COPY

In The Supreme court of Mississippi court of Appeals
of The State of Mississippi

Mr. Kenneth F. Rabalais Appeallant
V
State of Mississippi Appeallees

App. case # 2006-CA-01832 COA

APPeal

APPeallant BrieF

Oral Argument is Requested
Evidentual Hearing is Requested

APPeal From The Hancock. co. circuit count of The State of Mississippi

Now comes, Appeallant, Mr. Kenneth F. Rabalais Pro. se, Before This Hon. count Pursuant To M.R.A.P. Rule 3, M.R.A.P. Rule 28, and Presents His APPeallant BrieF, which He is APPealing The Hancock co. circuit counts Disposition Denying on (8/18/06) His Petition To ClariFy Sentence, sPeciFically The Issue of App. Rabalais' Life sentence Being with Parole under old Ten year law statue, M.C.A. §47-7-3, 1992, 1993, S.B. 2030 1992 / S.B. 2294 1993, and/or Life sentence Being without Parole under new sex crime: Mandatory sentencing Law statue, M.C.A § 47-7-3 1994 - / S.B. 2003, S.B. 3028, 1994 / M.C.A § 47-7-3, 1995 / - S.B. 2175, 1995, which The lower count Ruled That App. Rabalais' is under The new Law and His Life sentence is without Parole, on His alleged First oFFense. App. Rabalais' Feels That The new law statues

(1)

of 1994 and 1995. Effective Dates are Misinterpented and These sentencing Guidelines in The New Laws Prohibiting Parole." For Those who are sentence To Life, and no Parole For sex crime offenders are Being Ambiguosly Applied To The App. Rabalais' sex crime and Life sentence Received on 9/13/95 - arrested 9/24/94 - alleged crime date 8/25/94 There For App. Rabalais' is very Much aggrieve at The Lower courts Disposition of Denial, and Thus Brings Forth His Appeal.

This How' supreme ct, Having Jurisdiction in This Appeal Matter Pursuant To M.R.A.P Rule 3, M.R.A.P Rule 28.1 submitted By, counsel and on Pro.se, litigant Mr' Kenneth.F. Rabalais' 49942 J.F.C.F 279. Hwy 33, Fayette MS 39069. Kenneth F. Rabalais

May 2007 A.D

In The Supreme court of Mississippi court of Appeal of The state of Mississippi

Mr' Kenneth.F. Rabalais'

Appellant

.V.

App. case # 2006-CA-01832 COA

state of Mississippi'

Appellees

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certificate of Interested Persons

The undersigned counsel, and/or The Pro.se litigant App. Mr' Kenneth.F. Rabalais' of The Record certifies That The Following Listed Persons Have a Interest in The outcome of This Appeal case, and are Being Furnished a copy VIA: U.S. Postage Mail

certificate of Interested Persons:

Mrs Betty Sephton; clerk
P.O. Box 249 Jackson
MS 39205-0249

Mr. Tim Hood Atty Gen/
P.O. Box 220 S. Russides
St Jackson MS
39205
correct. add.?

This Been The 6 of May 2007 AD

Ken Ratliff

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Statment of case Facts And course of Proceeding Facts and Dispositions Below

The Appeallant, Mr. Kenneth. F. Rabalais, Pro-se, comes Before The Now, Miss. supreme court of Appeals, And Presents His Appeallant. Brief in support of His Appeal. For which He is very much Aggrieved and Therefore is Appealing The lower courts Disposition, Denying His Petition to clarify sentence on (8/18/06) and Further Presents a statment of case Facts and course of The Proceedual Facts and The Dispositions Below.

I

The Appeallant, Rabalais, Allegedly committed a crime of (Rape) on (8/25/94) For which The Hancock co, sheriff. Dept. Arrested and charged Him For committed said crime of (Rape 97-3-65(2)) on a (Female age. 17.) Arrest date (9/23/94), He was subsiquently "Arraigned," on (5/1/95) - Indicted on (5/15/95) - on This same Day (9/13/95) App, Rabalais, was Tried and convicted of (Rape, 97-3-65(2)) on a Female age 17, and The Trial Judge, gave Him a life sentence, on His Alleged First offense, on same Day of Trial (9/13/95) The Final Judgment and life sentence was Past. There was no Presentence Investigation on life sentence as Required By Law, The Trial Judge, O. Terry, verble Disposition Not in The Final Judgment order, Not in The commitment order Did not state specifically wether The App, Rabalais, life sentence, was To Be served with Parole or without Parole (see) The Final Judgment order and commitment as Exhibits (A) After Trial The Trial Judge, O. Terry, and The Defense attorney

Patricia Willis' and The Appeals Attorney 'Harry ward' Told The APP. Rabalais' That His Life sentence was with Parole, under The old Ten year law, and That He would Be Eligible For Parole consideration after serving Ten years Mandatory on Life sentence under /M.C.A § 47-7-3 1992-1993/ S.B. 2030, 1992/ S.B. 2294, 1993/ APP. Rabalais' was committed To M.D.O.C Rankin.co, Inmate Processing. also Told APP. Rabalais' That His Life sentence was with Parole under These same old Ten year Laws statues and sentencing Guidelines in M.C.A § 47-7-3 1992-1993/ S.B. 2030 1992/ S.B. 2294 1993/ which APP. Rabalais' also Believes He is under These old Ten years To serve Mandatory on Life Sentence, Before Being Eligible For Parole consideration.

The App. Rabalais' also Had Parole Documents in His Inmate Master File For Five years which These Parole Documents also stated That App. Rabalais' Life sentence was under These old Ten year Laws statues M.C.A § 47-7-3 1992-1993/ S.B. 2030, 1992/ S.B. 2294, 1993/ and That He would Be Eligible For Parole consideration on (Sept. 23, 2004) which is Exactly Ten years From Date of crime Being committed (8/25/94) But The M.D.O.C Records Dept Kept sending App. Rabalais' a Time sheet stating 99999, and stating no Parole, and After serving Ten years Mandatory on Life sentence, The M.D.O.C Parole Dept, never did give App. Rabalais' a Parole Hearing, and now The M.D.O.C Parole Dept, and The Lower courts and Attorney General. Parole sec, office are saying That App. Rabalais' Life sentence is without Parole Eligibility

And the M.D.O.C Records Dept, and Parole Board Had Taken These Parole Eligibility Documents o which stated App. Rabalais was Eligible For Parole in Sept. 23/04, well They Took The Parole Documents out of App. Rabalais' Master File, and now Both The M.D.O.C Record Dept, and (Attw) (Gen) office Parole section And There now Telling App. Rabalais' That His Life sentence Is without Parole, and That He would Have To serve His Entire Life sentence out, Because of new violent crimes and sex crimes offenders statues M.C.A § 47-7-3 1994 / S.B. 3028, 1994 / S.B. 566.(2) 1994 / S.B. 2003 supp 1994 / Mandatory sentencing Laws Became Effective on aug/23/94. Which was Two day Prior To App. Rabalais' alleged (Rape) crime Being committed on 8/25/94

But These new Mandatory sentencing statues Laws state That They Became Effective on (oct/1/94) (see) new Mandatory sentencing statues Laws M.C.A § 47-7-3 1994 / S.B. 3028 1994 / S.B. 566.(2). 1994 / S.B 2003, 1994 / (see) sections 11-A-B-C-D.i-D.ii- oct. 1/94 / Being The Effect Date For all The above Five crimes sections 11-A-B-C-D.i-D.ii / (aug/23/94) is not The connect Effect Date For The new Mandatory Violent crimes sentencing statues Laws (see) App. Rabalais' Time sheet as (Exhibit B) Punch in The Time sheet codes They'll Prove I Had Parole Documents stating I Had Parole under old Ten-year laws M.C.A § 47-7-3 1993-1992. / S.B. 2030, 1992 / S.B. 2294, 1993 / Both The M.D.O.C Record Dept, and The Parole Board and The (Attw) General office Parole section, Have Misinterpreted (Aug/23/94) as Being The new Mandatory violent crimes sex offenses

Statues Law Effect Date, and Have Misapplied The New Law, M.C.A. § 47-7-3 supp. 1994, as Amended which now Increases The App, Rabalais' Life sentence with Parole / to a Life sentence without," Parole, Because Prior To its Amendment M.C.A § 47-7-3, 1992-1993, Allowed any Person convicted of a violent crime or a sex crimes To Be considered For Parole Eligibility After serving Ten years Mandatory on a Life sentence or any sentence Prescribed," By The courts, which App, Rabalais' is Aggrieved and now Appeals

IV

Aggrieved The App, Rabalais' on (9/16/06) Filed a Petition To clarify sentence specifically on The Issue of Wether His Life sentence Is with Parole under old Ten year statue M.C.A § 47-7-3 1992-1993 / S.B. 2030, 1992 / S.B. 2294, 1993 / Ect, and/or Whether His Life sentence is under The New violent crimes and sex crimes Mandatory sentencing statue; M.C.A § 47-7-3 supp 1994, / S.B. 3028 1994 / S.B. 566 (2) 1994 / SB. 2003, 1994 /. The App, Rabalais' In His Petition To clarify sentence, Argues That He is under The old Ten year statue M.C.A § 47-7-3 1992-1993 / S.B. 2030 1992 / S.B 2294, 1993 / and That He's is Eligible for Parole after serving," Ten years on His original Life sentence, Because His

Alleged sex crime (Rape, 97-3-65 (2)) was committed on 8/25/94 And That This a U.S. constitutional / Arts 1-10 / Miss, const, Arts 3-26, Expost facto Issue, and That The old Ten year statue: M.C.A § 47-7-3, 1992-1993 / are Applicable To His sex crime (Rape) and Life sentence, (Date of conviction 9/13/95) and He is Eligible For Parole after serving Ten years on Life sentence

