

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2021-CA-01101-COA

SOWETO RONNELL LOVE

APPELLANT

V.

CORRECTIONAL

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLANT

FILED

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COURT OF APPEALS

BY:

S. Love

Soweto Ronnell Love, Pro se

ORAL ARGUMENT NOT REQUESTED

PRO SE PRISONER BRIEF

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CERTIFICATE OF INTERESTED PERSONS

The undersigned Appellant, Soweto Ronnell Love, certifies that the following listed persons have an interested in the outcome of this case. The representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

- Soweto Ronnell Love, Appellant pro se;
- Honorable Gerald Chatham, Circuit Court Judge;
- Honorable Ronda Amis, Assistant District Attorney;
- Honorable Stacey Spriggs, Defense Attorney

Respectfully Submitted,

BY:



Soweto Ronnell Love, #231096
Unit 30, MSP
Parchman, MS 38671

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STATEMENT OF CASE

Appellant, Soweto Ronnell Love, was charged by indictment with: Obtaining a controlled substance by fraud; attempting to obtain a controlled substance by fraud; possession of a controlled substance; and possession of a false, fraudulent and forged prescription. Appellant initially entered pleas of not guilty to all charges set out in the indictment. Appellant subsequently appeared before the trial court to change his pleas to guilty but did not change such pleas as previously prearranged and anticipated by trial counsel. Appellant specifically advised the trial court that he did not desire to plead guilty. Notwithstanding such testimony and entry by appellant, the trial court nevertheless entered a plea of guilty to such charges and imposed a sentence of 10 years imprisonment in the custody of the Mississippi Department of Corrections. Appellant's plea was involuntary as a matter of law.

STANDARD OF REVIEW

This Court has held that "When reviewing a circuit court's denial or dismissal of a PCR motion, we will reverse the judgment of the circuit court only if its factual findings are clearly erroneous; however, we review the circuit court's legal conclusions under a de novo standard of review." Hays v. State, 321 So.3d 1208, 1211 (¶4) (Miss. Ct. App. 2021), cert. denied, 321 So.3d 565 (Miss. 2021).

STATEMENT OF ISSUES

I.

As a matter of law, the Movant was subjected to fundamental plain error where trial court failed to acknowledge Appellant's attempt to reject the pleas of guilty which had been prearranged by counsel. Appellant was denied due process of law, in violation of the 5th and 14th Amendments to the United States Constitution.

II.

The trial court erred in imposing sentence upon Appellant where Appellant testified to Court that he, Appellant, was told Appellant would get probation and where Appellant did not fully admit to court that he committed crimes and told court prior to sentencing that he did not wish to enter plea of guilty. Appellant was deprived of his fundamental constitutional right in the court's actions of ignoring Appellant's testimony without evaluation or explanation.

STATEMENT OF FACTS

Soweto Ronnell Love, was indicted in Tate County, Mississippi, and charged, as a habitual offender under Mississippi Code Ann. Sec. 99-19-81, with Obtaining a controlled substance by fraud; attempting to obtain a controlled substance by fraud; possession of a controlled substance; and possession of a false, fraudulent and forged prescription. Appellant initially entered pleas of not guilty to all charges set out in the indictment. Appellant subsequently appeared before the trial court to change his pleas to guilty but did not change such pleas as previously prearranged and anticipated by trial counsel. Appellant specifically advised the trial court that he did not desire to plead guilty. Notwithstanding such testimony and entry by appellant, the trial court nevertheless entered a plea of guilty to such charges and imposed a sentence of 10 years imprisonment in the custody of the Mississippi Department of Corrections. Appellant's plea was involuntary as a matter of law.

Appellant testified to trial court that he had been advised he would be sentenced to probation and had signed a waiver to that effect. Additionally, Appellant never fully admitted guilt and told court, prior to imposition of sentence, that he did not wish to plead guilty. (Tr.

Sentencing pp. 15)

The trial court denied Love Post Conviction Motion without a hearing, when presented with these facts and issue this Court should reverse and remand this case to trial court for hearing or vacate plea and conviction and discharge Love.

SUMMARY OF ARGUMENT

Voluntary and Intelligent

Love would argue that his plea was not voluntary or intelligent. First, he would contend he was “induced by deception” by his attorney at the time, who promised that if Appellant Love pleaded guilty, he would only receive a probation sentence. Second, Appellant Love claims he was required to proceed without being represented by the attorney who had announced that he represented Love, which caused him confusion during the plea hearing.

