

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

**MYRON POLLARD**

**APPELLANT**

**VS.**

**NO. 2008-CA-0679**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**BY: DEIRDRE MCCRORY  
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**IN THE COURT OF APPEALS OF MISSISSIPPI**

**MYRON POLLARD**

**APPELLANT**

**VERSUS**

**NO. 2008-CA-0879-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR APPELLEE**

**STATEMENT OF THE CASE**

On July 13, 2007, Myron Pollard pleaded guilty in the Circuit Court of Coahoma County to one charge of possession of cocaine (Count I) and one charge of possession of marijuana (Count II). (T.3-12) The following July 16, the circuit court entered an order adjudicating guilt and deferring sentence. (C.P.14-15) Thereafter, on August 24, 2007, the court entered an order sentencing Pollard to a term of 15 years in the custody of the Mississippi Department of Corrections in Count I. The court also ordered him to pay fines of \$5,000 in Count I and \$250 in Count II. (C.P.16-18) Thirteen days later, on September 6, 2007, Pollard filed a motion to set aside his guilty plea. (C.P.22-27) The district attorney's office filed a response asserting that the circuit court lacked jurisdiction to modify its adjudication of guilty during term time absent an express reservation of jurisdiction in the order adjudicating guilt. (C.P.33-34) The court accepted the state's position

and entered an order denying Pollard's motion. (C.P.36-37) Aggrieved by the judgment rendered against him, Pollard has perfected an appeal to this Court.

### **SUMMARY OF THE ARGUMENT**

The circuit court did not err in finding that it lacked jurisdiction to consider Pollard's motion to set aside his guilty plea. The motion was filed after the term of court ended; it was not pending at the end of the term. The judgment entered below should be affirmed.

### **PROPOSITION:**

#### **THE CIRCUIT COURT DID NOT ERR IN FINDING THAT IT LACKED JURISDICTION TO CONSIDER POLLARD'S MOTION TO SET ASIDE HIS GUILTY PLEA**

At the outset, the appellee adopts by reference the Response of State to Motion Entitled "Motion to Set Aside Guilty Plea and Subsequently Sentencing Judgment and Motion Demanding Trial," which is appended to this brief as Exhibit "A." (C.P.33-35)

At the beginning of the hearing on Pollard's motion to set aside his guilty plea, the court noted found that the state's response was "technically correct." (T.17) Thereafter, the following was taken, in pertinent part:

[THE COURT:] With the term having ended with me altering a sentencing, that's were— well, there's just a prohibition against that. Now, I think what we could do, and that would be up to you [defense counsel], is to treat this as a post-conviction, if you so desire. Otherwise, technically, I think that we've got— you could perhaps file an out of time appeal. Procedurally, I think that's our options.

MS. WEBSTER: Well, I would like to go ahead with my proffer, with the evidence on my motion which we could probably stipulate all of the things that I'm going to put on. And then I will appeal the denial of my motion, and then he'll still have a right to post-conviction...

MR. BLECK: Judge, if she's going to not proceed under post-conviction relief, I don't think we do anything. I think the question is whether we have jurisdiction exclusively. I think we don't have jurisdiction. And at that point, you know, the only valid way to appeal this is via post-conviction relief even to the Supreme Court because he plead guilty. So you can't do an out of time appeal. You can't do an appeal period other than post-conviction relief, of which one of the exact grounds for it is you claim your plea was involuntary. It's one of the enumerated reasons. It's the only place in the statutes you've got the right to plead guilty and then appeal to the Supreme Court. I think we're wasting our time if we do it any other way.

THE COURT: I think he's correct, Counsel.

\* \* \* \* \*

THE COURT: [T]he Court feels certain that legally I have to deny this motion right here.

(T.17-19)

No error has been shown in the court's ruling. As this Court observed in *McGee v. State*, 976 So.2d 954, 956 (Miss.App.2008), "Generally, a circuit court does not have jurisdiction to alter or vacate a judgment once the term of court ends." Pollard's motion to set aside his plea was filed after the court term ended; it was not pending at the end of the term. Contrast *Presley v. State*, 792 So.2d 950, 954 (Miss.2001). No basis exists for disturbing the court's finding that it had no jurisdiction to entertain Pollard's motion. The judgment entered below should be affirmed.

### **CONCLUSION**

The state respectfully submits the circuit court properly concluded that it had no jurisdiction to consider Pollard's motion to set aside his guilty plea. The judgment entered below should be affirmed.

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 **BRIEF FOR THE APPELLEE** to the following:

Honorable Albert B. Smith, III  
Circuit Court Judge  
P. O. Drawer 478  
Cleveland, MS 38732

Honorable Laurence J. Mellen  
District Attorney  
P. O. Box 848  
Cleveland, MS 38732

Cheryl Ann Webster, Esquire  
Attorney At Law  
Post Office Box 1342  
Clarksdale, MS 38614

This the 1st day of December, 2008.

