IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

MATTHEW REARDON — **PETITIONER**

vs. — **CAUSE NO.** L24-388

STATE OF MISSISSIPPI — **RESPONDENT**

MOTION FOR POST-CONVICTION RELIEF

COMES NOW the petitioner, Matthew Reardon, pursuant to Miss. Code Ann. § 99-39-1, *et seq.*, respectfully requesting that this Court grant him post-conviction relief from the July 18, 2024 order revoking his unsupervised probation and imposing two (2) years of the suspended sentence in criminal cause number LK22-358. *See* 2nd Revoc. Order (Ex. A). The Court purported to find that Mr. Reardon committed a "felony DUI" offense in Galveston, Texas, and thereby violated the conditions of his probation. 2nd Revoc. Tr. (Ex. B) 43. *See also* 2nd Revoc. Order. (Ex. A). But even assuming the State proved by a preponderance of the evidence that Mr. Reardon violated the law by driving under the influence, the offense allegedly proven by the State is a *misdemeanor* under both Texas and Mississippi law. A misdemeanor is a "technical violation" of the conditions of probation. *See* Miss. Code Ann. § 47-7-2(q).[1] Moreover, this was just the

[1] *See also Henderson v. State*, 24-CV-204-PH, Order & Judgment, 1 (Marion Cir. Ct. May 15, 2024) (Ex. Z) (The court's finding that "Ms. Henderson … committed a misdemeanor offense … is a finding that she committed a "'technical violation' of post-release supervision"); *Holmes v. State*, 23-CV-286-BT, Order Reinstating Post-Release Supervision (Marion Cir. Ct. Sept. 13, 2023) (Ex. AA) (finding that Mr. Holmes's challenge to the revocation of his probation for a misdemeanor DUI offense was "well taken" and directing the Department of Corrections to "reinstate" him to "Post-Release Supervision status"); *Rogers v. State*, CV 23-031(F)(L), Agreed Order & Judgment, 1-2 (Lee Cir. Ct. May 16, 2023) (Ex. BB) (The "finding that [Mr. Rogers] … committed two misdemeanor offenses" was a finding that he "committ[ed] technical violations of his post-release supervision."); *Dancy v. State*, 22-CV-121-JM(T), Order & Judgment, 1 (Tate Cir. Ct. Sept. 8, 2022) (Ex. CC) (The "finding that [Mr. Dancy] committed three traffic offenses—all misdemeanors—was a finding that he committed technical violations of his post-release supervision."); *State v. Rudisill*, Cause Nos. 10-663, 11-51, Revoc. Transcript, 29-30 (Harrison Cir. Ct. Sept. 8, 2022) (Ex. DD) (acknowledging that a misdemeanor is a technical violation); *Brumley v. State*, 16-CV-273-AM, Order & Judgment, 6 (¶ 14) (Pearl River Cir. Ct. Jan. 24, 2017) (Ex. EE) (Mr. Brunley's "alleged misdemeanor offense is also a 'technical violation.'); *Wilborn v. State*, 2016-0162-CVK, Order & Judgment, 3 (¶ 8) (Oktibbeha Cir. Ct., Oct. 13, 2016) (Ex. FF) ("[T]his Court's finding by a preponderance of the evidence

"second revocation" of Mr. Reardon's probation "for one or more technical violations." Miss. Code Ann. § 47-7-37(5)(a). Thus, the maximum "period of imprisonment" authorized by the revocation statute is "one hundred twenty (120) days." *Id.* For these reasons, the revocation order should be vacated and Mr. Reardon should be re-sentenced to one hundred twenty (120) days (time served), given credit for all additional time spent incarcerated, released from prison, and re-instated to probation. *See, e.g., Knight v. State*, 301 So.3d 50, 55 (Miss. Ct. App. 2020) (finding that the petitioner was "improperly sentenced" to ten years for "technical violations," reversing the sentence, and "remand[ing] for sentencing under [Section 47-7-37(5)(a)]").

JURISDICTION

This Court has jurisdiction over this motion for post-conviction relief pursuant to Miss. Code Ann. § 99-39-7, which provides that such a motion "shall be filed as an original civil action in the trial court, except in cases in which the petitioner's conviction and sentence have been appealed to the Supreme Court of Mississippi and there affirmed or the appeal dismissed." *See also Beasley v. State*, 795 So.2d 539, 540 (Miss. 2001) ("[A]n order revoking probation and suspended sentence is not appealable," and thus a challenge to such an order should be "pursue[d] … under the Mississippi Uniform Post-Conviction Collateral Relief Act.").[2]

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that Mr. Wilborn committed a misdemeanor offense … is a finding that Mr. Wilborn committed a technical violation of his probation.").

[2] *See also* Miss. Code Ann. § 99-39-5(1) ("Any person sentenced by a court of record of the State of Mississippi … may file a motion to vacate, set aside or correct the judgment or sentence … if the person claims (a) That the conviction or the sentence was imposed in violation of the … laws of Mississippi; … (d) That the sentence exceeds the maximum authorized by law [or] … (h) That his sentence expired; his probation, parole or conditional release [was] unlawfully revoked; or he is otherwise unlawfully held in custody[.]").

FACTUAL & PROCEDURAL BACKGROUND

Given the basis for the revocation of Mr. Reardon's unsupervised probation, it is useful to provide background for two cases. First, the underlying criminal case: Lafayette County Circuit Court cause number LK22-358. Second, Mr. Reardon's ongoing appeal of a November 24, 2021 conviction for a misdemeanor DUI in Lafayette County Justice Court cause number 9291202.

The Underlying Criminal Case

On September 30, 2022, Mr. Reardon pled guilty to one count of aggravated stalking in Lafayette County Circuit Court cause number LK22-358. Sent. Order (Ex. C). The Circuit Court sentenced him to five (5) years in prison, but suspended that sentence and placed him on "Unsupervised Probation" for a period of five (5) years. *Id.* at 1. The Court also ordered him to comply with a number of conditions of probation. *See id.* at 2-3. These conditions include, but are not limited to: (1) banishment from Lafayette County for five (5) years (with exceptions discussed below), and (2) a requirement that he "commit no offense against the laws of this state or any state of the United States." *Id.* at 2.