A plea of guilty is only binding if it is entered voluntarily and intelligently. *Myers v. State*, 583 So.2d 174, 177 (Miss.1991). In order to determine whether a plea is voluntary, the appellate court examines whether “the defendant knows what the elements are of the charge against him including an understanding of the charge and its relation to him, what effect the plea will have, and what the possible sentence might be because of his plea.” *Wilson v. State*, 577 So.2d 394, 397 (Miss.1991). Further, “[s]olemn declarations in open court carry a strong presumption of verity.” *Baker v. State*, 358 So.2d 401, 403 (Miss.1978) (quoting *Blackledge v. Allison*, 431 U.S. 63, 74, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)).

ARGUMENT

Denial Of Due Process of Law Creating Plain Error

Appellant Love would assert that his plea was not knowing, intelligent and voluntary because he **thought that he was pleading guilty to probationary sentence as he had been advised when signing the waiver.** The plea transcript sets forth facts in support of Love's assertions. Love told the Judge that he had been informed **that his plea would result in probation.** (Tr. Sentencing, pp. 10-11) Under such circumstances, such plea, based on false information from the attorney which the trial court refused to acknowledge no longer represented Love, constitute a plea which was involuntary and was not knowing and intelligent. Such actions by the trial court "would so offend notions of due process and fundamental fairness in the criminal process as to warrant notice as plain error." *Bland v. State*, 771 So.2d 961, 964 (¶ 8) (Miss.Ct.App.2000) (citation omitted).

As noted above, throughout the plea hearing, the trial court continuously rejected Love's attempt to secure the representation from the attorney whom had been hired to represent him. Said attorney had been hospitalized on an emergency. The trial court insisted that Appellant be sentenced even if there was a possibility that a mistake had been made.

The Mississippi Supreme Court has held that in order for a guilty plea to pass constitutional muster [i]t is essential that an accused have knowledge of the critical elements of the charge against him, that he fully understand the charge,

how it affects him, the effects of a guilty plea to the charge, and what might happen to him in the sentencing phase as a result of having entered the plea of guilty. Love did not have that knowledge since he told the Court that he had been told he would not be charged as a habitual and would get probation. *Gilliard v. State*, 462 So.2d 710, 712 (Miss.1985) (citing *Henderson v. Morgan*, 426 U.S. 637, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976)). Furthermore, “[i]t is the duty of the trial court to address the defendant personally and to inquire and determine . [t]hat the accused understands the nature and consequences of such plea, and the maximum and minimum penalties provided by law.” U.R.C.C.C. 8.04(A)(4)(b).

It is evident from the record that, throughout the plea hearing, the trial court was told by Love that he was not guilty (Tr. Plea, pp. 12); that he did not wish to enter such plea (Tr. Sentencing, pp. 15); that he was informed by counsel that he would receive probation (Tr. Sentencing, pp. 9-10) Because of this obvious misunderstanding, it was impossible for the trial court to find that Love understood “the nature and consequences of the plea, and the maximum and minimum penalties provided by law.” *Id.* Love asserted it was his understanding it was probation.

The Mississippi Supreme court has stated: [a] factual basis is an “essential part of the constitutionally valid and enforceable decision to plead guilty.” This factual basis cannot simply be implied from the fact that the defendant entered a plea of guilty. Rather, there must be an evidentiary foundation in the record which is “sufficiently specific to allow the court to determine that the defendant's

conduct was within the ambit of that defined as criminal.” Unless courts are satisfied that such a factual basis exists, they are admonished not to enter judgment on a plea of guilty. Lott v. State, 597 So.2d 627, 628 (Miss.1992) (citations omitted). After having indicated to the Court that he was not guilty, Love did not provide an adequate factual basis for the crimes in which the Court found him guilty of so his guilty plea is constitutionally invalid and unenforceable.

CONCLUSION

WHEREFORE THESE PREMISES CONSIDERED, Appellant urges that this court reverse this case to the trial court with instructions that the conviction be vacated and Appellant be discharged. In the alternative, Appellant prays that this Court direct that this court reverse and remand for an evidentiary hearing.

Respectfully submitted,

BY: S. Love
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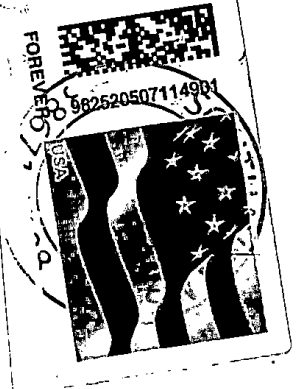
CERTIFICATE OF SERVICE

This is to certify that I, Soweto R. Love, Appellant, have this date served a true and correct copy of the above and foregoing Brief For Appellant, by United States Postal Service, first class postage prepaid, to Honorable Lynn Finch, Attorney General, P. O. Box 220, Jackson, MS 39205; Honorable Gerald Chatham, Circuit Court Judge, Desoto County Courthouse, Hernando, MS 38632; Honorable Ronda Amis, Asst. District Atty, Desoto County Courthouse, Hernando, MS 38632.

This, 7th day of June, 2022.

BY: S. Love
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