IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2011-CP-00351-COA

ALLAN ARTHUR ARANYOS **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

DATE OF JUDGMENT:	02/14/2011
TRIAL JUDGE:	HON. ROBERT P. CHAMBERLIN
COURT FROM WHICH APPEALED:	DESOTO COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	ALLAN ARTHUR ARANYOS (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JEFFREY A. KLINGFUSS
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
TRIAL COURT DISPOSITION:	MOTION FOR POST-CONVICTION RELIEF DENIED
DISPOSITION:	AFFIRMED - 01/29/2013
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE LEE, C.J., BARNES AND MAXWELL, JJ.

BARNES, J., FOR THE COURT:

¶1. Allan Arthur Aranyos was indicted on one count of embezzlement. At his plea hearing on September 24, 2009, the State amended the indictment to reflect that Aranyos was a habitual offender under Mississippi Code Annotated section 99-19-81 (Rev. 2007). Aranyos pleaded guilty and was sentenced to ten years, with five years to be served in the custody of the Mississippi Department of Corrections (MDOC) and five years of probation.

¶2. Aranyos filed a motion for post-conviction relief, claiming he was erroneously sentenced as a habitual offender. The circuit court denied the motion, and finding no error

on appeal, we affirm.

STANDARD OF REVIEW

¶3. A circuit court's denial of a motion for post-conviction relief will not be disturbed on appeal unless its factual findings are "clearly erroneous." *Mann v. State*, 73 So. 3d 564, 565 (¶4) (Miss. Ct. App. 2011) (citing *Bradley v. State*, 919 So. 2d 1062, 1063 (¶6) (Miss. Ct. App. 2005)). "However, where questions of law are raised, the applicable standard of review is de novo." *Id*.

DISCUSSION

I. Whether Aranyos's prior conviction and sentence of probation support his classification as a habitual offender.

¶4. Aranyos argues that one of the prior convictions used by the State to support his habitual-offender status does not meet the statutory requirements of section 99-19-81, which states:

> Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and *who shall have been sentenced to separate terms of one (1) year or more in any state and/or federal penal institution*, whether in this state or elsewhere, shall be sentenced to the maximum term of imprisonment prescribed for such felony, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

(Emphasis added). The amended indictment listed two prior convictions to support Aranyos's classification as a habitual offender. The first was an Ohio conviction for bank robbery, for which Aranyos received a sentence of thirty-seven months of imprisonment and two years of supervised release. The second conviction, from Pennsylvania, was for Count One, burglary, for which Aranyos received five years of probation, to run consecutively to

the sentence for Count Two, theft by unlawful taking or disposition. For Count Two, Aranyos received "an indefinite term, the minimum of which shall be eleven and one[-] half (11½) calendar months, and the maximum twenty[-]three (23) calender months[.]" Count Two was not specifically listed in the amended indictment as a prior conviction, although the "Order of Parole" and plea agreement for Count Two were included in the circuit court's record. The basis of Aranyos's argument on appeal is that since his sentence for the Pennsylvania burglary conviction (Count One) was merely for five years of probation, he was never sentenced to a term in a penal institution for this particular conviction, and the prior conviction does not meet the requirements of section 99-19-81. After reviewing the relevant authority, we find there was sufficient evidence to support Aranyos's classification as a habitual offender.

¶5. In the appellee's brief, the State contends that Aranyos admitted to his prior convictions at the plea hearing and summarily states that Aranyos's allegations regarding his Pennsylvania burglary conviction "are unsupported[.]" The State is correct that a defendant's admission to prior convictions is sufficient to meet the necessary burden of proof.

> Generally, to sentence a defendant as a habitual offender, the State must prove the prior offenses by competent evidence, and the defendant must be given a reasonable opportunity to challenge the prosecution's proof. However, where the defendant enters a plea of guilty *and admits those facts which establish his habitual status*, the State has met its burden of proof.

Wilkins v. State, 57 So. 3d 19, 26 (¶23) (Miss. Ct. App. 2010) (emphasis added and internal citations omitted). The following conversation took place at the hearing:

> Q. Do you admit you've been convicted of these two underlying convictions which establish you as a habitual offender?

A. Yes, Your Honor.

. . . .

