

GOVERNMENT

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO : 2006-CP-01660-COA

TYREE STATEN

APPELLANT

VERSUS

FILED

STATE OF MISS.

FEB 24 2007

APPELLEE

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

APPEAL FROM THE CIRCUIT COURT OF CLARK CO. MISS.

ACTION # 7979 / 2005 - 93 (B)

BRIEF OF APPELLANT

ORAL ARGUMENT IS REQUESTED

TYREE STATEN #

P.O. Box 4217

Meridian, Ms. 39304

ADDRESS

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APPELLEE

CERTIFICATE OF INTERESTED PERSONS

THE UNDERSIGNED APPELLANT CERTIFIES THAT THE FOLLOWING LISTED PERSONS HAVE AN INTEREST IN THE OUTCOME OF THIS CASE. THESE REPRESENTATIONS ARE MADE IN ORDER THAT THE JUSTICES OF THIS COURT MAY EVALUATE POSSIBLE DISQUALIFICATIONS OR RECUSAL.

CIRCUIT JUDGE PRESIDING
LARRY E. ROBERTS

APPELLANT
TYREE STATEN

HON. JIM HOOD OFFICE
ASSISTANCES

D.A. OF CLARKE CO. MISS.
DAN ANGERO

Tyree W Statem
APPELLANT

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STATEMENT OF ISSUES

1. WHETHER APPELLANTS PROBATION WAS UNLAWFULLY REVOKED AND HE IS UNLAWFULLY HELD IN CUSTODY BECAUSE, THE LOWER COURT VIOLATED HIS DUE PROCESS RIGHTS IN FAILING TO INFORM HIM OF HIS RIGHT TO REQUEST COUNSEL SO HE COULD HAVE MADE SUCH REQUEST AND IF REFUSAL WAS THE CASE, IT COULD HAVE BEEN STATED SUCCINCTLY IN THE RECORD, ACCORDING TO : GAGNON VS. SCARPELLI, INFRA.
2. WHETHER APPELLANT 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.
3. WHETHER THE P.O. HAD KNOWN OF ALL THE MISDEMEANOR CHARGES AGAINST APPELLANT FOR MONTHS AND LATER DECIDED TO REVOKE PROBATION, DENYING APPELLANT RIGHT TO DUE PROCESS AND WHICH WAS FUNDAMENTALLY UNFAIR.
4. WHETHER THE LOWER COURT HAS FAILED TO ACKNOWLEDGE THAT APPELLANTS GIRLFRIEND HAD ADMITTED TO PROVOKING THE DOMESTIC VIOLENCE CHARGE BY SUBMITTING AN AFFIDAVIT IN SUPPORT IN THE PCR.
5. WHETHER APPELLANT WAS INFORMED OF HIS RIGHT TO APPEAL THE DECISION OF THE LOWER COURT REVOKING HIS PROBATION IMMEDIATELY THEREAFTER.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

THE APPELLANT WAS INDICTED ON AUG 26, 1998, ON THE CHARGE OF ARMED ROBBERY. THEREAFTER, ON NOV. 2, 1998, HE FILED A PETITION TO ENTER PLEA OF GUILTY. THE COURT CONDUCTED A GUILTY PLEA HEARING ON NOV. 3, 1998, IN WHICH THE GUILTY PLEA WAS ACCEPTED. THE COURT SENTENCED HIM IN ACCORDANCE WITH HIS PLEA AGREEMENT TO SERVE 20 YEARS, WITH 16 YEARS SUSPENDED, FOUR YEARS TO SERVE AND FIVE YEARS ON PROBATION.

APPELLANT WAS RELEASED FROM CUSTODY ON DEC. 9, 2001. THEREAFTER, ON MAR. 18, 2004, THE PROBATION OFFICER FOR THE APPELLANT FILED A PETITION WITH THE COURT, ASSERTING THAT APPELLANT HAD VIOLATED THE TERMS OF HIS PROBATION. THE OFFICER LISTED SEVERAL GROUNDS FOR THE COURT TO REVOKE THE PROBATION. ON AUG. 10, 2004, THE OFFICER FILED A WARRANT, AFFIDAVIT, AND ANOTHER PETITION, WITH THE COURT, LISTING THE FOLLOWING GROUNDS FOR THE REVOCATION OF SAID PROBATION :

SEE - PAGE 2 OF ORDER DENYING MOTION FOR PCR, COND. (A)(E), (I), AND (J)..

