CARL DEWAYNE WATTS — APPELLANT

VS. — NO. 2007-CP-0708-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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CARL DEWAYNE WATTS **APPELLANT**

VS. **NO. 2007-CP-0708-COA**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

This is yet another appeal from a trial court's summary denial of post-conviction collateral relief flowing in the wake of a voluntary guilty plea. That plea later precipitated a thirty (30) year banishment from Forrest County after Watts violated the terms and conditions of his suspended sentence.

As one of seven (7) conditions attached to a thirty year (30) year straight suspended sentence, Carl Watts eagerly agreed to stay outside a 100 mile radius of the Forrest County Courthouse in Hattiesburg for the duration of his suspended sentence. Thirty-eight (38) days after receiving his lenient sentence in the wake of a plea-bargain agreement, Watts violated the terms of his suspended sentenced by returning to Forrest County where he was caught.

Following a petition for revocation of suspended sentence filed by the State, the trial court revoked Watts's suspended sentence and ordered him to serve the entire thirty (30) years.

Watts now cries foul, claiming his suspended sentence, which included banishment from the

conviction relief sought in the wake of his guilty plea to the transfer of cocaine entered in the Circuit Court of Forrest County, Robert B. Helfrich, Circuit Judge, presiding. Watts was sentenced by Judge Helfrich to serve thirty (30) years in the custody of the MDOC, provided however, " . . . it having been made known to the Court that the ends of justice and the best interest of the public and Defendant will be best served, the Court hereby suspends all of said sentence upon Defendant's good behavior and compliance with the following [seven conditions]." (C.P. at 41-42)

Unhappy over the prospect of extended incarceration, Watts filed for post-conviction relief complaining, *inter alia*, his sentence was illegal, his plea involuntary, and his lawyer ineffective.

Post-conviction relief was subsequently denied summarily by Robert B. Helfrich, Circuit Judge. (C.P. at 102-06; appellee's exhibit A, attached)

On appeal to this Court Watts has abandoned his claims his plea was involuntary and his lawyer ineffective. The target of his appellate complaint has been narrowed to the legality of Watts's straight suspended sentence and his subsequent banishment from the county.

STATEMENT OF FACTS

Carl Watts is a forty-five (45) year old African American male and prior convicted felon, having been convicted in 1989 of uttering a forgery, in1991 of carrying a concealed weapon as a convicted felon, in1995 of possession of a controlled substance, and in 1998 of receiving stolen property. (C.P. at 31-32, 73-74)

By all appearances, Watts is a criminal entrepreneur.

As a convicted felon four times over, Watts was at risk for enhanced punishment in the event he committed another felony. *See* Miss.Code Ann. §99-19-81 and 83.

February 4, 2005. Watts transfers crack cocaine to a confidential informant. (C.P. at 31)

September 13, 2005. Watts is indicted as an habitual offender under §99-19-81 for the transfer of cocaine. (C.P. at 31, 36)

November 29,2005. Watts, in the wake of an eagerly sought after plea bargain negotiated by his lawyer, files a petition to enter plea of guilty and enters a guilty plea to the transfer of crack cocaine in violation of Miss.Code Ann. §41-29-139(A)(1). (C.P. at 34-40)

November 29, 2005. Pursuant to the plea bargain, the charge of recidivism is dropped (C.P. at 33), and Watts is sentenced to serve thirty (30) years in the custody of the MDOC. (C.P. at 41-43) Judge Helfrich suspends all of the thirty (30) year sentence contingent upon Watts's good behavior and compliance with seven (7) conditions, including condition g) which reads, in its entirety, as follows: "Depart from Hattiesburg, Mississippi[,] within forty- eight (48) hours and remain outside a radius or distance of one hundred (100) miles from the Forrest County Courthouse situated in Hattiesburg, Mississippi, for the entire period of his suspended sentence." (C.P. at 42; appellee's exhibit B, attached)

The sentencing order also states in plain and ordinary English that "[t]he violation of any condition of Defendant's suspended sentence shall violate the terms and conditions of the [sic] his suspended sentence, and the Court shall have the authority to revoke the Defendant from his suspended sentence and remand him back into the custody of Mississippi Department of Corrections to serve the entire thirty (30) year sentence." (C.P. at 42-43)

