

IN THE SUPREME COURT OF MISSISSIPPI

DOUGLAS RICARDO MOODY
APPELLANT

V.

CAUSE NO. 2007-CP-01639

STATE OF MISSISSIPPI
APPELLEE

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BRIEF FOR APPELLANT

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DOUGLAS RICARDO MOODY
APPELLANT

V.

CAUSE NO. 2007-CP-01639

STATE OF MISSISSIPPI
APPELLEE

ON APPEAL FROM THE CIRCUIT COURT OF
HARRISON COUNTY, MISSISSIPPI

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. The representations are made in order that this Court may evaluate possible disqualification or recusal.

- 1). DOUGLAS RICARDO MOODY, PRO SE
- 2). CONO CARANNA, ATTORNEY FOR APPELLEE
- 3). JIM HOOD, ATTORNEY GENERAL FOR THE STATE
- 4). STEPHEN B. SIMPSON, CIRCUIT COURT JUDGE

THIS, the 15 day of January, 2008. A.D.

By: Douglas R. Moody
DOUGLAS RICARDO MOODY, PRO SE

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STATEMENT OF ISSUES

- I). Whether The Court Erred In Denying The Appellant's Petition To Re Instate Post Release Supervision?
- II). Whether The Court Erred In Revoking Appellant's Post Release Supervision?
- III). Whether The Appellant Received Effective Assistance Of Counsel On The Charges Of Simple Assault By Threat And Disorderly Conduct?
- IV). Whether The Appellant Was Afforded His Constitutional Right To Due Process?

STATEMENT OF THE CASE

A). Nature Of The Case, Course Of Proceedings And Deposition Below

This is an appeal by the Appellant, Douglas Ricardo Moody (hereinafter Appellant) from the denial of his Petition to Reinstate Post Release Supervision by the Harrison County Circuit Court.

The Appellant filed a Petition to Reinstate Post Release Supervision in the Harrison County Circuit Court on or about the 10 day of January, 2007 and the Hon. Stephen B. Simpson, denied the Appellant's Petition, stating the Appellant violated the terms and conditions of his post release supervision, citing Brown v. State, 864 So.2d 1058 (Ms. Ct. App. 2004) as authority. (See Exhibit (A-1) Order pg. 2) (See pgs. 56, 57 Appeal Record)

The Appellant on or about the 15 day of August, 2007 filed his Notice of Appeal and on the 18 day of September, 2007, the trial Court entered a Order granting the Appellant In Forma Pauperis Status to appeal the denying of his Petition. (See Appeal Record pgs. 58, 64)

B). Statement Of Facts

On the 9 day of February, 2005, the Appellant along with Counsel, Hon. Jim Davis, came before the Harrison County Circuit Court to enter a guilty plea to one count of Attempted Robbery, this court accepted same and sentenced the Appellant to Fifteen (15)

years, suspend for time served, approximately thirty-one (31) months, followed by five (5) years post release supervision, fines, court cost, restitution. Cause No. B2401-2004-763 shall be passed to the files. (See Appeal Record pgs. 23-26)

On or about the 10 day of March, 2006, the Appellant's field officer filed into the Harrison County Circuit Court a Petition to Revoke Post Release Supervision, for the alleged violations of Condition "A" and "D" of his post release terms. (See Appeal Record pgs. 27-28)

On the 22 day of May, 2006, the Appellant along with counsel, Hon. Richard J. Smith, came before the Court for a hearing on the Petition to Revoke the Appellant's post release supervision, and the court adjudicated the appellant to be guilty and revoked his post release supervision and revoked the Suspend portion and reinstated the fifteen (15) years to serve. (see App. R. pg. 29)

On or about the 10 day of January, 2007, the Appellant filed his Petition to Reinstate Post Release Supervision, and the Harrison County Circuit Court Judge, Hon. Stephen B. Simpson, denied same on the 30 day of May, 2007. (See App. R. pgs. 31-37 and 56-57)

