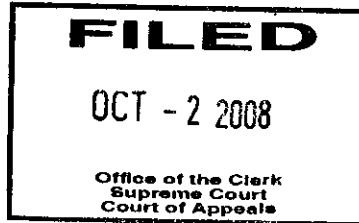


IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

WILLIAM EDMONDSON

APPELLANT

VS.



NO. 2007-CP-2213-COA

STATE OF MISSISSIPPI

APPELLEE

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

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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**MOTION TO DISMISS APPEAL
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BRIEF FOR THE APPELLEE ON THE MERITS**

COMES NOW the appellee, State of Mississippi, through counsel, and respectfully moves this Court for an order dismissing, with prejudice, the present appeal from the denial of a *pro se* motion for post-conviction relief filed by William Edmondson in the Circuit Court of Lowndes County, Mississippi, Honorable Lee J. Howard presiding. Edmondson's appeal should be dismissed due to lack of jurisdiction and standing. See *Torns v. State*, 866 So2d 486, (Miss.App. 2004); *Bowie v. State*, 976 So.2d 370 (Miss.App.2003).

Edmondson is no longer in custody of the Mississippi Department of Corrections for the 1994 possession of marijuana conviction for which he now seeks post-conviction relief. Therefore, Edmondson lacks standing to maintain this request for post-conviction relief and the court lacks jurisdiction to entertain the motion.

**BRIEF FOR THE APPELLEE IN SUPPORT
OF MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE,
BRIEF FOR THE APPELLEE ON THE MERITS**

FACTS AND HISTORY

On August 8, 1994, a Lowndes County Grand Jury indicted William Edmondson on one count of possession of marijuana with intent to distribute in violation of the Mississippi Uniform Controlled Substance Act. (CP Supp. Vol. 1, 3). After the capias was returned “Not Found,” an alias capias was issued on September 7, 1994, and served on October 9, 2000. Edmondson waived arraignment on November 15, 2000. On December 3, 2002, in Cause Number 94-0408, Edmondson entered a petition to plead guilty to possession of more than an ounce but less than a kilogram of marijuana. (CP Supp. Vol 1, 4-11). The trial court placed Edmondson on three years “suspended Probation pursuant to 41-29-150 Mississippi Code Annotated (1972).” (CP Supp. Vol. 1, 12 and 20-26). The sentencing order incorrectly stated the exact charge so the court subsequently entered an amended order. (CP Supp. Vol. 1, 19).

On **January 11, 2004**, Edmondson was **arrested** and subsequently indicted for receiving stolen property, possession of methamphetamine, manufacture of methamphetamine and possession of anhydrous ammonia. On February 4, 2004, the state petitioned the court to adjudicate Edmondson’s guilt in the 1994 marijuana case, Cause Number 94-0408. (CP Supp. Vol. 1, 16). On February 16, 2005, the trial court accepted Edmondson’s 2002 guilty plea to possession of marijuana, **revoked his probation in Cause No. 94-0408 and sentenced him to serve three years in the Mississippi Department of Corrections.** (CP Supp. 1, 28; Vol. 1, 19-26, 28). As part of a plea agreement with the state, **Edmondson also entered a guilty plea**, on the same date, **to one count of possession of methamphetamine in Cause No. 2004-0406, and one count of receiving stolen property in Cause No. 2004-0300;** the court retired the remaining three counts

to the files. Edmondson received five years for possession of stolen property and twelve years for possession of methamphetamine, with the sentences to run consecutive to the possession of marijuana three year sentence in Cause No. 94-0408. (CP Vol. 1, 18-35). (*Emphasis added by Appellee.*)

On October 1, 2007, Edmondson filed a *pro se* Motion for Post Conviction Relief/Habeas Corpus alleging, in Cause No. 94-0408, due process violations, including being sentenced in violation of Mississippi law. Edmondson argued his sentencing occurred over 270 days from arraignment and exceeded the time allowed by 99-17-1 M.C.A.(CP Vol. 1, 54-70).

On November 28, 2007, the trial court found the motion without merit and summarily denied the relief without hearing. The court noted 99-17-1 M.C.A. also states that the 270 day rule is only applicable “[u]nless good cause be shown, and a continuance duly granted by the court.” (CP Vol. 1, 71-72). The trial court’s review of the case found that the majority of the time lapse occurred between the time Edmondson was arrested on the offense and when could not be found for service of the *capias*. (*Ibid*). The rest of the time lapse was due to continuances obtained by Edmondson’s attorney.(*Ibid*). Feeling aggrieved Edmondson appealed claiming denial of a speedy trial.