January 3, 2006. The State of Mississippi files a "Petition for Revocation of Suspended Sentence" alleging that Watts " . . . has violated the terms of his suspended sentence in a material

violation of his suspended sentence. The circuit court finds that Watts violated the terms and conditions of his suspended sentence and enters an order (not in record) revoking Watts's suspended sentence and ordering him to serve the full thirty (30) year sentence. (C.P. at 103)

March 28, 2006. Gay L. Polk-Payton, lawyer for Watts, sends a letter to Watts reminding him, *inter alia*, he was ready to plead. (C.P. at 33; appellee's exhibit C, attached)

A paragraph from that letter is quoted as follows:

> I was in court when you pled and the judge went through a series of questions, such as: "If you get caught in this jurisdiction, what will happen?" You said: "I will go to jail for 30 years." He said, "If you commit any crimes anywhere, what will happen?" You said, "I will go to jail for 30 years." He asked you several more questions to make sure that you understood the ramifications of this plea agreement . . . *the plea agreement that you literally begged for.*" [emphasis ours]

September 13, 2006. Watts files, *pro se*, a "Motion to Vacate Conviction and Sentence," claiming his suspended sentence was illegal because he was a prior convicted felon, his banishment from the county was illegal, his plea was involuntary, and his lawyer ineffective. (C.P. at 6-30)

January 11, 2007. Watts files, *pro se*, a motion to amend his motion for post conviction collateral relief. (C.P. at 55-69)

February 16, 2007. Watts files, *pro se*, a motion for evidentiary hearing. (C.P. at 5, 95-101)

April 12, 2007. Judge Helfrich issues a five (5) page order and opinion treating Watts's papers as a motion for post-conviction collateral relief and summarily denying that motion as plainly or manifestly without merit.

April 24, 2007. Watts filed his notice of appeal. (C.P. at 108)

A petition to enter plea of guilty, signed and initialed in various places by Watts on

A copy of the Petition to Enter Plea of Guilty is a matter of record at C.P. 34-40.

A transcript of the plea-qualification hearing is not a part of the appellate record.

SUMMARY OF ARGUMENT

A trial judge has the discretionary power to suspend a sentence as well as vacate such suspended sentence based upon conditions which the offender has violated. **Johnson v. State,** 925 So.2d 86, 93 (Miss. 2006), citing Miss.Code Ann. §99-19-29, and quoting from **Carter v. State,** 754 So.2d 1207, 1210-11 (Miss. 2000) Mills, J., dissenting).

Judge Helfrich found as a fact " . . . that the banishment provision herein bears a reasonable relationship to the purposes of the suspended sentence . . ." (C.P. at 42) The findings of fact and conclusions of law made by the circuit judge in his 6 page opinion and order are both judicious and correct. *See* **Cobb v. State,** 437 So.2d 1218 (Miss. 1983).

Moreover, assuming the suspended sentence and Watts's banishment from the county were illegal, Watts cannot complain since both were more lenient than Watts was actually entitled to receive. **Myers v. State,** 897 So.2d 198, 201 (Ct.App.Miss. 2004). "It is well established in Mississippi that an individual may not plead guilty to a crime, receive a lesser sentence than what is prescribed by statute, and then use the more lenient sentence as a sword to attack the entire sentence as illegal." **McNickles v. State,** No. 2006-CA-00023-COA decided May 22, 2007, (¶13) (Ct.App. 2007), quoting **Cook v. State,** 910 So.2d 745, 747 (¶10) (Ct.App.Miss. 2005). *See also* **Sweat v. State,** 912 So.2d 458, 461 (¶9) (Miss. 2005).

CONVICTION RELIEF WERE PROPERLY DENIED BECAUSE THEY WERE MANIFESTLY WITHOUT MERIT. WATTS HAS FAILED TO DEMONSTRATE BY A PREPONDERANCE OF THE EVIDENCE HE IS ENTITLED TO RELIEF.

Watts, in a reasonably well-written 34 page *pro se* brief, invites this Court to vacate his guilty plea, conviction, and sentence as well as any other action taken by the trial court in denying post-conviction relief.

