

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**CHRISTOPHER WAYNE WALTERS**

**APPELLANT**

**VS.**

**NO. 2008-CP-1780**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**CHRISTOPHER WAYNE WALTERS**

**APPELLANT**

**vs.**

**CAUSE No. 2008-CP-01780**

**THE STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI**

**STATEMENT OF THE CASE**

This is an appeal against an Order of the Circuit Court of Lauderdale County, Mississippi in which relief was denied on the prisoner's "Ex-peediant Motion to Re-instate Probation" was denied.

**STATEMENT OF FACTS**

The prisoner entered a guilty plea to the felony of possession of precursor chemicals with the intent to unlawfully manufacture a controlled substance. His plea was accepted and he was convicted of that felony. On 6 April 2005 the prisoner was sentenced to serve a term of fifteen years in the Mississippi Department of Corrections, with one day of said term to serve and five years on post - conviction release on conditions under the supervision of the Department of Corrections. ( R. Vol. 1, pp. 33 - 38).

By petition filed on 27 July 2007 the Department of Corrections petitioned the Circuit

Court to revoke the prisoner's post - conviction release. The ground alleged in support of such relief was that the prisoner committed the felony of grand larceny on or about 19 July 2007. ( R. Vol. 1, pp. 40 - 43). A preliminary hearing was set to be held on the petition on 18 October 2007. ( R. Vol. 1, pg. 44). At the conclusion of that hearing, the hearing officer determined that there was probable cause to hold the prisoner for a formal revocation hearing. ( R. Vol. 1, pg. 46).

The formal hearing was set for 15 November 2007. ( R. Vol. 1, pg. 51). While there does not appear to be a transcript of any such hearing, there is an "Agreed Order of Revocation of Post Release Supervision, signed by the prisoner and his attorney and the district attorney's office, in which the prisoner was found to have violated a condition of post - conviction relief in that he had committed a the felony of grand larceny. In this Order, the State agreed not to present the grand larceny committed on 23 July 2007 "to the Wayne County courthouse." The prisoner's post - conviction relief was revoked and he was sentenced to serve fourteen years and three hundred and sixty four days in the Department of Corrections. ( R. Vol. 1, pp. 53 - 54).

On 9 October 2008, the prisoner filed his "Ex-Speediant Motion to Re-Instate Probation." ( R. Vol. 1, pp. 56 - 61). In this motion, the prisoner sought reinstatement of his post - conviction release on the ground that the grand larceny charge, which was the basis of the revocation, had been dismissed or had never been prosecuted.

The Circuit Court denied relief on this motion on 9 October 2008, finding it possessed no jurisdiction to alter a sentence imposed by it and which was being served by the prisoner. The court further held that its Order in this respect was not appealable absent written permission by the court. ( R. Vol. 1, pp. 62 - 63).

Nonetheless, the prisoner filed a notice of appeal on 23 October 2008. ( R. Vol. 1, pg.

64). The Circuit Court, perhaps taking the notice of appeal as a request for permission to appeal, found that the notice of appeal failed to state a claim for relief on the ground that orders denying or revoking reinstatement of probation are not appealable. ( R. Vol. 1, pg. 73; 74). However, by Order filed 5 January 2009, the Mississippi Supreme Court decided that the prisoner's motion to reinstate post release supervision stated a claim under Miss. Code Ann. Section 99-39-5(g) and directed the Circuit Court to determine whether the appeal would be permitted *in forma pauperis*. ( R. Vol. 1, pg. 76).

The Circuit Court by Order dated 17 January 2009 granted leave to the prisoner to proceed with an appeal *in forma pauperis*. ( R. Vol. 1, pg. 77).

#### **STATEMENT OF ISSUES**

**DID THE CIRCUIT COURT ERR IN REFUSING TO REINSTATE THE PRISONER'S POST - RELEASE SUPERVISION?**

#### **SUMMARY OF ARGUMENT**

**THAT THE CIRCUIT COURT DID NOT ERR IN REFUSING TO REINSTATE THE PRISONER'S POST - RELEASE SUPERVISION**

#### **ARGUMENT**

**THAT THE CIRCUIT COURT DID NOT ERR IN REFUSING TO REINSTATE THE PRISONER'S POST - RELEASE SUPERVISION**

The Circuit Court took the prisoner's motion as a request for reinstatement of post - supervision release, the prisoner's alleged basis for such relief being that, subsequent to the revocation, the charge of grand larceny, which was the reason revocation proceedings were begun, had been dismissed. This Honorable Court, however, based upon pleadings filed by the prisoner in *Walters v. State*, 2008-M-01610, construed the prisoner's claim to be one of an unlawful revocation of conditional release under Miss. Code Ann. Section 99-39-5(g) (Rev.

2007). It seems to us, though, that the prisoner's claim in the Circuit Court, fairly construed, was not so much that his post-release supervision had been unlawfully revoked as it was that it should have been reinstated in light of an event subsequent to that revocation, namely, that the grand larceny charge had been (allegedly) dismissed. The prisoner does not assert, so far as we can see, that the revocation, at the time it occurred, was unlawful. He appears to assert that the alleged subsequent event of the dismissal of the grand larceny charge meant that he had the right to be reinstated to post - release supervision. It seems to us that there is a substantive difference between a claim of an unlawful revocation and a request for reinstatement of post - release supervision. However, the Mississippi Supreme Court has treated a case such as this as an action cognizable in post - conviction relief. *Williams v. Castilla*, 585 So.2d 761 (Miss. 1991).

