IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CECIL JUNIOR PRUITT — APPELLANT

VS. — NO. 2010-CA-0230-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

Petitioner pled guilty on February 7, 2005 to Sale of Cocaine with 1,500 feet of a Church in violation of Miss. Code Ann. § 41-29-139. A sentence of 20 years with 19 years, three-hundred sixty-four days suspended, one day to serve, followed by three years post-release supervision. On October 10, 2007 a Petition for Revocation was filed based upon petitioner being arrested and indicted for sale of cocaine that took place in October of 2007. (Findings of trial court, cp. 95). (Order revoking, c.p. 7).

Petitioner then filed a motion – in the nature of a post-conviction petition – challenging his probation revocation. The trial court denied relief with extensive findings of fact and conclusions of law. Petitioner, aided by counsel, the greatly amended by filing

a motion for reconsideration with additional exhibits, affidavits, photos, drawings and supplemented arguments, challenging the revocation hearing.

The trial court again, denied relief with extensive findings of fact and conclusions of law. (C.p. 192-199).

The notice of appeal was timely filed.

STATEMENT OF FACTS

Petitioner got an amazing sentencing deal by essentially serving one day on a twenty year sentence. All he had to do was stay legal for three years. Sadly, and as oft happens, petitioner did what he was familiar with and, again, sold drugs within a short distance of a church.

The State chose to use the evidence of that arrest to revoke his suspended sentence and have the remainder of 19 years and 364 days imposed.

SUMMARY OF THE ARGUMENT

I., II., III., IV.,V., VI., VII., VIII., IX.

Defendant was not entitled to an evidentiary hearing on the basis of his motion for 'reconsideration' of the trial courts order denying relief on the 'first' motion for post-conviction relief.

> There was ample evidence that Pruitt was involved in the sale of drugs sufficient to revoke the suspended sentence. Just because petitioner supplemented his petition on a motion to reconsider did not mean the trial court had to have an evidentiary hearing.

X.

Confrontation clause implications of Melendez-Diaz are not implicated in a civil revocation hearing.

> Revocation proceedings are civil in nature and do not implicate the Sixth Amendment right of confrontation as delineated in *Melendez-Diaz*

ARGUMENT

I., II., III., IV.,V., VI., VII., VIII., IX.
DEFENDANT WAS NOT ENTITLED TO AN EVIDENTIARY HEARING ON THE BASIS OF HIS MOTION FOR 'RECONSIDERATION' OF THE TRIAL COURTS ORDER DENYING RELIEF ON THE 'FIRST' MOTION FOR POST-CONVICTION RELIEF.

Pruitt sought to have the trial court reconsider the **revocation of probation** and sentence imposed by filing a Petition of Writ of Habeas Corpus and/or Motion to Reinstate Post-Release Supervision. (C.p. 2-9).

The trial reiterated in the findings of fact and conclusions of law the petition was an petition challenging the Order Revoking Post-Release Supervision in casue No. 552-04. (Order denying relief, c.p. 95, 96 & 97). A copy of the original order is found in the record at page 7.

Not satisfied and aided by counsel an additional bundle of affidavits, drawings, photos, maps and evidence was appended and included in a motion to reconsider.

Again, the trial court reiterated the proceedings with significant findings of fact and conclusions of law in denying relief. (C.p. 192-199).

Now, petitioner argues he was wrongly denied an evidentiary hearing.

> ¶ 17. [...] "If the motion is not dismissed at a previous state of the proceeding, the judge, after the answer is filed and discovery, if any, is completed, shall, upon a review of the record, determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the motion as justice shall require." Miss.Code Ann. § 99-39-19(1) (Rev.2007).

Barnes v. State, 2010 WL 2490747 (Miss.App. 2010)(decided June 22, 2010).

Petitioner and counsel confuse proof that is legally sufficient to revoke a suspended sentence and proof sufficient to convict of a crime. The trial judge had proof of defendant's arrest and indictment for a crime committed within the period of supervised probation.

> ¶ 4. A conviction of these traffic violations was not necessary to revoke Edwards' probation. Younger v. State, 749 So.2d 219, 222 (¶ 12) (Miss.Ct.App.1999). ***It need only be shown that the defendant "more likely than not" violated the terms of the supervised release agreement.*** Id., quoting Berdin v. State, 648 So.2d 73, 78 (Miss.1994). We find no error with the lower court's ruling in this matter.

Edwards v. State, 834 So.2d 49 (Miss.App. 2002)(emphasis added).

The trial court had evidence of Pruit violating the terms of his supervised release. The trial court need not find guilt beyond a reasonable doubt – but that Pruitt "more likely than not" violated the terms of his supervised release agreement.

> ¶11. A trial court enjoys wide discretion in determining whether to grant an evidentiary hearing. Hebert v. State, 864 So.2d 1041, 1045(11) (Miss.Ct.App.2004). A post-conviction claim for relief is properly dismissed without the benefit of an evidentiary hearing where it is manifestly without merit. Holland v. State, 956 So.2d 322, 326(7) (Miss.Ct.App.2007) (citations omitted). This means that dismissal is appropriate where it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Culbert v. State, 800 So.2d 546, 550(9) (Miss.Ct.App.2001) (citing Turner v. State, 590 So.2d 871, 874 (Miss.1991)).

