

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LEROY CAMPBELL

FILED

APPELLANT

JUN 07 2007

VS.

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

NO. 2006-CP-2090-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

Defendant pled guilty to the crime embezzlement as quite an habitual offender. (Indictment c.p 9-10, seven previous felony convictions listed). Within the statutory period for filing defendant filed a motion which was treated as a post-conviction petition and denied (C.p. 19 & 30).

With *liberal* application of the “prison mailbox rule” it could be argued the present appeal was timely noticed.

STATEMENT OF FACTS

It would appear from the record and reasonable inferences therefrom defendant was arrested for embezzlement and left the State of Mississippi, becoming a fugitive from justice. Eventually he was apprehended in Louisiana and brought back to Mississippi. He eventually pled guilty to the crime, and was sentenced to a term of two years as an habitual offender, – meaning two years day-for-day, credit for time served.

Defendant thought he should be given credit for the time served pre-trial, when he was a fugitive from justice and incarcerated in other States. Since this is a question of application and calculation of credit for time served, post-conviction proceedings are not the proper proceedings to seek redress.

This appeal should be dismissed for lack of subject matter jurisdiction or alternatively affirmed as the trial court was correct in his narrow ruling in denying relief.

Defendant will be released, having served his entire sentence, on or about October 30, 2007.

SUMMARY OF THE ARGUMENT

I.

**THE TRIAL COURT DID NOT ERR IN DENYING THE MOTION
TO CORRECT AND MODIFY SENTENCE.**

ARGUMENT

I.

THE TRIAL COURT DID NOT ERR IN DENYING THE MOTION TO CORRECT AND MODIFY SENTENCE.

The issue before this Court is whether the trial court was correct in denying the motion to correct and modify sentence for the amount of pre-trial credit for time served.

The standard of review this Court should apply in reviewing this case is to give great deference to findings of the trial court. *Schmitt v. State*, 560 So.2d 148, 151 (Miss. 1990) (clearly erroneous standard of review for findings of trial judge on post-conviction rulings). Based upon this standard of review it is the position of the State that the trial court was correct in denying the motion to alter the sentence.

The law is clear. A defendant is not entitled to credit for time spent in another state awaiting return to this State to face criminal charges. *Holland v. State*, 418 So.2d 73 (Miss 1982). Further such claim is without a constitutional basis. There is no constitutional requirement that defendant be given credit for time served in another state absent statutory grant of such credit. *Boutwell v. Nagle*, 861 F.2d 1530 (11th Cir. 1988) citing, *Palmer v. Dugger*, 833 F.2d 253 (C.A.11 (Fla. 1987)). And, as cited above the Mississippi Supreme Court has specifically held that our statute, *Miss Code Ann.* § 99-19-23 has no application to time served in another state while an accused is awaiting return to this State to face criminal charges. *Holland*, 418 So.2d 73.

Additionally and quite contrary to the position of defendant *Taylor v. State*, 726

So.2d 227 (Miss.App. 1998) clearly holds defendant is not entitled to credit for time spend in Louisiana jail. The facts defendant cites from *Taylor* support this contention. (Taylor was taken into custody the day he signed the waiver.) Time is calculated from the day a defendant is in Mississippi custody.

Additionally, the State would ask this Court to take judicial notice (M.R.E. 201(d)) of the attached Mississippi Department of Corrections time calculation report. (Exhibit A – State’s Brief; Exhibit B, c.p. 28). The report shows defendant did receive credit for all the time he was incarcerated in Mississippi. Any incarceration in Louisiana is not to be counted as pre-trial credit, regardless of when or why defendant signed a waiver.

Consequently, based on the motion and all that was presented to the trial court it is clear that this defendant failed to meet his burden of proof as required under *Miss Code Ann.* 99-39-23(7), which states that "no relief shall be granted under this chapter unless the prisoner proves by a preponderance of the evidence that he is entitled to such." See, *McClendon v. State*, 539 So.2d 1375 (Miss. 1989) & *Schmitt, supra*. Legally and factually, this defendant did not present a claim to which he was entitled to the requested relief. Consequently, the trial court was absolutely correct in his ordering denying the motion for post-conviction relief as defendant got credit for all pre-trial time to which he was legally entitled.

However, there is another rationale for denying relief and affirming the trial

court's denial of post-conviction relief.

¶ 14. This Court has held that “a post-conviction relief pleading is not the proper means to calculate and receive credit for ... time served.” *Gable v. State*, 919 So.2d 1075, 1077 (¶¶ 6-8) (Miss.Ct.App.2005) (quoting *Murphy v. State*, 800 So.2d 525, 527-28(¶ 10) (Miss.Ct.App.2001)). If Melton is aggrieved by the calculation of credit for time served, he should send a request to the proper authorities within the Mississippi Department of Corrections administrative system. *Id.* If Melton is denied credit for time served, he may then seek redress from the courts. *Id.* This issue is not a proper subject for a motion for post-conviction relief. *Id.*

Melton v. State, 930 So.2d 452 (Miss.App. 2006).

Accordingly, this appeal should be dismissed for lack of subject matter jurisdiction. *Melton*.

Regardless, no relief should be granted.

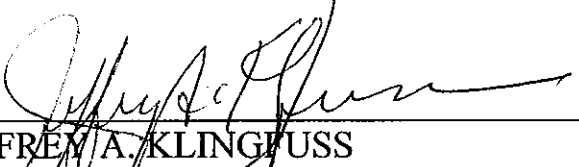
CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the trial court denial of post-conviction relief.

Respectfully submitted,

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BY:


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Mississippi Department of Corrections Inmate Time Sheet

Offender: CAMPBELL, LEROY 62840
Computation Date: 09/18/2006 10:55

Housing: WILKINSON CCF

Date Printed: 06/07/2007 11:49

Sentences:

DATE	CAUSE/COUNT	OFFENSE	COMMITTED	COUNTY	SERVE	HOUSE	PROBATION	HAB	DEFERRED	VERRIDE	CONCURRENT	CONSECUTIVE
07/10/06	62401-2005-17301	2700-EMBEZZLE	10/17/04	Harrison	2Y							

First Time Offender

Pre Trial/Pre Sentence Jail Time:

FROM	TO	DAYS	Override:
11/17/05	07/10/06	235	
11/05/04	11/23/04	18	
Total Jail Time:		253	

Computation Details:

DATE	DESCRIPTION
07/10/06	62401-2005-17301 2700-EMBEZZLE 2Y

Summary:

Begin Date	House Arrest Date	Parole Date	Tent. ERS Date	Tentative Discharge	Max Discharge	End Date
10/30/2005				10/30/2007	10/30/2007	
Total Term To Serve:	2Y	Total Earned Time:	0D	Earned Time Lost:	0D	Total MET Earned:
			0D			Total Trusty Time Earned:
						0D

Comments:

CERTIFICATE OF SERVICE

I, Jeffrey A. Klingfuss, 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 AND EXHIBIT** to the following:

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Circuit Court Judge
Post Office Box 1461
Gulfport, MS 39502

Honorable Cono Caranna
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This the 7th day of June, 2007.



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