On November 1, 2022, the State filed a motion to revoke Mr. Reardon's unsupervised probation. *See* 1st Revoc. Pet. (Ex. D). The State noted that "as a condition of his unsupervised term of Five Years probation," Mr. Reardon was "banished from Lafayette County with two exceptions: that he (1) be allowed to enter and exit Lafayette County and go directly to the residence where he was then lodged until November 15, 2022, and (2) to attend court proceedings or scheduled court business for which he would provide one day notice to the Lafayette County Sheriff's Department." *Id.* at 1. The State alleged that Mr. Reardon violated this condition by visiting "the City of Oxford on Friday, October 28, 2022, and Monday, October 31, 2022, for unauthorized and unscheduled purposes." *Id.* at 1-2. Specifically, the State alleged that he visited

"the local Federal Bureau of Investigation office on Friday, October 28, 2022," and was seen in "Shelbi's Place, a residential neighborhood, on the evening of October 31, 2022." *Id.* at 2.[3]

On November 3, 2022, the Court held a hearing on the State's motion to revoke. *See* 1st Revoc. Tr. (Ex. E). At the conclusion of the hearing, the Court found the State had proven "by a preponderance of the evidence" that Mr. Reardon "violated the terms and conditions of [his] probation" as alleged in the State's motion. *Id.* at 20. The Court "revoked" his "probation," *id.*, and imposed "one year" of his suspended sentence, leaving "four years suspended." *id.* at 22. The Court further ordered that "upon [his] release" from prison, he would be "placed on four years of unsupervised probation" with the same terms and conditions. *Id.* The Court subsequently issued a written order revoking Mr. Reardon's unsupervised probation and imposing one (1) year of his suspended sentence. 1st Revoc. Order (Ex. F).[4]

On August 17, 2023, the State filed a second petition to revoke Mr. Reardon's unsupervised probation. *See* 2nd Revoc. Pet. (Ex. G). In the petition, the State alleged that Mr. Reardon "violated the good behavior conditions of [his] probationary sentence" by being "charged with the felony crime of Driving Under the Influence, Third or more offense, by the Galveston, Texas Police Department in Case #2023-005559 for an offense that occurred on August 11, 2023." *Id.* On the

[3] The State also alleged that Mr. Reardon violated the banishment condition on September 30, 2022 and October 3, 2022, but noted that "[n]o revocation proceedings were initiated" for those alleged violations. 1st Revoc. Pet. (Ex. D) 1.

[4] As should be clear from the remainder of this motion, the November 3, 2022 revocation order also imposed an illegal sentence. Mr. Reardon's violation of the banishment condition was a "technical violation" of his unsupervised probation. Miss. Code Ann. § 47-7-2(q). The November 3, 2022 revocation was the "first revocation" of his probation for "one or more technical violations." Miss. Code Ann. § 47-7-37(5)(a). Thus, the maximum "period of imprisonment" authorized by the revocation statute was "ninety (90) days." *Id.* However, Mr. Reardon has served that illegal sentence. This motion challenges only the July 18, 2024 revocation order. *See* 2nd Revoc. Order (Ex. A).

same date—August 17, 2023—a warrant issued for Mr. Reardon's arrest. Warrant (Ex. H). However, the warrant was not executed until ten (10) months later, on June 25, 2024. *Id.*

On July 18, 2024, the Court held a hearing on the State's petition. 2nd Revoc. Tr. (Ex. B). The State presented two witnesses: Katreena Thompson and William Osteen. Ms. Thompson—"an investigator for the district attorney's office"—testified that Mr. Reardon was charged "*at one time*" with a "felony" driving under the influence ("DUI") offense in Texas. *Id.* at 10 (emphasis added). She claimed that the felony charge was based on "two prior DUIs": "[o]ne out of Georgia and one out of Mississippi." *Id.* 10. Court documents from each of those prior convictions were admitted into evidence without objection. *Id.* 11-12. The Mississippi abstract—admitted as State's Ex. 1—shows that Mr. Reardon was convicted of a misdemeanor "D.U.I. 1st Offense" in Lafayette County Justice Court on November 24, 2021. *See* Revoc. Exs. (Ex. I) 6.[5] According to the abstract, the alleged offense took place on February 21, 2021. *Id.* The Georgia documents—admitted as State's Ex. 2—show that Mr. Reardon was convicted of a misdemeanor DUI offense in Cobb County, Georgia on November 3, 2014. *Id.* 10. According to the Georgia documents, the offense took place on December 25, 2012. *Id.* at 8.[6]

On cross-examination, Ms. Thompson conceded that the "felony DUI" charge in Texas had been "dismissed." 2nd Revoc. Tr. (Ex. B) 16. In addition to Ms. Thompson's concession, an "order from the trial court in Galveston, Texas dismissing the felony DUI referenced in the motion to revoke Mr. Reardon's probation" was admitted into evidence—without objection—as Defense

[5] The five exhibits from the revocation hearing are a composite exhibit (Ex. I) to this motion. Citations are to the hand-written page numbers in the lower right-hand corner of the documents.

[6] As discussed in more detail below, the offense underlying the Georgia conviction preceded the alleged offense underlying the Lafayette County conviction by more than "five (5) years," and thus the alleged Lafayette County offense was properly charged as a "First Offense DUI." Miss. Code Ann. §§ 63-11-30(2)(a) & (b).

Ex. 4. *Id.* at 16-17. The "Order of Dismissal" indicates that the charge was dismissed on May 24, 2024. Revoc. Exs. (Ex. I) 5. Ms. Thompson indicated that it was her "understanding from speaking with the investigator with the DA's office" in Texas that the felony DUI charge—which requires two prior DUI convictions—was dismissed because "they were uncertain whether" the prior misdemeanor DUI conviction from Lafayette County Justice Court "was on appeal or not." 2nd Revoc. Tr. (Ex. B) 20.[7] The State also offered an order from the Lafayette County Circuit Court—admitted as State's Exhibit 5, *id.* at 19—dismissing Mr. Reardon's appeal of the November 24, 2021 DUI conviction for purportedly "fail[ing] to timely perfect [the] appeal." Revoc. Exs. (Ex. I) 4. According to the order, Mr. Reardon "initiated" the appeal "on December 3, 2021." *Id.* at 2. It was not dismissed until June 28, 2024. *Id.* at 4.[8]

William Osteen—"an officer with the Galveston Police Department"—testified about the alleged Texas DUI. 2nd Revoc. Tr. (Ex. B) 21. According to Officer Osteen, he "came into contact with Mr. Reardon" when he was asked to "assist a traffic stop." *Id.* at 22. He testified that the officer who stopped Mr. Reardon claimed that Mr. Reardon "was speeding" and "failed to maintain a single marked lane." *Id.* Officer Osteen testified that he "made contact with Mr. Reardon" and "smelled the odor of an unknown alcoholic beverage in the vehicle." *Id.* at 23. Thus, he "asked Mr. Reardon to step out of the vehicle." *Id.*

Officer Osteen testified that once Mr. Reardon "stepped out" and moved to "the rear of his vehicle," he could not "detect an odor of an unknown alcoholic beverage emitting from him" and therefore his "opinion was that [Mr. Reardon] was probably under the influence of another

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[7] *See also* Mot. to Dismiss (Ex. J) (indicating that the State of Texas moved to dismiss the felony charge because it "cannot prove up jurisdictional enhance[e]ments.").

