

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ROBERT E. LEWIS, JR.

APPELLANT

VS.

NO. 2009-CP-2041-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

Robert Lewis pled guilty to capital murder on August 28, 2008 before the Honorable Circuit Judge James T. Kitchens, Jr., and was sentenced to serve life in prison without the possibility of parole, pursuant to Miss. Code Ann. § 99-19-81. A little over one year later defendant filed a motion for post-conviction relief with the trial court. (C.p. 43-83). This motion was dismissed in December, 2009. (C.p., Order, c.p. 84-85).

It is from the order dismissing the motion defendant timely filed this instant appeal. (C.p. 86).

STATEMENT OF THE FACTS

On May 14th 2006, defendant shot a Mr. T.C. Turner in the head twice while robbing Mr. Turner of his automobile, cell phone, money, and other belongings. (C.p. 29).

SUMMARY OF THE ARGUMENT

I.

THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION OVER THIS CASE.

The indictment adequately informed defendant of the crimes for which he was charged and was in the proper court.

II.

DEFENDANT'S PLEAS WAS KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY MADE.

The record is replete with evidence defendant's plea was knowing, voluntary and intelligently made while ably represented by three attorneys.

III.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ACCEPTING THE GUILTY PLEA AS CHARGED AND SENTENCING AS AN HABITUAL OFFENDER.

The indictment was clear, defendant was informed, aided by able counsel and aware of exactly how and why he was sentenced as he was.

ARGUMENT

I.

THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION OVER THIS CASE

In this initial claim of error defendant claims the indictment failed to list which subsection of the capital murder statute that he was being charged for in the crime.

Count One of the indictment reads:

Late of the County aforesaid, on or about the 15th day of May, 2006, in the County aforesaid, did unlawfully, willfully, and feloniously, with or without the design to effect death, kill, and murder T.C. Turner, a human being, without the authority of law and not in necessary self defense, while engaged in the commission of the crime of Robbery, in violation of Section 97-3-19 Miss. Code Ann. 1972 as amended....

Lewis raises the issue of the subject matter jurisdiction, but this really is a question of whether the indictment was defective.

While the indictment did not list the subsection of capital murder that Lewis was being charged with, it is clear from the language of the indictment that Lewis was being charged with capital murder under Miss. Code Ann. § 97-3-19(2)(e). “So long as a fair reading of the indictment, taken as a whole, clearly describes the nature and cause of the charge against the accused, the indictment is legally sufficient.” *Berry v. State*, 996 So.2d 782, 790 (Miss. 2008); (quoting *Farris v. State*, 764 So.2d 411, 421 (Miss. 2000).

At Lewis’s plea hearing, the prosecution stated the following: “The State’s

proof would show that this defendant is the one who committed the shooting of Mr. T.C. Turner while engaged in the commission of the crime of robbery.” (R. 29). Lewis acknowledged through his defense counsel that the evidence the State indicated was sufficient to support Mr. Lewis’s guilt of the crime of capital murder. Consequently, the trial court did have subject matter jurisdiction in this case.

The trial court was correct in denying the motion for post-conviction relief.

II.
DEFENDANT'S PLEAS WAS KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY MADE.

Next defendant asserts his guilty plea was unknowingly and involuntarily given because he was misinformed by the Court as to the true nature of the charged crime, and also where the indictment itself failed to list the subsection of Miss. Code Ann. § 97-3-19 as charged.

In considering whether a guilty plea was voluntarily entered, it must be shown: the defendant's plea was not induced by fear, violence, deception, or improper inducements; the fact that the plea was voluntarily and intelligently made must appear in the record; the defendant was competent to understand the nature of the charge; the defendant understood the nature and the consequences of the plea as well as the maximum and minimum penalties provided by the law; the defendant understood that pleading guilty he waived his constitutional rights to trial by jury, to confront and cross-examine adverse witnesses, and to avoid self-incrimination; and if the defendant is not represented by an attorney and he is indigent, he has the right to be appointed an attorney to represent him at every stage of the proceeding. URCCC 8.04.

During the plea hearing, the following conversation was exchanged between the trial judge and Lewis:

Q. Now, Mr. Lewis, Why are you pleading guilty to this charge of capital murder?

A. Because I'm guilty.

Q. Has anybody offered you any money, or promised you any rewards or hopes of leniency to get you to plead guilty?

A. No, sir.

Q. Has anybody threatened you, said that they would beat you up, or hurt you, or hurt your family, or anything like that if you didn't plead guilty?

A. No, sir.

Q. Today, are you under the influence of any illegal drugs or alcohol or undergoing any mental treatment that would prevent you from understanding what we've been talking about?

A. No, sir, not at this time. (R. 28).

The record clearly shows a knowledge of the fact and voluntarily pleading of guilty to capital murder. Lewis was not under any duress or coercion to enter this guilty plea. Lewis was also not under the influence of drugs or alcohol. For these reasons, Lewis was fully competent to stand trial and enter a guilty plea. Lewis further stated that his defense counsel discussed all the facts surrounding the case and the proper defenses to the capital murder charge. (R. 27). Therefore, Lewis was aware of his charge and had the opportunity to adequately prepare a defense for his charge, but he voluntarily, knowingly and intelligently entered a plea of guilty.