In the alternative, he invites this Court to remand his case for an evidentiary hearing.

Robert Helfrich, Circuit Judge, in a six (6) page opinion and order which addressed several of Watts's claims, summarily denied post-conviction relief.

The findings of fact and conclusions of law made by Judge Helfrich in his opinion and order are both judicious and correct.

Illegal Sentence.

Watts argues his suspended sentence was illegal because he was a prior convicted felon. This ever present argument has been rejected by the Mississippi Supreme Court time and again.

Watts also claims his banishment was inappropriate under prevailing statutes and Mississippi sentencing laws.

A trial judge has the discretionary power to suspend a sentence as well as vacate such suspended sentence based upon conditions which the offender has violated.

In **Johnson v. State,** *supra*, 925 So.2d 86, 93 (Miss. 2006), we find the following language:

> * * * A suspension of a sentence does not automatically mean that the defendant will be on probation and under a duty to report to a probation officer. It simply means that part of his entire sentence has

Carter, 754 So.2d at 1210-11 (Mills, J., dissenting).

> One need go no further than the Mississippi Code to clearly see the distinct nature of probation versus that of a suspended sentence. For example, Miss.Code Ann. Section 99-19-29, which is entitled "Vacation of suspended sentence and annulment of conditional pardon for violation of terms," clearly evinces the distinct nature of a judge's discretionary power to suspend a sentence:
>
> > *Whenever any court granting a suspended sentence,* or the governor granting a pardon, *based on conditions which the offender has violated or failed to observe, shall be convinced by proper showing, of such violation of sentence* or pardon, *then* the governor or *the judge of the court granting such suspension of sentence shall be authorized to annul and vacate such suspended sentence* or conditional pardon *in vacation or court time. The convicted offender shall thereafter be subject to arrest and court sentence service, as if no suspended sentence* or conditional pardon *had been granted, and shall be required to serve the full term of the original sentence that has not been served.* The offender shall be subject, after such action by the court or the governor, to arrest and return to proper authorities as in the case with ordinary escaped prisoner.
>
> Miss.Code. Ann. §99-19-29.

In denying post-conviction relief Judge Helfrich observed that Watts, ". . . after receiving a lenient sentence, [now] wants to attack that same sentence." (C.P. at 104; appellee's exhibit A, attached)

"It is well established in Mississippi that an individual may not plead guilty to a crime, receive a lesser sentence than what is prescribed by statute, and then use the more lenient sentence as a sword to attack the entire sentence as illegal." **McNickles v. State,** *supra*, No.

458, 461 (¶9) (Miss. 2005).

Our position on this issue is summarized in **Sweat v State,** *supra*, 912 So.2d 458, 461 (Miss. 2005), where we find the following language:

> We have held generally, where a convicted defendant receives an illegal sentence, the sentence must be vacated and the case remanded to the trial court for re-sentencing because the defendant suffered prejudice. *See Robinson v. State,* 836 So.2d 747 (Miss. 2002). The Court of Appeals has recently held that there is no prejudice suffered when a defendant receives an illegally lenient sentence. Edwards v. State, 839 So.2d 578, 580-81 (Miss.Ct.App. 2003). Further, when the error benefits the defendant in the form of a more lenient sentence, it is harmless error. *Chancellor v. State,* 809 So.2d 700, 702 (Miss.Ct.App. 2001). The law which relieves defendants from the burden of an illegal sentence applies to situations where the defendant is forced to suffer a greater sentence rather than the luxury of a lesser sentence. *Id.* We agree with the Court of Appeals and therefore adopt its approach. Our holding today will not force Sweat to suffer incarceration for a period of time longer than he was legally obligated. * * * * * *

See also **Brooks v. State,** 919 So.2d 179, 181 (¶7) (Ct.App.Miss. 2005) quoting from **Graves v. State,** 822 So.2d 1089 (Ct.App. Miss. 2002) ["A defendant should not be allowed to reap the benefits of an illegal sentence, which is lighter than what the legal sentence would have been, and then turn around and attack the legality of the illegal, lighter sentence when it serves his interest to do so."]; **Jones v. State,** 881 So.2d 351, 353 (¶12) (Ct.App.Miss. 2004) ["(W)e have held that a defendant 'cannot stand mute when he is handed an illegal sentence which is more favorable than what the legal sentence would have been, reap the favorable benefits of that illegal sentence, and later claim to have been prejudiced as a result thereof.' "]

In the case at bar, the sentence imposed was the product of a plea bargain eagerly sought and accepted by Watts with full awareness of the consequences. The State kept its end of the bargain while Watts did not. Under these circumstances, it would seem imprudent to attempt to make the illogical logical by concluding that Watts and his writ-writer were the winners of this debate.