Q. Do you also admit that you've been convicted of these underlying felonies which establish you as a habitual offender.

A. Yes, Your Honor.

Thus, Aranyos did admit that he had been convicted of the two underlying convictions listed in the indictment.

¶6. However, we cannot state with certainty that Aranyos's acknowledgment of his prior conviction and sentence of probation in the indictment constitutes an admission of "those facts which establish his habitual status." *See id*. As the State did not substantively address Aranyos's argument in its brief, we requested supplemental briefing on this issue.[1]

¶7. In its supplemental brief, the State argues that actual incarceration for a prior conviction is not required in order to be sentenced as a habitual offender. The State is correct that Mississippi precedent has consistently held:

> Service of [a] sentence through actual incarceration is not mandatory when considering habitual[-]offender status under [section] 99-19-81. Where a defendant has been twice previously judged guilty of distinct felonies on which sentences of one year or more have been pronounced, irrespective of subsequent probation or suspension, statutory intent is satisfied regarding habitual[-]offender statutes.

Green v. State, 802 So. 2d 181, 183-84 (¶14) (Miss. Ct. App. 2001) (citing *Jackson v. State*,

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[1] As Aranyos is acting pro se, we also requested and were provided with an amicus curiae supplemental brief from the Criminal Appeals Clinic at the University of Mississippi School of Law. The Criminal Appeals Clinic is headed by Professor Phillip Broadhead, who authored the brief. The amicus brief limited its argument to the fact that Aranyos admitted the prior convictions.

381 So. 2d 1040, 1042 (Miss. 1980)). Considering a defendant's prior convictions originating in Alabama, the Mississippi Supreme Court, in *Jackson*, 381 So. 2d at 1042, stated:

> We are of the opinion [section 99-19-81] is intended to cure the evil of recidivism. Enhanced punishment relates to the conduct underlying the previous convictions. Adjudication of guilt and consequent pronouncements of sentences merely accord those convictions finality. *Subsequent* suspension of the sentences or probation is a matter of grace only, arising from the hope that the prospects of rehabilitation of the guilty warrant leniency. Clearly that hope is defeated when the beneficiary of the indulgence perpetrates further felonies. The statute is suited precisely to this problem.

(Emphasis added). However, the supreme court noted that the Alabama circuit court, in the prior convictions, had sentenced the defendant to imprisonment for three years; the defendant was the one who applied for and was granted probation, with his sentences suspended.

¶8. In *Anderson v. State*, 766 So. 2d 133, 135 (¶6) (Miss. Ct. App. 2000), the defendant argued that his prior conviction from Kentucky "only carried a probated sentence instead of a sentence to a penal institution." We found no error in the circuit court's sentencing of the defendant as a habitual offender under section 99-19-81, even though he had only received five years of probation on one of his prior convictions. *Anderson*, 766 So. 2d at 136 (¶9). "[I]t was Anderson's good fortune that his sentence was probated for five years subject to his continuing to meet certain conditions, therefore relieving Anderson of the burden of incarceration." *Id.*; *see also Williams v. State*, 24 So. 3d 360, 364-65 (¶11) (Miss. Ct. App. 2009) ("This statute merely requires that the defendant be sentenced to one year or more for each crime. It does not require that the individual be incarcerated under his imposed sentences to obtain habitual[-]offender status." (citing *Davis v. State*, 5 So. 3d 435, 441 (¶14)

(Miss. Ct. App. 2008))).

¶9. More recently, we addressed this issue again in *Middleton v. State*, 49 So. 3d 161 (Miss. Ct. App. 2010). Kurt Middleton claimed that classifying him as a habitual offender was error since "he was only sentenced to prison for one of the two crimes used to determine his habitual-offender status." *Id*. at 164 (¶11). The sentence for his second conviction, which was from Wisconsin, was "withheld," and Middleton was placed on probation for five years "in the custody and control of the Wisconsin Department of Health and Social Services." *Id*. Since there was a third prior conviction that met the statutory requirements of section 99-19-81, we declined to address Middleton's argument as to "whether the second sentencing report was sufficient to convict [him] as a habitual offender," finding it "unclear." *Id*. at 165 (¶11). However, we will now clarify this issue, as it applies to the present case.

