

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 2000-CA-00148-COA**

WILLIAM DUSTIN REEDER

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

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| DATE OF TRIAL COURT JUDGMENT: | 12/22/1999 |
| TRIAL JUDGE: | HON. GEORGE B. READY |
| COURT FROM WHICH APPEALED: | DESOTO COUNTY CIRCUIT COURT |
| ATTORNEY FOR APPELLANT: | J. LANCE BUTLER |
| ATTORNEY FOR APPELLEE: | OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART |
| NATURE OF THE CASE: | CIVIL - POST-CONVICTION RELIEF |
| TRIAL COURT DISPOSITION: | MOTION TO VACATE AND SET ASIDE THE IMPOSED SENTENCE DISMISSED |
| DISPOSITION: | AFFIRMED: 03/26/2002 |
| MOTION FOR REHEARING FILED: | 5/15/2002; denied 8/13/2002 |
| CERTIORARI FILED: | 9/12/2002 |
| MANDATE ISSUED: | |

EN BANC.

IRVING, J., FOR THE COURT:

¶1. William Dustin Reeder pleaded guilty in the Circuit Court of DeSoto County to arson. He was sentenced to ten years in the Mississippi Department of Corrections (MDOC) and placed in the Regimented Inmate Discipline Program (RID). The sentencing order further provided that if Reeder successfully completed the RID program he would be placed on supervised release for the remainder of his sentence. The order also provided that Reeder would be under house arrest for the first full year following his release from the RID program. Reeder successfully completed the RID program and was placed under house arrest with the Justice Network, Inc. program, a privately run program. Shortly after being placed in the house arrest program run by the Justice Network, Inc., Reeder found himself unable to pay the fee associated with the program. As a result he was transferred to a state-run program at Fairland in Clarksdale. While a resident of Fairland, Reeder assisted a female in bringing cocaine into his room. Reeder, the female, and other residents staying at Fairland under the house arrest program smoked the cocaine.

¶2. As a result of the cocaine incident, Reeder was removed from the house arrest program and placed in the general prison population. Following his removal from the house arrest program, Reeder filed a post-conviction relief motion in the Circuit Court of DeSoto County contending that the trial court lacked jurisdiction to revoke his participation in the house arrest program.

¶3. The trial court, without conducting an evidentiary hearing, dismissed Reeder's PCR motion pursuant to Mississippi Code Annotated Section 99-39-11(2) (Rev. 2000). This code section permits the dismissal of a PCR motion "[i]f it plainly appears from the face of the motion, any annexed exhibits . . . that the movant is not entitled to any relief."

¶4. Reeder contends in this appeal, as he did in the court below, that the trial court lacked jurisdiction to revoke his participation in the house arrest program and that the revocation constitutes a violation of his due process rights. We agree that the trial court lacked jurisdiction, but we disagree with Reeder's assertion that the trial court revoked his participation in the house arrest program. Quite the contrary, we find that Reeder was removed from the house arrest program by the MDOC. Since we do not find that the trial court revoked his participation in the house arrest program, we find no need to address Reeder's claim that the revocation constitutes a violation of his due process rights.⁽¹⁾ Consequently, we affirm the trial court's dismissal of Reeder's PCR motion.

FACTS

¶5. The record reveals the following facts taken from the MDOC's Rule Violation Report. On January 17, 1999, Fred Held, field officer with the MDOC, learned from Henry Atkins, house arrest program manager, that Reeder had been kicked out of the house arrest program for using illegal drugs. Officer Held called Fairland and spoke with Director David Cook. Cook informed Officer Held that Reeder brought drugs into the facility and had tested positive for drugs. Officer Held then arrested Reeder at Reeder's residence and transported him to the DeSoto County Sheriff's Office.

¶6. The violation report further shows that Reeder was charged with violating MDOC Rule 36-6-20 and that he appeared before the MDOC's disciplinary committee, waived his right to a hearing on the violation and admitted his guilt. The committee was composed of Lt. Annette Mack, chairperson, Sgt. Connie Brown, Sgt. Tony Lewis, and CM. Jonathan Grant, members. The committee determined that the punishment should be "reduction in custody from "U" custody to "C" custody pending initial class psychological evaluation." The violation report bears a stamp of approval of the recommended punishment.⁽²⁾

¶7. The record also contains a copy of the ISP Exit Form⁽³⁾ for Reeder's case. This completed form shows that Reeder was terminated from the house arrest program on January 17, 1999, and that the termination was the result of a revocation. The form bears the signature of Fred Held, the MDOC's ISP field officer and is dated January 17, 1999.

¶8. Additional facts as necessary will be provided during the discussion of the issue.