As noted In the cases cited above, this Court has repeatedly held that one must suffer harm and prejudice before he can complain of an alleged error in the law.

Even if the suspended sentence and banishment were inappropriate and improperly lenient under the prevailing statutes, any error was harmless beyond a reasonable doubt because it inured to the benefit of Watts.

The following cases are controlling: **Ruff v. State,** 910 So.2d 1160 (Ct.App.Miss. 2005); **Adams v. State,** 841 So.2d 151, 152-53 (Ct.App.Miss. 2002); **Williams v. State,** 802 So.2d 1058, 1060-61 (Ct.App.Miss. 2001); **McGleachie v. State,** 800 So.2d 561, 563 (Ct.App.Miss. 2001), all of which stand for the proposition that one must suffer harm before one can complain of an alleged error in the law.

In **Myers v. State,** 897 So.2d 198, 201 (Ct.App.Miss. 2004), we find the following language:

> In his last issue, Myers argues that, because he had prior felonies, the only legal sentence he could have received was thirty years without parole. Therefore, Myers claims that his sentence was unconstitutional and must be set aside.

> Myers benefitted from the illegal sentence since it was more lenient than he was actually entitled to receive. We cannot find that he suffered any fundamental unfairness from the illegal sentence, nor can we find his fundamental rights were violated. *Graves [v. State]* 822 So.2d [1089] at ¶8; McGleachie v. *State, 800 So.2d 561* (¶4) (Miss.Ct.App.2001); *Chancellor v. State,* 809 So.2d 700 (¶8) (Miss.Ct.App.2001). This issue is without merit.

And, in **Black v. State,** 902 So.2d 612, 614 (Ct.App.Miss. 2004), the Court of Appeals opined:

> * * * This court has previously held that when one receives a suspended sentence, the portion which is suspended acts as a benefit to that individual and therefore does not infringe on the person's fundamental constitutional rights. *Williams,* 802 So.2d at 1060 (¶6). "The law that states that there is a fundamental right to be free from an illegal sentence is interpreted to apply to sentences which cause the defendant to endure an undue burden rather than the luxury of a lesser sentence." *McGleachie v. State,* 800 So.2d 561, 563 (¶4) (Miss.Ct.App.2001).

"If any error occurred, it was harmless error as [Watts] 'benefit[ted] from an improperly lenient sentence." **Adams v. State,** *supra*, 841 So.2d at 152; **Ruff v. State,** *supra,* 910 So.2d 1160 (Ct.App.Miss. 2005)[Because 20 year suspended sentence benefitted defendant, he could not be heard to complain.]

Look at it this way. Watts was indicted as an habitual offender and could have been sentenced to a maximum of thirty (30) years of incarceration without the benefit of probation or parole. Confinement for thirty (30) years would be the equivalent of banishment with no

Watts pled guilty and got banishment for thirty (30) years with [illegible]

for being present within 100 miles of the courthouse. This, we respectfully submit, was a "real meal deal."

Ineffective Assistance of Counsel.

Judge Helfrich addressed the claim of ineffective assistance of counsel, and applied the correct legal standard. That claim has not been asserted on appeal, and we consider it abandoned.

It is enough to say that Watts, who told the judge he was satisfied with his lawyer (C.P. at 34), has failed to demonstrate that counsel's performance was deficient or, if it was, that any deficiency prejudiced the defense. **Strickland v. Washington,** 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); **Williams v. State,** 819 So.2d 532 (Ct.App.Miss. 2001); **Reynolds v. State,** 736 So.2d 500 (Ct.App.Miss. 1999).

