

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-CA-01650-COA

CLIFTON GATLIN

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S REPLY BRIEF

**APPEAL FROM THE CIRCUIT COURT OF MADISON COUNTY,
CAUSE NUMBER CI-2006-0332**

ORAL ARGUMENT REQUESTED

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I. GATLIN'S PETITION FOR POST-CONVICTION RELIEF SHOULD NOT BE DISMISSED AS MOOT.

All the State's cases on this issue are easily distinguishable from the facts of this case. The distinguishable characteristic present is that in all of the petitions the defendants' sentence had expired and they were not under the effect of the sentence.¹ The post-conviction relief statute is available to Gatlin because he is presently serving a sentence for the crime for which he was convicted by a Mississippi court of record.²

Gatlin's sentence has not expired. He is still serving his sentence. He must annually report to the Mississippi Department of Corrections and register as a sex offender. He is not at liberty to do otherwise. This court must find this issue is not moot.

II. GATLIN'S GUILTY PLEA WAS NOT ENTERED INTO VOLUNTARILY AND INTELLIGENTLY.

Contrary to the State's assertion, Gatlin does not complain that he was unlawfully granted early release. He instead complains that he is still in custody and his plea of guilty was not voluntarily and intelligently entered into. He is not on parole or some other type of early release.

The State is most to blame for this predicament. It erred when it induced Gatlin to enter a plea of guilty based on a program it knew or should have known Gatlin was not eligible.

The State finds amusing Gatlin's claim that he would not have entered his plea of guilty had he known he was not eligible for the Regimented Inmate Program. Gatlin does not find amusing the State's inducement to enter a guilty plea when it knew or should have

¹ See *Rice v. State*, 910 So. 2nd 1163 (Miss. Ct. App. 2005) and *Shaw v. State*, 803 So. 2d 1282 (Miss. Ct. App. 2002).

² *Phillips v. State*, 856 So. 2d 568, 570 (¶ 5) (Miss. Ct. App. 2003).

known were not available. The fact Gatlin served a period of time in a program that may or may not have been of some benefit to him is not of the moment. What is of the moment is the fact the State improperly induced Gatlin to he entered his plea of guilty. As a result his plea was note entered into voluntarily and intelligently.

CONCLUSION

For the foregoing reasons and authorities, this Court must find that Gatlin's plea must be set aside as being involuntary. This cause must be remanded to the trial court for a new trial.

Respectfully submitted,

CLIFTON GATLIN

By:



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CERTIFICATE OF SERVICE

This is to certify that on the below date a true and correct copy of the foregoing was mailed first class, postage prepaid, to the following individuals:

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This the 28th day of July 2008.


Imhotep Alkebu-lan