

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ALBERT JOINER, JR.

FILED

APPELLANT

VS.

DEC 13 2010

NO. 2009-CT-00220-²SCT

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI

APPELLEE

SUPPLEMENTAL BRIEF OF THE APPELLEE

COMES NOW Appellee, State of Mississippi, through undersigned counsel, and respectfully moves the Court, to affirm the decision of the Circuit Court of Lafayette County in the above-styled and numbered case, and as grounds therefor would show the following:

I. OMISSION OF JOINER'S PRIOR FELONY CONVICTIONS FROM HIS INDICTMENT DID NOT PRECLUDE IMPOSITION OF HABITUAL OFFENDER SENTENCING.

WHEREFORE, PREMISES CONSIDERED, and for the reasons more fully developed in the accompanying brief, the State respectfully moves this Court to reconsider granting certiorari to Appellee Albert Joiner, Jr. and upon so doing, to the trial court's denial of post-conviction collateral relief.

PROCEDURAL HISTORY

Albert Joiner, Jr. filed a motion for post-conviction relief from a guilty plea to felony fleeing from a law enforcement officer. The Lafayette County Circuit Court denied the motion. The Court

of Appeals affirmed the denial on April 20, 2010. This Court granted Joiner's petition for certiorari.

FACTS

On September 24, 2007, the Grand Jury of Lafayette County indicted Albert Joiner, Jr. on one count of felony flight and one count of felon in possession of a deadly weapon, in Circuit Court Cause Number LK07-399. On October 23, 2007, the grand jury also indicted Joiner for armed robbery as a habitual offender under Mississippi Code Annotated section 97-19-83, in Circuit Court Cause Number LK07-133.

On October 18, 2007, as part of an agreement with the State, Albert Joiner, Jr. pleaded guilty as a habitual offender to felony flight, in Cause Number LK07-399, and he pleaded guilty as a habitual offender to strong-arm robbery, in Cause Number LK07-133. After thoroughly questioning Joiner, the trial court accepted both pleas, followed the State's recommendation, and sentenced Joiner to four years on the felony flight and a consecutive fifteen years on the strong-arm robbery, both as a lesser habitual offender. (CP Supp. Vol. 1, pages 4-25). In exchange for the guilty pleas in both cases, the State agreed to reduce the lifetime habitual status under Mississippi Code Annotated section 99-19-83 to the lesser habitual under Mississippi Code Annotated section 99-19-81; to dismiss the felon in possession of a deadly weapon in Cause No. LK07-399 and to reduce the armed robbery to strong-arm robbery in Cause No. LK07-133. An order to dismiss the felon in possession of deadly weapon and a separate agreed motion and order to reduce the felony flight as a lifetime habitual to felony fleeing maximum habitual were entered in Cause No. LK07-399, the subject case.

On May 22, 2008, Joiner filed a Petition for Post-Conviction Collateral Relief in the subject

cause which the trial court denied.¹ Joiner appealed asserting that: (1) he was improperly charged as a habitual offender; (2) he was improperly sentenced as a habitual offender; and (3) he was denied effective assistance of counsel. On April 20, 2010, the Court of Appeals affirmed the denial of Joiner's motion for post-conviction relief and subsequently denied his petition for rehearing. Joiner filed a petition for writ of certiorari which this Court granted.

ARGUMENT

I. OMISSION OF JOINER'S PRIOR FELONY CONVICTIONS FROM INDICTMENT DID NOT PRECLUDE IMPOSITION OF HABITUAL OFFENDER SENTENCING.

Albert Joiner, Jr. was a five-time prior convicted felon facing three new life sentences when he struck a deal with the State and plead guilty in two separate cases as a lesser habitual offender. Pursuant to the plea agreement Joiner received a total of nineteen years instead of three life sentences and now he complains he was denied due process.

Albert Joiner, Jr. was previously convicted and sentenced in the Circuit Court of Lafayette County as follows:

On July 26, 1996 he was convicted of Grand Larceny, which crime occurred on June 20, 1996, and was sentenced to serve five years imprisonment.

On July 26, 1996 he was convicted of Simple Assault on a Law Enforcement Officer, which crime occurred on July 21, 1996, and was sentenced to serve five years imprisonment.

On November 1, 2002 he was convicted of Simple Assault on a Law Enforcement Officer, which crime occurred on January 15, 2002, and was sentenced to serve five years imprisonment.