Watts, we submit, has failed to demonstrate by "a preponderance of the evidence" he is entitled to post-conviction relief. **Bilbo v. State,** 881 So.2d 966, 968 (Ct.App.Miss. 2004) citing Miss.Code Ann. §99-39-23 (7).

Although Watts contends he is entitled to an evidentiary hearing, not every motion for post-conviction relief filed in the trial court must be afforded a full adversarial hearing. **Jones v. State,** 795 So.2d 589 (Miss. 2001). Defendants must show compelling reasons why the trial court should conduct an evidentiary hearing. **Crouch v. State,** 826 So.2d 772 (Ct.App.Miss. 2002).

Watts has failed to do so here.

citing **Meeks v. State,** 781 So.2d 109, 114 (¶ 14) (Miss. 2001).

No abuse of judicial discretion has been demonstrated in this case. An evidentiary hearing was neither prudent nor required.

Miss.Code Ann. § 99-39-11 (Supp. 1998) reads, in its pertinent parts, as follows:

* * * * * *

> (2) *If it plainly appears* from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief, *the judge may make an order* for its dismissal and *cause the prisoner to be notified.*

* * * * * *

It did, he made, and he was.

CONCLUSION

To allow Watts to withdraw his guilty plea after bargaining for what he wanted and after telling the trial judge, eyeball to eyeball, he was fully aware of the consequences in the event he violated the conditions attached to his suspension of sentence, would not, in our opinion, make any more sense than a stowaway in a kamikaze plane.

Watts signed the order of conviction at the bottom acknowledging that he accepted " . . . the above terms and conditions of this sentence . . ." (C.P. at 44)

The agreement means what it says, and Watts is bound by its terms and conditions.

"A trial court may summarily dismiss a post-conviction petition when it is clear upon the face of the petition itself or the exhibits or material from prior proceedings that there are

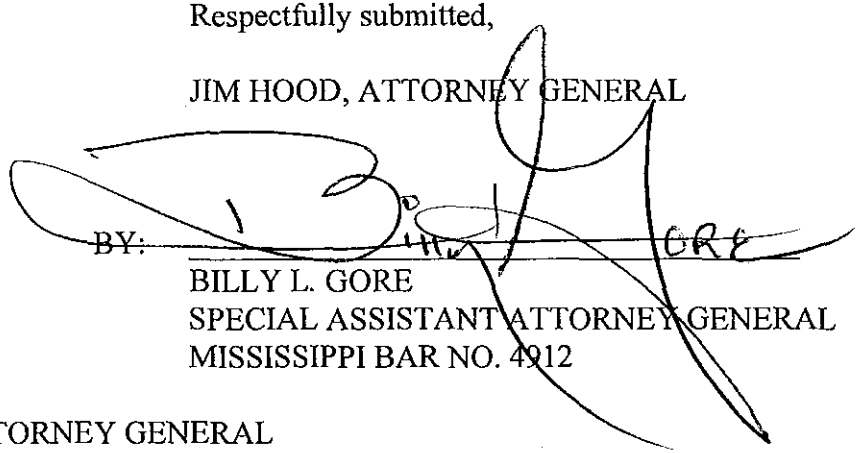
State, 782 So.2d 166, 168 (¶ 14) (Ct.App.Miss. 2000).

Insofar as this record reflects, Watts entered a knowing, intelligent, free, and voluntary plea of guilty in 2005 to the crime charged.

Summary denial was proper because Watts's post-conviction claims targeting the legality of his sentence, were manifestly without merit. Accordingly, the judgment entered in the lower court summarily denying Watts's petition for post-conviction collateral relief should be forthwith affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL



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CARL D. WATTS **PLAINTIFF**

VERSUS **CAUSE NO. CI06-0201**

STATE OF MISSISSIPPI **DEFENDANT**

OPINION AND ORDER

BEFORE THE COURT is Plaintiff's, Carl D. Watts (hereinafter "Watts"), Motion to Vacate Conviction and Sentence which this court is treating as a Motion for Post Conviction Collateral Relief, Motion to Amend Information and Motion for Evidentiary Hearing. The Court, having reviewed the complete file, all materials proffered by Watts and all relevant law, finds that it is plainly evident that Watts is not entitled to any relief. Said Motions are, therefore, **SUMMARILY DISMISSED**, pursuant to Miss. Code Ann. §99-39-11(2) for the following reasons, to-wit:

