IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ERIC DE'JUAN JONES — APPELLANT

VS. — NO. 2009-CP-0288-COA

STATE OF MISSISSIPPI — APPELLEE

# BRIEF FOR THE APPELLEE

## APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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

**ERIC DE'JUAN JONES** **APPELLANT**

**VS.** **NO. 2009-CP-0288-COA**

**STATE OF MISSISSIPPI** **APPELLEE**

## BRIEF FOR THE APPELLEE

## STATEMENT OF THE CASE

This is an appeal from summary denial of post-conviction relief sought in the Circuit Court of Lawrence County, Prentiss Greene Harrell, Circuit Judge, presiding. Appellant was unhappy with the revocation of his suspended sentence. (*See* appellee's exhibit A, attached)

ERIC DE'JUAN JONES has violated the terms and conditions of his court-imposed ten (10) year suspension of sentence under post-release supervision and has been ordered to serve the remaining ten (10) years of that sentence imposed for the possession of 6.2 grams of cocaine.

Jones's primary beef is that his sentence expired as of November, 2006, after service of six (6) years or less in the custody of the MDOC. He claims there is an irreconcilable, as well as "immoral," conflict (Appellant's Brief at 4, 9-10) between the sentence pronounced orally by the circuit judge after Jones entered his "best interest" plea and the written order of conviction and sentence. (*See* appellee's exhibit B-1 and B-2 attached)

No conflict exists, but even if it did, " . . . where there is a direct conflict between the oral

and written pronouncements of a sentence, the written order controls." **Chandler v. State,** No. 2008-CA-01962-COA (¶8) decided January 5, 2010 [Not Yet Reported], citing **Boutwell v. State,** 847 So.2d 294, 295 (¶6) (Ct. App.Miss. 2003), citing **Temple v. State,** 671 So.2d 58, 59 (Miss. 1996).

Jones also complains on appeal he was denied minimum due process at his revocation hearing when he was not provided an opportunity to cross-examine the State's witnesses and laments the absence in the official record of a transcript of the revocation hearing. We concur with the circuit judge any error was harmless beyond a reasonable doubt. Jones has received, time and again, all the process he was due.

Summary denial of Jones's motion was both prudent and proper because Jones has already been there and done that and because his claims were manifestly without merit. *See* **Jones v. State,** 904 So.2d 1107 (Ct.App.Miss. 2004); appellee's exhibit C, attached.

## STATEMENT OF FACTS

On June 25, 2003, Eric Jones entered a voluntary "best interest" plea of guilty in the Circuit Court of Lawrence County to possession of 6.2 grams of cocaine. In exchange for his guilty plea an additional pending charge was the target of a *nolle prosequi.* (C.P. at 49) A transcript of the plea-qualification hearing is a matter of record at C.P. 10-14, 15-25.

Jones was sentenced by Michael Eubanks, Circuit Judge, to serve sixteen (16) years in the custody of the MDOC with ten (10) years suspended pending successful completion of five (5) years of post-release supervision . (C.P. at 51-53)

Not surprisingly, there were certain conditions that Jones had to meet during his period of PRS in order for him to enjoy the benefit of his ten (10) year suspended sentence. The sentencing order reads, in part, as follows: "The suspension of any portion of said sentence, whether under Post-

Release Supervision, probation or otherwise, shall be subject to the following conditions: Defendant shall: * * * [conditions a. thru m. omitted]." (C.P. at 52-53)

Also, not surprisingly, Jones, after being released on PRS, violated the conditions of his PRS in material respects by, *inter alia*, failing to report, testing positive for marijuana and refusing subsequent testing. *See* supplemental volume filed on 5/19/2010.

Again, not surprisingly, an affidavit charging Jones with a multitude of violations of PRS was sworn on March 7, 2008, and filed on March 10, 2008. *See* supplemental volume filed on 5/19/2010.

On March 25, 2008, Jones was given notice of his revocation hearing. On April 3rd, Jones was given a preliminary revocation hearing, and on April 4, 2008, a full revocation hearing was held at the conclusion of which his suspended sentence under PRS was revoked and his ten (10) year suspended sentence reinstated. A transcript of the revocation hearing is not a part of the appellate record.

At the close of the revocation hearing, the circuit judge entered an order of revocation of suspended sentence under PRS based upon a finding of fact that the evidence presented supported a finding of violation of the terms and conditions of PRS. Jones was sentenced anew to serve a term of ten (10) years in the custody of the MDOC.

On May 22, 2008, and again on June 18, 2008, the Supreme Court denied and dismissed Jones's applications for leave to file his motions for post-conviction relief in the trial court without prejudice to Jones's right to file his motion *de novo* in the trial court. (C.P. at 27-28)

On October 3, 2008, Jones filed his latest - and at least his second - motion for post-conviction relief in the Circuit Court of Lawrence County. (C.P. at 29-39) After examining Jones's motion, his attached exhibits, and the court file, Judge Harrell, on March 4, 2009, entered an order summarily denying the specific relief requested by Jones, *viz.*, "his immediate unconditional

discharge," i.e., Jones's freedom from an allegedly illegal and expired sentence.

Judge Harrell, signed a twelve (12) page opinion and order summarily denying as plainly without merit Jones's motion for post-conviction relief. *See* appellee's exhibit A, attached. Judge Harrell found as a fact and concluded as a matter of law that " . . . it plainly appears from the face of the Petitioner's Motion, the annexed exhibits, and the court file that [Jones] is not entitled to any relief . . . pursuant to Miss.Code Ann. §99-39-11(2)."

This did not sit well with Jones who, on or about March 20, 2009, filed a notice of appeal. (C.P. at 68) Jones complains in his appeal that following his "best interest" plea of guilty to cocaine possession, he was sentenced by Judge Eubanks "to a term of 16 years with 10 years suspended," period. (C.P. at 33) Jones contends he is being unlawfully held in custody because " . . . his time has expired" and his suspended sentence unlawfully revoked. (C.P. at 33)

Put another way, Jones argues he was improperly revoked to serve a full ten (10) years.

We have concluded, however, that Judge Harrell, who considered the motion for post-conviction relief together with the complete file, all materials proffered by Jones as well as all relevant law, was eminently correct in denying post-conviction based upon a complete history of the case.

Accordingly, Judge Harrell did not err in affirming the revocation of Jones's suspended sentence and remanding him to the custody of the MDOC to serve the ten (10) years on his original sentence.

## SUMMARY OF ARGUMENT

Jones's claims were both time barred, successive writ barred and were manifestly without merit as well. We defer to Judge Harrell's twelve (12) page opinion and order which fully and correctly addresses the issues raised by Jones.

We agree with the circuit judge that Jones's claim targeting an inconsistency between the sentencing colloquy and the order of conviction and sentence is time barred and successive writ barred. This issue could and should have been raised in Jones's first petition for post-conviction relief filed on November 3, 2003. It is too late to argue the point now.