ISSUES ON APPEAL

- I. DOES EDMONDSON HAVE STANDING TO MAINTAIN THE MOTION FOR POST-CONVICTION RELIEF AND DOES THE COURT HAVE JURISDICTION TO HEAR THE APPEAL?
- II. WAS EDMONDSON DENIED A SPEEDY TRIAL?

SUMMARY OF THE ARGUMENT

Appellee contends Edmondson completed serving his three year sentence for possession of marijuana, which is the subject matter of his request for post-conviction relief, and is now serving the sentences for the 2004 receiving stolen property and possession of methamphetamine convictions. Edmondson lacks standing to maintain the motion and the court lacks jurisdiction to consider it. The appeal from denial of post-conviction relief should be dismissed with prejudice.

In the alternative, the Lowndes County Circuit Court's ruling denying Edmondson's motion for post-conviction relief should be affirmed. Edmondson failed to prove that the trial court was clearly erroneous in dismissing his motion.

Edmondson waived his right to a speedy trial when he plead guilty. The record reflects on December 3, 2001, Edmondson petitioned the court to enter a guilty plea to possession of marijuana; on August 6, 2002, the court non-adjudicated Edmondson and sentenced him to probation; on February 4, 2004, the state petitioned the court to adjudicate Edmondson's guilt; on February 16, 2005, the court accepted the guilty plea and sentenced him to three years incarceration. (CP Supp Vol 1, 4-14 and Vol. 1, 20-26).

ARGUMENT

PROPOSITION I

EDMONDSON LACKED STANDING TO MAINTAIN THE MOTION FOR POST-CONVICTION RELIEF AND THE COURT LACKED JURISDICTION TO CONSIDER IT.

Edmondson cannot collaterally attack his possession of marijuana conviction through his current appeal because he lacks standing to do so. Under Mississippi Code Annotated section 99-39-5, in order to have standing to bring a motion for post-conviction relief, the petitioner must be in custody for the crime for which he seeks post-conviction relief. *Wilson v. State*, 2007-CP-01541-COA (Sept. 23, 2008) citing *Graves v. State*, 822 So.2d 1089, 1091 (¶6) (Miss. Ct. App. 2002). Edmondson is no longer in custody for the 1994 possession of marijuana conviction for which he now seeks post-conviction relief, therefore he lacks standing to challenge the conviction.

At his sentencing hearing on February 16, 2005, defense counsel stated to the court “My client’s been incarcerated about a year and a half on that warrant.” (CP Vol.1, 24). In his sworn Motion to Proceed in Forma Paupers, filed along with his appeal for post-conviction relief, both of which are **dated December 3, 2007**, Edmondson states “**Petitioner has been incarcerated for three years** with no personal income.” (*Emphasis added by Appellee*). (CP Vol.1, 81). According to the petition to plead guilty, Edmondson had not been convicted of any felonies prior to the marijuana charge. (CP Vol. 5-12 and 1 40-45; Supp Vol. 1, 4-11). Therefore, the three years of incarceration referenced in Edmondson’s pauper’s oath had to have been for the 1994 marijuana charge.

Attached hereto as Exhibit “A” is Edmondson’s MDOC Inmate Time Sheet record. The record reflects Edmondson began his pre trial/pre sentence jail time on January 11, 2004. At the latest, he completed his three year sentence in January 2007 and is without standing to challenge

the sentence which is the subject matter of his motion. As indicated, Edmondson began serving his three year sentence on January 11, 2004, and has not been in custody on account of his 1994 marijuana case since January 2007. He is presently in MDOC custody as a result of his 2004 methamphetamine conviction and possession of stolen property conviction.

The trial court was without jurisdiction to consider Edmondson's post-conviction relief motion regarding the 1994 marijuana case because Edmondson completed the sentence. If the trial court was without jurisdiction, the appellate court is also lacking in jurisdiction. *Torns v. State*, 866 So.2d 486, 490 (Miss.App., 2003) citing *Graves v. State*, 822 So2d 1089, 1091 (Miss.Ct.App.2002) ("no jurisdiction is conferred upon this Court if none was in the court below").

PROPOSITION II.

EDMONDSON WAIVED HIS RIGHT TO A SPEEDY TRIAL AND DID NOT MEET HIS BURDEN FOR ESTABLISHING HIS CLAIM.

On appeal, the appellate court will not reverse the trial court's decision to dismiss a motion for post-conviction relief "absent a finding that the trial court's decision was clearly erroneous." *Williams v. State*, 872 So2d 711, 712 (Miss.Ct.App. 2004).

Edmondson contends that he was denied a speedy trial and that his attorney did not advise him of this Constitutional right. Edmondson's claim is contrary to the record. The petition to plead guilty signed by Edmondson on December 3, 2001, reflects that he was advised the Constitution guaranteed him the right to a speedy and public trial by jury and that he waived that right by pleading guilty. (CP Supp Vol 1, 5) Edmondson offered nothing in his motion for post-conviction relief to support his allegation that he did not know he was waiving his right to a speedy trial when he plead guilty.