ON AUG. 31, 2004, THE OFFICER FILED A MOTION TO DISMISS REVOCATION AFFIDAVIT AND WARRANT, ASSERTING THAT APPELLANT HAD COMPLIED WITH ALL OF THE TERMS SET OUT IN THE PETITION FILED ON MAR. 18, 2004. THE COURT GRANTED THIS MOTION ON AUG. 31, 2004. ON SEPT. 1, 2004, THE COURT CONDUCTED A REVOCATION HEARING BASED ON THE PETITION FILED ON AUG. 10, 2004. THE COURT ENTERED AN ORDER REVOKING PROBATION, FINDING THAT THE APPELLANT HAD VIOLATED THE TERMS OF HIS PROBATION UNDER : (A), (E), (I) AND (J). SEE- PG 3 OF ORDER DENYING MOTION FOR PCR...

THEREFORE, THE COURT REVOKED THE PROBATION AND IMPOSED THE SUSPENDED SENTENCE OF THE YEARS ORIGINALLY IMPOSED ON NOV. 3, 1998.

BEFORE SEPT. 1, 2005, APPELLANT FILED FOR PCR AND SUMMARILY, THE TRIAL COURT DENIED THIS MOTION WITHOUT ANY FURTHER PROCEEDINGS ON THE MATTERS LISTED ON PG. 3-4 OF THE ORDER DENYING PCR, AGGRIEVED, THIS APPEAL FOLLOWS IN ACCORDANCE :

SUMMARY OF THE ARGUMENT

THE CASE OF THE STATE OF MISS. VS. TYREE STATEN ("STATEN") IN VIOLATION OF HIS PROBATION OF SEPT. 1, 2004 WAS A COMPLEX AND DIFFICULT CASE TO DEVELOP WITHOUT THE AIDE OF COUNSEL FOR APPELLANT. THE TRIAL COURT NEVER INFORMED HIM OF HIS RIGHT TO REQUEST AN APPOINTMENT OF COUNSEL NOR WAS AWARE OF HIS MENTAL HISTORY THAT, PURSUANT TO THE RECORD, PRECLUDED HIM FROM DEVELOPING FACTS, UNDERSTANDING HIS RIGHTS AND PRESENTING MITIGATING EVIDENCE TO MAKE REVOKING PROBATION INAPPROPRIATE.

THE TRIAL COURT FAILED TO ACKNOWLEDGE ON PCR THAT APPELLANTS GIRLFRIEND HAD SUBMITTED AN AFFIDAVIT IN REGARDS TO HER PROVOKING THE DOMESTIC VIOLENCE CHARGE AGAINST APPELLANT. THE P.O. HAD EVEN KNOWN OF ALL THE MISDEMEANOR CHARGES EARLY BEFORE REVOKING SAID PROBATION AND TRIAL COURT NEVER INFORMED APPELLANT OF HIS RIGHT TO DIRECTLY APPEAL THEIR DECISION.

FOR THESE REASONS, STATEN SUBMITS THIS COURT WILL FIND ABUNDANT GROUNDS FOR REVERSAL OF HIS SENTENCE.

STANDARD OF REVIEW

IN REVIEWING A TRIAL COURTS DENIAL OF PCR, THIS COURTS STANDARD OF REVIEW IS WELL STATED. THIS COURT WILL NOT DISTURB THE TRIAL COURTS FACTUAL FINDINGS UNLESS THEY ARE FOUND TO BE CLEARLY ERRONEOUS. HOWEVER, WHERE QUESTIONS OF LAW ARE RAISED THE APPLICABLE STANDARD OF REVIEW IS DE NOVA. BALDWIN VS. STATE OF MISS. INFRA.

