

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

**DEMARIO WALKER**

**APPELLANT**

**VS.**

**NO. 2008-CP-1987**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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STATEMENT OF THE ISSUES

I. Walker's parole and/or street time was lawfully revoked due to his conviction on October 15, 2007 of two counts of Felony Bad Check in violation of Mississippi Code Annotated 97-19-55.

II. Section 47-7-27 of the Mississippi Code of 1972, as amended, is constitutional.

## STATEMENT OF THE CASE

On or about August 15, 2001, the Marion County Grand Jury indicted Demario Walker on four counts of uttering a forgery, alleging that Walker "did wilfully, unlawfully and

feloniously and knowing by falsely attempt utter and publish as true to one Citizens Bank a

certain bank check on the account of Eddie J. And Katrina Y. Wilson, Citizens Bank account

number 20-15-147 by presenting the said check for payment." (C.P. 10) On or about May 21,

2002, Walker filed a Petition to Enter Plea of guilty to one count of attempted uttering forgery.

(C.P. 13) On that same date, a plea hearing was held and Walker formally entered his plea of

guilty. (C.P. 25)

On or about June 7, 2002, the trial court entered its Order of Conviction, sentencing

Walker to serve a term of ten (10) years in the custody of the Mississippi Department of

Corrections, said sentence to be served under the provisions of Section 47-7-47 of the

Mississippi Code of 1972, as amended, to participate in the Regimented Inmate Discipline

Program at the Department of Corrections. (C.P. 20) Pursuant to Section 47-7-47, Walker was

to successfully complete the program at the Restitution Center, and upon completion of the

program to be released to the local probation officer to complete his period of probation. Walker

was ordered to complete the requirements of obtain a GED certificate within one (1) year after

his release from the Regimented Inmate Discipline Program. (C.P. 21) It was further ordered that

after successfully completing the program at the restitution center, that Walker was to submit

himself to Pinebelt Mental Healthcare and be evaluated and tested for any all psychiatric and/or

psychological programs and treated according to the results of said tests. (C.P. 21) Walker was

further ordered to successfully complete the Alcohol Chemical Treatment Series (ACTS) program sponsored by the Woodlawn Pentecostal Church. Upon Walker's plea of guilty to Count I, Counts II-IV were nolle prossed. (C.P. 22)

Due to medical reasons, Walker was unable to complete the RID program. On January 30, 2003, the trial court entered an order, to which Walker agreed in open Court, amending the Petitioner's Order of Conviction, by suspending the balance of his sentence, placing him on five (5) years probation, and making successful completion of the Restitution Center program a condition of that probation. The trial court took notice of the fact that Walker had served one (1) year, five (5) months, and one (1) week in the custody of the Mississippi Department of Corrections, and gave him credit towards his original ten(10) year sentence for time served. Accordingly, the remaining time of approximately eight (8) years, six (6) months, and three (3) weeks, was suspended, and Walker was placed on probation for five (5) years. However, Condition M of the Probation Order stated that Walker shall successfully complete the program at the Restitution Center in either Hinds or Jackson County. Due to the Petitioner's refusal to work, he failed to complete the program. Consequently, the trial court, on February 28, 2003, revoked Walker's five (5) year probation and ordered him into the custody of the Mississippi Department of Corrections to serve the balance of his sentence, eight (8) years, six (6) months, and three (3) weeks.

Walker became eligible for parole, and was released on January 27, 2006. On July 16, 2007, Walker's parole was revoked, however, he was released again on parole to a Forrest County detainer on September 17, 2007. While on parole, on October 15, 2007, Walker pleaded guilty in the Circuit Court of Forrest County, Mississippi, to two counts of Felony Bad Check in

violation of Mississippi Code Annotated 97-19-55. He was sentenced to three (3) years in the custody of the Mississippi Department of Corrections with restitution for Count I, all three years suspended except for time served with remaining years on Post-Release Supervision and for Count II three (3) years suspended except for time served with remainder served on Post-Release Supervision to run consecutive to Count I with restitution.

On January 8, 2008, a Preliminary Revocation Hearing was conducted by the Mississippi Department of Corrections Parole Board and a Warrant for Retaking Paroled Prisoner, Demario Walker, was issued as a result of his being convicted of these two felonies while on parole. Walker was placed back in MDOC custody on January 14, 2008. Subsequent to his arrest, on January 24, 2008, the Forrest County Circuit Court issued a Warrant for Walker's arrest for violation of his post release supervision; He was arrested by Wilkinson County Sheriff's Department on December 27, 2007 and charged with Attempted Escape of State Inmate and impersonating an Officer.