In *Jones v. State*, 747 So.2d 249, 251(¶7) (Miss.1999), the Mississippi Supreme Court held:

This Court has found that a guilty plea waives the right to a speedy trial, whether that right is of constitutional or statutory origin. *Rowe v. State*, 735 So.2d 399, 400 (Miss.1999); *Anderson v. State*, 577 So.2d 390, 391-92 (Miss.1991).

In *Anderson* the Court stated:

... [W]e have recognized that a valid guilty plea operates as a waiver of all non-jurisdictional rights or defects which are incident to trial. *Ellzey v. State*, 196 So.2d 889, 892 (Miss.1967). We have generally included in this class "those [rights] secured by the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, as well as those comparable rights secured by Sections 14 and 26, Article 3, of the Mississippi Constitution of 1890." *Sanders v. State*, 440 So.2d 278, 283 (Miss.1983); see also *Jefferson v. State*, 556 So.2d 1016, 1019 (Miss.1989). We take this opportunity to specifically include in that class of waivable or forfeitable rights the right to a speedy trial, whether of constitutional or statutory origin.

Anderson, 577 So.2d at 391-92.

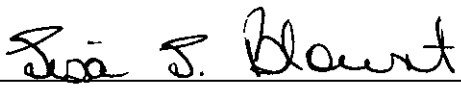
Edmondson plead guilty to possession of marijuana and thereby waived his right to a speedy trial. Appellee would submit that this issue is without merit.

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal, the State would ask this reviewing court to dismiss this appeal, with prejudice, or, in the alternative, affirm the order of the Circuit Court of Lowndes County denying William Edmondson's motion for post-conviction relief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 
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Mississippi Department of Corrections
Inmate Time Sheet

Offender: EDMONDSON, WILLIAM N3802

Housing: CENTRAL MISSISSIPPI COUNTY JAIL, LEAKE CSWP

Computation Date: 10/29/2007 10:13

Date Printed: 09/29/2008 08:22

Sentences:

DATE	CAUSE/COUNT	OFFENSE	COMMITTED	COUNTY	SERVE	HOUSE	PROBATION HAB	DEFERRED	OVERRIDE	CONCURRENT	CONSECUTIVE
02/16/05	94-408/1	3565:POSS OF MARIJUANA W/INTENT TO DISTRIBUTE	08/12/93	Lowndes	3Y		N				
02/17/05	04-406/2	3575:METHAMPHETAMINE - POSSESSION	01/11/04	Lowndes	12Y		4Y	N			94-408/1
02/17/05	2004-0300/3	2803:RECEIVE STOLEN PROPERTY	01/08/04	Lowndes	5Y			N			04-406/2

☒ First Time Offender

Pre Trial/Pre Sentence Jail Time:

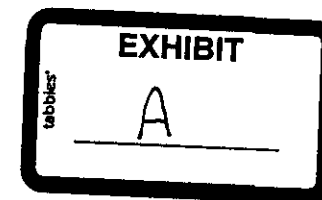
FROM	TO	DAYS
01/11/04	02/16/05	402

Total Jail Time: 402

Override:

Computation Details:

DATE	DESCRIPTION
02/16/05	94-408/1 3565:POSS OF MARIJUANA W/INTENT TO DISTRIBUTE 3Y
02/17/05	04-406/2 3575:METHAMPHETAMINE - POSSESSION 12Y CS to 94-408/1
02/17/05	2004-0300/3 2803:RECEIVE STOLEN PROPERTY 5Y CS to 04-406/2
04/11/06	Into Trusty Status 07/12/05 IN T/S - COMMON LABOR (WITHOUT INTENT) HE ONLY HAS TO SERVE 50% ON WITH INTENT CHARGE SO HE IS NOW ELIGIBLE FOR 30/30.
04/12/06	Trusty Earned Time 07/12/05 to 08/11/05 : 30D
04/12/06	Trusty Earned Time 08/11/05 to 09/10/05 : 30D
04/12/06	Trusty Earned Time 09/10/05 to 10/10/05 : 30D
04/12/06	Trusty Earned Time 10/10/05 to 11/09/05 : 30D
04/12/06	Trusty Earned Time 11/09/05 to 12/09/05 : 30D
04/12/06	Trusty Earned Time 12/09/05 to 01/08/06 : 30D
04/12/06	Trusty Earned Time 01/08/06 to 02/07/06 : 30D
04/12/06	Trusty Earned Time 02/07/06 to 03/09/06 : 30D
04/12/06	Trusty Earned Time 03/09/06 to 04/08/06 : 30D
05/08/06	Trusty Earned Time 04/08/06 to 05/08/06 : 30D
06/07/06	Trusty Earned Time 05/08/06 to 06/07/06 : 30D
07/07/06	Trusty Earned Time 06/07/06 to 07/07/06 : 30D
07/17/06	Met-Abe/GED 04/01/06 to 06/30/06 : 20D
08/06/06	Trusty Earned Time 07/07/06 to 08/06/06 : 30D
09/05/06	Trusty Earned Time 08/06/06 to 09/05/06 : 30D
09/21/06	Met-Discipleship Program 07/01/06 to 08/31/06 : 20D 17 days not eligible due to overlapping dates.
10/05/06	Trusty Earned Time 09/05/06 to 10/05/06 : 30D
10/13/06	Met-Abe/GED 09/01/06 to 09/30/06 : 10D
11/04/06	Trusty Earned Time 10/05/06 to 11/04/06 : 30D
12/04/06	Trusty Earned Time 11/04/06 to 12/04/06 : 30D
12/06/06	Met-A&D Treatment 10/01/06 to 11/28/06 : 19D
01/03/07	Trusty Earned Time 12/04/06 to 01/03/07 : 30D
01/18/07	Met-Discipleship Program 11/29/06 to 12/07/06 : 3D



