COPY

IN The court oF APPeals oF The State
OF Mississippi

Kenneth F. Rabalais
Appellant

VS.

State oF Mississippi
Appellee

FILED
NOV 05 2007
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

2006-CA-01832

APPeallant RePly BrieF

The APPeallant Humbly Request A ORAL Argument or
A Evidential Hearing

Humbly submitted By The,

APPeallant, Mr. Kenneth F. Rabalais
A Pro-se litigant

Mr. Kenneth F Rabalais 49942
U/291 A, Parchman M.S 38738

Kenneth F. Rabalais

11/5/07

In The court of Appeals of The state of Mississippi

Kenneth F. Rabalais / Appellant

v

State of Mississippi / Appellees

certificate of Interested Person

comes now Appellant Kenneth F. Rabalais' Pro se and Presents a certificate of Interested Person, and certifies that with His Appellant Reply Brief He Files The certificate of Interested Person, and therefore Has Furnished a copy of His Reply Brief To all Their Interested Parties who Have a Interest in The outcome of This Appeal. VIA U.S. Postage mail.

(Atto) Gen, Mr Jim Hood
P.O. Box. 220, Jackson MS
39205 - 0220

Mrs. Betty Sephton, clerk
Miss. S.C.t. of App, + court of App.
P.O. Box 249, Jackson MS
39205-0249

A.C.L.U. Mrs. Margie Wolinten (atto)
P.O. Box 2242, Jackson MS
39225 - 2242

This Being The ___ Day of Nov, 2007, A.D

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Exhibit, - A.1 - A-2 - A 3, are S.B. 2030, 1992 - S.B. 2294, 1993 - MCA 47-7-3, 1993
Exhibit, - B.1 - B.2 -, SB 2003, 1994, - MCA, 47-7-3 1994
Exhibit, - C. Final Judgment order
Exhibit - D. Arrest Report.
Exhibit - E. MCA 1-3-79.
Exhibit - F. white v State
Exhibit - G. Puckette v Abels

Table of Authority

M - A § 1-3-79

IN The court of APPeals of The state of Mississippi

Appeallant

Kenneth. F. Rabalais

no* 2006-CA-01832

VS

Appeallees

state of Mississippi

APPeallant RePly BrieF

Statement of The Case

I.

The Appeallant, Kenneth. F. Rabalais! was Arrested on 9/23/94 For The crime of RaPe. on a Female age 17, which This Alleged RaPe INcident was suppose To Have occured on 8/25/94., Rabalais! was Formaly charged and In- dicted, on 5/1/95 on one count. of (Rape 97-3-65(2)) of a Female age 17. Rabalais! was subsiquently Tried on 9/13/95, and was convicted and sen- tenced! To LiFe Imprisonment, By a Hancock co. circuit count. of The crime of RaPe. The APPeals count, AFFirmed His conviction without Publishing This case or The writen opinion on 4/7/98.! Pro-se Rehearing was Denied in Aug. 1998., The Trial Judge Penny. O. Tenny! IN His Final Judgement ordeu stated That Rabalais! was sentenced To (LiFe), Judge O. Tenny! did not specify IN

II.

The order That Rabalais! sentence of LiFe was To Be served without Parol Rabalais! Defense Attorney Told Him That He was sentence To LiFe with Paro under The S.B. 2030, 1992 S.B. 2294, 1993 M.C.A. 47-7-3 supp 1993 The old Ten yea law, and would Be Eligible For Parole AFter serving, Ten years on a LiFe sentence, Rabalais! Had Parole Documents in His Prisoner Master File. Sta ing", He would Be Eligible For Parole in 2004, which meant He was under The old Ten year Law M.C.A. 47-7-3 supp 1993,) But Rabalais! Time sheet Kep Reading not Eligible For Parole. on LiFe sentence. Rabalais! argued with The M.D.O.C Records Dept, and with The Attn. Gen, office Parole sec, Mrs Mapp! an with The Parole Board Mr. Skipper! of The Point That His LiFe sentence is Parole. under The old Ten year laws S.B. 2030, 1992 - S.B. 2294, 1993 - M.C.A. 47-7-3 supp. 1993. These agencies all Told Rabalais! That His LiFe sente violent crimes, Mandatory sentencing Laws S.B. effective on aug/23

III.

To clarify sentence, specific Issue Being wether Rabalais' Life sentence", Is with Parole Eligibility under the old Ten years' Laws S.B. 2030, 1992 S.B. 2294 supp. 1993, M.C.A. 47-7-3 supp. 1993, with the Hancock co, cir. Trial court Judge Terry, O, Terry; which without a Hearing, Judge O. Terry' Denied on Aug 16/06, said Motion, stating Rabalais' on 8/25/94 committed His alleged" crime of Rape, which was Two days After the New Mandatory violent" crime Sex crimes sentecing act S.B. 2003, 1994 M.C.A. 47-7-3 supp 1994, Became Effective on Aug 23/1994, and Therefore Rabalais' Life sentence", is To Be served without Parole., which Rabalais' contend, That the Trial court: Judge O, Terry' Interpretation of the New Laws Effect, Date, Being Aug 23 94 are Erroneously Misinterpreted, and misapplied To Rabalais', Life sentence and case at Bar,) which Rabalais' is Aggrived at

The Judgment Rendered against, Therefore Rabalais' Has Timely Filed His Notice", of Appeal., and Rabalais' Has successfully Filed and Perfected an Appeal To This Hon! Appeals court, And Rabalais' now Filed' an Perfected." Appellant Reply Brief, In Response To the state Appellees Brief consisting of Four Pages

IV.

Summary of Argument Facts

I.

The state Appellees are in Plain Error, stating The Appellant Rabalais' Failed To File His Notice of Appeal in a Timely Manner and That His Appeal should Be Dismissed For lack of Jurisdiction. Rabalais' states The Appellees are in Error., Because Rabalais' Filed a Timely Notice of Appeal, which was accepted Timely By This Hon. Appeals court, Clerk Mrs Sepulton' and given a case no* 2006, CA 01832 COA, and a Briefing Schedule was Issued, By The Clerk Accordingly, Rabalais' states That The Appellees Inadvertantly Failed To Realise That There is a Inmate Pro-se mail Box Rule, which allows 3 days For Receiving", and 3 days For Forwarding Legal Mail, The Appellees Erred in Inadvertantly, Failing To Realise That The Appellant, Rabalais' is a Pro-se litigant and is not To Be Held To The Standards of That of a Professional," Attorney, and The Professional Rules of court, Rabalais' Has a vested U.S const 6th 5th 14th amend and Miss. const. art: 3-26 right To Appeal His

circuit court clerks Letter on **Aug/28/06**. containing, circuit count, Judge O, Terry; order Denying, Rabalais' Motion To clarity sentence, and its Relief signed on **Aug/16/06**, Filed on **Aug/18/06**. Rabalais' argues That He cannot Be Held accountable For The circuit courts clerks Inability, To Mail and Forword Him The letter containing The courts Denial order, In a Timely Manner," where He would Be able To Enjoy The Full **30 days**, In which To file His notice of Appeal. Pursuant To **(M.R.A.P Rule 4(a))**, and Due Process Laws, Rabalais' argues stateing That His notice of Appeal was Timely signed and Mailed on **Sept/20/06**, To The circuit court clerks office,; which was Approx, **23 days**, After The Date, **Aug/28/06** In which He Received The, clerks Letter containing, The circuit count Judge, O, Terry's Denial order., Dated,

and Filed on **Aug/18/06**, Rabalais' argues and Informs The state Appellees That He is a Inmate In The M.S.P system. subJected To an Inadequate I.L.A.P service, And Dose not Have The litigating Resorces That The Attn. Gen. office Attorneys Enjoy, Rabalais' Further argues That The state Appellees, Erred By Inadvertantly Failing To Realise That Rabalais' Is an Inmate Pro-se litigant, and That There is a Inmate Pro-se litigant," **Mail Box Rule (see) Colman v Johnson** 184. F 3rd 398. 401., 196 F.2d. **1259**. 5th cir 1999,. which Allow **3 days** For Receiving and **3 days** For Forwarding Mail, **Total six days**, which Deem, Rabalais' Notice of Appeal. Timely Filed,; Rabalais' argues That The state Appellees, Erred

II

By Inadvertantly Failing To Realise That Appellant, Rabalais' Is an Inmate Pro-se litigant, subJected, To sub-Attorney litigating condition. And That Rabalais' is not a layman of The Law, and Has no Formal Education In Law, and The state Appellees' Inadvertantly Fail To Realise, That Being That Appellant Rabalais' is a Pro-se litigant, And is not To Be Held accountable," To The same Legal standard, of That a Professional Attorney, is subJected To, or To The Professional Rules and Time Limit, of The courts Rabalais' Further argues That The state Appellees' Erred By Inadvertantly Failing To Realise, That Rabalais' Filed a Timely notice of Appeal on **sept/20/06** which was accepted on **9/24/07**) By The court of Appeals clerk, Mrs. Sephton," as Timely Filed, which Mrs Sephton' set said Appeal on Docket and assigned," a **case no# 2006-CA-01832. COA- Kenneth F. Rabalais' v state of Miss,**

II

The state APPellees are in Plan Error, By agreeing That The circuit court Judge, O. Terry, Did not Error, By Denying Rabalais' Motion To Clarify sentence, without Giveing Rabalais' a Evidential Hearing, as He Requested. To substanciate. That The M.D.O.C Record. Dept, Parole sec and The Parole Board and the Atto Gen, office, Parole, sec, and The Trial court Judge, O, Terry's Interpretation of The new Law! S.B. 2003 1994, MCA 47-7-3 supp. 1994 Effective Date Being Aug/23/1994, is Erroneously Incorrect and are Being Misapplied To Rabalais' case and Life sentence, Because The correct Effective Date is oct/1/1994, For These new Mandatory violent, crimes or sex crimes, which now Require That all Person convicted of a sex crime, shall Have To serve There Entire sentence, without Being Eligible For Parole. If There sex crimes were committed After oct/1/1994 Rabalais' Alleged sex crime was committed on Aug/25/1994, . 37 days Prior To The new Law, came into Effect oct/1/1994, Therefore Rabalais' sex crime conviction, and Life sentence, Fall under The old Ten year Law. S.B. 2030, 1992 - S.B. 2294, 1993, - M.C.A § 47-7-3 supp. 1993, sentencing Guidelines, Therefore The circuit court Trial Judge, O, Terry's committed, Prejudicial Plan Error, Denying Rabalais' His Right To an Evidential Hearing. Thus violating and Disinfranchseing Rabalais' From His Due Process Rights U.S. const. 5th 14th amend and Miss, const, § Art 3-26 Allowed To Proceed on Appeal, For This Hon' Appeals court Review and Just Disposetion

Therefore The APPellees contendsion are Meritless, Rabalais' should Be

III

APPeallant, Reply To APPellees ProPosition one

This Notice of APPeal and APPeal Was Timely Filed, and Should Proceed on APPeal, and This Hon' APPeals court Having Complete Jurishdiction

I
Argument

The APPeallant, Rabalais' OBJects To, And would Angue That The State APPeal Have committed Plan Error, In its ProPosition one, ProPosing That Rabalais' A "- Fil- his Notice of APPeal is a Timely Manner, And ProPosing Rabalais' Rabalais' any

III

Therefore The state Appellee's, Proposition one, Relief should Be Denied The Appellant, Rabalais' Has a vested U.S. const, 6th 5th 14th amend and Miss. const, Art § 3-26. right to Appeal, His case To This How' Appeals court, For its Thorough Review and its Just Disposition. Therefore, The Appellant, Rabalais' as of Right, Numbly Request That He Be Allowed To Proceed on Appeal. which This How' Appeals court Having complete Jurisdiction over Appellant, Rabalais' Appeal

IV

Appellant Reply To The Appellees Proposition Two

The state Appellee's, are In Plan Error. Because The Circuit court Did commit- Plan Error. When It Erroneously Denied, Rabalais' Motion To Clarify Sentence Without An Evidential Hearing Thus Violating And DisinFranchising Rabalais' From His U.S. Const 6th 5th 14th amend, And Miss. const, Art, § 3-26 Rights To An Evidential Hearing

I

Argument

The Appellant, Rabalais' OBJects To, And would argue That the state Appellee's," Has committed Plan Error, when in its Proposition Two, Proposed That The circuit court, Judge, O. Terry' Did not commit Prejudicial Plan Error when it Denied Rabalais' Motion To clarify sentence, without an Evidential Hearing, As He Requested, Rabalais' argues That the circuit court Judge, O. Terry' Did commit Prejudicial Plan Error, when it Erroneously Denied Rabalais' Motion To Clarify Sentence, without Affording Him His Rights To an Evidential Hearing, As He Requested., Rabalais' argues That The circuit court Judge, O. Terry' Error was Prejudicial. By Denying Him His U.S. const 6th 5th 14th Amend, and Miss. const. Art § 3-26 Due Process Rights, To Be Given an Evidential Hearing, Because Rabalais' was Prohibited From His Requested and Guaranteed Rights, To an Evidential Hearing, He was not able To Properly argue and Substantiate, In His Motion To [illegible] sentence claims. That The M.D.O.C Record, Dept Parole sec, and The

S.B. 2003, 1994. - M.C.A § 47-7-3, supp. 1994, Laws came into Effect, This aug/23/1994, Effect Date, Is Being Erroneously Misinterpreted By the state, and is Inconnect, Because the correct Effective Date, is oct/11/1994, which is stated clearly In the Body of These New Mandatory violent crimes or sex crimes sentencing Act, Law: S.B. 2003, 1994, - M.C.A § 47-7-3, supp. 1994, section 11- A-B-C-D-D.ii. D.i, gives oct/11/1994 Being the Effect Date, For all the Above crime Issue, Mentioned In Sections 11-A-B-C. Therefore Rabalais would argue. That Because His sex crime Rape was Allegedly committed on. aug/25/1994, Approx. 27 days Prior To These New Mandatory violent crimes on sex crimes sentencing act, of 1994. came Into Effect, which Prohibit Parole For sex crime offenders, Do not Apply To His case At Bar, Rabalais would Further argue. That, since His Rape crime was committed on Aug/25/1994, And That Rabalais was Found Guilty, of Rape, 97-3-65(2) By a Jury, and sentence To Life. on Sept-/13/1994, And That His Life sentence. is under the old Ten year Laws S.B. 2030, 1992. - S.B. 2294, 1993 - M.C.A § 47-7-3, 1993. which state in Sec, 11, and sec, C. any Person sentence To Life. would Have To Do Ten years Before Becoming Eligible For Parole. Sec, B, state: any Person convicted of a sex crimes would Have To Do Ten years on sentence and Have a Psychiatric Evaluation Before Being Eligible For Parole. Rabalais would Have Further argued That Because of These M.D.O.C Records, Parole sec, and The Atty, Gen, office Parole sec, And The circuit court: Judge, O, Terry: Have Erroneously Misinterpreted aug/23/1994, as Being

The Effective Date For These New Mandatory violent crimes or sex crimes sentencing Act, Law: came into Effect, And That They are Misapplying, These New Laws: S.B. 2003, 1994 - M.C.A § 47-7-3, supp. 1994 Prohibiting, Parole For Person convicted of sex crimes. Guidelines, To Rabalais, alleged sex crime Rape, committed on aug/25/1994, and, Rabalais' conviction on sept/13/1994 of Rape 97-3-65(2) and sentence of Life Rabalais argues That The State Appellees and circuit court, Judge, O, Terry, are in Prejudicial Error, By Denying, Rabalais' Motion To clarify sentence, without an Evidential Hearing, Rabalais argues That The circuit [illegible] By law, under The U.S. const. 6th 5th 14th amend.

II.

tion," Filed Be a P.C.C.R or a Hebeas corpus. or an APPeal or a Motion", To clarify sentence, Thus The Circuit count Judge, O Terry i committed," PreJudicial Plan Error By Denying Rabalais' Motion To clariFy," sentence and His rights To an Evidential Hearing. Thus violating," and DisinFranchising Rabalais' From His Fundamental U.S. const. 6th 5th 14th amend. and Miss, const Art § 3-26 rights To Due Process oF The Law

III

Urgent

Request To The state oF Mississippi Law Makers, And To The Judicials, "oFFicials, To Have a Special Legal Analysis. To correctly Analyze These 1994, New Violent crimes or sex crimes sentencing," Act, Senate Bills 2003, 1994, which Amended M.C.A § 47-7-3. supp. 1994. Parole Statue, And There correct Effective Dates, And IF There Legal Language Violates Expostfacto Laws. And IF The New Mandatory Laws Sentencing Guidelines Are unconstitutional," By Eliminating Parole, And other Reform Programs For A certain sect oF Violent crimes oFFenders, which Violates U.S. const. 5th Amend, Equal APPlication oF Law. Statues Ect And That These New Mandatory sentencing Laws are still In EFFect," And Are Being Ambiguously APPlied To Rabalais' case At Bar.

I

Rabalais' would argue and Present, His urgent Request To The state oF Mississippi Law Makers and The circuit count Judge, O Terry; and state, APPealles," and To the How' APPeals coart Judicial oFFicials, To Have a Special Legal Analysis, To correctly Analyze These 1994 New violent crimes or sex crimes sentencing Act, Law; Senate Bills 2003, 1994, which Amended," M.C.A § 47-7-3 supp 1994 Parole Statue, And There correct EFFective," Dates, And IF There Legal Language Violates Expostfacto Acts 1-10, Laws and Miss, const Art § 3-26, Laws,) And To Further Analyze, IF The New Mandatory Laws sentencing Guidelines, Are unconstitutional, By Eliminating Parole. And other Reform Programs For a certain sect oF

Laws Are still in EFFect, And are Being Ambiguously Applied To The Appellant, Rabalais' Rape conviction, and sentence of Life case at Bar

II

Therefore Appellant, Rabalais' would argue, That the State Appellees And The circuit court, Judge, O. Terry's Application and Interpretation of Aug 23, 1994, as Being The EFFect Date, For These New Mandatory Violent crimes or sex crimes sentencing Act, Laws S.B. 2003, 1994 Amending The M.C.A. § 47-7-3 supp. 1994, Parole statue, Is Erroneously Incorrect," and Misapplied To Appellant, Rabalais' case at Bar, which The circuit court, Judge. O. Terry's Prejudicially Erred When He Based His order Denying on 8/18/06. The Appellant, Rabalais' Motion To clarify sentence Specifically The Parole Eligibility on Life sentence, Issue, on This Aug. 23, 1994, Incorrect, EFFective Date, which is not and Has not Ever Been clearly Established

Take Notice

I

Appellant, Rabalais' would Further argue. and will Illustrate with an overwhelming Perponderence of substanciated Evidence, That These 1994, New Mandatory Violent crimes or sex crimes sentencing Act, S.B. 2003, 1994, - M.C.A § 47-7-3 supp. 1994, and its EFFective Date, Aug 23, 1994, Is Incorrect, (And Oct/1/1994, is The correct EFFective Date.) And are Being Ambiguously Applied To Appellant, Rabalais' Rape crime committed on Aug. 25, 1995, ; And That These 1994 New Mandatory sentencing Law's Legal Language is Incorrect and Illegal, Because, They use The Word conviction," Rather Then (charged) Tried or convicted, Which Violate U.S. const. Art § 1-10, And Miss. const. Art § 3-26, Ex post Facto Laws, And That in S. ct. of U.S. v Booker, 125, 738. 2005. Have Declaired That all of The Federal, and state, S.B. 2003, 1994, - M.C.A § 47-7-3 supp. 1994, Laws And There Mandatory sentencing Guidelines To Be unconstitutional, But They are still in use, !

Quote! Appellant, Rabalais' argues That How could a Just Judicial System, Hold Him In Prison. From His Life Liberty and Freedom. un-
der" These New Mandatory violent crimes or sex crimes sentencing

II

The Appellant, Rabalais' would argue. That the circuit court Judge, O Terry' and state Appellee,s' and there contendsions, That Because The Appellant Rabalais' was Arrested on sept/23/1994 For the crime of Rape, which said crime of Rape was Allegedly committed on Aug/25/1994, Then By a Jury verdict, Rabalais' was Found Guilty of Rape 97-3-65(2) on sept/13/1995 And without a Presentence Investigation, Rabalais' was sentenced to Life on His Alleged First Felony offense conviction, (see) Final Judgement order as Exhibit (C.) To which The Trial court Judge, O. Terry' Dose not stipulate In The Final Judgement order That Rabalais' sentence of Life, is To Be served with Parole or without Parole. (It Just states Life.) The circuit

court, Judge, O Terry' and state Appellee, contends That Because, Rabalais' committed The crime of Rape on Aug/25/1994, which was Two Days After The New Mandatory violent crimes or sex crimes sentencing Act, came into Effect on Aug/23/1994, (see) New Law statue: S.B. 2003, 1994, - M.C.A. § 47-7-3 supp. 1994, as Exhibit (B1 - B2) which these New Law Statue of 1994, Prohibit Parole, For Sex crime offender, who committed There sex crimes on or After Aug/23/1994, In This case at Bar, Appellant, Rabalais' Rape crime was committed," on Aug/25/1994, (see) Arrest Report as Exhibit (D.) The Appellant Rabalais' argues That The circuit court Judge, O. Terry and state Appellees And The M.D.O.C. Record Dept. and Attw/Gen office Parole sec, Have Totally

III

Misinterpreted Aug/23/1994, as Being The Effect Date For These New Mandatory violent crimes or sex crimes sentencing Act, S.B. 2003, 1994 - M.C.A § 47-7-3, supp. 1994, and There Mandatory sentencing Guidelines Prohibiting Parole For sex crime offender's, and Therefore Have Misapplied Them To The Appellant, Rabalais' sex crime Rape committed on Aug/25/1994, and conviction, on sept/13/1995, and Life sentence, stating He is not Eligible For Parole, Appellant, Rabalais' argues and will Prove By Law, That aug/23/1994, is an Incorrect Effect Date, / And That oct/1/1994, is The undisputed," correct Effective Date, That The New Mandatory Violent crime, sex crimes sentencing Guidelines S.B. 2003, 1994, - M.C.A § 47-7-3 supp 1994 Act, Became into Effect, and Therefore Appellant, Rabalais' will Further Argue and Prove By Law, That, His sex crime Rape, committed on Aug/23/1994, and conviction on sept/13/1995, and sentence of Life, Is under

datory".

