

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JIMMY TRAYLOR

APPELLANT

VS.

NO. 2010-CP-1139-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF ISSUE

TRAYLOR WAS NOT PLACED TWICE IN JEOPARDY FOR THE SAME OFFENSE BY ENTERING GUILTY PLEAS TO MANSLAUGHTER AND FELONY CHILD ABUSE BECAUSE THE FACTUAL BASIS FOR EACH CHARGE INVOLVED THE COMMISSION OF TWO SEPARATE AND DISTINCT CRIMINAL ACTS.

STATEMENT OF FACTS

Jimmy Traylor was indicted for the depraved heart murder of his three month old son, Deante Shawn Traylor, who was literally starved to death while in Traylor's care. C.P. 15, 39. Traylor was also presented with a bill of information which charged him with felonious child abuse, as it was discovered prior to or at the time of Deante's death that he had also suffered a fractured femur. C.P. 15, 41. Traylor, with the benefit of counsel, pleaded guilty to manslaughter and felony child abuse. C.P. 17. Traylor was sentenced to serve a term of twenty years for the manslaughter conviction and to concurrently serve a term of forty years for the felony child abuse conviction. C.P. 18.

Traylor subsequently filed a motion for post-conviction relief which was summarily dismissed by the trial court. C.P. 46. Traylor now appeals the trial court's dismissal of his motion for post-conviction relief.

SUMMARY OF ARGUMENT

Traylor has not been twice put in jeopardy for the same offense. Traylor's act of intentionally fracturing his infant son's femur was a separate criminal act from starving the infant to death, even if the time frame of the two crimes overlapped.

ARGUMENT

TRAYLOR WAS NOT PLACED TWICE IN JEOPARDY FOR THE SAME OFFENSE BY ENTERING GUILTY PLEAS TO MANSLAUGHTER AND FELONY CHILD ABUSE BECAUSE THE FACTUAL BASIS FOR EACH CHARGE INVOLVED THE COMMISSION OF TWO SEPARATE AND DISTINCT CRIMINAL ACTS.

Traylor believes that he received ineffective assistance of counsel because his attorney allowed him to plead guilty to felony child abuse and manslaughter, which Traylor incorrectly asserts subjected him to double jeopardy.

The Fifth Amendment provides that no person shall be "subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. The Mississippi Constitution also provides that "no person's life or liberty shall be twice placed in jeopardy for the same offense" Miss. Const. art. 3, § 22. "[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." *Blockburger v. United States*, 284 U.S. 299, 304 (1932). A detailed *Blockburger* analysis is completely unnecessary in the present case because Traylor was charged with, and pleaded guilty to, committing two separate acts: intentionally fracturing his baby's femur and starving his baby to death. Simply because the infant victim in this case survived for only three months in the defendant's "care" and likely suffered a broken femur at the hands of his father at the same time his father was starving him to death does not mean that Traylor has been subjected to double jeopardy.

Double jeopardy protects criminal defendants from being exposed to more than one prosecution for the same offense. It does not protect a defendant against different prosecutions for different offenses. It is not a legal analog to some sort of "blue light special" where a defendant, by having the foresight or good fortune to commit the same crime or different crimes in close connection to each other, gets two or more offenses for the price of one.

Id. (quoting *Wright v. State*, 540 So.2d 1, 5 (Miss. 1989)). The crimes of manslaughter and felonious child abuse each require proof of an element not necessary to the other. Accordingly, Traylor's double jeopardy claim via an ineffective assistance of counsel claim necessarily fails.

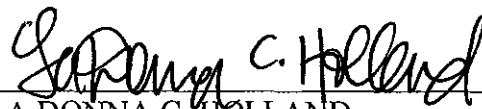
CONCLUSION

For the foregoing reasons, the trial court's summary dismissal of Traylor's motion for post-conviction relief must be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE


I, La Donna C. Holland, 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 21st day of January, 2011.



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