[8] Additional information about Mr. Reardon's ongoing appeal of the Lafayette County misdemeanor DUI conviction is provided below.

substance." 2nd Revoc. Tr. (Ex. B) 24. In support of this opinion, Officer Osteen claimed that Mr. Reardon's "eyes were watery and glossy," "his pupils were very small," *id*, and he was "looking around" and "talking extremely fast," *id.* at 35. However, Officer Osteen did not claim that Mr. Reardon was slurring his words or unsteady on his feet. *See generally* 2nd Revoc. Tr. (Ex. B). Nor did Officer Osteen claim to have administered any field sobriety tests. *See generally id.* Moreover, Officer Osteen conceded that he is "not a drug recognition expert nor was [he] one during the arrest." *Id.* at 35.

Officer Osteen acknowledged that Mr. Reardon "state[d] that he would do a breathalyzer over and over again," but since "[t]he only thing a breathalyzer can test for is alcohol," Officer Osteen chose to request a blood test. 2nd Revoc. Tr. (Ex. B) 24. As a result, Mr. Reardon was transported to the hospital "where a registered nurse drew his blood." *Id.* at 26. The State and Officer Osteen engaged in the follow exchange about the blood test results:

> Q. Do you recall the toxicology report that came back from the blood submission?
>
> A. So, I see two, one for alcohol and one for another substance.
>
> Q. Okay. Do you recall the result? Was there a positive result for alcohol or a negative?
>
> A. *There was alcohol detected.*
>
> Q. Was there a positive result for any other substance?
>
> A. Yes, sir.
>
> Q. And do you recall what substance and what quantity that was?
>
> A. The substance that came back for – *besides alcohol* was methamphetamine and the results were .13 milligrams per liter.

Id. at 27 (emphasis added). The toxicology reports were admitted into evidence as State's Exhibit 3. *Id.* at 13. Directly contradicting Officer Osteen's testimony, the toxicology report states: "*No*

alcohol detected." Revoc. Exs. (Ex. I) 15 (emphasis added). The other toxicology report does indicate that "0.13 milligrams per liter" of methamphetamine were detected. *Id.* at 18. However, the State did not present any evidence that this level of methamphetamine would impair a person's ability to operate a motor vehicle. *See generally* 2nd Revoc. Tr. (Ex. B).

On cross-examination, Officer Osteen was asked whether the "felony driving while intoxicated charge" had been dismissed, and he responded that he had "not seen the dismissal personally." 2nd Revoc. Tr. (Ex. B) 39. Nonetheless, he confirmed that "the charge is [now] pending as a misdemeanor," rather than a felony. *Id.* at 39.

In closing argument, the State argued that Mr. Reardon "violat[ed] the terms and conditions that the Court imposed upon him by breaking the law as evidenced by a toxicology report that shows that he had methamphetamine in his system while he was driving down the road in Texas." 2nd Revoc. Tr. (Ex. B) 42. Despite the Texas court's order dismissing the felony DUI charge, the State also insisted that, "based on [the] proof," Mr. Reardon committed "a felony DUI." *Id.* at 42. The State, however, offered no citation to Texas or Mississippi law to support the conclusion that it had established that Mr. Reardon committed felony. *See generally* 2nd Revoc. Tr. (Ex. B).

At the end of the hearing, the Court found it "more probable than not" that Mr. Reardon "violated the terms and condition[s] of [his] unsupervised probation." 2nd Revoc. Tr. (Ex. B) 43. The Court based this finding "on the testimony presented to the Court," the evidence "showing .13 level methamphetamine" in Mr. Reardon's system, and the fact he was "charged with a felony DUI." *Id.* Thus, the Court "revoked" Mr. Reardon's "unsupervised probation." *Id.* Moreover, the Court sentenced him "to four years in the custody of the Mississippi Department of Corrections, with execution of two years suspended, leaving two years to serve." *Id.* at 44. The Court further ordered that upon his "release from MDOC custody," Mr. Reardon would "be placed on two years

of post-release supervision." *Id.* The Court subsequently entered a written order—styled as an Order Revoking Post-Release Supervision—revoking Mr. Reardon's probation, imposing two (2) years of his suspended sentence, and suspending the remaining two (2) years. 2nd Revoc. Order (Ex. A).

The Ongoing Appeal of the Lafayette County Misdemeanor DUI Conviction

As noted above, on November 24, 2021, the Lafayette County Justice Court found Mr. Reardon guilty of one count of "D.U.I. 1st Offense" in cause number 9291202. Revoc. Exs. (Ex. I) 6. Nine (9) days later, on December 3, 2021, Mr. Reardon filed in the Lafayette County Circuit Court a *pro se* "Motion to Alter or Amend [the] Judgment." *See* Mot. (Ex. K) 1. *See also* Revoc. Exs. (Ex. I) 2. In the motion, Mr. Reardon argued, among other things, "that the State of Mississippi has ***failed*** in proving every fact necessary to constitute the crime of DUI[.]" *Id.* at 4. (emphasis in original). At the conclusion of the motion, he stated: "[P]lease take Judicial Notice of this Motion to serve as Defendant's Notice of Intent to Appeal the Judgement (sic) / Order." *Id.* at 12. Mr. Reardon also completed a Civil Cover Sheet in which he indicated that the "nature of suit" was an "appeal[]" from "Justice Court." Cover Sheet (Ex. L). The Lafayette County Circuit Court Clerk docketed the action as civil cause number 21-cv-494. *Id.*

Approximately one month later, on January 7, 2022, Mr. Reardon filed a *pro se* "Motion to Schedule Hearing for De Novo Appeal," Mot. (Ex. M), and an Affidavit of Poverty, Aff. (Ex. N). In the motion, Mr. Reardon asked the Court to "take Judicial Notice that he provided notice of his intent to appeal the Justice Court Judgement (sic) which was notated in the final sentence of the final paragraph of his motion submitted on December 3rd, 2021." *Id.* 2. Mr. Reardon also alleged that:

> On December 27th in an effort to play things safe, [he] brought a separate formal notice of intent to appeal de novo both to the Justice Court and to put on file in

> Circuit Court. However, upon trying to file a copy of a formal notice of appeal, [he] was told that his IFP status was being revoked for other matters and that it would cost nearly $150 to file his formal stamped notice despite being given an order from the trial judge approving [him] to proceed on appeal with IFP status.

