

**COPY**

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

**CARL WILLIAMS**

**APPELLANT**

**VS.**

**NO. 2007-CP-2029**

**STATE OF MISSISSIPPI**

**FILED**  
**AUG 22 2008**  
**OFFICE OF THE CLERK**  
**SUPREME COURT**  
**COURT OF APPEALS**

**APPELLEE**

**MOTION TO DISMISS APPEAL, OR IN THE ALTERNATIVE,**  
**BRIEF FOR APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES ..... ii**

**STATEMENT OF THE CASE ..... 1**

**SUMMARY OF THE ARGUMENT ..... 2**

**PROPOSITION:**

**THIS ATTEMPTED APPEAL SHOULD BE DISMISSED;**

**SOLELY IN THE ALTERNATIVE, THE STATE SUBMITS**

**THE CIRCUIT COURT PROPERLY DISMISSED THE**

**PETITION ..... 2**

**CONCLUSION ..... 3**

**CERTIFICATE OF SERVICE ..... 4**

## TABLE OF AUTHORITIES

### STATE CASES

<i>Fleming v. State</i> , 553 So.2d 505, 506 (Miss.1989) .....	2
<i>Leverette v. State</i> , 812 So.2d 241, 244 (Miss. App. 2002) .....	3
<i>Presley v. State</i> , 792 So.2d 950, 954 (Miss.2001) .....	3
<i>Smith v. State</i> , 742 So.2d 1188, 1189 (Miss. App.1999) .....	2

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

**CARL WILLIAMS**

**APPELLANT**

**VERSUS**

**NO. 2007-CP-2029**

**STATE OF MISSISSIPPI**

**APPELLEE**

**MOTION TO DISMISS APPEAL, OR IN THE ALTERNATIVE,  
BRIEF FOR APPELLEE**

**STATEMENT OF THE CASE**

Carl Williams pleaded guilty in the Circuit Court of Oktibbeha County to a charge of sale of cocaine. On May 2, 2006, the court sentenced him to a term of 12 years in the custody of the Mississippi Department of Corrections. (T.28-30) Another charge against Williams was retired to the files. (C.P.31)

More than a year later, in September 2007, Williams filed in the Circuit Court a Petition for a Reduction/Consideration of Sentence. (C.P.45) The circuit court summarily dismissed the motion (C.P.8) and Williams has attempted an appeal from that order.

## **SUMMARY OF THE ARGUMENT**

This attempted appeal should be dismissed. Solely in the alternative, the state contends the circuit court correctly dismissed the petition.

### **PROPOSITION:**

#### **THIS ATTEMPTED APPEAL SHOULD BE DISMISSED; SOLELY IN THE ALTERNATIVE, THE STATE SUBMITS THE CIRCUIT COURT PROPERLY DISMISSED THE PETITION**

Williams has attempted to appeal from an order denying his petition for reduction of sentence. The state counters that such an order is not appealable; thus, this purported appeal should be dismissed.

"[T]here are two primary ways in which a criminal defendant may challenge a trial court proceeding: (1) a direct appeal from a conviction, or (2) a proceeding under the Post Conviction Relief Act. An appeal is a matter of statutory right and not based on any inherent common law or constitutional right." *Fleming v. State*, 553 So.2d 505, 506 (Miss.1989), quoted in *Smith v. State*, 742 So.2d 1188, 1189 (Miss. App.1999). Because Williams was not directly appealing his conviction, and was not proceeding under the Post-Conviction Collateral Relief Act, this appeal is not properly before the Court. *Smith*, 742 So.2d at 1189 (holding that denial of motion for reduction of restitution payments was not an appealable order). In the absence of statutory authorization, this appeal should be dismissed.

Solely in the alternative, while in no way conceding that any further discussion is necessary, the state contends the circuit court properly found that it had no authority to reduce Williams's sentence, which had been imposed in a former term of court and which he had in fact begun to serve. (C.P.8) "A circuit court judge may not alter a sentence

imposed during a term of court once the term has ended." *Leverette v. State*, 812 So.2d 241, 244 (Miss. App. 2002). Accord, *Presley v. State*, 792 So.2d 950, 954 (Miss.2001). Of course, the lack of jurisdiction in the circuit court signifies lack of jurisdiction in this Court. This attempted appeal should be dismissed.

The state maintains that this appeal should be dismissed.

**CONCLUSION**

The state respectfully submits that Williams has attempted to appeal from an unappealable order. The appeal should be dismissed accordingly.

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 **MOTION TO DISMISS APPEAL, OR IN THE ALTERNATIVE, BRIEF FOR APPELLEE** to the following:

Honorable James T. Kitchens, Jr.  
Circuit Court Judge  
P. O. Box 1387  
Columbus, MS 39703

Honorable Forrest Allgood  
District Attorney  
P. O. Box 1044  
Columbus, MS 39703

Carl Williams, #K2731  
B.C.R.C.F.  
2792 Hwy. 8 West  
Cleveland, MS 38732

This the 22nd day of August, 2008.

  
\_\_\_\_\_  
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