

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

SHAUN DERRELL SPRATT

APPELLANT

VS.

CAUSE NO. 2007-CA-00791-COA

STATE OF MISSISSIPPI

APPELLEE

**APPEAL FROM THE CIRCUIT COURT
OF MONROE COUNTY, MISSISSIPPI
HONORABLE PAUL FUNDERBURK**

APPELLANT'S BRIEF

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Oral Argument is requested.

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CAUSE NO. 2007-TS-00791

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

Counsel for Appellant certifies that the following persons or entities have an interest in the outcome of this case:

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STATEMENT OF THE ISSUES

ISSUE NO. 1:

Did the trial court commit reversible error and violate Appellant's Constitutional Rights when its Order revoking Appellant's Post-Release Supervision was based on matters not heard at the Revocation Hearing.

STATEMENT OF THE FACTS

Appellant, Shaun Derrell Spratt was sentenced on September 13th, 2001, in Monroe County, Mississippi, in Cause Number 2000-244 to twenty (20) years in the custody of the Mississippi Department of Corrections based on a guilty plea to the crime of sale of cocaine.

Subsequently, Appellant was released from the custody of the Mississippi Department of Corrections and placed on post-release supervision imposed by the Court, the violation of which would result in revocation of Appellant's post-release supervision and imposition of any remainder of Appellant's sentence left unserved after release on post-release supervision.

After serving approximately two (2) years in the custody of the Mississippi Department of Corrections, Appellant Spratt was released on post-release supervision and subsequently brought before the Circuit Court of Monroe County, Mississippi on revocation proceedings for violation of the terms and conditions of his post-release supervision.

On the 27th day of February, 2007, a hearing was held in the Circuit Court of Monroe County, Mississippi, on the Petition to revoke Spratt's post-release supervision and to impose his prior suspended sentence. After a hearing on that matter, the court issued an Order wrongfully revoking Spratt's post-release supervision. (Record, pages 34-37).

Spratt timely filed a Petition for Post Conviction Relief in Monroe County Circuit Cause Number CV07-106-PFM (Record, page 9) alleging that, inter alia, his probation was wrongfully revoked, his conviction or the sentence imposed in violation of the Constitution of the United States or the Constitution of the State of Mississippi, that there exist evidence of material facts not previously presented or heard that requires vacation of the conviction or sentence and that his probation, parole or conditional release was unlawfully revoked and in violation of law.

Spratt's post-conviction relief action was denied without a hearing by Order filed April 13th, 2007 (CP 39-40). It is from this Order from which Appellant Spratt appeals.

STATEMENT OF THE CASE

The revocation hearing in this case centered exclusively on matters of violations of Spratt's post release supervision which, although admitted, were not adjudged by the lower court as the basis of his revocation in the Order which revoked his post release supervision.

The matters that served as the basis of Spratt's revocation were matters which were either never addressed at the revocation hearing, were found by the Court to be untrue, or were ruled on by the Court without his ability to confront evidence against him.

The transcript of the revocation proceedings and the violations established by the State therein, via admissions by Spratt or otherwise is diametrically opposed to the lower Court's findings contained in the Order revoking Spratt's post release supervision. The Lower Court revoked Spratt's post release supervision for violations of his post release status for reasons either not addressed, or for which the Court exonerated him.

SUMMARY OF THE ARGUMENT

Appellant Spratt's Fourteenth Amendment Rights of Due Process were violated because he was unlawfully revoked from his post release supervision status based on violations of terms and conditions of his post release supervision agreement which were declared by the lower court to be grounds for revocation of that status when the matters declared by the Court's Order were not adjudged to be violations at the revocation proceedings.

ARGUMENT

On the 27th day of February, 2007, a hearing was held before the Circuit Court of Monroe County, Mississippi, regarding a Petition filed against Appellant Spratt seeking to revoke his post release supervision.

In the course of the hearing, Spratt was asked to admit or deny several purported violations alleged in the Petition to Revoke. The questions regarding violations of Spratt's post release supervision were as follows:

(1) Whether or not he "failed to abstain from the use and possession of illegal drugs as directed in your....." by the Court; (Revocation transcript, page 4)

(2) Whether or not he "tested positive for marijuana on February 17th, 2005, April 21st, 2005, May 19th, 2005, and January 11, 2007";

(3) Whether or not he "failed to abstain from the possession of a firearm by a prior convicted felon".... "on January 10th, 2007"; (Revocation transcript, page 5)

(4) Whether or not he had "failed to live at liberty without violating the law..." by being arrested for "not paying a child-restraint ticket given you on August 8th, 2006." (Revocation transcript, page 5)

(5) Whether or not he had on January 10th, 2007, possessed "one lortab tablet" ... and was charged with possession of a controlled substance; (Revocation transcript, page 6)

(6) Appellant Spratt admitted to each of the allegations that the Judge inquired about with the exception of whether or not he informed his probation officer about the child restraint ticket.

(Revocation transcript, page 4-6)

At the conclusion of the hearing the Court held that "As to the allegations that he has admitted, the Court finds that these acts and omissions as alleged in the petition constitute a violation of the terms and conditions of his post release supervision and suspended sentence."