ARGUMENT AND CITATION OF AUTHORITIES

PROPOSITION ONE : APPELLANTS PROBATION WAS UNLAWFULLY REVOKED AND HE IS UNLAWFULLY HELD IN CUSTODY BECAUSE, THE LOWER COURT VIOLATED HIS DUE PROCESS RIGHTS IN FAILING TO INFORM HIM OF HIS RIGHT TO REQUEST APPOINTMENT OF COUNSEL SO HE COULD HAVE MADE SUCH A REQUEST AND IF REFUSED, IT COULD HAVE BEEN STATED IN THE RECORD.

HERE IN THE CASE AT BAR, STATEN WAS NEVER INFORMED OF HIS RIGHT TO REQUEST APPOINTED COUNSEL, SO HE COULD HAVE MADE SUCH A REQUEST, BASED ON A TIMELY AND COLORABLE CLAIM. T. 5 LINES 6-29

THE TRIAL COURT NEVER PASSED ON A REQUEST FOR THE APPOINTMENT OF COUNSEL. THE TRIAL COURT ONLY MENTIONED THAT PETITIONER HAD A RIGHT, IF HE WANTED TO HAVE A LAWYER THERE TO REPRESENT HIM AND THAT THE COURT WAS NOT AUTOMATICALLY REQUIRED TO PROVIDE A FREE COURT APPOINTED, LAWYER FOR THIS TYPE OF HEARING. T. 5 LINES 6-10

APPELLANT ASSERTS THAT ALL THE COURT HAD TO SAY WAS : "THAT STATEN HAD A RIGHT TO REQUEST THE APPOINTMENT OF COUNSEL IF HE WANTED TO MAKE SUCH A REQUEST AT THIS TIME AND IF THIS COURT REFUSED TO APPOINT COUNSEL IT MUST BE STATED CLEARLY IN THE RECORD BECAUSE THE COURT IS NOT AUTOMATICALLY REQUIRED TO PROVIDE A FREE LAWYER. "

GOD KNOWS THAT AT THAT TIME, USING THE ABOVE UNDERSTANDING INFORMATION, STATEN WOULD HAVE MADE A FORMAL REQUEST FOR AN APPOINTMENT OF COUNSEL TO ASSIST HIM ACCORDINGLY.

APPELLANT ALSO ASSERTS THAT THE COURT WAS SYNTAX IN WHAT WAS REQUIRED BY "THEM TO DO" AND THAT "TO DO" WAS : INFORM HIM OF HIS RIGHT TO REQUEST A FREE LAWYER.

THAT COURT ONLY STRESSED CLEARLY THAT IF STATEN WANTED TO HIRE HIS OWN LAWYER, HE COULD. T. 5 LINES 25-28

HOWEVER, IN RIELY VS. STATE, 562 SO. 2D 1206 (MISS. 1990) IN EVERY CASE IN WHICH A REQUEST FOR COUNSEL AT A HEARING IS REFUSED, THE GROUNDS FOR REFUSAL SHOULD BE STATED SUCCINCTLY IN THE RECORD.

ALSO IN, GAGNON VS. SCARPELLI, 411 U.S. 778 (1973) HEAD NOTE 11, AFTER BEING INFORMED OF HIS RIGHT TO REQUEST COUNSEL; HEAD NOTE 6, AND IF REFUSED COUNSEL, THE GROUNDS FOR SUCH SHOULD BE STATED SUCCINCTLY IN THE RECORD.

APPELLANT ASSERTS, EVEN IF WE USE THE MOST HIGH-TECH SCOPE IN THE WORLD, WE WILL NOT FIND THAT THE TRIAL COURT DID ANY OF THE ABOVE MANDATED REQUIREMENTS IN THIS CASE.

IN THIS CASE, THERE WERE INSTANCES WHERE A LAWYER WAS REQUIRED, BECAUSE APPELLANT (A MENTAL PATIENT) WAS UNABLE TO PROTECT HIS RIGHTS AND THEREFORE DID NOT POSSESS THE SKILL TO PROTECT SUCH RIGHTS.

