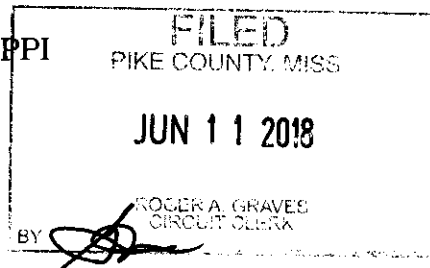


IN THE CIRCUIT COURT OF PIKE COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

WILLIAM MARTIN



CAUSE NO. 16-119-PKT

ORDER

This matter has come before the court on William Martin's "Motion to Dismiss Pursuant to Double Jeopardy". The record is clear regarding the evidentiary basis for Martin's claim. In June of 2016 Martin pled guilty to the misdemeanor offense of receiving stolen property in Osyka Municipal Court. In September 2016 Martin was indicted for the felony offense of burglary of an automobile – involving the same incident and property.

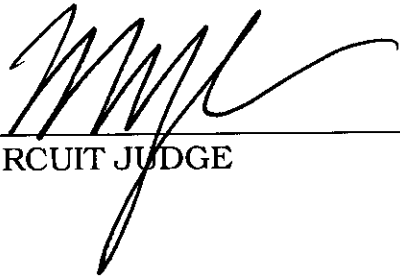
Martin filed his motion alleging that the plain language of Section 97-17-70 Mississippi Code Annotated 1972 forbids the state from charging "both stealing and receiving the same property..." The state responds that the elements of the offenses differ and that the indictment does not charge Martin with stealing the property which he was charged with possessing in Osyka.

It is axiomatic that crimes are defined by statute. The state has no power to prosecute outside the boundaries set by the legislature. It is clear from the indictment that stealing the same property he has been convicted of receiving is an essential element of the charge against Martin. The state's reliance upon Smith V. State, 429 So. 2d 252 (Miss. 1983) is misplaced. The objects of the

two crimes in Smith were different. Also the state's reliance on Smith does not answer the statutory limitation created by Section 97-17-70.

The statute does not permit both prosecutions. The motion should be and is hereby granted. The indictment in 2016-119 is hereby dismissed.

SO ORDERED AND ADJUDGED this the 8th day of June, 2018.



CIRCUIT JUDGE

MICHAEL M. TAYLOR
CIRCUIT JUDGE
P.O. BOX 1350
BROOKHAVEN, MS 39602
601.835.1576
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