

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

**DERRICK STOKES**

**APPELLANT**

**VS.**

**NO. 2010-CP-0908**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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

**DERRICK STOKES**

**APPELLANT**

**vs.**

**CAUSE No. 2010-CP-00908-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI**

**STATEMENT OF THE CASE**

This is an appeal against an Order of the Circuit Court of Madison County, Mississippi in which relief upon the prisoner's motion in post - conviction relief was denied.

**STATEMENT OF THE CASE**

The prisoner has not troubled himself to present as a record in this case anything more than his motion in post -conviction relief, order denying same, and a few miscellaneous filings of one kind or another unrelated to his claims in post conviction relief. The prisoner did not seek to include in this record his petition to enter a guilty a plea or the plea colloquy itself, in which he entered guilty pleas to exploitation of a child and gratification of lust. ( R. Vol. 1, pg. 69). Consequently, our account of the facts of the instant cause will be limited to those set out in the "Opinion and Order Denying Post - Conviction Relief" ( R. Vol. 1, pp. 55 - 60) and those set out in the prisoner's motion

in post - conviction relief, to the extent that the statements in that motion may be thought true or useful.

The prisoner was charged in a multi - count indictment with a number of felony offenses. He entered pleas of guilty, on 12 May 2008, to two of those counts, those counts being exploitation of a child and gratification of lust. The prisoner was convicted on his pleas and was sentenced accordingly. ( R. Vol. 1, pg. 55).

Following the usual practice of the penitents of the Mississippi Department of Corrections, the prisoner had an epiphany of some sort and decided that he wished he had not admitted his guilt for these felonies. So he filed a motion in post - conviction relief, in which he alleged that was legally blind on one eye and could hardly see out of the other, was deaf to some extent, that he told his attorney of these impairments but that the attorney failed to inform the circuit court of them, that he had been beaten by law enforcement officers and that his confession was coerced, that he was not guilty of the crimes to which he entered pleas of guilty, that he was on narcotics of one kind or another when he entered his pleas, newly discovered evidence, destroyed evidence, claims of various due process violations, a desire to invoke trial by jury, and so forth and so on. There was, of course, the usual ineffective assistance of counsel claim amidst all this. ( R. Vol. 1, pp. 3 - 6). There then followed a lengthy, tedious account of the prisoner's personal relationships with certain people and how it came to be that he was charged with exploitation of a child and gratification of lust. ( R. Vol. 1, pp. 18 - 27).

The only affidavits attached in support of the prisoner's claims were his own. ( R. Vol. 1, pp. 29 - 38).

The circuit court, by order filed 5 March 2010, denied relief on the prisoner's motion without an evidentiary hearing. The court denied relief after having reviewed the prisoner's 'Petition to Enter

a Guilty Plea” and the transcript of the plea colloquy, which, the court found, clearly showed that the prisoner was informed of his various rights, understood them, and understood the consequences of his pleas. The court further found that the prisoner understood that his sentences would be served “day for day.” The court found that the prisoner’s claim that his pleas were involuntary were clearly belied by the petition and the plea colloquy.

The prisoner also expressed satisfaction with his attorney and stated that he had no complaint about the attorney. The court further found that the record before it demonstrated that the attorney provided competent and reasonable assistance to the prisoner.

As for the claim that he had been beaten into confessing his guilt, the court found that the prisoner specifically and explicitly denied having been coerced or subjected to some other sort of duress. ( R. Vol. 1, pp. 55 - 60).

The prisoner then filed his notice of appeal on 4 June 2010. ( R. Vol. 1, pg. 68).

### **STATEMENT OF ISSUES**

- 1. IS THE INSTANT APPEAL PROPERLY BEFORE THE COURT?**
- 2. DID THE CIRCUIT COURT ERR IN DENYING RELIEF ON THE PRISONER’S MOTION IN POST - CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING?**

### **SUMMARY OF ARGUMENT**

- 1. IS THE INSTANT APPEAL PROPERLY BEFORE THE COURT?**
- 2. THAT THE CIRCUIT COURT DID NOT ERR IN DENYING RELIEF ON THE PRISONER’S MOTION IN POST - CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING**

### **ARGUMENT**

- 1. IS THE INSTANT APPEAL PROPERLY BEFORE THE COURT?**

The circuit court denied relief on the prisoner’s motion by order filed 5 March 2010. The prisoner filed his notice of appeal on 4 or 14 June 2010. Clearly, the prisoner did not comply with

Rule 4 MRAP.

