

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JOSEPH R. TRISTE

APPELLANT

VS.

NO. 2010-CP-0864

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI

STATEMENT OF THE CASE

This is an appeal against an Order of the Circuit Court of Itawamba County, Mississippi in which relief was denied on the prisoner's motion in post - conviction relief.

STATEMENT OF FACTS

The prisoner entered pleas of guilty to burglary and kidnaping, and he was sentenced, as to the burglary conviction to a term of twenty - five years imprisonment, with eight years to serve, seventeen years suspended upon five years post - release supervision. As to the kidnaping conviction, the prisoner was sentenced to a term of thirty years imprisonment, to be served consecutively with the sentence imposed in the burglary conviction, all thirty years to be suspended. The court also imposed a fine and costs. (R. Vol. 1, pg. 47; 52 - 53). The prisoner then went on, later, in a sentencing hearing for one of his co-defendants, to describe what he had done in this peculiar case. (r. Vol. 1 , pp 97 - 119).

The prisoner, in November of 2009, filed a motion in post - conviction relief. His claim for

relief consisted of a claim that the five - year period set for post - release supervision amounted to an illegal sentence. It was said that the twenty - five year sentence together with a five - year period of post - release supervision exceeded the maximum sentence imposable upon conviction of burglary of an occupied dwelling. (R. Vol. 1, pp. 4 - 12).

By order filed on 9 March 2010, relief was denied on the prisoner's motion, without an evidentiary hearing. (R. Vol. 2, pp. 199 - 200). While the prisoner failed to file a notice of appeal in a timely fashion, the circuit court granted an out - of - time appeal. (R. Vol. 2, pg. 220).

STATEMENT OF ISSUES

1. DID THE CIRCUIT COURT ERR IN DENYING RELIEF UPON THE PRISONER'S MOTION IN POST - CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING?

SUMMARY OF ARGUMENT

THAT THE CIRCUIT COURT DID NOT ERR IN DENYING RELIEF UPON THE PRISONER'S MOTION IN POST - CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING

ARGUMENT

THAT THE CIRCUIT COURT DID NOT ERR IN DENYING RELIEF UPON THE PRISONER'S MOTION IN POST - CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING

The prisoner was sentenced to a term of twenty - five years imprisonment, with eight years incarceration and seventeen years for which execution of sentence was suspended. A period of five years of post - release supervision was also ordered. A fine was also imposed upon the prisoner in the amount of one thousand dollars. (R. Vol. 1, pp. 13 - 14).

The prisoner claims that the period set for post - release supervision, together with the sentence imposed, exceeded the maximum penalty for the felony of burglary of an occupied dwelling. Under Miss. Code Ann. Section 97-17-23 (Rev. 2010), the maximum period of imprisonment is set at twenty - five years.

Under Miss. Code Ann. Section 47-7-34(1) (Rev. 2004), a period set for post - release supervision together with a period of incarceration may not exceed the maximum sentence for the crime committed. The prisoner, however, was actually sentenced to serve only eight years imprisonment. That being so, the five - year period set for post - release supervision, added to that period of incarceration, did not exceed the statutory maximum. The circuit court therefore did not impose a sentence in excess of that provided by statute. *Brown v. State*, 923 So.2d 258 (Miss. Ct. App. 2006).

While it does not appear that the imposition of a fine of one thousand dollars is a penalty that may be imposed under the provisions of Section 97-17-23, the authority to impose such a fine is found at Miss. Code Ann. Section 99-19-32 (Rev. 2007). *Cochran v. State*, 969 So.2d 119, 122 (Miss. Ct. App. 2007).

A circuit court may deny relief on a motion in post - conviction relief where it plainly appears from the face of the motion, annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief. Miss. Code Ann. Section 99-39-11(2) (Rev. 2010). It is quite clear that the prisoner was entitled to no relief on the grounds alleged by him in his motion in the circuit court; the circuit court was clearly correct in denying relief.


CONCLUSION

The Order of the circuit court denying relief on the prisoner's motion in post - conviction relief should be affirmed.

Respectfully submitted,

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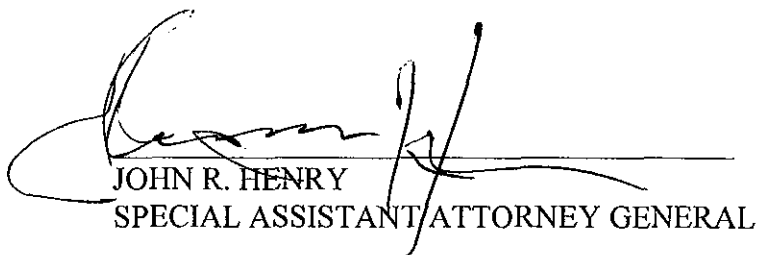
I, John R. Henry, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 20th day of December, 2010.


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