Judge Harrell correctly ruled, in effect, that Jones received all the procedural due process Jones was due. *See* Miss.Code Ann. §47-7-37 (Rev.2009); **Payton v. State,** 845 So.2d 713 (¶22) (Ct.App.Miss. 2003); **Agent v. State,** Cause No. 2009-CP-00111-COA (¶11) decided February 23, 2010 [Not Yet Reported].

## ARGUMENT

### JUDGE HARRELL'S DECISION DENYING POST-CONVICTION RELIEF WAS NOT CLEARLY ERRONEOUS. RATHER, JONES'S MOTION WAS CORRECTLY DENIED SUMMARILY BECAUSE JONES'S CLAIMS WERE TIME BARRED, SUCCESSIVE WRIT BARRED AND PLAINLY WITHOUT MERIT AS WELL.

Eric Jones, a 27-year-old resident of Prentiss at the time of his guilty plea and a high school graduate who could both read and write (C.P. at 16), sought post-conviction relief following revocation of his suspended ten (10) year sentence and reinstatement of that sentence. It seems that Jones violated in a material way multiple conditions of his post-release supervision by, *inter alia*, failing to report and testing positive for marijuana.

Jones does not dispute these violations. Rather, Jones argues he is being unlawfully held in custody because his suspended sentence was unlawfully revoked and his time of incarceration has expired.

Jones's beef, from the get-go, has been that his sentence is illegal because the sentence as pronounced *ore tenus* by Judge Eubanks from the bench in open court after Jones entered his best

interest plea, differs substantially from the sentence found in the written order of conviction and sentence. (C.P. at 24 and 51) Jones claims there was an "oral promise of pronouncement" of sentence by Judge Eubanks which, in effect, amounted to only six (6) years, period. (Appellant's Brief at 3)

As Judge Harrell points out in his opinion at p. 64-65, the record simply does not support this conclusion.

Jones also suggests he was never informed as to the specific conditions of his suspended sentence under post-release supervision. Of course, these were collateral consequences of his plea of guilty about which he did not have to be informed. *Cf.* **Elliott v. State**, No. 2008-CA-00948-COA (¶¶ 17, 23-24decided November 3, 2009 [Not Yet Reported] citing **Magyar v. State,** 18 So.2d 807, 811 (¶¶ 9, 10, 11, 12) (Miss. 2009)["(S)ex offender registration is a collateral consequence of a guilty plea."]

This is not Mr. Jones's first rodeo. We agree with the circuit judge that Jones requested post-conviction relief in November of 2003 and that his present petition is time barred and successive writ barred as well. Jones has already had an opportunity to complain about his sentence. *See* **Jones v. State,** 904 So.2d 1107 (Ct.App.Miss. 2004), appellee's exhibit C, attached).

There is no inconsistency between the sentencing colloquy and the order of conviction which, as stated earlier, is controlling. It is perfectly clear from the order of conviction and sentence that Jones got " . . . SIXTEEN (16) years in the custody of the MDOC with SIX (6) years to be served at the MDOC, and the remaining TEN (10) years of said sentence hereby suspended, pending successful completion of a supervised period of post-release for FIVE (5) years, pursuant to Mississippi Code 47-7-34." (C.P. at 51)

We note that a transcript of the revocation hearing conducted on April 4, 2008, has not been

included in the official record. A transcript of the plea-qualification hearing conducted on June 25, 2003, is a matter of record at C.P. 15-25 and again at 40-50.

In summarily denying Jones's successive motion for post-conviction relief, Judge Harrell issued a twelve (12) page opinion and order stating in great detail the historical facts and addressing individually each issue raised by Jones. We respectfully submit Judge Harrell's findings of fact and conclusions of law were neither clearly erroneous nor manifestly wrong. This is especially true where, as here, the record points to a rather recalcitrant defendant/petitioner who was not always on his best behavior. We invite the attention of the court to the rhetoric that appears at C.P. 60-63.

The findings made and conclusions drawn by Judge Harrell are amply supported by citations of legal authority. Appellee, therefore, does not feel inclined to reinvent the proverbial wheel by re-addressing that which has been accurately addressed already. We adopt the positions taken by the circuit judge and incorporate by reference thereto the opinion and order entered on March 4, 2009.

It is enough to say that Judge Harrell examined the issues with a great deal of wisdom and circumspection and did not abuse his judicial discretion in denying post-conviction relief. As stated earlier, Jones received all the process he was due.

"Jones must show by a preponderance of the evidence that he is entitled to the requested post-conviction relief. Miss.Code Ann. §99-39-23(7) (Rev. 2000)." **Jones v. State**, *supra*, 904 So.2d 1107, 1108 (¶3) (Ct.App.Miss. 2004).

"In reviewing a trial court's decision to deny a petition for post conviction relief this Court will not reverse such a denial absent a finding that the trial court's decision was clearly erroneous." **Kirksey v. State,** 728 So.2d 565, 567 (Miss. 1999) citing **State v. Tokman,** 564 So.2d 1339, 1341 (Miss. 1990).

However, if questions of law are raised, then the applicable standard of review is *de novo*.

**Jackson v. State,** 965 So.2d 686 (Miss. 2007). *See also* **Agent v. State,** *supra*, Cause No. 2009-CP-00111-COA (¶5) decided February 23, 2010 [Not Yet Reported].

In the case at bar, application of neither standard is sufficient to derail the decision of the circuit judge to deny post-conviction relief.

It was not necessary for the sentence "revocator" to prove beyond a reasonable doubt that Jones violated the terms and conditions of his suspended sentence but only that it was "more likely than not" that he did so. **Younger v. State,** 749 So.2d 219 (¶12) (Ct.App.Miss. 1999), citing **Berdin v. State,** 648 So.2d 73, 79 (Miss. 1994), quoting from **Murphy v. Lawhon,** 213 Miss. 513, 517, 57 So.2d 154 (1952), and **Wallace v. State,** 607 So.2d 1184, 1189-90 (Miss. 1992).

The proverbial "bottom line" is that Jones's suspended sentence was conditioned upon, *inter alia,* his abiding by certain conditions, i.e., various "do's and don'ts" that were identified in plain and ordinary English. (C.P. at 52-53) Even a cave man could understand them. Strange as it seems, Jones failed to take advantage of the trial judge's benevolence. He went out and committed material violations of his post-release supervision by not reporting and testing positive for marijuana.

The trial court was entitled to remand Jones to the custody of the MDOC to serve the balance of his sentence, i.e., ten (10) years. *See* **Johnson v. State,** 925 So.2d 86 (Miss. 2006), which held that suspending a sentence and imposing probation are distinct events. "If a prisoner is under court imposed probation, that prisoner may be incarcerated if the conditions of probation are not followed." **Johnson v. State,** *supra*, 925 So.2d 86, 92 (Miss. 2006). The same holds true when a prisoner fails to abide by the conditions of his suspended sentence.

