

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

GERALD MANGUM

APPELLANT

VS.

NO. 2009-CP-1167

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. Mangum's Petition for Post-Conviction Relief is time-barred and barred as a successive writ.
- II. Mangum's indictment was not fatally defective and Mangum waived any non-jurisdictional defects to the indictment by pleading guilty.

STATEMENT OF THE CASE

In November of 1980, Gerald Lee Mangum was indicted by a Hinds County Grand Jury for the murder of John Edgar Simmons. On March 4, 1981, Mangum entered his plea of not guilty to the charge of murder in Cause Number S474 in the Circuit Court of the First Judicial District of Hinds County, Mississippi. He was sentenced to life in the custody of the Mississippi Department of Corrections. On October 4, 1989, the Mississippi Supreme Court affirmed the lower court's denial of post conviction relief in trial court case S474. Mangum v. State, 553 So.2d 24 (1989). On November 12, 1998, Mangum filed his Motion to Vacate and Set Aside Conviction and Sentence. This motion challenged Mangum's conviction for the March 4, 1981 conviction for the murder of John Edgar Simmons in Hinds County Circuit Court Cause Number S-474. On or About February 22, 1999, the circuit court judge entered an order dismissing with prejudice Mangum's motion for post-conviction Relief (See Exhibit A to Appellee's Motion to Supplement). On March 24, 2004, Mangum filed his Post-Conviction-Collateral-Relief Petition to Vacate and Set Aside Conviction and Sentence asking the court for relief from his life March 4, 1981, sentence for the murder of John Edgar Simmons in Circuit Court Cause Number S-474. On April 7, 2004, the circuit court judge entered an order dismissing Mangum's Motion for Post-Conviction Collateral Relief. (See Exhibit B to Appellee's Motion to Supplement).

On September 24, 2007, Mangum filed his Motion to Dismiss Defective Indictment with Prejudice. (C.P. 9) Mangum then filed his Petitioner's Amended Post Conviction Habeas Corpus Motion to Vacate Conviction and Set Aside Sentence on May 26, 2009. (C.P. 2) This petition was denied by the circuit court judge on July 7, 2009. (C.P. 55) The instant appeal ensued.

SUMMARY OF THE ARGUMENT

Mangum's Petition for Post-Conviction Relief is time-barred and barred as a successive writ. Mangum has filed numerous previous Petitions for Post Conviction Relief in the Hinds County Circuit Court and has appealed the denial of at least one of those petitions to the Mississippi Supreme Court. Mangum's current petition is barred by **Mississippi Code Annotated section 99-39-23(6)** as a successive writ. Further, Mangum's current petition is barred by the three year statute contained in **Mississippi Code Section 99-39-5(2)** as Mangum's conviction was entered on March 4, 1981, and his current Petition for Post-Conviction Relief was filed in the trial court on May 26, 2009, some 28 years later. Therefore, this issue is without merit and the trial court's denial of Mangum's Petition for Post-Conviction Relief should be affirmed.

Mangum's indictment was not fatally defective and the trial court correctly denied the Motion for Post Conviction Collateral Relief. **Section 99-7-33 of the Mississippi Code of 1972**, as amended, provides, in pertinent part:

(1) In an indictment for homicide it shall not be necessary to set out the manner in which or the means by which the death of the deceased was caused, *but it shall be sufficient to charge in an indictment for murder, that the defendant did feloniously, wilfully, and of his malice aforethought, kill and murder the deceased.*"

In **Williams v. State, 445 So. 798 (1984)**, the Mississippi Supreme Court held that:

The major purpose of an indictment is to furnish the accused such a description of the charges against him as will enable him to adequately prepare his defense. **Westmoreland v. State, 246 So.2d 487 (Miss.1971); Woods v. State, 200 Miss. 527, 27 So.2d 895 (1946)**. Thus, all that is required in this regard is a concise and clear statement of the elements of the crime charged. **Love v. State, 211 Miss. 606, 52 So.2d 470 (1951)**. Nothing more is

required.

The indictment was therefore sufficient to charge Mangum with murder and is not defective. Generally speaking, “[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 [or information] against a defendant.” Brooks v. State, 573 So.2d 1350, 1352 (Miss.1990). [1] “Outside the constitutional realm, the law is settled that with only two exceptions, the entry of a knowing and voluntary guilty plea waives all other defects or insufficiencies in the indictment.” Jefferson v. State, 556 So.2d 1016, 1019 (Miss.1989).

ARGUMENT

I. Mangum's Petition for Post-Conviction Relief is time-barred and barred as a successive writ.

Mangum's Petition for Post-Conviction Relief is barred by the statute of limitation and as a successive writ. Mangum's valid guilty plea waives all technical and nonjurisdictional defects in the indictment. Brooks v. State, 573 So.2d 1350, 1352-55 (Miss.1990). Mangum argues that his indictment has a jurisdictional defect because it does not contain the phrase "and not in necessary self defense," which Mangum asserts is a necessary element of the crime. However, as argued below, this is not a jurisdictional defect, nor does it render the indictment insufficient.

Mangum has filed numerous previous Petitions for Post Conviction Relief in the Hinds County Circuit Court and has appealed the denial of at least one of those petitions to the Mississippi Supreme Court. Mangum's current petition is barred by Mississippi Code Annotated section 99-39-23(6) as a successive writ. Further, Mangum's current petition is barred by the three year statute contained in Mississippi Code Section 99-39-5(2) as Mangum's conviction was entered on March 4, 1981, and his current Petition for Post-Conviction Relief was filed in the trial court on May 26, 2009, some 28 years later. Therefore, this issue is without merit and the trial court's denial of Mangum's Petition for Post-Conviction Relief should be affirmed.

