

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-CP-01309-COA

**RAYMOND HUGHES A/K/A RAYMOND
ARTHUR HUGHES**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	06/12/2019
TRIAL JUDGE:	HON. JOHN ANDREW GREGORY
COURT FROM WHICH APPEALED:	LAFAYETTE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	RAYMOND HUGHES (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BARBARA BYRD
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
DISPOSITION:	AFFIRMED IN PART; REVERSED IN PART; VACATED AND REMANDED IN PART - 06/29/2021
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE WILSON, P.J., LAWRENCE AND McCARTY, JJ.

LAWRENCE, J., FOR THE COURT:

¶1. On February 23, 2017, Raymond Hughes was indicted for felony driving under the influence (DUI) third¹ (“2017 DUI”) in violation of Mississippi Code Annotated section 63-11-30 (Rev. 2017). On June 7, 2018, Hughes was indicted for felony DUI fourth² (“2018 DUI”) under Mississippi Code Annotated section 63-11-30 (Rev. 2017). Prior to the 2017 and 2018 DUIs, Hughes was convicted on three additional DUI charges on June 24, 2008,

¹ Lafayette County Circuit Court Cause No. LK17-041.

² Lafayette County Circuit Court Cause No. LK18-227.

December 18, 2012, and April 16, 2013. The June 24, 2008 conviction occurred in Washington County, Utah, and the December 18, 2012 and April 16, 2013 convictions occurred in Lafayette County, Mississippi. On October 18, 2018, Hughes pled guilty to both the 2017 DUI and the 2018 DUI. Hughes was sentenced on the 2017 DUI to serve a total of four years in the custody of the Mississippi Department of Corrections (MDOC). A fine of \$2,000 was suspended. On the 2018 DUI, Hughes was sentenced to ten years in the custody of the MDOC, with six years suspended and four years to serve running concurrent with the sentence imposed on the 2017 DUI. Further, Hughes was placed on five years of supervised post-release supervision and ordered to pay a fine in the amount of \$3,000.

¶2. On May 29, 2019, Hughes filed a motion for post-conviction collateral relief (PCR) with the Lafayette County Circuit Court asserting five issues: (1) defective indictment, (2) ineffective assistance of counsel, (3) involuntary plea, (4) violation of his right to a speedy trial, and (5) violation of his due-process rights. On June 12, 2019, the circuit court denied Hughes' PCR motion. On appeal, Hughes raises all five issues.

STANDARD OF REVIEW

¶3. A trial court's denial of a PCR motion "will not be reversed absent a finding that the trial court's decision was clearly erroneous." *Smith v. State*, 806 So. 2d 1148, 1150 (¶3) (Miss. Ct. App. 2002). However, when questions of law are raised, the proper standard of review is de novo. *Brown v. State*, 731 So. 2d 595, 598 (¶6) (Miss. 1999).

ANALYSIS

I. Defective Indictment

¶4. Hughes first argues that his 2018 DUI indictment was defective because the indictment unlawfully used his 2008 out-of-state DUI conviction to enhance his 2018 DUI to his fourth offense. In addition, he argues that the trial court erred in considering his prior out-of-state DUI in his 2018 DUI indictment pursuant to section 63-11-30(7). Section 63-11-30(7) reads:

(7) Out-of-state prior convictions. **Convictions in another state**, territory or possession of the United States, or under the law of a federally recognized Native American tribe, of violations for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle **occurring within five (5) years before an offense shall be counted for the purposes of determining if a violation** of subsection (1) of this section is a **second, third, fourth** or subsequent **offense** and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

Miss. Code Ann. § 63-11-30(7) (emphasis added). However, subsection (8) states that:

(8) Charging of subsequent offenses. (a) For the purposes of determining how to impose the sentence for a second, third, fourth or subsequent conviction under this section, the affidavit or indictment shall not be required to enumerate previous convictions. It shall only be necessary that the affidavit or indictment states the number of times that the defendant has been convicted and sentenced within the past five (5) years for a second or third offense, or **without a time limitation for a fourth or subsequent offense, under this section to determine if an enhanced penalty shall be imposed.** The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third, fourth or subsequent offense of this section.

Miss. Code Ann. § 63-11-30(8) (emphasis added).