> By definition, a "suspended sentence" is a unique mechanism by which the court may postpone the imposition of a sentence altogether or delay the execution of a sentence once it has been pronounced. 21A Am.Jur.2d, Criminal Law §895 p. 163. Suspension

> is a term which generally applies to the actions of the state in relation to a prisoner under its supervision and control. Wilson v. State, 735 So.2d 290, 292, (Miss. 1999) (citing *Goss v. State,* 721 So.2d 290, 144, 145 (Miss. 1998)). Simply stated, "suspension" is the restriction placed upon the power of the State to act during that (the suspended portion of a sentence) period. *Id.*
>
> * * * * * *
>
> . . . A suspension of a sentence does not automatically mean that the defendant will be on probation and under a duty to report to a probation officer. **It simply means that *part* of his entire sentence has been *postponed* pending the defendant's good behavior or such other conditions as the court may see fit to establish.**

**Johnson v. State,** *supra*, 925 So.2d at 93 quoting with approval the Justice Mills dissenting opinion in *Carter v. State*, 754 So.2d 1210-11 [emphasis ours.]

Here there was suspension with conditions which Jones failed to meet. The judge, i.e, the trial court, was entitled to reinstate and execute Jones's entire sentence.

Miss.Code Ann. §47-7-37 (Supp 2009), states, in part, that

> [T]he court in term time or vacation, shall cause the probationer to be brought before it and *may* continue or revoke all or any part of the probation or the suspension of sentence, and *may* cause the sentence imposed to be executed or *may* impose any part of the sentence which might have been imposed at the time of conviction. [emphasis in original]

It caused, and it revoked.

Miss.Code Ann. § 99-39-11 (2007) reads, in its entirety, as follows:

> (1) The original motion together with all the files, records, transcripts and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned.
>
> **(2) If it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief, the judge may make an order for its dismissal and cause the prisoner to be notified.**
>
> (3) If the motion is not dismissed under subsection 2 of this section, the judge shall order the state to file an answer or other

> pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.
>
> (4) This section shall not be applicable where an application for leave to proceed is granted by the Supreme Court under Section 99-39-27. [emphasis added]
>
> (5) Proceedings under this section shall be subject to the provisions of Section 99-19-42.

Jones's post-conviction claims were properly denied because they were manifestly without merit.

## CONCLUSION

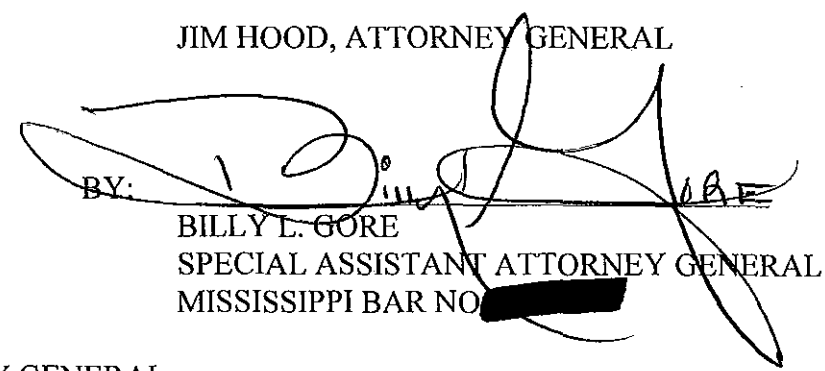
Not every motion for post-conviction relief filed in the trial court must be afforded a full adversarial hearing. **Hebert v. State,** 864 So.2d 1041, 1045 (Ct.App.Miss. 2004). *See also* **Rowland v. Britt,** 867 So.22d 260, 262 (Ct.App.Miss. 2003) ["(T)he trial court is not required to grant an evidentiary hearing on every petition it entertains."]

Jones's motion seeking post-conviction relief was correctly denied as time barred, successive writ barred, and plainly or manifestly without merit on the merits.

Appellee respectfully submits this case is devoid of any error. Accordingly, summary dismissal, as manifestly without merit, of Jones's motion for post-conviction collateral relief should be forthwith affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

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IN THE CIRCUIT COURT OF LAWRENCE COUNTY, MISSISSIPPI

ERIC D. JONES — PETITIONER

VS. — CAUSE NO. 2008-117H

STATE OF MISSISSIPPI — RESPONDENT

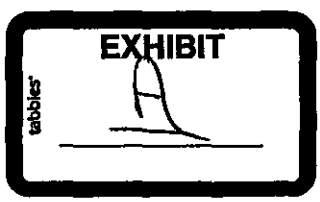


**MEMORANDUM OPINION AND ORDER OF SUMMARY DISMISSAL**

BEFORE THIS COURT is Petitioner, Eric D. Jones' *Pro Se* Motion for Post-Conviction Relief from Revocation of Suspended Sentence, under Miss. Code Ann. § 99-39-1 *et. seq.* In rendering its decision, the Court has throughly examined the Petitioner's motion and accompanying exhibits, and the court file in LAWRENCE County Circuit Court Cause No. K02-0151E relating to the judgment under attack. Accordingly, the Court finds that it plainly appears from the face of the Petitioner's Motion, the annexed exhibits, and the court file that he is not entitled to any relief. Therefore, the Court, pursuant to Miss. Code Ann. § 99-39-11(2), SUMMARILY DISMISSES the Petitioner's motion for the following reasons to-wit:

**FACTUAL AND PROCEDURAL BACKGROUND**

On June 25, 2003, Petitioner entered a "best interest" plea of guilty to the charge of possession of cocaine, a controlled substance. The circuit judge determined, based upon what was heard in a suppression hearing, that a basis existed for accepting the plea. Pre-Sentencing report was waived, and the Petitioner was sentenced to sixteen years in the custody of the Department of Corrections, with six years to be served and the remaining ten suspended pending successful completion of a supervised period of post-release for five years pursuant to Miss. Code Ann. 47-7-34.



Correspondence to the Petitioner dated July 25, 2003 appears in Court file Cause No. K02-0151E in response to a Motion filed by Petitioner to Withdraw his best interest guilty plea. The July 25, 2003 letter from the trial judge's law clerk advised the Petitioner that the conviction could not be legally appealed due to the entry of a guilty plea, and that Petitioner's recourse for review was under the Post Conviction Collateral Relief Act, Miss. Code Ann. §99-39-1 *et seq.*

On November 15, 2004, in Cause No. 2003-CP-02816-COA, the Court of Appeals of Mississippi entered an Order in response to Petitioner's Petition for Extraordinary Writ to Clarify Sentence. The Court of Appeals acknowledged that it had previously entered an opinion on October 12, 2004, wherein it had affirmed the judgment of the circuit court denying post-conviction relief to Petitioner, and stating that the Petitioner's seeking clarification of the sentence should have been raised in the circuit court at the time of sentencing, or as part of post-conviction relief.

