

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

GREGORY LINSON

APPELLANT

VS.

NO. 2008-KA-0613

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

THE APPELLANT IS PROCEDURALLY BARRED FROM ARGUING THAT HIS SENTENCE IS ILLEGAL AS HE NEVER BROUGHT THE ISSUE BEFORE THE TRIAL COURT; HOWEVER, PROCEDURAL BAR NOTWITHSTANDING, THE APPELLANT'S SENTENCE IS LEGAL.

STATEMENT OF THE FACTS

The Appellant, Gregory Linson was convicted of the crime of sale of cocaine. (Record p. 55). He was sentenced under the "Second and Subsequent Offender" statute of the Uniform Controlled Substances Law and as a habitual offender under Mississippi Code Annotated §99-19-81 to serve sixty years in the custody of the Mississippi Department of Corrections without the possibility of parole or early release. (Record p. 55 - 57). During a bifurcated hearing, the trial court found that Linson was a second or subsequent offender under Mississippi Code Annotated §41-29-147 as he was previously convicted of conspiracy to sell a schedule IV

controlled substance in Case No. 7864-1 in Pearl River County Mississippi. (Record p. 56). The Court also found that Linson was a habitual offender under Mississippi Code Annotated §99-19-81 as he was previously convicted of receiving stolen property in Case No. 7504-2 in Pearl River County and for possession of a weapon by a convicted felon in Case No. 9866-1 in Pearl River County. (Record p. 56). Linson now appeals his sentence.

SUMMARY OF THE ARGUMENT

Linson is procedurally barred from arguing that his sentence is illegal as there was no contemporaneous objection made during the sentencing phase of the trial nor was the matter addressed in his motion for new trial. However, without waiving the State's contention that the matter is procedurally barred, the sentence is valid and legal according to the plain language of the statute at issue.

ARGUMENT

THE APPELLANT IS PROCEDURALLY BARRED FROM ARGUING THAT HIS SENTENCE IS ILLEGAL AS HE NEVER BROUGHT THE ISSUE BEFORE THE TRIAL COURT; HOWEVER, PROCEDURAL BAR NOTWITHSTANDING, THE APPELLANT'S SENTENCE IS LEGAL.

Linson raises the following issue on appeal: "whether the Appellant's sentence under Mississippi Code Annotated Section 41-29-147 was lawful in that the Appellant's previous conviction was for conspiracy rather than a drug offense." (Appellant's Brief p. 4). However, Linson is procedurally barred from raising this issue on appeal as the matter was never brought before the trial judge. "Errors related to improper sentencing are procedurally barred if no objection is made at trial." *Hughes v. State*, 983 So.2d 270, 282 (Miss. 2008) (citing *Hobgood v. State*, 926 So.2d 847, 857 (Miss.2006)). See also *Steele v. State*, 991 So.2d 176, 178 (Miss. Ct. App. 2008) (holding that "failure to protest his sentence during sentencing also constitutes a

procedural bar”). Procedural bar notwithstanding, Linson’s sentence is valid and legal. As noted above, Linson was sentence pursuant to Mississippi Code Annotated §41-29-147 which reads as follows:

Except as otherwise provided in Section 41-29-142, any person convicted of a second or subsequent offense under this article may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

For purposes of this section, an offense is considered a second or subsequent offense, if prior to his conviction of the offense, the offender has at any time been convicted under this article or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant or hallucinogenic drugs.

(emphasis added). Linson argues that “the first section of paragraph two clearly and unambiguously sets out which previous criminal conviction(s), in the State of Mississippi, are to be considered for the purposes of sentencing enhancement under §41-29-147” and that “the second section clearly and unambiguously sets forth the relevant convictions in other jurisdictions which may be considered for the purposes of the §41-29-147 enhancement.”

(Appellant’s Brief p. 7). The State, however, strongly disagrees. The statute simply states that a person is a subsequent offender if he or she has previously been convicted: (1) of a crime under the Uniform Controlled Substances Law, OR (2) a crime relating to illegal drugs under ANY statute of the United States or ANY statute of ANY state. Linson’s claim that the second part of the second paragraph of the statute relates only to convictions in other jurisdictions has no basis in the plain language of the statute itself. If the legislature intended for that part of the statute to refer only to other jurisdictions, it would have said that in the plain language of the statute. For example, the legislature could have stated as follows: “. . . the offender has at any time been convicted under this article or under any statute of the United States or of any *other* state relating

to . . .” Instead it used the connector “OR” and the modifier “ANY.” The trial court correctly found that Linson’s previous conviction for conspiracy to sell a controlled substance to fall under this statute as it was, in fact, a conviction under a statute of the State of Mississippi, i.e. Mississippi Code Annotated §97-7-1. Further, there can be no argument that a conviction for conspiracy to sell a controlled substance is “related to narcotic drugs, marihuana, depressant, stimulant or hallucinogenic drugs.”

The Mississippi Supreme Court has held with regard to statutory interpretation:

When a statute is unambiguous, this Court applies the plain meaning of the statute and refrains from the use of statutory construction principals. *Pinkton v. State*, 481 So.2d 306, 309 (Miss.1985). The court may not enlarge or restrict a statute where the meaning of the statute is clear. *State v. Traylor*, 100 Miss. 544, 558-59, 56 So. 521, 523 (1911). In interpreting statutes, this Court's primary objective is to employ that interpretation which best suits the legislature's true intent or meaning. *Clark v. State ex. rel Mississippi State Med. Ass'n*, 381 So.2d 1046, 1048 (Miss.1980).

Gilmer v. State, 955 So.2d 829, 833 (Miss. 2007). Mississippi Code Annotated §41-29-147 is unambiguous. Thus, according to the plain language of the statute, Linson’s sentence is valid and legal.

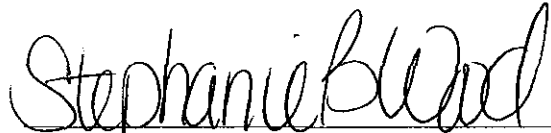
CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the sentence of Gregory Linson as it was a valid and legal sentence.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:

A handwritten signature in cursive script, reading "Stephanie B. Wood", written over a horizontal line.

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CERTIFICATE OF SERVICE


I, Stephanie B. Wood, 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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