On the 15 day of August, 2007, the Appellant filed his notice of Appeal and the Court granted same on the 18 day of September, 2007. (See App. R. pgs. 58, 64)

SUMMARY OF ARGUMENT

In the present case the trial court denied the Appellant's Petition to Reinstate Post Release Supervision, stating the decision was based upon the revocation hearing and that, the Appellant entered a nolo contendere plea in City court to charges of simple assault by threat and disorderly conduct. (See App. R. pg. 56)

The Appellant asserted factual claims and affidavits in support of said claims that showed if not for the erroneous advice of counsel, the Appellant would not have entered a nolo contendere plea to the charges of simple assault by threat and disorderly conduct.

Futthure, if the Appellant would have been afforded his due process and effective assistance of counsel, the Appellant's Post Release Supervision should have not been revoked, and the Appellant should have been granted an evidentiary hearing. See Alexander v. State, 605 So.2d 1170 (Ms. 1990); Conner v. State, 684 So.2d 608 (Ms. 1996); Hudson v. State, - So.2d- (Ms. Ct. App. Nov. 15, 2005) and Miller v. State, 910 So.2d 56 (Ms. Ct. App. 2005)

The Appellants Post Release should be Reinstated with credit given for time served in prison to be applied.

ARGUMENT

I). Whether The Court Erred In Denying The Appellant's Petition To Reinstate Post Release Supervision?

The Appellant asserts that the trial Court erred in denying his Petition To Reinstate Post Release Supervision without affording him the benefit of an evidentiary hearing for probable cause, where the Appellant raised questions of fact regarding Counsel's deficiencies and prejudice resulting therefrom. (See Conner v. State, 684 So. 2d 608 (Ms. 1996))

The Appellant asserts that had he been afforded an evidentiary hearing, the Appellant contends that testimony from witnesses would have proved that the Appellant is innocent of the charges of simple assault by threat, disorderly conduct and possession of a weapon by a convicted felon¹ and had it not been for the erroneous advice of counsel, the Appellant would not have entered a Nolo Contendere plea to the charges of simple assault by threat and disorderly conduct, which caused the Appellant's Post Release Supervision to be revoked. (See App. R. pgs. 45, 54-55)

This Court held in Alexander v. State, 605 So. 2d 1170 (Ms. 1992) A defendant who was convicted of armed robbery was entitled to an evidentiary hearing pursuant to § 99-39-13 through 99-39-23 on the issue of whether he was afforded ineffective assistance of counsel during the plea process, where the defendant alleged that his attorney erroneously informed him that if he accepted the prosecution's plea bargain offer of 15 years imprisonment he would be eligible for parole after serving 3 years, 9 months of his sentence and that, he would not have accepted the prosecution's plea bargain offer had he known that he would be ineligible for parole for 10 years pursuant to 47-7-3(1)(d), which provides that a person convicted of robbery and sentenced to more than 10 years imprisonment shall not be eligible for parole after serving at least 10 years of the sentence. See also Hudson v. State, - So. 2d - (Ms. Ct. App. Nov. 15, 2005); Miller v. State, 910 So. 2d 86 (Ms. Ct. App. 2005)

For these reasons, the Appellant's Post Release Supervision should be reinstated.

II). Whether The Court Erred In Revoking Appellant's Post Release Supervision?

The Appellant asserts that the trial court erred when it revoked the Appellant's post release supervision upon the arrest for the alleged possession of a fire arm by a convicted felon, and did not afford the Appellant his fifth, sixth or fourteenth amend. rights, by not allowing the appellant to put witnesses on the stand to testify for him or to provide the appellant with any type of proof that the appellant was officially charged with possessing a fire arm by a convicted felon, only that of the State's witness. (See Brown v. State, 864 So. 2d 1058 (Ms. Ct. App. 2004)).

