

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TAWRENCE AMOS

APPELLANT

VS.

NO. 2009-CP-1382

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: DEIRDRE MCCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	1
PROPOSITION: THE CIRCUIT COURT PROPERLY DENIED TAWRENCE'S MOTION FOR POST-CONVICTION COLLATERAL RELIEF WITHOUT A HEARING	2
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

STATE CASES

<i>Black v. State</i> , 963 So.2d 47, 48 (Miss. App. 2007)	3
<i>Brown v. State</i> , 944 So.2d 103, 106, (Miss. 2006)	4
<i>Gordon v. State</i> , 977 So.2d 420, 429 (Miss. App. 2008)	4
<i>Kirksey v. State</i> , 728 So.2d 565, 567 (Miss.1999)	3
<i>Taylor v. State</i> , 766 So.2d 830, 832 (Miss. App. 2000)	3

STATE STATUTES

MISS. CODE ANN. § 47-5-193 (1972)	3
MISS. CODE ANN. § 47-5-195 (1972)	4

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TAWRENCE AMOS

APPELLANT

VERSUS

NO. 2009-CP-1382-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

On October 21, 2008, Tawrence Amos pleaded guilty in the Circuit Court of Winston County to a charge of unauthorized possession of contraband in a correctional facility. On July 7, 2009, Amos filed in the circuit court a motion for post-conviction collateral relief which was summarily denied on July 29, 2009. (C.P.32-33) Aggrieved by the judgment rendered against him, Amos has perfected an appeal to this Court.

SUMMARY OF THE ARGUMENT

The circuit court properly found that Amos's motion for post-conviction collateral relief was plainly devoid of merit. Accordingly, the circuit court properly denied the motion without a hearing. The judgment entered below should be affirmed.

PROPOSITION:

**THE CIRCUIT COURT PROPERLY DENIED TAWRENCE'S
MOTION FOR POST-CONVICTION COLLATERAL
RELIEF WITHOUT A HEARING**

The circuit court denied Tawrence's motion with the following findings and conclusions:

In the heading of his indictment the charge read "INDICTMENT FOR THE OFFENSE OF: UNAUTHORIZED POSSESSION OF CONTRABAND IN A CORRECTIONAL FACILITY MCA § 47-5-193." In the body of the indictment the specifics of the charge allege that on July 16, 2008, Amos while incarcerated at the Winston-Choctaw Regional Correctional Facility was in possession of \$315.00 in United States currency in violation of § 47-5-193 MCA. Amos states that § 47-5-193 MCA does not apply to him and that he should have been charged pursuant to § 47-5-194 MCA. Section 47-5-193 prohibits law enforcement officials, jail personnel and offenders from possessing contraband in a correctional facility but does [not] specifically list currency as contraband. Section 47-5-194 specifically prohibits offenders from possessing currency. Hence, Amos claims he was charged under the wrong statute and therefore, his sentence is illegal. However, his motion fails for several reasons.

The specific charge in the body of the indictment clearly falls within the provisions of § 47-5-194 MCA, but since 194 establishes that currency is contraband § 47-5-193 MCA also applies. In any event the indictment clearly defines the factual basis of the charge so that Amos had adequate notice. That he had sufficient notice is substantiated by the plea colloquy wherein he admitted the facts contained in the indictment. In addition his petition to enter a plea of guilty stated that he wished to plead guilty to 47-5-194 MCA.

The Court finds that the code sections cited in the indictment and carried forward into the judgment were clerical errors and had no bearing on the outcome of this case. The Court finds further that the Motion for Post-Conviction Collateral Relief filed herein has no merit and should be

denied. A corrected judgment will be entered by the Court correcting the code section.

(C.P.32-33)

Out the outset, the state submits the circuit court's disposition of Amos's motion is not subject to reversal "absent a finding" that it "was clearly erroneous." *Taylor v. State*, 766 So.2d 830, 832 (Miss. App. 2000), citing *Kirksey v. State*, 728 So.2d 565, 567 (Miss.1999). Accord, *Black v. State*, 963 So.2d 47, 48 (Miss. App. 2007). The state contends the court's finding and conclusions are legally and factually sound. No basis exists for overturning the court's ruling.

First, the court correctly analyzed the statutes in issue, the pertinent portions of which are set out below:

It is unlawful for any officer or employee of the department, of any county sheriff's department, of any private correctional facility in this state in which offenders are confined or for any other person or offender to possess, furnish, attempt to furnish, or assist in furnishing to any offender confined in this state any weapon, deadly weapon, unauthorized electronic device, cell phone, or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards, chargers, etc., or contraband item. It is unlawful for any person or offender to take, attempt to take, or assist in taking any weapon, deadly weapon, unauthorized electronic device, cell phone or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards, chargers, etc., or contraband item on property belonging to the department which is occupied or used by offenders, except as authorized by law.

MISS. CODE ANN. § 47-5-193 (1972) (as amended).

(1) It is unlawful for any offender committed to the department to possess:

(a) Coin or currency on his person or in premises assigned to him or under his control ...

MISS. CODE ANN. § 47-5-194 (1972) (as amended).

Any person who violates any provision of Section 47-5-193 or 47-5-194 shall be guilty of a felony and upon conviction shall be punished by confinement in the Penitentiary for not less than three (3) years nor more than fifteen (15) years, and may be fined not more than Twenty-five Thousand Dollars (\$25,000.00), or both.

MISS. CODE ANN. § 47-5-195 (1972) (as amended).

The circuit court correctly noted that although the indictment cited § 47-5-193, the specific charge fell within the provisions of § 47-5-194. However, since § 47-5-194 establishes that currency is contraband, § 47-5-193 also was applicable. Moreover, the penalty for violation of either section is the same. § 47-5-195.

Furthermore, the court properly observed that the defendant had full notice of the factual basis of the charge. (C.P.20, 25-26) In light of this notice, even if Amos could show that the indictment cited the wrong statute, that citation alone would not render the indictment defective. Rather, the citation would be deemed "mere surplusage" and not prejudicial to the defendant. *Brown v. State*, 944 So.2d 103, 106, (Miss.2006). Accord, *Gordon v. State*, 977 So.2d 420, 429 (Miss. App. 2008).

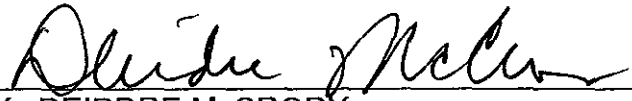
No error has been shown in the court's denial of Amos's motion for post-conviction collateral relief. The judgment entered below should be affirmed

CONCLUSION

The state respectfully submits that Amos's motion for post-conviction collateral relief was properly denied without a hearing. The judgment entered below should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

A handwritten signature in cursive script, appearing to read "Deirdre McCrory", written over a horizontal line.

BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I, Deirdre McCrory, 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 C. E. Morgan, III
Circuit Court Judge
P. O. Box 721
Kosciusko, MS 39090

Honorable Doug Evans
District Attorney
P. O. Box 1262
Grenada, MS 38902-1262

Tawrence Amos, #110096
Central Mississippi Correctional Facility (C.M.C.F.)
Post Office Box 88550
Pearl, Mississippi 39288-8550

This the 25th day of March, 2010.


DEIRDRE MCCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680