

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00321 COA**

JOHN WATZKE

APPELLANT

v.

CITY OF BAY ST. LOUIS

APPELLEE

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

DATE OF JUDGMENT:	03/11/96
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:	CIRCUIT COURT'S DISMISSAL OF APPEAL FROM MUNICIPAL COURT'S REVOCATION OF SUSPENDED SENTENCE
DISPOSITION:	AFFIRMED - 12/2/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/23/97

BEFORE BRIDGES, C.J., HERRING, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

This case arises from the dismissal by Hancock County Circuit Court of John Watzke's appeal from the Municipal Court of the City of Bay St. Louis. Finding no error in this dismissal, 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 Subsequently, Watzke was brought before the city court for a revocation hearing in which Watzke's suspended sentence was revoked and he was sentenced to serve six months each on two counts of contributing to the delinquency of a minor with said sentences to run concurrently.⁽¹⁾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 appealed the revocation of his suspended sentence to the Hancock County Circuit Court. The circuit court denied the relief sought on the ground that an order revoking a suspension of sentence is not appealable. Feeling aggrieved, Watzke filed this appeal asserting one issue.

ANALYSIS

I. DOES A DEFENDANT GIVEN A SUSPENDED SENTENCE IN MUNICIPAL COURT HAVE A RIGHT TO APPEAL TO THE CIRCUIT COURT FROM A MUNICIPAL COURT ORDER REVOKING HIS SUSPENDED SENTENCE?

Watzke argues that the circuit court erred in denying his appeal from the municipal court's order revoking his suspended sentence. We disagree.

In regard to this issue, the Mississippi Supreme Court has stated as follows:

An order revoking a suspension of sentence is not appealable. When in such a matter there is a fundamental issue which if found in the convict's favor would make the proceedings null and void, the issue may be raised and reviewed in habeas corpus

***Kittrell v. State*, 29 So. 2d 313 (Miss. 1947)** (citations omitted) (emphasis added). Based on *Kittrell* and progeny, we find Watzke's argument to be without merit and therefore affirm the holding of the circuit court.

We note that Watzke filed a petition for writ of habeas corpus which was dismissed by the Hancock County Circuit Court. Watzke then filed an appeal from this dismissal which is styled ***John Watzke v. Ronald A. Peterson, Sheriff of Hancock County. Watzke v. Peterson*, 96-CA-000320 COA**, is currently before this Court and will be addressed in a separate opinion.

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, KING, AND SOUTHWICK, JJ., CONCUR. THOMAS, P.J., NOT PARTICIPATING.

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