Id. Attached to the motion is a December 2, 2021 order from the Lafayette County Justice Court finding that "Matthew Reardon is indigent and by reason of poverty he cannot offer security required by and is unable to give bond to appeal the judgment against him." *Id.* at 3. The order further states: "Mr. Reardon is allowed to appeal, if he desires to do so, and execution of judgment will be stayed without the requirement of supersedeas bond. … Mr. Reardon shall have an additional ten (10) days beyond the current appeal deadline to file an appeal should he desire to do so." *Id.*

On March 30, 2022, Mr. Reardon filed a Petition to Appoint Counsel. Pet. (Ex. O). On April 7, 2022, he filed a "Notice of Hearing" on, among other things, his Motion to Alter or Amend Judgment, Motion to Schedule a Hearing for De Novo Appeal, and Petition to Appoint Counsel. Notice (Ex. P). On April 12, 2022, the County Attorney filed a response to Mr. Reardon's notice of hearing arguing, *inter alia*, that Mr. Reardon's notice of appeal did not comply with Mississippi Rule of Criminal Procedure 29.1. Resp. (Ex. Q) 1-2.

On April 14, 2022, the Circuit Court entered an order granting Mr. Reardon's Petition to Appoint Counsel. Order (Ex. R). Specifically, the Court ordered that "Mitchell Driskell, a qualified member of the bar, be and he is hereby appointed by the Court to defend and represent the defendant in this appeal of convictions of misdemeanors by [the] Justice Court of Lafayette County." *Id.* On the same date, appointed counsel filed a Corrected Notice of Appeal and Demand for Jury Trial. Corr. Not. (Ex. S). According to the Notice, it was "filed pursuant to M.R.Cr.P. 29.1(c) to preemptively correct any deficiencies in [Mr. Reardon's *pro se*] Notice of Appeal and

to alleviate the necessity of the Court directing the Clerk to issue a written notice of deficiency." *Id.* at 1-2.[9]

On May 20, 2022, the County Attorney filed a Response to the Notice of Appeal and Jury Trial Demand. Resp. (Ex. T). The County Attorney argued that the notice improperly sought to appeal "two separate matters": "resisting arrest and disorderly conduct" charges from December 28, 2020 and "DUI first offense and related traffic citations" from February 21, 2021. *Id.* at 1. Moreover, the County Attorney argued that the "Judgment of the Justice Court of Lafayette County, Mississippi, was entered on November 24, 2021," and Mr. Reardon "did not file and perfect his appeal on the two separate matter[s] within the 30 days as is allowed under Rule 29.1 of the [Mississippi Rules of Criminal Procedure]." *Id.* Thus, the County Attorney argued that Mr. Reardon's appeal "should be dismissed as being untimely filed and perfected." *Id.* at 2.

Mr. Reardon's appeal lingered on the Circuit Court's docket for over two years. On May 31, 2024, the Circuit Court Clerk filed a motion to dismiss for want of prosecution. Clerk's Mot. (Ex. U). On June 11, 2024, Mr. Reardon's appointed counsel responded to the clerk's motion with a Motion to Reinstate Case. Mot. (Ex. V). In the motion, appointed counsel argued, *inter alia*, that "the issues before the Court remain (1) whether the original *pro se* Motion perfected an appeal of the Justice Court convictions; if not (2) whether the Corrected Notice of Appeal perfected an appeal of the Justice Court convictions." *Id.* at 2. Counsel further insisted that "[n]o actions of record have been taken because the pleadings are ripe for ruling by th[e] court." *Id.*

[9] MRCrP 29.1(c) states: "Upon a failure of a party to comply with the requirements of this rule as to content of the written notice of appeal, the court, on its own motion or on motion of a party, shall direct the clerk of the court to give written notice to the party in default, apprising the party of the nature of the deficiency. If the party in default fails to correct the deficiency within fourteen (14) days after notification, the appeal shall be dismissed by the clerk of the court. The county or circuit court shall promptly notify the lower court of any such dismissal."

On June 28, 2024, the Circuit Court granted the County Attorney's request to dismiss Mr. Reardon's appeal. Revoc. Exs. (Ex. I) 2-4. The Court noted that "[a]n appeal from the Justice Court to Circuit Court is perfected by simultaneously filing a written notice of appeal, a cost bond, and an appearance bond (or cash deposit) with the clerk of the circuit court having jurisdiction within thirty (30) days of the judgment." *Id.* at 2 (citing MRCrP 29.1(a)). The Court found that "Mr. Reardon never timely perfected an appeal." *Id.* at 3. According to the Court, even if appointed counsel's corrected notice of appeal "cured" deficiencies in Mr. Reardon's initial pleading, Mr. Reardon failed to "timely submit either: (1) an affidavit of poverty; or (2) a cost bond and appearance bond." *Id.* The Court found that "[t]he affidavit of poverty Mr. Reardon submitted on January 7 was well outside the thirty (30) day period." *Id.* Thus, the Court found that it was "without jurisdiction." *Id.* at 4.

On July 18, 2024—the same date this Court revoked his unsupervised probation in cause number LK22-358—Mr. Reardon timely filed a notice of appeal from the Circuit Court's June 28, 2024 order dismissing his appeal of the Lafayette County misdemeanor DUI conviction. *See* Notice (Ex. W). Mr. Reardon's appeal is pending in Mississippi's appellate courts and has been assigned cause number 2024-TS-00839.[10]

PROCEDURAL BARS

There are no procedural bars to Mr. Reardon's motion for post-conviction relief. This motion is timely filed "within three (3) years after entry of the judgment of conviction." Miss. Code Ann. § 99-39-5(2). In any event, "those cases in which the petitioner claims that his … probation, parole or conditional release has been unlawfully revoked" are expressly "[e]xcepted

[10] The docket for Mr. Reardon's appeal is available at: https://courts.ms.gov/index.php?cn=98285#dispArea.

from th[e] three-year statute of limitations." Miss. Code Ann. § 99-39-5(2)(b). Moreover, this is Mr. Reardon's first post-conviction challenge to the July 18, 2024 revocation order. Regardless, "those cases in which the petitioner claims that … his probation, parole or conditional release has been unlawfully revoked" are "[l]ikewise excepted" from the successive writ bar. Miss. Code Ann. § 99-39-23(6).[11]

