

**COPY**

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**GLEN TYRONE ALEXANDER**

**APPELLANT**

**VS.**

**FILED**  
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SUPREME COURT  
COURT OF APPEALS  
**NO. 2007-CP-0703-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**NO. 2007-CP-0703-COA**

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**PROCEDURAL HISTORY**

Glen Tyrone Alexander filed a *Pro Se* Petition for Writ of Habeas Corpus with the Circuit Court of Marion County, Mississippi. Although Alexander styled his pleading a Writ of Habeas Corpus, it was a motion for post-conviction relief and the Marion County Circuit Court, Honorable R.I. Prichard presiding, treated it accordingly. The Circuit Court denied said motion in a memorandum and order filed April 12, 2007. Feeling aggrieved of that ruling Alexander appeals, raising the following issues:

- I. WHETHER PETITIONER WAS DENIED DUE PROCESS DURING HIS PROBATION REVOCATION HEARING.**
- II. WHETHER PETITIONER'S PROBATION REVOCATION WAS ERRONEOUS.**
- III. WHETHER PETITIONER'S PROBATION OFFICER VINDICTIVELY PROSECUTED HIM.**
- IV. WHETHER FALSE DOCUMENTS AND MISLEADING TESTIMONY INTRODUCED AT PETITIONER'S PROBATION REVOCATION HEARING LEAD TO THE REVOCATION OF HIS POST-SUPERVISION RELEASE.**

**V. WHETHER PETITIONER IS UNLAWFULLY DETAINED.**

**STATEMENT OF THE FACTS**

On August 22, 2000, Alexander plead guilty to one count of sale of a Schedule II controlled substance. The court sentenced Alexander to twenty years in the Mississippi Department of Corrections (hereinafter referred to as MDOC) with eight years to serve and twelve years suspended on post release supervision for a period of five years. Alexander claims he was released from prison on or about April 16, 2005, and placed on earned-release supervision. The MDOC Discharge Certificate attached to his petition reflects Alexander completed his eight-year sentence and was discharged on January 3, 2006, when he began his post-release supervision. (R 7)

According to Alexander and the MDOC test results in the record, Alexander submitted a urine specimen on September 16, 2005, which tested positive for marijuana. The test results reflect a date of October 20, 2005. (R 8)

On January 24, 2006, MDOC field officer Lanny Arrinder arrested Alexander for domestic assault. Attached to Alexander's petition is a narrative of the arresting officer's interview with a bruised and bloodied woman who stated Alexander assaulted her. (R 9, 10) According to Alexander, Columbia Municipal Court dismissed the domestic assault charges and assessed him \$93.00 for old traffic fines. However, a copy of an Order of Conviction Upon Guilty Plea for domestic assault dated February 22, 2006 is in the record.. (R 12) Alexander claims the order was forged.

Subsequently, the MDOC petitioned the Circuit Court of Marion County to revoke Alexander's probation on the grounds that he: "(a) committed an offense against [t]he laws of this State. (b) failed to avoid injurious and vicious habits. [(c)] possessed and consumed a mood altering drug, to-wit: marijuana." (R 11) After a hearing, the Marion County Circuit Court found

Alexander violated the terms of his suspended sentence and entered an order revoking his probation.

Alexander filed a *Pro Se* Petition for Writ of Habeas Corpus with the Circuit Court of Marion County, Mississippi. (R 2-13) The circuit court correctly treated the petition as a motion for post conviction relief. After a complete review of the record, Judge Prichard entered a memorandum and order denying Alexander's post-relief motion. (R 16, 17, 18) Alexander filed this appeal asking to be credited for time served and placed under post-release supervision or in the alternative be given an evidentiary hearing.

### **SUMMARY OF ARGUMENT**

The trial court lawfully revoked Alexander's post-release supervision. Alexander raises five errors on appeal but all relate to whether the trial court lawfully revoked Alexander's post-release supervision.

### **ARGUMENT**

#### **THE TRIAL COURT DID NOT ERR IN REVOKING ALEXANDER'S POST RELEASE SUPERVISED PROBATION.**

Alexander contends that the circuit court did not have authority to revoke his post-release supervision because he was on earned-release supervision and not post-release supervision when he tested positive for marijuana. Pursuant to *Mississippi Code Annotated* § 47-7-37 (Supp. 2007), only the court has the authority to revoke probation. *Grace v. State*, 919 So.2d 987, (Miss. Ct. App.2005). Grace argued that matters pertaining to earned release supervision fall under MDOC's supervision and not the trial court. This Court, finding Grace's argument without merit, stated, "probationers remain under the jurisdiction of the courts until the entire term for which they were sentenced has expired, including any and all portions ordered suspended." *Grace*, 919 So.2d at 989(¶ 8), citing *Brown v. State*, 872 So.2d 96, 99(¶ 13) "We found that it was immaterial as to whether Grace was under earned release supervision or post-release supervision at the time he

violated the terms of his probation.” Id.

In *Edwards v. State*, 946 So.2d 822 (Miss. Ct. App.2007), Edwards, claimed that the trial court unlawfully revoked his post-release supervision because he was arrested while on early release supervision, a situation similar to the case *sub judice*. In *Edwards*, this Court relying on *Grace v. State* again held that the trial court possessed authority to revoke a defendant’s probation regardless of whether the defendant was on earned release supervision or post release supervision when he violated the terms of his probation.

