

**IN THE COURT OF APPEALS 09/17/96**  
**OF THE**  
**STATE OF MISSISSIPPI**  
**NO. 93-KA-01089 COA**

**BRYANT MILES**

**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

TRIAL JUDGE: HON. JOHN LESLIE HATCHER

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

TOM T. ROSS, JR.

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: DEWITT ALLRED, III

DISTRICT ATTORNEY: LAURENCE Y. MELLEN

NATURE OF THE CASE: CRIMINAL: POSSESSION OF COCAINE

TRIAL COURT DISPOSITION: GUILTY VERDICT; SENTENCED AS A HABITUAL  
OFFENDER TO LIFE IMPRISONMENT WITHOUT PAROLE

BEFORE THOMAS, P.J., COLEMAN, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Bryant Miles was convicted of possession of cocaine and sentenced as a habitual offender to life imprisonment without parole. He appeals his conviction, contending that a document used in sentencing him was inadmissible, the indictment was defective, his sentence is unconstitutionally cruel and unusual, and that the trial court improperly influenced the jury in this case. We affirm.

### FACTS

Miles was stopped by a police officer for speeding. When asked for his driver's license, Miles disclosed that he was driving without one. The evidence favorable to the verdict indicates that the officer conducted a pat-down search of Miles and felt a lump in one of Miles' pockets. The officer asked Miles for permission to conduct a further search, but Miles refused. Miles then said "I'll show you," and pulled from his pocket a bag containing what looked like crack cocaine and dropped it into the front of his pants. The officer told Miles he had seen the bag, which caused Miles to begin running and to throw the bag beneath a parked truck. He was apprehended and charged with possession of cocaine. At trial, Miles denied possessing cocaine or throwing the bag.

### DISCUSSION

#### *1. Accuracy of M.D.O.C. File*

During the sentencing phase of his trial, the State presented documentary proof to support sentencing under the habitual offender provisions of Mississippi criminal law. In particular, the State sought to admit into evidence Miles' master file from the Mississippi Department of Corrections that evidenced two prior convictions and sentences. The defense objected to admission of the file because its certification identified the file as belonging to another convict in the department's custody. However, the qualified sponsoring witness identified the file as accurately reflecting Miles' criminal record and pointed out Miles' name on the documents in the file. The witness explained that Miles' name should have been in the certificate but that a clerical error had left another convict's name in Miles' place. Miles contends that the clerical error made admission of the department file improper—essentially challenging its authenticity and accuracy. We disagree.

The trial judge is afforded ample discretion in deciding whether to admit evidence. *Burt v. State*, 493 So. 2d 1325, 1326 (Miss. 1986) (citations omitted). The question for us is whether the rules of evidence precluded admission of the department file. The question is answered by Rule 901 of the Mississippi Rules of Evidence which provides:

The requirement of authentication . . . as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. . . . By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule: . . . Testimony [from a witness with knowledge] that a matter is what it is claimed to be.

M.R.E. 901. The testimony of the witness in this case concerning the authenticity and accuracy of the department file was sufficient to render the evidence admissible.

Because the clerical error in the name shown in the certification was explained, the remaining question is whether the file was properly certified. We conclude that it was. Generally, no particular words are required for a proper certification. *Monroe v. State*, 515 So. 2d 860, 868 (Miss. 1987) (citation omitted). A document can be sufficiently authenticated if it includes an attestation that the copy is true and correct, and the attestation bears an official seal. *Id.* The certification in this case contains both elements, and the testimony of the sponsoring witness, were sufficient to establish that the copy presented was what the prosecution claimed—Miles' department file reflecting his prior convictions. An entirely clerical error, the defect in the certification, did not cause confusion or prejudice to Miles and is insufficient to warrant reversal. *Williams v. State*, 583 So. 2d 620, 625 (Miss. 1991) (citations omitted).

## 2. *The Indictment*

The indictment in this case reflected that Miles was sentenced as a habitual offender. Rather than include a listing of Miles' prior offenses and sentences in the indictment form itself, the district attorney annexed sentencing reports from the prior convictions and attached them to the indictment. The indictment itself referred to these reports, incorporated them by reference, and explained that they presented the requisite prior convictions to support habitual offender status. Miles contends that the indictment should have included the details concerning his prior convictions in the text of the indictment itself. He supports this contention with case law that requires the substance of an indictment to be followed with constitutionally mandated language alleging that the crime charged was committed "against the peace and dignity" of the State. We conclude that this issue has no merit.

The form of the indictment was permissible. An indictment can attach a specific list of the prior convictions and sentences which support prosecution under habitual offender provisions of criminal law. *Earl v. State*, 672 So. 2d 1240, 1244 (Miss. 1996). An indictment is not defective as Miles alleges because it specifies the prior convictions in an attachment that does not physically precede the statement that the crime was committed "against the peace and dignity" of the State. *Id.* So long as the body of the indictment notes that the accused is charged as a habitual offender and incorporates in that charge the language contained in the attached list of prior convictions, the indictment is not defective. *Id.*

## 3. *Severity of Punishment*

Miles contends that his sentence to life imprisonment was unconstitutionally cruel and unusual. Specifically, Miles argues that the sentence is too severe and that it is disproportionate to the punishments provided for other drug crimes. We conclude that the sentence is not unconstitutional.

