IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00320 COA

JOHN WATZKE **APPELLANT**

v.

RONALD A. PETERSON, SHERIFF OF HANCOCK COUNTY **APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	03/19/96
TRIAL JUDGE:	HON. ROBERT H. WALKER
COURT FROM WHICH APPEALED:	HANCOCK COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JAMES G. TUCKER III
ATTORNEY FOR APPELLEE:	RONALD J. ARTIGUES, JR.
NATURE OF THE CASE:	CIVIL - OTHER
TRIAL COURT DISPOSITION:	DENIAL OF HABEAS CORPUS RELIEF
DISPOSITION:	AFFIRMED - 12/2/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/23/97

BEFORE McMILLIN, P.J., COLEMAN, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

This case arises from the denial by Hancock County Circuit Court of John Watzke's petition for writ of habeas corpus. Finding no error in this denial, we affirm.

FACTS

In the Municipal Court of the City of Bay St. Louis, John Watzke was convicted of twice contributing to the delinquency of a minor and received a suspended sentence and probation for the offenses. Subsequently, Watzke was brought before the city court for a revocation hearing in which Watzke's suspended sentence was revoked, and he was sentenced to serve six months each on two counts of contributing to the delinquency of a minor with said sentences to run concurrently.[(1)]

Thereafter, Watzke filed a petition for writ of habeas corpus with the Hancock County Circuit Court

asking the court to review the revocation. The circuit court denied the relief sought on the ground that it did not have the authority to review the sufficiency of the evidence relied on by the city court. The circuit court held that its authority was limited to a review of the order or judgment of revocation to determine if it was void or valid. The circuit court found that the order was valid on its face in that the city judge provided a statement in his order that evidence was presented, received, and considered before he made the decision to revoke Watzke's suspended sentence. Feeling aggrieved, Watzke filed this appeal asserting three issues. Because the issues are all based on the same proposition, i.e., whether the circuit court erred in denying Watzke's habeas corpus petition, we will not separately discuss each issue.

ANALYSIS

I. IS HABEAS CORPUS RELIEF AVAILABLE TO REVIEW A MUNICIPAL COURT'S PROCEEDING REVOKING A DEFENDANT'S PRIOR SUSPENDED SENTENCE?

II. CAN A DEFENDANT'S SUSPENDED SENTENCE BE REVOKED IF THE FACT FINDER DOES NOT PROVIDE A WRITTEN STATEMENT AS TO THE EVIDENCE RELIED UPON AND THE REASON FOR REVOCATION?

III. MUST A STATE PRESERVE A CITIZEN'S RIGHT TO APPEAL THE SUFFICIENCY OF THE EVIDENCE TO THE UNITED STATES SUPREME COURT?

In his petition for writ of habeas corpus to the circuit court, Watzke argued that the city court erred in revoking his suspended sentence. Watzke contends that there existed no evidence to warrant the city court's revocation of his suspended sentence. Watzke contends further that assuming arguendo, there had been sufficient evidence to warrant the revocation, the municipal judge erred by failing to set out in his written order of revocation the evidence on which the judge based his decision. Thus, Watzke argues, his due process rights were violated and the circuit court could have and should have set aside the revocation instead of denying Watzke's habeas corpus petition.

The State concedes that Watzke is entitled to file a habeas corpus petition for review of the order revoking his suspended sentence but argues that Watzke is not entitled to a review of the merits of the case. We agree.

It is well established that an order revoking a suspension of sentence is not appealable. ***Kittrell v. State*, 29 So. 2d 313 (Miss. 1947).** While habeas corpus is a valid remedy for determining whether the court (1) had jurisdiction to issue the order, (2) rendered a valid judgment, (3) gave proper notice to the defendant, and (4) provided the defendant a public hearing on the matter, ***Pipkin v. State*, 292 So. 2d 181, 182 (Miss. 1974),** habeas corpus is not a proper proceeding to test the sufficiency of the evidence to support an otherwise valid order revoking a suspension of sentence. ***State v. Nicholson*, 286 So. 2d 820, 822 (Miss. 1973).**

The Mississippi Supreme Court has held that the following procedural requirements are necessary for a revocation hearing: "1) written notice of the probation violation[;] 2) disclosure of evidence against the probationer; 3) opportunity for defendant to testify and to present witnesses and other evidence; 4) right to confront and cross-examine witnesses; 5) 'neutral and detached' hearing board; and 6) a written statement of reason for revocation." ***Berdin v. State*, 648 So. 2d 73, 76 (Miss. 1994).** In the present case, Watzke concedes that requirements one through five were followed. Watzke takes issue, however, with requirement number six. Watzke contends, on the one hand, that there was no evidence to support the revocation of his suspended sentence. On the other hand, Watzke argues that whatever evidence led the judge to his decision was not put in a writing sufficient to satisfy requirement number six. We disagree.

The circuit court acted properly in reviewing only the order of revocation and did not err in finding that the revocation order was valid on its face. A review of the record indicates that the circuit court articulated a finding that the order states on its face that the municipal court heard from witness, Tom Burleson, and found his testimony to support revocation. Our case law only tells us that a revocation hearing must include "a written statement of reason for revocation." ***Id.*** The supreme court does not tell us what particularities must be included in this statement nor are we informed that this statement must include specific information in regard to the evidence presented during the revocation hearing. As such, we can find no error in the circuit court's denial of Watzke's petition for writ of habeas corpus.

We find that Watzke's arguments are without merit and therefore affirm the judgment of the circuit court.

THE JUDGMENT OF THE HANCOCK COUNTY CIRCUIT COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, AND SOUTHWICK, JJ., CONCUR. KING, J., DISSENTS WITH SEPARATE WRITTEN OPINION. THOMAS, P.J., NOT PARTICIPATING.

KING, J., DISSENTING:

I dissent from the majority opinion offered herein. The majority finds that the Order of revocation was on its face valid saying, "A review of the record indicates that the circuit court articulated a finding that the order states on its face that the municipal court heard from witness, Tom Burleson, and found his testimony to support revocation. Our case law only tells us that a revocation hearing must include 'a written statement of reason for revocation'. The supreme court does not tell us what particularities must be included in this statement . . . . "

The majority has confused the evidence considered with the reason for the action. Our supreme court observed that matters of this nature are controlled by ***Gagnon v. Scarpelli,* 411 U.S. 778, (1973).** In

Gagnon the Supreme Court held that the written statement should include ". . . the evidence relied on and the reasons for revoking probation." ***Gagnon* at 786.** It is clear that the court's written findings identified the evidence relied upon, but did not identify the reason. I believe this was error.

1. We note that at the time of this writing, Watzke has completed the sentences from which he appeals.