

STATE OF MAINE
PENOBSCOT, ss

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-07-48
KMC - PEN - 1.14.0804

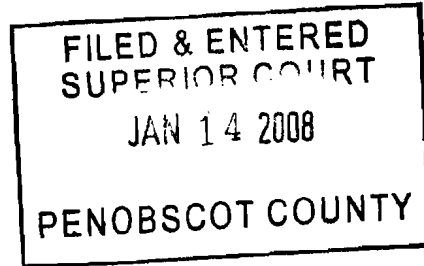
RODNEY JAMES BARNETT

Petitioner

v

STATE OF M MAINE

Respondent



DECISION

Under a Post Conviction Assignment Order dated February 1, 2007, responding to a Petition for Post Conviction Review, this matter was set for hearing in Ellsworth, Maine on January 7, 2008. Petitioner was represented by appointed counsel, Jeffrey Toothaker, Esq.. The State was represented by Assistant District Attorney, Susan Pope, Esq.. Mr. Barnett was present and testified.

At the Hearing, the Court received 5 exhibits filed on behalf of the Petitioner. Exhibit 1 is the transcript of the Somerset County sentencing hearing of August 21, 2001, involving Mr. Barnett. Exhibit 2 is the July 31, 2006, Penobscot County sentencing hearing involving Mr. Barnett.

Exhibit 3 is the Penobscot County Judgment and Commitment dated July 31, 2006, relating to Mr. Barnett. Exhibit 4 is the Somerset County Judgment and Commitment dated August 21, 2001, relating to Mr. Barnett. Exhibit 5 is the Somerset County Docket Record relating to Mr. Barnett and his sentencing of August 21, 2001 (Docket No SKOSC-CR-2001-00280). Exhibit 6 is the Somerset County Docket Record relating to Mr. Barnett and his sentencing of August 21, 2001 (Docket No SKOSC-CR-2001-00288).

The Court has listened to the testimony of Mr. Barnett and reviewed each of the 6 exhibits submitted on behalf of the Petitioner.

It is clear from review of the Somerset County Docket Records that Mr. Barnett was sentenced in August of 2001 to 19 months confinement of a 5-year sentence and 3 years of probation on completion of that confinement (See Exhibits 4,5 and 6). Subsequently this probation was revoked for a confinement of 9 months as of September 8, 2003. It was further revoked on June 14, 2006, and Mr. Barnett was ordered to serve 32 months of the suspended portion of the sentence and the "probation is terminated."

It is equally clear that Mr. Barnett was sentenced to a term of imprisonment on July 31, 2006, for a concurrent term of 48 months, concurrent with a sentence he was presently serving.

Petitioner takes issue with the representations of his then counsel (attorney Glazier) that Mr. Barnett "was on probation for OAR and OUI when this event occurred". The 'event' was Mr. Barnett crashing into the home of Ms. Langley and Mr. Gaynor on October 30, 2005. [See pgs 7 and 10 of Exhibit 2]

A review of the July 31, 2006 sentencing transcript (Ex. 2) makes clear that Mr. Barnett was sentenced to 48 months as of July 31, 2006 solely for the driving violation of October 30, 2005. That sentence was to run concurrent with the sentence he was then serving, which was the probation violation from Skowhegan.

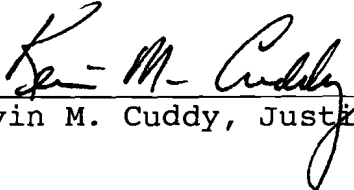
Mr. Glazier did not represent to the Court that Mr. Barnett was 'on probation' as of the July sentencing. Mr. Glazier did say that Mr. Barnett was on probation at the time of the "event", i.e. October 30, 2005. Clearly he was. He was sentenced to jail as of June of 06 (and probation was terminated at that time) for violation or probation conditions, which relate back to the 2001

Skowhegan sentencing.

The record does not reflect that Mr. Barnett was provided with ineffective assistance of counsel as the Law Court has applied and defined that term. (See *Francis v. State of Maine*, 2007 ME 148). Rather the record reflects that his counsel in July of 2006, correctly represented to the Court in July of 2006, Mr. Barnett's probation status as of October of 2005. Likewise it is clear from a review of the exhibits that the sentence Mr. Barnett received in July of 2005 was not in any way enhanced or altered by his status in October of 2005 as being on probation, other than that the sentence imposed was a concurrent sentence reflecting his then commitment status.

PETITION DENIED.

Dated: January 14, 2008


Kevin M. Cuddy, Justice

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