Williams v. State, 4 So.3d 388, 392 (Miss.App. 2009).

It would appear from the record and the order of the court the trial judge considered the record and in the interests of justice denied relief without an evidentiary hearing.

There was ample evidence in the record to support the trial court ruling that Pruitt denied the terms of his post-release supervision agreement.

Even if petitioner Pruitt went to trial on the charges and was found not guilty such would not make his sentence revocation illegal.

> ¶ 5. Peacock contends his sentence was illegally revoked because he was ultimately found not guilty of the charges upon which his suspended sentence was revoked. ***A conviction is not necessary for revocation of probation.*** Berdin v. State, 648 So.2d 73, 79 (Miss.1994). A mere showing that a defendant has more likely than not violated the terms of his release is sufficient. Id. (citing Wallace v. State, 607 So.2d 1184, 1190 (Miss.1992)). Peacock fails to specify that he did not violate the terms and conditions of his suspended sentence. This issue is without merit.

Every issue raised as claimed error one through eight had to do with the court not granting an evidentiary hearing for reconsideration that his suspended sentence had been revoked. There was no need as the transcript provides ample evidence that Pruitt violated the terms of his sentencing agreement.

> The record is replete that Pruitt had plenty of notice as to the hearing...

> ¶ 7. Thus, we find no indication that the minimum requirements for a revocation hearing were not met in this case. Penton filed a written affidavit alleging that Agent had violated the terms of his probation. A revocation hearing was held where the charges were read to Agent and he was given an opportunity to respond to the charges. Although Agent claims that he could have produced witnesses which would have attested to the fact that he attempted to get help for his drug addiction, the fact remains that he failed to do so. Further, as the circuit court aptly noted in its denial of Agent's motion for post-conviction relief, the only evidence that Agent claims he would have presented was merely regarding his rehabilitation efforts, not to refute his violation of the terms of his PRS. Accordingly, this issue is without merit.

Agent v. State, 30 So.3d 370, 373 (Miss.App. 2010).

Pruitt was arrested in October, as the transcript indicates there was a convoluted arrangements made of which Pruitt was obviously aware. (C.p. 28-30). Counsel was clearly aware of the nature of the proceedings and ready to proceed.

Every claim one through nine is based upon the trial court not granting an evidentiary hearing on the motion to reconsider the trial court's first denial of relief appealing the order to revoke suspended sentence. (C.p. 7).

From reading the transcript of the revocation proceeding the trial court found defendant was involved in a drug sale. (C.p. 90). That's all it takes, no need for proof beyond a reasonable doubt. Affidavits, photos, maps, claims of innocence attached to a motion to reconsider do not necessarily mean an evidentiary hearing is necessary. The trial court was not persuaded and was correct in denying relief the second time.

Consequently there being no abuse of discretion no relief should be granted on any of the above allegations of error based upon the trial courts failure to grant an evidentiary hearing on the motion to reconsider.

X.

CONFRONTATION CLAUSE IMPLICATIONS OF MELENDEZ-DIAZ ARE NOT IMPLICATED IN A CIVIL REVOCATION HEARING.

In Mississippi revocation of probation, suspended sentence and the like are considered civil in nature and do not implicate the full panoply of Constitutional rights. *Younger v. State*, 749 So.2d 219, 221 (Miss.App. 1999).

> The Sixth Amendment only applies to "criminal prosecutions" and a revocation of supervised release is not a part of such a prosecution. Id. "Revocation deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observance of special [ ] restrictions," and thus the full protection provided to a criminal defendant under the Confrontation Clause does not apply to revocation cases. United States v. Ray, 530 F.3d 666, 668 (8th Cir.2008) (quoting Morrissey, 408 U.S. at 480). For this reason, Crawford, and by extension, Melendez-Diaz, are not implicated in a supervised release revocation proceeding. Ray, 530 F.3d at 668; Martin, 382 F.3d at 844, n. 4; see also United States v. Hall, 419 F.3d 980, 985-86 (9th Cir.2005); United States v. Aspinall, 389 F.3d 332, 342 (2d Cir.2004).
>
> U.S. v. Left Hand Bull, 2009 WL 2030544, 1 (D.S.D. 2009).

It is the succinct position of the State *Melendez-Diaz* is not implicated in the civil revocation hearing for revocation of a suspended sentence.

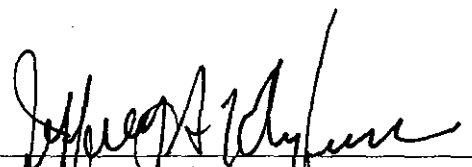
Consequently, no relief should be granted on this last claim of error.

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the trial court denial of post-conviction relief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

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CERTIFICATE OF SERVICE

I, Jeffrey A. Klingfuss, 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:

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This the 24th day of Seeptember, 2010.

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