NOTARY COPY CERTIFICATION

State of MS.
County of Lowndes

I, Evelyn Dixon, a Notary Public, certify
this 26th day of Sept., 2008, the foregoing/attached
document is a true, correct, complete and unaltered copy of William
Edmondson inmate made by MDOC Records
time sheet

Evelyn Dixon
Notary Public
My Commission Expires: 4/2/2009

DATE	DESCRIPTION
02/02/07	Trusty Earned Time 01/03/07 to 02/02/07 : 30D
03/04/07	Trusty Earned Time 02/02/07 to 03/04/07 : 30D
04/03/07	Trusty Earned Time 03/04/07 to 04/03/07 : 30D
05/03/07	Trusty Earned Time 04/03/07 to 05/03/07 : 30D
05/07/07	Met-Discipleship Program 01/04/07 to 04/19/07 : 35D Level 5
06/02/07	Trusty Earned Time 05/03/07 to 06/02/07 : 30D
07/02/07	Trusty Earned Time 06/02/07 to 07/02/07 : 30D
08/01/07	Trusty Earned Time 07/02/07 to 08/01/07 : 30D
08/24/07	Met-Discipleship Program 05/10/07 to 08/23/07 : 34D
08/31/07	Trusty Earned Time 08/01/07 to 08/31/07 : 30D
09/30/07	Trusty Earned Time 08/31/07 to 09/30/07 : 30D
10/29/07	Met-Discipleship Program 09/13/07 to 10/19/07 : 12D
10/30/07	Trusty Earned Time 09/30/07 to 10/30/07 : 30D
11/29/07	Trusty Earned Time 10/30/07 to 11/29/07 : 30D
12/29/07	Trusty Earned Time 11/29/07 to 12/29/07 : 30D
01/28/08	Trusty Earned Time 12/29/07 to 01/28/08 : 30D
02/27/08	Trusty Earned Time 01/28/08 to 02/27/08 : 30D
03/28/08	Trusty Earned Time 02/27/08 to 03/28/08 : 30D
04/27/08	Trusty Earned Time 03/28/08 to 04/27/08 : 30D
05/27/08	Trusty Earned Time 04/27/08 to 05/27/08 : 30D
06/26/08	Trusty Earned Time 05/27/08 to 06/26/08 : 30D
07/26/08	Trusty Earned Time 06/26/08 to 07/26/08 : 30D
08/25/08	Trusty Earned Time 07/26/08 to 08/25/08 : 30D
09/24/08	Trusty Earned Time 08/25/08 to 09/24/08 : 30D

Summary:

Begin Date	House Arrest Date	Parole Date	Tent. ERS Date	Tentative Discharge	Max Discharge	End Date
01/11/2004			05/06/2016	11/23/2018	01/06/2024	
Total Term To Serve: 20Y		Total Earned Time: 4Y 18D		Earned Time Lost: 0D	Total MET Earned: 153D	Total Trusty Time Earned: 3Y 75D

Comments:

CERTIFICATE OF SERVICE


I, Lisa L. Blount, 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 THE APPELLEE ON THE MERITS** to the following:

Honorable Lee J. Howard
Circuit Court Judge
Post Office Box 1344
Starkville, MS 39760

Honorable Forrest Allgood
District Attorney
Post Office Box 1044
Columbus, MS 39703

William Edmondson, #N3802
C.M.C.F.
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This the 2nd day of October, 2008.



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