Following the rulings in *Edwards* and *Grace*, Alexander’s argument that the trial court did not have jurisdiction to revoke his post-release supervision is without merit. Alexander, as a probationer, remained under the jurisdiction of the Circuit Court of Marion County until he completed the entire twenty years of his sentence.

Alexander also claims that he was not provided a fair and impartial hearing. According to Alexander, the trial court allowed the state to introduce a forged order into evidence and failed to allow him to present evidence in his defense. When reviewing a lower court’s decision to deny a petition for post-conviction relief, an appellate court will not disturb the trial court’s factual findings unless they are found to be clearly erroneous. However, where questions of law are raised, the applicable standard of review is de novo. *Barnes v. State*, 937 So.2d 1006(¶ 4) (Miss. 2006), citing *Brown v. State*, 731 So.2d 595, 598(¶ 6) (Miss.1999)

“It is elementary that a party seeking reversal of the judgment of a trial court must present this Court with a record adequate to show that an error of reversible proportions has been committed and that the point has been procedurally preserved.” *Barnes v. State*, 937 So.2d 1006, 1008, citing *Hansen v. State*, 592 So.2d 114, 127 (Miss.1991). An order denying post-conviction relief is presumed correct. *Nelson v. State*, 919 So.2d 124, 126(¶ 6) (Miss.Ct.App.2005) (citing *Branch v. State*, 347 So.2d 957 (Miss.1977)

*Mississippi Code Annotated* § 99-39-9 (Rev.2005) states, in pertinent part, that:

(1) A motion under this chapter shall name the state of Mississippi as respondent and shall contain all of the following:

....

(d) A separate statement of the specific facts which are within the personal knowledge of the prisoner and which shall be sworn to by the prisoner.

(e) Affidavits of the witnesses who will testify and copies of documents or records that will be offered shall be attached to the motion. The affidavits of other persons and the copies of documents and records may be excused upon a showing, which shall be specifically detailed in the motion, of good cause, why they cannot be obtained. This showing shall state what the prisoner has done to attempt to obtain the affidavits...

In filing for post-conviction relief, Alexander failed to provide a sworn statement of facts within his personal knowledge. He also failed to provide affidavits from witnesses who he would have testify and failed to make any showing of why he had not provided the affidavits and what he had done to attempt to obtain the affidavits, all as required by statute. Alexander listed Municipal Judge Forest Dantin, Jessica Brown, and Captain Michael Stevens as persons who he claimed could prove the domestic assault charge was dismissed. However, Alexander wholly failed to provide affidavits from such individuals or a statement of what he did to attempt to obtain sworn statements.

The results of Alexander's positive drug tests from MDOC (R 8), the police report where he was arrested for domestic violence (R 9, 10) and a copy of Alexander's guilty plea to domestic assault and sentencing order from the Municipal Court of Columbia. (R 12) are in the record.

There is nothing in the record that would prove that the Marion County Circuit Court denied Alexander due process or erred when it denied Alexander's petition for post conviction relief. In *Barnes v. State*, this Court stated that it "can only consider those facts that are found in the record, *Colenburg v. State*, 735 So.2d 1099(¶ 6) (Miss.Ct.App.1999), and cannot rely on mere allegations contained within a petitioner's brief." *Henderson v. State*, 783 So.2d 769(¶ 4) (Miss.Ct.App.2001)

The Marion County Circuit Court in its opinion stated

While, the petitioner raises numerous arguments, alleging forged documents, inadequacy of the hearing etc., all of which attack the validity of the Court's order:



however, since the petitioner tested positive for Marijuana, the court does not deem discussion on every point necessary in light of *McGaughy v. State*, 2006-CA-00382\_COA and Miss. Code Ann. § 47-3-37. In *McGaughy*, the Court of Appeals affirmed the trial court decision to revoke the petitioner's probation, even though he was acquitted of the underlying charges, which instigated the revocation proceeding, since other independent grounds existed. Further, *McGaughy* held that Mississippi law is clear that a probationer may have his or her probation revoked for **any** deficiency. (*emphasis added*)

Here, the record reflects, that the defendant tested positive for marijuana, which is clearly a deficiency under *Miss. Code Ann. § 47-7-37*.

The Marion County Circuit Court had sufficient evidence to find that Alexander violated his probation and therefore was correct in revoking his post-release supervision. Alexander never denied he used marijuana while on early-release supervision. Alexander failed to present any evidence that the Circuit Court denied him due process or that he was not provided a fair and impartial hearing

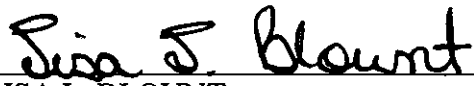
### CONCLUSION

Accordingly, the trial court properly exercised jurisdiction over Alexander in revoking his post-release supervision.

Respectfully submitted,

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BY:

  
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## CERTIFICATE OF SERVICE


I, Deshun T. Martin, 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 R. I. Pritchard, III  
Circuit Court Judge  
Post Office Box 1075  
Picayune, MS 39466

Honorable Haldon J. Kittrell  
District Attorney  
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Glen Tyrone Alexander, #77742  
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This the 3rd day of March, 2008.

  
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