Background

Watts pled guilty in the Forrest County Circuit Court to Transfer of Controlled Substance and was sentenced on November 29, 2005 to thirty (30) years in the custody of the Mississippi Department of Corrections, with said sentence being suspended upon certain conditions, including that Watts "depart from Hattiesburg, Mississippi within forty-eight (48) hours and remain outside a distance of 100 miles from the Forrest County Courthouse in Hattiesburg, Mississippi, for the entire period of his suspended sentence." On December

EXHIBIT

found in Hattiesburg, Mississippi on said date. Watts waived a formal hearing and admitted that he was in Hattiesburg, Mississippi in violation of his suspended sentence. On January 6, 2006 this Court found that, Watts had violated the terms of his suspended sentence and entered an Order revoking Watts' suspended sentence, ordering him to serve the thirty (30) year sentence.

Law and Analysis

Watts now alleges that his sentence was illegal and obtained in violation of Miss. Code Ann. §47-7-33(1) and that the banishment provisions were cruel and unusual and violated due process. He also alleges that his plea was involuntary and he was not advised of all the conditions of his plea agreement. Finally, Watts alleges that he was denied effective assistance of counsel. It is clearly seen from the face of his Motions that Watts is not entitled to any of the relief requested.

The law is well settled that when properly entered and accepted, "[a] guilty plea operates to waive the defendant's privilege against self-incrimination, the right to confront and cross-examine the prosecution's witnesses, the right to a jury trial and the right that the prosecution prove each element of the offense beyond a reasonable doubt." *Swift v. State*, 815 So. 2d 1230 at 1234 (p.13) (Miss. Ct. App. 2001). Since Watts pled guilty, he waived his opportunity for a jury to review the sufficiency of evidence in his case; thus, we decline to review any of his allegations of an illegal and improper sentence. Furthermore, Watts' suspended sentence was revoked because he violated the provisions of said sentence by being

attack that same sentence. Watts says his plea was involuntary, but he does not provide any proof through transcripts, affidavits, etc. to prove said allegations are true and they are also, meritless.

As to Watts' claims of ineffective assistance of counsel, said claims are determined under the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984), *reh'g denied*, 467 U.S. 1267, 82 L. Ed. 2d 864, 104 S. Ct. 3562 (1984). Two inquiries must be made under the *Strickland* standard: (1) Whether counsel's performance was deficient; and, if so, (2) Whether the deficient performance was prejudicial to the defendant. *Wilson v. State*, 577 So. 2d 394, 396 (Miss. 1991). That is, Watts "'must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Schmitt v. State*, 560 So. 2d 148, 154 (Miss. 1990) (quoting *Strickland*, 466 U.S. at 694).

In examining the record and in applying the two-part test as set forth in *Strickland*, this Court finds that Watts fails to establish grounds for ineffective assistance of counsel. Watts contends that his attorney was ineffective in that she did not advise him properly. Even if Watts' version of events is accurate, he had the option of stopping the guilty plea at any time during the hearing and he did not take such action. Also, "Exhibit B" to his petition is a letter from his attorney which states in part "I was in court when you pled and the judge went through a series of questions, such as 'If you get caught in this jurisdiction, what will happen?' You said, ' I will go to jail for 30 years'". Watts' attorney has verified that he was

standards handed down by *Strickland* and is also meritless.

An evidentiary hearing is not required where the allegations in the post-conviction relief motion are specific and conclusive. *Davis v. State*, 743 So. 2d 326, 352 (P 83) (Miss. 1999). The statute relating to post-conviction relief includes the following provision:

> If it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief, the judge may make an order for its dismissal and cause the prisoner to be notified. Miss. Code Ann. §99-39-11(2) (Rev. 2000).

