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In The Supreme Court Of The State Of Mississippi

No. 2010-CP-01886-CA

Corey Parker

Appellant

Vs.

State Of Mississippi

Appellee

FILED

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SUPREME COURT
COURT OF APPEALS

Appeal from the
Circuit Court of Jones County,
Mississippi

Brief Of Appellant



Corey Parker # 38570
Pro se, Appellant
Jefferson/Franklin Corr. Fac.
279 Hwy. 33
Fayette, MS. 39069

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Corey Parker

Appellant

Vs.

State Of Mississippi

Appellee

Certificate Of Interested Persons

The undersigned Pro se- Appellant certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or refusal:

- 1) Corey Parker.....Appellant
- 2) Anthony J Buckley.....District Attorney
- 3) Billy Joe Landrum.....Trial Judge



Corey Parker # 38570
Pro se, Appellant

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Statement Of The Issues

1. Can an illegal sentence be Time Barred Pursuant to State Law clearly established by
The Supreme Court of The State of Mississippi?

2. Did the Trial Court erred in sentencing Appellant contrary to the language and or
Statutory Guidelines of the statute by which He was indicted?

Statement Of The Case

A. Statement of the Facts

Corey Parker acting alone robbed three fast food establishments of currency.

B. Procedural History

The Appellant, Corey Parker, was indicted by the Jones County, Mississippi Grand Jury on or about January 8, 1995, for the charge of Armed Robbery in violation of Miss. Code Ann. **§ 97-3-79**, as amended.

Appellant submitted a petition in The Trial Court to enter a plea of guilty, and thereby was sentenced by The Trial Court to serve a term of Twenty (20) years in The Mississippi Department of Corrections. From the aforesaid facts and or Procedural History, Appellant Corey Parker has Perfected this Appeal.

Summary Of The Argument

Appellant Corey Parker urges this Court to reverse his conviction and sentence in the Court below and set forth several separate and distinct grounds requiring reversal.

Though the record (**Hereto Attached**) indicates that the Appellant Corey Parker understood the impact of entering plea of guilty to the charge of Armed Robbery, and The Trial Court found that He knowingly and intelligently entered said plea. The sentence however, Pursuant to the Legislative enactment and language expressed in Miss. Code Ann. **§ 97-3 79**, the statute by which the Appellant was sentenced exceed the maximum term allowed by law.

The Appellant submits that He did not challenge the Constitutionality of His guilty plea, He only challenged the illegal sentence imposed on Him as a result of said plea. The language enacted in the statute by which Appellant was indicted speaks plainly in that it clearly states that the Appellant **“Shall be guilty of Robbery”**, which under Mississippi Law carries a term not more than fifteen (15) years. Also, under Mississippi Law a basic tent of statutory construction is that **“SHALL”** is mandatory. Therefore, if said language should be change to mean anything other than the basic tent of the statute, such change can only be done by legislative authority and not by Judicial Pronouncement.

The Trial Court's contention seems to be that Appellant understood the terms of His guilty plea. That however, is not the crux of Appellant's argument, the argument here is that the Trial Court when accepting Appellant's guilty plea did not adhere to the mandatory language expressed in the statute by which Appellant was indicted. Thereby, dispensing as it did with the basic tent of the statute, and sentenced the Appellant beyond the maximum term authorized by Law. Appellant therefore urges reversal of His sentence and conviction in the Court below.

Argument

I. There are no Procedural or Time Bars Applicable to Appellant's case.

It is well settled and consistently held by this Court that, a claim that the Defendant is serving an illegal sentence is not subject to the three-year statutory Time Bar for filing a Motion for Post-Conviction relief because errors affecting a fundamental constitutional right are excepted from the three-year statutory Time Bar. See, Caviness V. State, 1 So. 3d 917 (Miss. App. 2008); Miller V. State, 879 So. 2d 1050, 1051 (Miss. 2004) (Citing Ivy V. State, 731 So. 601, 602 (Miss. 1999)).

The aforesaid authority and adherence has just been recently affirmed by this Court in Rowland V. State, No. 2008-CT-00731-sct. July 29, 2010, where The Court unequivocally held that errors affecting Fundamental Constitutional Rights are excepted from the Procedural Bars of (Upccra). Therefore, the foregoing issue is properly before The Court as a question of Law, and should be given **de novo** review.

II. The mandatory language enacted by the legislature in Miss. Code Ann. § 97-3-79, the statute by which Appellant was indicted gives Appellant the Constitutional Right to a sentence of not more than fifteen (15) years.