FOR EXAMPLE IN GAGNON VS. SCARPELLI, FOUND THAT ALTHOUGH DUE PROCESS REQUIRED ONLY AN INFORMAL HEARING BEFORE REVOCATION, THE COURT FOUND THAT THE ABILITY OF THAT HEARING TO PROTECT THE APPELLANT'S RIGHTS DEPENDED ON THE USE OF SKILLS WHICH HE WAS UNLIKELY TO POSSESS.

ALSO IN GAGNON, FOUND THAT, APPELLANT IS AND WAS ENTITLED TO BE REPRESENTED BY APPOINTED COUNSEL AT A COMBINED REVOCATION AND SENTENCING HEARING. COUNSEL IS REQUIRED AT EVERY STAGE OF A CRIMINAL PROCEEDINGS WHERE SUBSTANTIAL RIGHTS OF A CRIMINAL ACCUSED MAY BE AFFECTED. COUNSEL MUST BE PROVIDED TO AN INDIGENT AT SENTENCING EVEN WHEN IT IS ACCOMPLISHED AS PART OF A SUBSEQUENT PROBATION REVOCATION PROCEEDING. ID. AT HEAD NOTE #1

THE LOSS OF LIBERTY ENTAILED IS A SERIOUS DEPRIVATION REQUIRING THAT STATEN BE ACCORDED DUE PROCESS. ID AT #2

APPELLANT HAD DIFFICULTY IN PRESENTING HIS VERSION OF DISPUTED FACTS AND THE PRESENTATION OF COMPLICATED DOCUMENTARY EVIDENCE WHICH INVOLVED THE EXAMINATION OR CROSS-EXAMINATION OF WITNESSES.

ADDITIONALLY, WHEN THE COURT INFORMED APPELLANT THAT HE COULD CROSS-EXAMINE THE P.O., HE (APPELLANT) ADVISED THE COURT THAT HE DID NOT KNOW HOW TO CROSS - EXAMINE. T. 15 LINES 7-24 AND 16 LINES 7-8

UNDER GAGNON VS. SCARPELLI, THIS COURT FOUND THAT THE ABILITY OF THAT HEARING TO PROTECT APPELLANTS RIGHT TO CROSS - EXAMINE HIS ACCUSED DEPENDED ON THE USE OF SKILLS WHICH STATEN DID NOT POSSESS.

THUS HERE IS AN INSTANCE WHERE COUNSEL WAS REQUIRED IN THE CASE AT BAR BECAUSE STATEN DID NOT POSSESS THE REQUIRED SKILLS TO CROSS-EXAMINE WITNESSES.

INTERESTINGLY IN THE CASE AT BAR, ON AUG. 31, 2004, THE P.O. FILED A PETITION TO DISMISS REVOCATION AFFIDAVIT AND WARRANT, ASSERTING THAT STATEN HAD COMPLIED WITH ALL TERMS SET OUT IN THE PETITION FILED ON MAR. 18, 2004. THE COURT GRANTED THIS MOTION ON AUG. 31, 2004. ONE DAY LATER ON SEPT. 1, 2004, THE COURT CONDUCTED A HEARING BASED ON THE PETITION FILED ON AUG. 10, 2004 AND REVOKED THE PROBATION, FINDING THAT STATEN HAD VIOLATED THE TERMS OF HIS PROBATION UNDER : (A), (E), (I) AND (J).

APPELLANT NOTES THAT THE TERMS LISTED ON THE AUG. 31, 2004 PETITION AND THE AUG. 10, 2004 TERMS WERE IDENTICAL TO EACH OTHER IN EACH PETITION.

THE TRIAL COURT SEEMS TO THINK THAT APPELLANT WAS PROVIDED ALL OF THE DUE PROCESS THAT IS REQUIRED UNDER THE U.S. CONST. AND THE CONST. OF THE STATE OF MISS.. PG. 6 OF COURTS OPINION

APPELLANT ASSERTS THAT THIS IS SIMPLY NOT TRUE BECAUSE, INFORMING AN INMATE THAT "HE HAD A RIGHT, IF HE WANT TO, TO HAVE A LAWYER HERE TO REPRESENT HIM." T. 5, IS NOT THE SAME THING AS, INFORMING HIM THAT "HE HAS A RIGHT TO REQUEST APPOINTMENT OF COUNSEL."