(Revocation transcript, page 6)

The Court went on to state that "Because you have met monthly as ordered, because you have paid as ordered, and because with the exception of the gun, all of your violations have been use of drugs, it is the order of the Court, that the previous suspended sentence of seventeen (17) years shall be and the same is hereby imposed." "I am going to suspend ten (10) of those years, leaving you with seven (7) to serve, and place you on five (5) years post release supervision upon your release." (Revocation transcript, pages 10-11)

This ruling was followed by an Order filed February 27th, 2007 which stated that Spratt violated the terms of his suspended sentence by:

1. Failing to pay court costs as directed;
2. Failing to report as directed;
3. Failing to pay supervision fees as directed. (R34)

The violations addressed at the hearing in this case were failed drug tests, possession of a firearm, a traffic ticket, and possession of a controlled substance. None of these admitted violations were set out as a basis for revocation of Spratt's post release supervision in the revocation Order cited above. The Court specifically addressed and exonerated Spratt on the issues of payment of court costs and Spratt's reporting to his supervision officer at the hearing by stating in the record that "Because you have met monthly as ordered, because you have paid as

ordered, and because with the exception of the gun, all of your violations have been use of drugs, it is the Order of the Court that the previous suspended sentence of seventeen (17) years shall be and the same is hereby imposed.” (Revocation transcript, pages 10-11) The Order revoking Spratt’s post release supervision is therefore defective and illegal due to the fact that it revokes Spratt’s post release supervision based on violation neither admitted to nor addressed at his hearing on the matter.

Mississippi Code Annotated Section 47-7-37 sets forth the procedure for probation revocation in this State. This statute meets the minimal requirements of due process as long as it is construed as inhering the due process requirements set forth in Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 474 (1972), and Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973). Riely v. State, 562, So.2d 1206, 1211 (Miss.1990); Grayson v. State, No. 91-KP-01215, slip op. 7-8, --- So.2d ---, ---- -- ---- (Miss. 1994). Even though Section 47-7-37 does not expressly state the requirements set forth in Morrissey and Gagnon, this Court will give the statute this construction in order to save its constitutionality. Riely, 562 So.2d at 1211. Morrissey requires both a preliminary hearing and a final hearing to determine whether parole will be revoked. Morrissey, 408 U.S. at 485-90, 92 S. Ct. at 2602-05. Gagnon applied the same due process requirements of Morrissey to probation revocations. Gagnon, 411 U.S. at 782. 93 S.Ct. at 1759-60. The court must adhere to the following procedures to have a proper preliminary hearing: (1) a minimal inquiry into the alleged violation near the time and reasonably near the place of the violation so that “information is fresh” and “sources are available”; (2) a determination that “reasonable ground exists for revocation.... by someone not directly involved in the case” although they “need not be a judicial officer”; (3) notice of the

hearing and a statement that the purpose is to determine if there is probable cause to believe a violation has been committed; (4) "the notice should state what violation have been alleged"; (5) the defendant should be allowed to bring all relevant information on which revocation is based be questioned in his presence; (7) the hearing officer shall prepare a summary of the responses of the defendant or evidence in support of the defendant's case; (8) the hearing officer shall determine whether there is probable cause to "hold the [defendant] for the final decision"; and, (9) the decision maker should express the grounds for holding the defendant for a final determination. Riely, 562 So.2d at 1210 (citing Morrissey, 408 U.S. at 485-87, 92 S.Ct. at 2602-03). The following procedural requirements are necessary for the final revocation hearing: 1) written notice of the probation violation; 2) disclosure of evidence against the probationer; 3) opportunity for defendant to testify and to present witnesses and other evidence; 4) right to confront and cross-examine witnesses; 5) "neutral and detached" hearing board; 6) a written statement of reason for revocation. Riely, 562 So.2d at 1210 (citing Gagnon, 411 U.S. at 786, 93 S.Ct. At 1761-62).

In the case at bar, Spratt's Eighth and Fourteenth Amendment Rights, under the United States Constitution were violated because his post release supervision was revoked for violations for which he neither admitted, was found guilty of at the revocation hearing nor had a right to testify in opposition of or confront at the revocation hearing. (Riely v. State, 562 So.2d 1206 (Miss. 1990), Morrissey V. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed. 2d 656 (1973)) The case of Berdin v. State, 648 So.2d 73 (Miss. 1994) further supports Spratt's position. In this case the Court held that revocation of probation was a violation of Berdin's due process rights because the revocation was based on matters which were not heard at the revocation proceeding. In Berdin,

there was “substantial confusion in the record concerning the reason the court revoked probation in the first place”. In that case, the hearing transcript indicated that the Court based the revocation on the Defendant’s failure to pay court costs whereas the post-conviction relief hearing transcript indicated that the Court revoked the probation due to the Defendant’s entering a guilty plea to a felony after being placed on probation. (Berdin v. State, 648 So.2d 73, at 77)

Clearly, as in Berdin, where a defendant has his or her probation or post release supervision revoked for reasons for which he or she has had no hearing, nor any right to confront the evidence forming the basis of the Court’s findings, that defendant’s due process rights have been violated and, as held in Berdin, the case must be remanded back to the lower court.

Based on the precedent established by this Court, this case should be reversed and remanded.

CONCLUSION

The Trial Court committed reversible error in its dismissal of the Petition for post conviction relief in this case. The underlying revocation of Spratt's post release supervision was a clear deprivation of his Constitutional Rights under the Fourteenth Amendment to the United States Constitution.

Appellant requests the decision of the Trial Court be reversed or, in the alternative that this case be remanded for a new trial.

Respectfully Submitted, this the 16th day of June, 2008.



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CERTIFICATE OF SERVICE

I, John Dudley Williams, Attorney for Appellant, do hereby certify that I have this date mailed a true and correct copy of the above and foregoing Appellant's Brief to the following parties:

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So certified on this the 16th day of June, 2008.



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