On August 10, 2005, the Supreme Court of Mississippi, in Cause No. 2003-M-01812, entered an Order dismissing – but allowing for the filing of same in the trial court – Petitioner's application for leave to seek post-conviction.

By response dated July 12, 2006, the Circuit Court of Lawrence County directed the Circuit Clerk to return, unfiled, Petitioner's Motion for Post-Conviction Relief on the basis that the motion was procedurally barred as a matter of law as a second and subsequent petition for post-conviction relief, and that it did not qualify under any of the exceptions for filing a second and subsequent motion for post-conviction relief, *e.g.*, intervening supreme court decision or new evidence.

By Affidavit – Violation of Post Release Supervision, dated March 7, 2008, and filed on March 10, 2008, Field Officer Charles Crook with the Mississippi Department of Corrections ("MDOC") alleged that Petitioner had violated the terms and conditions of his post release by failing to report for the months of February, June, August, September, and October 2007; by testing positive

for cannibus in May 2007; by refusing a drug test in July 2007, and failing to return to the Hinds County MDOC officer from July 2007 to date of Affidavit in March 2008. Warrant was issued on March 14, 2008. Notification of Preliminary Hearing was received by Petitioner on March 25, 2008,

At the preliminary hearing, the MDOC determined "sufficient reasonable cause"existed to hold the Petitioner for a revocation hearing before the circuit court. MDOC's stated basis for its conclusion, according to the Preliminary Probation Revocation Hearing Report, was the documentation provided by the probation officer at the hearing. MDOC further concluded that the Petitioner had been verbally combative, would not listen to several attempts to provide explanations to him, refused to sign off on the Preliminary Probation Revocation Hearing papers, and refused to answer most of the questions asked. A post-release revocation hearing was maintained for April 4, 2008. Notice of the April 4, 2008 Post Release Revocation Hearing had been served on the Petitioner on March 25, 2008.

At the revocation hearing on April 4, 2008, the Circuit Court entered an Order of Revocation of Post Release Supervision based upon a finding by the Court that the evidence presented supported a finding of violation of the conditions charged.

Petitioner has alleged in his motion for post-conviction relief that:

1) The written, Order of Conviction and Sentence does not accurately reflect what transpired at sentencing (referencing fact that the specific terms and conditions of post release supervision are listed in the Order, but were not orally stated at sentencing), and that he would not have pled guilty had he been aware of post-release terms and conditions;

2) His suspended sentence was unconstitutionally revoked in that he did not receive due process at the revocation proceeding, and he should have had court appointed counsel to represent him at the revocation hearing;

3) He is unlawfully held due to expiration of sentence;

## ANALYSIS

I. **Inconsistency between Sentencing Colloquy and Order of Conviction re Supervised Post Release**:

The Court finds this issue to be not only time barred, but also procedurally barred under Miss. Code Ann. §99-39-23(6). As the chronology reflects above, the Petitioner made multiple filings for post conviction relief wherein this issue was, or should have been raised, and his claim for post-conviction relief on this claim is denied.

II. **Suspended Sentence was Unconstitutionally Revoked**:

Petitioner's next claim is that his suspended sentence was unconstitutionally revoked because he should have had court appointed counsel to represent him at his revocation hearing, and he did not receive due process at the revocation proceeding.

A. Right to Counsel:

In **Pruitt vs. State**, 953 So. 2d 302 (2007 Miss. App. LEXIS 203), our supreme court held:

> It is well established in Mississippi that there is no per se right to counsel at revocation hearings. Riely v. State, 562 So.2d 1206, 1209 (Miss. 1990) (quoting Lassiter v. Dep't of Social Servs., 452 U.S. 18, 26, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981)). The Supreme Court of the United States has addressed this specific issue and held that the decision of whether counsel is to be provided at a revocation hearing is one that is to be made on a case-by-case basis. Gagnon, 411 U.S. at 790. The Supreme Court declined to formulate [**9] a bright line test to determine when counsel would be constitutionally req uired, but stated that the "presence and participation of counsel will probably be both undesirable and constitutionally unnecessary in most revocation hearings," however, "there will remain certain cases in which fundamental fairness -- the touchstone of due process -- will require that the State provide at its expense counsel for indigent probationers or parolees." Id. The Supreme Court further stated, [C]ounsel be provided in cases where, after being informed of his right to request counsel, the probationer or parolee makes such a request, based on a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present. In passing on a request for the appointment of counsel, the responsible agency also should consider,

> especially in doubtful cases, whether the probationer appears to be capable of speaking effectively for himself. In every case in which a request for counsel at a preliminary or final hearing is refused, the grounds for refusal should be stated succinctly in the record. Id. at 790-91.

In **Pruitt**, the trial court had determined in the order denying Pruitt's motion for post-conviction relief that the revocation hearing did not involve complex or difficult issues such to warrant the appointment of counsel. In the case *instanter*, though the Petitioner had indicated that he wanted court appointed counsel, under the guidelines of the **Pruitt** decision this Court does not find that the issues raised in the revocation hearing rose to the level of complexity or difficulty to merit the appointment of counsel for the Petitioner. The issues at the revocation hearing were, simply, whether the Petitioner had failed to report to the field officer for the months stated, whether the Petitioner had failed a drug test, whether the Petitioner had refused a drug test, and whether the Petitioner had been absent from reporting since the refused drug test. The Court finds that the Petitioner's claim, that he was denied due process because he was entitled to have court appointed counsel represent him at his revocation hearing, is without merit under the guidelines of **Pruitt**.

B. Lack of Due Process at Revocation Hearing:

In the "Specific Facts within the Knowledge of Petitioner" section of his Motion for post collateral relief, Petitioner alleges that he was not allowed to cross-examine witnesses against him or present any defense, that the trial court revoked the suspended sentence after testimony from the state's witnesses, and without the presentation of any letter, documents or reports.

In the case of **Ray vs. State**, 976 So. 2d 398 (2008 Miss. App. LEXIS 127), the supreme court held:

> The minimum requirements of due process, applicable in a revocation hearing, include written notice of the claimed violations of probation, disclosure to the probationer of the evidence against him, an opportunity to be heard and to present witnesses and evidence, the right to confront and cross-examine adverse witnesses, a neutral and detached hearing body, and a written statement by the fact-finders as

to the evidence relied on and the reasons for revoking probation. Riely v. State, 562 So. 2d 1206, 1210 (Miss. 1990).

