

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RONNIE MACKEY

APPELLANT

VS.

NO. 2007-CP-1785

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE SUPREME COURT OF MISSISSIPPI

RONNIE MACKEY

APPELLANT

VERSUS

NO. 2007-CP-1785

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

On March 22, 2007, Ronnie Mackey pleaded guilty in the Circuit Court of Forrest County to a charge of transfer of a controlled substance and was sentenced to a term of 30 years in the custody of the Mississippi Department of Corrections, with said sentence being suspended upon certain conditions, including the condition that Mackey depart from Hattiesburg, Mississippi, within 48 hours and remain outside a radius of 100 miles from the Forrest County Courthouse for the entire period of his suspended sentence. On March 30, 2007, Mackey was found in Hattiesburg, Mississippi. He waived a formal hearing and admitted that he was in that location in violation of his suspended sentence. On April 10, 2007, the circuit court found that Mackey had violated the terms of his suspended sentence and entered an order revoking his suspended sentence and ordering him to serve the 30-year sentence. (C.P.78-79)

On or about June 15, 2007, Mackey filed in the circuit court a Motion for Post-Conviction Collateral Relief. (C.P.7) The circuit court dismissed that motion summarily. (C.P.78-82) Aggrieved by the judgment rendered against him, Mackey has perfected an appeal to this Court.

SUMMARY OF THE ARGUMENT

No error has been shown in the circuit court's summary dismissal of Mackey's motion for post-conviction collateral relief. The judgment entered below should be affirmed.

PROPOSITION:

THE CIRCUIT COURT DID NOT ERR IN DISMISSING MACKEY'S MOTION WITHOUT A HEARING

Having reviewed Mackey's motion, the court file, all the materials proffered by Mackey, and all relevant law, the circuit court found that it was plainly evident that Mackey was not entitled to any relief. (C.P.78-83) In reaching this determination, the court made findings and conclusions which are set out in its OPINION AND ORDER attached to this brief as Exhibit "A." The state submits no error can be shown in these findings and conclusions.

At the outset, we assert that only those issues raised in the circuit court may be considered at this juncture. *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). Concomitantly, we submit that the circuit court's judgment comes before this Court cloaked with the presumption of correctness. "Our law presumes that the judgment of the trial court is correct, and the appellant has the burden of demonstrating some reversible error to this Court." *Buice v. State*, 751 So.2d 1171, 1173 (Miss.App.1999) (upholding denial of motion for post-conviction relief), citing *Pierre v. State*, 607 So.2d 43, 48 (Miss.1992).

To the extent Mackey sought below and seeks here to attack the judgment of conviction and sentence, he cannot prevail on the state of this record, which includes neither the transcript of the plea colloquy, nor the petition to enter a plea of guilty, nor the judgment of conviction. As this Court stated in *Crawford v. State*, 716 So.2d 1028, 1040 (Miss.1998), the appellant, the “party seeking reversal of the judgment of a trial court[,] must present this Court with an adequate record to show that reversible error has been committed.” Thus, “[t]he result of appellant’s failure to present a full record here is that the “presumption of correctness stands un rebutted.” *McKnight v. State*, 738 So.2d 312, 316 (Miss.App.1999), quoting *Smith v. State*, 572 So.2d 847, 849 (Miss.1990).

The dearth of documentation in this record makes it impossible for Mackey to demonstrate error with respect to the circuit court’s dismissal of his claims relating to the validity of this conviction and sentence. For the sake of argument, the state points out that in his prayer for relief, Mackey asked the circuit court “to reconsider and reinstate him to the suspended sentence he was given ... “ (C.P.30) From this prayer for relief, the circuit court would have been well justified in concluding that Mackey had no serious challenge to the validity of his conviction and sentence, inasmuch as he wished to be “reinstated” to the sentence originally imposed.

As for the challenge to the revocation of his suspended sentence, the record supports the court’s finding that “Mackey waived a formal hearing and admitted that he was in Hattiesburg, Mississippi in violation of his suspended sentence.” (C.P.79) The record also shows that Mackey “was served with a copy of the petition for [for revocation] and the notice of hearing ... “ (C.P.70)

During the hearing on the Petition for Revocation, Mackey admitted that he had violated the conditions of his suspended sentence by remaining in Hattiesburg, but pleaded extenuating circumstances and asked for another chance to leave the jurisdiction. (C.P.71-72) In light of these

facts, Mackey cannot show error in the circuit court's finding that his due process rights were not violated. *Ray v. State*, 976 So.2d 398, 404 (Miss.App.2008).

CONCLUSION

The state respectfully submits the circuit court properly denied Mackey's Motion for Post-Conviction Collateral Relief. 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:

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This the 8th day of October, 2008.



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