

IN THE COURT OF APPEALS 8/6/96

OF THE

STATE OF MISSISSIPPI

NO. 93-KA-00372 COA

JEFFREY SMITH

APPELLAN

v.

STATE OF MISSISSIPPI

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. GRAY EVANS

COURT FROM WHICH APPEALED: LEFLORE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

ROGER MATHES

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JEFFREY A. KLINGFUSS

DISTRICT ATTORNEY: FRANK CARLTON

NATURE OF THE CASE: BURGLARY OF A DWELLING AND ATTEMPTED BURGLARY
OF AN OCCUPIED DWELLING

TRIAL COURT DISPOSITION: VERDICT OF GUILTY ON BOTH COUNTS; SENTENCED TO TEN YEARS ON COUNT ONE AND FIFTEEN YEARS WITH FIVE YEARS SUSPENDED ON COUNT TWO IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS. COUNT ONE IS TO BE CONSECUTIVE TO THE REVOCATION OF A SUSPENDED SENTENCE OF FOUR YEARS; COUNT TWO IS TO BE CONSECUTIVE TO THE SENTENCE IN COUNT ONE.

BEFORE THOMAS, P.J., DIAZ, AND PAYNE, JJ.

PER CURIAM:

SUMMARY

Jeffrey Smith was convicted on a two count indictment charging him with burglary of a dwelling and attempted burglary of an occupied dwelling. Aggrieved by the verdict, Smith appeals assigning one issue as error--whether the State has proven his guilt beyond a reasonable doubt. Finding no error, we affirm.

As to the charge of attempted burglary, homeowner Fred Prater testified that he was sitting in his kitchen on the morning of December 15, 1992, when he heard "pecking" on the kitchen window. Aware that his neighbor's home had been burglarized the previous morning, Prater testified that he went outside and saw Smith "pecking" on the window, which, by that time, had been broken. Prater confronted Smith, who immediately ran away. Officer Rafus Davis testified that, after a short chase, Smith was quickly apprehended by officers of the Greenwood Police Department hiding under the clothing in his bedroom closet. At trial, Prater positively identified Smith as the individual whom he saw breaking his kitchen window.

As to the charge of burglary of a dwelling, homeowner Robert King testified that when he came home from work around noon on December 14, 1992, his home had been burglarized, and jewelry and other items had been taken. After being apprehended for the attempted burglary of Prater's home, Smith gave a statement to the police which was read to the jury, without objection, that he, along with two other men, had burglarized a house on December fourteenth, taking jewelry and other items. Detective Charlie Barr testified on cross examination that Smith returned the jewelry stolen from King's home after he was caught.

LAW

Smith is procedurally barred from raising his assignment of error since he does not cite this court to any authority in support of his position nor does he make more than a cursory attempt to argue this point in his brief. *McClain v. State*, 625 So. 2d 774, 780 (Miss. 1993); *Rogers v. State*, 599 So. 2d 930, 933 (Miss. 1990).

Further, even if he were not barred from raising this issue, there is no merit to the same. Our scope of review on appeal to a challenge as to the weight and sufficiency of the evidence supporting a jury

verdict is very limited. *Holmes v. State*, 660 So. 2d 1225, 1227 (Miss. 1995); *McClain*, 625 So. 2d at 778; *Noe v. State*, 616 So. 2d 298, 302 (Miss. 1993); *Nicolaou v. State*, 612 So. 2d 1080, 1083 (Miss. 1992). The testimony of a single credible witness is sufficient to sustain a conviction. *Holmes*, 660 So. 2d at 1227. Suffice it to say that there was more than ample evidence supporting the jury's verdict.

As a procedural matter, the verdict of the jury correctly stated the proper convictions under each count of the indictment, count one being burglary of a dwelling and count two being attempted burglary of an occupied dwelling, and the trial court correctly sentenced Smith accordingly on the record. However, the actual sentencing order in the case sub judice herein incorrectly reflects a conviction on count one as attempted burglary of an occupied dwelling and a conviction on count two as burglary of an occupied dwelling. Although we are affirming the convictions and sentences in this case, we hereby direct the trial court, upon receipt of the mandate herein, to enter a corrected sentencing order without further hearing and have a certified copy thereof transmitted to the Mississippi Department of Corrections and the clerk of this court.

THE JUDGMENT OF THE CIRCUIT COURT OF LEFLORE COUNTY OF CONVICTION ON COUNT ONE OF BURGLARY OF A DWELLING AND SENTENCE OF TEN YEARS AND THE CONVICTION ON COUNT TWO OF ATTEMPTED BURGLARY OF AN OCCUPIED DWELLING AND SENTENCE OF FIFTEEN YEARS WITH FIVE YEARS SUSPENDED IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH COUNT ONE TO BE CONSECUTIVE TO THE REVOCATION OF A SUSPENDED SENTENCE OF FOUR YEARS AND COUNT TWO TO BE CONSECUTIVE TO THE SENTENCE IN COUNT ONE IS AFFIRMED, BUT REMANDED WITH INSTRUCTIONS. ALL COSTS ARE ASSESSED TO LEFLORE COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.