

IN THE COURT OF APPEALS THE STATE OF MISSISSIPPI

**COPY**

NO. 2007-KP-00360-COA

LOUIS R. REESE

**FILED**

APPELLANT

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STATE OF MISSISSIPPI

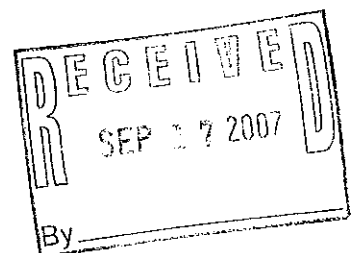
APPELLEE

**BRIEF FOR APPELLANT**

BY:

Louis Reese

Louis R. Reese, [REDACTED]  
MCCF, D-1  
833 West Street  
Holly Springs, MS 38635



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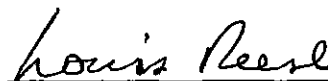
**CERTIFICATE OF INTERESTED PERSONS**


The undersigned Appellant, Louis R. Reese, certifies that the following listed persons have an interested in the outcome of this case. The representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Louis R. Reese, Appellant pro se.
2. Honorable Jim Hood, and staff, Attorney General.
3. Honorable Sharion Aycock, Circuit Court Judge.
4. Honorable Clay Joyner, Assistant District Attorney.

Respectfully Submitted,

BY:



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**STATEMENT OF ISSUES**

**ISSUE ONE**

Whether Appellant was denied fundamental due process of law, in violation of the 5th and 14th Amendment to the United States Constitution, where his probation or supervision earned release was violated without any conviction of crime or other valid conviction or violation of his release.

**ISSUE TWO**

Whether trial court erred in summarily dismissing the PCR motion without conducting an evidentiary hearing nor requiring the state to file an answer to the motion where record demonstrates that there was no criminal conviction of any crime, either before or after conviction, to warrant revocation of suspended sentence and that such revocation was based upon information and allegation by the state which was presented to the trial court.

**STATEMENT OF INCARCERATION**

The Appellant is presently incarcerated and is being housed in the Marshall County Correctional Facility at Holly Springs, Mississippi, in service of a 15 year prison

term imposed after a determination by the trial court that Appellant had violated the terms and conditions of his release without having been convicted of any offense or factual presentation which would violate the terms of his release. Appellant has been continuously confined in regards to such sentence since the date his conditional release was violated by the trial court.

### **STATEMENT OF CASE**

Louis R. Reese was sentenced by the Circuit Court of Monroe County, Mississippi, on November 19, 2001, to a term of thirty years imprisonment, with 22 years suspended. On November 13, 2002, that sentence was modified to 30 years imprisonment with 26 years suspended and five years of post release supervision.

It was alleged in 2005, that Appellant had violated the terms of the suspended sentence. The trial court, on September 20, 2005, revoked the suspended sentence for a term of 15 years. (C.P. 68-70) The Court further directed that Appellant be placed on 9 years post release supervision after release from prison and in regards to the same conviction and sentence. (C.P. 69). The Court's order revoking such suspended sentence did not reflect that Appellant had been convicted of any offense but stated that Appellant was charged with failing to live at liberty without violating laws and failed to pay court costs, fine and restitution. (C.P. 68). No proof of violation of any law was presented.

In regards to the post conviction motion, which is on appeal by this case, the trial court asserted that it was required only to apply a preponderance of the evidence standard and not a beyond a reasonable doubt standard when a petitioner is in violation

of supervised release. (C.P. 75). That the state only sought to violate post release supervision on the grounds that Louis R. Reese had failed to live at liberty without violating laws and failed to pay court costs, fine and restitution as directed. That there was no trial held on any of the accusations against Louis R. Reese and there has been no conviction regarding such changes.<sup>1</sup>

The trial court never found, as a fact, that Appellant was guilty of violating any condition of his post release supervision or that the state had actually proved any such violation.

### **STANDARD OF REVIEW**

In reviewing a trial court's decision to deny a motion for post-conviction relief the standard of review is clear. The trial court's denial will not be reversed absent a finding that the trial court's decision was clearly erroneous. Kirksey v State, 728 So.2d 565, 567 (Miss. 1999).

### **SUMMARY OF ARGUMENT**

Louis R. Reese is being illegally confined under an Order which is invalid where the trial court failed to sustain a conviction of crime or other term and condition of release before directing Louis R. Reese to be confined in prison. Sentence was invalid since such sentence was illegal where Mississippi Law prohibited a sentence to be imposed to be served concurrent with another term not imposed by the same court and at the same term of court. Glover v. State, 419 So.2d 588; Tate v. State, 455 So.2d 1312 (Miss. 1982). Since the trial court was without jurisdiction to impose such

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<sup>1</sup> The sentencing order in CR01-135-BM set forth the conditions of the post release supervision and provided no specific date in which Appellant was required to pay court costs, fin, and other amounts. (C.P. 32-34).

sentence and since the plea of guilty was motivated and entered into upon the agreement that such sentence would be imposed illegally the conviction and sentence is a null and void act and should be vacated and set aside as it violates the 5th and 14th amendments to the United States Constitution, as well as the Constitution of the State of Mississippi. Such action was tantamount to imposing a partially suspended sentence and, therefore, constitutes an illegal sentence and a violation of the spirit of the decision rendered by the Mississippi Supreme Court in Goss v. State, 721 So.2d 144 (Miss. 1998)..

The trial court decision is clearly erroneous and incorrect.

A.

