IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CECIL JUNIOR PRUITT — APPELLANT

VS. — NUMBER 2010-CA-00230-COA

STATE OF MISSISSIPPI — APPELLEE

APPEAL
FROM
THE CIRCUIT COURT OF LAUDERDALE COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLANT

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Table of Contents

Table of Authorities	**ii**
I. In General.	**1**
II. Issues Not Couched in Terms of "Evidentiary Hearing."	**1**
III. Right to Confrontation,	**2**
CONCLUSION	
Certificate of Service	
Certificate of Mailing	

Table of Authorties

Commonwealth v. Melendez-Diaz, 129 S. Ct. 2527, 2009 WL 1789468(2009)	**2**
Crawford v. Washington, 541 U. S. 36(2004)	**2**
Grayson v. State, 648 So.2d 1129 (Miss.1994)	**3**
Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)	**3**
Riely v. State, 562 So.2d 1206(Miss.,1990)	**3**
Younger v. State, 749 So. 2d 219, 222(Miss. App. 1999)	**2**

REPLY BRIEF OF APPELLANT

I. In General.

The State has couched all the ten Issues, except that one raising a lack of confrontation by reason of the failure of the State to introduce the cocaine and live testimony to support same, as requests for evidentiary hearing. However Issues Seven, Eight and Nine, question the fundamental structural nature of the proceedings below, i.e. lack of notice of revocation hearing, unfair tribunal and failure to hold a preliminary revocation hearing.

Therefore, Pruitt will not re-count the voluminous materials presented to the trial judge which overwhelmingly justify an evidentiary hearing based upon substantial question of whether there ever was any cocaine sale by Pruitt. While the State has distinguished the burden of proof of beyond a reasonable doubt at trial versus a "more likely than not" at a revocation hearing, Pruitt urges the Court not to be distracted from the details presented that question substantially whether there ever as a cocaine sale by the State's apparent attempt to play upon the distinctions between the burdens of proof.

II. Issues Not Couched in Terms of "Evidentiary Hearing."

Pruitt would respectfully submits that the State has not made adequate response to the following denominated Issues.

ISSUE SEVEN

WHETHER A PRISONER IS DENIED A FAIR HEARING, FUNDAMENTAL FAIRNESS AND DUE PROCESS OF LAW IN A REVOCATION HEARING WHERE THE JUDGE RULES THERE IS **NO RIGHT TO DISCOVERY OF THE EVIDENCE** AGAINST THE PRISONER. NO RIGHT TO 4TH AMENDMENT PROTECTIONS AND ACTIVELY PARTICIPATES IN FAVORABLY RESURRECTING THE CI WITNESS, UNDER THE CIRCUMSTANCES THAT THE JUDGE HAS PARTICIPATED IN A DECISION TO FOREGO TRIAL ON THE PRIMARY CHARGE AND ONLY HOLD THE REVOCATION HEARING AND THIS DECISION WAS NOT COMMUNICATED TO THE PRISONER.

ISSUE EIGHT

WHETHER A PRISONER IS DENIED DUE PROCESS OF LAW AND FUNDAMENTAL FAIRNESS IN A REVOCATION HEARING ON HIS POST RELEASE SUPERVISION WHERE THE TRIAL JUDGE, IN HIS RULING DENYING THE PETITION WHERE IT CONSIDERS THE ARGUMENT IN PRISONER'S PETITION THAT HE HAD **NO NOTICE OF THE REVOCATION** HEARING BUT CAME TO COURT EXPECTING ONLY TO BE TRIED ON THE NEW CHARGE, REVEALS THAT HE AND THE STATE HAD DECIDED NOT TO HOLD THE TRIAL ON THE NEW CHARGE, BUT ONLY HOLD THE REVOCATION HEARING, WHICH REVELATION DOES NOT INDICATE AT ALL THAT THIS WAS COMMUNICATED TO THE PRISONER OR HIS ATTORNEY AND THUS THE TRIAL JUDGE **COULD NOT BE FAIR AT THE REVOCATION HEARING BECAUSE HE BECAME VESTED** IN SECURING AN OUTCOME DISFAVOR ABLE TO THE PRISONER.