APP. Rabalais' Further Argues That The State and Parole Board Have Misinterpented The Effect Date 8/23/94 as Being The Effect Date For The New violent crimes sex crimes. M.C.A § 47-7-3 1994 11-A-B-C-D-i-ii / S.B. 3028 1994, / S.B. 2003, 1994, / SB 2003, 1994 / which These Statues clearly state The correct Effect Date For These / New laws M.C.A § 47-7-3 supp oct/1/1994. / Therefore These New Law Statues and sentencing Guidelines which Prohibit, "Parole For anyone who commits a sex crime After oct/1/1994 Do not Apply To The App. Rabalais' sex crime 8/25/94 Date and Life sentence conviction Date 9/13/95, Therefore The lower court, on / 8/18/06 / denying App. Rabalais' Petition To clarify sentence on Parole Issue, are In Plain Error, Because They

Have Misinterpreted The Effect Date, of Being 8/23/94 and Have Applied These New violent crimes sex crimes Mandatory sentencing Guideline. of sex offenders Not Being Eligible For Parole, To The APP. Rabalais' and His sex crime and Life sentence," Which Neither The Appellant Rabalais' Trial attorney or The Trial court Never Informed Him of The Minimum or Maximum of sentence nor was He Informed That Life sentence" was To Be served without Parole (see) Final Judgement order and commitment order Exhibit (C) Therefore The New Law Statues M.C.A § 47-7-3 supp. 1994 Do not Apply To The App. Rabalais' Life sentence and case at Bar

V

A Brief Summary of This Protracted litigation is Protected and Provided By The united states constitution, Art § 1-10. and

Miss, const, Art § 3-26. Ex post Facto: statues / M.C.A § 47-7-3, 1992-1993. / old Ten year law. under S.B, 2030, 1992. - S.B. 2294 1993 / M.C.A § 47-7-3, 1994 New Mandatory sentencing Law's and No Parole For sex offenders sentencing Guidelines under S.B. 3028, 1994 - S.B. 566.2, 1994, statues / which state connect EFFective date is (oct/1/94) (not aug/23/94) / S.B. 596.(3), 1995 S.B 2175, 1995 EFFective Date (July/1/95) For statues M.C.A. § 47-7-3, 1995 / which are Provided By Justice, Southwick; and Justice McMillin in White v. State 751. So.2d. 481. Miss, 1999 / and By Justice Sullivan; in Puckett v Abels 684. So 2d. Miss, 1996, which state: Mandatory sentencing act M.C.A § 47-7-3. supp 1995, Became EFFective on July/1/1995 - S.B. 2175, 1995, which stated that anyone who committed a sex offense After (July/1/95) EFFective date, would Have To serve Entire sentence without Parole Eligibility / In S. ct. of U.S. v Booker; 125, 738, 2005, stating the Mandatory sentencing" Guidelines are unconstitutional / But They are still in EFFect. (Why?) / (see) M.C.A § 47-7-3 1994, chapter 47, which states That the Attorney General Parole. sec, opinion, was not Binding on The courts, as to There Interpretation of The Parole Eligibility Statue: M.C.A. § 47-7-3 1994, and There EFFective Date and construction" and Application, chapter § 47, Key 1.5, Key 89, McGhee v Johnson 2004, 2004, W.L. 557256 court / which is Reasonable Doubt.

Statment of The Issues, And There Arguments And Supporting Authorities

Issue ONE, And Argument

VI

The Trial court, committed PreJudicial Plan Error, By Violating Thus DisEnfranchising The APPeallant, Rabalais' From His United, State, Constitution, Art, § 1-10, / And Miss, constitution Art, § 3-26, Ex Post Facto Protected Rights, By APPlying These New violent crimes Mandatory sentencing statues, S.B. 3028, 1994-S.B. 566 (a), 1994 / M.C.A § 47-7-3 supp. 1994, and there Misinterpreted EFFect Date, 8/23/94 / and there no Parole For sex OFFenders Guidelines To His Life sentence and sex crime convictions, which

Are Inapplicable To His case at Bar

I

The Trial court, committed PreJudicial Plan Error, Hear in This Point of Law, The Trial court Erred. In its Disposition Rendered on (8/18/06) (see) Exhibit D. / denying Appellant, Rabalais' Petition To Clarify sentence, specific Issue Parole Eligibility. on Sex crime conviction (Rape 97-3-65 (2)), and Life sentence on First offense, The Trial court, Denial order, used The supported Authority M.C.A § 47-7-3. supp. 1994, statue, was (amended on 8/23/94) Two Days Prior To The App, Rabalais' committing said Rape crime on 8/25/94, and Therefore M.C.A § 47-7-3 (b) supp. 1994 (b) sec, Sex crimes, statue as amended and Passed on 8/23/1994, is Applicable," and That The App, Rabalais' is Ineligible For Parole consideration" under The above referenced statue, and will Therefore" Have To serve His Life sentence out, / which The APP, Rabalais' state, That Both The Attorney General, Parole section office, and M.D.O.C Parole section, and The Trial court, Have Erroneously misinterpreted / aug/23/1994 / as Being The Effect-

ive" Date For This New violent crimes - sex crimes mandatory sentencing act S.B. 3028, 1994 - S.B. 2003, 1994 - M.C.A § 47-7-3-(b) supp. 1994, statue. And Have Erroneously Misapplied This New Law Prohibiting Parole. To The APP, Rabalais' sex crime and life sentence, which is Inapplicable To His case at Bar Because, The True and correct EFFective Date For This S.B. 3028 1994 - S.B. 566 (a) 1994 - M.C.A § 47-7-3 (b) supp 1994, is (oct/1/1994) Therefore The APP. Rabalais' sex crime Rape 97-3-65 (a) Date committed (on aug/25/1994) and His Life sentence. Falls under The old Ten year law statue: S.B. 2030, 1992 - S.B. 2294, 1993 - M.C.A § 47-7-3. supp 1993. which Provides in section 1.1, anyone sentence To Natural Life. After serving Ten years will Be Eligible For Parole" consideration. Section C. which Provides That anyone convicted of a sex. crime, After serving Ten years on sentence and After Recieveing a Psychiatric Evaluation, will Be Eligible For Parole consideration, Therefore Both The Attorney General. Parole sec, office and M.D.O.C Parole sec, and The Trial court, Judge, Jerry. O. Terry' are in Direct Prejudicial Plain Error. By Violating and Disinfranchising The App. Rabalais' From His U.S. const. Art § 1-10 Expost Facto. and Miss. const. Art § 3-26 Ex-Post Facto Protected Rights

II

Relevant Factual Information And Authorities And Argument In support

The App. Rabalais' will Provide His Relevant Factual Information And supporting Argument and supporting Authorities.
App. Rabalais' Allegedly committed a crime of (Rape on aug/25/94)

He was Arrested on (sept/23/1994) For the crime of Rape 97-3-65(a) of a (Female age 17,) Approx, one month After the Alleged Incident. App Rabalais! on May/1/1995. was Formerly charged and Indicted For (Rape 97-3-65(a)) / on sept/13/1995 App, Rabalais" was Tried and Found Guilty of (Rape 97-3-65(a)) By a Jury verdict, which Fixed the sentence at Life in Prison, (see) Jury verdict as Exhibit (A). And without a Presentence Investigation," which is Required By Law, The Trial Judge, O, Terry" sentenced," The App, Rabalais! To Life in Prison, on His First offense And the commitment order, and Final Judgment order, simply states Life in Prison, Never Did the Jurors in there Jury verdict, or The Trial Judge O. Terry! In His Final Judgment order or in the commitment order, Inform the App. Rabalais! That His Life sentense," was To Be served without Parole, or that Life sentence Is To Be served with Parole, which To Be Informed of Max and Min, sentencing is Required By Law. Neither Did the Defense Attorney Willis! Inform App. Rabalais! of the Max + Min sentencing Nor Did she object to the Trial court Failing To Inform The App-Rabalais! of the Max + Min sentencing, also Required By Law.

III.

After Trial Both The Trial Judge O Terry! and Defense Atty! Patricia Willis! and Appeal Atty, Harry ward! and the M.D.O.C Rankin.co. classification Dept. Informed the App, Rabalais! That His Life sentence was with Parole under the old Ten year law, M.C.A. § 47-7-3, 1992-1993, and For Nine years The APP, Rabalais! Had in His Master File Had Parole Documents that stated He would Become Eligible In (sept. 2004.) For Parole consideration. which is Ten years From (crime Date, aug/25/1994) (But) The App.

Rabalais! For nine years kept Receiving a Inmate Time Sheet That Kept Reading 99999 and Had no Parole Eligibility Date, which means He was not Eligible For Parole consideration, APP, Rabalais! Brought This Issue up To The M.D.O.C unit 32. warden Streeter! and case Manenger while in There office, and Both The warden and case Manenger Reviewed App, Rabalais' Master File, and seen He was correct, and seen The Parole Documents in His File which stated He would become Eligible For Parole consideration," in 2004! The warden and case Manenger said They would correct the Time Sheet and send Him a copy, They Never Did send The copy of The corrected Time Sheet, Instead They Had Taken These Parole Documents out of The APP, Rabalais' Master File, and Then Told The APP, Rabalais: He was not Eligible For Parole consideration, Then The APP, Rabalais' Informed The

Attorney General's Parole sec, office of The Time sheet Issue and Parole Documents in His Master File For nine years! Issues The Attorney General's Parole sec, office, In forming The APP, Rabalais! That He was not Eligible For Parole consideration Because sex crimes Became Mandatory under M.C.A § 47-7-3-supp, aug/23/1994, which Required That all Those convicted of a sex crime, would Have To serve Entire sentence without Parole Eligibility, (see) Time sheet as Exhibit (B) Punch in The Time Sheet codes and see That at one Time APP, Rabalais' Had Parole Documents in His Master File, The APP, Rabalais' argues and states That Both The M.D.O.C classification Parole sec, Dept Admin's, and The Attorney General's Parole sec, office, Have Mis-interpreted," Aug/23/1994 as Being The Effective Date of The

IV

New violent crimes - sex crimes Mandatory sentencing act, statues M.C.A § 47-7-3 supp. 1994 - S.B. 3028, 1994 - S.B 566 a, 1994, - S.B 2003, 1994, Because at the Bottom of These statues. In section, s (D i i,) Give a Clearly Established (EFfective Date Oct 1 1 1994) as Being The EFFective Date For all The above Mentioned statues, and Therefore, Have Erroneously Applied These new violent crimes - sex crimes Madatory sentencing statues Guidelines Prohibiting Parole, To sex crimes offenders, To The App. Rabalais' sex crime conviction and life sentence, which are Inapplicable To App. Rabalais' case at Ban.

