

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**SYLVESTER YOUNG, JR.**

**APPELLANT**

**VS.**

**NO. 2009-CP-2026**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: STEPHANIE B. WOOD  
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 ISSUES .....	1
STATEMENT OF THE FACTS .....	1
SUMMARY OF THE ARGUMENT .....	2
ARGUMENT .....	2
THE TRIAL COURT PROPERLY TREATED THE APPELLANT'S MOTION FOR WRIT OF HABEAS CORPUS AS A PETITION FOR POST-CONVICTION COLLATERAL RELIEF AND PROPERLY DISMISSED THE SAME .....	2
CONCLUSION .....	4
CERTIFICATE OF SERVICE .....	5

## TABLE OF AUTHORITIES

### STATE CASES

<i>Brown v. State</i> , 872 So.2d 96, 98 (Miss. Ct. App. 2004) .....	3
<i>Ivory v. State</i> , 999 So.2d 420, 424-425 (Miss. Ct. App. 2008) .....	2
<i>Johnson v. State</i> , 925 So.2d 86, 93 (Miss. 2006) .....	3
<i>McClinton v. State</i> , 799 So.2d 123, 126 (Miss. Ct. App. 2001) .....	3
<i>Mitchell v. State</i> , 754 So.2d 519, 521 (Miss. Ct. App. 1999) .....	3
<i>Reaves v. State</i> , 749 So.2d 295, 297 (Miss. Ct. App. 1999) .....	3

### STATE STATUTES

Mississippi Code Annotated Section 47-7-37 .....	3
Mississippi Code Annotated Section 47-7-47 .....	2

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**SYLVESTER YOUNG, JR.**

**APPELLANT**

**VS.**

**NO. 2009-CP-2026**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE ISSUES**

THE TRIAL COURT PROPERLY TREATED THE APPELLANT'S MOTION FOR WRIT OF HABEAS CORPUS AS A PETITION FOR POST-CONVICTION COLLATERAL RELIEF AND PROPERLY DISMISSED THE SAME.

**STATEMENT OF THE FACTS**

On August 13, 2009, the Appellant, Sylvester Young, filed a "Motion for Writ of Habeas Corpus" alleging that he was being held under an unlawful sentence. (Record p. 2). The motion only referenced a sentence of "one (1) day to serve 364 suspended, one (1) year post-release supervision" for possession of a firearm by a convicted felon. (Record p. 2). It did not make any other allegations nor did it specify how the sentence was illegal. (Record p. 2 - 3).

On November 10, 2009 the trial court entered an Order holding that the Appellant's motion would be treated as a post-conviction petition and denying the same. (Record p. 5 - 6). The body of the Order indicated that in 1997, the Appellant pleaded guilty to an unnamed crime and was sentenced to a term of twenty years in the custody of the Mississippi Department of Corrections with twelve years suspended, eight to serve, and five years reporting probation. (Record p. 5). The Order

further indicated that the Appellant violated his probation and that on September 13, 2007, an Agreed Order of Revocation of Probation was entered sentencing him to serve the twelve years initially suspended. (Record p. 5). The Order then indicated that also on September 13, 2007, the Appellant entered a guilty plea to another crime and was sentenced to serve a term of one year in the custody of the Mississippi Department of Corrections with three hundred sixty four days suspended, one day to serve, and one year of post-release supervision. (Record p. 5-6). The Order ultimately denied the Appellant's motion on the basis that the motion was "absolutely meritless on its face, wholly unsupported by any factual basis or other credible evidence." (Record p. 6).

The Appellant now appeals that decision raising the issue of "whether [his] earned probation after serving eight years in confinement pursuant to Mississippi Code Annotated Section 47-7-47 exempted the circuit court of Lauderdale County of any authority to alter or vacate its original judgment." (Appellant's Brief p. 3).

### **SUMMARY OF THE ARGUMENT**

The trial court properly treated the Appellant's Motion for Writ of Habeas Corpus as a Petition for Post-Conviction Collateral Relief and properly dismissed the same. It was apparent from the face of the motion that the Appellant's claim that he was serving an illegal sentence was meritless. The sentence imposed after it was determined that the Appellant violated the conditions of his probation was valid and legal under Mississippi law.

