

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JESSIE JAMES MCGEE

APPELLANT

VS.

FILED

JUN 14 2007

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

NO. 2006-CP-2139

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JESSIE JAMES McGEE

APPELLANT

VERSUS

NO. 2006-CP-2139-COA

STATE OF MISSISSIPPI

APPELLEE

**MOTION TO DISMISS APPEAL, OR IN THE ALTERNATIVE,
BRIEF FOR APPELLEE**

STATEMENT OF THE CASE

On or about April 4, 2005, Jessie James McGee pleaded guilty in the Circuit Court of Copiah County to a charge of sale of cocaine and was sentenced to a term of 10 years in the custody of the Mississippi Department of Corrections. (C.P.16) On or about March 26, 2006, McGee filed in the Circuit Court a Motion for Reconsideration of Sentence, which was summarily denied. (C.P.18, 25) McGee has attempted to appeal that ruling. (C.P.9)

SUMMARY OF THE ARGUMENT

This purported appeal should be dismissed for lack of jurisdiction. Solely in the alternative, the state submits the circuit court properly denied McGee's motion.

PROPOSITION:

**ALEXANDER'S ATTEMPTED APPEAL SHOULD BE DISMISSED;
SOLELY IN THE ALTERNATIVE, THE STATE SUBMITS THE
CHALLENGE TO HIS SENTENCE LACKS
SUBSTANTIVE MERIT**

McGee has attempted to appeal from an order denying his motion for reconsideration of sentence. The state counters that such an order is not appealable; thus, this purported appeal should be dismissed.

"[T]here are two primary ways in which a criminal defendant may challenge a trial court proceeding: (1) a direct appeal from a conviction, or (2) a proceeding under the Post Conviction Relief Act. An appeal is a matter of statutory right and not based on any inherent common law or constitutional right." *Fleming v. State*, 553 So.2d 505, 506 (Miss.1989), quoted in *Smith v. State*, 742 So.2d 1188, 1189 (Miss. App.1999). As the Mississippi Supreme Court stated in *Pipkin v. State*, 292 So.2d 181, 182 (Miss.1974), quoted in *Swift v. State*, 952 So.2d 1039, 1040 (Miss. App. 2007), an "attempt to appeal an unappealable order is a total departure from the orderly administration of justice and should not be approved." Because Alexander was not directly appealing his conviction, and was not proceeding under the Post-Conviction Collateral Relief Act, this appeal is not properly before the Court. *Smith*, 742 So.2d at 1189 (holding that denial of motion for reduction of restitution payments was not an appealable order). In the absence of statutory authorization, this appeal should be dismissed.

Solely in the alternative, the state points out for the sake of argument that the circuit court properly concluded that McGee's motion should be denied. The court denied relief with the following statement of facts, findings and conclusions:

THIS CAUSE having come on to be heard on the Defendant, Jessie James McGee's, Motion for Reconsideration of Sentence, said Motion filed with the Clerk of this Court on the date of March 6, 2006, wherein the Defendant requests this Court to reconsider the sentence previously imposed upon this Defendant on April 4, 2005, as it relates to the above styled matter. The Court having reviewed the Defendant's Motion herein and the Court file with respect to the above styled matter, and being fully aware that on the date of March 16 [sic], 2005, the Defendant herein pled guilty to Sale of Crack Cocaine and was sentenced by this Court on the date of April 4, 2005, to serve a term of Ten (10) Years in the custody of the Mississippi Department of Corrections. **This Court does hereby find that said Sentencing Order of the Defendant herein, having been signed by the undersigned Judge on the 4th day of April, 2005, during this Court's March, 2005 Term of Court, and Mr. McGee having begun to serve said sentence, and the term of court, at which said Order was entered having been formally closed, there exists no authority of law for the Court to change said sentence, (see Section 47-7-33 of Miss. Code of 1972, Denton v. Maples, 394 So.2d 895 1981), and there exists to need for a hearing on said Motion, and that Motion should be denied.**

(emphasis added) (C.P.25)

The circuit court's analysis of this issue is legally correct. See also *Hampton v. State*, 724 So.2d 449, 450 (Miss. App.1998), citing *Denton v. Maples*, 394 So.2d 895 (Miss.1991).

The state maintains that this appeal should be dismissed for lack of jurisdiction. We assert alternatively that there is no error in the court's refusal to grant the requested relief.


CONCLUSION

For the reasons stated above, the state respectfully asks this Court to dismiss this purported appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

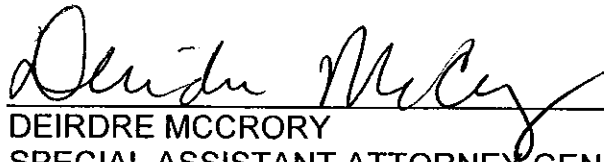
I, Deirdre McCrory, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Lamar Pickard
Circuit Court Judge
P. O. Box 310
Hazlehurst, MS 39083

Honorable Alexander C. Martin
District Attorney
P. O. Drawer 767
Hazlehurst, MS 39083

Jessie James McGee, #110829
Central Mississippi Correctional Facility (C.M.C.F.)
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This the 14th day of June, 2007.



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