

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

**ARTHUR GARDNER**

**APPELLANT**

**VS.**

**NO. 2009-CP-1999-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: LA DONNA C. HOLLAND  
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**

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**STATEMENT OF ISSUE**

- I. THE TRIAL COURT PROPERLY DENIED GARDNER'S MOTION FOR POST-CONVICTION RELIEF. AS MISSISSIPPI IS NOT A PARTY TO THE INTERSTATE AGREEMENT ON DETAINERS, IT IS NOT BOUND BY ITS TERMS.

**STATEMENT OF FACTS**

Arthur Gardner pleaded guilty to one count of sale of cocaine, and under a separate indictment, to one count of possession of more than 250 grams of marijuana. Following the State's recommendation, the trial court sentenced Gardner to serve concurrent seven year terms on each charge in the custody of the Mississippi Department of Corrections. C.P. 18-20, 43-45. Per the plea agreement, three other counts of sale of cocaine were retired to the file. C.P. 28-30. As Gardner was serving a sentence in the Yazoo City Federal Correctional Complex at the time he entered his guilty pleas, the trial court ordered that his concurrent seven year sentences run consecutive to his federal sentence. C.P. at 20, 30. Gardner subsequently filed a motion for post-conviction relief which was summarily denied by the trial court.

## **SUMMARY OF ARGUMENT**

In his sole issue on appeal, Gardner claims that the trial court was without jurisdiction to accept his guilty pleas because it violated the terms of the Interstate Agreement on Detainers by shuttling him back and forth between federal prison and the circuit court before finally accepting his guilty pleas. Because the State of Mississippi is not a party to the Interstate Agreement on Detainers, it is not bound by its terms.

## ARGUMENT

### I. THE TRIAL COURT PROPERLY DENIED GARDNER'S MOTION FOR POST-CONVICTION RELIEF, AS MISSISSIPPI IS NOT A PARTY TO THE INTERSTATE AGREEMENT ON DETAINERS, AND IS, THEREFORE, NOT BOUND BY ITS TERMS.

As a preliminary matter, the State would point out that Gardner is still serving his federal sentence with a tentative release date of November 15, 2012. See Exhibit A. Therefore, he is not currently a "prisoner in custody under sentence of a court of record of the State of Mississippi." Miss. Code Ann. §99-39-5. As such, it would appear that Gardner is not yet entitled to request relief under the Mississippi Uniform Post-Conviction Relief Act. However, prior precedent establishes that when a prisoner would be subject to incarceration in this state but for his incarceration in another state or in the federal system, he is still in custody for purposes of Mississippi Code Annotated §99-39-5. *Putnam v. Epps*, 963 So.2d 1232, 1234 (Miss. Ct. App. 2007) (citing *Unruh v. Puckett*, 716 So.2d 636, 639 (¶11) (Miss. 1998)).

Gardner claims that the circuit court was without jurisdiction to accept his guilty pleas<sup>1</sup> because the State of Mississippi violated terms of the Interstate Agreement on Detainers (IAD). Specifically, Gardner claims that he was transferred back and forth between the Yazoo City Federal Correctional Complex and the Lowndes County Circuit Court several times before a final disposition of all State charges, allegedly in violation of the IAD.

Gardner's claim necessarily fails because Mississippi is not a party to the IAD, and is, therefore, not bound by its terms. *Smothers v. State*, 741 So.2d 205, 206 (Miss. 1999). See also *U.S. v. Allred*, 129 F. 3d 612, (5th Cir. 1997); *Robinson v. U.S.*, 580 F.2d 783, 784 -85 (5th Cir. 1978)

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<sup>1</sup>Although Gardner is attacking the validity of two guilty pleas in one motion for post-conviction relief in violation of Mississippi Code Annotated §99-39-9(2), the State would ask this Court to dispose of Gardner's claim as it relates to both pleas for the sake of judicial economy.

(“The language of Art. IV of the Agreement indicates that the terms of the Agreement are only operative in transactions between party states.”). Accordingly, the circuit court was not bound to reach a final disposition before transferring Gardner back to federal custody. Further, the record does not support Gardner’s claim that he was shuttled back and forth between federal prison and the circuit court before entering guilty pleas.

For the foregoing reasons, the trial court properly denied Gardner’s motion for post-conviction relief.

## CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm the trial court's denial of post-conviction relief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:

  
LA DONNA C. HOLLAND  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. [REDACTED]

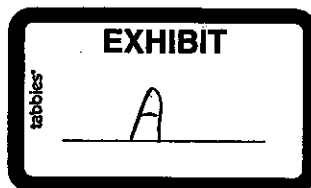
OFFICE OF THE ATTORNEY GENERAL  
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JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680



**Inmate Locator** - Locate Federal inmates from 1982 to present

Name	Register #	Age-Race-Sex	Release Date Actual or Projected	Location
1. ARTHUR GARDNER	11780-042	45-Black-M	11-15-2012	<u>YAZOO CITY MED FCI</u>

Results 1 - 1 of 1

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## CERTIFICATE OF SERVICE

I, La Donna C. Holland, 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 Lee J. Howard  
Circuit Court Judge  
Post Office Box 1344  
Starkville, MS 39760

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

Arthur Gardner, #11780-042  
FCC - Yazoo (Med.)  
Post Office Box 5888  
Yazoo City, MS 39194-5888

This the 12th day of July, 2010.

  
\_\_\_\_\_  
LA DONNA C. HOLLAND  
SPECIAL ASSISTANT ATTORNEY GENERAL

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