



In the Mississippi Court of Appeals

No. 2009- CP- 01943- COA

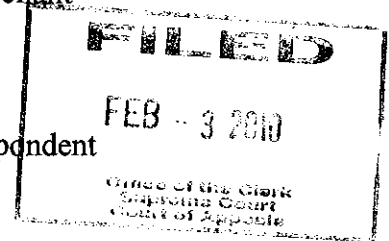
Holley Jones

Vs

State of Mississippi

Appellant

Respondent



Appellant Brief

Respectfully Submitted

By

*Holley Jones # R8361*

Mr. Holley Jones, # R8361

Appellant Pro Se

DCF 3800 County Rd. 540

Greenwood, MS 38930

## Certificate of Interested

### Persons

The undersigned Pro Se Appellant of Record Certifies that the following listed persons have an interest in the outcome of this case:

Honorable Ashley Hinds . . . . .	.Cir. Ct. Judge
	Washington Co., Miss.
Holley Jones. . . . .	.Pro Se Appellant

Submitted this 3 Day of February, 2010.

Holley Jones #R8361

Mr. Holley Jones, # R8361

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### Cases

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### Statutes

Art. 111 § 14 Miss. Const. (1890) . . . . .	
Miss. Code Ann. § 99-39-1 ct seq . . . . .	
Miss. Code Ann. § 99-39-7 . . . . .	
Miss. Code Ann. § 99-39-23 (6) . . . . .	
Miss. Rules Civil Proc 60 . . . . .	

## Statement of Issues

1. Trial Court Erred in Dismissing Petitioner's Motion for Post- Conviction Collateral Relief as a Successive Writ.

2. Petitioner's Sentence is Illegal.

## Statement of Case

Appellant filed this Motion for Post-Conviction Collateral Relief in or about the 23<sup>rd</sup> day of March, 2009, In the Circuit Court of Washington County, Mississippi, Asserting that his conditional release had been unlawfully revoked and that his sentence had expired. On the 24<sup>th</sup> day of July, 2009, Trial Court Erroneously dismissed said Motion. Upon Motion made by Appellant, Pur. Rule 60(b) Miss. R. Civ. Proc., Trial court on the 24<sup>th</sup> day of August, 2009, Abrogated its July 24, 2009, Order, Restating the Motion, then again, making an erroneously assessment. Trial Court dismissed said Petition as one barred Pur. M. C. A. § 99-39-23 (6). Trial Court denied Appellant's subsequent rule 60(b) Motion Miss. R. Civ. Proc. This Appeal follows.

## Summary of Argument

Appellant contends that trial court lacked jurisdiction to revoke his Conditional Release and that his sentence had expired. He further avers that his Motion for Post-Conviction Relief was properly before trial court and should have been disposed of on its merits. Finally, that Appellant is confined contrary to Art. 111 §14 Miss. Const. (1890).

## Argument

Appellant Holley Jones, Petitioned the Circuit Court of Washington County, Mississippi, for Collateral Relief Pur. M. C. A. § 99-39-1 et. Seq. Claiming that his Probation was revoked after its expiration and that his present sentence illegally imposed. Filing of Petition was in or about the 23<sup>rd</sup> day of March, 2009. Incidentally the Circuit Clerk's Office failed to file that Petition pursuant to the dictates of § 99-39-7. It was not until months later that the Clerk, subsequent to a letter via Appellant, correct the filing and assign the March 23<sup>rd</sup> 2009, Petition a docket number. Following this action the Circuit Court dismissed the Petition in error thinking it was a letter. See Order dated July 24th, 2009, in cause No. 2009-0145 CI.

After the Court, pursuant to a Rule 60 (b) Motion of Appellant, re-instated the Petition, it again dismissed it under the erroneous assessment that the Petition was Barred, by M. C. A. § 99-39-23 (6).

Appellant maintains and the record evidences the Trial Court error in its assessment of the Petition bring successive. Appellant filed only (1) one post- conviction motion to trial court. Under §99-39-23 (6) petitioner would have had to received a final judgement previously in order to be barred. No such judgement was given. The trial court alleges that petition no. 2009-0145 CI was a second petition. That's incorrect. It is the exact same petition filed March 23, 2009. Indeed the court was in error.

Next, Appellant auers that his sentence is illegal. Present.

On the 9<sup>th</sup> day of April, 1999, trial court entered an order sentencing to a suspended 10 years and 5 years probation. On the 5<sup>th</sup> day of April 2001, the court amended its order, Exhibit B, again suspending the 10 ten years and placing appellant in (5) five years probation crediting time all the way from April 9, 1999. Accordingly, appellants probation expired on or about April 9, 2004. See Exhibit B.

In the instant matter, trial court on the 3<sup>rd</sup> day of April 2006, approximately 2 years beyond expiration date of April 2004., revoked an expired sentence. See Exhibit E.

No allegation was ever submitted prior to the expiration of the probation of any alleged violation.

Under the law of the state, the court was without jurisdiction to impose the present sentence, *Ellis vs. State*, 748 So. 2d 130, 134 (Miss. 1999), and this court in *Kennedy v. State*, 626 So. 2d 103 ( Miss. 1993) held that “the right to be free from an illegal sentence has been found to be fundamental.

