



IN THE MISSISSIPPI COURT OF APPEALS

NO. 2010-CP-00744-Charles Pegues V. StateMiss.

FILED

CHARLES E. PEGUES

**JUN 24 2010
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT

By
Mr. Charles Pegues #R4082

MR. CHARLES E. PEGUES #R4082
PETITIONER PRO SE
DCF 3800 COUNTY RD 540
GREENWOOD MS. 38930

CERTIFICATE OF INTERESTED PERSONS

The Undersign Pro SE Appellant certifies that the following Listed Persons have an interest in the Outcome of the case:

Mr. Charles E. Pegues.....Pro SE Appellant
Hon. Jim Hood.....Miss. St. Atty General
Hon. Andrew K. Howorth.....Cir. Ct. Judge Trial Court

Respectfully Submitted By:
Mr. Charles Pegues #R4082
Mr. Charles E. Pegues, #R4082
Appellant Pro SE

TABLE OF CONTENTS

Cover.....1

Certificate of Interested Persons.....2

Table of Contents.....3

Table of Authorities.....4

Statement of Issues.....5

Statement of Case.....6

Argument.....7

Conclusion.....13

TABLE OF AUTHORITIES

Case

Buck vs. State, 838 SO. 2d 256,258 (Miss 2003)
Evans vs. State, 144. Miss. 1,108 SO. 725 (Miss 1926)
Hannah vs. State, 943 SO. 2d. 2027 (Miss 2006)
Jensen vs. State, 798 SO. 2d 383,385 (Miss 2001)
Moore vs. State, 676 SO. 2d 244 (Miss 1996)
Myers vs. State, 583 SO. 2d 174,177 (Miss 1991)
State vs. Sansome, 133 Miss. 428, 97 So. 753 (1923)
Strickland vs. State, 466 US.668:104 S.CT.2052:8OL.Ed.2d 674 (1984)
Vittitoe vs. State, 556 S0 2d. 1062, 1064 (Miss 1990)

Const

Miss. Const. Art. 3 Section 14
Miss. Const. Art. 3 Section 26
Miss. Const. Art. 3 Section 27
US. Const. (6th) Sixth Amendment

Statue

M.C.A 99-7-1

STATEMENT OF ISSUES

1. The Indictment fails to state venue of offense charged rendering it Fatally Defective.

2. Appellants Guilty Plea was not Freely Voluntarily, and Intelligently made where He was denied effective assistance of Counsel when Counsel informed and allowed Him to Plea Guilty to a “Defected Indictment” and due to being defective, Trial Counsel deprived Appellant of a Fair Trail for failure to Demurrer to the alleged Indictment

STATEMENT OF THE CASE

On the 10th Day of January, 2005, in the Circuit Court of Lafayette County Miss. Appellant entered a Plea of Guilty to a Charge Offense, Possession of a Controlled Substance, A violation of M.C.A 41-29-139. Subsequently Appellant was sentence to serve a term of (16) sixteen years in the Custody of the Miss. Department of Corrections. Sentenced to be served Pur. M.C.A 99-19-81. Pursuant to the instant Action, Appellant Maintains that His Conviction is Illegal. An of Constitutional Error...

ARGUMENT

According to Established Law, “The Venue of the Crime Charged is as Necessary to be set out in the indictment as any of the other Fundamentals of the Offense. The Indictment Must Give... Notice... Notice of the Place where it is Alleged that the Offense was committed.

Evans vs. State, 144 Miss. 1,108 SO. 725 (Miss 1926)

An Examination of the Indictment, Sub Judice Evidence a Failure to cite the Venue of the Crime Charged. See Exhibit A

Art. 111 26 Miss. Const. (1890) Requires that Adequate notice be given As to the Place Where Such Crime is Allege to Have been Committed. Failure to Accord is a Fundamental Error.

This Error Evidences Appellant’s lack of knowledge As to where the Allege Crime Occurred.

OUR LAW TEACHES THAT A PLEA OF GUILTY IS BINDING IN A
DEFENDANT ONLY IF IT IS ENTERED VOLUNTARILY AND INTELLIGENTLY.
MYERS V. STATE, 583 SO. 2d 174,177 (MISS. 1991). APPELLANT CONTENDS
THAT HIS PLEA HAS NOT INTELLIGENTLY MADE DUE TO INADQUATE
NOTICE OF VENUE, VITTION VS. STATE 556 SO. 2d 1062, 1064 (MISS. 1990);
ART. 111 14, 26, 27.

APPELLANT SEEKS RELIEF FOR FAILURE TO PROVIDE
FUNDAMENTAL NOTICE, VIA INDICTMENT.