Under this statute dismissal is appropriate where "it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Culbert v. State*, 800 So. 2d at (P 9), citing *Turner v. State*, 590 So. 2d 871, 874 (Miss.1991). "Furthermore, where the trial court summarily dismisses the post-conviction relief claim, it does not have an obligation to render factual findings and this Court will assume that the issue was decided consistent with the judgment and will not be disturbed on appeal unless manifestly wrong or clearly erroneous." *Culbert*, 800 So. 2d at (P 9) (citations omitted). We find that Watts' request for an evidentiary hearing is without merit and is denied.

IT IS THEREFORE ORDERED AND ADJUDGED that Plaintiff's, Carl D. Watts, Motion to Vacate Conviction and Sentence which this Court is treating as a Motion for Post Conviction Collateral Relief, Motion to Amend Information and Motion for Evidentiary Hearing are hereby **SUMMARILY DISMISSED** pursuant to Miss. Code Ann. §99-39-

IT IS FURTHER ORDERED AND ADJUDGED that the Forrest County Circuit Clerk's Office shall mail a copy of the Court's Order to Watts by certified, first class U. S. Mail, return receipt requested.

SO ORDERED AND ADJUDGED this the 12th day of April, A. D., 2007.

CIRCUIT COURT JUDGE

STATE OF MISSISSIPPI

VERSUS

CARL DEWAYNE WATTS

FILED

NOV 29 2005

FORREST COUNTY CIRCUIT CLERK

CAUSE NO. 05-559CR

DEFENDANT

ORDER OF CONVICTION

THIS DAY INTO OPEN COURT came the District Attorney, who prosecutes for the State of Mississippi, and came also, **CARL DEWAYNE WATTS**, personally and represented by counsel, Honorable Gay Polk-Payton, upon an Indictment returned by a Grand Jury of Forrest County, Mississippi, charging said Defendant with the crime of **TRANSFER OF CONTROLLED SUBSTANCE** (Cocaine), in violation of MISS. CODE ANN. § 41-39-139(a) (1972), as amended; and thereupon the said **CARL DEWAYNE WATTS**, being duly advised of all his legal and constitutional rights in the premises, and being fully advised of the consequences of such plea, did then and there voluntarily enter a plea of guilty to said charge, which this Court FINDS was voluntarily, intelligently and freely made.

THEREFORE, for said offense and on said plea of guilty, it is by the Court ORDERED AND ADJUDGED that the said **CARL DEWAYNE WATTS** be and he is hereby sentenced to a term of THIRTY (30) YEARS in the custody of the Mississippi Department of Corrections and to pay all costs of court on this date.

PROVIDED HOWEVER, it having been made known to the Court that the ends of justice and the best interest of the public and Defendant will be best served, the Court hereby suspends all of said sentence upon Defendant's good behavior and compliance with the following:

a) Commit no offense against the laws of this or any other state of the United States, or the laws of the United States;

d) Support his dependents, if any;

e) Possess or consume no alcoholic beverages or mood altering drugs, and possess no firearm or other deadly weapon;

f) Submit, as provided in Miss. Code Ann. § 47-5-603 (1972), as amended, to any type of breath, saliva or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or a substance prohibited or controlled by any law of the State of Mississippi or the United States, or to tests as may be required; and

g) **Depart from Hattiesburg, Mississippi within forty-eight (48) hours and remain outside a radius or distance of one hundred (100) miles from the Forrest County Courthouse** situated in Hattiesburg, Mississippi, for the entire period of his suspended sentence.

IT IS FURTHER ADJUDICATED AND THE COURT SO FINDS that the banishment provision herein bears a reasonable relationship to the purposes of the suspended sentence or probation, that the ends of justice and the best interest of the public and the Defendant will be served by such banishment during the period of the suspended sentence, that the banishment provision of the suspended sentence does not violate the public policy of the State of Mississippi, that the banishment provision of the suspended sentence herein does not defeat the rehabilitative purpose of the probation and/or suspended sentence, and such provision does not violate the Defendant's rights under the First, Fifth, and Fourteenth Amendments of the United States Constitution.

The violation of any condition of Defendant's suspended sentence shall violate the terms and conditions of the his suspended sentence, and the Court shall have the authority to revoke the Defendant from his suspended sentence and remand him back into the custody of Mississippi

SO ORDERED AND ADJUDGED on this the 21 day of November, 2005

CIRCUIT JUDGE

Patricia Mitchell
STATE OF MISSISSIPPI

Defendant Information:

SSN: 428-15-2839
DOB: 12/19/59
SEX: M
RACE: B

contest any effort to return me to the State of Mississippi.