ISSUE NINE

WHETHER A PRISONER IS DENIED DUE PROCESS OF LAW AND FUNDAMENTAL FAIRNESS AND NOTICE OF AND OPPORTUNITY TO PREPARE WHEN THE REVOCATION HEARING IS HELD WITHOUT THERE FIRST BEING A **PRELIMINARY REVOCATION HEARING OR WAIVER** AND THERE IS NO NOTICE OF THE REVOCATION HEARING DATE

Pruitt refers the Court to its arguments and authorities already presented under the Propositions corresponding to these Issues and again requests that the judgment of revocation be reversed and rendered and he be restored to post release supervision.

III. Right to Confrontation,

In response to Pruitt's argument that the use of the lab reports to prove the Cocaine violated his right to confrontation as recently decided by the United States Supreme Court in **Commonwealth v. Melendez-Diaz,** 129 S. Ct. 2527, 2009 WL 1789468(2009), reasoning that it was "testimonial" under **Crawford v. Washington,** 541 U. S. 36(2004) , the State in its Brief, p. 9, cites **Younger**

v. State, 749 So. 2d 219, 222(Miss. App. 1999) for a proposition that a revocation hearing is civil in nature . That is not a proper interpretation of **Younger** . The **Younger** case then cited **Grayson v. State**, 648 So.2d 1129, 1133 (Miss.1994) , recounting the minimum due process requirements as follows:

> (a) written notice of the claimed violations of [probation or] parole; (b) disclosure to the [probationer or] parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) **the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation);** (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking [probation or] parole.

The lab report was a mere piece of paper, something submitted in discovery to the Defendant in his request made in the new charge. Why not have presented one with the Certificate of Authenticity. But most importantly, why not the actual cocaine. If the primary charge was to have been tried, then certainly the forensic analyst should have been right there available to testify. The failure to have a witness to authenticate the drug and without the drug itself, such wholly failed to guarantee Pruitt his right to confront, as guaranteed in **Grayson** above. ,

Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), as "generally paraphrased" in **Morrissey**, 408 U.S. at 485-87, 92 S.Ct. at 2602-03, 33 L.Ed.2d at 496-97 as described in **Riely v. State**, 562 So.2d 1206, 1220(Miss.,1990) requires the following:

> Specifically, Morrissey requires the following- vis-á-vis the preliminary hearing: (1) "that some minimal inquiry [or preliminary hearing] be conducted at or reasonably near the place of the alleged ... violation or arrest and that as promptly as convenient after arrest while information is fresh and sources are available"; (2) that "the determination that reasonable ground exists for revocation ... should be made by someone not directly involved in the case" and that the decision maker "need not be a judicial officer"; (3) that the defendant "should be given notice that the hearing will take place and that its purpose is to determine whether there is probable cause to believe that he has committed a ... violation"; (4) that "[t]he notice should state what ... violations have been alleged"; (5) that "[a]t the hearing the [defendant]

may appear and speak in his own behalf [and] he may bring letters, documents, or individuals who can give relevant information to the hearing officer"; (6) that "[o]n request of the [defendant], persons who have given adverse information on which ... revocation is to be based are to be made available for questioning in his presence"; FN1 (7) that "the hearing officer shall have the duty of making a summary, or digest, of what occurs at the hearing in terms of the responses of the [defendant] or evidence given in support of the [defendant's] position"; (8) that "[b]ased on the information before him, the hearing officer should determine whether there is probable cause to hold the [defendant] for the final decision" regarding revocation; (9) that the decision maker "should state the reasons for his determination and indicate the evidence he relied on ... but it should be remembered that this is not a final determination calling for formal findings of fact and conclusions of law."

The State apparently is asking that the right to confrontation as heretofore guaranteed by the decision of this Court be excused in this case and such request should be soundly rejected. It was a simple matter to have had the cocaine presented into evidence and identified as cocaine and Pruitt be given the opportunity to cross examine concerning same. Without any cocaine, there was no proof of a violation of probation.

CONCLUSION

Cecil Junior Pruitt respectfully submits the Court should conclude that the order revoking his post release supervision and imposing the suspended sentence should be reversed and rendered. In the alternative he urges the Court to reverse and order a full evidentiary hearing on all matters raised in his PCCR.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I, the undersigned James A. Williams, counsel for the Appellant, in the above styled and numbered cause, do hereby certify that a true and correct copy of the above and foregoing Reply Brief of Appellant has been mailed by United States Mail, postage prepaid to the following:

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Done this the 10 day of November, 2010.

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CERTIFICATE OF MAILING

I, the undersigned, Attorney for Appellant hereby certify, that I have actually mailed this date the Original and three copies of the Reply Brief of Appellant.

This the 10 day of November, 2010.

James A. Williams

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Attorney at Law