

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

SEPECCUSS LANGSTON

APPELLANT

VS.

NO. 2010-CP-0590-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

This appeal proceeds from the denial of Sepeccuss Langston's Petition for Post-Conviction Relief from the Circuit Court of Desoto County, Mississippi, Honorable Robert P. Chamberlin presiding.

STATEMENT OF THE FACTS

In November 2007, a Desoto County grand jury indicted Sepeccus Langston as a Mississippi Code Annotated section 99-19-81 habitual offender for two counts of possession of a controlled substance in a correctional facility,(CP 34). On February 25, 2008, in the DeSoto County Circuit Court, Langston entered a guilty plea to one count of possession of a controlled substance in a correctional facility, as a § 99-19-81 habitual offender. (CP 36-41; Plea hearing transcript 47-99). The trial court sentenced Langston to serve seven years in the Mississippi Department of Corrections as a habitual offender under § 99-19-81, and to pay a \$1,000 fine plus court costs. (CP 42-44; Plea hearing transcript 96-98). The court remanded the second possession charge to the files. (CP 44;

98).

Langston subsequently filed a motion for post-conviction collateral relief wherein he argued his sentence was unconstitutional and his trial counsel was ineffective. (CP 4-20). The trial court denied his motion, finding that Langston's sentence was legal and that Langston failed to prove his trial counsel was ineffective.(CP 23-25). Aggrieved, Langston appeals, asserting the following;

ISSUE I: WHETHER THE TRIAL COURT ERRED IN SENTENCING HIM AS A HABITUAL OFFENDER.

ISSUE II: WHETHER LANGSTON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.

SUMMARY OF ARGUMENT

The Desoto County Circuit Court order denying Langston's Petition for Post Conviction Relief should be affirmed. Langston's two prior Tennessee convictions qualified as predicate felonies, for purposes of the habitual offender statute. Therefore, the trial court properly sentence Langston as a habitual offender pursuant to Mississippi Code Annotated section 99-19-8. Whether Langston served time in Shelby County Correction Center or a workhouse is irrelevant for the purposes of habitual offender status. *Byrne v. State*, 30 So.3d 1264 (Miss.App.,2010); *Davis v. State*, 5 So.3d 435 (Miss.App.,2008).

Langston failed to meet the requirements of *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed 2d 674 (1984) in proving his counsel was deficient.

ARGUMENT

PROPOSITION I: THE TRIAL COURT PROPERLY SENTENCED LANGSTON AS A HABITUAL OFFENDER.

In his first issue, Langston argues the trial court improperly sentenced him as a habitual offender pursuant to Mississippi Code Annotated section 99-19-81 (Rev.2007). Langston contends the State failed to prove that he had been convicted twice previously of a felony within the meaning of section 99-19-81. Langston contends that for felony theft he was sentenced to a Tennessee Department of Corrections Workhouse, which does not exist. Langston claims he served his sentence in the Shelby County Correctional Facility; thus, he did not qualify as a habitual offender.

Mississippi Code section 99-19-81 provides:

Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, shall be sentenced to the maximum term of imprisonment prescribed for such felony, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

The certified records from the State of Tennessee admitted during Langston's sentencing indicate that Langston was convicted of facilitation to commit especially aggravated kidnaping in Case No. 97-12172 in the Criminal Court of Shelby County, Tennessee, and sentenced on June 1, 1998 to serve a term of eight years in the Tennessee Department of Corrections; and that Langston was convicted of felony theft of property over \$500 in the Criminal Court of Shelby County, Tennessee and sentenced on April 8, 1998 to serve one year in the Workhouse. (CP 63-66; Plea

transcript Exhibit 1).¹

In *Byrne v. State*, 30 So.3d 1264, (Miss.App.,2010), the defendant was sentenced to the Tennessee Department of Corrections Workhouse. This Court held that the two prior Tennessee convictions qualified as predicate felonies, for purposes of the habitual offender statute, regardless of where the defendant served the sentences. An individual is not required to have actually served any prison time in order to be sentenced as a habitual offender.” *Davis v. State*, 5 So.3d 435, 441 (¶ 14) (Miss.Ct.App.2008).

