

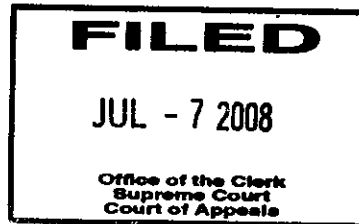
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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CEDRIC DEWAYNE SILLIMAN

APPELLANT

VS.



NO. 2008-CP-0140-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 Lauderdale County indicted defendant, Cedric Dewayne Silliman for Robbery in violation of *Miss. Code Ann.* § 97-3-73. Defendant pled guilty in November 2004, and was sentenced to 15 years, suspended with five years of supervised probation (in addition to related fines, restitution of \$1379.19). Within two months defendant tested positive for marijuana, had several traffic tickets, failed to make any monetary payments, and was arrested for criminal offenses. A probation revocation was noticed and had with defendant being revoked and the fifteen-year sentence reinstated.

Subsequently, defendant filed a motion to vacate and set aside probation

violation which was treated as a motion for post-conviction relief. The trial court considered the file, records, transcripts and correspondence then dismissed the petition. (Order denying relief, c.p. 37-49).

It is from that order denying post-conviction relief defendant now appeals.

STATEMENT OF FACTS

Defendant was indicted for robbery and in a plea agreement entered a plea of guilty in exchange for a suspended sentence and probation. Defendant violated the terms of his probation over ten times during his first 14 months of probation. A revocation hearing was held and the State presented evidence on seven of the ten violations. The trial court revoked the probation and invoked the full suspended sentence.

SUMMARY OF THE ARGUMENT

Issue I.

THE TRIAL COURT WAS CORRECT IN THAT DEFENDANT WAS NOT ENTITLED TO HAVE AN ATTORNEY APPOINTED TO REPRESENT HIM AT HIS PROBATION REVOCATION.

Issue II.

THE STATE PROVIDED AND THE TRIAL COURT FOUND AS PERSUASIVE SUFFICIENT EVIDENCE TO SUPPORT THE REVOCATION OF PROBATION.

Issue III.

DEFENDANT'S PROBATION WAS REVOKED FOR MANY REASONS, ONLY ONE BEING FAILURE TO PAY FINES AND FEES.

ARGUMENT

Issue I.

THE TRIAL COURT WAS CORRECT IN THAT DEFENDANT WAS NOT ENTITLED TO HAVE AN ATTORNEY APPOINTED TO REPRESENT HIM AT HIS PROBATION REVOCATION.

First of all, the trial court wrote an extensive and comprehensive findings of fact and conclusions of law – clearly and succinctly addressing this issue. The trial courts findings can be found in his order denying relief at pages 9-10 (C.p. pp, 45-46).

¶ 7. Staten claims that the lower court denied him due process by not informing him that he had a right to request court-appointed counsel for his revocation hearing. This Court has recognized that probationers do not necessarily have a right to counsel at probation revocation hearings. *Riely v. State*, 562 So.2d 1206, 1209 (Miss.1990) (citing *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 26, 101 S.Ct. 2153

Staten v. State, 967 So.2d 678,(¶¶7-9)(Miss.App. 2007).

In conclusion, the ruling of the trial court was correct as defendant did not have an absolute right to counsel, the issues were not complex and did not involve an new felony charges.

No relief should be granted on this allegation of trial court error.

Issue II.

**THE STATE PROVIDED AND THE TRIAL COURT FOUND AS
PERSUASIVE SUFFICIENT EVIDENCE TO SUPPORT THE
REVOCATION OF PROBATION.**

Defendant is claiming the State didn't prove the crimes against him to support the probation revocation.

The standard of proof necessary to support a probation revocation has been held to be:

¶ 8. . . . Moreover, “[p]robation may be revoked upon a showing that a defendant ‘more likely than not’ violated the terms of probation.” *Graham v. State*, 952 So.2d 1040, 1044(¶ 6) (Miss.Ct.App.2007) (citing *McClinton v. State*, 799 So.2d 123, 128(¶ 9) (Miss.Ct.App.2001)).

Staten v. State, 967 So.2d 678 (Miss.App. 2007).

The State provided and the trial court accepted proof on seven probation violations. Plus, defendant admitted the allegations of all the violations several times.

Again, the trial court comprehensively addressed this issue and found more than adequate evidence supporting the revocation.

Consequently, no relief should be granted.

Issue III.

DEFENDANT'S PROBATION WAS REVOKED FOR MANY REASONS, ONLY ONE BEING FAILURE TO PAY FINES AND FEES.

Lastly, defendant essentially agrees the trial court was correct in his ruling in that there were other reasons for revoking probation and the revocation was not automatic for failure to pay.

However, defendant now folds in a new argument not presented to the trial court – specifically:

The possession of marijuana, felony DUI and felon in possession of a firearm is what originally initiated the revocation of defendant's probation and without the State proving those charges against the defendant this Court is free to decide whether to reinstate probation or vacate the sentence. (Paraphrase of the last paragraph of defendant's brief).

Such issue was not raised and is now barred from review. *Lockhart v. State*, 980 So.2d 336 (¶ 14)(Miss.App. 2008).

Without waiving the procedural bar to review this issue is also without merit in fact and law. To reiterate, mainly for defendant, the State need not "prove" charges at a revocation hearing. And, looking to the record, the three felonies he mentions were NOT part of the probation revocation. Such was made abundantly clear at the onset of the revocation hearing. (C.p. 16). Those charges or crimes were not before the court, not considered by the court and no evidence was presented regarding those

charges.

Therefore, failure to pay fines was but one of a litany of probation violations. This was cited by the trial court in the order denying post-conviction relief, and, in essence, recognized by defendant.

No relief should be granted on this last allegation of trial court error.

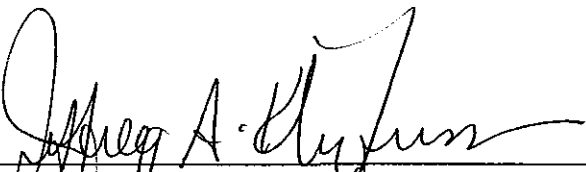
CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal and the complete and comprehensive order of the trial court the State would ask this reviewing court to affirm the trial court dismissal of post-conviction relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

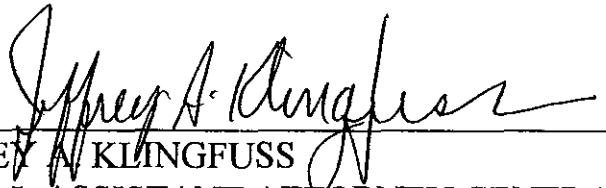
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Lester F. Williamson, Jr.
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This the 7th day of June, 2008.



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