

IN THE COURT OF APPEALS

9/9/97

OF THE

STATE OF MISSISSIPPI

NO. 95-KP-01057 COA

PATRICK HIGGINS 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. SHIRLEY BYERS

COURT FROM WHICH APPEALED: SUNFLOWER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: PRO SE

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: JEFFREY A. KLINGFUSS

DISTRICT ATTORNEY: FRANK CARLTON

NATURE OF THE CASE: CRIMINAL-FELONY

TRIAL COURT DISPOSITION: HABEAS PETITION DISMISSED AS MOOT

MANDATE ISSUED: 12/9/997

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

SOUTHWICK, J., FOR THE COURT:

This appeal is from the circuit court's dismissal of a petition for writ of habeas corpus. The relief sought in the petition was to have an appeal bond set in another appeal, the one in which the suspension of a sentence had been revoked.

In December of 1994, Patrick Higgins, was convicted of three counts of felony bad check charges and sentenced to serve three years on each count. The sentences were to be suspended upon successful completion of a restitution program in the Jackson County Restitution Center. The suspended sentences were revoked when he was caught stealing from the Restitution Center. The direct appeal of that revocation was deflected to the Court of Appeals on December 9, 1996 and is presently pending. This opinion relates to a separate appeal regarding Higgins' bond.

Higgins filed a pro se motion with the Mississippi Supreme Court, styled "Emergency Motion to Set Reasonable Bond and For Stay of Sentence Pending Outcome of Appeal." The court, by order filed on April 21, 1995, found that because the transcript of the hearing in Warren County Circuit Court had not been prepared, it was uncertain whether an appeal bond had been set. Therefore, the court denied the motion without prejudice.

Higgins then filed a second motion for release pending appeal and requested that the court set an appeal bond. By order filed January 5, 1996, the supreme court found that "by order dated September 22, 1995, an order was entered in the Circuit Court of Warren County, setting an appeal bond in the amount of \$50,000 in Appellant's case," and denied the motion. (*Higgins v. State*, 95-KA-00124 COA).

Higgins then filed a pro se petition for writ of habeas corpus in the Circuit Court of Sunflower County, claiming he was entitled to bail pending his appeal. This is the case that is currently on appeal to us. The circuit court found that in March of 1995, an appeal bond had been set by Circuit Judge Isadore Patrick in Warren County and therefore, the petition was moot and denied.

Higgins now appeals to this court. He argues that he was entitled to a hearing in Sunflower County to decide whether an appeal bond was ever entered in the Circuit Court of Warren County. He also argues that he should have been granted a hearing on whether the Mississippi Department of Corrections had a record of the appellant having an appeal bond.

The relief the petition for habeas corpus was seeking, namely an appeal bond, has been received.

Higgins filed a motion with this court seeking to reduce the bond. The motion was denied by order filed August 12, 1997. Any complaint regarding the size of the bond, an argument that Higgins tangentially raises, can be addressed on direct appeal and is not an issue for this collateral proceeding.

The circuit court was proper in denying the petition for writ of habeas corpus.

THE JUDGMENT OF THE CIRCUIT COURT OF SUNFLOWER COUNTY OF DENIAL OF PETITION OF HABEAS CORPUS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO SUNFLOWER COUNTY.

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