¶5. Hughes' 2018 indictment for DUI fourth offense listed his April 16, 2013 and December 18, 2012 convictions from Lafayette County, Mississippi, and his June 24, 2008 conviction from Washington County, Utah, as the three underlying DUI convictions for the

purpose of determining that the 2018 DUI was a fourth offense. However, section 63-11-30(7) prevents the use of Hughes' out-of-state 2008 DUI for this purpose because it occurred outside of the five-year window provided by statute. Although not listed in the 2018 indictment, Hughes' 2017 felony DUI could not have been used in the 2018 indictment as he had not yet been convicted of the 2017 charge at the time of his 2018 indictment.³ Therefore, because the indictment for the 2018 DUI incorrectly included Hughes' 2008 out-of-state DUI conviction as an underlying conviction for purposes of classifying a felony DUI fourth, and because Hughes' guilty plea also expressly relied on the 2008 out-of-state conviction, the circuit court judgment as to that conviction only should be and is vacated. Cause No. LK18-227 is remanded to the active docket of the circuit court. The State may either pursue a lesser-included offense under the indictment⁴ or move to amend the indictment based on Hughes' conviction on the 2017 charge. Because the felony DUI fourth conviction is vacated, a further analysis of Hughes' claims as related to the 2018 conviction is not necessary.

II. Ineffective Assistance of Counsel and Involuntary Plea

¶6. Hughes also argues that his guilty plea to the 2017 DUI was involuntary as a result of

³ Hughes pled guilty to the 2017 felony DUI third offense on the same day as the 2018 DUI fourth offense.

⁴ *Cf. Ostrander v. State*, 803 So. 2d 1172, 1176 (¶13) (Miss. 2002) (holding that “[t]he charge of a second-offense DUI necessarily includes the charge of first-offense DUI” and that a defendant indicted for the greater offense may be convicted of the lesser-included offense); *Smith v. State*, 950 So. 2d 1056, 1060-61 (¶18) (Miss. Ct. App. 2007) (reversing a conviction for third-offense DUI and rendering a conviction for second-offense DUI where the State had provided only one prior qualifying DUI conviction).

ineffective assistance of counsel. Hughes claims that his attorney failed to investigate the crimes for which he was charged. Further, Hughes states in his PCR motion that “defense counsel displayed an actual conflict of interest, counsel’s representation fell way below an objective standard of reasonableness, and but for counsel’s very unprofessional errors the result of the proceeding would have been different.”

¶7. To be successful on a claim for ineffective assistance of counsel, the defendant must prove that (1) counsel’s performance was deficient, and (2) the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Hughes fails to address the *Strickland* factors and instead merely asserts his counsel was ineffective for various reasons without providing any evidence for his claims. For example, Hughes states that defense counsel was ineffective because she “actively represented conflicting interests, [as] she represented the defendant [] and seemingly, she represented the [] State or prosecutor.” After review, we find no evidence in the record showing how defense counsel’s performance was deficient or how Hughes suffered any prejudice to his defense as to the 2017 felony DUI charge. The PCR motion lacks sufficient detail to show any deficient performance. Accordingly, we find Hughes’ ineffective-assistance-of-counsel claim is without merit.

III. Speedy Trial and Due-Process Rights Claim

¶8. Hughes argues on appeal that his guilty plea regarding his 2017 felony DUI conviction should be vacated because his “constitutional” and “statutory” rights to a speedy trial and due-process rights were violated. A guilty plea waives a defendant’s constitutional and

statutory rights to a speedy trial. *Jones v. State*, 747 So. 2d 249, 251 (¶8) (Miss. 1999) (citing *Anderson v. State*, 577 So. 2d 390, 391-92 (Miss. 1991)). Here, there is no evidence to support Hughes' claim that his guilty plea was involuntary. The transcript from Hughes' guilty-plea hearing indicates that Hughes' plea was found by the judge to be "freely, knowingly, and voluntarily" entered, and there is nothing in the PCR motion that would belie that factual determination. Thus, because Hughes entered a valid guilty plea, we find this issue procedurally barred on appeal.

CONCLUSION

¶9. For the reasons set forth above, we affirm the circuit court's judgment pertaining to Hughes' 2017 felony DUI third conviction. We reverse the court's judgment regarding Hughes' 2018 felony DUI fourth conviction and therefore vacate and set aside Hughes' guilty plea as to that conviction. Cause No. LK18-227 is remanded to the circuit court's active docket.

¶10. **AFFIRMED IN PART; REVERSED IN PART; VACATED AND REMANDED IN PART.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE, WESTBROOKS, McDONALD, McCARTY, SMITH AND EMFINGER, JJ., CONCUR.