THESE TWO STATEMENTS ARE DIFFERENT LIKE NIGHT AND DAY !!

RIELY VS. STATE, 562 SO. 2D 1206 (MISS. 1990), QUOTING GAGNON VS. SCARPELLI, SUPRA, SPECIFICALLY MENTIONED THAT, "AFTER BEING INFORMED OF HIS RIGHT TO REQUEST COUNSEL." FINALLY, IN EVERY CASE IN WHICH A REQUEST FOR COUNSEL AT A HEARING IS REFUSED, THE GROUNDS FOR REFUSAL SHOULD BE STATED SUCCINCTLY IN THE RECORD. GAGNON, AT 791

"HE HAD A RIGHT, IF HE WANT TO, TO HAVE A LAWYER HERE TO REPRESENT HIM," PUT APPELLANT IN THE MIND FRAME THAT IF "HE WANTED TO GO OUT AND EITHER HIRE OR CONVINCE A LAWYER TO COME IN AND REPRESENT HIM," HE HAD THAT RIGHT "IF HE WANTED TO."

APPELLANT DID NOT KNOW THAT HE HAD A RIGHT IF HE WANTED TO REQUEST AN APPOINTMENT OF A COURT LAWYER PAID BY THE STATE OF MISS., AND THE TRIAL COURT DID NOTHING TO CURE HIS UN-AWARENESS.

IN RIELY VS. STATE, SUPRA., WE FIND THAT HIS COURT DID NOT REFUSE TO APPOINT A LAWYER AT THE REVOCATION HEARING. RIELY DID NOT ASK THAT ONE BE APPOINTED UNTIL PRIOR TO THE FOURTH HEARING -- AT WHICH TIME THE COURT GRANTED HIS REQUEST AND ALSO GRANTED HIS REQUEST ON APPEAL TO THIS COURT.

APPELLANT ASSERTS THAT WITHOUT SEEING RIELYS TRANSCRIPT, HE WAS INFORMED OF HIS RIGHTS TO REQUEST COUNSEL IN A CLEAR MANNER, AND APPARENTLY HE UNDERSTOOD HIS RIGHTS AT GREAT EXTENTS.

HOWEVER, IN BALDWIN VS. STATE, 891 SO. 2D 274 (MISS. 2005), THIS COURT FOUND THAT THE TRIAL COURT HAD NOT ERRED IN ADDRESSING HIM AT HIS REVOCATION HEARING WITHOUT AN ATTORNEY PRESENT BECAUSE THE ISSUES WERE NEITHER COMPLEX NOR DIFFICULT TO DEVELOP.

LOOKING AT THE RECORD IN THE CASE AT BAR AT A BIRDS EYE VIEW, WE FIND THAT THE ISSUES WERE COMPLEX AND DIFFICULT TO DEVELOP FOR STATEN.

THIS WAS THE TRIAL COURTS FAULT, NOT STATENS'. THIS CONVICTION SHOULD BE REVERSED ON THIS GROUND ALONE.

ARGUMENT AND CITATION OF AUTHORITIES

PROPOSITION TWO : APPELLANT 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. U.S. VS. DODSON, SUPRA.

HERE APPELLANT PRESENTS POTENTIAL REASONS JUSTIFYING AND MITIGATING HIS FAILURE TO COMPLY WITH HIS PROBATION RULES. APPELLANTS REASONS ARE SUCH THAT ONLY COUNSEL COULD HAVE EXPLAINED AND BROUGHT OUT.

APPELLANT INSISTS THAT HAD THE COURT AFFORDED HIM THE RIGHT TO TESTIFY IN RESPONSE TO THE QUESTION POSED BY A LAWYER, AS APPOSED TO SIMPLY BEING PERMITTED TO MAKE A LIMITED STATEMENT WHICH WAS UNAIDED BY A LAWYER, HE WOULD HAVE BEEN ABLE TO SHOW THAT, EVEN THOUGH HE MAY HAVE VIOLATED HIS PROBATION, HE HAD MITIGATING CIRCUMSTANCES WHICH WARRANTED AGAINST REVOKING PROBATION.

