

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-KA-00457 COA**

TERRY COOPER

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:	08/01/94
TRIAL JUDGE:	HON. KATHY KING JACKSON
COURT FROM WHICH APPEALED:	JACKSON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JAMES L. FARRIOR
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: CHARLES W. MARIS, JR.
DISTRICT ATTORNEY:	KEITH MILLER
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT: SENTENCED TO SERVE A PERIOD OF 12 YRS IN THE CUSTODY OF THE MDOC & PAY A FINE IN THE AMOUNT OF \$10,000.00, PAY LAB FEES & ALL COURT COST
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

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

PER CURIAM.

Terry Cooper was convicted of possession of a controlled substance (marijuana) with intent to distribute and sentenced to a term of twelve years with the Mississippi Department of Corrections and to pay a \$10,000 fine. On appeal, Cooper argues that he was denied effective assistance of counsel.

Cooper raises the following deficiencies in his trial counsel's performance: (1) failing to file any pretrial motions; (2) failing to attempt to discredit the confidential informants who had charges pending; (3) failing to review or introduce the tape generated as a result of the confidential informants' activities immediately prior to and during the arrest of the defendant; (4) failing to contest

the "with intent" portion of the indictment or trial testimony; (5) opening the door on other crimes evidence and failing to contest the introduction of evidence of weapons, scales, and other prejudicial evidence; (6) not objecting to hearsay evidence, comments on post-arrest silence, argumentative questions, and the interruption of the defendant's responses during cross-examination; (7) failing to submit jury instructions which set forth the defendant's version of the crime and filing vague or general instructions of which only two were granted; (8) failing to file any post-trial motions, including a motion for new trial; and (9) failing to present any mitigation at sentencing.

FACTS

Based on information from informants, the Jackson County Narcotics Department obtained a search warrant for Terry Cooper's residence. The informants were fitted with a body wire and sent to Cooper's home. After the informants gave a signal to the police, the warrant was executed and a large quantity of marijuana was found, along with several weapons and a weighing scale.

Cooper testified that he had just come home from hunting in Alabama for ten or eleven days and was asleep on the sofa when the informants came to his house. Cooper maintained that they brought the marijuana in with them.

DISCUSSION

Our standard of review in determining ineffective assistance of counsel claims is set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). As our supreme court stated in *Schmitt v. State*, 560 So. 2d 148, 154 (Miss. 1990):

Before counsel can be determined to have been ineffective, it must be shown (1) that counsel's performance was deficient, and (2) that the defendant was prejudiced by his counsel's mistakes . . . Under *Strickland*, there is a strong presumption that counsel's performance falls within the range of reasonable professional assistance. To overcome this presumption, "the defendant must show that there is a reasonable probability that, but for the counsel's unprofessional errors, the result would have been different. A reasonable probability is sufficient to undermine confidence in the outcome. *Strickland*, 446 U.S. at 684, 104 S. Ct. at 2068.

In *Lambert v. State*, 462 So. 2d 308, 316 (Miss. 1984), the court stated:

Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting to second guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perception at the time. (citations omitted).

Much of what Cooper raises as ineffective assistance of counsel would fall within the latitude of permissible trial strategy or is raised with the perspective of hindsight. As the supreme court stated in *Powell v. State*, 536 So. 2d 13, 16 (Miss. 1988)(quoting *Murray v. Maggio*, 736 F.2d 279, 283 (5th

Cir. 1984), "The mere fact that the attorney did not file a motion for discovery is not sufficient to raise an ineffective assistance of counsel claim. "The filing of pre-trial motions falls squarely within the ambit of trial strategy." In each case where Cooper has charged error, he has not shown that an alternative course would have produced a better result. In particular, he has not shown "that there is a reasonable probability that, but for the counsel's unprofessional errors, the result would have been different." *Strickland*, 446 U.S. at 684.

We do not find that Cooper was provided ineffective assistance of counsel and affirm the judgment and sentence of the trial court.

THE JUDGMENT OF THE JACKSON COUNTY CIRCUIT COURT OF POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT AND SENTENCE OF TWELVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FINE OF \$10,000 IS AFFIRMED. ALL COSTS OF APPEAL ARE ASSESSED TO THE APPELLANT.

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