Issue One: Arguments And supported Authorities

The APP. Rabalais' In These Points of Law will argue That Both The M.D.O.C. classification Parole sec, Dept, and The Attorney General's Parole sec, office. and Finally The Trial court, when it Rendered on 8/16/06 a Disposition Denying APP. Rabalais' Petition To clarify sentence, of Life, and its Parole Eligibility status, Thus Trial court, committed PreJudicial Plan Error, when in There Legal Analysis, Misinterpreted (aug 23 1994,) as Being The correct EFfective Date for These new violent crimes - Sex crimes Mandatory Sentencing Act, statues S.B. 3028, 1994 / S.B. 2003, 1994 / S.B. 566 a 1994 / which Amended M.C.A § 47-7-3 supp. 1994, sec, 11 - A - B - C - D i - D i i, Parole statue (see) as Exhibits 1-2-3) Which now Prohibits Parole For Sex crimes offenders. This Date is Incorrect, (see) at The Bottom of THESE statues (sections (D i i) Which gives a undisputed clearly Established EFFective Date (Oct. 1 1 1994) as Being The EFFective Date, For all of The above Mentioned statues crimes sections 11 - A - B - C - D i - D i i. Therefore The

APP. Rabalais ! Further argues That the State's and Trial court's Erroneous "(Assumption That aug 23, 1994) as Being The Effective Date For These M.C.A § 47-7-3, 1994, - S.B. 566 (a) 1994, - S.B. 2003, 1994, New violent crimes - sex crimes Ect, Mandatory sentencing act, statue's Is Erroneously Misinterpreted. And Therefore Have not Been Clearly Established," and These Statue's legal Language stating (convicted) Rather Then stating charged - Tried - convicted, Is in violation of The U.S. const, Art § 1-10, - Miss, const, Art § 3-26, Expostfacto Law's and Therefore." This S.B. 2003, 1994, - M.C.A § 47-7-3-1994 - S.B. 3028, 1994, - S.B. 566, (a) 1994, Legal language is Illegally Incorrect, and The state and Trial court assumption That aug/23/1994, is These statue's Effective Date is Therefore Misinterpreted and Therefore Erroneously Being Applied To The APP. Rabalais' sex crime conviction and life sentence.

VII

Correct legal Analysis

APP. Rabalais', will Present To The Hon'l courts His Fair and Just Legal Analysis of These 1994, Senate Bill's correct Effect Date, and Then Incorrect, "Legal Language, The were Three Senate Bill's Implimented in The 1994 session's, S.B. 3028, 1994 / - S.B. 566 (a), 1994 / - S.B 2003, 1994 /, addressing, "The New violent crimes - sex crimes Mandatory Sentencing Act, and to Amend M.C.A § 47-7-3 Parole statue's (See) The controlling Senate Bill, S.B. 2003, 1994, as Exhibit, (E), (See) The S.B. 2003, 1994, caption) which Specifically state's That There going To Amend M.C.A's sec, 47-7-3 1972 - 1993, and To Provide That certain Persons convicted of sex crimes - Armed Robbery - Att, Armed Robbery - carjacking or Drive By shooting Shall not Be Eligible For Parole. (See)

The Law Makers Layout of S.B. 2003, 1994 (caption) and its crimes section 1.1. - A - B - C - D.- D.i.i - and its Incorrect Legal language which violates Expostfacto Laws

Caption and
Layout and/or Format of S.B 2003, 1994

The S.B. 2003, 1994 ch 25.5, (caption) clearly Emphasizing That there going In To Amend. M.C.A § 47-7-3, 1972-1993. Parole statue, To Provide That certin Person, convicted of a sex crime - Armed Robbery - Attempted, "Armed Robbery - carJacking or Drive By shooting, shall not Be Eligible For Parole

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

(Section (1))
M.C.A § 47-7-3 (1.) state; any Prisoner who Has Been or May Hereafter Be (convicted) of any crime or offense, and sentence To Natral life after serving Ten years shall Be Eligible For Parole

(Section (A))
M.C.A § 47-7-3 (A) State, no Prisoner (convicted) as confirmed Habitual criminal under sec, 99-19-81 - 99-19-87 shall not Be Eligible For Parole

(Section (B))
M.C.A § 47-7-3 (b) state; no Prisoner (convicted) of a sex crime, shall not Be Eligible For Parole, Except for a Person under The age of (19.) nineteen who Has Been convicted under sec, 97-3-67

Section, (C)
M.C.A § 47-7-3 (C) i.i.i) state, no Prisoner shall Be Eligible For Parole until He as served 9. months on one year sentence (ii) To serve 10 months on a (2) Two years or less sentence (iii) To serve one 1 year, IF sentence is more The Two 2 years and less The Five 5, years

(section (D.i.))

M.C.A § 47-7-3 (D i) state: no Prisoner shall Be Eligible For Parole who shall on or After Jan 1/1/1977 Be (convicted) of Robbery - Attempted, Robbery - Through The Display of a Firearm, until He Has served Ten (10) years of said sentence, or sentenced to a Term of more The Ten years or if sentence To a Term of The natural Life of such Person, and shall not apply To Person: (convicted.) After (Sept 30/1994)

(Section (D i i))

M.C.A § 47-7-3 (D ii) states no Person, shall Be Eligible for Parole Who on or after Oct/1/1994 Be (convicted) of Robbery - Attempted Robbery - carJacking, as Provided in sec, 97-3 + ils, et seq, Through The Display of a Firearm or drive By shooting, The is Provided in sec, 97-3-109, The Provision of This subparagraph (D i i) shall apply To any Person who shall commit These same said crimes Mentioned above on or after (oct/1/1994)

(section (e))

M.C.A § 47-7-3 (e), state: no Person shall Be Eligible For Parole who on or after July/1/1994 is charged - Tried - or convicted and sentence to Life imprisonment without Eligibility For Parole under sec, 99-19-101. Ect.,

Therefore The (S.B. 2003, 1994 caption) clearly Establishes That its Implimenting The Bill To Amend M.C.A 47-7-3 supp 1972-1993 with M.C.A 47-7-3 supp 1994, section: 1 1-A-B-C-D i-D ii at The End of (sec, D i i) They give an EFFective Date oct/1/1994 which is clearly The EFFect For The S.B. 2003. 1994, crime section, 1 1-A-B-C-D i-D ii Mentioned above D ii-C-B-A-1 1, That, why The Miss, Law makers Felt no need To attach

a Different Effective Date For Each Individual crime sections In S.B.2003,1994 - M.C.A 47-7-3 1994, Because, at the End of sec. "ii", clearly gives the Effective Date (oct/1/1994) as Being The Effective Date For all of The above Mentioned crime sections, C-B-A-11, (Sec) S.B.2003.1994 and its (caption)) as Exhibit(E)) Therefore (aug/23/1994) is not The Effective Date, For The sec. B, Sex offender/Portion of This S.B.2003,1994 - M.C.A 47-7-3 1994 oct/1/1994 is The undisputed Effective Date For the crime section: "11-A-B-C-D'-D'', Mention above (D'') in (S.B.2003,1994) M.C.A 47-7-3,1994,)

IX

Therefore The state attorney Gen, Parole sec, office and The Trial court, Have misinterpreted aug/23/1994 when The Governor signed This S.B.2003,1994, approving its Passage, as Being The Effective Date For The sex offender Portion sec.(B) of This Bill, is Being Erroneously, applied To The APP, Rabalais' sex crime committed on (aug/25/1994) conviction, and His Life sentence, given on Trial date (sept/13/1995), Therefore The APP, Rabalais', argues That Because His sex crime was allegedly committed on aug/25/94,, approx. 36 days Prior To These New violent crime sex crime Mandatory sentencing law S.B.2003,1994 - S.B.3028,1994 - S.B.566.2 1994, M.C.A 47-7-3,1994, (Came into Effect on oct/1/1994). Therefore APP, Rabalais' state: That His sex crime committed on (aug/25/94) Life sentence given on (Trial Date sept/13/95) and Therefore He is under The old Ten year S.B 2030 1992-1972. - S.B.2294,1993 - M.C.A 47-7-3,1993 and That He is Eligible For Parole after serving Ten years which He was Eligible For Parole in (sept/2004/) which is Ten years From

From APP, Rabalais' alleged sex crime Being committed on (aug 25 94) which M.C.A, 47-7-3, 1993-1972, Provides That any Person convicted of a sex crime after serving Ten years and after Having a Psychiatric Evaluation shall Be Eligible for Parole and Further Provides any Person convicted and sentence To Life In Prison, after serving Ten years shall Be Eligible For Parole (See) M.C.A. 47-7-3 1972-1993 sec. C,) and S.B. 2030, 1992 S.B. 2294 1993, as Exhibit (4-5-6) which APP. Rabalais' alleged (crime date aug 25 94) is Protected By The U.S. const art § 1-10 / Miss, const art § 3-26. which Provides That sentencing Guideline must Be applied That were in EFFect when The crime was committed

APP. Rabalais' Further argues That The (Attn) (Gen) Parole sec. and Trial court. Erred By its Misinterpreting aug 23 94 as New law S.B 2003 1994 - M.C.A 47-7-3 supp 1994 EFFective Date, which Eliminated "Parole Eligibility For sex offenders and Have Erroneously Applied These New violent crimes sex crimes, Mandatory sentencing" Guideline To APP. Rabalais' sex crime conviction and sentence of life in Prison. APP. Rabalais' argues That He is under Three sections in These New mandatory statues, M.C.A 47-7-3 supp. 1994 - S.B 2003, 1994 (sec, 1.1) state any Person sentence To Life in Prison, shall Become Eligible For Parole after serving Ten years / (sec. b) state any Person convicted of a sex crime shall not Be Eligible For Parole / (sec. C) any Person sentence To Life in Prison, After serving Ten years, shall Be Eligible For Parole / Two out of Three of The crime sections, (sec. 1.1) - (sec. C) Dealing with any Person sentenced To Life

