

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

**ANTHONY CRAIG MCDONALD**

**APPELLANT**

**VS.**

**NO. 2008-CP-1467-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**STATEMENT OF ISSUES**

I. **McDONALD IS NOT SERVING AN ILLEGAL SENTENCE.**

**STATEMENT OF FACTS**

On April 23, 2007, Anthony Craig McDonald pleaded guilty to grand larceny and burglary. C.P. 25. McDonald was sentenced to ten years on the grand larceny charge with credit for time served and the remainder suspended, and five years of post-release supervision. C.P. 25. On the burglary charge, McDonald was sentenced to seven years with credit for time served and the remainder suspended, and five years of post-release supervision. C.P. 25. One month later, McDonald was arrested and charged with two counts of burglary. C.P. 129. Accordingly, the trial court revoked McDonald's post-release supervision and suspended sentences and ordered him to serve ten years of his previously suspended sentence in the custody of the Mississippi Department of Corrections. C.P. 144.

## **SUMMARY OF ARGUMENT**

McDonald's claim that he is not being given credit for time served is not a ground upon which post-conviction relief may be granted. Accordingly, the trial court properly denied McDonald's motion for post-conviction relief.

## ARGUMENT

### I. McDONALD IS NOT SERVING AN ILLEGAL SENTENCE.

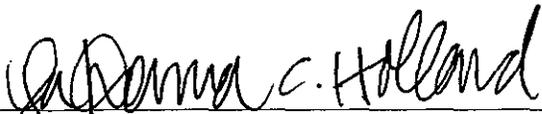
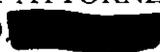
McDonald claims on appeal that his amended sentence is illegal because he was originally given credit for time served, but the sentencing order after revocation is silent as to credit for time served. This Court has previously held that a post-conviction relief proceeding is not the proper venue for challenging the calculation and/or receipt of credit for time served. *Melton v. State*, 930 So.2d 452, 456 (¶14) (Miss. Ct. App. 2006) (quoting *Gable v. State*, 919 So.2d 1075, 1077 (¶¶ 6-8) (Miss. Ct. App. 2005)). Rather, the aggrieved prisoner should notify the proper authorities within the Mississippi Department of Corrections of his credit for time served. *Id.* If the prisoner is denied the credit, he may then seek redress from the courts. *Id.* Nothing in the record shows that McDonald has been denied credit for time served. In fact, MDOC records show that McDonald has been credited with 72 days of time served prior to entering his guilty plea. C.P. 56, 76. Accordingly, the trial court properly denied McDonald's motion for post-conviction relief, as the only issue he raised was not the proper subject of a post-conviction relief motion.

**CONCLUSION**

For the foregoing reasons, the State asks this honorable Court to affirm the trial court's denial of post-conviction relief.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

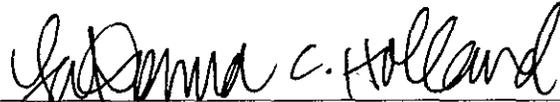
I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 11th day of February, 2009.



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