The prisoner claims that he mailed a notice of appeal and other documents to the circuit court clerk on 30 March 2010. (Brief for the prisoner, at v). However, the record does not reflect such a mailing or filing. The record does indicate that the circuit clerk did send mail to the prisoner on 9 March 2010. ( R. Vol. 1, pg. 61). Thereafter, the prisoner filed an application to proceed *in forma pauperis* on 24 May 2010, and which was sworn to by the prisoner on 19 May 2010. Likewise, the prisoner filed on 24 May 2010 a financial disclosure, which was dated 30 March 2010 but apparently not given to prison officials for completion until mid-April 2010. ( R. Vol. 1, pg. 63). By letter to the circuit clerk dated 19 May 2010, the prisoner alleged that he was enclosing an application to proceed *in forma pauperis*, and further alleged that he had previously mailed a notice of appeal on 30 March 2010. ( R. Vol. 1, pg. 66). There is no filing of record of a notice of appeal until June, 2010. It appears that this appeal is not properly before the Court on account of the prisoner's failure to file a timely notice of appeal. It is this Court's duty to ensure that it is possessed of jurisdiction to entertain a case before it. *Melton v. Lawrence County Sheriff's Department*, 20 So.3rd 762 (Miss. Ct. App. 2009).

**2. THAT THE CIRCUIT COURT DID NOT ERR IN DENYING RELIEF ON THE PRISONER'S MOTION IN POST - CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING**

The prisoner claims here that the circuit court erred in failing to appoint an interpreter for the prisoner prior to conducting the plea colloquy. It is said that the prisoner informed the court of the need for one prior to the colloquy, and it is said that the prisoner was blind or nearly so and was hearing impaired. The prisoner thus claims that he did not intelligently enter his plea. The prisoner does not renew other claims made in the circuit court. They are thus abandoned and need not be considered here. *Pinter v. State*, 795 So.2d 587, 589 (Miss. Ct. App. 2001)

Other than the prisoner's say-so, there is nothing whatever to support the prisoner's claim. There is nothing to show that a request for an interpreter was made, nothing to show that one was needed, assuming the request had been made, and there is nothing to substantiate the claims of blindness and deafness. The prisoner's mere allegation was not sufficient to require an evidentiary hearing.

In terms of the instant appeal, it is the prisoner's duty to support his claims. *Lyons v. State*, 881 So.2d 373 (Miss. Ct. App. 2004). The Appellant presents nothing to show an abuse of discretion on the part of the circuit court. The record is wholly insufficient to support his claims. The Appellant's mere allegation is wholly insufficient.

Beyond these considerations, the court, in its order denying relief on the prisoner's motion, did quote certain parts of the plea colloquy. The prisoner's responses show no impairment. The responses show rather that the prisoner understood what was asked of him, and they also show that the prisoner had no complaints about his attorney. While the petition to enter a guilty plea is not a part of the record, the circuit court alluded to it in its order denying relief on the prisoner's motion, noting that the prisoner had been advised and informed in that pleading of his various rights.

A circuit court may deny relief on a motion in post - conviction relief without an evidentiary hearing where it plainly appears from the face of the motion and the prior proceedings in the case that the movant is not entitled to relief. Miss. Code Ann. Section 99-39-11(2) (Supp. 2009). This Court will not disturb the denial of such relief absent a showing that the circuit court was clearly in error. *Simmons v. State*, 784 So.2d 985, 987 (Miss. Ct. App. 2001). Here, there was nothing presented to the circuit court to give color to the prisoner's claims. The court, on the other hand, did have good cause in the form of the prisoner's responses in the course of the plea colloquy, at least, to reject the prisoner's essential claim – that being that the prisoner did not know what he was doing



because he could not understand what was being asked of him on account of deafness. The court committed no error in refusing to grant an evidentiary hearing and in denying relief on the prisoner's motion.

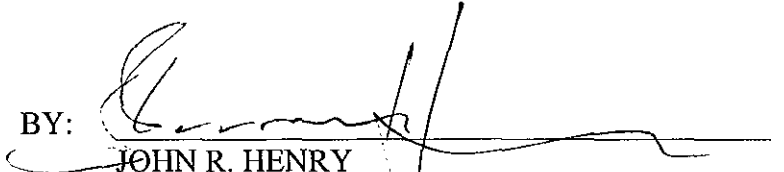
### CONCLUSION

The order denying relief on the prisoner's motion in post - conviction relief should be affirmed.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

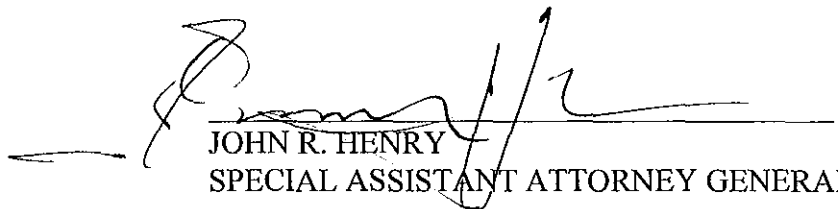
I, John R. Henry, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Samac S. Richardson  
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This the 22nd day of November, 2010.

  
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