¶10. Aranyos's prior burglary conviction and sentence of five years of probation originated in Pennsylvania. Under 42 Pennsylvania Consolidated Statutes Annotated section 9721(a)(1), a court may impose an "order of probation" as an sentencing alternative. *See Com. v. Childs*, 664 A.2d 994, 996 (Pa. Super. Ct. 1995) (Under section 9721, "the trial court may select from the alternatives of probation, determination of guilty without a penalty, partial or total confinement, fines or intermediate punishment."). "Probation is a separate sentence permitted by the Sentencing Code under certain circumstances." *Com. v. Deshong*, 850 A.2d 712, 716 (¶15) (Pa. Super. Ct. 2004). "Probation is a suspended sentence of incarceration served upon such terms and conditions as imposed by the sentencing court." *Fleegle v. Pa. Bd. of Prob. & Parole*, 532 A.2d 898, 899 (Pa. Commw. Ct. 1987) (citation omitted).

¶11. Moreover, "[n]o section of the Sentencing Code contemplates imprisonment as an element of a probationary sentence; probation is in fact a less restrictive alternative to imprisonment directed at rehabilitating the defendant without recourse to confinement during the probationary period." *Com. v. Basinger*, 982 A.2d 121, 127 (¶13) (Pa. Super. Ct. 2009) (citing *Com. v. Crosby*, 568 A.2d 233, 235 (Pa. Super. Ct. 1990)); *see also Klouda v. Sixth Judicial Dist. Dep't. of Cor. Servs.*, 642 N.W.2d 255, 262 (Iowa 2002) ("Probation 'relates to judicial action taken before the prison door is closed.'" (quoting *State v. Wright,* 202 N.W.2d 72, 76 (Iowa 1972))). Even Black's Law Dictionary defines probation as a "court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community *instead of sending the criminal to jail or prison*." Black's Law Dictionary 1240 (8th ed. 2004) (emphasis added). Accordingly, we conclude that Aranyos's prior Pennsylvania burglary conviction and sentence of five years of probation was not a sentence to a term in a penal institution and does not satisfy the requirements of section 99-19-81.

¶12. However, as in *Middleton*, we find there was evidence of a third conviction that satisfies the requirements of section 99-19-81. The amended indictment stated that the sentence for Aranyos's Pennsylvania burglary conviction (Count One) was to run consecutively with his sentence for Count Two, which was "an indefinite term, the minimum of which shall be eleven and one half (11½) calendar months, and the maximum twenty[-]three (23) calender months[.]" *See Basinger*, 982 A.2d at 127 (¶13) (holding that "probation may be employed in conjunction with confinement as a 'tail' designed to assist the defendant in reintegrating with society following a term of imprisonment, or may be imposed where mitigating factors make prison unnecessary"). Although the Count Two conviction was not

listed on the amended indictment except by reference, the sentencing order for the conviction was included in the circuit court's record to support Aranyos's habitual-offender status. Thus, although the Count Two conviction was not mentioned at the plea hearing, we find that it was clearly in the record before the court. *See Heidelberg v. State*, 45 So. 3d 730, 733 (¶14) (Miss. Ct. App. 2010) ("Sentencing orders are competent evidence of previous convictions." (quoting *Harper v. State,* 887 So. 2d 817, 828 (¶49) (Miss. Ct. App. 2004))); *Frazier v. State*, 907 So. 2d 985, 991-92 (¶¶16-18) (Miss. Ct. App. 2005) (certified pen-packs proving prior convictions sufficient to establish "habitual enhancement").

¶13. Aranyos contends that his sentence for Count Two also "does not qualify under the statute" since it was for a minimum of eleven and one-half months. We find no merit to this argument. "[U]nder Pennsylvania law, the sentence imposed for a criminal offense is the maximum term. The minimum term merely sets the date prior to which a prisoner may not be paroled." *Krantz v. Pa. Bd. of Prob. & Parole*, 483 A.2d 1044, 1047 (Pa. Commw. Ct. 1984) (citing *Gundy v. Pa. Bd. of Prob. & Parole*, 478 A.2d 139, 141 (Pa. Commw. Ct. 1984)). "[A] prisoner has no absolute right to be released from prison on parole upon the expiration of the prisoner's minimum term." *Id*. (citation omitted); *see also State v. Luna*, 319 N.W.2d 737, 740 (Neb. 1982) (holding that an indeterminate sentence is sufficient to satisfy a minimum term requirement for habitual-offender status, as the defendant might have been made to serve the entire term). *But see State v. Perkins*, 363 A.2d 141, 143 (Conn. 1975) (A "sentence . . . for an indefinite term was not a sentence for 'an imposed term of more than one year'" within the meaning of Connecticut's "persistent felony offender" statute.) While the minimum term for Aranyos's sentence for Count Two was slightly less

than one year, the maximum term was twenty-three months. Therefore, we find his conviction and sentence for Count Two satisfies the prior-conviction requirements in section 99-19-81.

