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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

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LOUIS R. REESE

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SUPREME COURT
COURT OF APPEALS

APPELLANT

VS.

NO. 2007-KP-0360-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The grand jury of Monroe County indicted defendant, Louis R. Reese for sale of a controlled substance (Oxycodone). In November 2001, defendant (an admitted previously convicted felon) pled guilty (to THREE felony sales!!) and was sentenced to 30 years withy twenty-two suspended leaving eight to serve and five years of post-release supervision. (Plus fines, fees, restitution & court costs). (C.p. 32-34 & 56). The trial court retained jurisdiction for one year. Within that statutory period, on November 13, 2002, defendant was re-sentenced to 30 years, twenty-six suspended, four to serve with five years post release supervision. (Modified Sentence order, c.p. 20-22).

Within a very short time of being release from his prison sentence defendant was arrested in August of 2005 for selling stolen property and possession of stolen property. Defendant had also failed to pay fines, fees, costs to the court. (Order denying post-conviction relief). (Cp. 74-75).

Upon the State's petition to revoke suspended sentence defendant was re-sentenced so that fifteen years of the twenty-six years previously suspended was reinstated so that defendant would be required to serve fifteen years in the custody of the Mississippi State Department of Corrections.

Subsequently, defendant filed a motion for post-conviction relief (January 2006; C.p. 11-19).

The trial court denied with findings of fact and conclusions of law. (Order denying post-conviction relief, February 2007, c.p.74-75).

It is from that denial of post-conviction relief that defendant timely noticed this instant appeal.

STATEMENT OF FACTS

Defendant, a convicted felon in Alabama, came over to Mississippi and was indicted for committing THREE more felonies. Defendant pled guilty to ALL THREE felonies, defendant was sentenced on all three and, in essence, was to serve eight years of a possible EIGHTY YEARS.

Sadly, as is oft the case, after defendant was shown even more leniency, and upon being released from prison almost immediately committed more CRIMES and was arrested for same.

Those arrests were used to revoke just one of his three previously suspended sentences.

Defendant then raised an argument that has been presented more that a few time to the trial judge. To wit: – I was a convicted felon so the lenient sentence you gave me was an illegal sentence. So my revocation was illegal so you must let me go.

Fortunately the law holds otherwise.

ARGUMENT

I.

THE TRIAL COURT DID NOT ERROR IN DENYING THE MOTION FOR POST-CONVICTION RELIEF.

Defendant raises two errors on appeal and pretty much just argues one issue. The claim being his sentence was illegal so any revocation must arise to new charges, proved beyond a reasonable doubt, to support a revocation and new incarceration.

¶10. Even assuming, without deciding, that the trial judge in this case imposed an illegal sentence upon Jefferson by suspending part of his sentence and/or by sentencing Jefferson to house arrest, we find that such error by the trial court does not require reversal of Jefferson's conviction or sentence. In *Myers v. State*, 897 So.2d 198, 201 (¶ 11) (Miss.Ct.App.2004), we considered an argument identical to the one which Jefferson asserts in the instant case. There, the criminal defendant argued that, "because he had prior felonies, the only legal sentence he could have received was thirty years without parole. Therefore, [the defendant] claim[ed] that his sentence was unconstitutional and must be set aside." Id. In finding that the errors urged in *Myers* did not rise to the level of reversible error, we stated that "a defendant's fundamental right of freedom from an illegal sentence is violated when the sentence imposes an undue burden on the defendant, such as when the offer induces a plea and the State later seeks to rescind the suspension solely because it was statutorily barred." Id. at 201 (¶ 12) (citing *Graves v. State*, 822 So.2d 1089, 1092 (¶ 11) (Miss.Ct.App.2002); *Weaver v. State*, 785 So.2d 1085, 1088 (¶ 11) (Miss.Ct.App.2001)).

Jefferson v. State, 958 So.2d 1276 (Miss.App. 2007).

So, as to his illegal sentence argument it is without merit and no relief should be granted based on said claim.

Next, it would appear defendant asserts the trial court used the wrong standard

to revoke his suspended sentence.

¶ 17. In our case, Davis had a suspended sentence with three years of post-release supervision, which is proper for a defendant with a prior felony conviction under section 47-7-34. Once he violated the terms of his suspended sentence, the post-release supervision was revoked, which is proper under section 47-7-37. The judge then ordered Davis to serve three years and five months in the custody of MDOC. This sentence equates to the remainder of his five-year sentence which was suspended. Davis was given credit for his nineteen months of time served in the Copiah County jail. Therefore, the imposition of a three year and five month sentence by the trial court was proper. We find this issue to be without merit.

Davis v. State, 954 So.2d 530 (Miss.App. 2007).

Defendant has cited case law on point for the State. The fact that defendant was arrested after a judicial probable cause determination is enough to support the revocation of a suspended sentence. The State need not offer proof of any act in furtherance of that crime. As defendant had even cited and argued – even after an acquittal on the charges the revocation is still valid.

Looking to the order of revocation it is clear from the trial court's order defendant was found in violation of conditions (9) & (10) as noted in the revised sentencing order (C.p. 68-70). Which was know, signed and acknowledged by defendant (C.p.71). Under the rationale of *Moore* (as cited by defendant) and *Davis* and *Jefferson*, the trial court had ample factual basis that the terms and conditions of defendant's sentence were violated. The State need not prove nor the trial court find

CERTIFICATE OF SERVICE

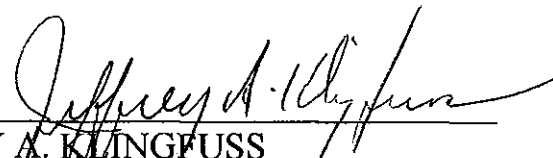
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Sharion Aycock
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Tupelo, MS 38802-1100

Honorable John R. Young
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This the 17th day of December, 2007.



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