

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TYREE STATEN

VS.

STATE OF MISS.

FILED

APR 24 2007

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

APPELLANT

2006-CP-1660

APPELLEE

REPLY BRIEF FOR THE APPELLANT

TYREE STATEN [REDACTED]
EAST MISS. CORRECTION
10641 HWY 80 W.
MERIDIAN, MS. 39304

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REPLY BRIEF

NOW COMES, THE APPELLANT, TYREE STATEN, BY AND THROUGH HIMSELF AND FILES THIS HIS REPLY BRIEF TO THE BRIEF OF APPELLEE AND STATE AS FOLLOWS :

APPELLANT'S PROBATION WAS UNLAWFULLY REVOKED
AND HE WAS DENIED DUE PROCESS

APPELLANT AGREES WITH THE APPELLEE'S POSITION AND THE RECORD THAT THE TRIAL COURT DID OFFER STATEN A CHANCE TO OBTAIN COUNSEL AND SPECIFICALLY STATED THAT "IF YOU WANT TO HIRE A LAWYER, AND YOU NEED A DELAY OR A POST PONEMENT 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," AND; THAT STATEN'S NOTICE OF HEARING ALSO INFORMED HIM OF HIS RIGHT TO OBTAIN COUNSEL.

APPELLANT DOES AGREE, AND THIS COURT SHOULD AGREE, THAT THE TRIAL COURT, ACCORDING TO GAGNON VS. SCARPELLI, DID NOT PASS ON AN OPPORTUNITY FOR HIM TO REQUEST A COURT APPOINTED LAWYER FROM THE COURT AND IF REFUSED THIS REQUEST, IT HAD TO BE CLEARLY MENTIONED IN THE RECORD.

APPELLANT ARGUES THAT BEING INFORMED THAT HE COULD OBTAIN A LAWYER OR HIRE A LAWYER,  DOES NOT MEET CONSTITUTIONAL MUSTER AS BEING INFORMED OF HIS RIGHT TO REQUEST A COURT APPOINTED LAWYER FROM THE COURT TO MEET HIS DUE PROCESS REQUIREMENTS UNDER STATE AND FEDERAL LAW. SEE - RIELY VS. STATE, 562 SO. 2D 1206 (MISS. 1990)

IF THE COURT HAD PASSED ON THE REQUIRED OPPORTUNITY OF STATEN TO REQUEST APPOINTED COUNSEL, THEN A CASE-BY-CASE ANALYSIS WOULD HAVE BEEN REQUIRED TO APPOINT COUNSEL OR NOT. THE COURT SHOULD REMAND FOR A DETERMINATION

OF WHETHER STATEN WAS ENTITLED TO AN OPPORTUNITY TO REQUEST A COURT APPOINTED LAWYER OR WHETHER IF GIVEN THIS OPPORTUNITY IF STATEN WOULD HAVE REQUESTED A COURT APPOINTED LAWYER AND WHETHER OR NOT THE COURT WOULD HAVE GRANTED HIS REQUEST.

STATEN WAS NOT INFORMED OF HIS RIGHT TO
APPEAL THE COURTS DECISION TO REVOKE
HIS PROBATION IN THE TRIAL COURT.
SEE - RIELY VS. STATE, SUPRA

APPELLEE SIDE STEPS APPELLANTS CLAIM AND ARGUMENT FROM HIS ORIGINAL BRIEF AND ASSERTS THAT THE CLAIM IS MOOT IN THAT HE WAS ABLE TO TIMELY FILE HIS APPEAL.

THIS IS SIMPLY NOT TRUE BECAUSE OF RIELY VS. STATE, SUPRA, WHERE HE APPEALED 9 ISSUES IN THE TRIAL COURT AND APPEALED 2 OF THOSE ISSUES TO THE APPELLATE COURT AFTER THE TRIAL COURT DENIED THEM.

APPELLANT WAS NEVER INFORMED OF HIS RIGHT TO APPEAL THE TRIAL COURTS DECISION IN THE TRIAL COURT AND THEREFORE THIS ISSUE IS NOT MOOT AS ARGUED BY THE APPELLEE. THIS ISSUE WAS NOT ADDRESSED BY HE TRIAL COURT DURING POST-CONVICTION PROCEEDINGS. WRIGHT VS. STATE, SUPRA.

CONCLUSION

APPELLANT MAINTAIN HIS FORMER POSITION AS ARGUED IN HIS FIRST BRIEF TO THIS COURT AND ALSO PRESENTS THIS REPLY IN SUPPORT OF HIS POSITION, AND PRAYS FOR WHATEVER RELIEF THIS COURT DEEMS APPROPRIATE IN THIS CASE. ADDITIONALLY, APPELLANT REMAINS IN ORIGINAL POSITION IN REGARDS TO HIS OTHER CLAIMS IN THE ORIGINAL BRIEF TO THIS HON. COURT.

RESPECTFULLY SUBMITTED,

Tyree Stater # R6797

CERTIFICATE OF SERVICE

A TRUE AND CORRECT COPY OF THE REPLY HAS BEEN MAILED TO :

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4-24-07

DATE

Tyree States #R6797
APPELLANT