ANALYSIS AND DISCUSSION OF THE ISSUE

¶9. We will first address the State's contention that this appeal is time barred. The State bases its contention on the fact that the order denying post-conviction relief was filed on December 22, 1999, and Reeder's notice of appeal is stamped filed January 24, 2000. The State is correct in its assertion regarding the filed

date of the notice of appeal. However, we note from the record that Reeder sent a letter to the clerk of the circuit court purporting to transmit the notice of appeal and an affidavit for leave to proceed *in forma pauperis*. This letter is dated January 14, 2000, and was filed January 24, but the affidavit which it purports to transmit was filed January 21, 2000. The affidavit and notice of appeal are both dated January 19, 2000. On these facts, we are unable to conclude with certainty that an error may not have occurred in the filing process. Therefore, we decline to accept the State's invitation to dismiss the appeal as untimely.

¶10. Reeder's argument regarding the trial court's lack of jurisdiction is based on one document, the MDOC's ISP form order, which was gratuitously signed by the circuit judge. However, that fact is not as significant as the contents of the order itself. The order provides as follows:

This Defendant having been sentenced to the custody of the Mississippi Department of Corrections on 4-11-97 to serve 10 years for the crime of Arson, subject to the provision of Section 47-5-1001 through 47-5-1015, Mississippi Code of 1972, as amended, being the Intensive Supervision Program, and the court having maintained jurisdiction of this matter pursuant to Section 47-7-47 and *the Court having been advised by the Mississippi Department of Corrections that the Defendant has failed to complete the Intensive Supervision Program and the Court hereby approves the Mississippi Department of Corrections' placement of the Defendant in whatever facility deemed appropriate and the Defendant is to complete the original sentence of the Court.*

(emphasis added).

¶11. The documents previously discussed make it sufficiently clear that all the circuit court did was approve the actions taken by MDOC. For certain, such approval was not necessary. However, we cannot accept the notion that the trial judge's execution of an unnecessary order, which says nothing about revocation of Reeder's sentence, somehow transforms the order into a revocation-of-sentence order, despite the limiting language of the order which makes plain that the order only "approves the Mississippi Department of Corrections' placement of the Defendant in whatever facility deemed appropriate." The trial judge's approval of the MDOC's decision to terminate Reeder's participation in the house arrest program is not synonymous with the judge's revoking Reeder's participation in the program.

¶12. This Court finds that Reeder's participation in the house arrest program was revoked by the MDOC, the entity charged with such responsibility by Mississippi Code Annotated Section 47-5-1003(3) (Supp. 2001). This section reads:

To protect and to ensure the safety of the state's citizens, any offender who violates an order or condition of the intensive supervision program shall be arrested by the correctional field officer and placed in the actual custody of the Department of Corrections. Such offender is under the full and complete jurisdiction of the department and subject to removal from the program by the classification hearing officer.

Miss. Code Ann. § 47-5-1003(3) (Rev. 2001).

¶13. As previously observed, Reeder was arrested by Fred Held, field officer with the MDOC. According to the rule violation report, as we have already pointed out, Reeder appeared before the MDOC's disciplinary committee, waived his right in writing to a hearing, and admitted that he was guilty as charged.

Also, as previously noted, the disciplinary committee recommended that Reeder, as punishment for his violation of the ISP agreement, be transferred from "U" custody to "C" custody. This recommendation, according to the record, was approved by the classification committee.

¶14. The dissent contends that "[t]he circuit court revoked Reeder's house arrest based upon a violation of the terms of his parole pursuant to Miss. Code Ann. § 47-7-47 (Rev. 2000)." Dissenting Opinion at (¶25). Two points should be mentioned here. First, a reading of the order does not support this contention. Second, the ISP exit form which was executed on January 17, 1999, two days before the judge's order in question, states that Reeder entered the house arrest program on July 31, 1998, and that he was terminated from the program on January 17, 1999. Revocation was the reason given for the termination. Also, as already observed, this form was signed not by the trial judge but by Fred Held, the MDOC's ISP field officer. The hearing held before the disciplinary committee on February 2, 1999, was merely perfunctory, in accordance with the rules and regulations of the MDOC. It was perfunctory because Reeder had already, on January 17, 1999, admitted that he was guilty of the charges. He again admitted his guilt during the disciplinary hearing.

