

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2004-CP-00127-COA

BERNARD BRYANT

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF TRIAL COURT JUDGMENT:	12/10/2003
TRIAL JUDGE:	HON. MIKE SMITH
COURT FROM WHICH APPEALED:	LINCOLN COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	BERNARD BRYANT (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL
	BY: W. GLENN WATTS
DISTRICT ATTORNEY:	DEE BATES
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
TRIAL COURT DISPOSITION:	POST-CONVICTION RELIEF DENIED
DISPOSITION:	AFFIRMED - 08/03/2004
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	

BEFORE SOUTHWICK, P.J., MYERS AND CHANDLER, JJ.

SOUTHWICK, P.J., FOR THE COURT:

¶1. Bernard Bryant's petition for post-conviction relief was denied. After reviewing his appellate issues, we find no error and affirm.

¶2. Bryant pled guilty to the sexual battery of a girl under the age of fourteen. He was given an eight year sentence, seven and one half years suspended with five years of probation. His probation has been revoked and Bryant is now incarcerated. He filed a petition for post-conviction relief in circuit court, which

was denied. Bryant appeals raising issues with his indictment, his sentence, and the effectiveness of counsel.

DISCUSSION

¶3. The circuit judge dismissed Bryant's motion for post-conviction relief, finding that it was time barred. Bryant was sentenced on July 12, 1999. His motion for post-conviction relief was filed on November 17, 2003. When a conviction arises from a guilty plea, a motion for post-conviction relief must be made within three years after the judgment. Miss. Code Ann. § 99-39-5(2) (Rev. 2000). The same subsection provides for some exceptions to this three year limitation. We examine the nature of Bryant's claims to see if any are within those exceptions.

¶4. Bryant alleges that the indictment should have charged that the eleven-year-old victim did not consent to the offense. At the time of the offense, the statute defined the crime as sexual penetration of a child under the age of fourteen. Miss. Code Ann. § 97-3-95(1)(c) (Rev. 1994). Consent was not an issue. Further, he alleges that he was not told of a statutory minimum sentence. The sentencing statute in effect for his offense provided for imprisonment for *not more* than thirty years, without a minimum. Miss. Code Ann. § 97-3-101 (Rev. 1994). Bryant was sentenced to eight years. The ineffective assistance of counsel issue focuses on the failure to object to the unobjectionable indictment and counsel's advice about parole. None of these issues are exceptions to the three year deadline for bringing claims.

¶5. **THE JUDGMENT OF THE CIRCUIT COURT OF LINCOLN COUNTY DENYING POST-CONVICTION RELIEF IS AFFIRMED. ALL COSTS ARE ASSESSED TO LINCOLN COUNTY.**

**KING, C.J., BRIDGES, P.J., LEE, IRVING, MYERS, CHANDLER AND GRIFFIS, JJ.,
CONCUR.**