The MDOC Parole Board notified Walker by letter, on February 19, 2008, that pursuant to Mississippi Code Annotated 47-7-27 his parole was revoked based on his new conviction of Felony Bad Checks in Forrest County, Mississippi. The letter also notified him that he had fifteen (15) days to present evidence or written testimony regarding his revocation, however, after that time the action would become final. Walker alleges on February 26, 2008, he filed an appeal with the MDOC Parole Board, however, there is no documentation of that action. Walker then filed his fourth Post-Conviction Motion pertaining to Marion County Criminal Cause Number K01-0355P, alleging that (1) his parole was unlawfully revoked contrary to due process; (2) his "street time" was revoked contrary to due process; and (3) Mississippi Code Annotated

time save every savable provision or term in it. The Court therefore held that § 47-7-37 is adopt such a construction, when reasonably possible, as will save the statute, and at the same with a statute a literal construction of which would render it unconstitutional, the Court must The Court further held that "[t]he rule is without exception that when the Court is confronted § 47-7-37 as inhering the minimum due process requirements set forth in *Gagnon* and *Morrissey*. In *Riely v. State*, 562 So.2d 1206 (Miss. 1990), the Mississippi Supreme Court construed ruling of the trial court should be affirmed.

his Petition for Post-Conviction Relief. Walker's assignment of error is without merit and the Therefore, the trial court correctly held that Walker's parole was lawfully revoked and dismissed in compliance with the statute and offered Walker the opportunity to request a parole hearing. . this conviction, the Parole Board had to immediately revoke his parole. The Parole Board acted Mississippi while he was on parole. Pursuant to Mississippi Code Ann. § 47-7-27, as a result of noted that Walker was convicted of two counts of Felony Bad Checks in Forrest County, process rights were not violated and that his parole was not unlawfully revoked. The trial court with the minimum due process rights they are accorded. The trial court held that Walker's due Mississippi Supreme Court as being in compliance with *Morrissey*, thereby providing parolees The trial court correctly noted that Section 47-7-27 has long been upheld by the

### **SUMMARY OF THE ARGUMENT**

trial court. The instant appeal ensued.

47-7-27 is unconstitutional. Walker's Motion for Post Conviction Relief was dismissed by the



in *Morrissey v. Brewer*, 408 U.S. 471 (1972). *Morrissey* states:

Due process rights of a parolee have been addressed by the United States Supreme Court written testimony regarding his revocation or to request a revocation hearing. (C.P. 155) record reflects that Walker was offered the opportunity to submit information, evidence or chance to present evidence as he was arrested and taken to court with no notice. However, the Check in violation of Mississippi Code Annotated 97-19-55. He argues that he did not have the revocation of his probation due his conviction on October 15, 2007 of two counts of Felony Bad Walker argues that he did not have the opportunity to plead and defend against the

Annotated 97-19-55.

October 15, 2007 of two counts of Felony Bad Check in violation of Mississippi Code

I. Walker's parole and/or street time was lawfully revoked due to his conviction on

### ARGUMENT

court should be affirmed. (Miss.1994)) (other citations omitted)). This issue is without merit and the ruling of the trial *Agency v. Gray Corp.*, 972 So.2d 495, 517 (Miss.2007)(citing *Grey v. Grey*, 638 So.2d 488, 491 support of claims of error precludes appellate review of those claims. *Tupelo Redevelopment* Mississippi Code of 1972, as amended, is unconstitutional. The failure to cite authority in Further, Walker cites no authority for his proposition that Section 47-7-27 of the Relief. There has been no violation of Walker's due process rights. reflects no such request aside from Walker's bare assertion in his Motion for Post Conviction constitutional on it's face. Walker was given an opportunity to request a hearing, and the record

Section 47-7-27, *Return of violator of parole or earned release supervision; arrest of offender;*

Mississippi statutory law in *Miss Code Ann. § 47-7-27. Godsey v. Houston*, 584 So.2d at 392.