ARGUMENT

The July 18, 2024 revocation of Petitioner Matthew Reardon's probation and suspended sentence is governed by the revocation statute, Section 47-7-37, which requires graduated penalties when a court revokes probation for "one or more technical violations." Miss. Code Ann. § 47-7-37(5)(a). Even assuming the State proved by a preponderance of the evidence that Mr. Reardon violated the law by driving under the influence in Galveston, Texas, the offense allegedly proven by the State is a *misdemeanor* under both Texas and Mississippi law. A misdemeanor is a technical violation of the conditions of probation. *See, e.g.,* Miss. Code Ann. § 47-7-2(q). And the July 18, 2024 revocation was just the "second revocation" of Mr. Reardon's probation for "one or more technical violations." Miss. Code Ann. § 47-7-37(5)(a). Thus, the maximum "period of imprisonment" authorized by the revocation statute is "one hundred twenty (120) days." *Id.* For these reasons, the revocation order should be vacated and Mr. Reardon should be re-sentenced to one hundred twenty (120) days (time served), given credit for all additional time spent incarcerated, released from prison, and re-instated to probation.

[11] *See also Fluker v. State*, 170 So.3d 471, 474 (Miss. 2015) ("Section 99-39-23(6) contains an exception to the successive-pleadings bar for 'those cases in which the petitioner claims that his sentence has expired or his probation, parole, or conditional release has been unlawfully revoked.'").

A. The revocation of Mr. Reardon's probation and suspended sentence is governed by Section 47-7-37.

As an initial matter, there should be no question that the revocation of Mr. Reardon's "unsupervised probation" and the imposition of any portion of his "suspended sentence" is governed by the revocation statute, Section 47-7-37. "Circuit courts do not have inherent power to suspend a sentence or to impose a term of [probation], nor do they have inherent power to revoke a term of [probation] and impose a period of imprisonment." *Atwood v. State*, 183 So.3d 843, 846 (Miss. 2016).[12] Instead, the "discretion" to suspend a sentence in a felony case is granted to the circuit courts through Section 47-7-33 (probation) and Section 47-7-34 (post-release supervision). *Johnson v. State*, 925 So.2d 86, 105 (Miss. 2006).[13] The authority to *revoke* a term of probation or post-release supervision—and to impose all or part of the sentence suspended pursuant to Section 47-7-33 or 47-7-34—is granted to the circuit courts through Section 47-7-37. *See, e.g.*, Miss. Code Ann. § 47-7-37(5)(a) (authorizing a circuit court to "revoke all or any part of the probation or the suspension of sentence"); *Moore v. State*, 585 So.2d 738, 741 (Miss. 1991) ("Miss. Code Ann. § 47-7-37 grants to the circuit and county courts the authority to revoke probation.");

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[12] Indeed, "[b]efore 1956 the circuit … courts had *no statutory authority* to suspend sentences in felony cases." *Id.* (quoting *Johnson v. State*, 925 So.2d 86, 96 (Miss. 2006)) (emphasis added). However, one "result of the Probation Act [of 1965] was to expand a criminal court's ability to suspend sentences … by allowing it to suspend felony sentences." *Id.*

[13] Section 47-7-33 authorizes the sentence imposed in this case (i.e. "the imposition of a suspended sentence … [that] does not involve a period of supervised probation"). *Johnson*, 925 So.2d at 105. *See also id.* at 92, n.5 (emphasis added) ("'Unsupervised probation' is the functional equivalent to 'a straight suspended sentence' to the extent that the sentence is not under the supervision of the Department of Corrections, but under the watchful eye of the sentencing judge. Therefore, when we endorse 'unsupervised probation' or 'non-reporting post-release supervision' under Miss. Code Ann. Section 47-7-34, *we are merely sanctioning a straight suspended sentence under Miss. Code Ann. Section 47-7-33(1).*"). A separate statute—Section 99-19-25—also authorizes "suspension of sentences," but it applies "in misdemeanor cases only." *Id.* at 96 (citation omitted). *See also* Miss. Code Ann. § 99-19-25 ("The circuit courts and the county courts, *in misdemeanor cases,* are hereby authorized to suspend a sentence and to suspend the execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court.") (emphasis added).

Atwood, 183 So.3d at 847 ("[T]he procedures for the revocation of post-release supervision are prescribed exclusively in Section 47-7-37.").

B. Section 47-7-37 requires graduated penalties when a court revokes probation for one or more technical violations.

In 2014, the Mississippi legislature enacted House Bill 585, a comprehensive criminal justice reform bill.[14] Among other things, House Bill 585 amended Section 47-7-37 to require "graduated penalties for 'technical violations'" of probation. *Atwood*, 183 So.3d at 846 (footnote omitted). The current version of Section 47-7-37 states, in pertinent part:

> (2) At any time during the period of probation, the court, or judge in vacation, may issue a warrant for violation of any of the conditions of probation or suspension of sentence and cause the probationer to be arrested. …
>
> (5)(a) … Within twenty-one (21) days of arrest and detention by warrant as herein provided, the court shall cause the probationer to be brought before it and may continue or revoke all or any part of the probation or the suspension of sentence. **If the court revokes probation for one or more technical violations, the court shall impose a period of imprisonment to be served in either a technical violation center or a restitution center** not to exceed ninety (90) days for the first revocation and **not to exceed one hundred twenty (120) days for the second revocation**. For the third revocation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one hundred eighty (180) days or the court may impose the remainder of the suspended portion of the sentence. For the fourth and any subsequent revocation, the court may impose up to the remainder of the suspended portion of the sentence.

Miss. Code Ann. § 47-7-37(2) & (5)(a) (emphasis added).[15] Thus, the maximum "period of imprisonment" a court may impose "for the second revocation" of probation for "one or more

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[14] The text of House Bill 585 is available at: https://billstatus.ls.state.ms.us/documents/2014/pdf/HB/0500-0599/HB0585SG.pdf

[15] As noted above, the graduated penalty scheme was implemented in 2014 through House Bill 585. It was amended in 2018, through House Bill 387, to clarify that the penalty is based on the number of *revocations* for technical violations, not the number of technical violations found at a single revocation. *See* H.B. 387, 2018 Leg. Reg. Sess., § 11 (Miss. 2018). The text of HB 387 is available at: https://billstatus.ls.state.ms.us/documents/2018/pdf/HB/0300-0399/HB0387SG.pdf. *See also, Knight v. State*, 301 So.3d 50, 54 (Miss. Ct. App. 2020) ("With the 2018 revisions, the number of individual technical

technical violations" is "one hundred twenty (120) days." *Id.* A court is not authorized to "impose the remainder of the suspended portion of the sentence" unless and until there is a "third revocation" of probation for "one or more technical violations." *Id.*

There are just two exceptions to Section 47-7-37's graduated penalty scheme. Section 47-7-37.1—which was added to the Mississippi Code in 2015[16]—states:

> Notwithstanding any other provision of law to the contrary, if a court finds by a preponderance of the evidence, that a probationer or a person under post-release supervision has committed a felony or absconded, the court may revoke his probation and impose any or all of the sentence. For purposes of this section, 'absconding from supervision' means the failure of a probationer to report to his supervising officer for six (6) or more consecutive months.