Correct Legal Analysis

I.

Appellant, Rabalais! will Present a correct Legal Analysis of The new Mandatory Violent crimes or sex crimes sentencing Act of 1994, and Its Illegal legal language which violates Expost Facto Law,, and its unconstitutional Mandatory sentencing Guidelines, And Its Incorrect Effective Date Aug/23/1994, which was never clearly Established, And (Its correct Effective Date, Oct/11/1994,) The Miss, Law Makers of The Senate, Implimented Three Senate Bills In 1994 sessions, which were S.B., 3028, 1994, - S.B., 566, 1994, - S.B. 2003, 1994, addressing The new Mandatory Violent crimes or sex crimes Sentencing Guidelines Act (see) The S.B. 2003, 1994 as Exhibit, B 1) which is The controlling Senate Bill and The one In Question,, (See) The senate Bill, S.B. 2003, 1994, and its Substance, which specifically states There going To Amend

The M.C.A § 47-7-3, 1993, Parole statue, (see) as Exhibit (A, 3)) and To Provide That Anyone convicted of Violent crimes, - sex crimes, - Armed" Robbery - Attw, Armed Robbery - cartacking - Drive by shooting shall Not Be Eligible For Parole, After Oct/11/1994,

Take Notice
of The Format and/or The Layout of S.B. 2003, 1994

II

Take notice of The S.B. 2003, 1994, and its substance and its Body, which state, and clearly Emphasizes, that There going In To Amend. M.C.A. § 47-7-3 supp. 1993, with The new Mandatory violent crimes or sex crimes sentencing Guideline, Act, with M.C.A § 47-7-3 supp. 1994, which now Provides, That anyone convicted of a sex crime - a Armed Robbery - Robbery - cartacking - Drive by Shooting - and Habitual offender - and Those Persons sentenced To Life Shall Not Be Eligible For Parole, I- see 1-A-B-C-D

section, 5, M.C.A. § 47-7-3, 1972-1993, Is Amended as Followed

M.C.A. § 47-7-3 (1) state, Every Prisoner who has Been or may Hearafter Be convicted of any offense against The state of (Miss) and By a Judgment is sen-

Is sentenced To a Term of natral life, and Has served not less Then Ten (10) years of such Life sentence, may Be Released on Parole as hear-after," Provided Except That

Sec. 1A. - No Prisoner **convicted** as a confirmed Habitual offender under The Provisions of 99-19-81, Through 99-19-87 Shall Be Eligible for Parole

Sec. 1B - Any Person **convicted** of a **sex crime** shall not Be Released on Parole, Except for a Person under The age of nineteen (19) who Has Been convicted under sec, 97-3-67

sec 1C. - no one shall Be Eligible For Parole until he Has served one (1) year of His sentence, unless such Person, Has **accrued** any Meritorious Earn-ed. "Time allowances, which He shall Be Eligible For Parole, IF He has ser-ved." (i) nine (9) month of His Sentence, when His sentence is more Then Two (2) years or less (ii) Ten (10) months of His sentence, when His sen-tence, is more Then Two (2) years But no more Then Five (5) years, and (iii) one (1) year of His sentence, when His sentence is more Then five (5) years

III

sec 1d(i) - no Person shall Be Eligible For Parole who shall on or after Jan. 1/1/1977, Be **convicted** of Robbery or Attempted Robbery Through The Display of a Firearm. **until He shall Have served Ten (10) years**, IF He is sentenced To a Term of more Then Ten (10) years, **or IF sentenced To a Term of The natral Life of such Person**, IF such Person is sentenced To a Term of not Less. Then Ten (10) years or less, Then such Person shall not Be Eligible For Parole, This Provision of This Paragraph (d) shall also **Apply** To any Person who shall commit Robbery - Armed Robbery on or After July 1/1 **1982**, Through The Display of a deadly weapon., **This subparagraph (d)(i) shall not Apply To Persons convicted after sept 30/1994**

Sec (d)(ii) - NO Person shall Be Eligible For Parole, who shall, on or After (**october 1/1994**) Be **convicted** of Robbery - attempted Robbery - or carJacking as Provided in sec 97-3-115, et, seq Through The Display of a of a deadly weapon

(see) The S.B. 2003, 1994 substance which clearly state its going To Amend, The Parole statue M.C.A § 47-7-3, 1972-1993 Then They Define, In Emphasis, stating That certain Person: convicted of The Following violent crimes shall not Be Eligible For Parole, sex crime: - Armed Robbery - Robbery - cartjacking - Drive by shooting - Those Person: sentenced To Life Then In The S.B. 2003, 1994 (Body) They List These violent crimes In section 1-A-B-C-Di-Dii Then at The Bottom of (Dii) They give an Effective Date. oct/1/1994. (see) Illistration as Listed Below

section/1:- Those Person: sentenced To Life
section/A.- Those Person convicted as a Habitual criminal
section/B.- Those Person convicted of a sex crime
section/C.- no Person shall Be Eligible For Parole until They serve at least one(1) year, 9, month - 10 month on Two (2) years one(1) year on a Five (5) years
section/1-Di- no Person shall Be Eligible For Parole no Person who After Jan/1/1977 commits a crime of Robbery or Attempted Robbery and convicted shall not Be Eligible," For Parole, until He shall Have served Ten 10, years; or IF sentenced To Life, until He shall Have serve Ten (10) years on Life Sentence
section, Di:- shall not apply To any Person convicted after september 30/1994
section Dii- no Person shall Be Eligible For Parole who shall on or after, october/1/1994, Be convicted of Robbery - Attempted Robbery - cartjacking - Drive by shooting on or After october/1/1994, Through The Display of a Firearm.

IV

Then at The End of crime section (Dii) The senate Law makers give October."1/1/1994 which is The Effective Date For all of The above Mentioned crime sections Through Dii-Di-c-B-A-1 This is a simble and concise correct Illistration and Analysis of The correct Effective Date oct/1/1994 of S.B. 2003, 1994, M.C.A § 47-7-3 supp 1994 (see) as Exhibits (B1-B2) / Appellant Rabalais' argues and confirms That. The correct Effective Date is oct./1/1994, and Aug/23/1994 is a Incorrect Effective Date, and Therefore The circuit court Judge. O. Terry's and state Appellees Have Inadvertantly Misinterpreted Aug/23/1994 as Being The Effective Date and Have Misapplied These S.B. 2003, 1994 - M.C.A § 47-7-3 supp 1994, and There Mandatory sentencing Guideline: To Appellant Rabalais' sex-
[illegible] Appellant Rabalais' argues That He

ing," Ten (10) years on Life sentence /, and (sec, D i,) Life sentence which states He's still Eligible For Parole, After serveing Ten (10) years on Life sentence / also stated In (sec, D i,) This subparagraph shall not Apply To Person's convicted After sept, 30/1994 / which means This S.B, 2003/1994, - M.C.A § 47-7-3 supp 1994/ Does not Apply To The Appellant, Rabalais' Rape crime and conviction on Sept/13/1994, and Life sentence Because He was convicted on sept/13/1994 / (18, days) Prior To sept/30/1994 But The circuit court, Judge, O,Terry's and The state Appellee,s' Have Erroneously only Applied The S.B, 2003, 1994 - section, B, The Sex crime Portion To Appellant Rabalais' sex crime conviction, And They Have Erroneously Denied Him Parole, on His Alleged First Felony OFFense conviction and sentence of Life

The Miss, Legislator,s Implimented Three senate Bill In 1994, session which were S.B, 3028, 1994 - S.B. 566, 1994 - S.B. 2003 1994 / In an Attempt," To Amend The M.C.A § 47-7-3, 1972-1993, Parole statue, and In The Latist Third senate Bill, S.B, 2003, 1994, and in it, (section D ii,) They Give an EFFective Date oct/1/1994, (See as Exhibit (B, 1) also (See) M.C.A § 1-3-79, as Exhibit, (E.) which states Then when ever The same section of Law, are Amended By Different senate Bills During The same Legislative session of That year, Then The Amendment with The Latist EFFective Date shall supersede all other Amendment Dates To The same Issues and sections of Law Takeing EFFect Earlier / In This case The S.B, 2003, 1994, and Its oct/1/1994 EFFective Date, Is The Latist EFFective Date and senate Bill

V

Appellant, Rabalais' would argue and substanciate That The Legal Language," In S.B, 2003, 1994, Is Illegal, Because In This Bill, section of crimes Sec, 1 - sec, A - sec, B - sec, C - sec, D i - sec D ii, / they all use The word (Conviction.) ((See) The Previous Pages 11-12-13), Conviction violates U.S. const, Art § 1-10 - Miss, Const, Art § 3-26 Ex post Facto laws convicted also creates confusion, And Deems S.B, 2003, 1994, Arbitrary Because of Its Incorrect Illegal Legal Language, which is not Clearly Established, (See) The S.B, 2003, 1994, section, E, which states charged - Tried - convicted, This Is correct Legal Language, within U.S. const, Art § 1-10 - Miss, const, Art § 3-26, Ex-

were not clearly Established And was creating Great confusion In The courts and M.D.O.C Records Dept. The Miss. Legislature Law Makers In 1995 In Senate Bill, S.B. 2175, 1995, and S.B. 596, 1995 again Attempted" Rectify The Impediments In The 1994 New Mandatory violent crimes on sex crimes sentencing Act, S.B. 2003, 1994 - M.C.A § 47-7-3 1994, and its sentencing Guidelines and There correct Effective Date, (see) S.B. 2175, 1995 - S.B. 596, 1995 - M.C.A § 47-7-3, 1995, as Exhibits, (H.1 - H.2 - H.3) And in These 1995, Senate Bill Statues They state sex crimes Became Mandatory on July/1/1995 also (see) White V State 751 So 2d 481 1999, Miss, App. Lexis 517, as Exhibit (F) (see) Puckett V Abels 684 So.2d 671, 1996, Miss, Lexis 636, as Exhibit (G). (See) also M.C.A. § 47-7-3, 1998 which also confirms That sex crimes Became Mandatory In July/1/1995 / and now requires anyone who commits a sex crime To serve The Entire sentence. / allow The APPeallant Rabalais, was convicted

of a sex crime Rape on Sept/13/1995 / The APPeallant, Rabalais would Argue. That Because His sex crime of Rape was Allegedly committed on Aug/25/1994 / Eleven months Prior To The sex crimes Laws Being changed" on July/1/1995 / There Fore, APPeallant, Rabalais Further argues That His sex crime Rape was committed on Aug/25/1994, and Thus convicted and sentenced To Life on Sept/13/1995 / Therefore under undisputed Law His Life sentence Is controlled By The Statues, S.B. 2030, 1992 - S.B. 2294, 1993, - M.C.A § 47-7-3 supp. 1993 / sentencing Guidelines (see) as Exhibits (A.1 - A.2 - A.3) which are The old Ten year laws which Provides That any Person convicted of a sex crime must serve Ten (10) years Before Becoming Eligible For Parole, / which Further Provide That any Person sentenced To Life, must serve Ten (10) years Before Becoming Eligible" For Parole, (see) U.S. const. Art § 1-10, and Miss, const. Art § 3-16 Expost Facto Laws, which state: Expost Facto Laws Prohibitation Forbids The Imposition of Punishment more seven, Then The Punishment assigned By Law, When The act or crime To Be Punished accured

Take Notice

I

— [illegible] v. Rabalais' cases and would argue That The Miss.

S.B. 2175. 1995 - M.C.A § 47-7-3 supp. 1995, Eighty Five 85% Percent Truth and, sentencing Act, statues, and There Enhanced Mandatory sentencing Guidelines, and The Issue That They are unconstitutional, which The ~~In~~ S. ct. of U.S. v Booker 125, S ct. 738, 2005, Deem: That The Mandatory sentencing Act, Guidelines are unconstitutional, Because The violate The U.S. const. 6th 5th 14th amend. and Miss, const. Art § 3-26, Right, To Due Process, and Right, To a Fair and unbias Trial. In which These Mandatory sentencing Guidelines Especially violate The First time convicted Felony who, is convicted of a violent crime; offenders' Rights, when He, is given a Mandatory, sentence without Parole on His First offense, and/or He, is given a Life sentence without Parole on His First offense, / Appellant, Rabalais, argue, Then what, Has Become of The Three strikes Law, where an offender, "is given a Three strikes or Three chances Before He is given any Mandatory sentence, IF This is Law, Then what Has Happened To The First Time violent crime offenders Previlege or Right, To Be given Three strikes or Three chances, Before He, is given a Mandatory sentence or Life sentence without Parole ?, OBviously a First Time violent crime, convicted, "Felon: cannot and will not Be convicted as a Habitual criminal under The Habitual criminal offender statue, sec, 99-19-81 - 99-19-87 Where Did The First Time convicted Felon offenders Right, To Be Reformed and Then Reinstated Back into society gone ? Appellant, Rabalais, argues That if The Federal and state congressman and legislators Implement and Passes Laws, That are Mandatory sentencing Laws which For The convicted Felon First Time offenders Eliminate Reform programs and The Hope of Parole, and To Be Reinstated Back into society, Then The Government, s Law makers and Its Judicial system and its Penal system, Have Failed its Tax Paying voteing citizens, and is Therefore Disfunctional,

II

The Appellant, Rabalais, state, That The state of Mississippi senate Law Makers In 1994 and 1995 Have adopted The Federal Enhanced Mandatory sentencing Act, and its sentencing Guidelines, With Implimenting and Passing There own version of Mandatory sentencing Laws and There Guidelines, " In senate Bills S.B. 2003. 1994 - M.C.A § 47-7-3 supp 1994 - S.B. 2175

Also These violent crimes or sex crimes offenders who are sentenced to serve Mandatory sentences, or, To serve a Life sentence, are Excluded From Participating in any Reform Incentive Earned Time Credits programes. M.C.A. § 47-5-139. - M.C.A § 47-5-138. They are not Eligible To Earn 10-days For Every 30-days served Time credits, nor can They Earn 30 days For 30 days served Time credits" For completion of work or Educational Programs which only non-violent offenders can Recieve These, Reform Incentive Earned Time Credits For completion of any work or Educational programs Ect, which creates a Double standard" which Violates U.S. const, 5th 14th amend and Miss, const, Art § 3-26, Rights To Equal application of The law. and Due Process clause., / where otherwise under." The Previous old Ten year Statues S.B. 2030, 1992. - S.B. 2294, 1993. - M.C.A § 47-7-3, 1993 Provided That offenders Like Appellant Rabalais' who were charged Tried or convicted of a violent crime or a sex crime. Would Be Eligible To Participate." In all of These Prison Reform Incentive Programs, such as Parole Probation - House arrest - Work and Educational completion and Earn 10 days For 30, days served Time Credits and To Earn 30 days For 30, days served Time credits,) And Those offenders convicted of a violent crime or a sex crime would First Have To serve Ten, 10, years on There sentence Before Becoming Eligible For Parole, or Those offenders convicted and sentenced To Life, Would Have To First serve Ten, 10, years Before Becoming Eligible For Parole, and Those offenders convicted of sex crimes, would Have To First serve Ten 10 years and Have a Psychiatric Evaluation Before Becoming Eligible For Parole

III

Appellant, Rabalais' argues That Even Those S. ct. of U.S., v Booker 125, S. ct. 738 2005. Is a Federal case Dealing with The charge of Posession with Intent To Distribute cocaine Drug. conviction of Booker, and sentencing Him under The Enhanced Mandatory Federal sentencing Act, of 1987. and Dealing with The Issue of The U.S. const. 6th Amend guarantee That Every Element of The crime must Be Presented To The Jury. and Every Element of Facts For Enhanced sentencing Purposes Must Be also Presented To The Jury, and That Jury must Find Him Guilty," of Every Element of The crime, with which He is charged. Before Booker could Be given a Mandatory sentence, under The Federal Enhanced Mandatory sentencing act, of 1987, which in S. ct. of U.S. v Booker, sentence was vacated and

support, such as Winship - Ring - Guadin - Mistretta - Jones - Apprendi - Blakely Booker, U.S. const. 6th amend. right to Jury, are Identically Related Issues, which are Therefore Applicable To The Appellant, Rabalais' case of a state sex crime Rape conviction, and Mandatory sentence of Life, Handed down To Him By The state of Mississippi Hancock co. cir court on His alleged First offense situation, Even Thoe The Sct of U.S. v Booker, was a Federal case and conviction, of The sale of cocaine Drug, Issue, and Enhanced Mandatory sentence Issue, which The Prosecutor Failed To Present and Prove Every Element and Facts of The crime of Posession with Intent To Distribute cocaine, Nor Did The Prosecutor, Present or Prove The Element, and Facts For Enhanced Mandatory sentencing, To The Jury. In The Booker's case.

Argument
I

Therefore Appellant, Rabalais' will Brige and Prove How The Federal Booker case Relates some what Identically To His case, (Like Booker,) In The Appellant, Rabalais', case He was Taken To Trial on sept/13/1995. For a state Formal Indicted charge of Rape 97-3-65 (2) of a Female (age, 17) (see) Indictment as Exhibit( ) There was Never any Warrent Issued To Appellant Rabalais' Nor was There any warrent attached To The Indictment. Nor Did The Prosecutor 'wood' Present a warrent To The Jury or into The Trial Evidance, The Prosecutor 'wood' Failed To Prove or Present To The Jury, any Evidance of Proof, of The crime of Rape Nor Did The Prosecutor, wood' Prove any of The Four Element of The crime of Rape. Before The Jury, There was (no Proof of (1) - Lack concent - (2) no Proof of Force - (3) no Proof of Fear - (4) No Proof of Penetration or Medical Proof There was No Medical Proof - No Medical Doctor Exam Done on Defendant Rabalais', or on The alleged victem Nicole' - No D.N.A. Test Done - No Rape Kit Test Done on Either The Defendant Rabalais', or on The victem Nicole' Even, There was never any Medical Physician Examination or His Testimony Presented To The Jury or into The Trial Evidance, The Prosecutor 'wood' Failed To Prove and/or To

Submit any of The Proof of That a crime of Rape Ever acurred. Nor Did The Prosecutor, wood' Prove any of The Four Element, To support a Rape conviction (See) In re Winship 397, U.S. 358, 364, 90, S.ct, 1068, 25 L.Ed. 2nd, 368, (1970). See also, united states v Guadin 515, U.S. 506, 511, 115, S.ct 2310, 132, L.Ed. 2d. 444 (1995) which The Trial court, and Prosecutor Erred In violating The Appellant Rabalais' U.S. const 6th

Failed To Provide The Names and Statments of His Two state witnesses Detective Glen Strong; and social worker Connie Amies; so The Defense would Be able To Defend, at Trial The Defense (attn) willis; OBJected To These Two state witnesses Being allowed To Testify For The State in Behalf of The alleged victem. The Prosecutor, wood; Realising His Discovery Violation Blunder; Lies and says (Quote) Prosecutor, Wood; says He,s allowed Two surprise witnesses; "This was Tampered with and Deleted out of The Trial Transcripts of Evidence," (over Defense OBJection) The Trial count, Judge O, Terry; Erred By allowing These Two witnesses Strong; and Amies; Take The Stand and Testify For The state, which Both Strong; and Amies; Testimony was well Rehearsed, These

Two Illegal Inadmissible witnesses Both Strong; and Amies were allowed To Give Hearsay Testimony of what a Great Aunt Margie Campo; Told Them, about What The alleged victem Nicole; Told Her of The alleged Rape That accured on Aug/25/1994, which was In violation of The Hearsay M.R.C.P Rule (802) Both Strong; and Amies; who are not Medical Physicians, But of These witnesses Strong; and Amies; were allowed To give Medical Testimony about Rape about Penetration, about What some Doctor said, which was a Lie, Because Neither The APPeallant Rabalais; or The alleged victem Nicole; were Never seen or given any Kind of Medical Exam - no D.N.A Test - no Rape Kit Test, By any Medical Physician, And The Prosecutor Wood; Did not Even Present To The Jury or Enter into The Trial Evidence, any Medical Physicians

II

Testimony or any Medical Exam - no D.N.A Test, - no Rape Kit Test, Nor Did He Produce a Medical Physician To Testify as a witness, In Behalf of The alleged victem Nicole, The Trial count Judge O Terry; Erred By allowing Both of These Two state witnesses Strong; and Amies; To give Inadmissible Testimony of Medical Issues which violates M.R.C.P Rule (802) which state; only Medical Physicians are allowed To give Testimony on Medical Issues The Prosecutor Wood; Did not Prove any of The Four Elements of The crime of Rape, or That a crime of Rape Ever accured, The united state, constitution, "states That without Medical Proof and a Physicians Testimony, a Rape conviction cannot Be Had or Stand,) The state witness, Connie Amies; Entire Trial Testimony was Tampered with, and Totally Deleted out of The Trial Testimony Transcripts of Evidence, The Defendant APPeallant Rabalais; was

not A. The Trial count Judge, O Terry; To give His choice of Defens

as Exhibit 1) The Trial count Judge O.Terry; Prejudicially Erred By violating The Appellant, Rabalais; U.S. const. 6th Amend and Miss. const Art. 3-26 right; Twice To choose His own Defense, To Defend The Indicted charges against Him, The Trial count Judge O.Terry; Prejudicially Erred By Twice Denying The Appellant Rabalais; Right To Speak while on The witness stand at His own Trial (quote) Q- Rabalais; your Honor can I say something? A- Judge, O. Terry: No! The Trial Judge O.Terry; Twice denied Rabalais; To speak while on stand Because He Knew That Rabalais; was going To alert The Jury of The Facts That There was no warrant - no Medical Physician Exam - or no DNA Test; - or no Rape kit Test Done on Rabalais; or The alleged victim Nicole; - 354 day Fast and Speedie Trial violation, - and That The Affidavit of complaint of This Rape was written out and signed By detective Glen strong; It was not written out or signed By The alleged victim Nicole;, and The Trial count, Judge. O. Terry; and Prosecutor wood; Did not want The Jurors To Know These violative Facts, nor Did They want These violative Facts Dictated into The Trial Transcripts, Rabalais; Defense Attn willis; alerted The Trial Judge O.Terry; and Prosecutor wood; That Rabalais; when called To testify would Expose These violative Issues To The Jurors, While on the witness stand. Because," Prion To Trial, Rabalais; Requested of His Defense (Attn) willis; To File a omnibus Hearing Motion, and To Have This Indicted charge of Rape Dismissed," on These violative Issues. Instead Defense (attn) willis; Breached Rabalais; Defense By going To The Trial Judge, O.Terry; and The Prosecutor wood; Prion To Trial, and told Them That Rabalais; wanted Her To Bring up These violative Issues Before The Jury Jurors; and Have The Indicted charges of Rape Dismissed," Defense (Attn) willis; Told Rabalais; That she Discussed Bringing up These violative Issues Before The Jury with The Trial Judge O.Terry; and The Prosecutor, wood; and That They Told Her, she would Have a very short career IF she Even attempted To Bring These violative Issues up Before The Jury. on The morning of Trial Defense (attn) willis; Told Rabalais; For These Reasons, she would not Bring These Issues up Before The Jury, and Have The Indicted charge of Rape Dismissed, But Defense (Attn) willis; Told Rabalais; That He could Bring These violative Issue up Before The Jury, when He was called To Testify on stand. Well obviously, Defense (attn) willis; alerted The Trial Judge, O. Terry; and Prosecutor wood; and This is why The Trial Judge, O.

