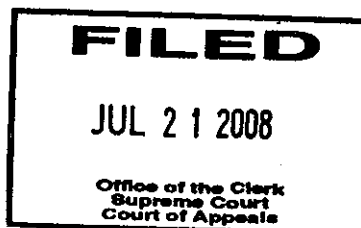


**COPY**

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

**ARNOLD LEE FELTON**



**APPELLANT**

**VS.**

**NO. 2008-CP-0565-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**NO. 2008-CP-0565-COA**

**STATE OF MISSISSIPPI**

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**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE CASE**

Arnold Lee Felton, defendant, was charged with automobile burglary. Defendant, by way of counsel, plead guilty and was sentenced to seven years in prison. Defendant was released after serving four years and was set to be on Post-Release Supervision for the remaining three years of his sentence.

Defendant violated the terms of his Post-Release Supervision and was thus re-incarcerated. The Post-Release Supervision revocation was issued by default whereas the defendant waived his right to a revocation hearing. Defendant was denied on his motion for post conviction relief with the Circuit Court of Lamar County, and appeals accordingly. Defendant, pro se, filed a brief to which the State now responds.

## **STATEMENT OF THE FACTS**

On April 2, 2002, Arnold Lee Felton unlawfully entered the vehicle of Ms. Aleshia Pool, feloniously relieved her of a CD player, and tried to sell it to a third party. The victim was notified by a witness, that Mr. Felton was responsible for the break-in.

Felton plead guilty to this offense and was sentenced to seven years in prison with three of those years being suspended for post release supervision provided that he meet the requirements for such. One requirement was to complete the Intensive Drug and Alcohol Program(IDAP) while in the Mississippi Department of Corrections. Felton never partook in the required drug and alcohol rehabilitation program that was prescribed in his initial sentence.

Felton was released after serving four years and soon reincarcerated after violating the terms of this post release supervision. Specifically, Felton tested positive for cocaine use on two separate occasions, the second of which giving rise to the revocation of his Post-Release Supervision. Given that he did not complete the IDAP program, Felton asserts that he was on probation and not on Post-Release Supervision and should not have been subject to revocation of the latter. Further, Felton contends that his sentence was completed as of April 25, 2006 and that he owed the State no further obligation pertaining to the auto burglary charge as of this

date. Felton now claims he is wrongfully imprisoned and should be released accordingly.

## **SUMMARY OF THE ARGUMENT**

### **Issue I.**

**DEFENDANT'S SENTENCE HAD NOT EXPIRED**

### **Issue II.**

**DEFENDANT'S POST-RELEASE SUPERVISION WAS LAWFULLY  
REVOKED**

## **ARGUMENT**

### **Issue I.**

#### **DEFENDANT'S SENTENCE HAD NOT EXPIRED**

Defendant contends that his sentence for the charge of automobile burglary had expired at the time he tested positive for cocaine use during his Post-Release Supervision period. We disagree with this notion and would like to highlight that defendant does not contest the use of cocaine during this time, nor does he show that he objected to being subject to such drug tests or any other components of his Post-Release Supervision.

A trial court's denial of post-conviction relief will be disturbed only where that court's decision was clearly erroneous. *Kirksey v. State*, 728 So.2d 565, 567(¶ 8) (Miss.1999) (citing *State v. Tokman*, 564 So.2d 1339, 1341 (Miss.1990)). Defendant has failed to meet his burden of proving that there was a clear error.

Defendant asserts that the error arises from the interpretation of the dates included on his time sheet from the Mississippi Department of Corrections. However, upon examination of this document, which defendant has marked as "Exhibit A" in his brief, one can plainly see that the end of his sentence, or "End Date," was scheduled to be March 3, 2008. The "5Max Discharge Date," April 25, 2006, is misconstrued by defendant as the end of his obligation. This was actually the latest date he was to be released to begin serving the remaining three years of



Post-Release Supervision as prescribed in his sentence.