  
DEIRDRE MCCRORY  
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IN THE CIRCUIT COURT OF COAHOMA COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2007-0043

Myron Pollard

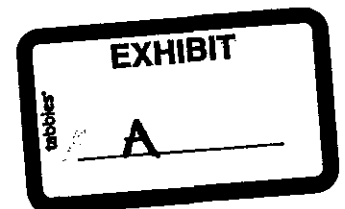
RESPONSE OF STATE TO MOTION ENTITLED  
"MOTION SO SET ASIDE GUILTY PLEA AND SUBSEQUENT  
SENTENCING JUDGMENT AND MOTION DEMANDING TRIAL"

COMES NOW, the State of Mississippi, by and through the District Attorney for the Eleventh Circuit Court District, files this its response to the above referenced motion and would state:

1. On July 13, 2006 Defendant plead guilty in cause number 2007-0042 and in cause number 2007-0043.
2. On July 16, 2007 a Judgement of Conviction adjudicating Defendant guilty was signed in each case.
3. The summer Coahoma County Circuit Term of Court began on July 9, 2007 and ended August 17, 2007.
4. September 6, 2007, after the close of the Coahoma County Term of Court, Defendant filed his motion to set aside his guilty pleas.
5. Mississippi Law provides that a Circuit Court lacks jurisdiction to modify an adjudication of guilt made during term time absent an express reservation of jurisdiction in the order adjudicating guilt.

"In the absence of some statute authorizing such modification, ... once the case has been terminated and the term of court ends, a circuit court is powerless to alter or vacate its

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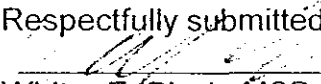
judgment." Harrigill v. State, 403 So.2d 867, 868-69 (Miss.1981), partially superceded by statute, Miss.Code Ann. § 99-39-3(1) (Rev.2000); see also Norwood v. State, 846 So.2d 1048, (Miss.Ct.App.2003) (concurring opinion). It is "clear that there is no inherent authority to alter or vacate a judgment, but rather legislation is required." Dickerson v. State, 731 So.2d 1082, 1085 (Miss.1998), overruled in part, Presley v. State, 792 So.2d 950, 953 (Miss.2001). Therefore, "a judge may not alter or vacate a sentence once the term of court in which the defendant was sentenced has ended." *Id.* (citing Miss. Comm'n on Judicial Perf. v. Russell, 691 So.2d 929, 943-44 (Miss.1997)).

Creel v. State, 944 So.2d 891, 893-94 (Miss.,2006). See also, Ducote v. State, 970 So.2d 1309,1313 (Miss.App. 2007).

6. The only way to consider Defendants motions is as motions for post conviction relief under Miss. Code Ann. 99-39-1 *et seq.* in general and 99-39-5(1)(f) in particular.
7. However, Defendant has failed to comply with the requirements of the post conviction relief act and his petitions should be denied.
8. If the Court should find that Defendant has substantially complied with the requirements of Miss. Code Ann. 99-39-1 *et seq.* then, the Defendant' s petition should be denied on its face as it admits that he was properly apprised of his rights and the potential sentences and he still chose to plead guilty. Defendant simply complains that he did not qualify for "drug court." Where a Defendant is properly told the law, as this Defendant was in his guilty plea petitions and by the judge when pleading, the mere fact that he does not like the sentence imposed in not reason to set aside the guilty plea. See e.g. Shanks v. State, 672 So.2d 1207,1208 (Miss. 1996), Houston v. State, 461 So.2d 720 (Miss. 1984).

WHEREFORE, the State would move that the Court deny Defendant's motions.

Respectfully submitted,

  
Walter E. Bleck, MSB  
Assistant District Attorney  
11th Circuit Court District  
115 First Street, Suite 200  
Clarksdale, Mississippi 38614

**CERTIFICATE OF SERVICE**

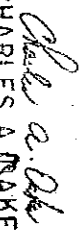
The undersigned, for the District Attorney, does hereby certify that I have served a true and correct copy of the foregoing instrument by First Class U.S. Mail, Postage Prepaid and/or hand delivery and/or facsimile to the following:

Honorable Al Smith III  
Cleveland, Mississippi  
662.846.2930

Honorable Cheryl Webster  
Clarksdale, Mississippi  
662.627.3703

Signed this the 11<sup>th</sup> day of March.

  
FOR THE DISTRICT ATTORNEY

  
CHARLES A. ISAKES  
CIRCUIT CLERK

2008 MAR 11 PM 4:08

CLARKSDALE, MS

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