III

And one of The Trial Judge, O, Terry's Denials of Rabalais' Request to speak was Deleted out of His Direct Trial Testimony Transcripts, and was Injected and Transcribed Into The alleged victems Nicole's Direct Trial Testimony Transcripts, (See) T.T.p.( ) as Exhibit, (I), which was a crime of altering, and Tampering with The Direct Trial Testimony Transcripts of Evidence committed By These Hancock.co.cir court corrupt Judicial Officials, The Defense (attys) willis' Failed to oBject

well Rabalais' Trial Ended The Jury well Eleven of The Jurors went To Deliberate, But The Prosecuton Wood' called The Jury Forman Vanessa Peterson' over To His Table, and Demandedly Told Her This (Quote) Prosecutor Wood' Demandedly Told The Jury Forman Vanessa Peterson' That He wanted a conviction, and a Life Sentence.' The Jury Forman Vanessa Peterson Reply Was Prosecuton Wood' Don't I always get you the conviction and sentence you Want They Both said This while Looking Rabalais' right in The Eyes, well The Jury Forman, Vanessa Peterson' Joined The other Eleven Jurors and a Hour Later came Back with a Guilty verdict, Finding Appellant, Rabalais' Guilty of Rape 97-3-65(2), and Fixed sentence at Life, which The Trial court Judge O, Terry

IV

Erred By not Informing The Jury, in a Jury Instruction That IF, They Found Rabalais' Guilty and Fixed The sentence at Life, That His Life sentence would Be without Parole, Due To a New violent crimes sex crime' Act, Law S.B. 2003, 1994, - M.C.A § 47-7-3, Supp, 1994, Statue, That allegedly came into Effect on Aug 23, 1994, Two Days Prior To Rabalais' sex crime Rape, Aug/25/1994, allegedly Being committed, which The Jury should Have Been given this Instruction Because This New violent crime' on sex crime State of 1994 Enhanced', Rabalais' Punishment To Being a sentence of Life Without Parole (See) Supreme court of United state' v Booker 125, S.ct, 738, 2005, . where otherwise, IF Rabalais' sex crime Rape, would Have Happened Just Three Days Earlier on Aug 22, 1994, His Life sentence would Have Been under The old Ten year Law S.B. 2030, 1992, - S.B. 2294, 1993, M.C.A § 47-7-3-1993, where He would Have Been Eligible For Parole after serving Ten years on Life sentence," (See) Blakely v Washington 542, U.S, 142 S.ct, 2531, 2004, (See) Apprendence" v New Jersey, 530 U.S, 466, 120 S.ct. 2348, 147, L. Ed.2d, 435, 2000,) and

Investigation. The Trial court Judge, O, Terry' Read The

Jones v united states 526 U.S. 227, 230 119, S.ct, 1215, 143, L.Ed. 2d, 311 (1999)
(see) Ring v Arizona 536, U.S. 584, 122, S.ct, 2428, 153, L.Ed. 2d, 556 2002
The Trial court Judge O. Terry, In the Final Judgment order. That Rabalais' sen-
tence, of Life, would Have To Be served without Parole. or with Parole, the
Trial Judge. O. Terry, In the Final Judgment order, Just states sentence is
Life, By Law The Trial Judge. O. Terry, was Required to stipulate In the Final
Judgment order. That Rabalais' Life sentence was To Be served without Parole
and The Judge. O. Terry was also Required To cite The sentencing Guidelines
statue **S.B 2003. 1994 - M.C.A § 47-7-3 Supp. 1994.** For which Prohibited Parole

Appellant, Rabalais' Feels That If The Trial Judge. O. Terry, Had not Erred, By not
Giving The Jury, an Instruction on IF The Jury Found Rabalais' Guilty of Rape
and Fix The sentence at Life, That The Life sentence They were giveing, Him
would Be a Life sentence without Parole. on Rabalais' First alleged Felony
Rabalais' Feels That Had The Jury Been But on Notice with a Properly Re-
quired," Instructing. That The Jury would Have Fixed Rabalais' sentence
at something Lesson Then Life. The Appellant, Rabalais' was Informed By
Both The Trial Judge, O. Terry, and His Defense (attn) willis' and His Appeals
(attn) Harry Ward, and By The M.D.O.C Rankin co. Records Dept, That His Life
sentence, was under The old Ten years Law, **S.B. 2030, 1992. - S.B. 2294, 1993.**
M.C.A § 47-7-3 1993, and That He will Become Eligible For Parole After serving

The First Ten years Mandatory on His Life sentence, Appellant, Rabalais' Had
Parole. Documents in His Inmate Prison Master File For nine years again also
stating He was Eligible For Parole. In **2004. september 25th 2004.** which was Ex-
actly, "Ten years From His crime Being committed. on **Aug 25th 1994.** But after
nine years. The M.D.O.C Record Dept Parole section's Had Taken These Ten
years Law Parole Documents out of Rabalais' Master File. and now The
M.D.O.C Records Dept, Parole section, That Rabalais' Life sentence is without
Parole Due To a new Mandatory Violent crime, or sex crime, sentencing Act,
statue **S.B. 2003, 1994 - M.C.A § 47-7-3 Supp. 1994,** and its sentencing Guidelines,
Prohibiting Parole For sex offenders, Becomeing in Effect on Aug 23rd 1994, Two
Day Prior To Rabalais' sex crime Rape Being committed. which is Erroneous
Because on The Face of These **1994** statue, S.B. 2003, 1994, - M.C.A § 47-7-3
Supp. 1994. clearly states in **(section D i.) That oct 1st 1994** is The Effect-
ive," Date.

The Rules and now Tell That convicted Man, That He is not Eligible For Parole, and That now He will Have To Serve His Entire Life in Prison under a Mandatory Life sentence, on His First Felony offense conviction, constitutes," a **U.S. const. 8th amend. and Miss. const. Art §3-26**, cruel and unusual Punishment violation. of The Appellant Rabalais' Rights

conclusion

I

Appellant, Rabalais' alerts The Miss. supreme court of Appeals That (1st) These Federal and state mandatory sentencing Acts and There sentencing Guidelines of **1984 - 1987 - 1994 - 1995**, statues were Implimented For serial violent crimes offenders serial Murders - serial Rapest - serial child Molesters Terrorest. Ect, These Mandatory sentencing Act, sentencing Guidelines statues were not Implimented To Be Applied To any First Time violent crimes or sex crimes Ect offenders, To Through a Man away in Prison, under These Mandatory sentencing Acts and There sentencing Guidelines, Prohibiting Re-Form," Parole - Probation - Education - work Programs and Prohibiting That man From Being Reformed By The Penal system, and From Being Reinstated Back into society, would Deem Both The Miss, Penal system and its Judicial courts System. Disfunctional. Both Failing That convicted Man and The Tax paying Voteing Citizens of The united states of America

Appellant, Rabalais' argues That The Prosecuter's wood' Evidence was Poor and did not support a conviction or it Life sentence. which took Appellant Rabalais' Life Libenty and Freedom Family career Ect, away From Him

Appellant, Rabalais' states That The culomitive Effect of The Issues and Facts Presented in This Reply Brief Have overwhelming Merit, and That all Relief sought should Be greented. Which Appellant, Rabalais' Pray His Reply Brief is well Taken

Relief Sought

I

The Appellant, Ken Rabalais' Seek's That His Following Requested Relief sought will Be granted

cruel and unusual Punishment. He suffered Being Told He Had Parole for nine years, Then Being Told He Was no Parole, and will Have To serve His Entire Life sentence out, without The Hope of Being Releast. The Appellant, Rabalais; seeks That His conviction Be set aside, and His Life sentence Vacated, and To Release Rabalais; From M.D.O.C coustady

(2nd) Rabalais; seeks That The supreme court of Appeals, court Justices Deem; His Life sentence. To Be under The old Ten year Laws; S.B. 2030, 1992. - S.B. 2294, 1993 - M.C.A §47-7-3 1993, and To Have The M.D.O.C. Records Dept. and The (Attn.) General office Parole section, set a Date For a Parole Hearing Immediately. And To Grant Rabalais; Parole, and To Release Rabalais; on a out of state compack Parole, To New orleans LA, Adler st, Bernard Parish. LA.

(3rd) Rabalais; seeks That The supreme court of Appeals court, Justices Grant. Him an Abandegement From The state of Mississippi, which Rabalais; will sware under oath. That He will never Return To This state Ever

(4th) Rabalais; seeks That The supreme court of Appeals court, Justices Deem Rabalais; sentence of Life, as sufficient time served, and To Release Him From M.D.O.C coustady,

(5th) Rabalais; seeks That The supreme court of Appeals, court Justices seek out a Legal Analysis To correctly Interpret The S.B. 2083 1994 M.C.A §47-7-3, 1994, correct Effective Date, whether it; Aug 23/1994 or whether it; Oct. 1/1994, and To correct its Incorrect Legal Language;" From (conviction) To (charged-Tried-convicted)

(6th) Rabalais; seeks That The supreme court of Appeals, court Justices To also Have a Legal Analysis To Determine whether sex crimes were Made Mandatory; In July 1/1995 under S.B. 2175, 1995 - M.C.A. 47-7-3 Supp 1995, which White v State 751. So. 2d. 481. 1999, and Puckett v Abels 684. So. 2d. 671, Miss 1996, clearly state sex crimes [illegible] which IF This is correct, Then That

(7th) Rabalais' seeks That The supreme court of Appeals court, Justices To also Have a legal Analysis Examen There state Enhanced Mandatory sentencing Act statue; S.B. 2003, 1994 - M.C.A § 47-7-3, 1994, - S.B. 2175, 1995 M.C.A § 47-7-3, 1995, and there sentencing Guidelines. IF They are in Fact unconstitutional, as The S.ct. of U.S. states That They are

(8th) Rabalais' would Emphasizes: To urge The supreme court of APPeals, court Justices To Realise That Throughout The United States The Averege sentence given To a Person For a First Time conviction of (Rape is seven years,) not Life without

(9th) Rabalais' seeks To Inform The supreme court of Appeals court Justices That He is a self Reformed convict who Has self Taught Himself The Professional Paralegal skills. This and many other Briefs and Petitions Ect, are Living Testimony of His Paralegal Skills, which is Proof That He can Be a Productive Responsible citizen again. all He need, is one chance at Life Liberty Freedom

This Hon'l supreme court of Appeals Having Jurisdiction In This Matter Pursuant To M.R.A.P Rule, 28-29.

This Being The 5 day of November, 2007

Kenneth F. Rabalais 499
4/291 Parchman M.S 387.

Kenneth F. Rabalais

CERTIFICATE OF SERVICE

This is to certify that I, the undersigned, have this date as reflected below, caused to be mailed, via United States Postal Service, postage prepaid, by placing a true and correct copy of the foregoing and attached pleading and/or instrument in the United States mail addressed to the following listed person(s):

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MISSISSIPPI ADVANCE LEGISLATIVE SERVICE

1992 REGULAR SESSION

CHAPTER 520

SENATE BILL NO. 2030

1992 Miss. ALS 520; 1992 Miss. Laws 520; 1992 Miss. S.B. 2030

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT TO AMEND SECTION 47-5-138, MISSISSIPPI CODE OF 1972, TO REVISE EARNED TIME ALLOWANCE FOR INMATES; TO AUTHORIZE THE DEPARTMENT OF CORRECTIONS TO PREPARE A CONDITIONAL EARNED TIME RELEASE DATE FOR ALL INMATES; TO PROVIDE FOR THE FORFEITURE OF EARNED TIME ALLOWANCES IF VIOLATION IS FELONIOUS IN NATURE; TO DELETE PROVISIONS PERTAINING TO HABITUAL OFFENDERS AND OFFENDERS SENTENCED TO LIFE IMPRISONMENT; TO AMEND SECTION 47-5-139, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT INMATES SENTENCED AS HABITUAL OFFENDERS, SENTENCED TO LIFE IMPRISONMENT, SENTENCED FOR ARMED ROBBERY AND SEX OFFENDERS DENIED PAROLE SHALL NOT BE ELIGIBLE FOR EARNED TIME ALLOWANCE; TO AMEND SECTION 47-5-140, MISSISSIPPI CODE OF 1972 TO CONFORM; TO AMEND SECTION 47-5-142, MISSISSIPPI CODE OF 1972, TO REVISE MERITORIOUS EARNED-TIME ALLOWANCES; AND FOR RELATED PURPOSES.

To view the next section, type .np* and TRANSMIT.
To view a specific section, transmit p* and the section number. E.g. p*1

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

[*1] SECTION 1. Section 47-5-138, Mississippi Code of 1972, is amended as follows:

47-5-138. (1) The department may promulgate rules and regulations to carry out the earned time allowances program. An inmate shall be eligible to receive an earned time allowance of one-half (1/2) of the period of confinement imposed by the court except those inmates excluded by law. The department shall determine a conditional earned time release date by subtracting the earned time allowance from an inmate's term of sentence and shall prepare a conditional earned time release date for each inmate.

(2) If an inmate commits a violation felonious in nature, he may forfeit all or part of the earned time allowance upon the written order of the commissioner. The superintendent of a correctional facility shall immediately notify the commissioner in writing of any such violation on such forms and in such detail as the commissioner may require. From the record so furnished, the Commissioner of Corrections may order the forfeiture of all or part of the earned time allowance of an inmate who commits a violation felonious in nature. The order of the commissioner shall be in writing and the conditional earned time release date shall be modified accordingly.

(3) An offender, demonstrating acceptable behavior, shall be released on his conditional earned time release date.

Exhibit A.1.

[*2] SECTION 2. Section 47-5-139, Mississippi Code of 1972, is amended as follows:

47-5-139. (1) An inmate shall not be eligible for the earned time allowance if:
(a) The inmate was sentenced to life imprisonment;
(b) The inmate was convicted as a habitual offender under Sections 99-19-81 through 99-19-87;
(c) The inmate has forfeited his earned time allowance by order of the commissioner;
(d) The inmate was convicted of a sex crime and has been denied parole based on the psychiatric or psychological examination required by law; or
(e) The inmate has not served the mandatory time required for parole eligibility for a conviction of robbery or attempted robbery with a deadly weapon.

(2) An offender under two (2) or more consecutive sentences shall be allowed commutation based upon the total term of the sentences.

(3) All earned time shall be forfeited by the inmate in the event of escape and/or aiding and abetting an escape. Provided, in the event of escape, the commissioner may restore all or part of the earned time if the escapee returns to the institution voluntarily, without expense to the state, and without act of violence while a fugitive from the facility.

(4) No inmate in any event shall have his sentence terminated by administrative earned time action until he is eligible for parole as provided in Title 47, Chapter 7, Mississippi Code of 1972.

(5) Any officer or employee who shall willfully violate the provisions of this section and be convicted therefor shall be removed from office or employment.

[*3] SECTION 3. Section 47-5-140, Mississippi Code of 1972, is amended as follows:

47-5-140. Each county attorney, district attorney, each member of the Parole Board and circuit judge shall be provided a copy of a handbook prepared by the commissioner which shall include a copy of Section 47-5-138 and Section 47-5-139, and shall clearly show how such sections would apply to an offender sentenced to terms of various lengths. Each offender shall be provided a copy of the handbook upon arrival at the correctional system and have it explained to him as a part of his initial orientation.

[*4] SECTION 4. Section 47-5-142, Mississippi Code of 1972, is amended as follows:

47-5-142. (1) In order to provide incentive for offenders to achieve positive and worthwhile accomplishments for their personal benefit or the benefit of others, and in addition to any other administrative reductions of the length of an offender's sentence, any offender shall be eligible, subject to the provisions of this section, to receive meritorious earned time as distinguished from earned time for good conduct and performance.

(2) Subject to approval by the commissioner of the terms and conditions of the program or project, meritorious earned time may be awarded for the following: (a) successful completion of educational or instructional programs; (b) satisfactory participation in work projects; and (c) satisfactory participation in any special incentive program.

(3) The programs and activities through which meritorious earned time may be received shall be published in writing and posted in conspicuous places at all facilities of the department and such publication shall be made available to all offenders in the custody of the department.

(4) The commissioner shall make a determination of the number of days of reduction of sentence which may be awarded an offender as meritorious earned time for participation in approved programs or projects; the number of days shall be determined by the commissioner on the basis of each particular program or project. However, in no event shall an offender be awarded in excess of ten (10) days reduction for each thirty (30) days of participation in such a program or project. Furthermore, an offender shall never be allowed to earn more than a total of one hundred eighty (180) days

of meritorious earned time during the entire time he is under the jurisdiction of the Department of Corrections. The commissioner may authorize the awarding of all or any part of meritorious earned time upon an offender's entry into the correctional system.

(5) No offender shall be awarded any meritorious earned time while assigned to the maximum security facilities for disciplinary purposes.

(6) All meritorious earned time shall be forfeited by the offender in the event of escape and/or aiding and abetting an escape.

(7) Any officer or employee of the department who shall willfully violate the provisions of this section and be convicted therefor shall be removed from office or employment.

(8) An offender may forfeit all or any part of his meritorious earned time allowance for just cause upon the written order of the commissioner or his designee. Any meritorious earned time allowance forfeited under this section shall not be restored nor shall it be re-earned by the offender.

[*5] SECTION 5. This act shall take effect and be in force from and after its passage.

HISTORY:

PASSED BY THE SENATE, May 5, 1992.
PASSED BY THE HOUSE OF REPRESENTATIVES, May 6, 1992.
APPROVED BY THE GOVERNOR, May 14, 1992.

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MISSISSIPPI ADVANCE LEGISLATIVE SERVICE

1993 REGULAR SESSION

CHAPTER NO. 443

SENATE BILL NUMBER 2294

1993 Miss. ALS 443; 1993 Miss. Laws 443; 1993 Miss. S.B. 2294

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT TO AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN INMATES SHALL RECEIVE PRIORITY FOR PLACEMENT IN ANY EDUCATION DEVELOPMENT OR JOB TRAINING PROGRAM PRIOR TO PAROLE; AND FOR RELATED PURPOSES.

To view the next section, type .np* and TRANSMIT.
To view a specific section, transmit p* and the section number. E.g. p*1

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

[*1] SECTION 1. Section 47-7-3, Mississippi Code of 1972, is amended as follows:

47-7-3. (1) Every prisoner who has been or may hereafter be convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi State Penitentiary for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the Penitentiary, and who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

(a) No prisoner convicted as a confirmed and habitual criminal under the provisions of Sections 99-19-81 through 99-19-87 shall be eligible for parole;

(b) Any person who shall have been convicted of a sex crime, and who is otherwise eligible for parole, shall not be released on parole until after he has been examined by a competent psychiatrist or by a competent psychologist selected by the State Parole Board. Such examination must have occurred not more than one (1) year prior to the prisoner's parole hearing. Upon completion of the examination a written report of the psychiatric or psychological examination shall be forwarded immediately to each member of the Parole Board. The written report of the examining psychiatrist or psychologist shall state whether the sex offender is likely or unlikely to commit another sex crime. The Parole Board may also order psychiatric or psychological examinations for persons convicted of other crimes when it determines such examination is necessary to making a parole decision;

(c) No one shall be eligible for parole until he shall have served one (1) year of his sentence, unless such person has accrued any meritorious earned time allowances, in which case he shall be eligible for parole if he has served (i) nine (9) months of his sentence or sentences, when his sentence or sentences is two (2) years or less; (ii) ten (10) months of his sentence or sentences when his sentence or sentences is more than two (2) years but no more than five (5) years; and (iii) one (1) year of his sentence or sentences when his sentence or sentences is more than five (5) years;

Exhibit A.2.