To support his contention that there was a plain error, defendant cites an overruled 5<sup>th</sup> Circuit case, *U.S. v. Calverly*, 37 F.3d 160 (5<sup>th</sup> Cir. 1995). A case that recognizes *Calverly*'s abrogation held that there must be an error that is plain and that affects substantial rights. Moreover... the decision to correct the forfeited error [is] within the sound discretion of the court of appeals, and the court should not exercise that discretion unless the error seriously affects the fairness, integrity or public reputation of judicial proceedings. *Crawford v. Falcon Drilling Co., Inc.*, 131 F3d. 1120 (5<sup>th</sup> Cir. (La.) 1997). There was no plain error to merit an overturn of the lower court's decision, and the defendant was in fact, still under obligation to the state of Mississippi. The court of appeals correctly applied its discretion in denying defendant's motion for post conviction relief, while recognizing no error or any merit to any of his claims. We ask that this court uphold this ruling.

**Issue II.**  
**DEFENDANT'S POST-RELEASE SUPERVISION WAS  
LAWFULLY REVOKED**

Defendant contends that his having not completed the Intensive Alcohol and Drug Program did not qualify him for Post-Release Supervision and therefore, he was not eligible to have it revoked. Defendant contends that he was on probation and not Post-Release Supervision. There is no record to support that the defendant objected at any time to adhering to the terms of the Post-Release Supervision.

“Probation” denotes a release of the defendant, under suspension of sentence, into the community under the supervision of a probation officer. *Moore v. State*, 585 So.2d 738 (Miss. 1991). Defendant’s release from prison on a Post-Release Supervision basis was a form of probation in that he had a suspension of his sentence to be carried out in this form as opposed to behind bars. In light of this, defendant is correct in his assertion that he was on probation. His completion of any rehabilitation program prior to release is immaterial to the fact that he was still released with some obligations pertaining to his initial sentence, and would face ramifications if he violated such terms. Defendant’s knowledge of this is evidenced by his compilation with officials who conducted the drug tests that found him positive for cocaine use.

At any time during the period of probation the court, or judge in vacation, may issue a warrant for violating any of the conditions of probation or suspension of

sentence and cause the probationer to be arrested. Miss. Code Ann. § 47-7-37 (2008). Testing positive for cocaine use was a violation of defendant's Post-Release Supervision terms and he thereby subjected himself to arrest and revocation of that privilege.

Circuit court judges have the authority to revoke all or any part of post-release supervision and return an offender to the custody of the Department of Corrections. *Rucker v. State* 909 So.2d 137 (Miss. App. 2005). As prescribed by Mississippi law, the defendant was correctly returned to the custody of the Mississippi Department of Corrections upon violating his probation by testing positive for cocaine use on two separate occasions. Again, defendant was correctly subjected to the revocation of that probation or Post-Release Supervision as the district court affirmed.

## CONCLUSION

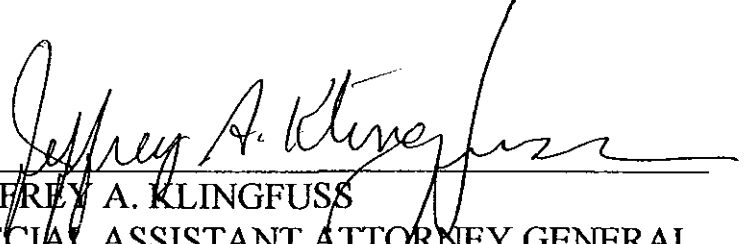
Defendant was given an opportunity to serve his time and begin life anew upon his release. Defendant tested positive for cocaine use on two separate occasions which serves as a manifestation of his disregard of the laws of this state. As stated in *Rucker*, circuit judges have the authority to return an offender to the Department of corrections. That authority was correctly exercised with the defendant in this case.

In light of the Defendant's reckless disregard for the laws of this State, and lack of support in his claims, the State asks this reviewing court to affirm the trial court's denial of post conviction relief.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

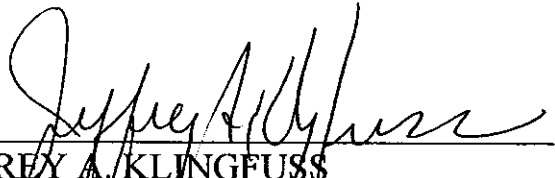
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable R. I. Prichard, III  
Circuit Court Judge  
Post Office Box 1075  
Picayune, MS 39466

Honorable Haldon J. Kittrell  
District Attorney  
500 Courthouse Square Ste. 3  
Columbia, MS 39429

Arnold Lee Felton, #13826  
S.M.C.I.  
Post Office Box 1419  
Leakesville, MS 39451

This the 21<sup>st</sup> day of July, 2008.

  
\_\_\_\_\_  
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