Further, it should be noted defendant was ably represented by three counsel of high regard and of some considerable specialized expertise in capital litigation. C.p.

22, (Represented by Andre deGruy, William Starks and Carrie Jourdan).

¶ 11. [. . .] The record unambiguously reflects that, at the time Watts pleaded guilty, he was fully informed that the only available sentence for the crime of murder was life imprisonment. The record further reflects that this was a favorable arrangement for Watts, who was indicted for capital murder and avoided eligibility for the death penalty by pleading guilty to murder. The circuit court's finding that Watts's guilty plea was voluntary was not clearly erroneous. This issue is without merit.

Watts v. State, 981 So.2d 1034, 1038 (Miss.App. 2008).

Based upon the record before this reviewing court there was no merit to defendant's assertion his plea was unknowing and involuntary. The trial court was correct in dismissing the motion.

No relief should be granted based on this claim of error.

III.
**THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN
ACCEPTING THE GUILTY PLEA AS CHARGED AND
SENTENCING AS AN HABITUAL OFFENDER.**

Lastly, defendant maintains the trial court abused its discretion in sentencing him to life in prison because he was misinformed of the nature of the crime he was charged and the indictment failed to inform Lewis of an essential element of the felony. The court did not abuse its discretion in sentencing him to life in prison because the indictment was not defective. The indictment clearly conforms to the language of the statute as noted above.

For instance, in *Greenlee*, the defendant claimed the indictment failed to adequately inform him as to whether he was being charged with “murder” or whether the charge was “capital murder.” The confusion developed as the original indictment referred to his being charged pursuant to “97-3-19” which was divided into two sections, these sections containing definitions for both murder and capital murder. The amended indictment changed the section to “97-3-19(1)(a)” which defined murder. As defined in the statute, “capital murder” includes killing public officers, using a bomb to kill others, being paid for killing and similar crimes. In *Greenlee*, the facts showed the boy killed his mother, and this scenario clearly pointed not to capital murder but to “non-capital” murder. The *Greenlee* court said: “It is permissible to amend an indictment if the amendment is one of form and not of

substance.... The test for whether an amendment to the indictment will prejudice the defense is whether the defense as it originally stood would be equally available after the amendment is made.... If Section 97-3-19 is read in its entirety, there is no way that the original indictment can be construed as charging capital murder....” *Greenlee v. State*, 725 So.2d 816, 821-22 (Miss. 1998).

However, as noted in Issue I, above such is just not the case here. There is not doubt the indictment lists the specific statutory provision, the quotes from a specific statutory subsection.

¶ 13. For a guilty plea to be valid it must be entered into “voluntarily, knowingly, and intelligently, ‘with sufficient awareness of the relevant circumstances and likely consequences.’ ” *Carroll v. State*, 963 So.2d 44, 46 (¶ 8) (Miss.Ct.App.2007) (quoting *Bradshaw v. Stumpf*, 545 U.S. 175, 183, 125 S.Ct. 2398, 162 L.Ed.2d 143 (2005)). “To determine whether the plea is voluntarily, knowingly, and intelligently given, the trial court must advise the defendant of his rights, the nature of the charge against him, as well as the consequences of the plea.” *Burrough v. State*, 9 So.3d 368, 373 (¶ 11) (Miss.2009) (citation omitted). The burden of proving that a guilty plea was invalid rests with the defendant and must be proven by a preponderance of the evidence. *Terry v. State*, 839 So.2d 543, 545 (¶ 7) (Miss.Ct.App.2002) (citation omitted). *75 Ultimately, the validity of a guilty plea is determined on a case-by-case basis. *Williams v. State*, 752 So.2d 410, 412 (¶ 4) (Miss.Ct.App.1999).

Williams v. State, 31 So.3d 69 (Miss.App. 2010).

Again, a look to the record found in the clerk’s papers at page 28-30 shows the State clearly enunciated the elements of the offense of murder during the commission of a robbery.

Accordingly, the trial court was correct in denying the motion for post-conviction relief as defendant was informed of the elements of the offense to which he pled guilty.

The record also fully develops the reason, rational, and record supporting defendant being sentenced as an habitual offender.

Consequently, no relief should be granted based on this allegation of error.

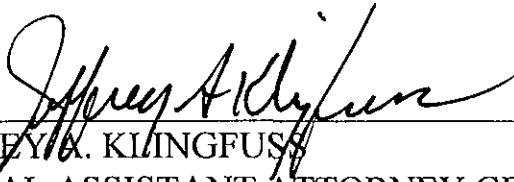
CONCLUSION

Based upon the arguments presented herein as supported by the transcript and evidence introduced at the hearing, the State would ask this reviewing Court to affirm the trial courts order dismissing the petition for post-conviction relief.

Respectfully submitted,

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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 13th day of August, 2010.



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