In Prison shall Be Eligible For Parole After serving Ten years Therefore APP. Rabalais's conviction and Life sentence Falls under Two section (Sec. 1.1) - (sec. c) in the M.C.A §47-7-3, 1994 which These Two section states He is Eligible For Parole After serving Ten years on His Life sentence. / The Judicial / Legal Question" Hear is IF the APP. Rabalais's Life sentence Falls under Two (Sec. I.1.) - (sec. c) stating He Eligible For Parole After serving, "Ten years / Then (Why?) did the M.N.O.C Parole sec. Dept. and The Attorney Gen. Parole sec. office, and the Trial court, Error In Applying The (sec. b) Dealing with sex offender: Being Prohibited, "From Parole consideration

X

In The year of 1994, The Miss. legislator's Implimented Three senate Bill's To (Amend M.C.A § 47-7-3, 1993-1972) which were S.B 3028, 1994 Ex. 1) / S.B. 566 (a) 1994 (Ex 2) / S.B 2003, 1994 (Ex 3) / which S.B. 2003 gives The latest Effective Date Being / Oct. 1 / 1994 / in (sec. (b) i) and Presented The New version of M.C.A § 47-7-3, 1994 Parole statue's which Basicly Eliminated Parole For sex crime offenders (see) Exhibit (F) M.C.A sec. 1-3-79 statue) which state's That IF The same section of Law are Amended By Different bill's During, "The same legislative session, of That year, Then The Amendment," with The latest Effective Date shall supersede all other Amendment's" To The same Issue and section of law Taking Effect Earlier

(see) in The Exhibits of These new violent crimes - sex crime's Mandatory sentencing laws statue's S.B 3028, 1994 - S.B. 566 (a), 1994 S.B. 2003, 1994, which Amended and codified The M.C.A 47-7-3 1994 Parole Statue's which now Enhances and make's more onerous The

The Punishments For certian violent crimes offenders, and sex offenders By Eliminating The Posibility For Parole, For said offenders, and now They Have To Do Entire sentence Mandatory without Parole where in The Previous M.C.A 47-7-3 1993-1972 Parole statue said violent crimes, sex crimes offenders Became Eligible For Parole After serving Ten years on there sentences, / Now (see) These New laws M.C.A § 47-7-3, 1994 sec, 1 1-A-B-C-D-D i-D ii. They use the word (quote) (conviction) which is Judicially Illegal and Incorrect Legal Language, and violates The U.S. constitutional art, § 1-10 / and Miss, const. Art § 3-26 Ex post facto Laws, which clearly state, That sentencing Guidelines laws must Be Applied That were in Effect when

crime was committed, And since These New Mandatory sentencing Laws M.C.A § 47-7-3 1994 section, sec. 1 1-A-B-C-D-D i-D ii Increases The Punishment, The constitutional and Judicial sound and Legally correct Language, should Have Been charged-Tried-or convicted, which is within The Protected U.S. const. Art. 1-10. Miss, const. Art 3-26 Ex post facto Laws § / (see) as Exhibit (G) The (M.C.A § 47-7-3 (1994) which state, That The Attorney General Parole sec, office, (Opinions) on The Effective Date, and There Legal Language in These New Laws, Senate Bill, State, Are not Binding on The courts, which clearly states That The Attorney Gen. Parole. sec, staff, and There Opinion, and Interpretation of The Effective Date, Are subjected to Being Erroneously Interpreted and Applied, which is The case Here in APP, Rabalais' case at Bar

The Trial court. and The state (Attn.) Gen, Parole sec. staff, are in Prejudicial Error In Applying these New Mandatory sentencing act

Laws of 1994) S.B. 3028, 1994. — S.B. 556(a) 1994 — S.B. 2003, 1994 — M.C.A § 47-7-3 1994, which Eliminated Parole for certian violent crimes and sex crimes offenders To the APP, Rabalais' sex crime conviction and life sentence, which are Inapplicable, To the APP, Rabalais' case at Bar, Because These New M.C.A 47-7-3 supp 1994, Parole Statues Legal Language and there Effective Dates Have never Been clearly Establish ed."

XI

The Trial court, committed Plain Error, when it did not Inform and/or Instruct the Jury, that IF They Fixed the sentence at Life, that Because of the new mandatory sentencing act laws (M.C.A. 47-7-3 supp 1994, Eli- minated, Parole For Those who were convicted of sex crimes)

The Trial court, committed Plain Error, when in Passing its Final Judgm- ent, "In Fixing the APP, Rabalais' sentence at Life, the Trial court, Failed to stipulate in writing or verbaly in it's Final Judgement order, Disposition that the APP, Rabalais' sentence of Life, would Have To Be served without Parole, or that sentence of Life would Be with Parole, (see) Final Judgment order (Ex. A,) which is Reguired By The U.S. const. 5th 14th amend. Due Process rights Laws and 6th amend, rights To a Fair and unbias Trial, The Trial court, Final Judgment order and The commitment order, simply state, (Life) its Dose not stipulate Life with Parole or Life without Parole. (see) commitment order (Ex. C.,) It Just state, (Life) sentence

Trial court, committed Plain Error, when Either Prior To Trial or at Trial, Failed To Inform The APP, Rabalais', of The Maximum and Minimum of the sentencing Guideline, IF The Jury Found Him guilty that IF They Fixed The sentence at Life, That The Maximum of

sentence Punishment would Be Life without Parole Eligibility, and Having To serve Entire sentence of Life, under New law M.C.A 47-7-3 supp. 1994. / or That The Minimum of sentencing Punishment would Be Life with Parole under old Ten year Laws S.B. 2030 1992-1972 / M.C.A 47-7-3 1972. 1993. (see) Final Judgment order (Ex. A), Trial court Failur To Inform APP. Rabalais: of The Maximum and Minimum sentencing created a Bias and unfair advantage over His Defense APP. Rabalais: state: That if He Knew That if He was sentenced To Life. That it would Be Life without Parole, That He would Have never Taken This case To Trial

Trial court committed Plain Error, when it gave APP. Rabalais: a sentence" of Life without Parole under a new Mandatory sentencing act Law: M.C.A 47-7-3 supp. 1994 statue: when its Legal Language, violated Expostfacto Laws and its Effective Date: aug/23/94 or oct/1/94 or sept/30/94 were never clearly Established, APP. Rabalais: was given a Life sentence without Parole, on His alleged First offense conviction of Rape, This was APP. Rabalais: First Felony at (age 35,) which He never Had The Three strike: Privilege, and He was never Indicted as a Habitual "offender:, Again The Question: Hear is How could The M.D.O.C Parole" sec. Dept. and (Attn:) Gen. Parole sec. staff, and The Trial court Give APP. Rabalais: a Life sentence, And Hold Him under a Mandatory sentence act Law: statues S.B. 2003, 1994 / M.C.A 47-7-3 supp. 1994. which Prohibit Parole For First Time sex offender) when There Effective Dates were never clearly Established, and There Legal Language (Convicted) violates U.S. const. Art 1-10 Expostfacto Laws: and are Incorrect Legal Language, The correct Legal Language, within scope of Expost-Facto Laws, should Have Been (Charged) - Tried - or Convicted

(Charged) and/or (Date crimes was committed) is the correct legal language which is within the Protected scope of the U.S. const, Art, 1-10 / Miss, const, Art § 3-26, Expost facto laws of these united states, which clearly Establish that sentencing Guideline must Be Applied that were in Effect at time crime was committed,

Obviously the Miss, Legislative law Makers and the M.D.O.C Parole sec, Dept, and the Attorney Gen, Parole sec, staff, and the Miss, Trial court, Knew these new violent crimes -sex crimes Mandatory sentencing act statue S.B 3028, 1994 / S.B. 566 (a) 1994, / S.B. 2003, 1994. / M.C.A. 47-7-3 1994 / Effective date, and there constitutionally unscaard Incorrect Legal Language, were not Clearly Established, and causeing Great confussion, "accrossed the state with its Judicial officials Misinterpreting." The new laws correct Effective date, And thus Misapplying the New law, Mandatory sentencing Guideline act, so the Miss, Legislators Revisited the New Mandatory violent crime -sex crimes sentencing act, S.B. 2003, 1994 / M.C.A. 47-7-3 supp 1994, Parole statue. In an Effort To correct its Ambiguousness

Therefore in (1995) The Miss, Legislators law Makers Repealed M.C.A. 47-7-3-1994 / S.B 2003, 1994 / with Two New Mandatory sentencing Senate Bills, (S.B. 2175, 1995, / S.B. 596, 1995 (see) as Exhibit (7-8-9)) M.C.A 47-7-3 supp. 1995 / In order To Clearly Establish These Ambiguous," and very Much Misconstruded Effective date, and Incorrect Legal Language in These M.C.A 47-7-3 1994 / S.B-2003, 1994 statues which were Being very much Misinterpreted and Misapplied accross-ed" The state of Miss, By its Judicial officials and Penal officers one of the Leading cases That Prompted The Legislator To Repeal

These Mandatory violent crime, - sex crimes sentencing act, of (1994,) S.B. 2003, 1994, / M.C.A. 47-7-3, 1994, / was, (see) as (Ex. H) Puckett v Abel, 684, so.2d. 481 miss, 1996 / which Justice sullivan, Provided That The new violent crime, - sex crimes Mandatory sentencing act, Became in Effect on (July 1/1995) when S.B. 2175, 1995. - S.B 596, 1995 M.C.A 47-7-3, 1995 / was Passed and approved, / also (see) as (Ex. I) White v State 751, so.2d. 481 Miss, 1999, which Justice Southwick and Justice McMillin, Provided and stated That anyone who commit, a sex crime. After July/1/1995 Effective Date, of S.B. 2175, 1995, would Have To serve Entire sentence without Parole,) And Further stated That (sex crime,) Became Mandatory on July/1/1995, / Therefore The

XII

App, Rabalais, argues That under Clearly Established controlling laws of The U.S. const, Art 1 - 10 / Miss, const, Art. 3 - 26 Ex post facto laws, and under Puckett v Abel, and white v state, which clearly and undisputedly Establish That sex crimes Became Mandatory on (July /1/1995). And That His alleged sex crimes was committed on (aug. /25/1994) approx, Eleven months Prior To The (July/1/1995) Mandatory sentencing For violent crime, - sex crimes act, Became Effective and clearly Established law. Therefore Because of The legal Reason, That App, Rabalais, Allegedly committed His sex crime, on (aug/25/1994) Eleven months Prior To new Law (M.C.A 47-7-3 supp, July/1/1995, Effect Date.