The Appellant denied having been charged with possession of a fire arm during his revocation hearing, and other than the State and its witness alleging that he

¹ The Appellant was arrested for simple assault by threat, disorderly conduct and possession of a fire arm by a convicted felon, but there is no record anywhere showing the Appellant was officially charged with possession of a fire arm by a convicted felon.

possessing a fire arm, there is no proof. (See Trans. pgs. 4-8; 10, 11) Further, had the appellant been afforded sufficient time, he could have had his mother and brother testify on his behalf, that he did not have a gun of any kind as stated in affidavits of oaths from his mother and brother in support of his petition to reinstate his post release supervision. (See App. R. pgs. 54, 55 and Trans. pgs. 10-11) The Appellant asks that this Court review this claim under M.R.A.P. 28(a)(3) and Gray v. State, 549 So. 2d 1316, 1321 (Ms. 1989) and Simpson v. State, 785 So. 2d 1121 (Ms. 2001)

For these reasons, the Appellant's Post Release Supervision should be reinstated.

III). Whether The Appellant Received Effective Assistance Of Counsel On The Charges Of Simple Assault By Threat And Disorderly Conduct?

The Appellant asserts that he entered a plea of Nolo Contendere to the Charges of Simple Assault by Threat and Disorderly Conduct in city court based upon advice from his counsel, Hon. Richard Smith, who promised that said plea to the charges would not violate the terms of his post release supervision because it was not a guilty plea. Had the Appellant known that such a plea would violate his post release supervision and if it wasn't for the erroneous advice of counsel, the appellant never would have entered said plea. (See App. R. 45) also Fairley v. State, 834 So. 2d 704 (PP7.8) (Ms. 2003).

The information the Appellant received and relied upon from counsel to enter a plea of Nolo Contendere was inaccurate and thus render his counsel ineffective pursuant to Washington v. Strickland, 466 U.S. 668, 687, 80 L.Ed. 2d 674, 104 S.Ct. 2052 (1984). See also Alexander v. State, 605 So. 2d 1170 (Ms. 1990); Hudson v. State, - So. 2d - (Ms. Ct. App. Nov. 15, 2005); Miller v. State, 910 So. 2d 608 (Ms. 1996) and M.R.A.P. 28(a)(3).

For these reasons, the Appellant's Post Release Supervision should be reinstated.

IV). Whether The Appellant Was Afforded His Constitution Right To Due Process?

The Appellant asserts that he was denied his constitutional rights to due process when the Court allowed the state's witness testify that the Appellant ~~was~~ was charged with possession of a fire arm by a convicted felon, when in fact, finger print testing proved that the Appellant never possessed the hand gun the Long Beach Police "found" nor any other gun for that matter. (See App. R. pg. 48) Further, the Appellant request that ballistic tests be done on the gun, his hands and clothes, to prove he never possessed the .22 or any other gun, in which the LBPD refused because no finger prints were found and the appellant was never charged with the gun as the State and it's witness alleged and because of said testimony, the Appellant was prejudiced to a fair hearing, which the Court gave great weight to said

testimony.

The Appellant believes that if not for the alleged gun charge, his post release would not have been violated.

For these reasons, the Appellant's Post Release Supervision should be reinstated.

CONCLUSION

The Appellant asserts that he has set forth meritorious claims to support why his Post Release Supervision should be Reinstated, and in fact, should have never been revoked.

Had it not been for the ineffective assistance of Counsel and perjured testimony from the State and its witness, the Appellant would almost be completely finished with his Post Release Supervision.

For the reasons and facts set out herein, the Appellant moves this Court to Reinstate his Post Release Supervision with credit for time served in prison to be applied to said sentence.

SO MOVED, this the 15 day of January, 2008. A.D.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Douglas R. Moody, Pro Se, do hereby certify that I have this day mailed via, U.S. Mail, postage pre paid, a true and correct copy of the foregoing: Brief For Appellant, to each of the following:

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THIS the 15 day of January, 2008, A.D.

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