However, in **Edwards v. State**, 946 So.2d 822 (2007 Miss. App. LEXIS 8), the supreme court denied a claimant's "denial of due process"claim, finding that the claimant had failed to "articulate a substantive reason in support of this argument." And, in **Bynum v. State**, 929 So. 2d 312, 314 (2006 Miss. LEXIS 261), the supreme court defined "harmless error" as being "those which in the setting of a particular case are so unimportant and insignificant that they may, consistent with the Federal Constitution, be deemed harmless, not requiring the automatic reversal of the conviction."

This Court acknowledges the due process issues raised in the Petitioner's Motion with respect to the revocation proceeding, however, the Court considers Petitioner's claims to either be without merit, or harmless error under the preceding.

a) **Written Notice of Claimed Violations:** There is no question but that the Petitioner was provided with written notice of the claimed violations of probation prior to the revocation hearing. On or about March 25, 2008, Petitioner was provided with a Notification of the Preliminary Hearing which was to be held in Jefferson Davis County, Mississippi on April 3, 2008 (simultaneously served along with the Notice of the Revocation Hearing set for April 4, 2008). Petitioner signed said Notification acknowledging receipt of same. The Notification contains a written description of the conditions Petitioner was alleged to be in violation of, advises the Petitioner that he would be allowed to speak, present evidence, cross-examine witnesses against him, and that he could retain counsel but the MDOC would not appoint him counsel.

The preliminary probation revocation hearing was held on April 3, 2008 wherein, according to the Preliminary Probation Revocation Guide, Petitioner refused to answer all questions thereon except for Paragraph No. 8 "Do you understand these charges...," and Paragraph No. 10 "Are you guilty of these charges", to which two questions the Petitioner responded "No". Paragraph No. 7 of

said Guide sets out the charges against the Petitioner. Thus, at another point in time, the Petitioner was made aware of the conditions he was charged with violating.

b) **Disclosure to the Probationer of Evidence**: Evidence in the present case consisted of testimony of the field officers charged with supervising the Petitioner, and to whom the Petitioner was required to report. Supported by filed affidavit, or in support of the filed affidavit, the MDOC field officers testified that the Petitioner had in fact not reported in for several specific months – as he was required to do under the terms of post-release; that Petitioner had not reported subsequent to his refusal to take a drug test; and that the Petitioner had failed a drug test. Petitioner's claim of non-disclosure is without merit. This evidence was disclosed to the Petitioner at the preliminary revocation hearing, and at the revocation hearing.

c) **Opportunity to be Heard and to Present Witnesses and Evidence**: The Court finds that the minimum requirements of due process were either met with respect to these elements, or any failings thereof were harmless error. The transcript from the April 4, 2008 Revocation Hearing reveals the following exchange between the Court and the Petitioner:

Court: Unfortunately, Mr. Jones has not conducted himself appropriately in this matter in that he has failed to report for the months of February, June, August, September, August of '07. And, unfortunately, he also tested positive for marijuana in May and he refused a drug tet in July. And he has not returned to the Hinds County office since.

Court: Mr. Jones, this is all very unfortunate, is it not?

A: Huh?

Q: This all very unfortunate.

A: Excuse me, sir?

Q: You understand you have to do these things, you have [to] report to your people. Do you understand that? And you understand that you cannot test positive for an illegal substance abuse. And you understand that you do have to submit yourself to testing on a fairly random basis as the Mississippi Department of Corrections sees fit.

You also understand, I'm confident, that Judge Eubanks, my predecessor, gave you a pretty good deal. So I don't know what to say about all these things. It seems very unfortunate that you've had this conduct, for lack of a better word. Or lack of appropriate conduct. Do you understand?

A: No, sir.

Q: What don't you understand?

A: I don't understand my sentence, Your Honor.

Q: Well, unfortunately, that's history. You know, the ball game's over in that particular matter. The sentence that you received from Judge Eubanks was a very liberal sentence, in my opinion, and he gave you a good deal. But the ball game's over on that....So we can't go back to that. It's conduct that has been or the lack of appropriate conduct since the time that you've been on probation is why we're here today. Do you understand that?

A: No, sir.

Q: Well, even if you don't understand it, that is what has been brought on by this affidavit by Mr. Charles Crook, and he has brought this affidavit to me.

This exchange with the Petitioner was followed immediately by testimony from Charles Crook and Charles Wilson, with the Mississippi Department of Corrections, in support of the charges contained in the Affidavit of Violation against the Petitioner. Subsequent to their testimony the State questioned Mr. Crook. Immediately after the State's questioning of Mr. Crook, the Court announced that, based upon the information placed before it, the Court found more than "adequate and sufficient evidence" that Petitioner had violated the conditions and terms of his post-release. The only thing which kept the Petitioner from raising any issue, question, or objection at this point about the proceeding was the Petitioner's own conduct. Instead of formally addressing the court or attempting to voice an objection or to raise an issue, the Petitioner chose, according to the transcript, to instantly slam his microphone down, pick up the 25-35 lbs microphone stand in front of him and threw it approximately 30 feet across the court room creating a large hole in the courtroom wall. This violent

outburst by the Petitioner created turbulence in the court room among the courtroom spectators, and among the numerous of inmates who were in the courtroom that date.

It is clear from the above exchange that the Petitioner was given the opportunity to be heard in open court with respect to the charges, and that the Petitioner did not challenge or deny the charges against him when the Court solicited response from the Petitioner regarding same. Petitioner chose at that moment, instead, to try and direct the Court's attention to the sentence handed down against the Petitioner in 2003 (*i.e.*, the issue concerning his sentence was ruled upon in a post-collateral relief action, with the circuit court's decision denying relief having been affirmed by our court of appeals).

The record does not reflect that the Petitioner had any witnesses present at the revocation hearing, or that the Petitioner made any effort or request to present witnesses or evidence. Nor does the Petitioner claim or assert in his Motion for relief that he in fact had witnesses present who were ready, willing, and able to testify on his behalf at the revocation hearing. Furthermore, Petitioner fails to specify what these witnesses would have testified to and why that testimony would have affected the decision of the trial judge. The Court thus finds the Petitioner's claim, that he was denied the opportunity to offer up evidence or present witnesses, to be harmless error. See **Edwards v. State**, 946 So.2d 822 (2007 Miss. App. LEXIS 8).

d) **Right to Confront and Cross-examine Adverse Witnesses**:

The Court acknowledges that it revoked Petitioner's post-release upon conclusion of the State's questioning of Mr. Crook, without first asking the Petitioner if he wished to cross-examine the witnesses. Again, under **Edwards v. State**, the Court finds such omission to be harmless error in that the Petitioner failed to "articulate a substantive reason in support of" his argument." The Petitioner failed to provide any details or specifics as to questions, if any, he would have asked had

he cross-examined the witnesses, and failed to provide any statements or facts showing that a cross-examination would have affected the Court's decision.