Therefore App, Rabalais, state, That Because His sex crime was committed, (on aug/25/1994) That He is under The old Ten year Law S.B 2030, 1992 - 1972, / S.B. 2294, 1993 / M.C.A 47-7-3 supp, 1993 / sentencing Guidelines which Required That Those Persons convicted of a sex crime, would Have To serve Ten years, and would Have To Receive a Psychiactric

Evaluation Before Becoming Eligible For Parole consideration, and that those sentenced To Life in Prison would also Have To serve Ten years, on sentence Before Being Eligible For Parole consideration, which These old Ten years Laws S.B 2030 1992 / S.B. 2294, 1993 / M.C.A 47-7-3 1993. sentencing Guidelines, and, APP. Rabalais' sex crime Date Aug. 25/1994 / are Protected By The U.S const Art. 1-10 / Miss. const. Art. 3-26. Expostfacto Guaranteed Rights, which state, That sentencing" Guideline must Be Applied That were in Effect when crime was committed

(See) S.ct. OF U.S. V Booker 125. 738, 2005, stating That These Mandatory Sentencing Guidelines are unconstitutional. and Disfunctional, Because They Eliminate Reform For Prisoners, and They violate U.S. const. 5th Amend. Right, To Equal application OF Prison) Reform Probation) Parole Programs Ect, Laws / But these Mandatory Sentencing Guidelines are still in Effect. (why?) when The U.S. supreme court, Ruled That They are unconstitutional. also (see) Inside Journal legal News, artical (Ex. J.) U.S. House of Repersentitives H.R 2007,) second chance Act, OF 2007, Demanding Reform Programs and second chances For First Time offenders

The APP. Rabalais' States That The Trial court, committed Plain Error, By Sentencing Him To Life without Parole on His alleged first offense, Leaving" no Posibilities For Reform or Parole Ect, which is vindictive and Ludicrous and Legally Disfunctional, a Judicial system and Penal system," and Legislative law makers system, That Passes Laws That Eliminate Parole Probation Educational Reform Programs and opportunities," are sadistically Disfunctional and Creates a Great Public Liberty

Interest., APP, Rabalais; The The Trial court, and (Attw) Gen, Parole sec, staff, and The M.D.O.C Parole sec, Dept, and The Defense Attorney all committed Plain Error, when Prior To Trial and After Trial, They all Told APP, Rabalais; that He Had a Life sentence with Parole under The old Ten year law M.C.A 47-7-3, 1993. And To Place Parole Documents In APP, Rabalais; Master File for Nine years stating He was Eligible (for Parole in 2004) which is Ten years from His crime Date aug, 25/94. Then To Illegally Take These Parole Documents out of His Master File, and now Tell APP, Rabalais; that He Has no Parole and will Have To serve His Entire Life sentence without Parole. Create; a Great U.S. const, 8th Amend cruel and unusual Punishment violation claim Thus also creating a Great Public Liberty Interest

The APP Rabalais; argues; How can these Judicial officials of The (Attw) Gen, Parole sec, and M.D.O.C Parole sec, Dept, and The Trial court, Error so Inadvertantly and Apply These New Mandatory violent crime sex crimes sentencing Guideline; Laws; M.C.A 47-7-3 supp, 1994, - S.B 2003 1994 To The APP, Rabalais; sex crime conviction and Life sentence on His First alleged offense, Felony conviction, when in S. ct. of U.S. v Booker state; The Mandatory sentencing Laws; and Guideline are Dis Functional and unconstitutional, and when They violate U.S. const, Art 1-10 / and Miss, const, Art. 3-26. Ex post facto Right, Laws;, and when in The case; White v. State and Puckett v Abel; ✓ states That violent crimes; and sex crimes; did not Become Mandatory until S.B 2175, 1995 / M.C.A 47-7-3 supp 1995 was passed and Become Effective In (July/1/1995) How could APP, Rabalais; sex crime conviction and Life sentence Be Erroneously Held under These Ambiguous Laws That are Being Misconstruded Misinterpreted and Misapplied To Him

(See) Mullins v State 859. So.2d. 1082 Miss ct. App. 2003. (See) Lattimore v Spankman 858 So.2d. 936 Miss. ct. App. 2003, on Issue M.C.A. § 47-7-3. 1994, is ambiguous in its Illegal Language and its Effect date, and on The Ten years on Life sentence

XIV

The Trial court, Judge O. Terry: and Dis, (Atty) Cox: are in Prejudicial, Plain Error: By Holding APP, Rabalais: on a Life sentence In Prison, when The APP, Rabalais: Entire Pretrial Trial and Appeal Record: Have Been Destroyed By (Hurricane Katrina) which The Trial court Judge O. Terry: informed The APP, Rabalais: In Final Judgment order Disposition Rendered on 8/16/06 Denying His Petition to clarify sentence, of Life and its Parole status, That His Entire Trial Record: were Destroyed By The Hurricane, Therefor IF The State District Attorney, Dose not Have a complete Record OF The APP, Rabalais: it can no longer Prosecute His case against APP, Rabalais: and shall Have To set APP, Rabalais: Free, For Lack OF want of Prosecution, as is Required By Law. (See) as Exhibit. (D) The Final Judgment order, Denying Petition To clarify sentence, which state, The Entire Pretrial Trial Appeal Record are Destroyed

This Now, court Having Jurisdiction in These above Styled Matters OF Appeal Pursuant To M.R.C.P Rule 3, M.R.A.P, Rule 28.

This Being The 6 day of May 2007 A.D

Ken Rabalais

D.30

Relief sought,

The APP. Kenneth. F. Rabalais' seeks the Following Relief sought

(1) APP. Rabalais' seek: That He Be Immediately and unconditionally Released, Do to the Ambigaties of The laws Being Applied and the unconstitutionality

(2) APP. Rabalais' seeks That He Immediately and unconditionally Released, Because the state Entire Record: of APP. Rabalais' case Have Been Destroyed By Hurricane Katrina, and therefore The state is unable to Prosecute, Further.

(3) The APP. Rabalais' seek: That The How! supreme court Justices Have a legal Analist Review The 1994. M.C.A 47-7-3 1994, 1 S.B. 2003, 1994, statue: In order To Obtain a correct Interpretation of There correct Effective, Date: Eicther Being 8/23/94 or 9/30/94. on 10/1/94. / and To Interpret if These laws legal Language violate Exposttacto Laws: / Miss college: / A.C.L.U. / 5th cir ct APP/

(4) APP. Rabalais' That The How! supreme court Justices Have a Legal Analist, also To Interpret if Sex crime Became Manda-tory." in 1995. under S.B 2175/1951 - S.B. 596/1951 - Mic A 47-7-3 supp 1995/(July/1/1995) Being The correct Date Sex crime: Became Mandatory

(5) APP. Rabalais' seek: at The very least That The How! supreme court, mandate That He Be Immediately **Released on Parole**

Humbly submitted Kenneth Rabalais

P 31

CERTIFICATE OF SERVICE

This is to certify that I, the undersigned, have this day and date mailed, via United States Mail, postage pre-paid, a true and correct copy of the foregoing and attached instruments to the following:

Mrs Betty Sephton
clerk, P.O Box 249
Jackson MS
39205-0249

Hon. Jim Hood Atty, Gen
P.O. Box 220 Jackson
MS 39205

This the 5 day of May, 2007.

Mackenneth F Kabalan
PETITIONER
MDOC# 49942
U-29-L Parchman
Address
MS 38738
Address

STATE OF MISSISSIPPI)
)
) -SS-
COUNTY OF Sunflower)

"AFFIDAVIT OF OATH"

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, Mr. Kenneth F Rabalais, who after first being duly sworn, did state under oath as follows:

1) I, Kenneth F Rabalais, do hereby affirm that I am a citizen of the State of Mississippi, and do hereby state that the information contained in the foregoing Civil Action is true and correct. I state these facts under the penalty of perjury. I state By AFFidavit OF OATH That By Notice OF The Hon. Jerry O Terry order. That my Evitime Pretrial-Trial-Appeal Record are Destroye

2) I bring this action in good faith and I believe that I am entitled to the relief, which I seek, by same. No Longer accessible, Therefore I APP. Ken Rabalais. Moves This Hon! supreme court To Dismiss! The Indicted charges set, aside The conviction and vacate The Sentence By Kenneth Rabalais AFFIANT
Reason of states Inability To
Produce Record. and To further
Procecate Mr. Ken Rabalais case

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE 9 **DAY OF**

May, 2007.

Kathryn McIntyre
NOTARY PUBLIC

KATHRYN MCINTYRE, SUNFLOWER COUNTY, MS NOTARY PUBLIC My Commission Expires February 17, 2008

MY COMMISSION EXPIRES

120 238

IN THE CIRCUIT COURT OF HANCOCK COUNTY, MISSISSIPPI

FILED

AUG 18 2006

PAMELA THOMAS METZLER
CIRCUIT CLERK HANCOCK CO.
BY _____ D.C.

THE STATE OF MISSISSIPPI

VERSUS

CAUSE NO. 8027

KENNETH F. RABALAIS

ORDER

This cause is before the Court on Kenneth F. Rabalais' *pro se* motion to clarify sentence. This Court, having considered said motion as well as the applicable case law, finds the motion is not well taken and should be denied.