To begin with Appellant would present the language in Miss. Code Ann. §97-3-79, the statute by which He was indicted:

Every person who shall feloniously take or attempt to take from the person or from the presence the personal property of another and against his will by violence to his person by the exhibition of a deadly weapon **Shall be guilty of Robbery** and, upon conviction, shall be imprisoned for Life in the State Penitentiary if the penalty is so fixed by the Jury; and in cases where the Jury fails to fix the Penalty at imprisonment for Life in The State Penitentiary the Court shall fix the penalty at imprisonment in the State Penitentiary for any term not less than three (3) years.

Prior to and since Appellant's sentence and conviction this Court has consistently held that a basic tent of statutory construction is that "**Shall**" is mandatory and "**May**" is discretionary. Franklin V. Franklin Exrel., Phillips, 858 So. 2d 110 (Miss. 2003) (Citing Planters Bank & Trust Co. V. Sklar, 555 So. 2d 1024, 1027 (Miss. 1990), Murphy V. State, 253 Miss. 644, 649, 178 So. 2d 692 (1965). In specific terms, the language **Shall be guilty of Robbery** enacted in the Statute by which Appellant was indicted, creates for the Appellant a due process entitlement, which in this case would be the term of sentence authorized for **Robbery** as clearly established by Mississippi Law. 1

1. Robbery; Penalty **§ 97-3-73**

Every Person convicted of Robbery **Shall** be punished by Imprisonment in the Penitentiary for a term not more than fifteen years.

Therefore, it is unarguably clear that pursuant to Statutory Law, the language of a Statute is controlling, and that language should be attributed a usual and ordinary meaning. See, Necaise V. State, 771 So. 2d 353 (Miss. 2000); Mississippi Casino Operators Ass'n V. Miss. Gaming Comm'n, 654 So.2d 892, 894 (Miss. 1995); Buelow V. Kemp Co., 641 So. 2d 1226, 1228-29 (Miss. 1994). A plain reading of the Statute sub Judice is “**Shall be guilty of Robbery.**” Where a Statute is clear and unambiguous, no further statutory construction is necessary and the statute should be given its plain meaning. City of Natchez V. Sullivan, 612 So. 2d 1087, 1089 (Miss. 1992). The enacted Statute by which the Appellant was indicted here speaks plainly, The Appellant “**Shall be guilty of Robbery**”, the Penalty of which is a term not more than fifteen (15) years.

The Appellant would humbly note and/or Appeal to the Court that if for whatever reason the language expressed in the Statute by which the Appellant was indicted should be changed to mean anything other than what it plainly states, such change can only be done by Legislative Authority and not by Judicial Pronouncement. The role of the Courts in determining the Legislative intent and constitutionality of acts passed by the Legislature are well settled. Stockstill V. State, 854 So. 2d 1017 (Miss. 2003); Anderson V. Lambert, 494 So.2d 370, 372 (Miss. 1986) (Citing Baker V. State, 327 So. 2d 288 (Miss. 1976); Carter V. Harrison County Election Comm'n, 183 So. 2d 630 (Miss. 1966); Beard V. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

Wrenched from the aforesaid authority and incorporated into the dominant requirements of due process, and there exist no Law that supercede the plain language of a Statute or exclude the Basic Tent thereof.

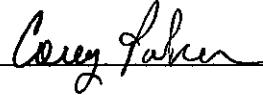
Therefore, it is plainly clear that the Twenty (20) year sentence imposed on the Appellant by the Trial Court superceded the plain language and/or authorization of The Statute for **Robbery**, which is fifteen years under Mississippi Law. Again if the language in said Statute should be changed to mean anything other than **Shall be guilty of Robbery**, such change or correction can only be done by Legislative Authority and not by Judicial Pronouncement. **In short**, The Trial Court in sentencing the Appellant was bound by the plain language of the Statute so enacted and worded by the Legislature, and not by presumption.

The error in this case was such that Appellant was denied a Fundamental Constitutional Right to a Legal sentence authorized by Law. Accordingly, the sentence and conviction thereby imposed must be reversed.

Conclusion

Appellant Corey Parker was given a sentence that could not have been just. For the reasons and authority herein above stated, Appellant respectfully submits that his conviction in the Court below must be reversed, and the sentence imposed by that Court vacated.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Corey Parker", is written over a horizontal line.

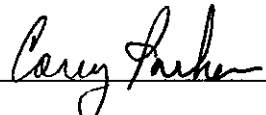
Corey Parker #38570
Pro se, Appellant

Certificate Of Service

Let this certify that I , Corey Parker #38570, the undersigned Appellant has this Date caused a true and correct copy of the foregoing the Appellant Brief, via U.S. Mail, postage prepaid to the following person (s) :

Hon. Jim Hood
Attorney General
P.O. Box 220
Jackson, MS. 39205-0220

Executed, This The 6 Day Of January, 2010.


Corey Parker #38570
Pro se, Appellant