Miss. Code Ann. § 47-7-37.1. Thus, "notwithstanding" Section 47-7-37's graduated penalty scheme, a court is authorized to impose "any or all" of a suspended sentence if it finds that the probationer "committed a felony" or "absconded" from supervision by failing to report to his probation officer "for six (6) or more consecutive months." *Id.*

C. Unlike a felony, a misdemeanor is a "technical violation" that is subject to Section 47-7-37's graduated penalty scheme.

In addition to requiring graduated penalties for technical violations of probation, House Bill 585 provided a statutory definition of "technical violation." *See* H.B. 585, 2014 Leg. Reg. Sess., § 47 (Miss. 2014). The term is very broadly defined:

> 'Technical violation' means an act or omission by the probationer that violates a condition or conditions of probation placed on the probationer by the court or the probation officer.

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violations does not determine the length [of imprisonment] or where the imprisonment will be served. Rather, with the 2018 revisions, the length and manner of imprisonment for technical violations depends instead upon whether or not this is the defendant's first revocation verses the second, third or fourth.").

[16] More on this below.

Miss. Code Ann. § 47-7-2(q). Under this broad definition, *every* violation of "a condition or conditions of probation"—including (in this case) a violation of the requirement that the probationer "commit no offense against the laws of this state or any state of the United States," Sent. Order (Ex. C) 2—is a "technical violation."

In 2015, then-Representative Andy Gipson—the primary sponsor of House Bill 585—apparently concluded that the statutory definition of "technical violation" was *too* broad. During the legislature's regular session, he introduced House Bill 1051, which would have amended the definition of "technical violation" as follows:

> 'Technical violation' means an act or omission by the probationer that violates a condition or conditions of probation placed on the probationer by the court or the probation officer. A technical violation shall not include **the commission of a new crime** or the absconding from supervision by the probationer. For purposes of this subsection, 'absconding from supervision' means the failure of a probationer to report to his supervising officer for six (6) or more consecutive months.

H.B. 1051, 2015 Leg. Reg. Sess. (Miss. 2015) (proposed amendment underlined, bold emphasis added) (Ex. X). If HB 1051 had become law, the commission of *any* new crime—including a misdemeanor—would *not* have been a technical violation. Thus, if a court found that a person violated the conditions of his probation by committing a misdemeanor, the court's authority to impose any or all of the probationer's suspended sentence would not have been limited by Section 47-7-37's graduated penalty scheme. However, HB 1051 did ***not*** become law. *See id.*

Instead, the legislature enacted House Bill 1267, which also was sponsored by then-Representative Gipson. *See* H.B. 1267, 2015 Leg. Reg. Sess. (Miss. 2015) (Ex. Y). Rather than amending the definition of "technical violation," Section 3 of HB 1267—which is now codified at Section 47-7-37.1—excepted the commission of a felony and absconding from supervision from Section 47-7-37's graduated penalty scheme for technical violations. There is no analogous provision excepting the commission of a misdemeanor from Section 47-7-37's graduated penalty

scheme. Thus, the commission of a misdemeanor is a "technical violation" that is subject to Section 47-7-37's graduated penalty scheme. *See, e.g., Harper v. Banks, Finley, White & Co.*, 167 So.3d 1155, 1162 (Miss. 2015) (citation omitted) ("'Where a statute enumerates and specifies the subject or things upon which it is to operate, it is to be construed as excluding from its effect all those not expressly mentioned or under a general clause.'"). *See also Lindley v. F.D.I.C.*, 733 F.3d 1043, 1056 (11th Cir. 2013) (citation omitted) (When the legislature "'knows how to say something but chooses not to, it's silence is controlling.'").

Even if there were some ambiguity regarding the scope of the term "technical violation" or the application of Section 47-7-37's graduated penalty scheme, there is a "long standing rule that penal statutes are to be interpreted strictly against the state and construed liberally in favor of the accused." *McLamb v. State*, 456 So.2d 743, 745 (Miss. 1984).[17] This "rule of lenity" is "'not merely a convenient maxim of statutory construction.'" *Hollie v. State*, 174 So.3d 824, 836 (Miss. 2015) (citation omitted). "'Rather, it is rooted in fundamental principles of due process.'" *Id.* (citation omitted). Pursuant to this rule, this Court is obligated to resolve any possible ambiguity by applying "the statute which imposes the lesser punishment." *McLamb*, 456 So.2d at 745. In other words, this Court is obligated to resolve any perceived ambiguity in the statutes by concluding that the commission of a misdemeanor is "technical violation" that is subject to Section 47-7-37's graduated penalty scheme.

Notably, this Court is not writing on a blank slate. As far as undersigned counsel is aware, every court to address the question has concluded that the commission of a misdemeanor is a "technical violation" that is subject to Section 47-7-37's graduated penalty scheme. *See, e.g.,*

[17] *See also McGlasten v. State*, 328 So.3d 101, 107 (Miss. 2021) ("[F]or more than a century, [the Mississippi Supreme Court] ha[s] held that 'penal statutes must be strictly construed' against the State and in favor of the accused.") (citation omitted).

