

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-CP-00428

KARRY L. MORGAN

FILED

APPELLANT

VS.

OCT 22 2007

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SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF FOR APPELLANT

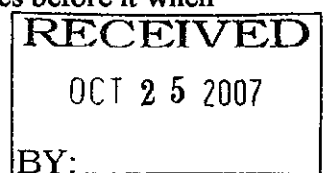
The State of Mississippi has files its brief in this case and responding to the issues set out in Appellants pro se brief.

The law is clear that pro se pleadings are entitled to liberal construction. Appellant presented his claim as best as possible without the assistance of an attorney or someone trained in the law. Appellant is confined in a regional county jail facility, indigent and without the ability to retain professional help.

PROPOSITION I

Appellant argued in his initial brief that his revocation was illegal where there was no conviction of any crime or condition of his release. The state makes out in it's brief that Appellant wrongfully alleges that he is being illegally confined under an order which is invalid where the trial court failed to sustain any conviction of crime or other term and condition of release before directing Morgan to be confined in prison. Contrary to the state's assertion, this argument is precisely correct.

After making this argument the state evades to Uniform Circuit and County Court Rules 8.04(A)(3). This rule quoted by the state is not relevant to the argument and claims demonstrated here by post conviction motion and the Brief for Appellant. The revocation of Appellant's sentence was not pursuant to a guilty plea. The trial court had the correct issues before it when



the trial court summarily denied relief. An appeal of such ruling is the only possible avenue for review in Mississippi. If the trial court initially revoked Appellant's suspended sentence without sustaining a conviction of crime or other acts to warrant violation of a condition of the release then the actions of the trial court "was clearly erroneous." Appellant need not raise errors committed by the lower court when the only relevant issue would be whether the lower court's findings were clearly erroneous. The state has not advanced any argument to refute the point that the lower court actually found a revocation of the suspended sentence without having sustained any conviction of a crime connected with the violation or the finding that Appellant had violated some other term of his release. Without such finding Appellant should not have been violated. The state's arguendo assumption in its brief is misplaced. It is common knowledge from the brief filed by Appellant that the trial court erred in failing to sustain the PCR motion. The state's continues to confuse the issue with a plea of guilty or that Appellant is challenging a guilty plea. No such challenge is being made since there was no guilty plea. While Appellant's initial conviction and imposition of the suspended sentence may be as a result of guilty plea, that particular proceeding is not being challenged. Appellant Morgan is challenging the fact of the violation which was subsequently entered by the trial court. The guilty plea argument advanced by the state is misplaced. Appellant's PCR motion was not found by the trial court to be untimely or procedurally barred.

While the Order revoking post release supervision sets forth the exact contents as the state argues, the record is totally lacking in any order of conviction and sentencing to sustain that Appellant committed new crimes. The Order Revoking Post Release Supervision Sentence states that Appellant committed such offenses but fails to support such finding with any actual sentencing order. The state's argument lacks merit. The state is attempting to evade to an issue of

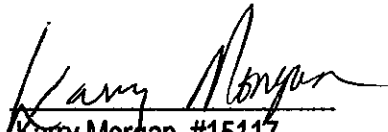
a plea of guilty which is not relevant to the case at bar. Morgan is not attempting to attack the plea of guilty which resulted in the post release supervision sentence. The only attack made here by Appellant, as was made in the PCR, is the attack made upon the post release supervision revocation proceedings. It is unclear how the state is associating such issues with the issues of a plea of guilty since the revocation proceedings were not based upon a plea of guilty. Appellant did not enter a plea of guilty to the crimes uttering forgery or attempting to utter forgery. The issues filed by Appellant in his PCR motion is not lacking in merit merely because the record makes an allegation, without proof or support, that Appellant committed these crimes. The trial court stated that Appellant committed these crimes on November 8, 2004, November 10, 2004, and November 19, 2004. (R.E. 95-96). The state pointed this out but failed to point out, or explain, where such conviction and actual sentencing orders for these offense may be found. Post conviction was the appropriate remedy to bring this claim before the trial court. The trial court's order revoking Morgan's Post Release Supervision fail to find Appellant guilty of violating his post release supervision but me simply states that Appellant committed these offenses on the dates specified. There was no testimony provided to support that Appellant was actually convicted of such charges.

CONCLUSION

Morgan would respectfully ask this Court to reject the state's argument and find that Appellant suffered a violation of his constitutional rights under the 5th and 14th Amendments where the Circuit Court violated Appellant's post release supervision without any underlying finding of guilty of any offense or condition which would warrant the violation of such. The trial court's actions of denying the PCR was

clearly erroneous. The state's argument fail to refute the claims advanced by Appellant in his brief. This Court should reverse and remand for additional proceedings consistent with the points set out herein.

Respectfully submitted

BY: 
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CERTIFICATE OF SERVICE

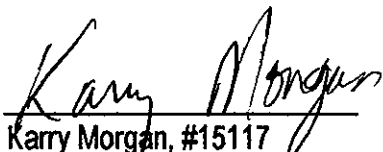
This is to certify that I, DeShun T. Martin, Appellant pro se, have this date delivered a true and correct copy of the above and foregoing Appellant's Reply Brief, to:

Honorable Jim Hood
P. O. Box 220
Jackson, MS 39205

Honorable Andrew C. Baker
Circuit Court Judge
P. O. Drawer 368
Charleston, MS 38921

Honorable John Champion
365 Loshier Street, Ste 210
Hernando, MS 38632

This, the 22nd day of, October, 2007.

BY: 
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