This the 29th day of November, 2005.

Ann D. Coates
DEFENDANT

A copy of this order has been given to the Defendant who has been instructed regarding the same.

This the 29th day of November, 2005.

ATTORNEY FOR DEFENDANT

I, _____, Clerk of the Circuit Court aforesaid, certify that the above and foregoing is recorded in Minute Book _____, at Page _____, of said Court.

This the 29th day of November, 2005.

Rose Ellen Adams
CIRCUIT CLERK
Nickie Graham
BY: DEPUTY CLERK

Gay L. Polk-Payton
POST OFFICE BOX 849
HATTIESBURG, MS 39403-0849
Phone 601-545-6122
Fax 601-544-2182

Jonathan Farris
Assistant Public Defender

William Ferrell
Assistant Public Defender

March 28, 2006

Mr. Carl Watts, #18202
SMCI, C1, B zone, Bed 111
P.O. Box 1419
Leakesville, Mississippi 39451

Dear Mr. Watts:

I put off your plea as long as I could to keep you from being sentenced to the banishment so that your mother would have time to secure you a place to live. But you sent notes down by other inmates to me almost every day, telling me that you were ready to plead. I explained to you OVER and OVER that it was not a FLOAT but it was a BANISHMENT, meaning that you COULD NOT come back within 100 miles of the courthouse.

I was in court when you pled and the judge went through a series of questions, such as: "If you get caught in this jurisdiction, what will happen?" You said: "I will go to jail for 30 years." He said, "If you commit any crimes anywhere, what will happen?" You said, "I will go to jail for 30 years." He asked you several more questions to make sure that you understood the ramifications of this plea agreement...the plea agreement that you literally begged for.

Now as for your suspended sentence being illegal, I don't know where that is coming from. You have at least two prior felonies convictions arising out of separate offenses and you were righteously indicted as a habitual offender. However, because the state removed the habitual status of your indictment before you pled, your time should not be mandatory. I am looking into your tentative release date with the Department of Corrections and it should be straightened out soon. It is my understanding that you received a suspended sentence but not as a habitual offender because if I recall correctly, on the date of your plea, the prosecutor made an ore tenus motion to remove that portion of the indictment.

If you have any questions, please feel free to let me know.

Sincerely,

EXHIBIT

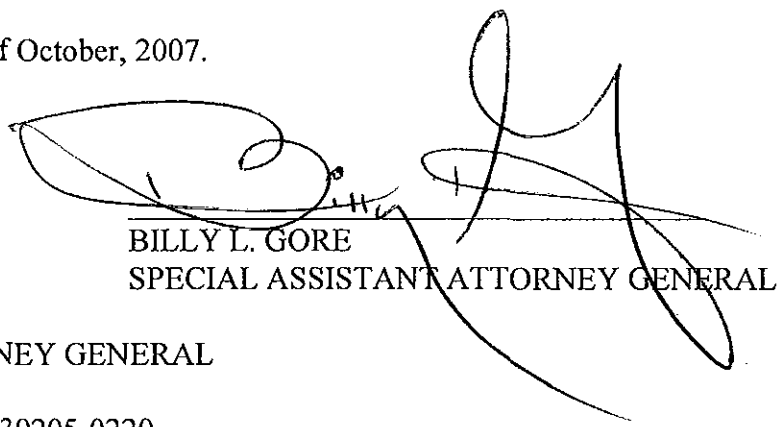
hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Bob Helfrich
Circuit Court Judge, District 12
Post Office Box 309
Hattiesburg, MS 39043

Honorable Jon Mark Weathers
District Attorney, District 12
Post Office Box 166
Hattiesburg, MS 39403-0166

Carl Watts, [redacted]
C-Zone, S.C.R.C.F.
1420 Industrial Park Rd.
Wiggins, MS 39577

This the 22nd day of October, 2007.



BILLY L. GORE
SPECIAL ASSISTANT ATTORNEY GENERAL

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