SEE - MORRISSEY VS. BREWER, SUPRA.

A. FOR EXAMPLE, A LAWYER COULD HAVE GATHERED WITNESSES ON BEHALF OF APPELLANT IN REGARDS TO THE DOMESTIC VIOLENCE CHARGE. WHEREAS HIS GIRLFRIEND HAS SIGNED A AFFIDAVIT ADMITTING THAT SHE WAS THE PROVOKER BY BREAKING OUT APPELLANTS CAR WINDOWS IN HIS YARD. SEE - ORIGINAL PCR

B. ANOTHER EXAMPLE, COUNSEL COULD HAVE GATHERED EXPERT WITNESSES IN REGARDS TO APPELLANTS HISTORY OF MENTAL PROBLEMS FROM S.M. ALLEN, M.D. AT H.C. WATKINS MEMORIAL HOSPITAL, INC. TO POSSIBLY MITIGATE AN ALTERNATIVE OTHER THAN PRISON IN THIS CASE. SEE - EXHIBITS IN ORIGINAL PCR

THIS LACK OF FAULT PROVIDES A SUBSTANTIAL REASON WHICH JUSTIFIES OR MITIGATES THE VIOLATION AND MAKES REVOCATION NOT NECESSARY. BEARDEN VS. GEORGIA, 461 U.S. 660 (1983)

ARGUMENTS AND CITATION OF AUTHORITIES

PROPOSITION THREE : THE P.O. HAD KNOWN OF ALL THE MISDEMEANOR CHARGES AGAINST APPELLANT FOR MONTHS AND LATER DECIDED TO REVOKE PROBATION DENYING APPELLANT RIGHTS TO DUE PROCESS AND WHICH ALSO FUNDAMENTALLY UNFAIR.

FOR EXAMPLE IN U.S. VS. TAYLOR, SUPRA. FOUND THAT THE PROBATIONARY SYSTEM IMPOSES A DUTY ON A P.O. TO REPRESENT THE INTERESTS OF BOTH SOCIETY AND THE DEFENDANT; UNREASONABLE DELAY IN BRINGING CHARGES OF VIOLATION, WOULD RARELY, IF EVER, SERVE THE INTERESTS OF EITHER.

APPELLANT ASSERTS THAT THE VIOLATION LODGED IN THIS CASE ARE MINOR VIOLATIONS OF THE TERMS OF PROBATION AND REVOCATION SHOULD NOT HAVE BEEN INITIATED AS A REFLEXIVE REACTION THEREOF.

IN THE CASE AT BAR, THE COURT INQUIRED ON THE FACT THAT APPELLANT WAS BEHIND ON PAYING HIS FINES, BUT THERE WAS NO CONCRETE REASON WHERE HE COULD NOT PAY. T. PG. 14 LINES 3-29, PG. 15 LINES 1-29 AND PG. 16 LINES 1-28.

APPELLANTS REASONS WERE SUBMITTED BY THE P.O. AS THAT APPELLANT JUST SAID : "HE DIDN'T HAVE IT AT THE TIME." T. PG. 16 LINES 12-20.

APPELLANT MAY WELL HAVE RECEIVED LESS THAN THE MINIMAL LEVEL OF DUE PROCESS. REGARDLESS OF THE ACTUAL REASON APPELLANTS PROBATION WAS REVOKED, IT IS CLEAR THAT HIS DUE PROCESS RIGHTS ASSOCIATED WITH REVOCATION WAS IGNORED BY THE COURT UNDER : GAGNON VS. SCARPELLI, AND RIELY VS. STATE OF MISS. SUPRA

OBVIOUSLY, APPELLANT WAS FINANCIALLY UNABLE TO PAY THE FINES AND UNDER MISS. CODE ANN. 99-19-20 (2) WHICH MANDATES THAT THE APPELLANT SHALL NOT BE IMPRISONED.

