendant, sit down and get this clear once and for all. At this juncture is does not matter, it's over, you pled guilty. You did the crime (and more than few others, I might add) and you are doing the time. You know who you are, you know what you did and you, correctly, answered to the court, admitted your guilt and were sentenced. And given some grace in that sentencing. 'Tis done. It's over.

The sentence YOU received, prisoner # 12824, is within (and far less) than you could have gotten and is not an illegal sentence. And you have not yet finished serving your time.

You did not receive an illegal sentence and this claim is time barred.

Adams v. State, 954 So.2d 1051 (Miss.App. 2007).

End of story.

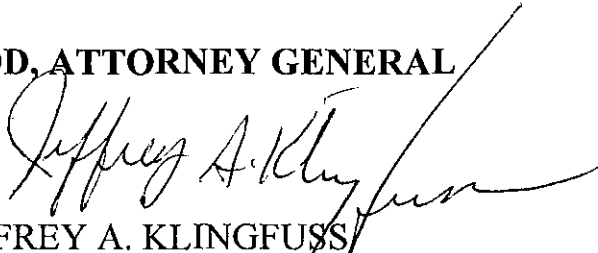
No relief should be granted.

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the trial court denial of post-conviction relief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

A handwritten signature in cursive script, reading "Jeffrey A. Klingfuss", written over the printed name of the Special Assistant Attorney General.

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CERTIFICATE OF SERVICE

I, Jeffrey A. Klingfuss, 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 28TH day of April, 2009.



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