¶14. Accordingly, we find that Aranyos's classification as a habitual-offender is supported by the record.

II. Whether defense counsel's failure to identify the deficiency in the prior conviction constituted ineffective assistance.

¶15. Aranyos also claims that his counsel's performance was ineffective, citing counsel's failure to recognize that his prior Pennsylvania conviction was insufficient to support his status as a habitual offender. In order for a defendant to prove ineffective assistance of counsel, he must establish that: "(1) his counsel's performance was deficient, and (2) this deficiency prejudiced his defense." *Dunlap v. State*, 70 So. 3d 1140, 1143 (¶13) (Miss. Ct. App. 2011) (citing *Strickland v. Washington,* 466 U.S. 668, 687 (1984)). To overcome the strong presumption "that counsel's performance falls within the range of reasonable professional assistance," a defendant "must 'show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Id.* (quoting *Strickland*, 466 U.S. at 694).

¶16. Aranyos's only claim is that his counsel did not inform him that his prior conviction was not sufficient to classify him as a habitual offender. As we have found no error in the circuit court's sentencing, this issue is without merit. Aranyos has failed to prove any deficiency on the part of his counsel that resulted in prejudice.

¶17. Accordingly, we find no error in the circuit court's denial of Aranyos's motion for

post-conviction relief.

¶18. **THE JUDGMENT OF THE CIRCUIT COURT OF DESOTO COUNTY DENYING THE MOTION FOR POST-CONVICTION RELIEF IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO DESOTO COUNTY.**

LEE, C.J., IRVING, P.J., ISHEE, CARLTON, MAXWELL AND FAIR, JJ., CONCUR. ROBERTS, J., CONCURS IN PART AND IN THE RESULT WITH SEPARATE WRITTEN OPINION, JOINED BY GRIFFIS, P.J.; FAIR, J., JOINS IN PART. JAMES, J., NOT PARTICIPATING.

ROBERTS, J., CONCURRING IN PART AND IN THE RESULT:

¶19. I concur with the majority's resolution of Aranyos's claim that he received ineffective assistance of counsel. Furthermore, I concur with the majority's result regarding Aranyos's claim that he was illegally sentenced as a habitual offender. I write separately to express my reasoning regarding why the circuit court correctly dismissed Aranyos's illegal-sentence claim.

¶20. At issue is whether Aranyos was illegally sentenced as a habitual offender under Mississippi Code Annotated section 99-19-81 (Rev. 2007). During Christmas 2006, Aranyos was the manager of a Circle K convenience store in Southhaven, Mississippi. Aranyos embezzled approximately $33,000 and attempted to evade capture. However, he was later arrested and indicted for one count of embezzlement. The prosecution later moved to amend the indictment to charge Aranyos as a habitual offender under section 99-19-81.

¶21. The prosecution presented documentary evidence that in 1983, Aranyos had been convicted of burglary in Pennsylvania related to Aranyos having broken into a Wendy's restaurant and stolen $5,500 from a floor safe. Attached to the prosecution's motion to amend the indictment were Pennsylvania court documents that indicated that Aranyos had

also pled guilty to what was characterized as a third-class felony of "theft by unlawful taking." For Aranyos's burglary conviction, the Pennsylvania court had suspended his sentence and placed him on probation for five years, to run consecutively to his sentence for "theft by unlawful taking." And for "theft by unlawful taking," the Pennsylvania court sentenced Aranyos to imprisonment for a term between eleven and one-half months and twenty-three months. The record does not indicate whether Aranyos actually served at least one year for his conviction for "theft by unlawful taking."

¶22. Additionally, the prosecution demonstrated that Aranyos had a 1991 Ohio conviction for bank robbery in Ohio. Aranyos's sentence for bank robbery is much clearer than his earlier sentence for "theft by unlawful taking." For bank robbery, Aranyos was sentenced to thirty-seven to forty-six months in federal prison.