Rabalais' motion to clarify sentence was filed on March 14, 2006. As a result of Hurricane Katrina, Rabalais' file was badly damaged and is no longer assessable by this Court. However, in his motion, Rabalais has provided this Court with the necessary factual information. In September 1994, Rabalais was arrested and charged with rape pursuant to Miss. Code Ann. § 97-3-65(2). The crime was allegedly committed on August 25, 1994. On September 13, 1995, a jury found Rabalais guilty of rape. Rabalais was sentenced to life in prison pursuant to Miss. Code Ann. § 47-7-3. In his motion to clarify sentence, Rabalais contends because the crime was committed on August 25, 1994, before Miss. Code Ann. § 47-7-3 was amended, he should be eligible for parole pursuant to the 1993 version of the statute. He further contends the Mississippi Department of Corrections has misapplied the law as amended, thereby increasing his sentence.

Prior to its amendment, Miss. Code Ann. § 47-7-3 allowed a person convicted of a sex crime to be eligible for parole subject to certain exceptions. *See* Miss. Code Ann. § 47-7-3 (Supp. 1993). However, in August 1994, Miss. Code Ann. § 47-7-3 was amended and prohibited any person convicted of a sex crime from being eligible for parole. *See* Miss. Code Ann. § 47-7-3(1)(b) (Supp. 1994). Rabalais claims the amendment applied to crimes committed after October 1, 1994. Since his crime was committed prior to October 1, 1994, Rabalais argues the amendment prohibiting parole for sex crimes is inapplicable in his case.

Upon review of the statutory history, it appears the statute went into effect on August 23, 1994. Specifically, the statutory history states, "eff from and after passage (approved August 23, 1994)." Rabalais committed the offense of rape on August 25, 1994, two days after the amendment was passed. Thus, Rabalais' parole eligibility was controlled by Miss. Code Ann. § 47-7-3(1)(b)

4

Exhibit D

mailed to Def.

(Supp. 1994) which states in pertinent part:

> (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:
>
> . . .
>
> (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....

Because Rabalais committed the crime of rape on August 25, 1994, Miss. Code Ann. § 47-7-3 (Supp. 1994), as amended, is applicable. Since Rabalais does not meet any of the exceptions under the statute, he is ineligible for parole consideration under the above referenced statute and will therefore have to serve out his life sentence. It is therefore,

ORDERED AND ADJUDGED that Kenneth F. Rabalais' *pro se* motion to clarify sentence is **DENIED.**

ORDERED AND ADJUDGED, this the 16th day of August, 2006.

JERRY O. TERRY
CIRCUIT COURT JUDGE

EX. D

S

Citation
MS LEGIS 1ES 25 (1994)
1994 Miss. Laws 1st Ex. Sess. Ch. 25 (S.B. 2003)

Search Result Rank 1 of 20 Database MS-LEGIS-OLD

MISSISSIPPI **1994** SESSION LAWS
1994 FIRST EXTRAORDINARY SESSION

See Caption

Additions and deletions are not identified in this document.
Vetoed provisions within tabular material are not displayed.

Language Deleted
Psyc Evaluation
Definition

Chapter No. **25**
S.B. No. 2003
PAROLE BOARD--ELIGIBILITY FOR PAROLE--PAROLE COMMISSION

Going to (see) caption of SB 2003
To Amend crime section 24-A-B-C-D-E-F
at Bottom Dilsey give (10th) as Effect Date
For all above mentioned crime Issues

h. 25

AN ACT TO REENACT SECTION 47-7-5, MISSISSIPPI CODE OF 1972, TO PROVIDE A STATE AROLE BOARD; TO PROVIDE FOR THE REPEAL OF SECTIONS 47-7-3, 47-7-11, 47-7-13 7-7-15, 47-7-17, 47-7-19, 47-7-21 AND 47-7-25, MISSISSIPPI CODE OF 1972, WHICH RESCRIBE THE DUTIES AND POWERS OF THE PAROLE BOARD; TO AMEND SECTION 47-7-2, ISSISSIPPI CODE OF 1972, TO CONFORM DEFINITIONS; TO AMEND SECTION 47-7-3, ISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN PERSONS CONVICTED OF SEX RIMES SHALL NOT BE ELIGIBLE FOR PAROLE; TO PROVIDE THAT PERSONS CONVICTED OF RMED ROBBERY, ATTEMPTED ARMED ROBBERY, CAR-JACKING OR DRIVE-BY SHOOTING SHALL OT BE ELIGIBLE FOR PAROLE; TO AMEND SECTION 47-5- 139, MISSISSIPPI CODE OF 972, TO AMEND EARNED TIME ALLOWANCE TO CONFORM; TO AMEND SECTION 47-7-17, ISSISSIPPI CODE OF 1972, TO REQUIRE PAROLE BOARD TO HOLD HEARINGS TO GIVE THE EPARTMENT OF CORRECTIONS TIME TO ADDRESS SPECIAL CONDITIONS REQUIRED BY THE AROLE BOARD; TO CREATE THE PAROLE COMMISSION AND PRESCRIBE ITS DUTIES; TO EQUIRE THE PAROLE COMMISSION TO REPORT RECOMMENDATIONS ON CLASSIFICATION OF NMATES PRIOR TO SENTENCING; AND FOR RELATED PURPOSES.

go to P. 11 same Bill 2

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

amend 47-7-3

. 25, § 1
ECTION 1. Section 47-7-5, Mississippi Code of 1972, is reenacted and amended follows:

<< MS ST § 47-7-5 >>

7-7-5. (1) The State Parole Board, created under former Section 47-7-5 is reby created, continued and reconstituted and shall be composed of five (5) mbers, one from each congressional district. The members of the board pointed and serving on June 30, 1994, shall continue to serve and their terms all be extended until July 1, 1996. Any vacancy shall be filled for the expired term by the Governor with the advice and consent of the Senate. The vernor 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 chelor's degree or a high school diploma and four (4) years' work experience.

1 of 3 4 Exhibit E and as Ex. 3 of 4-3-3

25, § 3

on 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.

Ch. 25, § 4

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

<< MS ST § 47-7-53 >>

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.

USE

Ch. 25, § 5

SECTION 5. 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 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

Ch. 25, § 5

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;

(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;

(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

64

3 copies

IN TH UNTY, MISSISSIPPI

with the copies of
The motion For Record
+ 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 C
BY Lisa Taylor DC

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

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

Ex. A

How could I Have .80 month. 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			

This should Be 80 month. Parole after serving 10 years or Life

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

I Had 10 year Parole Paper. in my File For 8 ½ years stating I come up For parole in sept/23/04 which is 10 years From Day of my arrest 9/23/94 old Law, They took Parole Paper out of my File. and now say I Have Life without (see) statues + case Law Especially white v state

8 attached

Exhibit, B

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

EX. B

STATE OF MISSISSIPPI

the Circuit Court of HANCOCK County Cause No. 8027

TO THE MISSISSIPPI DEPARTMENT OF CORRECTIONS:

NOTICE OF CRIMINAL DISPOSITION

u are hereby notified that at the SEPTEMBER 199 5 ... TERRY ...

A-1. Provisional Sentence (Compliance/Non-Compliance Order constitutes Final Disposition) ☐ Non-Adjudication ☐ Sentenced under RID ☐ Sentenced under Shock Probation
☐ Bad Check Diversionary Program ☐ Restitution Center in ______ County

B. Conviction as Result of: ☐ Guilty Plea ☐ Guilty Plea after ______ days of Commencement of trial
☒ Jury Verdict after 2 days in trial ☐ Revocation Hearing

Name KENNETH FRANCES RABALAIS Alias
SSN 439-04-1323 Race WHITE Sex MALE Date of Birth 8-10-59
Last Known Residence 25291 Katie Dr. Picayune, MS
Place of Birth N.O., LA
Alien Registration/Immigration # ______ Country of Citizenship U.S
FBI # ______
Count I Charge RAPE
MS Code § 97-3-65(2) Orig. Case# ______ Agency ______
...nt II Charge ______
... Code § ______ Orig. Case# ______ Agency ______
Count III Charge ______
MS Code § ______ Orig. Case# ______ Agency ______
...ate of Sentence SEPTEMBER 13, 1995 Credit for Time Served (ONLY for this/these charge(s)) ______
...entence(s) Initially Imposed by Order: Count I LIFE IMPRISONMENT ; Count II ______ ; *Count III ______

...k if reporting additional ...ts on Reverse Side

	Portion of Sentence to be Served (Yrs/Mos)	Portion of Sentence Suspended (Yrs/Mos)	To be served on Probation (Yrs/Mos)	Other Disposition (See Legend on Reverse Side)
Count I	LIFE IMPRISONMENT			
Count II				
*Count III				

______ to run concurrent with ______
______ to run consecutive with ______

...nditions/Designation of Sentence: ☐ Habitual ☐ Psychological/Psychiatric ☐ Alcohol/Drug Treatment/Testing ☐ Other ______

...ed in Jail ...s/These ...rges Only) 9-23-94 to Present
______ to ______
______ to ______
______ to ______
...ased on Bond Pending Appeal ______ to ______
...ndant Currently Housed in HANCOCK COUNTY JAIL

...S ______ Indigent Fee $ ______ Restitution $ ______
... Costs $ ______ Attorney Fees $ ______ Other Fees $ ______
...itions of Payment ______

...ner Commitments, Provisional Sentence ...rders and Revocation Orders to:
...or of Records
...C
...Box 88550
...MS 39208-8550

INS Liaison
MS Supreme Court
P. O. Box 117
Jackson, MS 39205-0117

...nded Sentence/Probation Notices, Provisional ...ntence Orders and Revocation Orders to:
...perations
...rth President St.
...n, MS 39202-3097

INS Liaison
MS Supreme Court
P. O. Box 117
Jackson, MS 39205-0117

...missal Notices to INS Liaison (Above Address)

PAMELA T. METZLER
Circuit Clerk
By: [signature]
Date: 10-5-95

10 ~~26~~

Exhibit C

SCJNS Form CR...