(d) No person shall be eligible for parole who shall, on or after January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term or terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole. The provisions of this paragraph (d) shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon;

(2) Notwithstanding any other provision of law, an inmate shall not be eligible to receive earned time, good time or any other administrative reduction of time which shall reduce the time necessary to be served for parole eligibility as provided in subsection (1) of this section; however, this subsection shall not apply to the advancement of parole eligibility dates pursuant to the Prison Overcrowding Emergency Powers Act. Moreover, meritorious earned time allowances may be used to reduce the time necessary to be served for parole eligibility as provided in paragraph (c) of subsection (1) of this section.

(3) The State Parole Board shall by rules and regulations establish a method of determining a tentative parole hearing date for each offender taken into the custody of the Department of Corrections from and after January 1, 1987. The tentative parole hearing date shall be determined within ninety (90) days after the department has assumed custody of the offender. Such tentative parole hearing date shall be calculated by a formula taking into account the offender's age upon first commitment, number of prior incarcerations, prior probation or parole failures, the severity and the violence of the offense committed, employment history and other criteria which in the opinion of the board tend to validly and reliably predict the length of incarceration necessary before the offender can be successfully paroled.

(4) Any inmate within twenty-four (24) months of his parole eligibility date and who meets the criteria established by the classification committee shall receive priority for placement in any educational development and job training programs. Any inmate refusing to participate in an educational development or job training program may be ineligible for parole.

[*2] SECTION 2. This act shall take effect and be in force from and after July 1, 1993.

HISTORY:

APPROVED MARCH 24, 1993

Ex-A-2

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MISSISSIPPI CODE ANNOTATED

*** ARCHIVE MATERIAL ***

*** THIS DOCUMENT IS CURRENT THROUGH THE 1993 SUPPLEMENT (1993 SESSION) ***

TITLE 47 PRISONS AND PRISONERS; PROBATION AND PAROLE
CHAPTER 7 Probation and Parole
PROBATION AND PAROLE LAW

Miss. Code Ann. § 47-7-3 (1993)

§ 47-7-3. Parole of prisoners; conditions; determination of tentative hearing date.

(1) Every prisoner who has been or may hereafter be convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi State Penitentiary for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the Penitentiary, and who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

(a) No prisoner convicted as a confirmed and habitual criminal under the provisions of Sections 99-19-81 through 99-19-87 shall be eligible for parole;

(b) Any person who shall have been convicted of a sex crime, and who is otherwise eligible for parole, shall not be released on parole until after he has been examined by a competent psychiatrist or by a competent psychologist selected by the State Parole Board. Such examination must have occurred not more than one (1) year prior to the prisoner's parole hearing. Upon completion of the examination a written report of the psychiatric or psychological examination shall be forwarded immediately to each member of the Parole Board. The written report of the examining psychiatrist or psychologist shall state whether the sex offender is likely or unlikely to commit another sex crime. The Parole Board may also order psychiatric or psychological examinations for persons convicted of other crimes when it determines such examination is necessary to making a parole decision;

(c) No one shall be eligible for parole until he shall have served one (1) year of his sentence, unless such person has accrued any meritorious earned time allowances, in which case he shall be eligible for parole if he has served (i) nine (9) months of his sentence or sentences, when his sentence or sentences is two (2) years or less; (ii) ten (10) months of his sentence or sentences when his sentence or sentences is more than two (2) years but no more than five (5) years; and (iii) one (1) year of his sentence or sentences when his sentence or sentences is more than five (5) years;

(d) No person shall be eligible for parole who shall, on or after January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term or terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole. The provisions of this paragraph (d) shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon;

Exhibit - A-3

Ability to pay as necessary consideration in conditioning probation or suspended sentence upon reparation or restitution. *73 ALR3d 1240*

Propriety of condition of probation which requires defendant convicted of crime of violence to make reparation to injured victim. *79 ALR3d 976*

Validity of requirement that, as condition of probation, indigent defendant reimburse defense costs. *79 ALR3d 1025*

Propriety of conditioning probation upon defendant's posting of bond guaranteeing compliance with terms of probation. *79 ALR3d 1068*

Validity of requirement that, as condition of probation, defendant submit to warrantless searches. *79 ALR3d 1083*

Validity of statutes prohibiting or restricting parole, probation, or suspension of sentence in cases of violent crimes. *100 ALR3d 431*

Governmental tort liability for injuries caused by negligently released individual. *6 ALR4th 1155*

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. *12 ALR4th 722*

Sufficiency, under *18 USCS § 4206*(b) or (c), of statement by United States Parole Commission of reasons for denying parole. *58 ALR Fed 147*

Information consideration by United States Parole Commission in making determinations relating to release on parole under § 2 of Parole Commission and Reorganization Act *(18 USCS §§ 4201* et seq.). *58 ALR Fed 911*

JUDICIAL DECISIONS

1. In general; construction
2. Consecutive sentences
3. Eligibility for earned good time
4. Change in law, regulation, or interpretation; ex post facto effect
5. Argument to, or consideration by, jury
6. Miscellaneous

1. In general; construction

The Mississippi parole statutes do not create a constitutionally protected liberty interest in the form of an expectation of parole because of the use of the permissive "may" in § 47-7-3, which provides that a prisoner "may be released on parole as hereinafter provided," read in the context of the other provisions of that section and, as well, those of § 47-7-17. Thus, Mississippi law did not vest a convicted and incarcerated felon with a liberty interest in parole entitling him to due process of law incident to his application for parole. *Harden v State (1989, Miss) 547 So 2d 1150.*

Language of statute concerning parole and probation is mandate to Parole Board and not to courts, and is unnecessary and surplusage in sentence. *Gardner v State (1987, Miss) 514 So 2d 292.*

In a prosecution for armed robbery involving a firearm, the defendant was properly convicted under § 47-7-3(d) where, although he was not the person who actually robbed the bank, he was an aider and abettor and therefore, under § 97-1-3, was considered a principal. *Anderson v State (1981, Miss) 397 So 2d 81.*

Absolute discretion conferred on parole board in Mississippi affords prisoner no constitutionally recognized liberty interest in being released on parole. *Scales v Mississippi State Parole Bd. (1987, CA5 Miss) 831 F2d 565.*

Reasonable and harmonious construction of §§ 47-5-138, 47-5-139, and 47-7-3 is that legislature intended them to maintain enhanced penalty that § 99-19-81 imposes on habitual offenders, which penalty includes denial of certain privileges available to other prisoners. *Perkins v Cabana (1986, CA5 Miss) 794 F2d 168,* cert den *479 US 936, 93 L Ed 2d 366, 107 S Ct 414.*

2. Consecutive sentences

Under the requirement of § 47-7-3 that a person under a life sentence becomes eligible for parole after ten years, a prisoner serving three consecutive life terms would not be eligible for parole until he had served at least ten years of each life sentence less 30 percent of earned good time, since § 47-5-139(3) mandates the mathematical process of multiplying the number of life sentences imposed upon the prisoner by ten years to determine the date upon which the prisoner would become eligible for parole. *Davis v State (1983, Miss) 429 So 2d 262.*

Ex. A-3

capital murder. *Williams v State (1984, Miss) 445 So 2d 798,* cert den *469 US 1117, 83 L Ed 2d 795, 105 S Ct 803.*

Prosecutor's statement in closing argument at sentencing phase of capital trial to effect that if defendant was sentenced to life imprisonment, he would be eligible for parole in 10 years, was accurate, thumbnail statement of Mississippi law, in spite of fact that it was obviously not full explanation of state's system of parole, and court refused to conclude that such remarks created unacceptable risk that jury would sentence defendant to death arbitrarily or capriciously. *Gilliard v Scroggy (1988, CA5 Miss) 847 F2d 1141,* cert den *488 US 1019, 102 L Ed 2d 807, 109 S Ct 818,* reh den *489 US 1061, 103 L Ed 2d 600, 109 S Ct 1332,* cause remanded (Miss) *1992 Miss LEXIS 782,* reh den (Miss) *1993 Miss LEXIS 105.*

6. Miscellaneous

A defendant who was convicted of armed robbery was entitled to an evidentiary hearing pursuant to §§ 99-39-13 through 99-39-23 on the issue of whether he was afforded ineffective assistance of counsel during the plea process, where the defendant alleged that his attorney erroneously informed him that if he accepted the prosecution's plea bargain offer of 15 years imprisonment he would be eligible for parole after serving 3 years and 9 months of his sentence, and that he would not have accepted the prosecution's plea bargain offer had he known that he would be ineligible for parole for 10 years pursuant to § 47-7-3(1)(d), which provides that a person convicted of robbery and sentenced to more than 10 years imprisonment shall not be eligible for parole until after serving at least 10 years of the sentence. *Alexander v State (1992, Miss) 605 So 2d 1170.*

Where it appeared that the trial court, in sentencing a 16-year-old defendant convicted of armed robbery to a term of 14 years in state prison, had been under the misapprehension that § 97-3-79 and § 47-7-3, read together, mandated a sentence of at least 10 years in the state penitentiary, absent a jury verdict of life imprisonment, the case would be remanded to the court for a clarification of the sentencing since there was no way to ascertain whether the trial court had considered the statutory alternative for sentencing minor offenders under the provisions of § 43-21-159(3). *Bougon v State (1981, Miss) 405 So 2d 101.*

In a prosecution for armed robbery, a sentence of 12 years in prison, without eligibility of parole for 10 years, imposed upon a 14-year-old mentally retarded defendant did not constitute cruel and unusual punishment; however, the case would be remanded to the trial court for consideration of alternative sentencing under § 43-21-159 where the trial judge should have placed in the record the sources and facts of his sentence study and should have permitted the defendant's attorney to introduce evidence of the presence or absence of facilities at the Mississippi State Penitentiary for the care of the defendant, and the availability of other institutions or facilities which could be utilized by the defendant. *May v State (1981, Miss) 398 So 2d 1331,* appeal after remand (Miss) *435 So 2d 1181* and (superseded by statute, on other grounds, as stated in *Erwin v State (Miss) 557 So 2d 799).*

In a prosecution for armed robbery, the defendant's contention that his sentence of 30 years imprisonment without parole was unconstitutional became moot with the passage of § 47-7-3(d) which provides that persons who have been convicted of armed robbery would be eligible for parole after serving 10 years. *Bankston v State (1980, Miss) 391 So 2d 1005.*

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MISSISSIPPI ADVANCE LEGISLATIVE SERVICE

1994 SPECIAL SESSION

CHAPTER NO. 25

SENATE BILL NO. 2003

1994 Miss. ALS 25; 1994 Miss. Laws 25; 1994 Miss. S.B. 2003

SYNOPSIS: AN ACT TO REENACT SECTION 47-7-5, MISSISSIPPI CODE OF 1972, TO PROVIDE A STATE PAROLE BOARD; TO PROVIDE FOR THE REPEAL OF SECTIONS 47-7-3, 47-7-11, 47-7-13, 47-7-15, 47-7-17, 47-7-19, 47-7-21 AND 47-7-25, MISSISSIPPI CODE OF 1972, WHICH PRESCRIBE THE DUTIES AND POWERS OF THE PAROLE BOARD; TO AMEND SECTION 47-7-2, MISSISSIPPI CODE OF 1972, TO CONFORM DEFINITIONS; TO AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN PERSONS CONVICTED OF SEX CRIMES SHALL NOT BE ELIGIBLE FOR PAROLE; TO PROVIDE THAT PERSONS CONVICTED OF ARMED ROBBERY, ATTEMPTED ARMED ROBBERY, CAR-JACKING OR DRIVE-BY SHOOTING SHALL NOT BE ELIGIBLE FOR PAROLE; TO AMEND SECTION 47-5-139, MISSISSIPPI CODE OF 1972, TO AMEND EARNED TIME ALLOWANCE TO CONFORM; TO AMEND SECTION 47-7-17, MISSISSIPPI CODE OF 1972, TO REQUIRE PAROLE BOARD TO HOLD HEARINGS TO GIVE THE DEPARTMENT OF CORRECTIONS TIME TO ADDRESS SPECIAL CONDITIONS REQUIRED BY THE PAROLE BOARD; TO CREATE THE PAROLE COMMISSION AND PRESCRIBE ITS DUTIES; TO REQUIRE THE PAROLE COMMISSION TO REPORT RECOMMENDATIONS ON CLASSIFICATION OF INMATES PRIOR TO SENTENCING; AND FOR RELATED PURPOSES.

Law Maker going in to amend

See in Sen Bill 2003, Su stance."

(See) Page of S.B. 2003/ Sections 1-A-B-C- Di gives Oct/1/1994 Ef ective, Date all the crime tion, mentioned above Di'i - Di - B - A - 1

To view the next section, type .np* and TRANSMIT.
To view a specific section, transmit p* and the section number. E.g. p*1

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

[*1] SECTION 1. Section 47-7-5, Mississippi Code of 1972, is reenacted and amended as follows:

47-7-5. (1) The State Parole Board, created under former Section 47-7-5 is hereby created, continued and reconstituted and shall be composed of five (5) members, one from each congressional district. The members of the board appointed and serving on June 30, 1994, shall continue to serve and their terms shall be extended until July 1, 1996. Any vacancy shall be filled for the unexpired term by the Governor with the advice and consent of the Senate. The Governor shall also designate one (1) of the members of the board as chairman.

(2) Any person who is appointed to serve on the board shall possess at least a bachelor's degree or a high school diploma and four (4) years' work experience. Each member shall devote his full time to the duties of his office and shall not engage in any other business or profession or hold any other public office. Each member shall keep such hours and workdays as required of full-time state employees under Section 25-1-98. Individuals shall be appointed to serve on the board without reference to their political affiliations. Each board member, including the chairman, shall receive actual and necessary expenses as authorized by Section 25-3-41.

Exhibit B.1

1994 Miss. ALS 25, *4; 1994 Miss. Laws 25;
1994 Miss. S.B. 2003

(see) Page 1 substance of S.B 2003/94 state what crime There going To Amend To provid Shall no Longer Be Eligible Fo Parole

See Body OF S.B 2003

[*5] SECTION 5. Section 47-7-3, Mississippi Code of 1972, is amended as follows:

47-7-3. (1) Every prisoner who has been or may hereafter be convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi State Penitentiary for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the Penitentiary, and who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

a (a) No prisoner convicted as a confirmed and habitual criminal under the provisions of Sections 99-19-81 through 99-19-87 shall be eligible for parole;

b (b) Any person who shall have been convicted of a sex crime shall not be released on parole except for a person under the age of nineteen (19) who has been convicted under Section 97-3-67;

c (c) No one shall be eligible for parole until he shall have served one (1) year of his sentence, unless such person has accrued any meritorious earned time allowances, in which case he shall be eligible for parole if he has served (i) nine (9) months of his sentence or sentences, when his sentence or sentences is two (2) years or less; (ii) ten (10) months of his sentence or sentences when his sentence or sentences is more than two (2) years but no more than five (5) years; and (iii) one (1) year of his sentence or sentences when his sentence or sentences is more than five (5) years;

Rabalais' is under three crime sec- tion: (sec-1, life sentence)- (sec, B, sex crime) (sec, c, life sentence)

D-i (d)(i) No person shall be eligible for parole who shall, on or after January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term or terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole. The provisions of this paragraph (d) shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon. This subparagraph (d)(i) shall not apply to persons convicted after September 30, 1994. Rabalais' was convicted on sept/13/1994 / 17 day Prior To 9/30/94

D-ii (ii) No person shall be eligible for parole who shall, on or after October 1, 1994, be convicted of robbery, attempted robbery or carjacking as provided in Section 97-3-115 et seq. through the display of a firearm or drive-by shooting as provided in Section 97-3-109. The provisions of this subparagraph (d)(ii) shall also apply to any person who shall commit robbery, attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the display of a deadly weapon;

Oct/1/1994

convicted is Incorrec Legal Language

(e) No person shall be eligible for parole who, on or after July 1, 1994, is charged, tried, convicted and sentenced to life imprisonment without eligibility for parole under the provisions of Section 99-19-101;

is correct Legal Language

(f) No person shall be eligible for parole who is charged, tried, convicted and sentenced to life imprisonment under the provisions of Section 99-19-101.

(2) Notwithstanding any other provision of law, an inmate shall not be eligible to receive earned time, good time or any other administrative reduction of time which shall reduce the time necessary to be served for parole eligibility as provided in subsection (1) of this section; however, this subsection shall not apply to the advancement of parole eligibility dates pursuant to the Prison Overcrowding Emergency Powers Act. Moreover, meritorious earned time allowances may be used to reduce the time necessary to be served for parole eligibility as provided in paragraph (c) of subsection (1) of this section.

(3) The State Parole Board shall by rules and regulations establish a method of determining a tentative parole hearing date for each offender taken into the custody of the Department of Corrections from and after January 1, 1987. The tentative parole hearing date shall be determined within ninety (90) days after the department has assumed custody

- is effective date for all the above D-i's crime section D-i-D-i- E - B - A - 1

Ex B-1

(3) The board shall have exclusive responsibility for the granting of parole as provided by Sections 47-7-3 and 47-7-17 and shall have exclusive authority for revocation of the same. The board shall have exclusive responsibility for investigating clemency recommendations upon request of the Governor.

(4) The board, its members and staff shall be immune from civil liability for any official acts taken in good faith and in exercise of the board's legitimate governmental authority.

(5) The budget of the board shall be funded through a separate line item within the general appropriation bill for the support and maintenance of the department. Employees of the department which are employed by or assigned to the board shall work under the guidance and supervision of the board.

(6) The board shall have no authority or responsibility for supervision of offenders granted probation, parole or executive clemency or other offenders requiring the same through interstate compact agreements. The supervision shall be provided exclusively by the staff of the Division of Community Services of the department.

(7) This section shall stand repealed on July 1, 1995.

[*2] SECTION 2. Section 47-7-2, Mississippi Code of 1972, is amended as follows:

47-7-2. For purposes of this chapter, the following words shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Adult" means a person who is seventeen (17) years of age or older, or any person convicted of any crime not subject to the provisions of the youth court law, or any person "certified" to be tried as an adult by any youth court in the state.

(b) "Board" means the State Parole Board.

(c) "Commissioner" means the Commissioner of Corrections.

(d) "Correctional system" means the facilities, institutions, programs and personnel of the department utilized for adult offenders who are committed to the custody of the department.

(e) "Department" means the Mississippi Department of Corrections.

(f) "Detention" means the temporary care of juveniles and adults who require secure custody for their own or the community's protection in a physically restricting facility prior to adjudication, or retention in a physically restricting facility upon being taken into custody after an alleged parole or probation violation.

(g) "Facility" or "institution" means any facility for the custody, care, treatment and study of offenders which is under the supervision and control of the department.

(h) "Juvenile," "minor" or "youthful" means a person less than seventeen (17) years of age.

(i) "Offender" means any person convicted of a crime or offense under the laws and ordinances of the state and its political subdivisions.

(j) "Special meetings" means those meetings called by the chairman with at least twenty-four (24) hours' notice or a unanimous waiver of notice.

(k) "Unit of local government" means a county, city, town, village or other general purpose political subdivision of the state.

[*3] SECTION 3. Section 47-7-17, Mississippi Code of 1972, is amended as follows:

47-7-17. Within one (1) year after his admission and at such intervals thereafter as it may determine, the board shall secure and consider all pertinent information regarding each offender, except any under sentence of death or otherwise ineligible for parole, including the circumstances of his offense, his previous social history, his previous criminal record, including any records of law enforcement agencies or of a youth court regarding that offender's juvenile criminal history, his conduct, employment and attitude while in the custody of the department, and the reports of such physical and mental examinations as have been made. The board shall furnish at least three (3) months' written notice to each such offender of the date on which he is eligible for parole.

Before ruling on the application for parole of any offender, the board may have the offender appear before it and interview him. The hearing shall be held two (2) months prior to the month of eligibility in order for the department to address any special conditions required by the board. No application for parole of a person convicted of a capital offense shall be considered by the board unless and until notice of the filing of such application shall have been published at least once a week for two (2) weeks in a newspaper published in or having general circulation in the county in which the crime was committed. The board shall also give notice of the filing of the application for parole to the victim of the offense for which the prisoner is incarcerated and being considered for parole or, in case the offense be homicide, a designee of the immediate family of the victim, provided the victim or designated family member has furnished in writing a current address to the board for such purpose. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. An offender shall be placed on parole only when arrangements have been made for his proper employment or for his maintenance and care, and when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Within forty-eight (48) hours prior to the release of an offender on parole, the Director of Records of the department shall give the written notice which is required pursuant to Section 47-5-177. Every offender while on parole shall remain in the legal custody of the department from which he was released and shall be amenable to the orders of the board. The board, upon rejecting the application for parole of any offender, shall within thirty (30) days following such rejection furnish that offender in general terms the reasons therefor in writing. Upon determination by the board that an offender is eligible for release by parole, notice shall also be given by the board to the victim of the offense or the victim's family member, as indicated above, regarding the date when the offender's release shall occur, provided a current address of the victim or the victim's family member has been furnished in writing to the board for such purpose.

Failure to provide notice to the victim or the victim's family member of the filing of the application for parole or of any decision made by the board regarding parole shall not constitute grounds for vacating an otherwise lawful parole determination nor shall it create any right or liability, civilly or criminally, against the board or any member thereof.

A letter of protest against granting an offender parole shall not be treated as the conclusive and only reason for not granting parole.

The board may adopt such other rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of offenders for parole, the conduct of parole hearings, or conditions to be imposed upon parolees, including a condition that the parolee submit, as provided in Section 47-5-601 to any type of breath, saliva or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or a substance prohibited or controlled by any law of the State of Mississippi or the United States. The board shall have the authority to adopt rules permitting certain offenders to be placed on unsupervised parole. However, in no case shall an offender be placed on unsupervised parole before he has served a minimum of three (3) years of supervised parole.