¶23. On September 24, 2009, Aranyos went before the DeSoto County Circuit Court to plead guilty to embezzlement. When specifically questioned by the circuit judge, neither Aranyos nor his counsel objected to the prosecution's request to amend the indictment to charge Aranyos as a habitual offender. Likewise, Aranyos did not object to the documents that supported that amendment.

¶24. It is clear that Aranyos pled guilty to embezzlement based on a plea recommendation or plea bargain from the prosecution. The following exchanges appear in the record:

> Q. By submitting this petition, you're asking to enter a plea of guilty to the only count in the indictment, as amended, that being embezzlement as a [s]ection 99-19-81 habitual offender; is that correct?
>
> A. (By the Defendant Aranyos) Yes, Your Honor.
>
> . . . .

Q. Do [you] understand a negotiated plea means the District Attorney, your attorney[,] and you have reached an agreement as to a recommendation to be made to this Court on your sentence? Do you understand that?

A. Yes, sir.

. . . .

BY THE COURT: It looks like on Mr. Aranyos the recommendation is five to serve, five post-release, fines, costs, and assessments. Is that the State's understanding?

BY [THE PROSECUTION]: Yes, Your Honor. . . .

Q. I note everything else to be - - I'll note, first of all, your sentence will be ten years in the Mississippi Department of Corrections as a [s]ection 99-19-81 habitual offender to be served five years [of] incarceration, five years [of] post-release supervision, reporting required, $1,000 fine and court costs, $665 transportation fee, $32,653.74 to Circle K as restitution. All of that will be payable per the attachment that the DA is going to submit that she has just read into the record. Credit for 85 days time [for] served. All terms and conditions of the Written Sentencing Order, [p]ost-[r]elease [s]upervision being incorporated into this sentence by reference.

BY THE COURT: Anything further from the State?

BY [THE PROSECUTION]: No, Your Honor.

BY THE COURT: Anything further, [defense counsel]?

BY [DEFENSE COUNSEL]: No, Your Honor.

. . . .

Q. Mr. Aranyos, do you need me to explain any of this to you?

A. (By the Defendant Aranyos) No, Your Honor.

Q. Do you understand if you violate this order, you'll be brought back before this court in front of a judge, not a jury, and if it's deemed you have violated, you can be sentenced to the remaining five years in

prison?

A. (By the Defendant Aranyos) Yes, Your Honor.

Q. Do you understand that whatever you're sentenced to it will be as a 99-19-81 habitual offender?

A. (By the Defendant Aranyos) Yes, Your Honor.

Q. Do you have any questions about any of that?

A. (By the Defendant Aranyos) No, Your Honor.

BY THE COURT: That will be the order of the Court.

¶25. The circuit judge clearly informed Aranyos that he was sentenced as a habitual offender to ten years in the custody of the MDOC, with five years to be served followed by five years of post-release supervision (PRS) under Mississippi Code Annotated section 47-7-34 (Rev. 2011). After discharge from his initial five-year sentence, if Aranyos violated the conditions of his PRS, the circuit court could revoke Aranyos's suspended sentence and sentence him to the remaining five years as a habitual offender.

¶26. Dissatisfied with his plea agreement and his sentence as a habitual offender, one year after Aranyos pled guilty, he filed his motion for post-conviction relief (PCR). Aranyos claimed that he did not plead guilty intelligently, knowingly, and voluntarily. Aranyos also claimed that his sentence was illegal. Finally, Aranyos claimed he had received ineffective assistance of counsel. The circuit court denied Aranyos's PCR motion. On appeal, Aranyos reiterates the claims he raised in his PCR motion.

¶27. If Aranyos had claimed that he received an illegal sentence based on the concept that the circuit judge lacked authority to suspend part of Aranyos's ten-year sentence as a habitual

offender and place him on PRS, I would have agreed with him. The Mississippi Legislature has mandated that a convicted felon who qualifies for enhanced sentencing as a habitual offender under section 99-19-81 "shall be sentenced to the maximum term of imprisonment prescribed for such felony, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation."[2] When the prosecution offers an accused felon a plea bargain that includes a sentence that is not authorized by law, and a circuit court sentences the accused consistent with the plea bargain, it is appropriate to allow him to withdraw that guilty plea and remand his case to the trial court's docket for trial or another appropriate disposition. *Lanier v. State*, 635 So. 2d 813, 816-17 (Miss. 1994) (overruled on other grounds by *Twillie v. State*, 892 So. 2d 187, 190 (¶11) (Miss. 2004)).