¶15. The dissent also contends that the order entered by the circuit court is void for lack of jurisdiction. We agree, but we disagree with the dissent that it was this order that resulted in Reeder's removal from the house arrest program. At that disciplinary hearing, Reeder admitted that he was guilty of the charges, and since he admitted that he was guilty, there is no basis for further complaint. Neither the signing of the gratuitous order by the trial judge nor the trial judge's belated written recognition that he lacked jurisdiction to sign the gratuitous order changes this fact. We have no qualms with the dissent's contention that the January 19, 1999 order of the circuit court, approving the revocation of Reeder's house arrest, should be set aside as void, and we so hold. However, our setting aside the judge's January 19, 1999 order does not affect the validity of the trial judge's order dismissing Reeder's PCR motion. Our reasons for reaching this conclusion is what we next discuss.

¶16. Reeder's *pro se* PCR motion in the trial court was styled "Motion to Vacate and Set Aside Intensive Supervision Sentence, Pursuant to MCA Section § 99-39-5(1)(e), 1972." In his motion, Reeder listed the issue as being "whether the court erred in ordering that the Petitioner serve the original sentence of ten (10) years in the penitentiary." As to the facts, supporting his claim and being within his personal knowledge, Reeder stated the following:

The Petitioner successfully completed the Regimeted [sic] Inmate discipline Program, and upon his release reported to the DeSoto County probation office and was told he needed to report to the Justice Network to be placed on house arrest.

After being unable to maintain the \$75.00 per week payment under the Justice Network, the petitioner was brought before the DeSoto County Circuit Court for a Revocation Hearing [sic] and switched to the MDOC house arrest program.

¶17. Reeder is obviously confused as to when he was ordered to be placed in the house arrest program. A review of Reeder's original sentencing order reveals that at the time of sentencing on April 11, 1997, the trial judge ordered Reeder placed in the house arrest program following "the first full year after [his] release from the RID program."

¶18. The probation revocation hearing of which Reeder complained in his PCR motion concerned a hearing

which was held July 31, 1998, following Reeder's release from the RID Program and his unsuccessful matriculation in the Justice Network, Inc., program for failure to pay the expenses associated with that program. The revocation hearing was held because Reeder failed to supply his probation officer with a telephone number as requested by the officer. This hearing was indeed held before the circuit judge. However, in an order dated July 31, 1998, the circuit judge did not disturb Reeder's placement in the house arrest program. The judge ordered that Reeder would be "released from custody upon verification that all conditions in the House Arrest Program have been met." This "custody" referred to Reeder's interim arrest between completion of the RID program and enrollment in the house arrest program, not the arrest for the cocaine incident which did not occur until January 1999. This is borne out by the transcript of that hearing:

THE COURT: I'm fixing to tell you something, Mr. Reeder: This is what I'm going to do: You're going to sit in the jail until the house arrest gets all set up. The first time you mess up, you're going to do five years in the penitentiary. I'm telling you now. We don't even need to have a hearing. Okay?

¶19. In his appellate brief, Reeder contends that he was re-sentenced on July 31, 1998. He further contends that:

[He] should be placed back in the ISP program so that he can be evaluated and be allowed to serve the remainder of his one year ISP sentence. In the alternative we are asking this Court [to] honor the July 31, 1998 re-sentencing order wherein it states that maximum William Dustin Reeder can receive is five years for a violation while on ISP status.

CONCLUSION

¶20. The trial judge properly dismissed Reeder's PCR motion. We reach this conclusion because it was the MDOC and not the trial judge that revoked Reeder's participation in the house arrest program. The gratuitous order entered by the trial judge on January 19, 1999, though done without jurisdiction, changes nothing and is void as a matter of law. Reeder's assertion that the trial judge amended his original sentencing order on July 31, 1998, wherein Reeder's sentence was changed from ten years to five years is totally without merit. The order speaks for itself, and nothing in the order purports to change the original sentence. The trial judge's comment at the July 31, 1998 revocation hearing regarding Reeder's serving five years in the penitentiary the first time he messed up was not incorporated in the order that was signed by the judge; therefore, it did not become a part of the order of the court. As already observed, Reeder admitted his guilt in connection with the January 17, 1999 cocaine incident, leaving nothing for further adjudication or review. Consequently, the order of the trial judge dismissing Reeder's PCR motion is affirmed.

¶21. THE JUDGMENT OF THE CIRCUIT COURT OF DESOTO COUNTY DISMISSING APPELLANT'S POST-CONVICTION RELIEF MOTION IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO DESOTO COUNTY.

McMILLIN, C.J., KING, P.J., BRIDGES, THOMAS, LEE, MYERS, AND BRANTLEY, JJ., CONCUR. CHANDLER, J. DISSENTS WITH SEPARATE OPINION JOINED BY SOUTHWICK, P.J.

