

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CORNELL CLARK

APPELLANT

VS.

NO. 2009-CP-0482

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

THE APPELLANT'S MOTION FOR POST CONVICTION COLLATERAL RELIEF IS TIME-BARRED AND COULD HAVE BEEN DENIED ON THAT BASIS ALONE.

THE TRIAL COURT PROPERLY DENIED THE APPELLANT'S MOTION FOR POST-CONVICTION COLLATERAL RELIEF ON THE MERITS WITH REGARD TO HIS CLAIM THAT THE INDICTMENT WAS DEFECTIVE.

THE APPELLANT'S ADDITIONAL ISSUES RAISED ON APPEAL ARE BARRED AS THEY WERE NOT RAISED IN HIS MOTION FOR POST CONVICTION COLLATERAL RELIEF.

STATEMENT OF THE FACTS

The Appellant, Cornell Clark was indicted for Count I - kidnapping in violation of Mississippi Code Annotated §97-3-53 and Count II - armed carjacking in violation of Mississippi Code Annotated §97-3-117(2)(a). (Record p. 2). He submitted a Petition to Enter Plea of Guilty on January 5, 2003. (Record p. 5 - 11). A hearing was held and an Order was entered adjudicating the Appellant guilty. (Record p. 12 - 13). The Appellant was sentenced on January 22, 2004 as follows:

Count I - thirty years with ten years suspended and twenty years to serve in the custody of the Mississippi Department of Corrections, Count II - thirty years with ten years suspended and twenty years to serve in the custody of the Mississippi Department of Corrections with both sentences to be served concurrently. (Record p. 14 - 17).

On July 21, 2008, over four years after the Appellant was sentenced, the Appellant filed a Motion for Records and Transcripts and a Petition for Order to Show Cause. (Record p. 28 - 31 and 35 - 38). In his Motion for Records and Transcripts, the Appellant asserted that he needed the records because he intended to seek post-conviction relief. (Record p. 29). On April 14, 2009, the trial court entered an Order denying the motion holding that the Appellant “is not entitled to such relief because he has filed his motion outside the Uniform Post-Conviction Collateral Relief Act and he has failed to show a specific need or purpose for said documents.” (Record p. 43).

In his Petition for Order to Show Cause, the Appellant alleged that he was not attacking the legality of his sentence but instead was attacking the indictment charging him with the crimes which he pleaded guilty to years earlier. (Record p. 35 - 36). There were no other allegations made in the Petition. On September 2, 2009, the trial court entered an Order treating the Petition as a motion for post-conviction collateral relief and denying the same holding that “the firmly established law in Mississippi is that a valid guilty plea admits all elements of a formal charge and operates as a waiver of all non-jurisdictional defects contained in an indictment against a defendant.” (Record p. 44). The Appellant’s appeal is based upon this Order. (Record p. 45). On appeal, the Appellant raises the following issues: “(1) whether the indictment was invalid, (2) whether the plea was involuntary due to incompetent interrogation, (3) whether trial counsel was ineffective, (4) whether Appellant’s right to due process was violated, (5) whether the trial court erred by not complying with M.R.A.P. 10(b)(5) and 10(c), and (6) whether the sentence imposed was excessive and grossly

disproportionate.” (Appellant’s Brief p. 1).

SUMMARY OF THE ARGUMENT

The Appellant’s motion for post conviction collateral relief is time-barred pursuant to Miss. Code Ann. §99-39-5(2) as it was filed four years after he was adjudicated guilty and sentenced. No exceptions to the bar were argued. As such, the trial court could have denied the motion on that ground alone.

Additionally, the trial court properly denied the motion on its merits. It is well-settled Mississippi law that a valid guilty plea waives all technical and non-jurisdictional defects in an indictment. Furthermore, the defects alleged by the Appellant were not present in the indictment.

Lastly, issues two through six are procedurally barred as they were never brought before the trial court.

ARGUMENT

THE APPELLANT’S MOTION FOR POST CONVICTION COLLATERAL RELIEF IS TIME-BARRED AND COULD HAVE BEEN DENIED ON THAT BASIS ALONE.

The Appellant’s motion for post-conviction collateral relief is time-barred. Mississippi Code Annotated §99-39-5(2), the section of the Post-Conviction Collateral Relief Act regarding grounds for relief and time limitations, states in pertinent part as follows:

A motion for relief under this article shall be made within three (3) years after the time in which the prisoner’s direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three (3) years after the entry of the judgment or conviction. Excepted from this three-year statute of limitations are those cases in which the prisoner can demonstrate either that there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of trial, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence. Likewise

excepted are those cases in which the prisoner claims that his sentence has expired or his probation, parole, or conditional release has been unlawfully revoked. Likewise, excepted are filings for post-conviction relief in capital cases which shall be made within one (1) year after conviction.

(*emphasis added*). As noted above, the Appellant was adjudicated guilty and sentenced in 2004. His motion was not filed until 2008, four years after his adjudication and sentencing. The Appellant does not assert that there are any exceptions to the time bar present in his case. As such, the Appellant's motion is time-barred.

THE TRIAL JUDGE PROPERLY DENIED THE APPELLANT'S MOTION FOR POST-CONVICTION COLLATERAL RELIEF ON THE MERITS.

The trial court's denial of a motion for post-conviction relief should not be reversed "absent a finding that the trial court's decision was clearly erroneous." *Crowell v. State*, 801 So.2d 747, 749 (Miss. Ct. App. 2000) (citing *Kirksey v. State*, 728 So.2d 565, 567 (Miss. 1999)).

On appeal, the Appellant first argues that the indictment was invalid. (Appellant's Brief p. 1). In both his motion and on appeal, the Appellant argues that the indictment was invalid because it "did not have the foreman of the grand jury's signature, nor was it stamped "filed" marked, dated, or signed by the circuit clerk." (Record p. 36). As noted by the trial court in his Order denying the Appellant's motion, Mississippi law is clear that "all technical and non-jurisdictional defects in an indictment are waived by the entry of a valid guilty plea." *Burch v. State*, 929 So.2d 394, 397 (Miss. Ct. App. 2006) (citing *Brooks v. State*, 573 So.2d 1350, 1355 (Miss. 1990)). See also *Shinall v. State*, 832 So.2d 1291, 1293 (Miss. Ct. App. 2002). Furthermore, the record evidences that the indictment was signed by the foreman of the grand jury and by the circuit clerk. (Record p. 3). As such, the trial court properly denied the motion on its merits.

THE APPELLANT'S ADDITIONAL ISSUES RAISED ON APPEAL ARE BARRED AS THEY WERE NOT RAISED IN HIS MOTION FOR POST CONVICTION RELIEF.

The Appellant raises five additional issues on appeal that were not raised in his Petition for Order to Show Cause. As he did not raise them before the trial court, he is procedurally barred from raising them on appeal. *Welch v. State*, 958 So.2d 1288, 1292 (Miss. Ct. App. 2007).

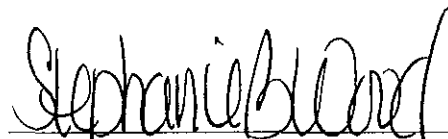
CONCLUSION

For the foregoing reasons, the State of Mississippi respectfully requests that this Honorable Court affirm the trial court's denial of the Appellant's request for post-conviction relief.

Respectfully submitted,

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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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