

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

SAMUEL LEWIS GOUDY, JR.

APPELLANT

FILED

MAY 21 2008

VS.

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

NO. 2007-CP-1569-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The grand jury of the Second Judicial District of Harrison County indicted defendant, Samuel Lewis Goudy, Jr., for Transfer of a Controlled Substance as an Habitual Offender in violation of *Miss. Code Ann.* §§ 41-29-139(a)(1) & 99-19-81. (Indictment, cp.27-28). Defendant, aided by counsel, secured a plea agreement and petitioned the court to plead guilty (Petition c.p. 29-33). After a plea hearing defendant was found guilty and sentenced. (Sentence order, c.p.34). Within about four months a petition to revoke was filed and a corrected sentencing order entered. (Pet. to revoke, c.p. 38; corrected sentencing order c.p. 35-37.) Subsequently, another petition to revoke was filed, heard and granted resulting in defendant receiving a

sentence of 20 years. (S.p.39).

Within the statutory period for such filing defendant filed a motion for post-conviction relief, which was denied, and timely appealed.

STATEMENT OF FACTS

This is one of those cases where defendant had every opportunity, chance, allowance and extension of grace to become a functioning member of society – and declined, repeatedly to accept the offers. Even now he takes no responsibility for his predicament and seeks to blame the State, the judiciary and the bar for his failings.

This multiply convicted felon was again caught selling drugs. He was charged as an habitual offender. His counsel managed to get a VERY favorable plea deal in which defendant would serve, in essence time served, and be on post-release supervision. While in this period of grace he again failed to fulfill the minimal expectations of society and a petition to revoke was filed. Again, judicial grace was extended and the same sentencing provision was imposed. Predictably, and sadly, defendant again violated the condition of his sentence and this time was revoked and sentenced to twenty years.

Defendant filed a motion to vacate sentence and conviction which was treated as a motion for post-conviction relief. Said motion was denied with an extensive, comprehensive finding of facts and amply cite supported conclusions of law. (C.p.40-48, Order denying Post-Conviction relief.) Defendant timely filed his notice resulting in this instant appeal.

SUMMARY OF THE ARGUMENT

Issue I.

THE TRIAL COURT WAS CORRECT IN DENYING THE MOTION FOR POST-CONVICTION RELIEF. THE ORDER DENYING RELIEF IS A CORRECT APPLICATION OF THE LAW TO THE FACTS.

Issue II.

TO BE SURE, DEFENDANT HAD CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

ARGUMENT

Issue I.

THE TRIAL COURT WAS CORRECT IN DENYING THE MOTION FOR POST-CONVICTION RELIEF. THE ORDER DENYING RELIEF IS A CORRECT APPLICATION OF THE LAW TO THE FACTS.

The issue before this Court is whether the trial court was correct in denying the motion to correct and modify sentence for the amount of pre-trial credit for time served.

The standard of review this Court should apply in reviewing this case is to give great deference to findings of the trial court. *Schmitt v. State*, 560 So.2d 148, 151 (Miss. 1990) (clearly erroneous standard of review for findings of trial judge on post-conviction rulings). Based upon this standard of review it is the position of the State that the trial court was correct in denying the motion to vacate sentence and conviction.

The State has the luxury of not having to interpret, extrapolate or develop a rationale for the ruling of the trial judge. It is succinct, clear and correct. To summarize the trial judge relied upon the recent ruling of the Mississippi Supreme Court in *Johnson v. State*, 925 So2d 86 (Miss.2006), that by its own terms to "...[T]hrough this opinion to once and for all lay to rest the perplexing issues concerning suspended sentences, supervised probation, and post-release supervision. *Johnson, supra*, ¶1.

And, in essence the trial judge meticulously applied the law to the facts of this case in deciding that regardless of the language used, and the lack of statutory citation within the sentencing orders, the literal language was easily discernable, unambiguous. Consequently, the sentence imposed was not illegal.

Therefore, the trial court was correct and no relief should be granted on this allegation of error.

Issue II.

TO BE SURE, DEFENDANT HAD CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

Within this second allegation of error defendant asserts he was denied effective assistance of counsel for the lack of presenting the speedy trial issue to the trial court.

Again, the trial court specifically citing to the court record did enumerate several motions filed by counsel and *pro se* seeking a speedy trial.

Additionally, there was citation to the record where it was found by the trial court that defendant had, by pleading guilty, waived any infirmity to his conviction based upon a Constitutional speedy trial claim.

As this reviewing Court has oft, and recently held:

¶ 25. Madden fails to prove his representation was deficient because, upon entering a guilty plea, he waived his right to a speedy trial. The supreme court has held that “a valid guilty plea operates as a waiver of all non-jurisdictional rights or defects which are incident to trial [including] the right to a speedy trial, whether of constitutional or statutory origin.” *Anderson v. State*, 577 So.2d 390, 391-92 (Miss.1991). Therefore, counsel's failure to raise a speedy trial claim did not constitute ineffective assistance. *Id.* at 392.

Madden v. State, 2008 WL 427968 (Miss.App. 2008).

Therefore based upon the findings of fact and conclusions of law found by the trial court as amply supported by the record on appeal the State would ask that no relief be granted based on this allegation of error.

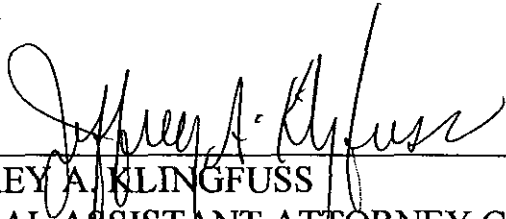
CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the trial court denial of post-conviction relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey A. Klingfuss, 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:

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This the 21st day of May, 2008.



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