

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COPY

JOSEPH L. BRANCH

APPELLANT

VS.

FILED

NO. 2007-CP-1796

MAR 31 2008

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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remedy for him in the Department of Corrections.

A Circuit Court may deny relief on a motion in post - conviction relief without an evidentiary hearing where it plainly appears from the face of the motion, annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief. Miss. Code Ann. Section 99-39-11(2) (Rev. 2007). The court's decision in this regard will not be disturbed here absent a finding that it was clearly erroneous. *Trice v. State*, No. 2007-KA-00041-COA (Miss. Ct. App., Decided 15 December 2007, Not Yet Officially Reported). Because order at issue in the case at bar clearly and expressly provided that the prisoner be given credit for time served on his conviction, he was clearly not entitled to relief.


CONCLUSION

The Order denying relief on the prisoner's motion in post - conviction relief should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

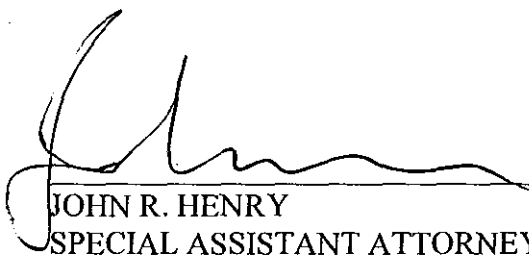
I, John R. Henry, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Isadore W. Patrick, Jr.
Circuit Court Judge
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Honorable G. Gilmore Martin
District Attorney
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This the 31st day of March, 2008.



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