### **ARGUMENT**

#### **THE TRIAL COURT PROPERLY TREATED THE APPELLANT'S MOTION FOR WRIT OF HABEAS CORPUS AS A PETITION FOR POST-CONVICTION COLLATERAL RELIEF AND PROPERLY DISMISSED THE SAME.**

The trial court properly treated the Appellant's Motion for Writ of Habeas Corpus as a Petition of Post-Conviction Collateral Relief. *See Ivory v. State*, 999 So.2d 420, 424-425 (Miss. Ct.

App. 2008). The standard of review for Post-Conviction Collateral Relief Motions has previously been set forth by this Court as follows:

“[T]his Court reviews a denial of a petition for post-conviction relief under an abuse of discretion standard.” *Brown v. State*, 872 So.2d 96, 98(¶ 8) (Miss.Ct.App.2004) (quoting *Mitchell v. State*, 754 So.2d 519, 521(¶ 7) (Miss.Ct.App.1999)). We will not overturn a lower court's denial of post-conviction relief unless its factual findings are clearly erroneous. *McClinton v. State*, 799 So.2d 123, 126(¶ 4) (Miss.Ct.App.2001).

*McDonald v. State*, 16 So.3d 83, 84 (Miss. Ct. App. 2009). In the case at hand, both the record and Mississippi law clearly indicate that the trial court did not abuse its discretion in denying the Appellant's motion.

The Appellant's motion simply argued that he was serving an illegal sentence without further explanation. On appeal, the Appellant argues that the trial court improperly dismissed his motion which argued that he was illegally sentenced after it was determined that he violated his probation. Mississippi Code Annotated §47-7-37, states in pertinent part as follows with regard to the trial court's powers regarding probation violations:

... The probation and parole officer shall at once notify the court of the arrest and detention of the probationer and shall submit a report in writing showing in what manner the probationer has violated the conditions of probation. Thereupon, or upon an arrest by warrant as herein provided, the court, in termtime 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 added*). Further, Mississippi case law clearly states that “[t]rial courts retain the power to revoke a suspended sentence and impose the original terms.” *McDonald v. State*, 16 So.3d 83, 84-85 (Miss. Ct. App. 2009) (citing *Johnson v. State*, 925 So.2d 86, 93 (Miss.2006)). *See also Reaves v. State*, 749 So.2d 295, 297 (Miss. Ct. App. 1999). Accordingly, the Appellant's sentence was not illegal. As such, the trial court properly dismissed his motion.

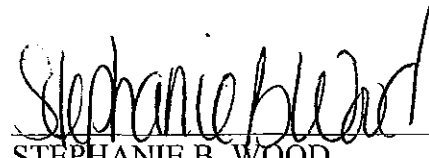
## CONCLUSION

For the foregoing reasons, the State of Mississippi respectfully requests that this Honorable Court affirm the trial court's dismissal of the Appellant's "Motion for Writ of Habeas Corpus."

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



STEPHANIE B. WOOD

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

**CERTIFICATE OF SERVICE**

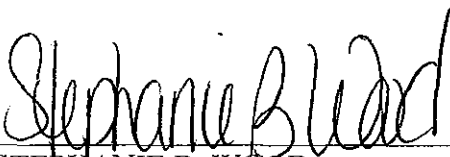
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Lester F. Williamson, Jr.  
Circuit Court Judge  
P. O. Box 86  
Meridian, MS 39302

Honorable E. J. (Bilbo) Mitchell  
District Attorney  
P. O. Box 5177  
Meridian, MS 39302-5127

Sylvester Young, Jr., #R2999  
South Mississippi Correctional Institution (S.M.C.I.)  
Post Office Box 1419  
Leakesville, Mississippi 39451

This the 15th day of April, 2010.

  
STEPHANIE B. WOOD  
SPECIAL ASSISTANT ATTORNEY GENERAL

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