¶28. Not surprisingly, Aranyos is careful to claim that his sentence is illegal only in that there was inadequate proof that his prior convictions met the parameters of section 99-19-81. Aranyos seeks resentencing to the same sentence, less the habitual-offender status. To be specific, Aranyos claims:

> Petitioner does not challenge the length of sentence, nor the terms of probation attached; only the sentencing as [a] habitual offender under [section] 99-19-81.

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[2] I recognize that the record includes an order entered sua sponte by the circuit judge almost seventeen months after Aranyos pled guilty. Within that order, the circuit judge attempted to perform a constitutional proportionality analysis to justify Aranyos's sentence. I have been unable to discover any authority that would allow a circuit court to consider such factors as the strength or weakness of the prosecution's case, a desire to fashion a sentence that would allow potential financial payment to the victim, or the prosecution and the defendant's agreement on a proposed sentence as valid considerations for an Eighth Amendment claim that a mandatory sentence is "cruel and unusual." To the contrary, a ten-year mandatory sentence for a fifty-three-year-old defendant who has been convicted of embezzling approximately $33,000, with prior convictions for bank robbery, burglary, and the equivalent of grand larceny, clearly cannot be classified as constitutionally disproportionate.

> Since the [S]tate also violated the statute by imposing a term of probation on a[] habitual sentence, [P]etitioner could also ask that the habitual portion be vacated on that reason as well, as the imposition of a term of suspension, reduced [sentence,] or . . . probation is not allowed under [section] 99-19-81. This could also be cited as grounds for an illegal sentence. But Petitioner would not insult this Court by knowing that he received a favorable sentence, and then try to claim that as a ground for vacating his sentence. Petitioner, again, is only asking for removal of the "habitual[-]offender" status due to the procedural errors and the use of convictions that clearly did not meet the statutory requirements under [section] 99-19-81. Petitioner feels the five . . . years to serve[] and five . . . years of probation [are] more than fair for a charge of embezzlement.

And in his request for relief, Aranyos stated:

> Wherefore[,] for premises considered, the Petitioner respectfully requests that th[is] Court . . . vacate the sentence complained of insofar as the Court purports to impose said sentence "as a[] habitual offender," as the sentence complained of is illegal. . . . Petitioner is not arguing the substance of the crime of which he was charged, but only the habitual portion of the sentence. Petitioner asks that this Honorable Court will vacate the habitual portion of this sentence and re[]sentence as other than a[] habitual offender. Petitioner argues that his five[-]year sentence and his five years of probation [are] a reasonable sentence for embezzlement.

Clearly, Aranyos has not claimed that his sentence is illegal based on the circuit court's failure to sentence him to the maximum permissible term for embezzlement or the circuit court's partial suspension of his sentence and its imposition of a term of post-release supervision.

¶29. After careful review of the record, I conclude that Aranyos's status as a habitual offender under section 99-19-81 is hopelessly ambiguous. If Aranyos served one year of his Pennsylvania sentences, he may well have been eligible for a life sentence under Mississippi Code Annotated section 99-19-83 (Rev. 2007). In any event, it was Aranyos's burden to prove by a preponderance or greater weight of the credible evidence that his sentence was

in violation of Mississippi law or that his guilty plea was involuntary. Miss. Code Ann. § 99-39-23(7) (Supp. 2012). Yet, as the majority properly quotes from the plea colloquy, while he was under oath, Aranyos twice swore that his prior convictions qualified him for enhanced sentencing as a habitual offender under section 99-19-81. "Great weight is given to statements made under oath and in open court during sentencing." *Gable v. State*, 748 So. 2d 703, 706 (¶11) (Miss. 1999). Under such circumstances, I would not allow Aranyos to attempt to repudiate the very words from his own mouth. Accordingly, I concur with the majority's decision to affirm the circuit court's denial of Aranyos's PCR motion.

GRIFFIS, P.J., JOINS THIS OPINION. FAIR, J., JOINS THIS OPINION IN PART.