Henderson v. State, 24-CV-204-PH, Order & Judgment, 1 (Marion Cnty. Cir. Ct. May 15, 2024) (Ex. Z) (The court's finding that "Ms. Henderson … committed a misdemeanor offense … is a finding that she committed a "'technical violation' of post-release supervision"); *Holmes v. State*, 23-CV-286-BT, Order Reinstating Post-Release Supervision (Marion Cir. Ct. Sept. 13, 2023) (Ex. AA) (finding that Mr. Holmes's challenge to the revocation of his probation for a misdemeanor DUI offense was "well taken" and directing the Department of Corrections to "reinstate" him to "Post-Release Supervision status"); *Rogers v. State*, CV 23-031(F)(L), Agreed Order & Judgment, 1 (Lee Cir. Ct. May 16, 2023) (Ex. BB) (The "finding that [Mr. Rogers] … committed two misdemeanor offenses" was a finding that he "committ[ed] technical violations of his post-release supervision."); *Dancy v. State*, 22-CV-121-JM(T), Order & Judgment, 1 (Tate Cir. Ct. Sept. 8, 2022) (Ex. CC) (The "finding that [Mr. Dancy] committed three traffic offenses—all misdemeanors—was a finding that he committed technical violations of his post-release supervision."); *State v. Rudisill*, Cause Nos. 10-663, 11-51, Revoc. Transcript, 29 (Harrison Cir. Ct. Sept. 8, 2022) (Ex. DD) (acknowledging that a misdemeanor is a technical violation); *Brumley v. State*, 16-CV-273-AM, Order & Judgment, 6 (¶ 14) (Pearl River Cir. Ct. Jan. 24, 2017) (Ex. EE) (Mr. Brunley's "alleged misdemeanor offense is also a 'technical violation.'); *Wilborn v. State*, 2016-0162-CVK, Order & Judgment, 3 (¶ 9) (Oktibbeha Cir. Ct., Oct. 13, 2016) (Ex. FF) ("[T]his Court's finding by a preponderance of the evidence that Mr. Wilborn committed a misdemeanor offense … is a finding that Mr. Wilborn committed a technical violation of his probation.").

D. Even assuming the State proved by a preponderance of the evidence that Mr. Reardon violated the law by driving under the influence, the offense allegedly proven by the State is a *misdemeanor* under both Texas and Mississippi law.

It is firmly established that "[t]he mere arrest of a probationer is not a violation of probation." *Brown v. State*, 864 So.2d 1058, 1060 (Miss. Ct. App. 2004). Instead, "[w]here the

State seeks to revoke one's probation based upon an allegation of criminal activity, it must show proof of an actual conviction, or that a crime has been committed and that it is more likely than not that the probationer committed the offense." *Id.* In this case, the State alleged—and the Court purported to find—that Mr. Reardon committed the "felony crime of Driving Under the Influence; Third or more offense" in Galveston, Texas. 2nd Revoc. Pet. (Ex. G). *See also* 2nd Revoc. Order (Ex. A). While it is true that a Third Offense DUI is a felony in both Texas and Mississippi, the evidence offered by the State at Mr. Reardon's revocation hearing was (at best) only sufficient to establish that he committed a *Second Offense* DUI. A Second Offense DUI is a misdemeanor in both Texas and Mississippi. As explained below, the November 24, 2021 conviction in Lafayette County Justice Court does not count as a prior conviction for purposes of Texas law because it was not "final" on the date of the alleged Texas offense. Moreover, the November 3, 2014 conviction in Cobb County, Georgia does not count as a prior conviction for purposes of Mississippi law because the underlying offense was not committed within five years of the alleged Texas offense *or* the alleged Lafayette County offense.

Texas Law

In Texas, a person commits the crime of "Driving While Intoxicated" ("DWI") if "the person is intoxicated while operating a motor vehicle in a public place." TX Penal Code § 49.04(a).[18] A first offense DWI is a misdemeanor. *See* TX Penal Code § 49.04(b)-(d). A second offense DWI also is a misdemeanor. *See* TX Penal Code § 49.09(a). A third offense DWI is a "felony of the third degree." TX Penal Code § 49.09(b)(2). However, in Texas "[i]t is well-settled

[18] For purposes of Texas's statute, "'Intoxicated' means: (A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or (B) having an alcohol concentration of 0.08 or more." TX Penal Code § 49.01(2).

law that '[b]efore a prior conviction may be relied on to enhance the punishment in a subsequent case such prior conviction must be final.'" *Lundgren v. State*, 436 S.W.3d 399, 401 (Tex. App. Fort Worth, 2014) (citation omitted). Under Texas law, "[a]n appealed prior conviction … does not become final until the appellate court issues its mandate affirming the conviction." *Id.* (citation omitted).[19] Thus, in Texas, a prior conviction for a DWI may "'not be used to elevate a subsequent DWI to … a third-degree felony'" if "'an appeal w[as] still pending from that [prior] conviction'" when the subsequent DWI was *committed*. *Id.* (citation omitted).

In Mr. Reardon's case, the Texas authorities—who presumably are experts in Texas law—correctly dismissed the felony charge against him because his appeal of the November 24, 2021 DUI conviction was still pending in the Lafayette County Circuit Court on the date the Texas DWI was allegedly committed. *See* Mot. to Dismss (Ex. J); Revoc. Exs. (Ex. I) 2-5. The date of the alleged Texas offense was August 11, 2023. 2nd Revoc. Tr. (Ex. B) 26. According to the Lafayette County Circuit Court's order—which was admitted into evidence at the July 18, 2024 revocation hearing as State's Ex. 5.—Mr. Reardon's appeal was pending from December 3, 2021 until the Court dismissed it on June 28, 2024. *See* Revoc. Exs. (Ex. I) 2-4.[20] Indeed, Mr. Reardon's

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[19] *See Beal v. State*, 91 S.W.3d 794, 794-95 (Tex. Ct. Crim. App. 2002) ("Today we settle the question of which date should be used in determining the finality of a prior conviction alleged in an indictment for enhancement purposes. We hold that it becomes final when the appellate court issues its mandate affirming the conviction.").

[20] It is irrelevant that the Circuit Court ultimately concluded that Mr. Reardon "failed to timely perfect [his] appeal," and therefore that the Court lacked "jurisdiction" over the appeal. Revoc. Exs. (Ex. I) 4. In *Lundgren v. State*, 436 S.W.3d at 400, Mr. Lundgren was convicted of a misdemeanor DWI on January 7, 2011. Seven (7) days later—on January 14, 2011—he "was again arrested for DWI." *Id.* Five (5) days after that—on January 19, 2011—he "filed a notice of appeal" of the January 7, 2011 conviction. *Id.* He was later "charged by indictment with felony DWI" for the January 14, 2011 arrest. *Id.* In the indictment, the State relied upon a 2009 misdemeanor DWI conviction *and* the January 7, 2011 misdemeanor conviction "to enhance the charged January 14, 2011 offense to felony DWI." *Id.* Mr. Lundgren filed a motion to quash the indictment because the January 7, 2011 conviction was not "final" at the time the January 14, 2011 offense was committed. *Id.* The trial court denied the motion and Mr. Lundgren pled guilty to felony DWI, but "preserved the right to appeal the denial of his motion to quash." *Id.* (footnote continued on next page).

