

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
FACTS	2
SUMMARY OF THE ARGUMENT	2
ARGUMENT	2
CONCLUSION	2
CERTIFICATE OF SERVICE	4

TABLE OF AUTHORITIES

STATE CASES

<u>Minnifield v. State</u>, 585, So.2d 723 (Miss. 1991)	2
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STATUTES

M.C.A. § 99-39-5	2
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M.C.A. § 99-39-2	2
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M.C.A. § 99-39-25.	2
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COURT RULES

Rule 4, MRAP	2
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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DAVID DORELL DORA

APPELLANT

V.

NO. 2008-KA-1020-COA

STATE OF MISSISSIPPI

APPELLEE +

APPELLANT'S SUPPLEMENTAL BRIEF

STATEMENT OF THE ISSUES

ISSUE NO. 1: WHETHER THE COURT OF APPEALS SHOULD GRANT THE APPELLANT AN OUT OF TIME APPEAL AND/OR WHETHER THIS COURT SHOULD GRANT THE APPELLANT AN OUT-OF-TIME APPEAL PURSUANT TO RULE 2 (c) OF THE MISSISSIPPI RULES OF APPELLATE PROCEDURE.

STATEMENT OF THE CASE

By Order dated March 12, 2009, made upon it's own motion, this Court directed the parties to file supplemental briefs addressing the issue of Appellant's out-of-time appeal. Appellant, David Dorell Dora, ["Dora"], had been convicted of burglary of a business on September 6, 2006 and sentenced to a term of five (5) years. On September 7, 2006, Dora filed a notice of his intent, at that time, to waive his appeal. On May 28, 2008, the Circuit Court of Lowndes County, heard Dora's Motion for Post-Conviction Relief, averring that Dora had advised his attorney that, within the time allowed to perfect his appeal, Dora had advised his attorney of a change of heart and of his desire to appeal his conviction. The trial court granted the post conviction requested relief, granting Dora an out-of-time. This order was not appealed by the State. The case was docketed appeal and the Clerk of the Supreme Court issued a briefing schedule. The parties have since filed their briefs.

FACTS

The facts have been previously stated in the Appellant's Brief are incorporated herein.

SUMMARY OF THE ARGUMENT

The trial court was vested with the authority to grant Dora an out-of-time appeal under M.C.A. §99-39-5(1) (h). The court properly found that the defendant had the right to an out-of-time appeal, having both revoked his waiver and having not filed a sworn waiver. The trial court's order was not appealed by the State.

ARGUMENT

This matter does not require the Court of Appeals to suspend the Rules of Appellate Procedure and to grant an out-of-time appeal. Instead, Dora's appeal has already been properly granted, pursuant to statute and established case law. In a case virtually "on all fours" the Mississippi Supreme Court has unequivocally held, that a defendant is entitled to an out-of-time appeal, under the provisions and authority of the post-conviction relief statutes, even when he has initially waived the right to an appeal. *Minnifield v. State*, 585, So.2d 723 (Miss. 1991) The Circuit Court is explicitly authorized by statute to grant an out of time appeal under M.C.A. 99-39-5 (1) (h). When the court conducts a hearing and issues a final order granting an out-of-time appeal, that order is a final judgement and is "conclusive until reversed." M.C.A. § 99-39-23 (6), M.C.A. § 99-39-25. As the State has not filed a timely appeal under Rule 4 of the Mississippi Rules of Appellate procedure, Dora's out-of time appeal is properly before the court and should be decided upon its merits.

CONCLUSION

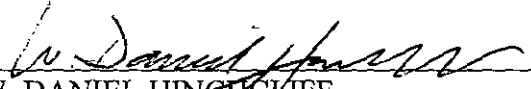

Dora's appeal is properly before this Honorable Court and therefore does not require this Court to suspend the rules, nor grant any extraordinary relief, under Rule 2 of the Mississippi Rules

of Appellate Procedure.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:


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CERTIFICATE OF SERVICE

I, W. Daniel Hinchcliff, Counsel for David Dorell Dora, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **SUPPLEMENT BRIEF OF THE APPELLANT** to the following:

Honorable Lee J. Howard
Circuit Court Judge
518 2n Avenue North
Starkville, MS 39759

Honorable Forrest Allgood
District Attorney, District 16
Post Office Box 1044
Columbus, MS 39703

Honorable Jim Hood
Attorney General
Post Office Box 220
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This the 9TH day of April, 2009.



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