

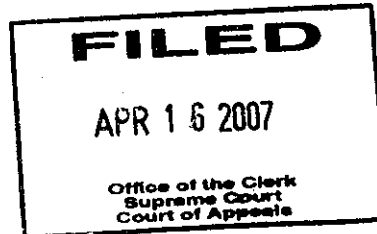
IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TYREE STATEN

APPELLANT

VS.

NO. 2006-CP-1660



STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: STEPHANIE B. WOOD
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680**

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BRIEF OF THE APPELLEE

STATEMENT OF THE ISSUES

Tyree Staten [hereinafter "Staten"] raised five issues on appeal. For simplification purposes, the State of Mississippi combined these issues as follows:

- I. STATEN'S PROBATION WAS NOT UNLAWFULLY REVOKED AND HE WAS NOT DENIED DUE PROCESS.

STATEMENT OF THE CASE

Staten was indicted for armed robbery by a grand jury in Clarke County, Mississippi on August 26, 1998. (Record p. 115). On November 2, 1998, Staten, while represented by counsel, pled guilty to armed robbery. (Record p. 115). Staten was sentenced in accordance with his guilty plea agreement to serve twenty years in the custody of the Mississippi Department of Corrections, with sixteen years suspended, four years to serve, and five years probation. (Record p. 115). After serving four years, Staten was released from custody on December 9, 2001. (Record p. 115 - 116).

On August 10, 2004, Staten's probation officer filed a Warrant, Affidavit, and Petition indicating that Staten violated various conditions of his probation agreement. (Record p.p. 85 - 87). A hearing was held on September 1, 2004. (Record p. 114). After the hearing, the court entered an

Order Revoking Probation, finding that Staten violated the terms of his probation as follows:

(Condition A) Staten pled guilty to the offenses of Domestic Violence, Carrying a Concealed Weapon, Trespassing, Improper Equipment, and No Insurance (on two occasions);

(Condition E) Staten failed to report to his probation officer in July of 2004;

(Condition I) Staten failed to pay the court ordered fines as directed in the amount of \$1,397.32; and

(Condition J) Staten failed to pay and is in arrears of \$45.00 on his court ordered supervision fees.

(Record p. 104). As such, Staten's probation was revoked and his sixteen year suspended sentence was imposed. (Record p. 104).

On August 15, 2005, Staten filed a Motion to Vacate Conviction and Sentence or Motion to Reinstate Probation which the court treated as a Motion for Post-Conviction Collateral Relief. (Record p.p. 5 - 43 and p. 47). On April 13, 2006, the court entered an Order Denying the Motion for Post-Conviction Collateral Relief stating that Staten "was provided all of the due process that is required under the U.S. Constitution and the Constitution of the State of Mississippi." (Record p.p. 47 - 60). Staten appeals that decision.

SUMMARY OF THE ARGUMENT

Staten's probation was not unlawfully revoked and he was not denied due process. Staten's revocation hearing met the minimum requirements of due process as set forth by Mississippi law.

ARGUMENT

The trial court's denial of a motion for post-conviction relief should not be reversed "absent a finding that the trial court's decision was clearly erroneous." *Crowell v. State*, 801 So.2d 747, 749 (Miss. Ct. App. 2000) (citing *Kirksey v. State*, 728 So.2d 565, 567 (Miss. 1999)). Staten raises several issues on appeal. Each issue basically alleges that his probation was unlawfully revoked and that he was denied due process. (Appellant's Brief p.6). This Court has previously set forth the

minimum due process requirements for probation hearings:

The minimum due process requirements applicable to probation revocation hearings were set forth by the United States Supreme Court in *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973), and were incorporated into Mississippi law through Miss. Code. Ann. §47-7-37 (Rev. 2000). These requirements are: (1) written notice of the claimed violations of probation; (2) disclosure to the probationer of the evidence against him; (3) an opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses (unless the hearing officer finds good cause for not allowing such confrontation); (5) a neutral and detached hearing body or officer; and (6) a written statement by the fact finder as to the evidence relied on and reasons for revoking the probation.

Payton v. State, 845 So.2d 713, 719 (Miss. Ct. App. 2003). As set forth in detail by the trial court in its Order Denying the Motion for Post-Conviction Collateral Relief, Staten's hearing met each of these requirements. (Record p. 53).

Staten, however, argues that "the lower court violated his due process rights in failing to inform him of his right to request counsel so that he could make such request." (Appellant's Brief p. 6). Staten's argument is without merit. First, the trial court did offer Staten a chance to obtain counsel and specifically stated "if you want to hire a lawyer, and you need a delay or a postponement in your hearing in order to hire an attorney or get a lawyer here to represent you, I certainly don't have any objection giving you some time to hire an attorney, if you want to do that." (Record p.p. 118-19). Further, Staten's notice of hearing also informed him of his right to obtain counsel. (Record p. 96). Moreover, Staten specifically stated that he wanted to proceed without an attorney:

Q: Do you intend on hiring a lawyer for this hearing?
A: No.
Q: All right. Are you ready to go forward today with your hearing?
A: (Nodding head)
Q: Sir?
A: Yes, sir.

(Record p. 119).