II. Mangum's indictment was not fatally defective and Mangum waived any non-jurisdictional defects to the indictment by pleading guilty.

Mississippi Appellate Courts engage in a relatively broad standard of review in determining whether an indictment is fatally defective. Nguyen v. State, 761 So.2d 873, 874

(Miss.2000). Murder is defined as “[t]he killing of a human being without authority of law ... [w]hen done with deliberate design to effect the death of the person being killed, or of any human being.” Mississippi Code Annotated § 97-3-19(1)(a). Each of these elements is contained in the indictment.

Mangum asserts that because the indictment does not contain the language “not in necessary self defense” it is insufficient. This language does not go to the particularity of the charge. The particular charge is clearly set out in the indictment by the date of its occurrence and states in great particularity, “ The Grand Jurors for the State of Mississippi, taken from the body of good and lawful persons of the first judicial District of Hinds County, in the State of Mississippi . . . in the name and by the authority of the State of Mississippi, upon their oaths present: [t]hat Gerald Lee Mangum said District, County and State on the 18th day of July, A.D., 1980 did then and there wilfully, unlawfully, feloniously and of his malice aforethought kill and murder John Edgar Simmons a human being.” The particulars are set out in the indictment so that Mangum was clearly given notice of the crime with which he was charged, the date of the crime and the identity of the victim so that he could defend himself against those charges.

Further, in McGehee v. State, 138 Miss. 822, 104 So. 150 (1925), The Mississippi Supreme Court held that an instruction that did not contain the clause ‘not in necessary self-defense’ was not error since the language ‘and not justified by law,’ which was contained in the instruction, embodies the connotation of ‘not in necessary self-defense.’ In the case at bar, the indictment states “that Gerald Lee Mangum . . . on the 18th day of July A.D., 1980 did then and there wilfully, *unlawfully*, feloniously and of his malice aforethought kill and murder John Edgar Simmons a human being. . . .” “*Unlawfully*” is an equivalent way of stating “not justified by

law,” and thus the indictment is sufficient pursuant to *McGeHee*.

Section 99-7-33 of the Mississippi Code of 1972, as amended, provides, in pertinent part:

(1) In an indictment for homicide it shall not be necessary to set out the manner in which or the means by which the death of the deceased was caused, *but it shall be sufficient to charge in an indictment for murder, that the defendant did feloniously, wilfully, and of his malice aforethought, kill and murder the deceased.*”

In *Williams v. State*, 445 So. 798 (1984), the Mississippi Supreme Court held that:

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Therefore, according to both statute and caselaw, the indictment charging Mangum with the murder of John Edgar Simmons was legally sufficient since it clearly and concisely informed Mangum of the charges against him so as to enable him to prepare a defense. Further, Mangum was advised quite clearly during his plea hearing that the State was required to prove that Mangum did not act in necessary self-defense when he committed the murder. The trial judge stated:

Q. Do you understand that on this charge of premeditated murder that the State would have to prove that on July the 16th of 1980 that you did kill John Edgar Simmons and that it was – that you had no lawful right to kill him and that it was with malice aforethought, that he was a human being and that it was not in necessary self-defense. Do you understand that?

A. Yes, Sir.

Q. That the State would have to prove all that. Do you understand that?

A. Yes, Sir.

(Exhibit A of Appellee's Motion to Supplement the Record, Page 9, Guilty Plea Hearing).

Generally speaking, “[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 [or information] against a defendant.” Brooks v. State, 573 So.2d 1350, 1352 (Miss.1990). [1] “Outside the constitutional realm, the law is settled that with only two exceptions, the entry of a knowing and voluntary guilty plea waives all other defects or insufficiencies in the indictment.” Jefferson v. State, 556 So.2d 1016, 1019 (Miss.1989). A plea of guilty does not waive (1) the failure of the indictment to charge a criminal offense or, more specifically, to charge an essential element of a criminal offense, and a plea of guilty does not waive (2) subject matter jurisdiction. Id.

Mangum cites U.S. v. Kay, 359 F.3d 738 (5th Cir. 2004) and U.S. v. Case, 2007 WL 1746399 (S.D.Miss.) for the proposition that the justification of self defense is at the “core of criminality” of the crime of murder and therefore must be set out in the indictment. However, *Kay* and *Case* address a different issue. In those cases, the identity of witnesses is central to the criminality of the act with which the defendant is charged. For example, *Kay* addresses a statute that requires witnesses at congressional hearings to answer the questions put to them. In order to know what they were specifically charged with, the witnesses had to know which question they did not answer, since each question and answer was a separate event when considered in light of the statute being enforced against them. In *Case*, the defendants were charged with the theft of a “trade secret.” The term trade secret is quite broad and encompasses an exceedingly large category of items. Therefore, in order for the defendants in that case to defend themselves, they had to know what specific items they were accused of stealing. These cases turn on a lack of particularity and are therefore distinguishable from the instant case.

CERTIFICATE OF SERVICE

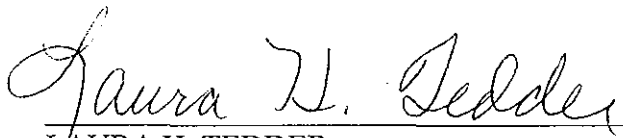
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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