November 24, 2021 conviction *still* is not "final" for purposes of Texas law, as he has appealed the Lafayette Circuit Court's judgment to the Mississippi Supreme Court. *See Reardon v. State*, 2024-TS-00839 (Miss. 2024).[21] Thus, as matter of Texas law, the State failed to prove a felony DWI offense. At best, the offense allegedly proven by the State is a misdemeanor second offense DWI.

Mississippi Law

In Mississippi, a person commits the offense of Driving Under the Influence ("DUI") if he "operate[s] a vehicle" while (a) "under the influence of intoxicating liquor," (b) "under the influence of any other substance that has impaired the person's ability to operate a motor vehicle," or (c) "while under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law." Miss. Code Ann. § 63-11-30(1)(a)-(c). As in Texas, both a first offense DUI and a second offense DUI is a "misdemeanor." Miss. Code Ann. § 63-11-30(2)(a)-(b). A third offense DUI is a "felony." Miss. Code Ann. § 63-11-30(2)(c). However, a third offense DUI is defined as "a third conviction" for DUI, "the offenses being committed within a period of five (5) years." *Id.* (emphasis added). In other words, "[t]he

On appeal, the Texas appellate court noted that it ultimately "dismissed" Mr. Lundgren's appeal of the January 7, 2011 conviction "for lack of jurisdiction." *Id.* Indeed, the court dismissed the appeal of the January 7, 2011 conviction because it was a "'plea-bargain case'" and thus Mr. Lundgren "'ha[d] *NO right of appeal*.'" *Lundgren v. State*, 2011 WL 754344, *1 (Tex. App., Fort Worth, Mar. 3, 2011) (capitalization in original, emphasis added). Nonetheless, the appellate court ruled that the January 7, 2011 conviction could not be used to enhance the January 14, 2011 offense because "[a]n appealed prior conviction alleged in an indictment for enhancement purposes does not become final *until the appellate court issues its mandate affirming the conviction*." *Id.* at 401 (emphasis added). With respect to Mr. Lundgren's January 7, 2011 conviction, the appellate court's mandate did not issue until May 12, 2011. *Id.* at 400. *See also In re S.F.L.*, 2005 WL 95794, *2 (Tex. App., Texarkana, Apr. 27, 2005) (finding sufficient proof that a "conviction [was] final" where the "record contains the judgment finding [the defendant] guilty (on his plea of guilty) …, the negotiated plea agreement, the September 5, 2002, opinion by the Eastland Court of Appeals *that dismissed his appeal as untimely, and the mandate from that court.*") (emphasis added).

[21] *Available at*: https://courts.ms.gov/index.php?cn=98285#dispArea.

statute requires that [all three] offenses must have been *committed* within a period of five years." *Smith v. State*, 950 So.2d 1056, 1058 (Miss. Ct. App. 2007) (emphasis added).

In Mr. Reardon's case, the abstract for the Lafayette County conviction shows an offense date of February 21, 2021, which is within five (5) years of his August 11, 2023 arrest in Galveston, Texas. However, the Georgia documents show an offense date of December 25, 2012, which is not within five (5) years of the alleged Texas offense *or* the alleged Lafayette County offense. Indeed, the Georgia offense was committed nearly *eleven* years before the alleged Texas offense and more than *eight* years before the alleged Lafayette County offense. Thus, as a matter of Mississippi law, the State failed to prove a felony DUI offense. At best, the offense allegedly proven by the State is a misdemeanor second offense DUI.

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In sum: Even assuming the State proved by a preponderance of the evidence that Mr. Reardon violated the law by driving under the influence on August 11, 2023 in Galveston, Texas, the offense allegedly proven by the State is a *misdemeanor* under both Texas and Mississippi law. A misdemeanor is a technical violation of the conditions of probation. *See, e.g.,* Miss. Code Ann. § 47-7-2(q). And the July 18, 2024 revocation was just the "second revocation" of Mr. Reardon's probation for "one or more technical violations." Miss. Code Ann. § 47-7-37(5)(a). Thus, the maximum "period of imprisonment" authorized by the revocation statute is "one hundred twenty (120) days." *Id.* The two (2) year sentence imposed by the Court exceeds the statutory maximum period of imprisonment by one (1) year and two hundred forty-five (245) days. It is an "illegal" sentence and must be "vacate[d]." *Foreman v. State*, 51 So.3d 957, 962 (Miss. 2011). Mr. Reardon has already served more than one hundred twenty (120) days in the custody of the Department of Corrections. Therefore, he should be resentenced to one hundred twenty (120) days (time served),

given credit for all additional time spent incarcerated, released from prison, and re-instated to probation. *See, e.g., Knight v. State*, 301 So.3d 50, 55 (Miss. Ct. App. 2020) (finding that the petitioner was "improperly sentenced" to ten years for "technical violations," reversing the sentence, and "remand[ing] for sentencing under [Section 47-7-37(5)(a)]").

CONCLUSION

For the foregoing reasons, and any others apparent to the Court, Petitioner Matthew Reardon respectfully requests that this Honorable Court grant his motion for post-conviction relief, vacate the July 18, 2024 revocation order, resentence him to one hundred twenty (120) days (time served), give him credit for all additional time spent incarcerated, release him from prison, and re-instate him to probation.

Respectfully submitted,

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Counsel for the Petitioner

VERIFICATION BY PETITIONER

I, **MATTHEW REARDON**, the petitioner in the foregoing Motion for Post-Conviction Relief do hereby verify and affirm that:

1. I am currently incarcerated in the Mississippi Department of Corrections. My inmate number is 210988.

2. To the best of my knowledge, all the facts alleged in the foregoing motion are true. I acknowledge that I was convicted of misdemeanor driving under the influence in Lafayette County Justice Court on November 24, 2021 and was arrested for driving while intoxicated in Galveston, Texas on August 11, 2023. However, I do not concede that I committed the alleged offenses.

3. To the best of my knowledge, there are no relevant facts that are not within my personal knowledge.

4. I believe I am entitled to the relief requested in the foregoing motion.

PETITIONER

STATE OF MISSISSIPPI

COUNTY OF SUNFLOWER

SUBSCRIBED AND SWORN TO BEFORE ME THIS 26 DAY OF NOVEMBER, 2024.

MY COMMISSION EXPIRES:

STATE OF MISSISSIPPI NOTARY PUBLIC ID # 380015 QUORTISHA WATERS Commission Expires Nov. 14, 2027 TALLAHATCHIE COUNTY

NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Post-Conviction Relief and two (2) volumes of exhibits have been deposited with the United States Postal Service for delivery to the following:

District Attorney Ben Creekmore
111 E. Main St.
New Albany, MS 38652

This the 26th day of November, 2024.

JACOB W. HOWARD