When faced with a similar issue in *Wilhite v. State*, 791 So.2d 231 (Miss.App.2000) this Court interpreted a Tennessee workhouse to be a state penal institution for the purposes of the habitual offender statute. Langston, like Wilhite, was convicted in the state of Tennessee of separate felonies brought and arising out of separate incidents at different times and was sentenced to separate terms of one year or more. Langston like Wilhite was also sentenced to a workhouse.

On two separate occasions during the plea hearing, the trial judge asked Langston about being a habitual offender. Langston readily admitted the convictions and qualifying as a habitual offender. (CP 62; 63-66; 77). Habitual offender status may be established by the defendant's "admission of prior felony convictions." *Id.* at 426, quoting *Sanders v. State*, 786 So.2d 1078, 1082 (¶ 14) (Miss. Ct. App. 2001); *Jones v. State*, 747 So.2d 249, 252 (Miss. 1999). Admissions to prior criminal convictions are sufficient to permit a finding of habitual status. *Sanders v. State*, 786 So.2d at 1083 citing *Jones v. State*, 747 So.2d 249, 252 (Miss.1999). During the plea hearing, Langston acknowledged that he was pleading guilty as a habitual offender, that he was previously convicted

¹The defendant in the Tennessee indictments and sentencing orders is Sepeccuss Triplett, however, SepeccoussLangston admitted during the subject plea hearing that he was convicted and sentenced in the aforesaid causes.(CP 63-66).

of the crimes as charged in the indictment.(CP 63-66).

Langston, citing *Wilson v. State*, 395 So.2d 957 (Miss., 1981) and *Hurt v. State*, 420 So. 2d 560 (Miss. 1982), further asserts that the trial court erred in failing to conduct a bifurcated hearing to determine if he was a habitual offender for enhancement purposes. A defendant who enters a plea of guilty is not entitled to a hearing separate from the guilty plea hearing on the question of whether he or she should be sentenced as a habitual offender. *Keys v. State*, 549 So. 2d 949 (Miss.1989)

Regardless of where Langston served his prior sentences, his prior felony convictions met the requirements of Mississippi Code Annotated section 99-19-81, namely that he had two prior, separate felony convictions for which he was sentenced to terms of one year or more in a state and/or federal penal institution. This issue is without merit.

**PROPOSITION II:
LANGSTON RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.**

Langston argues that he received ineffective assistance of counsel because his trial counsel failed to investigate his Tennessee theft conviction to see if the Tennessee Department of Corrections Workhouse was a state penal institution. (Appellant's brief at 7).

During the plea hearing, Langston acknowledged he was satisfied with the services his attorney provided him. (Plea hearing at CP 75). In the sworn Petition to Enter Guilty Plea Petition, Langston admitted that his lawyer was competent and that he was satisfied with the advice and help. (CP 40) Great weight is given to statements made under oath and in open court during sentencing.... There should be a strong presumption of validity of anyone's statement under oath. *Davis* 5 So.3d at 438.

To prevail on a claim that assistance of counsel was ineffective requires a showing that counsel's performance was deficient and that the defendant was prejudiced by counsel's mistakes.

Strickland v. Washington, 466 U.S. 668, 687-96, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). This test "applies to challenges to guilty pleas based on ineffective assistance of counsel." *Hill v. Lockhart*, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). The burden is on the defendant to bring forth proof which demonstrates that both prongs of the Strickland test are met. *Moody v. State*, 644 So.2d 451, 456 (Miss.1994). There is a strong but rebuttable presumption that counsel's conduct falls within a wide range of reasonable professional assistance. *Id.* at 456. Accordingly, appellate review of counsel's performance is "highly deferential." *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052.

Langston failed to meet his burden in proving deficiency and any resulting prejudice. Langston's two prior Tennessee convictions were sufficient to meet the requirements of section 99-19-81. Therefore, there was nothing for Langston's trial counsel to investigate or defend against. There was no deficiency or prejudice for any supposed inaction on this point by Langston's counsel. *Byrne v. State*, 30 So.3d at 1266; *Anderson v. State*, 766 So.2d 133 (Miss.App.,2000). This issue is also without merit.

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal, the State would ask this reviewing court to affirm the order of the Circuit Court of Desoto County denying Sepeccuss Langston's motion for post-conviction relief and request to be re-sentenced without the habitual offender status.

Respectfully submitted,

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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 **BRIEF FOR THE APPELLEE** to the following:

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This the 18th day of August, 2010.



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