SEE - CASSIBRY VS. STATE, SUPRA.

ARGUMENTS AND CITATION OF AUTHORITIES

PROPOSITION FOUR : APPELLANT WAS NOT INFORMED OF HIS RIGHT TO APPEAL THE DECISION OF THE LOWER COURT REVOKING HIS PROBATION IMMEDIATELY THEREAFTER.

IN THE CASE AT BAR, APPELLANTS RECORD DOES NOT CONTAIN ANY NOTICE OF RIGHT TO APPEAL BY THE TRIAL COURT AS IN THE CASE OF : RIELY VS. STATE OF MISS., 562 SO. 2D 1206 (1990) AT 1208. BASICALLY, RIELY WAS APPEALING THE COURTS REVOCATION OF HIS PROBATION IN THE TRIAL COURT ITSELF, WHICH INCLUDED NINE ALLEGATIONS -- ALL OF WHICH WERE REJECTED BY THE TRIAL COURT. HOWEVER, RIELY APPEALED 2 OF THE NINE ALLEGATIONS TO THE SUPREME COURT OF MISS. AIDED BY APPOINTMENT OF AN ATTORNEY BY THE TRIAL COURT.

TRIAL COURTS SHOULD ADVISE CRIMINAL DEFENDANTS OF THEIR RIGHTS CONCERNING APPEAL ON THE RECORD AT THE TIME OF SENTENCING AND SHOULD SOLICIT A DECISION IN THAT REGARD. WRIGHT VS. STATE, 577 SO. 2D 387 (MISS. 1991)

APPELLANT DID NOT KNOW THAT AN APPEAL COULD EXIST IN HIS CASE UNTIL AFTER HE READ RIELY VS. STATE, SUPRA. WHEN HE ARRIVED AT THE PENITENTIARY AND STARTED RESEARCHING HIS CASE FOR ERRORS.

CONCLUSION

FOR THE ABUNDANT ABOVE REASONS AND AUTHORITIES, AS WELL AS THOSE THAT MAY APPEAR TO THIS COURT UPON AN EXAMINATION OF THE ENTIRE RECORD IN THIS CASE, TYREE STATEN SUBMITS THIS COURT WILL FIND AMPLE GROUNDS FOR REVERSAL OF HIS CONVICTION AND SENTENCE OF THE CIRCUIT COURT OF CLARKE CO. MISS.

RESPECTFULLY SUBMITTED,


APPELLANT

Affidavit

Mr. Tyree Staten

vs.

Appeal # 2026-CP-01660-COA

State of Mississippi

Affidavit of: TYREE STATEN

I, TYREE W. STATEN, swear and affirm the following:

1. I am the appellant in this case, confined at the East Mississippi Correction Facility in Meridian, MS;
2. My probation was unlawfully revoked and I am unlawfully held in custody because, the lower court violated my due process rights in failing to inform me of my right to request counsel;
3. I had a long mental history precluding me from developing facts, understanding my rights, and presenting mitigating evidence on my behalf to make revoking probation inappropriate with substantial reasons;
4. I was incapable of speaking effectively for myself;
5. My P.O. knew of all the misdemeanor charges against me for months;

6. My girlfriend admitted to provoking the domestic violence charge's

7. I did not know or was informed of my right to appeal the revocation adverse decision in the trial court immediately thereafter.

Further affiant sayeth naught,

Tyree W. Stater
affiant

Subscribed and Sworn to me on this the 28th day of February 2007.

Christy A. Covert
Notary Public

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES DEC 13, 2010
BONDED THRU STEGALL NOTARY SERVICE

CERTIFICATE OF SERVICE

A TRUE AND CORRECT COPY OF THIS BRIEF HAS BEEN MAILED TO :

ATTORNEY GENERAL OFFICE
P.O. BOX 220
JACKSON, MS. 39205-0220

CIRCUIT COURT JUDGE
HON. LARRY E. ROBERTS
P.O. BOX 1005
MERIDIAN, MS.

2-24-07
DATE

Tyree W. Staten
APPELLANT