¹It should be noted that in 2009-CP-220-COA the Court of Appeals also affirmed the trial court's denial of Joiner's post conviction relief on the strong arm robbery charge in Circuit Court Cause Number LK07-133

On January 10, 1984 he was convicted of Attempted Armed Robbery, a crime which occurred on July 21, 1983, and was sentenced to serve ten years imprisonment.

On January 21, 1988 he was convicted of Burglary of a Commercial Building, a crime which occurred on December 27, 1987, and was sentenced to serve seven years imprisonment.

Joiner argues that the indictment in the subject case failed to notify him that he was being charged as a habitual offender. As part of Joiner's plea bargain, Count II of the indictment, possession of a weapon by a convicted felon, was dismissed. Count II lists five felonies with which Joiner had been previously convicted. Joiner asserts that since Count II was dismissed, the indictment no longer contained the necessary information to charge him as a habitual offender pursuant to Mississippi Code Annotated § 99-19-81. Throughout Joiner's arguments he failed to mention or provide a copy of the joint motion and order reducing the "felony fleeing lifetime habitual" charge to "felony fleeing maximum habitual." (CP Supp.Vol. 1, 2). Upon motion of the State, the Court of Appeals supplemented the record with the order.

In his petition for writ of certiorari, Joiner claims the Court of Appeals at page 3, paragraph 6 of it's [sic] opinion incorrectly states "He was originally charged as a habitual offender under Mississippi Code Annotated section 99-19-83 (Rev.2007)." Joiner is quoting the Court out of context. The Court of Appeals briefly addressed both criminal cases, the armed robbery case where he was indicted as a lifetime habitual, and the case *sub judice* where he was indicted for felony fleeing and felon with a deadly weapon. In its analysis, the Court of Appeals discussed both criminal cases because the plea agreement with the State involved both cases and the guilty pleas occurred simultaneously. It is impossible to discuss the guilty plea in one case without mentioning the other case.

Habitual offender status may be established by the defendant's "admission of prior felony convictions." *Sanders v. State*, 786 So.2d 1078, 1082 (¶ 14) (Miss. Ct. App. 2001); *Jones v. State*,

747 So.2d 249, 252 (Miss. 1999). Even though the plea petition in the case *sub judice* does not list Joiner's five prior felony convictions, the plea petition entered simultaneously in the strong-arm robbery does. Also, Joiner verbally acknowledged that he was pleading guilty as a habitual offender. The Petition to Enter Guilty Plea also acknowledges that Joiner was informed by his lawyer of the "maximum and minimum punishment which the law provides for the offense charged in the indictment." During the plea colloquy, the judge made sure Joiner understood that he would be sentenced as a lesser-habitual offender in both cases, which meant that Joiner would serve his four-year sentence and fifteen-year sentence "day-for-day" without eligibility for parole or probation rather than life without eligibility for parole or probation under section 99-19-83. Joiner does not deny that he has five prior felonies, nor does Joiner claim lack of notice to his pleading guilty as a habitual offender in both cases. Because the reduced sentence was part of Joiner's plea bargain, the Court of Appeals found the record shows that Joiner was aware of his eligibility for sentencing as a habitual offender.

In the petition and during the plea hearing, Joiner acknowledged his guilt of the crimes charged, as well as the constitutional rights he would be waiving by pleading guilty; at the hearing he further acknowledged that he was pleading guilty as a habitual offender, and that he knew the possible sentences he might receive. (CP Supp. Vol. 1, pages 5, 10,11, 16, 17).

The State would strongly suggest to the Court that Albert Joiner, Jr. knew he was pleading guilty as a lesser habitual offender in both cases, that Joiner's sentencing as a habitual offender was an integral part of the State's agreement with him and that he was not prejudiced nor denied his due process. The records clearly indicate that Albert Joiner, Jr. received the plea agreement he sought.

CONCLUSION

For the reasons stated herein, as supported by the record on appeal, the State would ask this

reviewing court to affirm the order of the Circuit Court of Lafayette County denying Albert Joiner, Jr.'s motion for post-conviction relief and request to be re-sentenced without the habitual offender status.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



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CERTIFICATE OF SERVICE

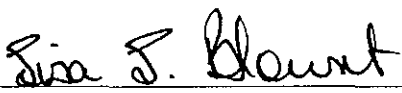
I, Lisa L. Blount, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **SUPPLEMENTAL BRIEF FOR THE APPELLEE** to the following:

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This the 13th day of December, 2010.



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