[*4] SECTION 4. This section shall be codified as Section 47-7-53, Mississippi Code of 1972:

47-7-53. Sections 47-7-3, 47-7-11, 47-7-13, 47-7-15, 47-7-17, 47-7-19, 47-7-21 and 47-7-25, Mississippi Code of 1972, which prescribe the duties and powers of the parole board, shall repeal on July 1, 1995.

Ex-B-1

of the offender. Such tentative parole hearing date shall be calculated by a formula taking into account the offender's age upon first commitment, number of prior incarcerations, prior probation or parole failures, the severity and the violence of the offense committed, employment history and other criteria which in the opinion of the board tend to validly and reliably predict the length of incarceration necessary before the offender can be successfully paroled.

(4) Any inmate within twenty-four (24) months of his parole eligibility date and who meets the criteria established by the classification committee shall receive priority for placement in any educational development and job training programs. Any inmate refusing to participate in an educational development or job training program may be ineligible for parole.

[*6] SECTION 6. Section 47-5-139, Mississippi Code of 1972, is amended as follows:

47-5-139. (1) An inmate shall not be eligible for the earned time allowance if:

(a) The inmate was sentenced to life imprisonment;

(b) The inmate was convicted as a habitual offender under Sections 99-19-81 through 99-19-87;

(c) The inmate has forfeited his earned time allowance by order of the commissioner;

(d) The inmate was convicted of a sex crime; or

(e) The inmate has not served the mandatory time required for parole eligibility for a conviction of robbery or attempted robbery with a deadly weapon.

(2) An offender under two (2) or more consecutive sentences shall be allowed commutation based upon the total term of the sentences.

(3) All earned time shall be forfeited by the inmate in the event of escape and/or aiding and abetting an escape. Provided, in the event of escape, the commissioner may restore all or part of the earned time if the escapee returns to the institution voluntarily, without expense to the state, and without act of violence while a fugitive from the facility.

(4) No inmate in any event shall have his sentence terminated by administrative earned time action until he is eligible for parole as provided in Title 47, Chapter 7, Mississippi Code of 1972.

(5) Any officer or employee who shall willfully violate the provisions of this section and be convicted therefor shall be removed from office or employment.

[*7] SECTION 7. (1) There is hereby created a joint committee of the Senate and House of Representatives to be known as the Parole Commission, hereinafter referred to as the "commission." The commission shall study and make recommendations to the Legislature related to the abolition of parole, and the complete and thorough classification of inmates prior to sentencing.

(2) The commission shall consist of the following members:

(a) Three (3) members of the House Judiciary "B" Committee and three (3) members of the House Penitentiary Committee appointed by the Speaker.

(b) Three (3) members of the Senate Corrections Committee and three (3) members of the Senate Judiciary Committee appointed by the Lieutenant Governor.

(3) The Chairman of the Senate Corrections Committee and the Chairman of the House Penitentiary Committee shall serve as co-chair of the commission.

(4) The commission shall submit its findings and recommendations to the Legislature no later than January 2, 1995.

(5) For attending meetings of the commission, members of the commission shall receive per diem as provided by Section 25-3-69, and reimbursement of expenses as provided by Section 5-1-47. The members of the commission shall obtain the approval of the Management Committee of the House of Representatives and the Contingent Expense Committee of the Senate for per diem and travel expense expenditures of the commission. The members of the commission shall not receive per diem or expenses while the Legislature is in session. All expenses incurred by and on behalf of the commission shall be paid from the contingency funds of the Senate and the House of Representatives.

(6) In conducting its activities pursuant to this act, the commission may elicit the support of and participation by federal, state and local agencies and interested associations, organizations and individuals. The commission may appoint an advisory committee whose members shall serve without compensation. The advisory committee may consist of judges, prosecuting attorneys, defense attorneys, medical professionals, correctional personnel and any other individual or groups that the commission desires to place on the advisory committee.

[*8] SECTION 8. The State Parole Board created by Section 1 of this act is a continuation of the State Parole Board that existed on June 30, 1994. Executive Order 754, issued June 24, 1994, shall have no force or effect from and after the effective date of this act, and the State Parole Board created by Section 1 of this act supersedes the entity referred to in Executive Order 754 in all respects after the effective date of this act; however, all actions taken by the entity referred to in Executive Order 754 between June 30, 1994, and the effective date of this act that would have been lawful if they had been taken by the State Parole Board as it existed on June 30, 1994, pursuant to the board's powers or duties as they existed on June 30, 1994, or pursuant to any powers or duties of the board provided for by any state law enacted during the 1994 Regular Session or any federal law or regulation that was in effect between June 30, 1994, and the effective date of this act, are retroactively ratified, confirmed and validated. In addition, all actions taken by the State Fiscal Officer, the State Treasurer and their respective employees between June 30, 1994, and the effective date of this act in connection with the expenditure by the entity referred to in Executive Order 754 of any of the funds appropriated to the Department of Corrections by Senate Bill 3253, 1994 Regular Session, are retroactively ratified, confirmed and validated. Nothing in this section shall be construed as ratifying any authority of the Governor to establish a state agency by Executive Order.

[*9] SECTION 9. This act shall take effect and be in force from and after passage.

HISTORY:

PASSED BY THE SENATE August 20, 1994
PASSED BY THE HOUSE OF REPRESENTATIVES August 20, 1994
APPROVED BY THE GOVERNOR August 23, 1994

Ex. B-1

5

22 of 36 DOCUMENTS

MISSISSIPPI CODE ANNOTATED

*** ARCHIVE MATERIAL ***

*** THIS DOCUMENT IS CURRENT THROUGH THE 1994 SUPPLEMENT (1994 SESSION) ***

TITLE 47 PRISONS AND PRISONERS; PROBATION AND PAROLE
CHAPTER 7 Probation and Parole
PROBATION AND PAROLE LAW

Miss. Code Ann. § 47-7-3 (1994)

§ 47-7-3. Parole of prisoners; conditions; determination of tentative hearing date.

(1) Every prisoner who has been or may hereafter be convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi State Penitentiary for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the Penitentiary, and who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

(a) No prisoner convicted as a confirmed and habitual criminal under the provisions of Sections 99-19-81 through 99-19-87 shall be eligible for parole;

(b) Any person who shall have been convicted of a sex crime shall not be released on parole except for a person under the age of nineteen (19) who has been convicted under Section 97-3-67;

(c) No one shall be eligible for parole until he shall have served one (1) year of his sentence, unless such person has accrued any meritorious earned time allowances, in which case he shall be eligible for parole if he has served (i) nine (9) months of his sentence or sentences, when his sentence or sentences is two (2) years or less; (ii) ten (10) months of his sentence or sentences when his sentence or sentences is more than two (2) years but no more than five (5) years; and (iii) one (1) year of his sentence or sentences when his sentence or sentences is more than five (5) years;

(d) (i) No person shall be eligible for parole who shall, on or after January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term or terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole. The provisions of this paragraph (d) shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon. This subparagraph (d)(i) shall not apply to persons convicted after September 30, 1994;

(ii) No person shall be eligible for parole who shall, on or after October 1, 1994, be convicted of robbery, attempted robbery or carjacking as provided in Section 97-3-115 et seq. through the display of a firearm or drive-by shooting as provided in Section 97-3-109. The provisions of this subparagraph (d)(ii) shall also apply to any person who shall commit robbery, attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the display of a deadly weapon;

Exhibit B.2

Advancement of parole eligibility dates during periods of prison overcrowding, see §§ 47-5-701 through 47-5-729.
Prison Overcrowding Emergency Powers Act, see §§ 47-5-701 through 47-5-729.
Good time, see §§ 47-5-138 et seq.
Exclusivity of State Parole Board's responsibility for granting or revoking parole, as provided by this section, see § 47-7-5.
Condition of probation upon suspended sentence, see §§ 47-7-33 et seq.
Requirement that persons on parole or probation make payments to community service revolving fund, see § 47-7-49.
Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.
Ineligibility for parole of person whose death sentence has been changed to life imprisonment should death penalty be declared unconstitutional, see § 99-19-107.

RESEARCH AND PRACTICE REFERENCES

59 Am Jur 2d, Pardon and Parole §§ 73 et seq.
22 Am Jur Trials 1, Prisoners' Rights Litigation.
1989 Mississippi Supreme Court Review: Statutory Interpretation. *59 Miss L J 876,* Winter, 1989.

ANNOTATIONS

Propriety of conditioning probation or suspended sentence on defendant's refraining from political activity, protest, or the like. *45 ALR3d 1022*
State court's power to place defendant on probation without imposition of sentence. *56 ALR3d 932*
Ability to pay as necessary consideration in conditioning probation or suspended sentence upon reparation or restitution. *73 ALR3d 1240*
Propriety of condition of probation which requires defendant convicted of crime of violence to make reparation to injured victim. *79 ALR3d 976*
Validity of requirement that, as condition of probation, indigent defendant reimburse defense costs. *79 ALR3d 1025*
Propriety of conditioning probation upon defendant's posting of bond guaranteeing compliance with terms of probation. *79 ALR3d 1068*
Validity of requirement that, as condition of probation, defendant submit to warrantless searches. *79 ALR3d 1083*
Validity of statutes prohibiting or restricting parole, probation, or suspension of sentence in cases of violent crimes. *100 ALR3d 431*
Governmental tort liability for injuries caused by negligently released individual. *6 ALR4th 1155*
Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. *12 ALR4th 722*
Sufficiency, under *18 USCS § 4206*(b) or (c), of statement by United States Parole Commission of reasons for denying parole. *58 ALR Fed 147*
Information consideration by United States Parole Commission in making determinations relating to release on parole under § 2 of Parole Commission and Reorganization Act *(18 USCS §§ 4201* et seq.). *58 ALR Fed 911*

CASE NOTES

1. In general; construction
2. Consecutive sentences
3. Eligibility for earned good time
4. Change in law, regulation, or interpretation; ex post facto effect
5. Argument to, or consideration by, jury
6. Miscellaneous

1. In general; construction

The Mississippi parole statutes do not create a constitutionally protected liberty interest in the form of an expectation of parole because of the use of the permissive "may" in § 47-7-3, which provides that a prisoner "may be released on parole as hereinafter provided," read in the context of the other provisions of that section and, as well, those of §

3. Eligibility for earned good time

A prisoner was not permitted to earn, but not use, good time credit during service of the mandatory portion of his period of confinement and then use that good time earned upon expiration of the mandatory portion of the sentence. *Williams v Puckett (1993, Miss) 624 So 2d 496*

A defendant convicted of armed robbery was not eligible to reduce his sentence with the grant of administrative good time, pursuant to § 47-5-139, since earned time for good conduct and performance only applies to inmates who are eligible for parole, and defendant was not entitled to parole under § 47-7-3, which required him to serve his full 10-year sentence. *Cooper v State (1983, Miss) 439 So 2d 1277*

4. Change in law, regulation, or interpretation; ex post facto effect

A 7-year sentence for armed robbery committed with a knife in 1980 in violation of § 97-3-79 was not an unconstitutional application of an ex post facto law, even though § 47-7-3 denied eligibility for parole prior to 1982 only when a robbery was committed with the display of a firearm, where the sentencing order merely established that the defendant serve 7 years and made no mention of "mandatory" or "without parole." Additionally, the sentencing chapter and the parole chapter are separate and distinct; the granting of parole or denial of parole under § 47-7-3 is the exclusive responsibility of the state parole board, which is independent of the circuit court's sentencing authority. Thus, sentencing authority was provided for under § 97-3-79, rather than § 47-7-3, and the defendant was not "sentenced" under the parole statute, which was later amended. *Mitchell v State (1990, Miss) 561 So 2d 1037*

Defendant who enters plea of guilty to charge of armed robbery pursuant to plea bargain agreement in reliance upon erroneous advice of attorney that defendant will be eligible for earned good time and will be subject to release after serving 7 years of sentence is entitled to vacation of guilty plea and reinstatement of innocent plea when Mississippi Department of Corrections changes administrative policy to comply with §§ 47-5-139, 47-7-3, thereby requiring that defendant serve minimum of 10 years. *Coleman v State (1986, Miss) 483 So 2d 680*

A petitioner who enters a guilty plea to armed robbery pursuant to plea bargain agreement upon erroneous advice of counsel that petitioner will be eligible for earned good time and will be subject to release after serving 7 years of sentence is not subjected to ex post facto law when Mississippi Department of Corrections changes administrative policy to comply with §§ 47-5-139 and 47-7-3, causing petitioner to serve minimum of 10 years. *Coleman v State (1986, Miss) 483 So 2d 680*

A defendant convicted of armed robbery after 1977 and sentenced to serve less than 10 years in the penitentiary, and who was therefore not eligible for parole pursuant to § 47-7-3, was not subjected to enforcement of an ex post facto law by a policy of the Department of Corrections administratively barring him from earning good time after January, 1981, although good time earned prior to that date was not taken away, notwithstanding the provisions of § 47-5-139(7), since the statutory provisions regarding good time remained unchanged, and since administrative interpretation of a clearly worded statute is not a "law" within the scope and contemplation of the ex post facto clauses of the federal and state Constitutions. *Tiller v State (1983, Miss) 440 So 2d 1001*

An administrative correction of a prior misinterpretation of parole laws is not a change in the law so as to violate the ex post facto clause of the United States or Mississippi Constitutions; even if the correction of a former mistaken interpretation of parole law did reach the level of a change in law, administrative decisions with regard to parole law eligibility are not "laws annexed to the crime when committed." *Taylor v Mississippi State Probation & Parole Board (1978, Miss) 365 So 2d 621*

5. Argument to, or consideration by, jury

It is no more proper for a jury to concern itself with the wisdom of the legislative determination, pursuant to § 47-7-3(1), that persons sentenced to life imprisonment may under certain circumstances become eligible for parole, than it is for a jury to consider the legislature's determination that death in the gas chamber is an authorized punishment for capital murder. *Williams v State (1984, Miss) 445 So 2d 798,* cert den *469 US 1117, 83 L Ed 2d 795, 105 S Ct 803*

Prosecutor's statement in closing argument at sentencing phase of capital trial to effect that if defendant was sentenced to life imprisonment, he would be eligible for parole in 10 years, was accurate, thumbnail statement of Mississippi law, in spite of fact that it was obviously not full explanation of state's system of parole, and court refused to conclude that

64

3 copies

IN TH UNTY, MISSISSIPPI

Seperate copy sent back To me with The copies of The motion For Records + Transcripts

STATE OF MISSIS

VERSUS USE NO. 8027

KENNETH FRANC
SS#439-04-1323
DOB 8-10-59

FILED
SEP 13 1995
PAMELA THOMAS McIZLE
CIRCUIT CLERK, HANCOCK
BY

FINAL JUDGMENT (2ND DAY)

Comes the Assistant District Attorney, Charles E. Wood, who prosecutes for the State of Mississippi and comes the Defendant, KENNETH FRANCES RABALAIS, in his own proper person and with his attorney of record, Patricia Willis, and issue being joined on Wednesday, the 13th day of September 1995 and the Jury composed of Vanessa M. Peterson and eleven (11) others together with two alternates, and the trial of this cause suspended on Monday, the 11th day of September 1995, is resumed and the Jury, having heard all the evidence, and arguments of counsel, and having received the instructions from the Court, retired to consider their verdict (with the exception of the two alternates who were then and there excused by the Court), being in charge of their bailiffs, John Felder and M.J. Tullier, and presently, the Jury returned into open Court, and in the presence and hearing of the Defendant and his counsel, the following verdict, to-wit:

"We, the Jury, find the Defendant guilty of Rape and unanimously fix his punishment at imprisonment for life in the State Penitentiary"

A poll of the Jury showed all twelve (12) voted for the verdict and an additional poll of the

(8) Exhibit C

64 70 Ex C

Cause No. 8027
Rabalais

Jury showed all twelve (12) voted for the sentence.

It is therefore ordered by the Court, in accordance with the verdict of the Jury, that the Defendant, KENNETH FRANCES RABALAIS, for such his crime of RAPE, be sentenced to serve LIFE IMPRISONMENT in the custody of the Mississippi Department of corrections.

ORDERED this the 13th day of September, 1995.

JERRY O. TERRY
Circuit Court Judge

Hancock County Sheriff's Office

☐ JUVENILE | CUSTODY FORM | Case Number | Suffix 142-9

1. Name of Person Arrested (Last, First, Middle) | 2. Alias or Nickname

25291 KALIE DR. KIANKUNE, MS

5. Occupation and Employer: SELF EMPLOYED

6. Social Security Number: 439-04-1323 | Right

7. Driver's License State?	8. Driver's License Number?	9. Driver's License Type?	10. Driver's License Expiration Date? Mo. Day Yr.
NA			/ /

11. Age	12. Sex	13. Race	14. ☐ Hispanic ☐ Non Hispanic	15. Height	16. Weight	17. Hair	18. Eyes	19. Scars, Marks, Tatoos and Amputations
35	M	W		5'5"	145	BR	BL.	L- inner forearm spid

20. Date of Birth	21. Place of Birth (City & State)	22. Contact In Event of Emergency	23. Relationship
8-10-59	N. O. LA	PATRICIA RAQUALAIS	WIFE

24. Contact's Address Number and Street	City and State	25. Home Phone	26. Business Phone
SAME			

UCR	27. Date of Arrest	28. Time of Arrest	29. Location of Arrest	30. Arrest Numbers	PLEA	COURT CLERK USE ONLY Ledger/Minutes
	9-27-94	11:42 AM	HANCOCK CO. SHERIFF'S			

	31. Charge/Offense	☒ Fel. ☐ Misd.	32. Date of Offense	33. Court Date/Time	34. Bond Amount		88. Disp.
	RAPE		8-25-94	10-11-94 1500	$100,000.00		
	35. Charge/Offense	☐ Fel. ☐ Misd.	36. Date of Offense	37. Court Date/Time	38. Bond Amount		89. Disp:
	39. Charge/Offense	☐ Fel. ☐ Misd.	40. Date of Offense	41. Court Date/Time	42. Bond Amount		90. Disp:
	43. Charge/Offense	☐ Fel. ☐ Misd.	44. Date of Offense	45. Court Date/Time	46. Bond Amount		91. Disp:

CUSTODY STATUS

49. ☐ Released, No Charge ☐ Released, Summons ☐ Pre-Trial Release ☐ Cash Ball Receipt ☐ Bond Co. ☐ Released, Time Served ☐ Juvenile Shelter ☐ Juvenile Detention ☐ Municipal Jail ☐ County Jail ☐ Fine Receipt

50. Detention: Date/Time 09-23-94 1150

51. Released: Date/Time 10/25/95 0730

47. Total Bond $100,000.00

48. Court/District JUSTICE

52. Check Item(s) That Apply To Defendant: ☐ Drinking ☐ Drunk ☐ Drugs ☐ Resistive ☑ Cooperative ☐ Belligerent

53. Individual Armed? ☐ Yes ☒ No Weapon:

54. Other Person(s) Arrested For Same Offense: NA

55. Vehicle ☐ Yes See Property Stamp ☒ No

56. Arresting Officer No. 5 Name:

57. How Arrest Was Made ☒ On View ☐ On Call ☐ Warrant
Warrant By:
Warrant Number
Warrant Date

58. Assisting Officers: (No. & Name) NA

59. Officer Fingerprinting and Photographing

60. Jailer/Booking Officer

61. Cell No.

62. Property ☑ Yes ☐ No

63. Phone Call: ☑ Yes ☐ No ☐ Refused

64. Defendants Rights Given By | Date | Time | Place | Witness

65. Admissions, Confessions or Comments by Defendants ☐ Spontaneous ☐ Prompted

SENTENCED TO LIFE 09-13-95
RELEASE TO RANKIN COUNTY

66. Give Details of What Prompted This Arrest:

67. Name of Witness to Arrest ☐ Affiant	68. Address Number and Street	City and State	69. Phone No.	70. Age
71. If Juvenile, Parent or Guardian Name	72. Address Number and Street	City and State	73. Phone No.	74. Contacted By
75. Other Parent or Guardian Name	76. Address Number and Street	City and State	77. Phone No.	78. Contacted By

FILED

Joint Legislative Committee Note — Section 1 of ch. 397 Laws, 2001, effective from and after passage (approved March 12, 2001), amended this section. Section 12 of ch. 407, Laws, 2001, effective from and after July 2, 2001, also amended this section. As set out above, this section reflects the language of Section 12 of ch. 407, Laws, 2001, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Amendment Notes — The first 2001 amendment (ch. 397) extended the date of the repealer for §§ 47-5-1101 through 47-5-1121 from "July 1, 2001" to "July 1, 2002."

The second 2001 amendment (ch. 480) also extended the date of the repealer for §§ 47-5-1101 through 47-5-1121 from "July 1, 2001" to "July 1, 2002."

The 2002 amendment extended the date of the repealer for §§ 47-5-1101 through 47-5-1121 from "July 1, 2002" until "July 1, 2003."

The 2003 amendment extended the date of the repealer for §§ 47-5-1101 through 47-5-1121 from "July 1, 2003" until "July 1, 2004."

STATE PRISON EMERGENCY CONSTRUCTION AND MANAGEMENT BOARD

§ 47-5-1211. Contracts for private correctional facilities or services; experience of contractor; rates and benefits standards.

ATTORNEY GENERAL OPINIONS

A contract between Mississippi Department of Corrections and a private medical provider for healthcare services at a private prison is not subject to the state's public bid law. Johnson, Oct. 26, 2001, A.G. Op. #01-0652.

PRISON INDUSTRY ENHANCEMENT PROGRAM

SEC.
47-5-1251. Prison Industry Enhancement Program; creation.

§ 47-5-1251. Prison Industry Enhancement Program; creation.