The prisoner sought reinstatement of post - release supervision in his motion filed in the Circuit Court on the claim that the grand larceny charge, which was the reason for revocation, was either dismissed or never prosecuted. However, he did not and does not now claim that he was innocent of the charge. On the other hand, in the "Agreed Order of Revocation of Post Release Supervision," signed by the prisoner and his attorney, the prisoner effectively if not actually admitted having violated a term of his post - release supervision by having committed grand larceny. The State agreed not to proceed with the grand larceny charge, perhaps as part of a bargain with the prisoner.

Where a person on probation violates the conditions of parole by committing a crime, it is not necessary that he be convicted of that crime in order to justify revocation. However, where the State does not rely upon a conviction as the basis for revocation, more must be shown than merely the fact that the probationer has been arrested for the commission of a crime. The State must produce actual proof that the conditions imposed were violated. *Moore v. Ruth*, 556 So.2d

1059 (Miss. 1990).<sup>1</sup> The standard for revocation of post - release supervision is whether it is more likely than not that one or more conditions of release were violated. *Jones v. State*, 976 So.2d 407 (Miss. Ct. App. 2008).

There is no transcript of the revocation hearing in the record here. However, the “Agreed Order of Revocation of Post Release Supervision” ( R. Vol. 1, pp. 53 - 54) is nothing if not an admission by the prisoner that he committed the felony of grand larceny. As the Order shows, the grand larceny charge against the prisoner was not proceeded with by the prosecution because it agreed not to so proceed in light of the agreed revocation. While it may be that the Order does not relate an admission in so many words by the prisoner, it makes no sense to understand the Order in any way other than that it was an admission by the prisoner.

An admission of violation of the terms and conditions of post conviction release is sufficient to permit revocation. *Alexander v. State*, 667 So.2d 1 (Miss. 1995). This is not a case such as *Brown v. State*, 864 So.2d 1058 (Miss. Ct. App. 2004), cited by the prisoner, in which revocation was based solely on the fact of an arrest.

It may also be of some worth to bear in mind that the prisoner at bar was never acquitted of the grand larceny charge and that he has never said he was innocent of it. It appears that the State did not proceed on that charge in exchange for the prisoner’s agreement to revocation. This was a boon to the prisoner in that he avoided the potential of serving the sentence in the case at

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<sup>1</sup> We recognize that the prisoner was place under post - release supervision under authority of Miss. Code Ann. Section 47-7-34 (Rev. 2004). ( R. Vol. 1, pg. 33). However, revocations of post - release supervision are to proceed in the same way as revocations of probation. Miss. Code Ann. Section 47-7-34(2). Consequently, the fact that the authorities we cite may involve probation, rather than post - release supervision as such, would be a fact without consequence. In any event, we see no reason why the principles of law set down in these authorities relevant to the issue here would be any less applicable to post - release supervision cases.



bar and a sentence upon conviction of grand larceny. Since an acquittal of a criminal charge is insufficient of itself to set aside a revocation, all the more should the fact that a charge was not proceeded upon be so insufficient. There is no finding in the case at bar by a trier of fact that the prisoner was not guilty of grand larceny. On the other hand, the prisoner's admission via the agreed order of revocation was surely sufficient to make it more likely than not that he had committed that felony, and thus violated condition (a) of his post - release supervision. ( R. Vol. 1, pg. 33).

The prisoner makes much of the fact that the Circuit Court analyzed this case as a request by the prisoner to amend or alter a sentence that had been imposed and which was being served. This Circuit Court did, and we think there is some merit in its view of the case. However, whether the Circuit Court erred in failing to consider the case within the context of post - conviction relief is a question which is unnecessary to resolve. As we have demonstrated, the prisoner was plainly not entitled to relief on post - conviction relief. In fact, what the prisoner was attempting to do by his motion in the Circuit Court was to violate his agreement with the State with respect to the grand larceny charge. Had the court considered the motion as a motion in post - conviction relief, it would have surely and correctly denied relief on it without an evidentiary hearing, for the reasons set out above. Miss. Code Ann. Section 99-39-11(2) (Rev. 2007). Consequently, to the extent if any that the court erred in failing to consider the prisoner's motion as one in post - conviction relief, any such error was harmless at worst: the court reached the right result. *Steen v. State*, 933 So.2d 1052, 1056 (Miss. Ct. App. 2006)(citing *Puckett v. Stuckey*, 633 So.2d 978 (Miss. 1993).

As *Steen* and *Puckett* also hold, this Court is not bound by the reasons given by the Circuit Court in denying relief on the prisoner's motion. The facts here are that the prisoner

entered into an agreed order of revocation of post - release supervision. While certainly the basis for the action to revoke post - release supervision arose from the fact that the prisoner had been arrested for grand larceny, it is very clear that revocation was not ordered on the mere fact that the prisoner had been so arrested. The revocation was ordered in light of the prisoner's agreement to revocation, evidently in return for the State's agreement not to proceed with the grand larceny charge. In making that agreement – and it should be borne in mind that the prisoner does not say that he did not make that agreement or that it was in some wise defective—the prisoner necessarily admitted having committed grand larceny. This was a sufficient basis on which to revoke his post - release supervision.

The prisoner's motion in the Circuit Court, then, was an attempt to have the benefit of the bargain and to avoid his end of the bargain. It cannot be reasonably said that any circuit court would have found merit in such a pleading under those circumstances. The motion was plainly without merit.

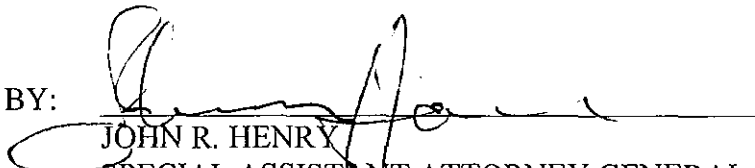
## CONCLUSION

The Order of the Circuit Court denying relief on the prisoner's "Ex-speediant Motion to Re-instate Probation" should be affirmed.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, John R. Henry, 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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