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;

Get the Gen Interp. OF Parole not Binding

Eighth amend Cruel + unusual Punishment

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 to prisoner, who

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

Exhibit G

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

Exhibit H

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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. H

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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. H

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enactment of the bill, prisoners had the possibility for parole after serving 25 percent of their sentence pursuant to Miss. Code Ann. § 47-7-3 (1993) or an inmate could obtain his release by serving 50 percent of their sentence pursuant to the earned time provisions of Miss. Code Ann. § 47-5-138 (1993). By denying the opportunity for parole, prior to serving 85 percent of his sentence, S.B. 2175 effectually increases the "standard of punishment" or the "quantum of punishment," is more onerous than the law in effect on the date of the offense, makes more burdensome the punishment for a crime, and is not a most speculative and attenuated risk of increasing the measure of punishment attached to covered crimes.

COUNSEL: FOR APPELLANT - Michael C. Moore, Attorney General, Jackson, MS; Joseph A Goff, Sp Ass't Attorney General, Jackson, MS.

FOR APPELLEE - Thomas M. Fortner, Jackson, MS.

JUDGES: SULLIVAN, PRESIDING JUSTICE. PRATHER, P.J., BANKS, McRAE, ROBERTS AND MILLS, JJ., CONCUR. SMITH, J., DISSENTS WITH SEPARATE WRITTEN OPINION. LEE, C.J., PITTMAN, J., NOT PARTICIPATING.

OPINIONBY: SULLIVAN

OPINION: [*671] EN BANC.

SULLIVAN, PRESIDING JUSTICE, FOR THE COURT:

On June 15, 1995, Appellees filed a complaint in the Circuit Court of the First Judicial District of Hinds County, Mississippi for a declaratory judgment. This complaint asked for a declaratory judgment as to the applicability of Senate Bill 2175, Section 4, paragraph 4, amending Miss. Code Ann. § 47-5-138 (1993) (Earned Release), as unconstitutional to crimes that occurred prior to the effective date of this bill. The retroactive application of this bill requires that eighty-five percent (85%) of a sentence be served and eliminates the opportunity for parole that existed prior to Senate Bill 2175. The Appellees were all charged with felony crimes that occurred prior to July 1, 1995, the effective date of Senate Bill 2175, and their charges were not to be disposed of until after July 1, 1995. On June 19, 1995, Appellees filed an amended complaint for declaratory judgment, citing Senate Bill 2175, Section [*672] 3, paragraph [**2] (1)(g), amending Miss. Code Ann. § 47-7-3 (Supp. 1993), as also being violative of the United States and Mississippi Constitutions. On June 21, 1995, Steve Puckett, Commissioner of the Mississippi Department of Corrections, (Puckett) filed an answer to the original and amended complaints.

On June 30, 1995, a hearing was held before Hinds County Circuit Court Judge James E. Graves, Jr. Judge Graves ruled that Senate Bill 2175 is an *ex post facto* law as it applies to the Appellees, who were charged with committing crimes prior to July 1, 1995, but who were not to be sentenced until on or after July 1, 1995.

Puckett filed a notice of appeal. Both parties filed a joint motion for expedited treatment on appeal, which this Court granted on September 28, 1995.

I.

WHETHER SENATE BILL 2175 OF THE 1995 LEGISLATIVE SESSION (THE "TRUTH IN SENTENCING" LAW) VIOLATES THE STATE AND FEDERAL CONSTITUTIONAL PROHIBITIONS AGAINST Ex post facto LAWS AS APPLIED TO OFFENDERS CHARGED WITH COMMITTING CRIMES THAT OCCURRED PRIOR TO JULY 1, 1995.

[HN1]The retroactive application of Senate Bill 2175 requires that eighty-five percent (85%) of a sentence be served and eliminates the opportunity for [**3] parole that existed prior to Senate Bill 2175. The Appellees, all charged with felony crimes that occurred prior to the effective date of Senate Bill 2175, argue that this effectively increases the length of incarceration that an inmate must serve after they have been sentenced and therefore violates the Ex Post Facto Clauses of the United States and Mississippi Constitutions.

[HN2]Prior to July 1, 1995, most offenders convicted of felonies and sentenced to a term of incarceration of one (1) year or more, were allowed to be eligible for parole after serving twenty-five percent (25%) of their sentence pursuant to Miss. Code Ann. § 47-7-3 (Supp. 1993) (Parole Board Review). 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 (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 [**4] 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 . . . .

Miss. Code Ann. § 47-7-3 (Supp. 1993). [HN3]This section went on to enumerate the 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 (1) 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 ten (10) years. Senate Bill 2175, Section 3, paragraph (1)(g) amended this section and a portion was added which reads "no person shall be eligible for parole who is convicted [**5] or whose suspended sentence is revoked after June 30, 1995 . . . ." Act of Apr. 17, 1995, ch. 596, 1995 Miss. Laws 940 (codified at Miss. Code Ann. § 47-7-3 (1)(g) (Supp. 1995)).

Also [HN4]prior to July 1, 1995, an inmate could obtain his release by serving fifty percent (50%) of his sentence pursuant to the earned time provisions of Miss. Code Ann. § 47-5-138 (1993) (Earned Release). This section before the amendment stated:

[*673] (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 (1/2) 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 "this section does not apply to any sentence imposed after June 30, 1995." Act [**6] of Apr. 17, 1995, ch. 596, 1995 Miss. Laws 941 (codified at Miss. Code Ann. § 47-5-138 (1) (Supp. 1995)).

[HN5]Senate Bill 2175, Section 4, paragraph 4, 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 (4-1/2) days for each thirty (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 fifteen percent (15%) of an inmate's term of sentence.

Act of Apr. 17, 1995, ch. 596, 1995 Miss. Laws 941 (codified at Miss. Code Ann. § 47-5-138 (4) (Supp. 1995)).

[HN6]Article I, § 9, Clause 3 of the United States Constitution states "No Bill of Attainder or ex post facto Law shall be passed." Article I, § 10, Clause 1 of the United States Constitution 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 Constitution in Article 3, § 16 stating, "Ex post facto laws . . [**7] . shall not be passed."

[HN7]The United States Supreme Court has interpreted Article I, § 10 of the United States Constitution 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 . . . .

Beazell v. Ohio, 269 U.S. 167, 169, 70 L. Ed. 216, 46 S. Ct. 68 (1925).

"In accordance with this original understanding, we have held that the Clause is aimed at laws that 'retroactively alter the definition of crimes or increase the punishment for criminal acts.'" ***California Dept. of Corrections v. Morales***, 514 U.S. 499, 131 L. Ed. 2d 588, 115 S. Ct. 1597, 1601 (1995) (quoting ***Collins v. Youngblood***, 497 U.S. 37, 41, 111 L. Ed. 2d 30, 110 S. Ct. 2715 (1990)). The United States Constitution "forbids the application of any new punitive measure to a crime already consummated . . . ." ***Lindsey v. Washington***, 301 U.S. 397, 401, 81 L. Ed. 1182, 57 S. Ct. 797 (1937).

The Supreme Court has held that the purpose of the Ex post facto Clause is to assure that legislative acts "give fair warning of their effect and permit individuals [**8] to rely on their meaning until explicitly changed" and to "restrict[] . . . governmental power by restraining arbitrary and potentially vindictive legislation." ***Weaver v. Graham***, 450 U.S. 24, 28-29, 67 L. Ed. 2d 17, 101 S. Ct. 960 (1981) (footnote and citations omitted). [HN8]A statute may violate the Ex post facto Clause "even if it alters punitive conditions

Court of Appeals of Mississippi.

Robert A. WHITE a/k/a Robert A. White, Appellant,
v.
STATE of Mississippi, Appellee.

No. 1998-CA-00980-COA.

Aug. 3, 1999.

Following conviction and sentence on his plea of guilty to fondling (child molestation) movant filed for post conviction relief. The Circuit Court, Lamar County, Michael Ray Eubanks, J., denied motion, and movant appealed. The Court of Appeals, Irving, J., held that movant was entitled to evidentiary hearing on his claim that counsel failed to inform him that he would be ineligible for parole.

Reversed and remanded.

Southwick, P.J., filed concurring opinion, in which McMillin, C.J., joined.

Lee, J., filed dissenting opinion, in which Bridges, Payne, and Thomas, JJ., joined.

West Headnotes

[1] Criminal Law 1655(1)
110k1655(1) Most Cited Cases
(Formerly 110k998(19))

Post-conviction petitioner is entitled to in-court opportunity to prove his claims if claims are procedurally alive and show substantial denial of state or federal right. West's A.M.C. § § 99-39-1 to 99-39-29.

[2] Criminal Law 273.1(1)
110k273.1(1) Most Cited Cases

[3] Criminal Law 1655(3)
110k1655(3) Most Cited Cases
(Formerly 110k998(19))

Post-conviction movant, who had been convicted of fondling (child molestation), was entitled to evidentiary hearing on his claim that counsel failed to inform movant that he would be ineligible for parole under amended sentencing statute applicable to sex offenders, thereby causing him to involuntarily enter guilty plea. West's A.M.C. § § 47-7-3, 99-39-1 to 99-39-29.

***482** P. Shawn Harris, Lake, Attorney for Appellant.

Office of the Attorney General by Pat S. Flynn, Attorney for Appellee.

EN BANC.

IRVING, J., for the Court:

¶ 1. 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 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 -

¶ 2. 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. [illegible] 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

Exhibit I

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 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.

¶ 3. 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

[1] ¶ 4. 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); *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.

¶ 5. The Mississippi Supreme Court has previously stated that:

> [b]efore 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).

[2] ¶ 6. The quality of advice from counsel has been [illegible] *Vittitoe*, 556 So.2d at 1065. Misinformation of counsel may be [illegible] a guilty plea. *See, e.g., Myers v. State*, 583 So.2d 174, 177 (Miss.1991).

[3] ¶ 7. White argues that his attorneys provided him with erroneous information on parole eligibility, thereby causing him to involuntarily enter a guilty plea. 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. *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 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)

¶ 8. 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.

