

**COPY**

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

**RICKIE SHIES**

**APPELLANT**

**FILED**

**JUL 29 2008**

**VS.**

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

**NO. 2007-CP-1187**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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## **TABLE OF CONTENTS**

<b>TABLE OF AUTHORITIES .....</b>	<b>ii</b>
<b>STATEMENT OF THE ISSUES .....</b>	<b>1</b>
<b>STATEMENT OF THE FACTS .....</b>	<b>1</b>
<b>SUMMARY OF THE ARGUMENT .....</b>	<b>2</b>
<b>ARGUMENT .....</b>	<b>2</b>
<b>CONCLUSION .....</b>	<b>3</b>
<b>CERTIFICATE OF SERVICE .....</b>	<b>4</b>

## TABLE OF AUTHORITIES

### STATE CASES

<i>Lockhart v. State</i> , 980 So.2d 336 (Miss. Ct. App. 2008) .....	2
<i>Welch v. State</i> , 958 So.2d 1288 (Miss. Ct. App. 2007) .....	2

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**STATEMENT OF THE ISSUES**

THE APPELLANT IS PROCEDURALLY BARRED FROM RAISING HIS ISSUE ON APPEAL AS IT WAS NOT ADDRESSED IN HIS MOTION FOR POST-CONVICTION RELIEF.

**STATEMENT OF THE FACTS**

On February 18, 2004, the Appellant, Rickie Shies pleaded guilty to two counts of credit card fraud and one count of possession of cocaine greater than .2 grams but less than 10 grams and was sentenced as a habitual offender to serve a total of twenty years in the custody of the Mississippi Department of Corrections. (Record p. 17 - 19, 20 - 22, and 33 - 35). On January 26, 2007, Shies filed a Motion for Post-Conviction Relief. (Record p. 48). The trial court denied the motion on May 25, 2007. (Record p. 106).

## SUMMARY OF THE ARGUMENT

The appellant is procedurally barred from raising his issue on appeal as it was not addressed in his Motion for Post-Conviction Relief.

## ARGUMENT

In his Motion for Post-Conviction Relief, Shies argues that he was provided ineffective assistance of counsel (Record p. 52), that his plea was involuntary (Record p. 67), and that his plea was induced by fear and deception (Record p. 72). However, Shies raises the following issue on appeal:

Was it a violation of Shies fundamental constitutional right to due process in sentencing to impose a twenty year sentence, none habitual and habitual under a plea without a court reporter prescribing the records/transcripts in order for an review of the facts used in order to make sure the state has followed the rules and applied to state law in accordance to MRAP as required for Sup. Court Rule Practice.

(Appellant's Brief p. 1). Shies' Motion for Post Conviction Relief does not address any issue regarding the presence of a court reporter at his sentencing hearing. As such, he is procedurally barred from raising this issue on appeal. *See Lockhart v. State*, 980 So.2d 336 (Miss. Ct. App. 2008) and *Welch v. State*, 958 So.2d 1288 (Miss. Ct. App. 2007).

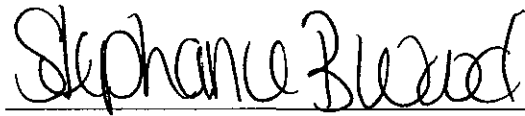
## CONCLUSION

The State of Mississippi respectfully request that this Honorable Court affirm the trial court's denial of Rickie Shies' Motion for Post-Conviction Relief as he is procedurally barred from raising his issue on appeal as it was not raised in his Motion for Post-Conviction Relief.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

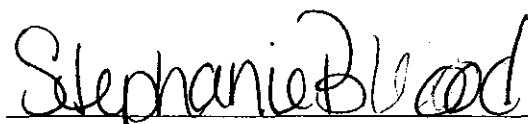
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Lee J. Howard  
Circuit Court Judge  
P. O. Box 1344  
Starkville, MS 39760

Honorable Forrest Allgood  
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This the 29th day of July, 2008.



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