Second, probationers do “not have, per se, a right to counsel at revocation hearings.” *Riely v. State*, 562 So.2d 1206, 1209 (Miss. 1990) (*citations omitted*). Whether probationers have a right to counsel must be decided “on a case-by-case basis in the exercise of a sound discretion by the state authority charged with responsibility for administering the probation and parole system.” *Id.* (*citations omitted*). There are, however, certain situations in which counsel should be provided. Counsel should presumably be provided in cases which are complex or otherwise difficult to develop. *Riely v. State*, 562 So.2d 1206, 1209 (Miss. 1990) (quoting *Gagnon v. Scarpelli*, 411 U.S. 778, 790-91, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973)). Staten’s case was not complex or difficult. It boiled down to simply whether or not Staten was guilty of violating his probation agreement as outlined by his probation officer. The trial court asked Staten about each of the alleged violations and he was given an opportunity to state whether he was guilty or innocent of the violation and offer any explanations regarding the violations. Further, the violations were simply stated. He either pled guilty to the misdemeanors at issue or he did not. He either reported to his probation officer in July of 2004 or he did not. He either paid the fines and fees as he was required to do or he did not. Moreover, Staten indicated that he understood the charges against him:

Q: All right. Do you understand the charges here that Mr. Wheeler is making against you?

A: Yes, sir.

(Record p. 119).

Counsel should also be provided in cases where “after being informed of his right to request counsel, the probationer or parolee makes such a request, based on a timely and colorable claim.” *Id.* As noted above, Staten was notified that he could obtain counsel and he chose to proceed without counsel. (Record p. 118-19). A probationer is also entitled to be represented by appointed counsel at a combined revocation and sentencing hearing unless the probationer was sentenced at

the time of the trial or plea. *Crowell v. State*, 801 So.2d 747, 749 (Miss. Ct. App. 2000) (citing *Riely v. State*, 562 So.2d 1206, 1209 (Miss. 1990)). In the case at hand, Staten was sentenced after he pled guilty to the underlying armed robbery charge. (Record p. 118). Accordingly, Staten's case is not one of those situations in which counsel is required and his first issue is without merit.

Staten also argues that he "had a mental history precluding him from developing facts, understanding his rights, and presenting mitigating evidence on his behalf to make revoking probation inappropriate with substantial reasons because he appeared to be incapable of speaking effectively for himself." (Appellant's Brief p. 12). This Court previously held that "unless there are reasonable grounds to believe a person is mentally incompetent, there is no requirement that a court inquire into competency." *Thorn v. State*, 815 So.2d 455, 457 (Miss. Ct. App. 2002) (citing *Edwards v. State*, 800 So.2d 454, 466 (Miss.2001)). In the case at hand, Staten indicated that he understood the charges brought against him. (Record p. 119). He was able to discuss the charges and respond to questions about said charges. (See Record generally p.p. 114 - 158). Also, Staten previously testified in front of the same judge during his guilty plea proceedings that he understood the difference between right and wrong. (Record 169). Furthermore, Staten did not place his mental competency in issue during the revocation hearing. Admittedly, the trial judge helped him question his probation officer after Staten stated that he did not know how to ask the questions. (Record p. 128 - 129). However, Staten never once asserted his mental competency as being a hindrance to his ability to represent himself. Thus, this issue is without merit.

Staten's final three issues are also without merit. First, Staten alleges that his probation officer knew about the misdemeanor charges against him and only "later decided to revoke his probation." (Appellant's Brief p. 6). When specifically asked by the trial court about the timing in which he filed the Petition to Revoke Probation, Staten's probation officer testified that he filed the

Petition after Staten failed to report to the officer in July of 2004 and after he learned from the Quitman Police Department of Staten's guilty pleas to the various misdemeanors. (Record p. 153). Second, Staten's contention that the trial court failed to acknowledge that Staten's girlfriend admitted to provoking the domestic violence is not relevant to his probation revocation. "Probation may be revoked upon a showing that the defendant 'more likely than not' violated the terms of probation." *McClinton v. State*, 799 So.2d 123, 127 (Miss. Ct. App. 2001) (citing *Younger v. State*, 749 So.2d 219 (Miss. Ct. App. 1999)). As such, all that is pertinent is whether Staten "more likely than not" violated his probation agreement. It is not relevant that his girlfriend provoked one of the numerous probation violations. Third, Staten's contention that he was not informed of his right to appeal is moot in that Staten was able to timely file his appeal.


CONCLUSION

Accordingly, Staten's probation was not unlawfully revoked and he was not denied due process. As such, the State of Mississippi respectfully requests that this Honorable Court affirm the denial of post-conviction relief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



STEPHANIE B. WOOD

SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [REDACTED]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

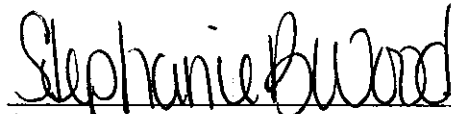
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing BRIEF FOR THE APPELLEE to the following:

Honorable Robert W. Bailey
Circuit Court Judge
P. O. Box 1167
Meridian, MS 39302

Honorable E. J. (Bilbo) Mitchell
District Attorney
P. O. Box 5172
Meridian, MS 39302

Tyree Staten, #R6797
East Mississippi Correctional Facility
P. O. Box 4217
Meridian, MS 39304

This the 16th day of April, 2007.



STEPHANIE B. WOOD
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680