Appellant Charles E. Pegues guilty Plea was not Freely, Voluntarily, and
Intelligently made where he was denied his (6th) Amendment Right Under the United
States Constitution to effective assistance of Counsel where Trial Counsel advised and
allowed Him to Plea guilty to a “Defected Indictment”... Such shown Unprofessional
Advice resulted in Substantial gravity that resulted in the Plea to an indictment that lack
subject matter Jurisdiction where it is required in Fundamental Law that an indictment
must have jurisdiction of the charge and the Person Article 3 section 27 (1890); State V.
Sansome, 133 Miss. 428, 97 SO. 753 (1923).

The Standard of Review for a claim of ineffective assistance of Counsel was established
by the United States Supreme Court in Strickland V. Washington 66 US. 668; 104 S.Ct
2052; 80 L. Ed. 2d. 674 (1984)

Cited in Moore V. State, 676 SO. 2d 244 (Miss 1996).

Under Strickland, I order to establish ineffective assistance of Counsel, Appellant must demonstrate that His Counsel's Performance was deficient and that this deficiency deprived Him of a fair trial Strickland, 466 U.S at 689; 104 S.Ct. 2052; 80L.Ed.2d.674 (1984). This test applies equally to guilty Pleas and Jury trials Hannah V. State; 943 SO. 2d. 2027 (Miss 2006). It was Unsound trial strategy for Appellant's Counsel to fail o demurrer to the indictment where it is required in Fundamental law that an indictment must have Jurisdiction of the Charge and the Person, Article 3 section 27 (1890); State V. Sansome, 133 Miss. 428, 97 SO. 753 (1923). These failures along with Counsel's overall failure to advocate Appellants cause amounted to deficient performance. The erroneous advice, coupled with Counsel's failure to Conscientiously fulfill His adversarial Role, deprived Appellant Charles E. Pegues, of His Constitutional Right to effective assistance of Counsel. Appellant was Prejudiced by this ineffectiveness because had it not been for "Counsels Errors", Appellant would not have entered this plea of guilty to the alleged charges in this alleged Indictment. Appellant's Counsel was in effective, Counsels overall Performance was deficient, and this deficiency deprived the Appellant Charles E. Pegues of a Fair Trial for failure to Demurrer this indictment... Appellant has met both standards of Review for a claim of ineffective assistance of Counsel as set forth by the United States Supreme Court in Strickland, 466, US 668: 104 S. CT 2052; 80 L. Ed 2d 674 (1984).

UNDER ART.111 27 MISS. CONST. (1890) AND M.C.A. 99-7-1 THE
CIRCUIT COURT OBTAINS SUBJECT MATTER JURISDICTION OVER A
CRIMINAL DEFENDANT WHEN THE DEFENDANT IS SERVER WITH AN
INDICTMENT. WHEN AS HERE, AN INDICTMENT IS CHALLENGED AS
DEFECTIVE; THE JURISDICTION OF THE CIRCUIT COURT TO HEAR THE
MATTER AND IMPOSE A SENTENCE IS CALLED INTO QUESTION. cf. JENSEN
V. STATE, 798 SO. 2d 383, 385 (MISS. 2001). THIS COURT SHALL CONDUCT A de
novo REVIEW.

UPON SUCH A REVIEW, IT IS AND/OR SHALL BE CLEAR THAT TRIAL COURT
HAD NO PROPER JURISDICTION TO ENTER CONVICTION AND SENTENCE
DUE TO THE DEFECTIVE INDICTMENT.

OUR LAW IS THAT A TRIAL COURT'S DENIAL OF POST-CONVICTION
RELIEF WILL NOT BE REVERSED ABSENT A FINDING THAT THE TRIAL
COURT'S DECISION WAS CLEARLY ERRONEOUS...BUCK V. STATE, 838 SO.
2d 256,258 (MISS. 2003). IN THE INSTANT CASE, THE COURTS DECISION WAS

ERRONEOUS.

CONCLUSION

APPELLANT PRAYS THIS HONORABLE COURT REVERSE THE LOWER
COURT DECISION AND FOR THE REASONS STATED HEREIN, DISMISS
THE INDICTMENT WITH PREJUDICE.

CERTIFICATE OF SERVICE

This is to certify that I, the undersigned, have this day and date mailed, via United States Mail, postage pre-paid, a true and correct copy of the foregoing and attached instruments to the following:

Court of Appeals
Kathy Gillis
P.O. Box 249
Jackson, MS. 39205-0249

Att General Jim Hood
Sillers Bldg, 550 High St.
P.O. Box 220
Jackson, MS. 39205-0220

Circuit Clerk
Mary A. Busby
101 Carthouse Square
Oxford, MS. 38655

This the 24th day of June, 2010.

Charles Pegues
PETITIONER
MDOC# 124082

3800 CR. 540
Address

Greenwood, MS. 39430
Address