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

**ANTONIO MOORE**

**FILED**

**APPELLANT**

**AUG 19 2008**

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

**VS.**

**NO. 2007-CP-1548**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**STATEMENT OF THE FACTS**

On November 6, 2000, the Appellant, Antonio Moore, was indicted for two separate counts of selling cocaine. (Record p. 5). He was tried and convicted on both counts. On February 27, 2002, he was sentenced to serve ten years for each count with the sentences to run consecutively. (Record p. 7 - 10).

Meanwhile, on May 7, 2001, Moore was indicted for possession of cocaine in the amount of .14 grams. (Record p. 11). On December 5, 2002, Moore filed a Petition to Enter a Guilty Plea with regard to the possession charge. (Record p. 12 - 19). On that same day, a plea hearing was held during which Moore formally pleaded guilty to the possession charge. (Transcript p. 1 - 9). During this hearing, Moore was informed of his rights, the nature of his crime, and the possible sentences he could receive. (Transcript p. 1 - 9). After pleading guilty, he was sentenced to serve three years in the custody of the Mississippi Department of Corrections with said sentence to run consecutive

to the sentences given with regard to the two counts for sale of cocaine. (Record p. 20 - 21).

On June 19, 2003, Moore filed a Motion for Post-Conviction Relief basically arguing that “the court could have combined all the charges and tried petitioner at one time and given him one sentence.” (Record p. 23 - 29). On August 26, 2003, the trial judge entered an order dismissing the motion and noting that:

The Petitioner filed a Motion for Post Conviction Collateral Relief alleging that he faced double jeopardy by going to trial on one charge and then later pleading guilty to a second charge when, he claims, his attorney and the prosecuting attorney both knew about the second charge at the time of the original trial. The Court finds that in the absence of a plea bargain, no legal authority exists which states a defendant must be tried on or plead to all charges at the same time. And it is within the Court’s sole discretion to sentence a defendant to a concurrent or consecutive state sentences.

(Record p. 34).

On September 10, 2007, Moore filed an Out of Time Notice of Appeal wherein he also requested that a “complete copy of the records in the Cause of State of Mississippi versus Antonio Moore, Cause No. 2003-0082CVI be mailed to the clerk of the Mississippi Appeals Court and to him, as soon as possible.” (Record p. 36). The trial judge subsequently entered an order granting an out of time appeal and directing the Circuit Clerk to contact the Court Reporter and have her prepare the transcript of the guilty plea hearing in Lowndes County Criminal Cause No. 2001-0261-CR1. (Record p. 40).

### **SUMMARY OF THE ARGUMENT**

The Appellant was not legally entitled to transcripts. Nonetheless, the trial court ordered that a transcript of the guilty plea hearing be prepared. Additionally, the Appellant is procedurally barred from raising his remaining issues on appeal as they were not addressed in his Motion for Post-Conviction Relief and as they addressed separate judgments.

## ARGUMENT

In his Motion for Post-Conviction Relief, Moore makes the following arguments:

- (1) Double jeopardy forbid multiple convictions under the sentencing guideline the prosecutor should have consider the concurrent and consecutive doctrine in petitioner.
- (2) The court could have combined all the charges and tried petitioner at one time and given him one sentence.
- (3) The prosecutor was aware of the facts that petitioner had three charges pending at time petitioner was convicted in his first trial.
- (4) Petitioner is filing his motion without the aid of trial transcript. Petitioner will present documentary evidence, sentencing order and trial transcript in support of his motion.

(Record p. 24). However, on appeal Moore appears to argue that he was entitled to a copy of the transcripts and various issues regarding his two convictions for sale of cocaine including but not limited to ineffective assistance of counsel.

First, Moore was not legally entitled to a transcript. *See McCrary v. State*, 869 So.2d 442, 444 (Miss. Ct. App. 2004) (holding that “an inmate is not entitled to a free transcript in a post-conviction relief setting if his post-conviction motion cannot withstand summary dismissal under Section 99-39-11(2) of the Mississippi Code Annotated.”) and *Ward v. State*, 879 So.2d 452, 454 (Miss. Ct. App. 2003) (holding that “there is no automatic right to a transcript” and that “there must be ‘good cause.’”) In this case, Moore’s Post-Conviction Relief Motion was summarily dismissed. (Record p. 34). Further, Moore never filed a motion requesting that the transcript of either the guilty plea hearing or of the trial for his sale of cocaine charges be made available. Nonetheless, the trial judge ordered that a transcript of the guilty plea hearing be prepared. (Record p. 40). The trial judge further ordered that a copy of his order requiring that a transcript be prepared be forwarded to all parties and the Mississippi Supreme Court. (Record p. 40). Thus, Moore was aware that the transcript had been made available.

Additionally, Moore is procedurally barred from raising his remaining issues raised on appeal as his Motion for Post Conviction Relief did not address any of these issues. As such, he is procedurally barred from raising the other issues 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). Moreover, these issues all seem to pertain to his trial and convictions for the sale of cocaine. This Court has noted that "Mississippi Code Annotated Section 99-39-9(2) (Supp.2005) provides that a motion for post-conviction relief shall be limited to a request for relief against one judgment" and that "it provides that 'if a prisoner desires to attack the validity of other judgments under which he is in custody, he shall do so by separate motions.'" *Shorter v. State*, 946 So.2d 815, 818 (Miss. Ct. App. 2007). Furthermore, "direct appeal shall be the principal means of reviewing all criminal convictions and sentences ..." *Cole v. State*, 666 So.2d 767, 772 (Miss. 1995) (quoting Miss. Code Ann. § 99-39-3(2)). Thus, Moore's issues on appeal are without merit.

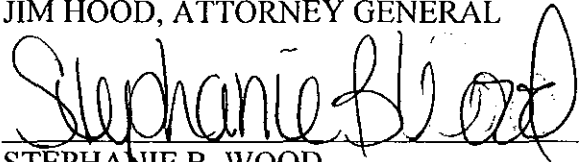
### CONCLUSION

For the reasons set forth above, the State of Mississippi respectfully requests that this Honorable Court affirm the trial court's denial of Antonio Moore's Motion for Post-Conviction Relief.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

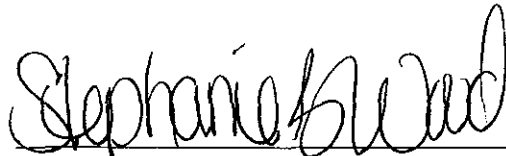
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Lee J. Howard  
Circuit Court Judge  
P. O. Box 1344  
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Honorable Forrest Allgood  
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Antonio Moore, #L0149  
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This the 19th day of August, 2008.

A handwritten signature in black ink, appearing to read "Stephanie B. Wood", written over a horizontal line.

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