e) **Neutral and Detached Hearing Body:**

The Court finds Petitioner's claim, that the Judge was not neutral and detached, to be without merit. The circuit judge who conducted the revocation hearing had not participated in the Petitioner's original plea or sentencing, and the transcript does not reveal any bias by the Court toward the state, or prejudice against the Petitioner. Again, Petitioner's claim fails for lack of specificity. Mere allegation is insufficient to support a claim, and Petitioner fails to identify the instances where the trial court was not neutral or not detached.

f) **Written Statement by the Fact-finders as to the Evidence Relied on and the Reasons for Revoking Probation:**

The due process criteria of providing a written statement of the reasons for revocation of suspended sentence is satisfied in that the circuit court judge entered a written order stating that revocation was based upon the evidence that had been placed before the court, *i.e.*, affidavit and testimony of MDOC officers. As our supreme court stated in **Loisel v. State**, 995 So. 2d 850 (2008 Miss. App. LEXIS 693), "[p]robation may be revoked upon a showing that the defendant 'more likely than not' violated the terms of probation." (Citing Younger v. State, 749 So. 2d 219, 222 (Miss. Ct. App. 1999)). There was an adequate basis for the court to determine that Petitioner had violated his probation, and Petitioner's claim, that no written statement was provided by the court, is without merit.

III. **Expiration of Sentence**:

Petitioner's claim, that he is unlawfully held because his sentence is expired, is based upon the false premise that his original sentence was to serve six (6) years, period, and that the ten (10) years suspended is, basically, surplusage and should not have been supervised or subject to terms

and conditions with which to comply. As noted previously, *supra*, the legality of Petitioner's sentence was addressed in a previous post-conviction collateral relief action and will not be revisited here. The Petitioner was sentenced to sixteen years, with six to serve, and ten suspended on post release. The court may revoke either a portion or the entirety of the suspended portion of a sentence. See **Fluker v. State**, 2008 Miss. App. LEXIS 675, holding that

> Post-release supervision revocation is to be followed just as probation according to Mississippi Code Annotated section 47-7-34(2), and under the probation revocation statute Mississippi Code Annotated section 47-7-37, any [*8] sentence suspended that could be imposed at the time of sentencing can be imposed on a showing that the petitioner has violated the terms of his probation. Brown, 872 So. 2d at 99 (P13). "[A]fter probation is revoked the court 'may impose any part of the sentence which might have been imposed at the time of conviction.'" Id. at 100 (P14) (quoting Johnson v. State, 802 So. 2d 110, 112 (P10) (Miss. Ct. App. 2001)).

In the present case the court elected to revoke the entirety of the suspended portion of the sentence, which was ten (10) years. The Court finds Petitioner's claim, that he is unlawfully held due to his sentence having expired, is without merit.

IV. **Conclusion:**

In the present setting it appears that the Petitioner had no witnesses called to testify on his behalf at the revocation hearing, nor does the Petitioner state in his Motion for post-convication relief that any such witnesses exist or existed. Thus, the Court's failure to "invite" the Petitioner to call witnesses is harmless error, it being neither apparent nor asserted that the Petitioner had any witnesses. Also in the present setting, the evidence of the Petitioner's violation of the conditions of his post-release, *i.e.*, failing to report as required, *et cet.*, was sufficiently overwhelming such that a cross-examination by the Petitioner would not have cured the fact of that violation. Furthermore, Petitioner did deny these charges in his Motion for relief or state therein, with detail, how his opportunity to have cross-examined the witnesses would have affected the outcome of the court's

decision. The failure to offer the Petitioner the opportunity to cross-examine the witnesses constitutes harmless error in the present setting.

IT IS, THEREFORE, ORDERED AND ADJUDGED that Eric D. Jones'Motion for Post-Conviction Collateral Relief is hereby DENIED and SUMMARILY DISMISSED pursuant to Miss. Code Ann. § 99-39-11(2).

IT IS FURTHER ORDERED AND ADJUDGED that the Circuit Clerk of LAWRENCE County, Mississippi shall mail a copy of the Court's Opinion and Order to Eric D. Jones via certified First Class U.S. Mail, return receipt requested.

SO ORDERED AND ADJUDGED this the 28 day of February, A.D., 2009.

CIRCUIT JUDGE

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Exhibit TWO

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

ERIC D. JONES

LAWRENCE COUNTY
MISSISSIPPI
JUN 25 2003
CINDY R. STOKES, CIRCUIT CLERK

CAUSE NO. K02-0151E

ORDER OF CONVICTION AND SENTENCE

INTO OPEN COURT on June 25, 2003 came the Assistant District Attorney, who prosecutes for the State of Mississippi, and the defendant, **ERIC D. JONES**, personally and represented by counsel HONORABLE BOB EVANS, whereupon the Defendant was lawfully arraigned on a charge in this Court of **POSSESSION OF CONTROLLED SUBSTANCE (COCAINE)**. The Court, after full inquiry, determined that Defendant's plea of guilty complied with all the requirements of Rule 8.04 of the Uniform Rules of Circuit Court, and satisfied all of Defendant's additional legal and constitutional rights. The plea was accepted and the Court found Defendant guilty of said charge.

THEREFORE, for said offense and on said plea of guilty, and after consideration of a pre-sentence investigation report, it is by the Court ORDERED AND ADJUDGED that the said **ERIC D. JONES** be and he is hereby sentenced to **SIXTEEN (16)** years in the custody of the Mississippi Department of Corrections, with **SIX (6)** years to be served at the Mississippi Department of Corrections, and the remaining **TEN (10)** years of said sentence hereby SUSPENDED, pending successful completion of a supervised period of post-release for **FIVE (5)** years, pursuant to Mississippi Code 47-7-34. The defendant is hereby ordered to pay all costs of Court herein. The specific provisions of said sentence are fully set forth below:

EXHIBIT
B-1



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Exhibit 1

Any period of incarceration imposed under said sentence is to be served in the custody of th Mississippi Department of Corrections under the provisions of Mississippi Code Section 47-5-138, a amended, and any portion of said sentence that is served under Post-Release Supervision is to be serve under the provisions of Section 47-7-34 of the Mississippi code of 1972, as amended.