**Louis R. Reese has been denied due process of law where his post release supervision has been violated without the court finding Louis R. Reese guilty of any violation of a condition of the release**

The law is clear that Reese' conditional release should not have been violated, resulting in his being returned to custody unless Louis R. Reese was convicted of an offense or violated other terms and condition of his release. Miss. Code Ann. §47-7-27.

In Williams v. Castilla, 585 So.2d 761, 764 (Miss. 1991), the court found the following in regards to a parole violation.

On revocation, the state's authority is much narrower, for before a person released on post release supervision or on parole may be returned to custody, it must be shown that he has violated the terms and conditions of such release. Miss. Code Ann. § (Supp. 1989).

Moore v. Ruth, 556 So.2d at 1061. Of course, a parolee's commission of a felony while at liberty is grounds for revocation, and we recognized in Moore that parole authorities are not required to await the principal trial before commencing proceedings to revoke parole. Moore went further and held that acquittal in a criminal proceeding does not per se preclude parole revocation predicated upon facts and circumstances giving rise to the criminal charge. Moore v. Ruth, 556 So.2d at 1061-62. On the other hand, we held.

The acquittal on the criminal charge means at the very least that, before the accused's parole may be revoked, the state must offer actual proof that he committed an act violating the terms and conditions of his parole.

Moore v. Ruth, 556 So.2d at 1062. The Board may not rely on the mere fact that the parolee has been charged with a felony.

Appellant would assert to this court that while the decision rendered by the court in Williams v. Castilla regarded a parole revocation proceeding, the standards to be applied before violation of a conditional release on supervised earned release is the same as parole since both forms of release pertains to sentences imposed to be served in the Mississippi Department of Corrections. Harwell v. State, 817 So.2d 598, 600 (Miss. App. 2002). The record reveals that the state did not pursue and the court never used any other grounds, other than Morgan's previous charges of forgery, of checks belonging to his step father, as grounds to revoke the conditional release. The state has not pursued any conviction of those crimes. Even were the court to apply those standards required for probation revocation, which is not what Louis R. Reese was under since he was a prior convicted felon ineligible for such release, the court would

have been required to provide a written statement by the fact finder as to the evidence relied upon and reasons for revoking the probation. Miss. Code Ann. §47-7-37; Newson v. State, 904 So.2d 1095 (Miss. App. 2004).

Additionally, the trial court judge should be held in error where the Court found that it was permissible to apply the preponderance of evidence standard to post release supervision violation matters rather than the reasonable doubt standard.<sup>2</sup> This Court should find that the trial court should have applied the moral certainty standard to the charges made by the state and should not have violated Appellant unless the state had met such burden of proof. This court should find that Louis R. Reese, having been previously found guilty of a felony, was not on probation and those standards did not apply. Reese' post release supervision sentence must therefore be evaluated under the revocation standards set forth under Miss. Code Ann. §47-7-27 which would not allow a

<sup>2</sup> The Trial Court Judge found that the U.S. Supreme Court has held that a judge should apply a preponderance of evidence standard and not a reasonable doubt standard when a petitioner is in violation of supervised release. The Court state that the Fifth Circuit had cited Johnson v. United States, 529 U.S. 694, 700 (2000), in regards to such matter. (C.P. 75). The United States Supreme Court, in Johnson, held:

In an 8-1 opinion delivered by Justice David H. Souter, that 18 USC section 3583(h) is not retroactively applicable; however, its prior version, 18 USC section 3583(e)(3), authorizes a Federal District Court to impose additional term of supervised release after revocation of initial term and reimprisonment. Thus, Johnson's judgment was affirmed because the federal sentencing statute, which was in effect at the time of his original offense, permitted the imposition of supervised release following recommitment. Justice Souter wrote for the Court that "[p]re-Guidelines practice, linguistic continuity from the old scheme to the current one, and the obvious thrust of congressional sentencing policy confirm that, in applying the law as before the enactment of subsection (h), district courts have the authority to order terms of supervised release following reimprisonment." Justice Antonin Scalia dissented

It is clear that Johnson is not applicable to the Mississippi statute which governs the post release supervision in this case. The trial court applied the wrong law and failed to recognize that Appellant was not indicted nor convicted of any offense which warranted the violation of his post release supervision. The record filed by the court fails to contain any showing that there was a proceeding conducted on the state's assertions and that there was evidence introduced to substantiate that Reese had violated the terms of his release.





violation to suffice unless there is a conviction of crime or violation of another condition of release. Louis R. Reese has not been convicted of any crime and the state never sought to pursue any other condition violation. Moreover, the record will clearly demonstrate that the trial court judge made no findings of guilt or adjudication on the two alleged reasons for revocation in which the state sought to go forward on in the revocation proceedings. The law requires that some form of finding of guilt be entered in regards to a ground under which the state seeks to revoke. No finding by the court should only be strictly construed for the Appellant and in favor of a finding that no violation under Mississippi Law occurred.

### **CONCLUSION**

Appellant Louis R. Reese respectfully submits that based on the authorities cited herein, and in support of his brief, that this Court should vacate the order revoking the post release supervision and action taken by the trial court in regards to the post conviction relief motion. This case should be remanded to the trial court for an evidentiary hearing.

Respectfully submitted:


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### CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Brief for Appellant have been served, by United States Postal service, upon: Honorable Jim Hood, Attorney General, P. O. Box 220, Jackson, Mississippi 39205; Honorable Sherion Aycock, Circuit Court Judge, P. O. Drawer 1100, Tupelo, MS 38802; Honorable Clay Joyner, Assistant District Attorney, P. O. Box 843, Aberdeen, MS 39730.

This, the 14 day of September, 2007.



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