(1) There is created the "Prison Industry Enhancement Program," through which the Department of Corrections may contract with the nonprofit corporation organized and formed under the "Mississippi Prison Industries Act of 1990" to employ offenders within the custody of the department or prison industries. The offenders must be under the supervision of the department at all times while working. The offenders shall be paid, by the entity or entities, wages at a rate which is not less than that paid for similar work in the locality in which the work is performed. The wages may be subject to deductions which shall not, in the aggregate, exceed eighty percent (80%) of gross wages. The deductions shall be limited to the following:

(a) To pay federal, state and local taxes;

(b) To pay reasonable charges for room and board as determined by regulations issued by the Commissioner of Corrections;

Exhibit E

ROBERT A. WHITE A/K/A ROBERT A. WHITE, APPELLANT v. STATE OF MISSISSIPPI, APPELLEE

NO. 1998-CA-00980-COA

COURT OF APPEALS OF MISSISSIPPI

751 So. 2d 481; 1999 Miss. App. LEXIS 517

August 3, 1999, Decided

PRIOR HISTORY: [**1] COURT FROM WHICH APPEALED: LAMAR COUNTY CIRCUIT COURT. DATE OF JUDGMENT: 04/22/1998. TRIAL JUDGE: HON. MICHAEL RAY EUBANKS. TRIAL COURT DISPOSITION: 04/22/1998: POST-CONVICTION COLLATERAL RELIEF DENIED;.

DISPOSITION-1: REVERSED AND REMANDED.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant sought review of a judgment from the Circuit Court of Lamar County (Mississippi), which denied his motion for post-conviction relief on the basis that his attorneys incorrectly informed him on parole eligibility, without an evidentiary hearing.

OVERVIEW: After appellant pled guilty to a charge of fondling and was sentenced, he filed a motion for post-conviction relief on the basis that his attorneys incorrectly informed him on parole eligibility. Appellant's motion was denied without an evidentiary hearing. On appeal, appellant argued the court erred by not granting him an evidentiary hearing after evidence that his attorneys provided erroneous information on parole eligibility, which allegedly caused him to involuntarily have entered a guilty plea. Upon review, the court found that before appellant could have pled guilty to a felony, he must have been informed of his rights, the nature and consequences of the act he contemplated, and any other relevant facts and circumstances, and thereafter, voluntarily entered the plea. Consequently, appellant was entitled to an evidentiary hearing based on his contention that, he had not voluntarily entered a guilty plea because of his reliance on his attorneys' erroneous advice regarding the possibility of parole. Accordingly, dismissal of appellant's motion was reversed and the case remanded, with costs, for a hearing to determine the merits of appellant's allegations.

OUTCOME: Judgment, which denied appellant's motion for post-conviction relief without an evidentiary hearing, was reversed and the case remanded, with costs, for a hearing to determine the merits of appellant's allegations. Before appellant could have pled guilty, he must have been informed of his rights, the nature and consequences of the act he contemplated, and any other relevant facts and circumstances, and then, have voluntarily pled guilty.

CORE TERMS: parole, sentence, guilty plea, eligibility, evidentiary hearing, eligible, good time, post-conviction, inmate, summary judgment, sentenced, mandatory sentence, plea hearing, minimum sentence, misinformation, reversal, serving, parole board, armed robbery, involuntary, mandatory, personal knowledge, plea of guilty, misinformed, colloquy, fondling, advise, possibility of parole, mandatory minimum, sworn testimony

LexisNexis(TM) Headnotes

Criminal Law & Procedure > Habeas Corpus > Evidentiary Hearings

[HN1]A petitioner is entitled to an in-court opportunity to prove his claims if the claims are procedurally alive and show a substantial denial of a state or federal right, Miss. Code Ann. §§ 99-39-1 - 99-39-29 (1998).

Criminal Law & Procedure > Guilty Pleas > Knowing & Intelligent Requirement

Criminal Law & Procedure > Guilty Pleas > Voluntariness

[HN2]The Mississippi Supreme Court has previously stated that before a person may plead guilty to a felony, he must be informed of his rights, the nature and consequences of the act he contemplates, and any other relevant facts and circumstances, and thereafter, voluntarily enter the plea.

Criminal Law & Procedure > Guilty Pleas > Voluntariness

[HN3]The quality of advice from counsel has been considered in determining whether a plea has been entered into voluntarily.

Criminal Law & Procedure > Guilty Pleas > Knowing & Intelligent Requirement

[HN4]Mistaken advice of counsel may vitiate a guilty plea in some cases.

Exhibit F

Criminal Law & Procedure > Guilty Pleas > Knowing & Intelligent Requirement

[HN5]The Mississippi Supreme Court has acknowledged that parole eligibility is a consequence in which attorneys should advise their clients in order to enter a voluntary plea.

COUNSEL: ATTORNEY FOR APPELLANT: P. SHAWN HARRIS.

ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL, BY: PAT S. FLYNN.

JUDGES: IRVING, J. KING, P.J., AND DIAZ, J., CONCUR. SOUTHWICK, P.J., CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY McMLLIN, C.J. LEE, J. DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY BRIDGES, PAYNE, AND THOMAS, JJ. MOORE, J., NOT PARTICIPATING.

OPINIONBY: IRVING

OPINION: [*482]

NATURE OF THE CASE: CIVIL - POST CONVICTION RELIEF

EN BANC.

IRVING, J., FOR THE COURT:

P1. Robert White entered a plea of guilty to the charge of "fondling" and was sentenced to a term of ten years and ordered to undergo counseling. White filed a motion for post-conviction relief in the Circuit Court of Lamar County on the basis that his attorneys incorrectly informed him on parole eligibility. The motion was denied. Aggrieved, White now appeals the denial of his motion for post-conviction relief. White presents one issue for review and resolution which is quoted [**2] verbatim from his brief:

The court erred by not granting the Appellant an evidentiary hearing on his motion Post Conviction Relief after evidence of mistaken advise [sic] of the Petitioner[']s Counsel was presented regarding false information that the petitioner would be eligible for parole at the time he was sentenced.

FACTS

P2. White was indicted for sexual battery against his stepdaughter on February 28, 1996. The indictment stated that the act was ongoing over a period of years with the most recent incident occurring during the month of September 1995. White agreed to plead guilty, and in exchange for his plea, the district attorney reduced the charge from sexual battery to child molestation (fondling). On October 21, 1996, White entered a plea of guilty to "fondling." On October 30, 1997, White filed a motion for post-conviction relief in the Circuit Court of Lamar County. White alleged that he did not learn until after he was incarcerated that he had received incorrect information from his attorneys. He alleges that he was unaware that Miss. Code Ann. § 47-7-3 (Supp. 1998) was amended in July of 1995 and now requires anyone who commits a sex crime to serve the entire [**3] sentence without eligibility for parole. White further alleged that his attorneys informed him that he would be eligible for parole after serving 25% of his sentence since some of the acts he pleaded guilty to occurred prior to the amending of the statute. White stated in his motion for post-conviction relief, and argues here, that had he known he would have to serve the entire term of his sentence, he would not have pled guilty.

P3. The trial judge entered an order directing the attorneys who represented White at the plea hearing to submit affidavits in response to White's motion. In [*483] their affidavits, the attorneys denied giving any specific information on parole eligibility, but admitted that they did not advise White of parole ineligibility. The circuit court denied White's motion for post-conviction relief without conducting an evidentiary hearing on the merits of the motion. The denial was based on the record, the petition and the affidavits submitted by both White and the attorneys.

DISCUSSION

P4. [HN1]A petitioner is entitled to an in-court opportunity to prove his claims if the claims are procedurally alive and show a substantial denial of a state or federal right. *Washington v. State*, 620 So. 2d 966, 967 (Miss. 1993); [**4] *see* Mississippi Uniform Post Conviction Collateral Relief Act, Miss. Code Ann. §§ 99-39-1 through 99-39-29 (Supp. 1998). Accordingly, we must determine whether White was entitled to an evidentiary hearing.

P5. [HN2]The Mississippi Supreme Court has previously stated that:

before a person may plead guilty to a felony, he must be informed of his rights, the nature and consequences of the act he contemplates, and any other relevant facts and circumstances, and thereafter, voluntarily enter the plea.

Vittitoe v. State, 556 So. 2d 1062, 1063 (Miss. 1990).

P6. [HN3]The quality of advice from counsel has been considered in determining whether a plea has been entered into voluntarily. *Washington*, 620 So. 2d at 967; *Vittitoe*, 556 So. 2d at 1065. [HN4]Mistaken advice of counsel may also vitiate a guilty plea in some cases. *Myers v. State*, 583 So. 2d 174, 177 (Miss. 1991).

P7. White argues that his attorneys provided him with erroneous information on parole eligibility, thereby causing him to involuntarily enter a guilty plea. [HN5]The Mississippi Supreme Court has acknowledged that parole eligibility is a consequence [**5] in which attorneys should advise their clients in order to enter a voluntary plea. *See Washington*, 620 So. 2d at 967; *Alexander v. State*, 605 So. 2d 1170, 1172 (Miss. 1992); *Coleman v. State*, 483 So. 2d 680, 683 (Miss. 1986). The court in *Washington* held that the appellant was entitled to an evidentiary hearing on the basis of his contention that he did not voluntarily enter a guilty plea because of his reliance on his attorneys advice regarding the possibility of parole. *Washington*, 620 So. 2d at 967. Washington was sentenced to a ten-year mandatory period before he would be eligible for parole. *Id.* at 966. He alleged that his attorney led him to believe that he would be eligible for parole in six years and three months. *Id.* Washington further alleged that he did not learn of the required mandatory sentence until after incarceration. *Washington*, 620 So. 2d at 967. The State argued that the misinformation regarding parole eligibility could not have induced Washington to enter a guilty plea. *Id.* at 969. The State further argued that the mandatory ten years [**6] to be served was not a "consequence" of which Washington needed to be informed of in order to plead voluntarily. *Id.* The court held that Washington should have been given a chance to present his claim at a hearing. *Id.* Additionally, the court stated that the issue is not whether Washington was sufficiently advised on his parole eligibility, but whether he was **apprised** of the mandatory sentence **without parole** consideration.

Id. (emphasis added)

P8. While *Washington* involved a mandatory sentence issue, we see no reason to make a distinction between it and the case *sub judice* where the issue is sentencing without the possibility for parole. Just as the court in *Washington* concluded that the defendant was entitled to an evidentiary hearing, we likewise conclude that White is entitled to one. Accordingly, we reverse the trial court's dismissal of the post-conviction motion without an evidentiary hearing and remand for such a hearing [*484] to determine the merits of White's allegations.

P9. **THE JUDGMENT OF THE LAMAR COUNTY CIRCUIT COURT OF DENIAL OF POST-CONVICTION RELIEF IS REVERSED AND REMANDED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO LAMAR [**7] COUNTY.**

KING, P. J., AND DIAZ, J., CONCUR. SOUTHWICK, P. J., CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY McMLLIN, C. J. LEE, J. DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY BRIDGES, PAYNE, AND THOMAS, JJ. MOORE, J., NOT PARTICIPATING.

CONCURBY: SOUTHWICK

CONCUR: SOUTHWICK, P.J., CONCURRING:

P10. Though I agree that we must reverse, I find that question of what had to be told White about parole requires some additional explanation.

P11. As I see them, the relevant variables are not that numerous. The answers that I give to each are noted, with the explanations following.

1(a) Does anything have to be said to a defendant pleading guilty about parole? No.

1(b) If not, then does it matter if something is told him anyway and it is erroneous? Yes, the statements cannot be misleading.

2) On post conviction relief, is the affidavit of the inmate sufficient to gain a hearing if it alleges the right facts? Maybe. The inmate's affidavit, if based on personal knowledge and containing "specific and detailed" facts that if true would support the granting of relief, does require a hearing with one exception. If the court has gone beyond the petition and received affidavits [**8] and other evidence from the State, the summary judgment section (Section 99-39-19) can be applied and relief denied without a hearing in some circumstances.

P12. To restate the key facts, White is asserting that his allegations fit within the precedents in which something was said about parole and it was wrong. That "something" was that he would be eligible for parole after serving 25% of his sentence. He also alleges that someone should have told him that he would have to serve the entirety of any sentence that he got, but no one did. Those are two different claims

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and only the first has possible merit. The evidence comes from White's affidavit and affidavits from his two former counsel. One lawyer admits that he misinformed White as to the range of sentences, saying that he could get from one to ten, when in fact fifteen was the maximum. The judge made the same error in the plea colloquy. However, White only got a ten year sentence.

P13. Both lawyers denied that any statement about parole after serving 25% of the sentence was made. One lawyer stated that there was no "representation or promise . . . concerning his right or eligibility" for parole. The other lawyer said [**9] that White was never told he was eligible, but also says he was never told that there would be no parole. No "representation or promise" may mean parole was never mentioned, or it could mean that though mentioned, everyone pled ignorance on how it would work. The form plea petition and the counsel's form affidavit with the petition used at the guilty plea proceedings stated that no one "predicted or estimated" the amount of time he would have to serve before being eligible for release.

P14. What was said in open court was limited. In the transcript of the original plea, White said that he understood the plea petition, that his two lawyers explained it, and that the sentence was from "zero to ten." There was discussion with the attorneys and the judge said the range was from "one to ten." Actually, it was from one to fifteen. White said there was no promise of a specific sentence or that it [*485] would be "served in a certain way." That quote is the only reference to parole. There certainly was no statement that whatever sentence was imposed the accused must serve it all.

P15. I now turn to the two issues that appear central.

1) Explanation of parole before plea.

P16. [**10] The failure to be told correctly the mandatory minimum sentence renders a plea involuntary unless it can be shown the defendant would have pled anyway. *Alexander v. State*, 605 So. 2d 1170, 1172 (Miss. 1992)(not told of right to remain silent and confront witnesses; not told of mandatory ten-year prison term), cited in *Washington v. State*, 620 So. 2d 966, 968 (Miss. 1993). In *Washington*, the court applied that rule to a situation in which the defendant alleges that his attorney privately informed him (not on the record in open court) that he would be eligible for parole in six years when in fact he would not be for ten years. *Id.* at 967. In open court taking the plea, the judge was said to have implied that Washington could without any stated limit get good time credits as "under normal sentences." What was never said is that for this crime, ten years was set as the required time to be served without parole. According to the supreme court, the plea hearing transcripts themselves gave "a definite indication" that the prosecutor and defense counsel were confused concerning the applicable statute. *Id.* at 968.

P17. [**11] Then the supreme court makes a distinction that the case was not one in which there had been a failure to advise the accused of parole eligibility, but there was a failure to be "apprised of the mandatory sentence without parole consideration. . . ." *Id.* at 970. The distinction seems to be that in those statutes that have a minimum sentence that must be served without parole, but a longer sentence option as well, the defendant has to be told "the range is from x to y, and the x has to be served without parole." Washington had to be told that he would serve ten years of whatever sentence he got, which was twenty-five years.

P18. The dissent to the reversal here relies upon a recent decision that I instead find consistent with the need for reversal. The supreme court described the facts this way: "Shanks was informed of the minimum and maximum sentence he could receive for armed robbery in compliance with Rule 3.03(3)(B) of the Uniform Criminal Rules of Circuit Court Practice. The transcript of the guilty plea hearing indicates that Shanks was not informed that the first ten years of his sentence for armed robbery would have to be served without possibility of parole. [**12] " *Shanks v. State*, 672 So. 2d 1207 (Miss. 1996). In *Shanks*, parole was discussed in the guilty plea form, and it stated that parole would be up to the authorities at the Parole Board. The plea petition in our case also mentioned as in *Shanks* that "no one has predicted how much time" he would have to serve and that early release was within the discretion of officials with the Department of Corrections. That kind of form language in fill-in-the-blank documents is not overly informative, but it exists. Three dissenters in *Shanks* found "misinformation" because the trial judge referred to parole, then said that parole was up to the parole board, but never said that even the parole board had to leave him locked up for ten years. The majority wins, though. *Shanks* holds that, absent any misinformation, no total explanation is needed as to parole even if mentioned during the plea hearing.

P19. The complaints in *Shanks* and *Washington* do not seem that different. In *Washington*, there was a mention of "good time" but there was also a statement that it applied as for a "normal sentence." Reversal was required because that was misinformation. In [**13]

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Shanks, there was a mention of parole but no one said anything further about it. No reversal required. The need for a misleading statement is made clearer in one case handed down chronologically between *Washington* and [*486] *Shanks*. It said that there were two situations for setting aside a guilty plea:

1)The sentence which the accused was informed would be his sentence if he pled guilty was erroneous and he acted in "reliance" on that information, but the mandatory minimum sentence which was imposed was harsher, or there was a misstatement by the court or the defense attorney as to the applicable minimum sentence [*Washington v. State*, 620 So. 2d 966 (Miss.1993); *Alexander v. State*, 605 So. 2d 1170 (Miss.1992); other citations removed]; or,

2. No representation of a minimum sentence was made, but the accused "expected" a much less severe sentence. *Vittitoe v. State*, 556 So. 2d 1062 (Miss.1990).

Smith v. State, 636 So. 2d 1220, 1226-27 (Miss. 1994). So *Washington* is viewed as just a "mistake" case -- something was said at the plea that was in error about the sentence. The second category defined [**14] in *Smith* has its own complications but they are not relevant here.

P20. White's affidavit asserts that this is a mistake case too and a much clearer mistake at that. He was not just told that good time credits apply as in a normal sentence, he was told that he would be eligible after 25% of a sentence had been served. The two lawyer affidavits disputed that. The final problem then is whether White's affidavit was enough to require an evidentiary hearing.

2) Evidentiary hearing

P21. A rule that gets stated in various ways is that an affidavit of the accused regarding a defect in the proceedings, standing alone, may be insufficient to require an evidentiary hearing. *Robertson v. State*, 669 So. 2d 11, 13 (Miss. 1996); *Campbell v. State*, 611 So. 2d 209, 210 (Miss. 1992). That is because, under the statute explaining what must be in a petition, there is a requirement that specific and detailed facts be presented supporting the claim, based on personal knowledge in most cases. Miss. Code Ann. § 99-39-9 (Rev. 1994). The next section states that if the petition "plainly" shows no entitlement to relief, it can be denied without a hearing. [**15] Miss. Code § 99-39-11 (Supp. 1998). One recent case says that when an inmate argues that a delay in sentencing violated his speedy trial rights and no affidavit was acquired from his attorney or anyone else involved with the plea, this was insufficient to require a hearing. *Marshall v. State*, 680 So. 2d 794, 795 (Miss. 1996). Judge Banks' concurring opinion states that the rule is that affidavits from others must be acquired only when events are not within the inmate's personal knowledge. *Id.* at 795.

P22. There are a few cases that state that if there are competing affidavits creating a fact dispute, the court can still grant summary judgment under Section 99-39-19. *Mowdy v. State*, 638 So. 2d 738, 742 (Miss. 1994). What may be important is the nature of the dispute. Both in *Mowdy* and in a later case, *Templeton v. State*, 725 So. 2d 764, 768 (Miss. 1998), the dispute was over the defendant's role in the crime and sworn statements were made in open court by the defendant in entering his guilty plea.

This Court in *Harris v. State*, 578 So. 2d 617, 620 (Miss.1991), held "that not all instances [**16] of conflicting affidavits will merit an evidentiary hearing. Where the petitioner's version is belied by previous sworn testimony, for example, as to render his affidavit a sham we will allow summary judgment to stand."

Mowdy, 638 So. 2d at 743. The case relied upon in *Mowdy* found a hearing was required when there were "contradictory affidavits disputing the essential facts of Harris' claim" regarding his attorney's deciding not to appeal without getting a waiver from the client. "Such a claim, if proven, merits the relief for which he prayed." *Harris*, 578 So. 2d at 619. The attorney denied Harris's claim and said that he had advised him of the right to [*487] appeal, but Harris decided not to appeal. The court concluded by saying:

Issues of facts sufficient to require denial of a motion for summary judgment [and the grant of an evidentiary hearing] obviously are present where one party swears to one version of the matter in issue and another says the opposite.

Id. Quite simply, *Harris* required a hearing even though the dispute of material fact was created solely by the inmate's own affidavit. Under *Harris* a hearing cannot be [**17] avoided just because counsel denies the claims. However, *Mowdy* went further and said that credibility determinations regarding affidavits can be made on summary judgment. That is at least permitted when there is something that the inmate previously said in open court that is inconsistent with his affidavit. However, there is well-established case law that what was said during the plea colloquy regarding voluntariness is not binding, and an attack on the accuracy of what was said is permitted. *Baker v. State*, 358 So. 2d 401, 403 (Miss.1978).

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P23. What all this means is that when the inmate's affidavit asserts that information was given him outside of open court that would invalidate his plea, the judge has two choices, but he cannot deny the petition under Section 99-39-11(2) as facially without merit. He can grant a hearing. Instead, the judge may ask for other affidavits and information, look at the plea transcript, and then enter summary judgment at least if the affidavit is directly impeached by what was said in sworn testimony during the plea.

P24. Summary judgment has not been entered in cases in which the dispute is over what representations had **[**18]** been made to the defendant outside of open court, i.e., issues of voluntariness. *Templeton* and *Mowdy* are about disputing sworn explanations of the accused's role in the crime. *Harris* is specifically what we face, namely, what an accused's own counsel told him outside of court.

P25. The trial judge here dismissed the complaint as facially invalid under Section 99-39-11(2). That was error. At *most* he could have granted summary judgment. He stated that White's affidavit by itself was insufficient to grant a hearing, but I find that was error and the credibility of the affidavit should have been weighed. He then said because of the absence of other evidence he need not decide whether firm representations about being eligible for parole after serving 25% of the sentence would justify relief. In fact, the issue is settled that erroneous representations about parole require reversal unless it can be shown that the representations were not a factor in the plea.