The suspension of any portion of said sentence, whether under Post-Release Supervision, probatio or otherwise, shall be subject to the following conditions:

Defendant shall:

(a) Commit no offense against the laws of this or any other state of the United States, or the laws of the United States;

(b) Avoid injurious or vicious habits and persons and places of disreputable or harmful character;

(c) Report to the field Officer as directed;

(d) Permit the Field Supervisor (Probation officer) to visit the defendant at home or elsewhere;

(e) Work faithfully at suitable employment so far as possible;

(f) Remain within a specified area, to-wit: State of Mississippi;

(g) Support his dependents, if any;

(h) Possess or consume no alcoholic beverages or mood altering drugs, and possess no firearm or other deadly weapon;

(i) Pay required fee during each month of probation, by money order, to the Mississippi Department of Corrections;

(j) Submit, as provided in Section 47-5-603 of the Mississippi Code of 1972, to any type of breath, saliva or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or substance prohibited or controlled by any law of the State of Mississippi or the United States, or to tests recommended by his Field Officer;



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Exhibit TWO

(k) Participate in any recognized program available and recommended by his Field Officer;

(l) Defendant shall pay his costs at the rate of $50.00 per month beginning one (1) month after his release on Post-Release Supervision;

(m) Defendant shall not be out in the public after the hours of 11 o'clock p.m. through 6 o'clock a.m., unless it pertains to his employment.

The violation of any one of the above enumerated conditions shall violate the terms and condition: of the defendant's Post-Release Supervision and the Court shall have the authority to revoke the defendan from Post-Release Supervision and remand him back into the custody of the Mississippi Department o Corrections to serve the revoked portion of his Sixteen (16) year sentence.

IT IS FURTHER ORDERED AND ADJUDGED that the defendant is to be given credit for th time that defendant has served in Jail.

IT IS THEREFORE ORDERED AND ADJUDGED that defendant be and he is hereby remande into the custody of the Sheriff of LAWRENCE COUNTY, to await transportation to said Department o Corrections.

SO ORDERED AND ADJUDGED on this the25th day of June, 2003.

Michael R. Eubanks

CIRCUIT JUDGE

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Exhibit 1



Q. And if you decide you need to get rid of your attorney at any stage of the charge, even up through the appeal stage, you can change attorneys any time you feel like you need to. You understand that?

A. Yes, sir.

Q. If you plead guilty, there won't be a trial, and there won't be anything to appeal. What will happen is, I will sentence you just as if the jury were to find you guilty of the charge you plead to. You understand that?

A. Yes, sir.

Q. And the option of the sentencing, I can give you up to sixteen years on this charge. You understand about that?

A. Yes, sir.

Q. Now, you have the right to a pre-sentence report, but we've discussed--your attorney and I and you were there and discussed about if you waive the pre-sentence and go ahead and be sentenced today, that you would receive a sixteen year sentence with ten of it suspended on ten years post-release. You understand about that?

A. Yes, sir.

Q. So it's going to be your option whether you want a pre-sentence or go ahead and be sentenced today.

BY THE COURT: The State has no objection to waiving the pre-sentence; is that right?

EXHIBIT tabbies D-2

Exhibit 1



Q. All right, then since the State has no objection about the sentencing, I'll sentence you at this time. Is there anything you want to say before sentencing?

A. Could y'all just get me out of Lawrence County Jail today as quick as possible, sir.

Q. I'll see if that can be done. I can't promise you what they'll do about that, but I'll see. All right, then based on what has been presented to me, I'm going to sentence you to sixteen years in the custody of the Department of Corrections. I'm going to suspend ten of it on ten years post-release supervision, and you'll be required to pay cost of Court when you come out on post-release, and I will give you credit for any time that you have served.

BY MR. EVANS: Your Honor, if I might interject--

BY MR. MILLER: Your Honor, the State would move to nolle prosse K03-53P in light of your acceptance of this guilty plea in this charge.

BY THE COURT: I didn't know there was another charge.

BY MR. EVANS: Yes, sir, under Judge Prichard.

BY THE COURT: Okay.

QUESTIONS BY THE COURT: (Continuing)

Q. Okay, that will be your sentence then.

*Vintage Petroleum, Inc.*, 825 So.2d 685(¶ 10) (Miss.Ct.App.2002). "Four identities must be present for res judicata to apply: (1) identity of the subject matter of the action; (2) identity of the cause of action; (3) identity of the parties to the cause of action; and (4) identity of the quality or character of a person for or against whom the claim is made." *Id.*

¶ 18. Under the first requirement, identity of the subject matter, Deramus' prior lawsuit alleged a violation of protective covenants and ordinances by the Pierces and requested that the sale of the property be set aside and be sold to her.

[4, 5] ¶ 19. The second requirement is "satisfied when there is commonality found among the 'underlying facts and circumstances upon which the claim is asserted and relief sought.'" *Williams*, 825 So.2d 685 at (¶ 15). Additionally, it must be determined whether the "evidence necessary to maintain the one [suit] would authorize a recovery in the other." *Id.* at (¶ 16). In this instance, the cause of action arises out of the same nucleus of facts and the requested relief is the same.

¶ 20. The third requirement is satisfied because the parties are the same.

¶ 21. The final requirement refers to the identity of the quality or character of a person for or against whom the claim is made. These too are the same with the exclusion of the FDIC.

[6] ¶ 22. Additionally, it must be noted that the district court found that the Pierces were bona fide purchasers. A bona fide purchaser is one who acts in good faith, pays the reasonable value of the subject property and takes it free and clear of any non-perfected claims. *Board of Educ. of Lamar County v. Hudson*, 585 So.2d 683, 687 (Miss.1991). Deramus has failed to identify any perfected claims, which should encumber the Pierces' title to this property.

¶ 23. The chancery court found that Deramus' claim was barred by the doctrine of res judicata and that summary judgment was appropriate. This Court affirms the decision of the chancery court.

¶ 24. **THE JUDGMENT OF THE WINSTON COUNTY CHANCERY COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED AGAINST THE APPELLANT.**

BRIDGES AND LEE, P.JJ., IRVING, MYERS, CHANDLER AND GRIFFIS, JJ. CONCUR. BARNES AND ISHEE, JJ., NOT PARTICIPATING.


**Eric D. JONES a/k/a Eric Dejuan Jones, Appellant**

**v.**

**STATE of Mississippi, Appellee.**

**No. 2003-CP-02816-COA.**

Court of Appeals of Mississippi.

Oct. 12, 2004.

Rehearing Denied Feb. 1, 2005.

Certiorari Denied April 14, 2005.

**Background:** After defendant pled guilty to possession of cocaine, defendant moved for postconviction relief. The Circuit Court, Lawrence County, Michael R. Eubanks, J., denied motion. Defendant appealed.

**Holding:** The Court of Appeals, Lee, P.J., held that defendant entered his guilty plea

to possession of cocaine knowingly and voluntarily.

Affirmed.

1. Criminal Law ⇐273.1(4)

In order for a guilty plea to be voluntarily and intelligently entered, a defendant must be advised about the nature of the crime charged against him and the consequences of the guilty plea.

2. Criminal Law ⇐273.1(4)

Defendant entered his guilty plea to possession of cocaine knowingly and voluntarily; defendant was informed of nature of charges against him, rights he was waiving, and effect of his guilty plea, petition to plead guilty filed with court clearly stated that he was pleading freely and voluntarily, he understood minimum and maximum sentence, he acknowledged under oath that by pleading guilty he was waving his right to jury trial and that additional pending charge would be dropped once he pled guilty to possession charge, and he testified that no one mistreated him in effort to convince him to plead guilty.

