

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 2000-KM-01201-COA**

JEREMY FRAZIER

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF TRIAL COURT JUDGMENT: 06/02/2000
TRIAL JUDGE: HON. W. ASHLEY HINES
COURT FROM WHICH APPEALED: WASHINGTON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT: JAMES MITCHEL CREEL
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEAN SMITH VAUGHAN
DISTRICT ATTORNEY: FRANK CARLTON
NATURE OF THE CASE: CRIMINAL - MISDEMEANOR
TRIAL COURT DISPOSITION: DRIVING UNDER THE INFLUENCE (2ND OFFENSE) - GIVEN 20 DAYS TO BE INCARCERATED IN THE WASHINGTON COUNTY JAIL AND PAY A FINE OF \$700.
DISPOSITION: AFFIRMED AND REMANDED - 05/28/2002
MOTION FOR REHEARING FILED:
CERTIORARI FILED:
MANDATE ISSUED: 6/18/2002

BEFORE KING, P.J., BRIDGES, AND CHANDLER, JJ.

BRIDGES, J., FOR THE COURT:

¶1. Frazier was convicted of a second offense DUI in the Washington County Justice Court. Frazier appealed to the Washington County Court, received a trial de novo, was convicted and sentenced to twenty days in county jail. Frazier appealed to the Washington County Circuit Court, which affirmed the county court's judgment. The circuit court allowed Frazier's appeal pursuant to Mississippi Code Annotated Section 11-51-81 (Rev. 2000), and Frazier perfected his appeal to this Court in a timely fashion.

STATEMENT OF THE ISSUE

WAS FRAZIER ENTITLED TO A JURY TRIAL ON THE CHARGE OF SECOND DUI OFFENSE?

FACTS

¶2. Jeremy Frazier, a minor, was arrested on November 18, 1998, for driving under the influence by deputies of the Washington County Sheriff's Department.

ANALYSIS

¶3. The Constitution of the United States guarantee's a jury trial to all persons charged with a "serious offense." A serious offense is one for which the defendant could be sentenced to more than six months in jail for committing. *Blanton v. North Las Vegas*, 489 U.S. 538, 542-3 (1989). In Mississippi, a defendant charged with a second offense DUI is entitled a jury trial, since the maximum sentence is one year's imprisonment. *Harkins v. State*, 735 So. 2d 317, 317-9 (¶2-3) (Miss. 1999). But Frazier's assignment of error must fail because the he does not preserve his request for a jury trial in the record. It is the appellant's responsibility to assemble a complete record of proceedings, and failure to provide a record will invalidate an appeal.

¶4. However, Frazier was a minor at the time of the offense; consequently, he should have been sentenced under Mississippi Code Annotated Section 63-11-30 (3) (c) (Rev. 2000), instead of Mississippi Code Annotated Section 63-11-30 (2) (b) (Rev. 2000) as he was sentenced. This constitutes plain error, and while this court affirms Frazier's conviction, we remand for re-sentencing in accordance with this opinion.

¶5. THE JUDGMENT OF THE CIRCUIT COURT OF WASHINGTON COUNTY OF CONVICTION OF DRIVING UNDER THE INFLUENCE (SECOND OFFENSE) AND SENTENCE OF TWENTY DAYS IN THE WASHINGTON COUNTY JAIL AND FINE OF \$700 IS AFFIRMED AND REMANDED TO THE CIRCUIT COURT OF WASHINGTON COUNTY FOR RESENTENCING IN ACCORDANCE WITH THIS OPINION. ALL COSTS OF THIS APPEAL ARE ASSESSED TO WASHINGTON COUNTY.

McMILLIN, C.J., KING AND SOUTHWICK, P.JJ., THOMAS, LEE, IRVING, MYERS, CHANDLER AND BRANTLEY, JJ., CONCUR.