P26. My result is the same as the majority, but my route is different and obviously longer. I concur.

MCMILLIN, C.J., JOINS THIS SEPARATE OPINION.

DISSENTBY: LEE

DISSENT: LEE, J., DISSENTING:

P27. The majority **[**19]** has concluded that White should be given a chance to present his claim at an evidentiary hearing because he, as a sex offender, relied on erroneous information from counsel regarding his parole eligibility. Because this is not supported by the record, I respectfully dissent.

P28. White contends, in an unsupported affidavit, that counsel presented him with false information regarding his eligibility for parole at the time he was sentenced. A review of *Myers v. State*, 583 So. 2d 174, 177 (Miss. 1991), cited by the majority, shows that the defendant, who was sentenced to sixteen years, was told by counsel that by pleading guilty he would be sentenced to less than twelve years. The affidavit presented by Myers, unlike that presented by White, was supported by affidavits from two witnesses present during Myers's conversation with his attorney. The court found as a result that his plea was not voluntary and intelligent. *Myers* is distinguishable from this case since **[*488]** there is nothing in the record to show that White was misinformed regarding the length of his sentence other than his unsupported affidavit. The affidavits submitted by both of White's attorneys in response **[**20]** to an order entered by the trial judge clearly deny that either attorney gave any information regarding parole eligibility to White. Though the affidavits do show that White was not advised that he would be required to serve his entire sentence without parole eligibility, *Shanks v. State*, 672 So. 2d 1207 (Miss. 1996), and *Ware v. State*, 379 So. 2d 904 (Miss. 1980), indicate that this is not the basis upon which an evidentiary hearing regarding the validity of a guilty plea has been granted.

P29. In *Ware v. State*, 379 So. 2d 904, 907 (Miss. 1980) (following *Smith v. United States*, 116 U.S. App. D.C. 404, 324 F.2d 436, 441 (D.C. Cir. 1963)), the Mississippi Supreme Court held that the trial court's failure to inform the defendant that the first ten years of his sentence for armed robbery would be served without parole did not render his guilty plea involuntary. In determining whether eligibility for parole was a consequence of a guilty plea for which a defendant must be informed, the court in *Ware* found that eligibility for parole is not such a "consequence" but rather "a matter of legislative grace." It likewise **[**21]** found that it is "equally true that noneligibility for parole" is also not a "consequence" of a guilty plea. It was therefore held that a guilty plea would not be found to be involuntary if a defendant was not informed of his ineligibility for parole. This rationale was also followed in *Shanks v. State*, 672 So. 2d 1207, 1208 (Miss. 1996).

P30. *Washington v. State*, 620 So. 2d 966, 969 (Miss. 1993), relied upon by the majority, also can be distinguished from the case *sub judice* in that the record in *Washington* shows that the defendant had specifically asked a question regarding "good time" during the plea hearing. The trial judge answered with a misstatement of the law that Washington would get good time when that was clearly not the case. The court found that Washington had been misled, and he was therefore given the opportunity to present his claims at an evidentiary hearing. It is important to note that the reason *Washington* held that the court had the responsibility to inform Washington of his mandatory

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sentence prior to accepting his guilty plea is that Washington specifically asked about his ability to accumulate "good time" at [**22] the plea hearing and he was given erroneous information by the court. *Coleman v. State*, 483 So. 2d 680, 683 (Miss. 1986), also involves an erroneous representation made by the court to the defendant regarding "good time." There is no such reference in the record that "good time" was an issue discussed in White or that White was misinformed in any capacity regarding the consequences of his guilty plea.

P31. Post-conviction relief is not granted for facts and issues which should have been, could have been, or were litigated at trial. Such a proceeding to set aside a guilty plea should be reviewed with the utmost gravity. It is important to remember that the remedy which is being sought is to set aside a final judgment which has been entered upon a guilty plea given in open court, following the meticulous efforts of a trial judge to ensure that such plea is knowing and voluntary. Courts should be satisfied that there is no coercion or threat inducing the plea. The orderly administration of justice does not require this Court to "lead a defendant by the hand" through the criminal justice system. *Cole v. State*, 666 So. 2d 767, 772 (Miss. 1995). A [**23] defendant need not be advised of every "but for" consequence which follows from a plea of guilty. The prosecution may well have failed to explain the details of White's eligibility for parole. This failure, however, does not and should not amount to a breach of the plea bargain agreement. The colloquy between the court and White indicates that the guilty plea was properly entered. White was properly informed of the maximum and minimum sentence. He [*489] indicated that he understood the impact of entering a plea of guilty and the trial court found that he knowingly and intelligently entered his petition. This should suffice to validate the plea. I therefore respectfully dissent.

BRIDGES, PAYNE, THOMAS, JJ., JOIN THIS SEPARATE WRITTEN OPINION.

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STEVE PUCKETT, COMMISSIONER OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS v. LARRY ABELS, DEVIASSI LATEFF ADAMS, EUGENE ADAMS, FREDDIE ADAMS, JR., ROY LEE ADAMS, WILLIE ADDISON, TIMOTHY AKBAR, CHARLES LYDEL ALDRIDGE, JIMMY FRANK ALLEN, PATRICK ALLEN, VERGIL MAURESE ALLEN, CHARLES ALLISON, SHERMAN ONEIL AMOS, JUDY ANDERSON, LEVONZEL ANDERSON, MELONEY L. ANDERSON, MICHAEL DESM ANDERSON, VICTOR ANDREWS, VICTOR B. ANDREWS, NATIVIDAD ARREOLA, MICHAEL ANTHONY AUTIN, NICKY JOE BABB, RICHARD ARN BAGGETT, ALBERT JAMES BAILEY, ET AL.

No. 95-CA-00856-SCT

SUPREME COURT OF MISSISSIPPI

684 So. 2d 671; 1996 Miss. LEXIS 636

November 21, 1996, Decided

PRIOR HISTORY: [**1] Appeal No. 2519553CIV from Judgment dated JULY 18, 1995, James E. Graves Jr. RULING JUDGE, Hinds County Circuit Court, First Judicial District.

DISPOSITION-1: AFFIRMED.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant, the Commissioner of the Mississippi Department of Corrections, contested a judgment of the Hinds County Circuit Court, First Judicial District, (Mississippi), which, in appellee prisoners' declaratory judgment action, ruled that S.B. 2175 (Mississippi) was an ex post facto law as it applied to the prisoners, who were charged with committing crimes prior to July 1, 1995, but were not to be sentenced until on or after July 1, 1995.

OVERVIEW: The retroactive application of S.B. 2175 required that 85 percent of a prisoner's sentence be served, and it eliminated the opportunity for parole. The prisoners were charged with felony crimes that occurred prior to the bill's effective date of July 1, 1995, and their charges were not to be disposed of until after July 1, 1995. The trial court held that S.B. 2175 was an ex post facto law as applied to the prisoners. On the Commissioner's appeal, the court affirmed, holding that the proper method of review was the "effect" review, which provided that when an amendment did not retrospectively change an offense's sentencing range but did make a change that could indirectly affect the length of a prisoner's term, no Ex post facto Clause violation occurred because the possibility of an indirect effect was speculative. Here, however the court found that S.B. 2175 lengthened the prisoners' sentences and eliminated any possibility for parole. Thus, because the amendment directly increased the punishment for covered crimes and the effect on the prisoners was not merely speculative, Senate Bill 2175 was an ex post facto law that violated the United States and Mississippi Constitutions.

OUTCOME: The court affirmed.

CORE TERMS: parole, prisoner, sentence, ex post facto, inmate, sentenced, eligible, convicted, facto, serving, ex post facto law, time allowance, offender, sentencing, early release, release date, new law, disadvantage, conditional, eighty-five, speculative, punishable, gain-time, quantum, formula, constitutional prohibition, retroactive application, legislative change, presumptive, suitability

LexisNexis(TM) Headnotes

Governments > Legislation > Effect & Operation > Prospective & Retrospective Operation

Criminal Law & Procedure > Postconviction Proceedings > Parole

Criminal Law & Procedure > Sentencing > Sentencing Ranges

[HN1]The retroactive application of S.B. 2175 (Mississippi) requires that 85 percent of a sentence be served and eliminates the opportunity for parole that existed prior to S.B. 2175.

Criminal Law & Procedure > Postconviction Proceedings > Parole

[HN2]Prior to July 1, 1995, most offenders convicted of felonies and sentenced to a term of incarceration of one year or more, were allowed to be eligible for parole after serving 25 percent of their sentence pursuant to Miss. Code Ann. § 47-7-3 (Supp. 1993). This section stated:(1) Every prisoner who has been or may hereafter be convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction of the Mississippi State Penitentiary for a definite term or terms of one

Exhibits G

year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the Penitentiary, and who has served not less than one-fourth of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of 30 years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than 10 years of such life sentence, may be released on parole as hereinafter provided. Miss. Code Ann. § 47-7-3 (Supp. 1993).

Criminal Law & Procedure > Postconviction Proceedings > Motions to Vacate Judgment

[HN3]Miss. Code Ann. § 47-7-3 (Supp. 1993) enumerated exceptions which included: (a) prisoners convicted as habitual or confirmed criminals; (b) prisoners convicted of a sex crime who first had to receive an examination by a competent psychiatrist or psychologist before parole would be granted; (c) prisoners would not be eligible for parole until they had served one year of their sentence, unless they had accrued any meritorious earned time allowance, in which case they were eligible for parole at earlier time increments; and (d) prisoners who after January 1, 1977, were convicted of robbery or attempted robbery through the display of a firearm would be eligible for parole until having served 10 years. S.B. 2175, § 3, para. (1)(g) (Mississippi) amended this section and a portion was added which provides that no person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30, 1995. Miss. Code Ann. § 47-7-3 (1)(g) (Supp. 1995).

Governments > Legislation > Effect & Operation > Prospective & Retrospective Operation

Criminal Law & Procedure > Postconviction Proceedings > Parole

[HN4]Prior to July 1, 1995, an inmate could obtain his release by serving 50 percent of his sentence pursuant to the earned time provisions of Miss. Code Ann. § 47-5-138 (1993). This section before the amendment stated: (1) The department may promulgate rules and regulations to carry out an earned time allowance program based on the good conduct and performance of an inmate. An inmate is eligible to receive an earned time allowance of one-half of the period of confinement imposed by the court except those inmates excluded by law. When an inmate is committed to the custody of the department, the department shall determine a conditional earned time release date by subtracting the earned time allowance from an inmate's term of sentence and shall prepare a conditional earned time release date for each inmate.Miss. Code Ann. § 47-5-138 (1) (Supp. 1993). This section was amended to state that it does not apply to any sentence imposed after June 30, 1995. Miss. Code Ann. § 47-5-138 (1) (Supp. 1995).

Governments > Legislation > Effect & Operation > Prospective & Retrospective Operation

Governments > Legislation > Effect & Operation > Amendments

Criminal Law & Procedure > Postconviction Proceedings > Parole

[HN5]S.B. 2175, § 4, para. 4 (Mississippi), amended Miss. Code Ann. § 47-5-138 (Supp. 1993) as follows:For any sentence imposed after June 30, 1995, an inmate may receive an earned time allowance of four and one-half days for each 30 days served if the department determines that the inmate has complied with the good conduct and performance requirements of the earned time allowance program. The earned time allowance under this subsection shall not exceed 15 percent of an inmate's term of sentence. Miss. Code Ann. § 47-5-138 (4) (Supp. 1995).

Constitutional Law > Congressional Duties & Powers > Ex Post Facto Laws & Bills of Attainder

Constitutional Law > State Constitutional Operation & Amendment

[HN6]U.S. Const. art. I, § 9, cl. 3 states that no Bill of Attainder or ex post facto law shall be passed. U.S. Const. art. I, § 10, cl. 1 prohibits a state from passing ex post facto laws, stating: No State shall pass any ex post facto law. The State of Mississippi adopted this prohibition in its Miss. Const. art. 3, § 16 stating: Ex post facto laws shall not be passed.

Constitutional Law > Congressional Duties & Powers > Ex Post Facto Laws & Bills of Attainder

[HN7]The United States Supreme Court has interpreted U.S. Const. art. I, § 10 to forbid the enactment of any statute which punishes as a crime an act previously committed, which was innocent when done; which makes more burdensome the punishment for a crime, after its commission, or which deprives one charged with crime of any defense available according to law at the time the act was committed. In accordance with this original understanding, the Court has held that the Ex Post Facto Clause is aimed at laws that retroactively alter the definition of crimes or increase the punishment for criminal acts. The United States Constitution forbids the application of any new punitive measure to a crime already consummated.

Constitutional Law > Congressional Duties & Powers > Ex Post Facto Laws & Bills of Attainder

[HN8]A statute may violate the Ex post facto Clause even if it alters punitive conditions outside the

Ex-G

sentence or where it substantially alters the consequences attached to a crime already completed, and therefore changes "the quantum of punishment."

Constitutional Law > Congressional Duties & Powers > Ex Post Facto Laws & Bills of Attainder

[HN9]The United States Constitution forbids the application of any new punitive measure to a crime already consummated, to the detriment or material disadvantage of the wrongdoer. It is for this reason that an increase in the possible penalty is ex post facto, regardless of the length of the sentence actually imposed, since the measure of punishment prescribed by the later statute is more severe than that of the earlier.

Constitutional Law > Congressional Duties & Powers > Ex Post Facto Laws & Bills of Attainder

[HN10]The ex post facto prohibition forbids the imposition of punishment more severe than the punishment assigned by law when the act to be punished occurred.

Constitutional Law > Congressional Duties & Powers > Ex Post Facto Laws & Bills of Attainder

[HN11]Critical to relief under the Ex post facto Clause is not an individual's right to less punishment, but the lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was consummated. Thus, even if a statute merely alters penal provisions accorded by the grace of the legislature, it violates the Clause if it is both retrospective and more onerous than the law in effect on the date of the offense.

Constitutional Law > Congressional Duties & Powers > Ex Post Facto Laws & Bills of Attainder

Criminal Law & Procedure > Trials > Burdens of Proof > Defense

[HN12]A prisoner need not show that he definitely would have served a lesser sentence under the previous legal scheme in order to show an ex post facto violation. In other words, the mere presence of some discretion before the change in law does not in and of itself foreclose an ex post facto claim. A crucial part of ex post facto jurisprudence is whether a defendant was given fair warning of the effect of legislative enactment and could rely on their meaning until explicitly changed.

Constitutional Law > Congressional Duties & Powers > Ex Post Facto Laws & Bills of Attainder

Governments > Legislation > Interpretation

[HN13]S.B. 2175 (Mississippi) increases the possible penalty regardless of the length of the sentence actually imposed, since the measure of punishment prescribed by the later statute is more severe than that of the earlier. S.B. 2175 constricts the inmate's opportunity to earn early release, and thereby makes more onerous the punishment for crimes committed before its enactment. This result runs afoul of the prohibition against ex post facto laws. S.B. 2175 increases the "quantum of punishment."

Constitutional Law > Congressional Duties & Powers > Ex Post Facto Laws & Bills of Attainder

[HN14]The ex post facto inquiry is focused on whether the legislative change increases the penalty by which a crime is punishable.

Constitutional Law > Congressional Duties & Powers > Ex Post Facto Laws & Bills of Attainder

[HN15]The ex post facto standard the court applies today is constant: it looks to whether a given legislative change has the prohibited effect of altering the definition of crimes or increasing punishments.

Constitutional Law > Congressional Duties & Powers > Ex Post Facto Laws & Bills of Attainder

[HN16]What legislative adjustments will be held to be of sufficient moment to transgress the constitutional prohibition against ex post facto laws must be a matter of "degree."

Governments > Legislation > Effect & Operation > Prospective & Retrospective Operation

Constitutional Law > Congressional Duties & Powers > Ex Post Facto Laws & Bills of Attainder

Governments > Legislation > Effect & Operation > Amendments

[HN17]When an amendment does not retrospectively "change the sentencing range" applicable to an offense, but does make a procedural or other change, that may indirectly affect the length of time that a prisoner may serve, no violation of the Ex post facto Clause has occurred because of the possibility of such an indirect effect is "speculative and conjectural." In other words the new law must have a direct effect on the sentence length.

Constitutional Law > Congressional Duties & Powers > Ex Post Facto Laws & Bills of Attainder

Criminal Law & Procedure > Postconviction Proceedings > Parole

[HN18]S.B. 2175 (Mississippi) eliminates any possibility for parole for all offenders who are sentenced on or after July 1, 1995, yet who committed their crimes before July 1, 1995, or whose suspended sentence are revoked after June 30, 1995. Prior to the

Ex G

3

SB. 2175 I am sex off. & Have a Life Sentence which one applies?

IN. This Bill Two sections apply To Rabalais

Ch. 596, § 2 Life sentence 10 years (sec 1) on sex crime sec 8,

Board" appear in any state law, they shall mean the Department of Corrections.

Ch. 596, § 3

SECTION 3. Section 47-7-3, Mississippi Code of 1972, is amended as follows:

<< MS ST § 47-7-3 >>

47-7-3. (1) Every prisoner who has been convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi State Penitentiary for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the penitentiary, and who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

(a) No prisoner convicted as a confirmed and habitual criminal under the provisions of Sections 99-19-81 through 99-19-87 shall be eligible for parole;

(b) Any person who shall have been convicted of a sex crime shall not be released on parole except for a person under the age of nineteen (19) who has been convicted under Section 97-3-67;

Any in Evaluation first 10 years

(c) No one shall be eligible for parole until he shall have served one (1) year of his sentence, unless such person has accrued any meritorious earned time allowances, in which case he shall be eligible for parole if he has served (i) nine (9) months of his sentence or sentences, when his sentence or sentences is two (2) years or less; (ii) ten (10) months of his sentence or sentences when his sentence or sentences is more than two (2) years but no more than five (5) years; and (iii) one (1) year of his sentence or sentences when his sentence or sentences is more than five (5) years;

(d) (i) No person shall be eligible for parole who shall, on or after January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term of terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole. The provisions of this paragraph (d) shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon. This subparagraph (d) (i) shall not apply to persons convicted after September 30, 1994;

Charged before 9/30/94 Illegal ex post facto

(ii) No person shall be eligible for parole who shall, on or after October 1, 1994, be convicted of robbery, attempted robbery or carjacking as provided in Section 97-3-115 et seq., through the display of a firearm or drive-by shooting as provided in Section 97-3-109. The provisions of this subparagraph (d)(ii) shall also apply to any person who shall commit robbery, attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the

Charged is correct Legal Language

convicted and sentenced to life imprisonment without eligibility for parole under the provisions of Section 99-19-101;

Oct 1, 1994,

Use correct Legal Language without Ex Post facto Law US, Const art 1 § 10. Miss art 3 § 1-26

Ex-H 1

Tried + convicted is Illegal Legal Language Violates Ex Post Facto

(Publication page references are not available for this document.)

MISSISSIPPI 1995 SESSION LAWS
1995 REGULAR SESSION

Chapter No. 596
S.B. No. 2175

PAROLE AND EARNED TIME CREDITS--POST-RELEASE SUPERVISION--GENERAL AMENDMENTS

Ch. 596

AN ACT TO PROVIDE MORE EFFECTIVE PROTECTION OF SOCIETY BY PHASING OUT PAROLE AND GOOD TIME; TO REQUIRE AN INMATE TO SERVE AT LEAST 85% OF A SENTENCE; TO REQUIRE INMATES TO BE PLACED UNDER EARNED-RELEASE SUPERVISION; TO AMEND SECTION 47-7-5, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE REPEAL OF THE STATE PAROLE BOARD; TO AMEND SECTION 47-7-53, MISSISSIPPI CODE OF 1972, TO TRANSFER THE DUTIES AND POWERS OF THE PAROLE BOARD TO THE DEPARTMENT OF CORRECTIONS AFTER ABOLITION OF THE PAROLE BOARD; TO AMEND SECTION [illegible] OF 1972, TO PROVIDE THAT PERSONS SHALL NOT BE ELIGIBLE FOR PAROLE AFTER A CERTAIN DATE; TO AMEND SECTION 47-5-138, MISSISSIPPI CODE OF 1972, TO REVISE THE EARNED TIME ALLOWANCE PROGRAM AND TO PROVIDE THAT INMATES SHALL BE PLACED UNDER EARNED RELEASE SUPERVISION; TO PROVIDE THAT COURTS MAY IMPOSE A TERM OF POST-RELEASE SUPERVISION; TO AMEND SECTIONS 47-5-139, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND SECTIONS 47-7-9, 47-7-27, 47- 7-29, 47-7-35, 47-7-37 AND 47-7-49, MISSISSIPPI CODE OF 1972, TO CONFORM TO EARNED AND POST-RELEASE SUPERVISION REQUIREMENTS; TO FURTHER AMEND SECTION 47-7-49, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER ON THE PAROLE, PROBATION AND SUPERVISED RELEASE FEE; TO AMEND SECTION 47-7-55, MISSISSIPPI CODE OF 1972, TO REQUIRE THE PAROLE COMMISSION TO REPORT RECOMMENDATIONS ON SENTENCING STANDARDS; TO AMEND SECTION 99-19-21, MISSISSIPPI CODE OF 1972, TO REQUIRE SENTENCE FOR FELONY COMMITTED DURING PAROLE, PROBATION, EARNED-RELEASE SUPERVISION, POST-RELEASE SUPERVISION OR A SUSPENDED SENTENCE TO BEGIN AFTER THE END OF THE SENTENCE FOR ANY PRECEDING CONVICTIONS; TO AMEND SECTION 97-3-101, MISSISSIPPI CODE OF 1972, TO CONFORM TO REVISED EARNED TIME ALLOWANCES; TO REQUIRE THE MISSISSIPPI JUDICIAL COLLEGE TO OFFER COURSES TO INFORM JUDGES AND PROSECUTORS OF THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

Ch. 596, § 1

SECTION 1. Section 47-7-5, Mississippi Code of 1972, is amended as follows:

<< MS ST § 47-7-5 >>

47-7-5. (1) The State Parole Board, created under former Section 47-7-5 is hereby created, continued and reconstituted and shall be composed of five (5) members, one (1) from each congressional district. The members of the board [illegible] constituted and shall be composed of three (3) members, one (1) from each of the Supreme Court districts. The Governor, with the advice and consent of the

Exhibit 30 H 1

22 of 35 DOCUMENTS

MISSISSIPPI CODE ANNOTATED

*** ARCHIVE MATERIAL ***

*** THIS DOCUMENT IS CURRENT THROUGH THE 1995 SUPPLEMENT (1995 SESSION) ***

TITLE 47 PRISONS AND PRISONERS; PROBATION AND PAROLE
CHAPTER 7 Probation and Parole
PROBATION AND PAROLE LAW

Miss. Code Ann. § 47-7-3 (1995)

§ 47-7-3. Parole of prisoners; conditions; determination of tentative hearing date.