Minimal due process rights have been set out in *Morrissey* and incorporated into

*Godsey v. Houston*, 584 So.2d 389 (Miss. 1991).

behavior. See *Morrissey v. Brewer* 408 U.S. at 480-484, and also

will be informed by an accurate knowledge of the parolee's based on verifiable facts and that the exercise of discretion will structured to assure that the finding of a parole violation will be guarantees at all. What is needed is an information hearing on the part of the State in revoking parole without any procedural observance of special parole restrictions. . . . There is no interest entitled, but on of the conditional liberty properly dependent on individual, not of the absolute liberty to which every citizen is court and sometimes of the executive. Revocations deprives an by and administrative agency, which is sometimes an arm of the imposition of sentence. Supervision is not directed by a court but arises after the end of the criminal prosecution including

revocations. Cf. *Mempa v. Ryah*, 389 U.S. 128 (1967). Parole

due a defendant in such a proceeding does not apply to parole part of a criminal prosecution and thus the full panoply of rights We begin with the proposition that the revocation of parole is not

*revocation of parole; board and hearing officers authorized to administer oaths summon*

*witnesses, specifically states:*

An offender convicted of a felony while on parole, whether in the State of Mississippi or another state, *shall immediately* have his parole revoked upon presentation of a certified copy of the commitment order to the board.” [Emphasis added]

Walker argues that he is unaware of why his parole was revoked and alleges a violation of due process by not being given the opportunity to present and/or rebut evidence to the Parole Board. Pursuant to § 47-7-27, if a parolee is convicted of a felony while on parole, his parole is immediately revoked. The Mississippi Parole Board received a Certified True Copy of Walker's Forrest County Order of Conviction on January 8, 2008. By receiving this certified copy of the commitment order, the Parole Board had statutory authority to immediately revoke Petitioner's parole. Both a preliminary revocation hearing and a parole revocation hearing were conducted by the Board and a notice of the Board's decision was provided to Walker. The State of Mississippi Parole Board provided Walker with an opportunity to present evidence in writing to the Parole Board or to explain why a revocation hearing was necessary. (C.P. 155) No such written response appears in the record. Walker alleges he made a written appeal, however, is it wholly within the discretion of the Parole Board as to whether or not a hearing is warranted. The trial court correctly noted that Section 47-7-27 has long been upheld by the Mississippi Supreme Court as being in compliance with *Morrissey*, thereby providing parolees with the minimum due process rights they are accorded. The trial court held that Walker's due process rights were not violated and that his parole was not unlawfully revoked. The trial court noted that Walker was convicted of two counts of Felony Bad Checks in Forrest County,

Mississippi while he was on parole. Pursuant to Mississippi Code Ann. § 47-7-27, as a result of this conviction, the Parole Board had to immediately revoke his parole. The Parole Board acted in compliance with the statute and offered Walker the opportunity to request a parole hearing. Therefore, the trial court correctly held that Walker's parole was lawfully revoked and dismissed his Petition for Post-Conviction Relief. Walker's assignment of error is without merit and the ruling of the trial court should be affirmed.

**II. Section 47-7-27 of the Mississippi Code of 1972, as amended, is constitutional.**

In *Riely v. State*, 562 So.2d 1206 (Miss. 1990), the Mississippi Supreme Court construed § 47-7-37 as inhering the minimum due process requirements set forth in *Gagnon* and *Morrissey*. The Court further held that "[t]he rule is without exception that when the Court is confronted with a statute a literal construction of which would render it unconstitutional, the Court must adopt such a construction, when reasonably possible, as will save the statute, and at the same time save every savable provision or term in it. The Court therefore held that § 47-7-37 is constitutional on its face. Walker was given an opportunity to request a hearing, and the record reflects no such request aside from Walker's bare assertion in his Motion for Post Conviction Relief. There has been no violation of Walker's due process rights.

Further, Walker cites no authority for his proposition that Section 47-7-27 of the Mississippi Code of 1972, as amended, is unconstitutional. The failure to cite authority in support of claims of error precludes appellate review of those claims. *Tupelo Redevelopment Agency v. Gray Corp.*, 972 So.2d 495, 517 (Miss.2007)(citing *Gray v. Grey*, 638 So.2d 488, 491 (Miss.1994)) (other citations omitted).

This issue is without merit and the ruling of the trial court should be affirmed.

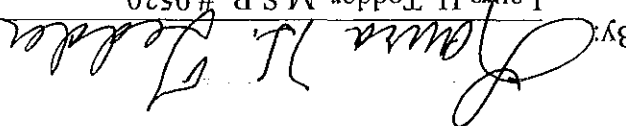
CONCLUSION

The assignments of error presented by the Appellant are without merit and the rulings of

the trial court should be affirmed.

Respectfully submitted,

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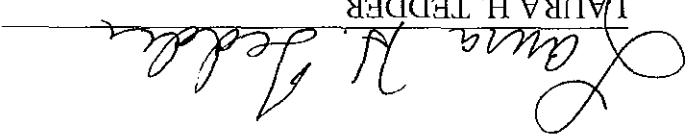
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**CERTIFICATE OF SERVICE**

I, Laura H. Tedder, 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 27<sup>th</sup> day of July, 2009.

  
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