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Eric D. Jones, Appellant, pro se.

Office of the Attorney General by W. Glenn Watts, Attorney for Appellee.

Before KING, C.J., LEE, P.J., IRVING and MYERS, JJ.

LEE, P.J., for the Court.

FACTS AND PROCEDURAL HISTORY

¶ 1. On June 25, 2003, Eric D. Jones pled guilty to possession of a controlled substance, namely 6.2 grams of cocaine, before the Circuit Court of Lawrence County, Mississippi. Jones was represented by Robert E. Evans, the public defender. Prior to pleading guilty Jones had filed, with the assistance of counsel, a petition to enter a plea of guilty. Evans filed the proper certification of counsel along with the petition.

¶ 2. Jones was sentenced to serve sixteen years in the custody of the Mississippi Department of Corrections, with ten years suspended and five years of post-release supervision. On November 3, 2003, Jones filed a petition for post-conviction relief. The trial court denied the motion on December 9, 2003, without a hearing. It is from this denial that Jones now seeks appellate relief, arguing what appears to be a claim that his plea was not voluntarily or intelligently made and a claim that he received ineffective assistance of counsel.

STANDARD OF REVIEW

¶ 3. "In reviewing a trial court's decision to deny a motion for post-conviction relief the standard of review is clear. The trial court's denial will not be reversed absent a finding that the trial court's decision was clearly erroneous." *Smith v. State*, 806 So.2d 1148, 1150(¶ 3) (Miss.Ct.App.2002). In considering a petition for post-conviction relief, the trial judge is obligated to review the "original motion, together with all the files, records, transcripts and correspondence relating to the judgment under attack," in order to resolve the merits of the allegations. Miss.Code Ann. 99–39–11(1) (Rev.2000). Jones must show by a preponderance of the evidence that he is entitled to the requested post-conviction relief. Miss.Code Ann. § 99–39–23(7) (Rev.2000).

[1] ¶ 4. "In order for a guilty plea to be voluntarily and intelligently entered, a defendant must be advised about the nature of the crime charged against him and the consequences of the guilty plea." *Banana v. State*, 635 So.2d 851, 854 (Miss.1994).

Claims for the ineffective assistance of counsel must be reviewed under the standard enunciated in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), which was applied to guilty pleas in *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). Under this standard, the claimant must show (1) that counsel's performance was deficient and (2) that the deficient performance was prejudicial to the defendant in the sense that it undermined confidence in the outcome. *Wilson v. State*, 577 So.2d 394, 396 (Miss.1991).

## I. WAS JONES' PLEA OF GUILTY KNOWINGLY AND VOLUNTARILY MADE?

[2] ¶ 5. Jones argues that his guilty plea was not knowingly and voluntarily made. For a guilty plea to be voluntarily and intelligently entered, a defendant must be advised about the nature of the crime charged against him and the consequences of the guilty plea. *Banana*, 635 So.2d at 854.

¶ 6. The record evidences that Jones was informed of the nature of the charges against him, the rights he was waiving, and the effect of his guilty plea. Additionally, Jones filed a petition to plead guilty with the court, and the petition clearly stated, "I offer my plea of guilty freely, voluntarily and of my own accord. I fully understand all matters set forth in the indictment or information and waiver of indictment, in this petition and in the certificate of my lawyer which follows."

¶ 7. The record of the guilty plea hearing reflects that Jones understood that he faced a minimum sentence of four years and a maximum sentence of sixteen years. At the hearing Jones also acknowledged under oath that by pleading guilty he was waving his right to a trial by a jury of his peers, his right to cross-examine witnesses, and his right not to testify against himself. Additionally, Jones acknowledged that an additional pending charge would be dropped once he pled guilty to the possession charge. Furthermore, Jones testified that no one mistreated him in an effort to convince him to plead guilty. The trial court did not abuse its discretion in disposing of this issue. Jones was informed about the nature of the charges against him and the consequences of his guilty plea. This issue lacks merit.

## II. DID JONES RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL?

¶ 8. Any review of the ineffective assistance of counsel begins with the test established in *Strickland*, 466 U.S. at 687, 104 S.Ct. 2052. Under this standard, the claimant must show: (1) that counsel's performance was deficient and (2) that the deficient performance was prejudicial to the defendant in the sense that it undermined confidence in the outcome. *Wilson*, 577 So.2d at 396. Jones does not cite any actions by his counsel which support an argument that the attorney's performance was deficient, nor does Jones show how his attorney's performance was prejudicial to him. Accordingly, Jones does not meet his burden under *Strickland*, and this issue lacks merit.

**¶ 9. THE JUDGMENT OF THE CIRCUIT COURT OF LAWRENCE COUNTY DENYING POST-CONVICTION RELIEF IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO LAWRENCE COUNTY.**

KING, C.J., BRIDGES, P.J., IRVING, MYERS, CHANDLER, GRIFFIS, BARNES AND ISHEE, JJ., CONCUR.

## CERTIFICATE OF SERVICE

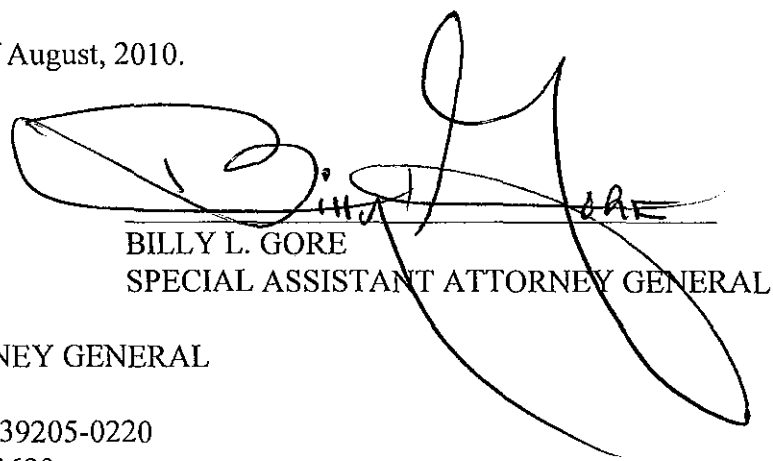
I, Billy L. Gore, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

**Honorable Prentiss Greene Harrell**
Circuit Court Judge, District 15
Post Office Box 488
Purvis, MS 39475

**Honorable Hal Kittrell**
District Attorney, District 15
500 Courthouse Sq., Suite 3
Columbia, MS 39429

**Eric De'Juan Jones, #50222**
EMCF
10641 Hwy. 80W.
Meridian, MS 39304

This the 24th day of August, 2010.



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