CHANDLER, J., DISSENTING:

¶22. The majority finds sufficient evidence in the record to conclude that William Reeder's house arrest was properly revoked by the Mississippi Department of Corrections (MDOC.) While I disagree that the house

arrest was revoked in accordance with statutory law, this is not the issue before this Court. On appeal, Reeder asserts that the trial court lacked the authority to issue an order revoking his house arrest. I agree and respectfully dissent with the majority's opinion.

¶23. The controlling statute in this case is Miss. Code Ann. § 47-5-1003(3) (Rev. 2000) which reads in pertinent part:

To protect and to ensure the safety of the state's citizens, any offender who violates an order or condition of the intensive supervision program shall be arrested by the correctional field officer and placed in the actual custody of the Department of Corrections. Such offender is under the full and complete jurisdiction of the department and subject to removal from the program by the classification hearing officer.

¶24. The seminal case on this issue is *Babbitt v. State*, 755 So. 2d 406 (Miss. 2000). The Mississippi Supreme Court in that case held that the circuit court had improperly removed the petitioner, Babbitt, from house arrest. *Id.* at (¶14). Specifically, the court stated, "section 47-5-1003 (3) confers 'full and complete' jurisdiction on the classification committee in matters relating to violations of the ISP." *Id.* at (¶11) (citing Miss. Code Ann. § 47-5-1003(3) (Rev. 2000)).

¶25. The circuit court revoked Reeder's house arrest based upon a violation of the terms of his parole pursuant to Miss. Code Ann. § 47-7-47 (Rev. 2000). That statute does not apply under the present circumstances. *Babbitt*, 755 So. 2d at (¶10). *Babbitt* noted that Chapter 7 of Title 47 governs probation and parole; however, the terms of Reeder's ISP are governed by Chapter 5 of Title 47. *Id.* As stated above, this statute grants complete jurisdiction to the classification committee; Reeder's ISP was not subject to the parole statute.

¶26. This issue was addressed in *Smith v. State*, 766 So. 2d 50 (Miss. Ct. App. 2000). In that case, Smith was arrested because of a violation of his house arrest rules. *Id.* at (¶3). On November 9, 1998, the Forrest County Circuit Court entered an order as follows:

This Defendant having been sentenced to the custody of the MDOC on § 12-2-97 to serve 10 (ten) years for the crime of manslaughter, subject to the provision of § 47-5-1001 through § 47-5-1015, Mississippi Code of 1972, as amended, being the Intensive Supervision Program, and the Court having maintained jurisdiction of this matter pursuant to § 47-7-47 and *the Court having been advised by the MDOC that the Defendant has failed to complete the Intensive Supervision Program and the Court hereby approves the MDOC's placement of the Defendant in whatever facility deemed appropriate and the Defendant is to complete the original sentence of the Court.*

Smith, 766 So. 2d at (¶12) (emphasis added). Except for the manslaughter charge and applicable statute, the language of the above order mirrors that of the order entered by the Circuit Court of DeSoto County revoking Reeder's house arrest.

¶27. On appeal, Smith argued that the November 9, 1998 order was void based on lack of jurisdiction. *Id.* at (¶7). This Court agreed with Smith and found that the circuit court was without the jurisdiction to revoke Smith's house arrest. *Id.* at (¶13). The Court noted that Section 47-7-47 relied upon by the circuit court only relates to the court's jurisdiction in matters of probation and earned probation, not house arrest. *Id.*

¶28. As stated above, the January 19, 1999 order entered by the DeSoto County Circuit Court revoking Reeder's house arrest is void for lack of jurisdiction. Such an order, even though it purports to be an approval of MDOC action, is, by statute, without authority to remove the defendant from house arrest and place him in a MDOC facility. *See Miller v. State*, 804 So. 2d 1062 (¶12) (Miss. Ct. App. 2001).

¶29. For the foregoing reasons, I would hold that the circuit court's order was ineffective and without jurisdiction; therefore it should be reversed and set aside.

SOUTHWICK, P.J., JOINS THIS SEPARATE WRITTEN OPINION.

1. In his appellate brief, Reeder's due process argument centers on allegations of lack of due process concerning what he perceives as a court-ordered revocation of his house arrest, but in his memorandum brief in the court below, he made allegations of due process violations by MDOC officials.
2. The approval stamp is dated February 3, 1999, and is signed by Officer Jordan. Jordan's official position is not specified in the record. However, it is noteworthy that he was not a member of the disciplinary committee. Given the fact that his stamp of approval appears one day after the disciplinary committee hearing, it is perhaps safe to assume that he may be the classification hearing officer. We also note that the violation report also contains the signature of the reviewing warden designee, dated February 4, 1999.
3. ISP is an acronym for Intensive Supervision Program which is commonly referred to as the house arrest program.