

**COPY**

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

**ANTHONY WILLIAMS**

**APPELLANT**

**FILED**

**JUN 30 2008**

**VS.**

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

**NO. 2007-CP-2143**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**IN THE COURT OF APPEALS OF MISSISSIPPI**

**ANTHONY WILLIAMS**

**APPELLANT**

**VERSUS**

**NO. 2007-CP-2143-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR APPELLEE**

**STATEMENT OF THE CASE**

On January 26, 1999, Anthony Williams pleaded guilty in the Circuit Court of Jefferson Davis County to a charge of sale of cocaine. Thereafter, he was sentenced to a term of 15 years in the custody of the Mississippi Department of Corrections, with seven years to serve and eight years suspended on post-release supervision. (C.P.25-28) On July 12, 2006, Williams executed a waiver of his rights to notice and/or waiting period prior to preliminary post-release hearing. (C.P.30) On July 24, 2006, Williams signed a waiver of his right to revocation hearing, which included an admission that he had thereby "consented to an immediate revocation" of his probation. (C.P.31) On that date, the Circuit Court of Jefferson County entered an order finding that Williams had violated the terms of his probation by his arrest on two occasions for domestic violence, revoking Williams' probation, and ordering him to serve the first three years of the eight-year term on Intensive

Supervision Program (house arrest), with the remaining five years to be served on post-release supervision. (C.P.32)

Thereafter, Williams filed in the circuit court a petition for post-conviction collateral relief, asserting that the state failed to afford him a revocation hearing, and that the sentence to house arrest was illegal. (C.P.34) The court summarily denied the petition on October 17, 2007. (C.P.46-47) Aggrieved by the judgment rendered against him, Williams has perfected an appeal to this Court.

### **SUMMARY OF THE ARGUMENT**

The circuit court did not err in denying Williams' petition without a hearing. In that petition, Williams failed to acknowledge that he had waived his right to a final revocation hearing and had consented to the immediate revocation of his probation. Furthermore, he could not be heard to complain of an illegally lenient sentence.

### **PROPOSITION:**

#### **THE CIRCUIT COURT DID NOT ERR IN DENYING WILLIAMS' PETITION SUMMARILY**

As the court stated in its order, "the thrust" of Williams' petition was "that the State of Mississippi failed to afford him a revocation hearing." (C.P.46) Williams acknowledged that he waived his right to a preliminary hearing, but failed to recognize that he also waived his right to the final hearing. (C.P.31) By signing that waiver, Williams acknowledged that he had "an absolute right to a hearing before the Court to answer the charges" and that he was thereby waiving that right and consenting to the immediate revocation of his probation. (C.P. 31) It follows that no error can be shown in the circuit court's summary dismissal of this ground for relief.

With respect to Williams' challenge to the legality of the sentence to house arrest, the court made the following findings and conclusions:

While the Court concedes that the petition was ineligible for house arrest, he has not been prejudiced under *Graves v. State*, 822 So.2d 1089 (Miss. Ct. App. 2002). In *Graves*, the Mississippi Court of Appeals held a defendant has no cause to complain when given a sentence more favorable than a legal sentence would have been. Here, the petitioner[s] sentence of house arrest is clearly more favorable and lenient than incarceration in an MDOC facility, the only legal sentence available. Therefore, this Court is compelled to deny the requested relief.

(C.P.47)

Accord, *Thornhill v. State*, 919 So.2d 238, 240 (Miss. App. 2005). The court's conclusion is factually and legally correct. "[T]here is no prejudice suffered when a defendant receives an illegally lenient sentence." *Sweat v. State*, 912 So.2d 458, 461 (Miss.2005), quoted in *Moore v. State*, 976 So.2d 930, 931 (Miss. App. 2007). For these reasons, the circuit court properly denied Williams' petition.

### **CONCLUSION**

The state respectfully submits the circuit court properly denied Williams' petition for post-conviction collateral relief. The judgment entered below should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL  
STATE OF MISSISSIPPI**

A handwritten signature in black ink, appearing to read "Deirdre McCrory", written in a cursive style.

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 30th day of June, 2008.

  
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