

IN THE COURT OF APPEALS 12/17/96
OF THE
STATE OF MISSISSIPPI
NO. 94-KP-00933 COA

DARYL VAN HICKS

APPELLANT

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. ROBERT BAILEY

COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: PRO SE

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: DEIDRE MCCRORY

DISTRICT ATTORNEY: E.J. MITCHELL

NATURE OF THE CASE: ASSAULT

TRIAL COURT DISPOSITION: GUILTY OF ASSAULT ON LAW ENFORCEMENT OFFICER
AND SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF
CORRECTIONS AS A HABITUAL OFFENDER

BEFORE FRAISER, C.J., DIAZ, AND KING, JJ.

PER CURIAM:

Daryl Van Hicks (Hicks) appeals his conviction of simple assault and sentence of life in the custody of the Mississippi Department of Corrections as a habitual offender. On appeal, Hicks argues that the evidence presented during his sentencing hearing failed to prove, beyond a reasonable doubt,

that he had been previously sentenced to and served separate terms of one year or more. Finding no error, we affirm.

FACTS

In December 1993, the Appellant was charged with simple assault on a law enforcement officer for allegedly biting the officer on the leg during an arrest. Hicks was indicted for simple assault, and the State sought enhanced punishment as a habitual offender pursuant to section 99-19-83.

Following a jury trial, the Appellant was found guilty of simple assault, and the trial court held a sentencing hearing pursuant to Uniform Criminal Rule of Circuit Court Practice 6.04. During the sentencing hearing, the State presented evidence from Ann Evans (Evans) of the Mississippi Department of Corrections. Evans testified that Hicks served three years and 347 days in Lauderdale County Circuit Court cause number 9453, and one year and 86 days in cause number 1411-C. Evans also testified that in cause 1411-C, Hicks served a total of 283 days, but that he was given credit for 168 days served in the Lauderdale County jail. The trial judge determined from the evidence presented that Hicks had been previously convicted of two felonies for which he served one year or more, that the two charges arose from separate events, and that one of the incidents was violent. Thus, the trial court imposed a sentence of life, without possibility of parole or probation pursuant to section 99-19-83.

DISCUSSION

Hicks argues that the State did not present sufficient evidence of his status as a habitual offender. Specifically, the Appellant contends that the time he served in the Lauderdale County jail should not be counted toward the statutory requirement embodied in section 99-19-83. Additionally, Hicks argues that Evans' testimony contained inconsistencies resulting in a lack of proof as required by section 99-19-83.

The State counters that under *Huntley v. State*, 524 So. 2d 572 (Miss. 1988), the trial court correctly ruled that time served in the Lauderdale County jail is applicable to fill the statutory requirements of section 99-19-83. Furthermore, the State contends that Evans' testimony was sufficient to prove Hicks' status as a habitual offender and the trial judge did not err in his ruling. Mississippi's "habitual criminal" statute reads as follows:

§ 99-19-83. Sentencing of habitual criminals to life imprisonment.

Every person convicted in this state of a felony who shall have been convicted twice

previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, and where any one (1) of such felonies shall have been a crime of violence shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

Miss. Code Ann. § 99-19-83 (1972).

We find that the trial judge correctly ruled that the time served by Hicks in the county jail counts toward the one-year requirement embodied in section 99-19-83. As the lower court observed, this precise issue was previously adjudicated by the Mississippi Supreme Court in *Huntley*, 524 So. at 574-75. Thus, his first issue is wholly without merit.

Second, Hicks seems to argue that the evidence was insufficient to prove his status as a habitual offender. Specifically, Hicks argues that the testimony of Evans was filled with inconsistencies and was not sufficient to prove beyond a reasonable doubt that the Appellant served one or more years on separate convictions as required by section 99-19-83. A review of the record reveals that Hicks was convicted of the crime of robbery with a deadly weapon other than a firearm on May 15, 1980, and was convicted for the crime of sale of cocaine on June 3, 1986. There was sufficient evidence presented to prove that Hicks served more than one year on each conviction. In addition to the testimony of Evans, a certified copy of the computation of Hicks' dates of confinement was entered into evidence. We find that the lower court was presented with sufficient evidence to find that the Appellant met the prerequisites to sentencing as a habitual offender under section 99-19-83. This assignment of error is also rejected.

THE JUDGMENT OF THE LAUDERDALE COUNTY CIRCUIT COURT OF CONVICTION OF SIMPLE ASSAULT ON A LAW ENFORCEMENT OFFICER AND SENTENCE OF LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AS A HABITUAL OFFENDER IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO LAUDERDALE COUNTY.

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