Against this backdrop, trial court erred in dismissing appellants’ post- conviction motion and in imposing a prison term, in the case subjudice.



### Conclusion

In both accounts trial court committed error. This honorable court, Appellant prays, will upon a just review, require appellant released due to this illegal sentence. Alternatively, require trial court to dispose of the matter according to established law.

Submitted By

*Holley Jones # R8361*

Mr. Holley Jones, # R8361

Appellant Pro Se

DCF 3800 County Rd. 540

Greenwood, MS 38930

CERTIFICATE OF SERVICE

This is to certify that I, the undersigned, have this day and date mailed, via United States Mail, postage pre-paid, a true and correct copy of the foregoing and attached instruments to the following:

Office of the Clerk

Kathy Gillis

Post office Box 249

Jackson, MISSISSIPPI 39205-0249

JIM HOOD ATTORNEY GENERAL

STATE OF MISSISSIPPI

POST OFFICE BOX 220

JACKSON, MISSISSIPPI 39205-0220

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This the 3 day of February, 2010.

Holley Jones  
PETITIONER

MDOC# R8361

3800 County Road 540  
Address

Greenwood, MS 38930  
Address

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, MISSISSIPPI

RECEIVED  
AND FILED

186/51

STATE OF MISSISSIPPI

APR 05 2001

VS.

CAUSE NO. CR99-00213

HOLLEY JONES

LEOLA B. JORDAN  
CIRCUIT CLERK  
BOX 1276, GREENVILLE, MS  
BY Jordan D. C.

AMENDED SENTENCING ORDER

the defendant, **HOLLEY JONES**, being present with attorney and having pled guilty during a former day of this Court to the charge of **ARMED ROBBERY**, which plea the Court then accepted as being knowingly and voluntarily given.

It is, thereupon, ORDERED by the Court that for the offense of **ARMED ROBBERY**, to which the defendant has plead **GUILTY**, that the defendant be and hereby is sentenced to a term of **ten (10) years**, in the Mississippi Department of Corrections. The execution of said sentence is suspended. And the defendant is to be received under the provisions of Section 47-7-47 of the Miss. Code of 1972 Annotated, as amended. This Court retains jurisdiction for 180 days.

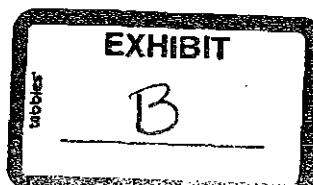
The defendant shall report to the probation officer of said county on the next business day following his release and shall be on supervised probation for a period of **five (5) years**, or until the Court shall alter, extend, terminate or direct the execution of the above sentence. Said suspension of the execution of said sentence is upon the condition that the defendant comply with all conditions required by the laws of the State of Mississippi for probation.

Defendant shall pay the following to the Clerk of this Court; court cost in the amount of \$252.50 and bond fee of \$20.00.

Execution of this order is effective as of the 9<sup>th</sup> day of April, 1999.

SO ORDERED AND ADJUDGED this the 5<sup>th</sup> day of April, 2001.

[Signature]  
CIRCUIT JUDGE



STATE OF MISSISSIPPI

WASHINGTON COUNTY, MISSISSIPPI

VS.

CAUSE NO. 99-00213

HOLLEY JONES

209-793

**ORDER OF REVOCATION OF PROBATION**

THIS CAUSE coming on to be heard, and being heard in the April term of the Circuit Court before Honorable Ashley Hines, and it appearing that Holley Jones hereinafter referred to as the aforesaid was on the 9th day of April, 1999, convicted of the offense of Armed Robbery in the Circuit Court of Washington County, Mississippi, which Court did suspend the remainder of the 10 year sentence and placed the aforesaid on probation for a period of five (5) years, in accordance with the provisions of the MISSISSIPPI CODE OF 1972 ANNOTATED Sections 47-7-33 and 47-7-35, and

IT FURTHER appearing that the aforesaid has not properly conducted himself, but has violated the following conditions of his probation in a material respect by violating the following provisions of his probation, to wit:

FAILING TO REPORT TO THE MDOC AS DIRECTED  
FAILING TO PAY SUPERVISION FEES TO THE MDOC AS DIRECTED  
FAILING TO PAY COURT-ORDERED ASSESSMENTS AS DIRECTED  
FAILING TO OBEY LAWS BY ARRESTS OF SALE OF MARIJUANA IN 11/2005 AND 3/2006.

IT IS, THEREFORE, ORDERED that the said probation of the aforesaid Defendant should be and is hereby revoked in accordance with Provision 47-7-37 of the MISSISSIPPI CODE OF 1972 ANNOTATED, and the aforesaid Holley Jones is hereby REVOKED to serve eight of the suspended years in the custody of the Mississippi Department of Corrections. The aforesaid is remanded to the custody of the Washington County Sheriff's Department to await transportation to the Mississippi Department of Corrections.

SO ORDERED AND ADJUDGED, this 3rd day of April, 2006.

**Received & Filed**

APR 03 2006

Janice C. Brown, Circuit Clerk  
By [Signature] D.C.

[Signature]  
CIRCUIT JUDGE

EXHIBIT

-E-