

IN THE COURT OF APPEALS

9/9/97

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00964 COA

MARRIOW MCCLENTON 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. ELZY JONATHAN SMITH JR.

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: STEPHEN A. BRANDON

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: PAT S. FLYNN

DISTRICT ATTORNEY: MELLEN, LAWRENCE Y.

NATURE OF THE CASE: CRIMINAL - MANSLAUGHTER

TRIAL COURT DISPOSITION: MANSLAUGHTER: SENTENCED TO SERVE A TERM OF 20 YRS IN THE MDOC; THIS CAUSE SHALL RUN CONSECUTIVE TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED.

MOTION FOR REHEARING FILED: November 3, 1997

MANDATE ISSUED: 9/30/97

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

BRIDGES, C.J., FOR THE COURT:

Marriow McClenton was convicted of manslaughter in the Circuit Court of Coahoma County. He was sentenced to a term of twenty years in the custody of the Mississippi Department of Corrections. McClenton appeals claiming the verdict was against the overwhelming weight of the evidence. We find no merit in McClenton's argument and, therefore, we affirm.

ARGUMENT AND DISCUSSION OF LAW

Testimony at trial revealed that after chasing Darnell Perkins, McClenton kicked and beat Perkins with a gun. Perkins died from head wounds caused by the gun. McClenton now claims that the verdict is against the overwhelming weight of the evidence. McClenton fails, however, to cite any authority in support of his argument. It is the duty of the appellant to cite to this court authority supporting his position. M.R.A.P. 28 (a) (6). If the appellant fails to do so, this court is under no duty to consider the assignment. *Hoops v. State*, 681 So. 2d 521, 526 (Miss. 1996). Even though it is procedurally barred, we shall discuss the merits of McClenton's assignment of error. Our scope of review with regard to this issue is very limited. It has been stated as follows:

[T]his Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial. Only when the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal. Thus, the scope of review on this issue is limited in that all evidence must be construed in the light most favorable to the verdict.

Herring v. State, 691 So. 2d 948,957 (Miss.1997) (citations omitted).

The verdict in this case is clearly supported by the evidence. The state's witness, Dr. Timothy Hayne, testified that Perkins' death was caused by a blunt force trauma to the head that was consistent with a handgun. There was also testimony from Robert Thomas that McClenton hit Perkins in the head with a handgun. Thomas was a witness at the scene of the beating. Furthermore, McClenton was seen with a handgun on the day in question by state's witnesses Phoebe Jones and

Belinda Marshall. Construing this evidence as dictated by the above cases, our thorough review of the record reveals that the jury's verdict in this case is fully supported by the evidence. Accordingly, we affirm.

THE JUDGMENT OF THE COAHOMA COUNTY CIRCUIT COURT OF CONVICTION OF MANSLAUGHTER AND SENTENCE TO TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH THE SENTENCE TO RUN CONSECUTIVE TO OTHER SENTENCES PREVIOUSLY IMPOSED IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO COAHOMA COUNTY.

McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. KING, J., CONCURS WITH SEPARATE WRITTEN OPINION.

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KING, J., CONCURRING:

I concur with the result reached in this case. However, I am concerned about the manner in which the majority arrived at that result.

The majority finds that McClendon's assignment of error is procedurally barred under M.R.A.P. 28(a)(6). If this is in fact correct, and the principle basis upon which the majority decides this case, then there is no need for an analysis of McClendon's claim.