IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 96-KA-00293 COA

LINDA WATTS A/K/A LINDA ROSE WATTS **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

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

DATE OF JUDGMENT:	DECEMBER 8, 1995
TRIAL JUDGE:	HONORABLE LARRY EUGENE ROBERTS
COURT FROM WHICH APPEALED:	CLARKE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	DAVID A. STEPHENSON
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: CHARLES W. MARIS, JR.
DISTRICT ATTORNEY:	BILBO MITCHELL
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	SALE OF COCAINE: SENTENCED TO SERVE 30 YRS WITH THE MDOC TO RUN CONSECUTIVE TO SENTENCE IN CLARKE COUNTY #7530, TO PAY $5,000 FINE, $125 CRIME LAB FEE, & COURT COSTS OF $237.50
DISPOSITION:	AFFIRMED - 11/18/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/9/97

BEFORE BRIDGES, C.J., DIAZ, COLEMAN, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Linda Watts was convicted by a jury in the Circuit Court of Clarke County of sale of cocaine. As a habitual offender, Watts was sentenced to serve thirty years in the custody of the Mississippi Department of Corrections to run consecutively with a previous sentence. On appeal, Watts asserts that the sentence imposed by the trial court is, in effect, a life sentence, and thus, the court erred in denying Watts twelve peremptory challenges. There is no requirement that twelve peremptory challenges be allowed. We therefore affirm.

FACTS

On January 13, 1995, Luis Hawkins, an undercover agent from the Mississippi Bureau of Narcotics, traveled along with a confidential informant and three law enforcement officers to the residence of Linda Watts. While Hawkins remained in the vehicle, the informant approached the residence and informed Watts that Hawkins desired to purchase one hundred dollars worth of cocaine. The informant then returned to the vehicle, and Watts retreated into the residence. Shortly thereafter, Watts approached the vehicle with six rocks of crack cocaine. Hawkins purchased three of them for fifty dollars. Watts was subsequently arrested for sale of cocaine.

During the jury selection process, Watts requested the use of twelve peremptory challenges. However, the trial court concluded that since the possible sentence for Watts's offense was neither life or death, she was entitled to only six challenges. Subsequently, a jury found Watts guilty of sale of cocaine. Following a sentencing hearing, the trial court sentenced Watts as an habitual offender to thirty years in the custody of the Mississippi Department of Corrections without parole. The court ordered the sentence to run consecutively with a previous thirty year sentence, of which she might serve only fifteen years.

DISCUSSION

As a twenty-nine-year-old black female, Watts argues that the minimum forty-five year sentence is the functional equivalent to a life sentence, and thus, she was entitled to exercise twelve, rather than six, peremptory challenges.

The supreme court addressed a similar situation in ***Osborne v. State*, 404 So. 2d 545 (Miss. 1981).** Osborne was charged with carrying a concealed weapon after conviction of a felony. ***Id.*** at 545. Osborne contended that "because the habitual offenders statute subjected him to punishment of life imprisonment, he was charged with a capital offense, and thus, was entitled under Miss. Code Ann. § 99-17-3 (1972) to twelve peremptory challenges. . . ." ***Id.* at 546.** Under §99-17-3, a defendant in a capital case is entitled to twelve peremptory challenges, while a defendant in a non-capital case is allowed six challenges. **Miss. Code Ann. §99-17-3 (Rev. 1994).** In rejecting Osborne's contention, the court concluded that the charged offense was not a capital crime and was not an offense entitling a defendant to twelve peremptory challenges. ***Id.; see also Yates v. State*, 396 So. 2d 629, 630 (Miss. 1981)**(holding that defendant was not entitled to twelve peremptory challenges even though subject to life imprisonment as an habitual offender).

