

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ANTHONY SWIFT

APPELLANT

VS.

FILED

NO. 2007-CP-0790

MAR 24 2008

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: DEIRDRE MCCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	2
PROPOSITION:	
SWIFT'S "MOTION FOR SUMMARY JUDGMENT"	
WAS PROPERLY DISMISSED WITHOUT A HEARING	2
CONCLUSION	3
CERTIFICATE OF SERVICE	4

TABLE OF AUTHORITIES

STATE CASES

<i>Gardner v. State</i> , 531 So.2d 805, 808-09 (Miss.1988)	2
<i>Kirksey v. State</i> , 728 So.2d 565, 567 (Miss.1999)	2
<i>Patterson v. State</i> , 594 So.2d 606, 609 (Miss.1992)	2
<i>Rivers v. State</i> , 807 So.2d 1280, 1281 (Miss. App. 2002)	2
<i>Taylor v. State</i> , 766 So.2d 830, 832 (Miss. App. 2000)	2

IN SUPREME COURT OF MISSISSIPPI

ANTHONY SWIFT

APPELLANT

VERSUS

NO. 2007-CP-0790

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

This case involves an appeal from the Circuit Court of Clay County, wherein Anthony Swift was indicted on a charge of sale of cocaine. The indictment was amended to charge Swift with possession of cocaine (C.P.24) and Swift entered a plea of guilty thereto. (C.P.35-57) On June 14, 2007, Swift filed in the circuit court a Motion for Summary Judgment, which the court treated as a motion for post-conviction relief and dismissed summarily on July 20, 2007. (C.P.20, 60) Aggrieved by the judgment rendered against him, Swift has perfected an appeal to this Court. (C.P.63)

SUMMARY OF THE ARGUMENT

The circuit court properly found that Swift's "Motion for Summary Judgment" was plainly devoid of merit and dismissed it without a hearing. The judgment entered below should be affirmed.

PROPOSITION:

SWIFT'S "MOTION FOR SUMMARY JUDGMENT" WAS PROPERLY DISMISSED WITHOUT A HEARING

Swift filed a Notice of Appeal of the circuit court's order entered July 20, 2007, dismissing his Motion for Summary Judgment. The only issue properly before this Court at this juncture is the propriety of that order of dismissal. *Rivers v. State*, 807 So.2d 1280, 1281 (Miss. App. 2002); *Patterson v. State*, 594 So.2d 606, 609 (Miss.1992); *Gardner v. State*, 531 So.2d 805, 808-09 (Miss.1988).

In his Motion for Summary Judgment, Swfit alleged that his conviction should be vacated because his charge was amended from sale of cocaine to possession of cocaine. (C.P.20) With the following language, the circuit court found this claim to be meritless on its face:

The Court finds that Petitioner was aware of the amendment to the lesser included offense at the time of the plea hearing and had no objection to it, as shown by the transcript of the guilty plea hearing. The Court further finds that contrary to the Petitioner's allegations, the Court Reporter did not omit his objections from the plea hearing transcript.

(C.P.60)

The court went on to order that the motion be dismissed without a hearing. This order is not subject to reversal absent a finding that it is clearly erroneous. *Taylor v. State*, 766 So.2d 830, 832 (Miss. App. 2000), citing *Kirksey v. State*, 728 So.2d 565, 567 (Miss.1999).

The transcript of the plea colloquy demonstrates that Swift freely and voluntarily entered Swift entered his guilty plea with full knowledge that the indictment had been amended. (C.P.38-41) His Motion for Summary Judgment was clearly devoid of merit and the circuit court did not err in so finding.

CONCLUSION

The state respectfully submits that Swift's Motion for Summary Judgment was properly dismissed without a hearing. The judgment entered below should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**


BY: DEIRDRE MCCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I, Deirdre McCrory, 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 Lee J. Howard
Circuit Court Judge
P. O. Box 1344
Starkville, MS 39760

Honorable Forrest Allgood
District Attorney
P. O. Box 1044
Columbus, MS 39703

Anthony Swift, #75278
Unit 29 F
Parchman, MS 38738

This the 24th day of March, 2008.


DEIRDRE MCCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680