(1) Every prisoner who has been convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi State Penitentiary for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the penitentiary, and who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

(a) No prisoner convicted as a confirmed and habitual criminal under the provisions of Sections 99-19-81 through 99-19-87 shall be eligible for parole;

(b) Any person who shall have been convicted of a sex crime shall not be released on parole except for a person under the age of nineteen (19) who has been convicted under Section 97-3-67;

(c) No one shall be eligible for parole until he shall have served one (1) year of his sentence, unless such person has accrued any meritorious earned time allowances, in which case he shall be eligible for parole if he has served (i) nine (9) months of his sentence or sentences, when his sentence or sentences is two (2) years or less; (ii) ten (10) months of his sentence or sentences when his sentence or sentences is more than two (2) years but no more than five (5) years; and (iii) one (1) year of his sentence or sentences when his sentence or sentences is more than five (5) years;

(d) (i) No person shall be eligible for parole who shall, on or after January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term or terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole. The provisions of this paragraph (d) shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon. This subparagraph (d)(i) shall not apply to persons convicted after September 30, 1994;

(ii) No person shall be eligible for parole who shall, on or after October 1, 1994, be convicted of robbery, attempted robbery or carjacking as provided in Section 97-3-115 et seq., through the display of a firearm or drive-by shooting as provided in Section 97-3-109. The provisions of this subparagraph (d)(ii) shall also apply to any person who shall commit robbery, attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the display of a deadly weapon;

Exhibit, H.2.

1994 Law, Not clearly Established

eligible for medical release under the provisions of Section 47-7-4

The second 1995 amendment (ch. 596), revised this section to provide that persons shall not be eligible for parole after a certain date

CROSS REFERENCES

Penalty of life imprisonment without parole for sale of specified quantities of certain drugs, see § 41-29-139.

Availability of parole to persons convicted under the Uniform Controlled Substances Law or prior law superseded thereby, see § 41-29-149.

Advancement of parole eligibility dates during periods of prison overcrowding, see §§ 47-5-701 through 47-5-729.

Prison Overcrowding Emergency Powers Act, see §§ 47-5-701 through 47-5-729.

Good time, see §§ 47-5-138 et seq.

Exclusivity of State Parole Board's responsibility for granting or revoking parole, as provided by this section, see § 47-7-5.

Condition of probation upon suspended sentence, see §§ 47-7-33 et seq.

Requirement that persons on parole or probation make payments to community service revolving fund, see § 47-7-49.

Authority for use of persons convicted of an offense for work on state highway projects, see § 65-1-8.

Ineligibility for parole of person whose death sentence has been changed to life imprisonment should death penalty be declared unconstitutional, see § 99-19-107.

RESEARCH AND PRACTICE REFERENCES

59 Am Jur 2d, Pardon and Parole §§ 73 et seq.

22 Am Jur Trials 1, Prisoners' Rights Litigation.

1989 Mississippi Supreme Court Review: Statutory Interpretation. *59 Miss L J 876,* Winter, 1989.

ANNOTATIONS

Propriety of conditioning probation or suspended sentence on defendant's refraining from political activity, protest, or the like. *45 ALR3d 1022*

State court's power to place defendant on probation without imposition of sentence. *56 ALR3d 932*

Ability to pay as necessary consideration in conditioning probation or suspended sentence upon reparation or restitution. *73 ALR3d 1240*

Propriety of condition of probation which requires defendant convicted of crime of violence to make reparation to injured victim. *79 ALR3d 976*

Validity of requirement that, as condition of probation, indigent defendant reimburse defense costs. *79 ALR3d 1025*

Propriety of conditioning probation upon defendant's posting of bond guaranteeing compliance with terms of probation. *79 ALR3d 1068*

Validity of requirement that, as condition of probation, defendant submit to warrantless searches. *79 ALR3d 1083*

Validity of statutes prohibiting or restricting parole, probation, or suspension of sentence in cases of violent crimes. *100 ALR3d 431*

Governmental tort liability for injuries caused by negligently released individual. *6 ALR4th 1155*

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. *12 ALR4th 722*

Sufficiency, under *18 USCS § 4206*(b) or (c), of statement by United States Parole Commission of reasons for denying parole. *58 ALR Fed 147*

Information consideration by United States Parole Commission in making determinations relating to release on parole under § 2 of Parole Commission and Reorganization Act *(18 USCS §§ 4201* et seq.). *58 ALR Fed 911*

CASE NOTES

Both an individual with two consecutive life sentences and an individual serving a life sentence and thirty years consecutive must serve ten years on each sentence before they are eligible for parole. Lucas, June 22, 1992, A.G.Op. #92-0443.

Ex # 2

defendant serve minimum of 10 years. *Coleman v State (1986, Miss) 483 So 2d 680*

A petitioner who enters a guilty plea to armed robbery pursuant to plea bargain agreement upon erroneous advice of counsel that petitioner will be eligible for earned good time and will be subject to release after serving 7 years of sentence is not subjected to ex post facto law when Mississippi Department of Corrections changes administrative policy to comply with §§ 47-5-139 and 47-7-3, causing petitioner to serve minimum of 10 years. *Coleman v State (1986, Miss) 483 So 2d 680*

A defendant convicted of armed robbery after 1977 and sentenced to serve less than 10 years in the penitentiary, and who was therefore not eligible for parole pursuant to § 47-7-3, was not subjected to enforcement of an ex post facto law by a policy of the Department of Corrections administratively barring him from earning good time after January, 1981, although good time earned prior to that date was not taken away, notwithstanding the provisions of § 47-5-139(7), since the statutory provisions regarding good time remained unchanged, and since administrative interpretation of a clearly worded statute is not a "law" within the scope and contemplation of the ex post facto clauses of the federal and state Constitutions. *Tiller v State (1983, Miss) 440 So 2d 1001*

An administrative correction of a prior misinterpretation of parole laws is not a change in the law so as to violate the ex post facto clause of the United States or Mississippi Constitutions; even if the correction of a former mistaken interpretation of parole law did reach the level of a change in law, administrative decisions with regard to parole law eligibility are not "laws annexed to the crime when committed." *Taylor v Mississippi State Probation & Parole Board (1978, Miss) 365 So 2d 621*

5. Argument to, or consideration by, jury

It is no more proper for a jury to concern itself with the wisdom of the legislative determination, pursuant to § 47-7-3(1), that persons sentenced to life imprisonment may under certain circumstances become eligible for parole, than it is for a jury to consider the legislature's determination that death in the gas chamber is an authorized punishment for capital murder. *Williams v State (1984, Miss) 445 So 2d 798,* cert den *469 US 1117, 83 L Ed 2d 795, 105 S Ct 803*

Prosecutor's statement in closing argument at sentencing phase of capital trial to effect that if defendant was sentenced to life imprisonment, he would be eligible for parole in 10 years, was accurate, thumbnail statement of Mississippi law, in spite of fact that it was obviously not full explanation of state's system of parole, and court refused to conclude that such remarks created unacceptable risk that jury would sentence defendant to death arbitrarily or capriciously. *Gilliard v Scroggy (1988, CA5 Miss) 847 F2d 1141,* cert den *488 US 1019, 102 L Ed 2d 807, 109 S Ct 818,* reh den *489 US 1061, 103 L Ed 2d 600, 109 S Ct 1332,* cause remanded (Miss) *1992 Miss LEXIS 782,* reh den (Miss) *1993 Miss LEXIS 105*

6. Miscellaneous

A post-conviction relief petitioner was entitled to an evidentiary hearing on the voluntariness of his guilty plea where the transcripts of the petitioner's change of plea hearing and sentencing hearing indicated that the assistant district attorney, the defendant's attorney, and the trial judge were confused or misinformed as to § 47-7-3, under which the defendant was pleading guilty, and consequently the defendant was not properly advised of the mandatory minimum sentence he would have to serve before becoming eligible for parole. *Washington v State (1993, Miss) 620 So 2d 966*

A defendant who was convicted of armed robbery was entitled to an evidentiary hearing pursuant to §§ 99-39-13 through 99-39-23 on the issue of whether he was afforded ineffective assistance of counsel during the plea process, where the defendant alleged that his attorney erroneously informed him that if he accepted the prosecution's plea bargain offer of 15 years imprisonment he would be eligible for parole after serving 3 years and 9 months of his sentence, and that he would not have accepted the prosecution's plea bargain offer had he known that he would be ineligible for parole for 10 years pursuant to § 47-7-3(1)(d), which provides that a person convicted of robbery and sentenced to more than 10 years imprisonment shall not be eligible for parole until after serving at least 10 years of the sentence. *Alexander v State (1992, Miss) 605 So 2d 1170*

Where it appeared that the trial court, in sentencing a 16-year-old defendant convicted of armed robbery to a term of 14 years in state prison, had been under the misapprehension that § 97-3-79 and § 47-7-3, read together, mandated a sentence of at least 10 years in the state penitentiary, absent a jury verdict of life imprisonment, the case would be remanded to the court for a clarification of the sentencing since there was no way to ascertain whether the trial court had

Ex-H-2

And Parole ⚿54; Prisons ⚿15(1)

1.5. Construction and application

Attorney General's opinion was not binding on the court, as to interpretation of parole eligibility statute. McGhee v. Johnson, 2004, 2004 WL 557256. Courts ⚿89

Common and ordinary meaning of phrase "first offender" when used in statute that carved out from entire inmate population those who as a category would be most responsive to parole, was to describe those incarcerated for their first and sole offense; later convictions ended "first offender" status even if the offenses occurred before the first conviction. McClurg v. State, 2003, 2003 WL 21450627. Pardon And Parole ⚿42.1

2. Validity

Statutory amendment that required that 85% of sentence be served and that eliminated opportunities for parole that had previously existed was an ex post facto law as applied to defendant who was charged with committing crime before effective date of statute and whose charge was not to be disposed of until after effective date. McKnight v. State, 1999, 751 So.2d 471, rehearing denied. Constitutional Law ⚿203; Sentencing And Punishment ⚿17(1)

Defendant convicted of kidnap, simple assault, sexual assault, and rape failed to overcome presumption of validity of statute forbidding parole for person convicted of "sex crimes," by showing statute's unconstitutional vagueness beyond a reasonable doubt; it was hard to imagine that a person of common intelligence would not know that a conviction of sexual battery and rape constituted "sex crimes," and, in addition, sex offenses were defined in separate statute. Genry v. State (Miss. 1999) 735 So.2d 186. Pardon And Parole ⚿43

Statutory amendment that required that 85% of sentence be served and that eliminated opportunities for parole that had previously existed was an ex post facto law as applied to defendants who had been charged with crimes before effective date of statute and whose charges were not to be disposed of until after effective date. Puckett v. Abels (Miss. 1996)

Statutory ten year parole ineligibility period for persons convicted of armed robbery was not so disproportionate to crime of armed robbery as to violate Eighth Amendment. Logan v. State (Miss. 1995) 661 So.2d 1137. Sentencing And Punishment ⚿1574; Robbery ⚿2

State parole board, rather than sentencing court, had responsibility to determine eligibility for parole during seven-year sentence for armed robbery, and, thus, any portion of sentence prohibiting parole would have no legal effect, would not be ex post facto application of statute prohibiting parole for robbery by display of deadly weapon, and, therefore, would not justify resentencing of defendant, even if defendant pleaded guilty to armed robbery in exchange for seven-year sentence. Mitchell v. State (Miss. 1990) 561 So.2d 1037. Pardon And Parole ⚿54; Pardon And Parole ⚿55.1

Where administrative policy of the Department of Corrections at time petitioner was sentenced was contrary to statutory provisions Code 1972, §§ 47-5-139(7), 47-7-3(d) insofar as it allowed good time to persons convicted of armed robbery, and the Department, in response to an opinion of the Attorney General, changed the policy thereafter to deny good time credit on armed robbery convictions, the Department only acted to comply with statutes in effect and did not subject petitioner to an ex post facto law. Coleman v. State (Miss. 1986) 483 So.2d 680. Constitutional Law ⚿203

Policy by which petitioner, convicted of armed robbery after 1977 and sentenced to serve less than 10 years, was administratively barred from earning good time after January 5, 1981, although good time earned prior to that date was not taken away, did not constitute enforcement of an ex post facto law against petitioner as long as the statutory provisions regarding good time had remained unchanged since 1977, well prior to petitioner's offense, and only the administrative interpretation of those provisions had changed. Tiller v. State (Miss. 1983) 440 So.2d 1001 . Constitutional Law ⚿203

If prior law governing parole eligibility required that a prisoner serve only statutory minimums, consecutive terms notwithstanding, and that law was changed by legislature so that statutory minimum applied to each consecutive sentence, such action would have resulted in an ex post facto law when applied

by providing that prisoner could be considered for parole after serving one-third of "total of such term or terms," carried with it mandate that terms, when imposed consecutively, should be added

How could I Have 80 months Probation without Having Parole ?

DCNO, IN,

I N M A T E F I L E
RELEASE DATA

PAGE 3

DOC NO	NAME	MSP NO	PROB TO FOLLOW
49942A	RABALAIS KENNETH FRAN	A49942	80 MONTHS

STATUTORY ELIGIBILITY DATE	SET OFF DATE	CLASSIFICATION COMM ACTION	PAROLE BOARD ACTION
SER		11/07/95	
WR		REJ CWC	
PAROLE 99/99/99			

ERS ELIGIBILITY DATE		HABITUAL OFFENDER	PRIORS	DETAINERS
CUSTODY LEVEL MORB	10/31/00	NO	00	0

TENTATIVE RELEASE	AGGREGATE MAX RELEASE	WEAPON USED
LIFE	LIFE	NONE

RELEASE TYPE	RELEASE DATE	REL. COUNTY	OFFENSE RPT
ACTIVE			

FOR PAGE 4 PRESS ENTER, FOR PREVIOUS PAGE PRESS PF5

4-© 1 Sess-1 10.247.17.29 COTN199 1/10

Push These codes you will see I Had 10 year Parole Documents in my File Parole out 2004

Exhibit-K
1

DCNO,IN, I N M A T E F I L E

DOC NO	NAME		DATE OF BIRTH	RACE SEX	MSP NO
49942A	RABALAIS	KENNETH FRAN	08/10/59	WH/M	A49942

SENT DATE: 09/13/95 BEGAN: 09/23/94 LENGTH: LIFE CS-CC:
OFFENSE: RAPE INVOLVEMENT:
WEAPON: NONE HAB: NO COUNTY OF CONV: HANCOCK

SENT DATE: BEGAN: LENGTH: CS-CC:
OFFENSE: INVOLVEMENT:
WEAPON: HAB: COUNTY OF CONV:

SENT DATE: BEGAN: LENGTH: CS-CC:
OFFENSE: INVOLVEMENT:
WEAPON: HAB: COUNTY OF CONV:

ENTRY TYPE: NEW PRISONER CUSTODY LEVEL: MORB TENTATIVE RELEASE: LIFE
ENTRY DATE: 10/25/95 CUSTODY DATE: 10/31/00 DETAINERS: 0

PHYSICAL LOCATION: UNIT 29 RELEASE TYPE: ACTIVE
LOC CHANGE DATE: 01/30/01 RELEASE DATE:
FOR PAGE 2 PRESS ENTER

4-© 1 Sess-1 10.247.17.29 COTN199 1/10

Second Chance Act Update

As the gavel rapped the 109th Congress to a close, the **Second Chance Act of 2005** died. Despite overwhelming support for the bill by leaders of both parties as well as the president, the U.S. Senate was prevented from voting on it because one senator withheld his consent. Had he allowed the vote, the bill would have passed the Senate easily. The House leadership was prepared to pass the bill immediately and send it to the president for his signature. Sadly, it was not to be. However, it often takes a couple of runs up the hill to pass a piece of legislation, and we are ready to try again.

Arrangements have already been made for the bill to be reintroduced in Congress in late February or early March. As with any new congressional session that follows an election year, the 110th political climate will differ from the prior, but supporters of the bill do not foresee any challenges to the passage of the bill

© Photos.com

The new **Second Chance Act of 2007** will continue to be a bipartisan effort to do a better job at preparing inmates to live safe and successful lives when they return from prison. It seeks to lower recidivism by strengthening inmate families and improving the services provided to returning inmates. The enactment of this bill will provide a much-needed boost for continued reform in the criminal justice system. *Inside Journal* will report on the outcome of this bill whenever more information is available. ▯

Rabalais

Review Thoroughly

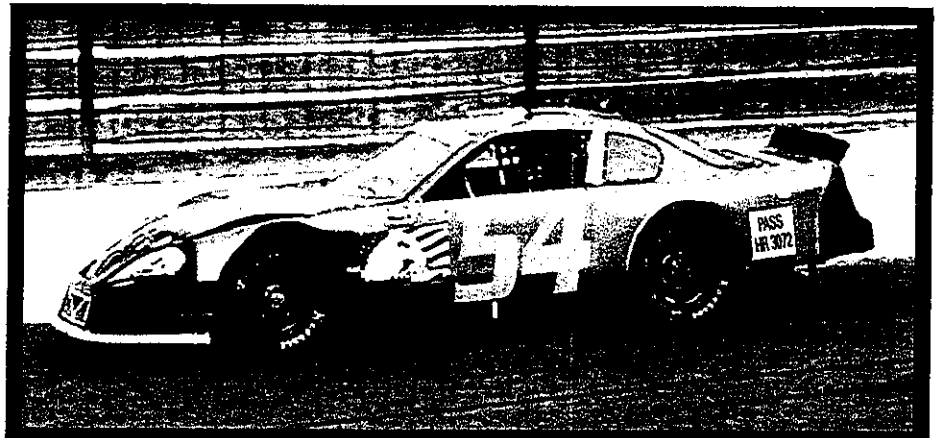
NASCAR Driver Seeks Checkered Flag for Parole

SOURCE: FEDCURE.ORG

Former prisoner Roger Carter II will race in the 2007 NASCAR Craftsman Truck series in support of parole for federal prisoners. A rookie, Carter will drive the #54 truck, bearing the message, "PASS 3072."

HR 3072, legislation pending in the U.S. Congress, would restore parole for federal prisoners. Carter was sentenced to federal prison in 2003 for a nonviolent white-collar crime and was ineligible for early release. In 1987 the Reagan Administration abolished parole for all federal prisoners as part of its war on drugs, and mandatory sentencing guidelines have been used in place of parole.

Last year the U.S. Supreme Court in *United States v. Booker* ruled the guidelines unconstitutional, but they are still in use. When released from prison in June 2006, Carter decided to start a race team that would help spread the word about the injustices of the mandatory guidelines. He is partnering with the federal chapter (FedCURE) of Citizens United for the Rehabilitation of Errants (C.U.R.E.) in publicizing the need to restore federal parole.



Fed CURE

After serving a three-year federal sentence for a nonviolent white-collar crime, Roger Carter II is racing to help restore parole for other federal inmates.

FedCURE hopes to have the numbers of other bills relating to prisoners painted on vehicles on the NASCAR circuit in 2007.

TV Series "Prison Break" Uses the Real Thing

"Prison Break," one of America's hottest new TV shows, is now in its second season. For prisoners who said, "That looks familiar," they're correct—if they ever served time at Joliet Prison in Illinois. When the prison closed in 2002, it became the permanent set of "Prison Break," immortalized as "Fox River State Penitentiary." (There is a real Fox Lake Correctional Facility in Wisconsin.)

The TV show cell occupied by lead character Lincoln Burrows, played by Dominic Purcell, was the actual cell that housed John Wayne Gacy, executed mass killer of 33 young boys. Many of the TV production crew refused to enter the cell, believing it to be haunted.

One section of the prison was rebuilt for the TV show, with three tiers where the original Joliet Prison had just two tiers. With the cast and characters now outside and on the run during the show's second season, filming is taking place largely in the Dallas area.

Florida Inmates Help Clean Schools

SOURCE: FLORIDA DEPARTMENT OF CORRECT

From the Panhandle to South Florida, Florida inmate work teams show up rig after school closes. Teams of hand-pick minimum-custody, nonviolent offenders strip and wax floors, scrub school buses paint, landscape, move furniture, and b cabinets. They have saved the schools a their taxpayers more than $100,000, Rol Woody, chief of the Bureau of Communi Relations, said. "Our inmate work squac take great pride in helping get schools r for Florida's school students."

The inmate work squads worked on school grounds in Baker, Gilchrist, Ham Jackson, Leon, Levy, Liberty, Madison, Okaloosa, and Union counties.

Meanwhile, Department of Correctio staff in Florida contributed more than $150,000 in donated school supplies. De ment of Corrections staff collected pape pencils, crayons, glue, folders, notebook erasers, markers, scissors, lunchboxes, a backpacks. Some staff even served breal for seniors on the first day of school at U County High in Raiford.