Miles argues that his sentence is unconstitutionally disproportionate by application of the Supreme Court's analysis in *Solem v. Helm*, 463 U.S. 277, 292 (1983). See *Wallace v. State*, 607 So. 2d 1184, 1188 (Miss. 1992) (citations omitted). Our supreme court faced a similar argument challenging a drug conviction of a habitual offender in *Hopson v. State*, 625 So. 2d 395, 404-05 (Miss. 1993). In *Hopson*, the court began its discussion of the case by observing "that for crimes concededly classified and classifiable as felonies, that is, as punishable by significant terms of imprisonment in a state

penitentiary, the length of the sentence actually imposed is purely a matter of legislative prerogative." *Id.* (citation omitted). With this foundation, the supreme court has "consistently held that a sentence will be upheld if within statutory limits. Also, where a sentence does not exceed statutory limits, it does not constitute cruel and inhuman treatment." *Adams v. State*, 410 So. 2d 1332, 1334 (Miss. 1982) (citations omitted). In this case, Miles was sentenced to life imprisonment without parole based upon his possession of cocaine and his prior convictions on aggravated assault and possession of a controlled substance charges, for which he was sentenced to fifteen years imprisonment.

Mississippi's habitual offender provisions allow a trial court to sentence a defendant to a term of life imprisonment when that defendant is proved to have been previously convicted of at least two felonies. Miss. Code Ann. § 99-19-81 (1972). Miles' sentence was within the term allowed by the statute. Moreover, the supreme court has repeatedly concluded that the habitual offender law is constitutional and does not violate the prohibition against cruel and unusual punishment. *Magee v. State*, 542 So. 2d 228, 237 (Miss. 1989) (citations omitted); *Huntley v. State*, 524 So. 2d 572, 575 (Miss. 1988). The statute in general and as applied in this case metes out punishment to achieve the goals of deterring repeat offenders and segregating habitual felons from the rest of society for an extended period of time. *Bandy v. State*, 495 So. 2d 486, 492 (Miss. 1986) (citation omitted). The supreme court has instructed that, in habitual offender cases, the "amount of time that the recidivist will be isolated from society [is a] matter[] largely within the discretion of the punishing jurisdiction." *Id.* (citation omitted).

In light of the seriousness of drug crimes and the propensity for violence reflected by Miles' prior conviction of assault, we cannot say that his punishment in this case is either cruel or unusual.

#### *4. Trial Judge's Impact on Panel*

The trial of a case that took place before Miles' trial ended in a mistrial because of a hung jury. At the conclusion of that case, the trial judge expressed dismay that the jury had been unable to reach a decision. The judge stated:

The Court has no choice but to declare a mistrial in this case. This is most unfortunate. I hate to see this done. A lot of work goes into these cases.

....

As the judge, it's sometimes a difficult job. You know, we judges are supposed to have judicial temperament, we're supposed to be fair and impartial, and we bend over backwards to give that appearance even though we have personal feelings just like you do. And sometimes we have to exercise our right of free speech, just like you do. And I feel very disappointed in this case. I find it almost incredible that a person could find a verdict of "not guilty" in this case, when all testimony on one side was from sober people and all the testimony on the other was from drunk people intoxicated at the time. Some people must have a problem with law enforcement officers.

I remember [the prosecutor] asked the jury, "Do any of you . . . just find that you can't

ever believe a police officer?" or something to that effect. And I believe there's somebody among you who does feel that way. And I think maybe you ought to search your own conscience about that. Because where would we be today without these police officers who put their lives on the line for us every day? And to say you can never believe a police officer, I find it incredible for anyone to even entertain such a thought. I just find it incredible.

All right. I wonder the message that is going out tonight; not so much for the law-abiding citizens, because they will remain law-abiding. I'm worried about those who are not law-abiding citizens. I wonder what's going to happen . . . . Instead of a simple assault on a police officer [that we had in this case], I'm afraid that it's going to later on turn into people getting killed. We're going to be looking at murder cases; not simple assault.

Following these remarks, the members of the jury were dismissed and asked to return to participate in other cases.

Miles argues that these comments to the jury likely tainted the *venire* from which he picked his jury and that his jury was infected. Miles' proof on this issue is insufficient to support his claims. Though a hearing was held concerning the impact of the comments made by the judge, Miles presented no proof that the jurors in his case had heard about the trial judge's remarks. Indeed, the evidence presented at the hearing discloses that none of the jurors in the prior case were ultimately selected for Miles' jury. There is no evidence that those jurors even returned to the courthouse the day after their trial ended to participate in the jury selection process for Miles' case.

Miles had the obligation to develop the necessary proof to support his objection. He did not do so. Accordingly, we reject this issue. *Polk v. State*, 417 So. 2d 930, 931 (Miss. 1982).

**THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY OF CONVICTION OF POSSESSION OF COCAINE AND SENTENCE AS A HABITUAL OFFENDER OF LIFE IMPRISONMENT IS AFFIRMED. SENTENCE IMPOSED SHALL RUN CONSECUTIVELY TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED. ALL COSTS OF THIS APPEAL ARE TAXED TO COAHOMA COUNTY.**

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