Although Watts acknowledges *Osborne* and *Yates*, she finds support for her position in the fact that Rule 5.06 of the Uniform Criminal Rules of Circuit Court Practice, which was in effect at the time of the decisions, has subsequently been amended. Watts contends that Rule 10.01 of the Uniform Circuit and County Court Rules entitles her to twelve peremptory challenges.

Rule 5.06 of the Uniform Rules of Circuit Court Practice provided:

> Challenges for cause shall be stated to the court first. In capital cases wherein the punishment may be death or life imprisonment the defendant and the state shall have twelve peremptory challenges. In cases not capital, the defendant and the state shall have six peremptory challenges. In all cases, a full panel shall be presented to the defendant.

UCRCCP 5.06.

Rule 10.01, the successor to Rule 5.06, provides:

> In jury selection challenges for cause shall be stated to the court.
>
> In cases wherein the punishment may be death or life imprisonment, the defendant and the prosecution shall have twelve (12) peremptory challenges. . . .
>
> In felony cases not involving the possible sentence of death or life imprisonment, the defendant and the prosecution shall have six (6) peremptory challenges. . . .

URCCC 10.01.

First, it is important that the court's decisions in both *Osborne* and *Yates* relied upon Section 99-17-3 rather than Rule 5.06. The statute, unlike the procedural rule, has not been altered. Under the statute a defendant is entitled to twelve peremptory challenges only in a capital case. **Miss. Code Ann. §99-17-3 (Rev. 1994).** According to Section 1-3-4, a capital case denotes "criminal cases, offenses and crimes punishable by death or life imprisonment in the state penitentiary." **Miss. Code Ann. §1-3-4 (Supp. 1997).** Consequently, Section 99-17-3 as already interpreted on this precise question authorized Watts to receive only six peremptory challenges since her punishment could not result in death or life imprisonment. "Life imprisonment" for purposes of peremptory challenges has never been interpreted to mean a sentence that is likely to extend beyond the defendant's normal life expectancy. It is, quite literally, a sentence of "life."

Though the supreme court announced its inherent authority to adopt rules of procedure for the judicial system, it agreed to "measure with great respect, legislative suggestions concerning procedural rules and they will be followed unless determined to be an impediment to justice or an impingement upon the constitution." ***Newell v. State,* 308 So. 2d 71, 76 (Miss. 1975).** It is evident that in *Osborne* and *Yates* that respect led to complete reliance upon the statute.

The statute and the amended rule are nearly identical in operative language. Watts asserts that the amendment to the rule significantly altered its impact. A comparison of Rule 5.06 and its successor, Rule 10.01, reveals three alterations: the word "capital" is omitted, "felony" is inserted in the third paragraph, and the word "state" in Rule 5.06 is changed to the word "prosecution" in Rule 10.01. Watts asserts that the first alteration--the deletion of the word "capital" from the new rule-- entitles her to twelve peremptory challenges.

We will not transform a simplification of the language of Rule 5.06 into an alteration of the import of the rule. The word "capital" is defined in Section 1-3-4 as a criminal offense punishable by death or life imprisonment. Thus Rule 5.06 -- "capital cases wherein the punishment may be death or life

imprisonment" -- used both a statutorily defined word and then the definition of the word. The deletion of the word "capital" simply removes the word defined, but leaves the definition. Eliminating a redundancy in the rule does not reveal a purpose of making a substantive change.

The trial court correctly ruled that Watts was entitled to only six peremptory challenges. The imposition of the thirty year sentence by the court does not amount to a life sentence within the meaning of the rule or statute on peremptory challenges.

THE JUDGMENT OF THE CLARKE COUNTY CIRCUIT COURT OF CONVICTION OF SALE OF COCAINE AND SENTENCE TO THIRTY YEARS AS AN HABITUAL OFFENDER IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS TO RUN CONSECUTIVE TO SENTENCE IN CLARKE COUNTY CAUSE #7530 AND TO PAY $5,000 FINE IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO CLARKE COUNTY.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, AND PAYNE, JJ., CONCUR.