9. THE JUDGMENT OF THE LAMAR COUNTY CIRCUIT COURT DENYING POST-CONVICTION RELIEF IS REVERSED AND REMANDED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO LAMAR

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.

¶ 17. 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.

¶ 18. 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." *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

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.

¶ 19. 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 *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 *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 in *Smith* has its own complications but they are not relevant here.

¶ 20. 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

¶ 21. 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

under the statute explaining what must be in a petition, there is a requirement that specific and detailed facts be presented supporting the claim,

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MS LEGIS 520 (1992) | MS-LEGIS-OLD
1992 Miss. Laws Ch. 520 (S.B. 2030)

MISSISSIPPI 1992 SESSION LAWS
REGULAR SESSION

Some legal language Deleted

Additions and deletions are not identified in this document.

Chapter No. 520
S.B. No. **2030**
CORRECTIONS--INMATES--EARNED TIME ALLOWANCE

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.

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

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

<< MS ST § 47-5-138 >>

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

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S LEGIS 520 (1992)

ec. 1
hall be modified accordingly.
(3) An offender, demonstrating acceptable behavior, shall be released on his onditional earned time release date.
ec. 2
SECTION 2. Section 47-5-139, Mississippi Code of 1972, is amended as follows:

<< MS ST § 47-5-139 >>

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 hrough 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 ...e 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 s[illegible] ion and be convicted therefor shall be removed from office or employment.
Sec. 3
SECTION 3. Section 47-5-140, Mississippi Code of 1972, is amended as follows:

<< MS ST § 47-5-140 >>

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

<< MS ST § 47-5-142 >>

(1)

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LEGIS 443 (1993) MS-LEGIS-OLD
993 Miss. Laws Ch. 443 (S.B. 2294)

MISSISSIPPI **1993** SESSION LAWS
1993 REGULAR SESSION

Additions and deletions are not identified in this document.
Chapter No. **443**
S.B. No. 2294
PRISONERS--PAROLE--EDUCATION, JOB TRAINING PRIORITY

Ch. 443
AN ACT TO AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT RTAIN INMATES SHALL RECEIVE PRIORITY FOR PLACEMENT IN ANY EDUCATION VELOPMENT OR JOB TRAINING PROGRAM PRIOR TO PAROLE; AND FOR RELATED PURPOSES.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:
Ch. 443, § 1
SECTION 1. 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 or may hereafter be convicted of any fense against the State of Mississippi, and is confined in the execution of a dgment of such conviction in the Mississippi State Penitentiary for a definite rm or terms of one (1) year or over, or for the term of his or her natural fe, whose record of conduct shows that such prisoner has observed the rules of ne Penitentiary, and who has served not less than one-fourth (1/4) of the total such term or terms for which such prisoner was sentenced, or, if sentenced to rve a term or terms of thirty (30) years or more, or, if sentenced for the rm of the natural life of such prisoner, has served not less than ten (10) ars of such life sentence, may be released on parole as hereinafter provided, cept that:
(a) No prisoner convicted as a confirmed and habitual criminal under the ovisions 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 herwise eligible for parole, shall not be released on parole until after he as been examined by a competent psychiatrist or by a competent psychologist lected by the State Parole Board. Such examination must have occurred not ore than one (1) year prior to the prisoner's parole hearing. Upon completion the examination a written report of the psychiatric or psychological amination shall be forwarded immediately to each member of the Parole Board. ne written report of the examining psychiatrist or psychologist shall state nether the sex offender is likely or unlikely to commit another sex crime. The arole Board may also order psychiatric or psychological examinations for rsons convicted of other crimes when it determines such examination is cessary to making a parole decision;
(c) No one shall be eligible for parole until he shall have served one (1) ar of his sentence, unless such person has accrued any meritorious earned time lowances, in which case he shall be eligible for parole if he has served (i) ne (9) months of his sentence or sentences, when his sentence or sentences is

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Exhibit, 4-5-6

. 443, § 1
o (2) years or less; (ii) ten (10) months of his sentence or sentences when
s sentence or sentences is more than two (2) years but no more than five (5)
ars; and (iii) one (1) year of his sentence or sentences when his sentence or
ntences is more than five (5) years;
(d) No person shall be eligible for parole who shall, on or after January 1,
77, be convicted of robbery or attempted robbery through the display of a
rearm until he shall have served ten (10) years if sentenced to a term or
rms of more than ten (10) years or if sentenced for the term of the natural
fe of such person. If such person is sentenced to a term or terms of ten (10)
ars or less, then such person shall not be eligible for parole. The
ovisions of this paragraph (d) shall also apply to any person who shall commit
bbery or attempted robbery on or after July 1, 1982, through the display of a
adly weapon;
2) Notwithstanding any other provision of law, an inmate shall not be eligible
receive earned time, good time or any other administrative reduction of time
ich shall reduce the time necessary to be served for parole eligibility as
ovided in subsection (1) of this section; however, this subsection shall not
ply to the advancement of parole eligibility dates pursuant to the Prison
ercrowding Emergency Powers Act. Moreover, meritorious earned time allowances
y be used to reduce the time necessary to be served for parole eligibility as
ovided in paragraph (c) of subsection (1) of this section.
3) The State Parole Board shall by rules and regulations establish a method of
termining a tentative parole hearing date for each offender taken into the
stody of the Department of Corrections from and after January 1, 1987. The
ntative parole hearing date shall be determined within ninety (90) days after
e department has assumed custody of the offender. Such tentative parole
aring date shall be calculated by a formula taking into account the offender's
e upon first commitment, number of prior incarcerations, prior probation or
role failures, the severity and the violence of the offense committed,
ployment history and other criteria which in the opinion of the board tend to
lidly and reliably predict the length of incarceration necessary before the
fender can be successfully paroled.
4) Any inmate within twenty-four (24) months of his parole eligibility date
d who meets the criteria established by the classification committee shall
ceive priority for placement in any educational development and job training
ograms. Any inmate refusing to participate in an educational development or
b training program may be ineligible for parole.
. 443, § 2
ECTION 2. This act shall take effect and be in force from and after July 1,
93.
proved March 24, 1993.
LEGIS 443 (1993)
D OF DOCUMENT

Citation
MS LEGIS 596 (1995)
1995 Miss. Laws Ch. 596 (S.B. 2175)
Found Document
Rank 1 of 1
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(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 47-7-3, MISSISSIPPI CODE 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 appointed and serving on June 30, 1994, shall continue to serve and their terms shall be extended until July 1, 1995. On July 1, 1995, the board shall be reconstituted 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

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Exhibits 7-8-9

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

Ch. 596, § 1

Senate, shall appoint the three (3) members of the reconstituted board. The initial terms of the three (3) members of the reconstituted board shall expire on June 30, 1996. Thereafter, succeeding appointments shall be for a four-year term to begin on July 1, 1996, and expire on July 1, 2000. 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. A member shall not receive compensation or per diem in addition to his salary as prohibited under Section 25-3-38. 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, may be reimbursed for actual and necessary expenses as authorized by Section 25-3- 41; but a member shall not be reimbursed for travel expenses from his residence to the nearest state penitentiary. In addition, a member must use a state vehicle, if available, for travel and a member who refuses to use an available state vehicle shall not receive reimbursement for mileage expenses for use of a privately owned motor vehicle.

(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, 2000.

Ch. 596, § 2

SECTION 2. Section 47-7-53, Mississippi Code of 1972, is amended as follows:

<< MS ST § 47-7-53 >>

47-7-53. On July 1, 2000, the Department of Corrections shall assume and exercise all the duties, powers and responsibilities of the State Parole Board. The Commissioner of Corrections may assign to the appropriate officers and divisions any powers and duties deemed appropriate to carry out the duties and powers of the Parole Board. Wherever the terms "State Parole Board" or "Parole

SB. 2175 2 on Sex off. & Have Life Sentence which one applies?

MS LEGIS 596 (1995)

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

10. This Bill Two sections apply To Rabalais

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

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; Age 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 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; charged Before (9/30/94 Illegal Language Violate Ex Post Fac

(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; End of Section

(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;

Use correct Legal Language within Ex

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Ex. 7-8-9

MS LEGIS 596 (1995)
(Publication page references are not available for this document.)

Ch. 596, § 3

(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;

(g) No person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30, 1995; Ex Post Facto Laws

~~(h) An offender may be eligible for medical release under Section 47-7-4.~~

(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 eligible offender taken into the custody of the Department of Corrections. 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.

Ch. 596, § 4

SECTION 4. Section 47-5-138, Mississippi Code of 1972, is amended as follows:

<< MS ST § 47-5-138 >>

47-5-138. (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 (1/2) 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. This subsection does not apply to any sentence imposed after June 30, 1995.

(2) An inmate may forfeit all or part of his earned time allowance for a serious violation of rules. No forfeiture of the earned time allowance shall be effective except upon approval of the commissioner or his designee, and forfeited earned time may not be restored.

(3) An inmate who meets the good conduct and performance requirements of the earned time allowance program may be released on his conditional earned time release date.

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

Ch. 596, § 4

(4) For any sentence imposed after June 30, 1995, an inmate may receive an earned time allowance of four and one-half (4 1/2) days for each thirty (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 fifteen percent (15%) of an inmate's term of sentence.

(5) Any inmate, who is released before the expiration of his term of sentence under this section, shall be placed under earned-release supervision until the expiration of the term of sentence. The inmate shall retain inmate status and remain under the jurisdiction of the department. The period of earned-release supervision shall be conducted in the same manner as a period of supervised parole. The department shall develop rules, terms and conditions for the earned-release supervision program. The commissioner shall designate the appropriate classification committee or other division within the department to conduct revocation hearings for inmates violating the conditions of earned-release supervision.

(6) If the earned-release supervision is revoked, the inmate shall serve the remainder of the sentence and the time the inmate was on earned-release supervision, shall not be applied to and shall not reduce his sentence.

Ch. 596, § 5

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

<< MS ST § 47-5-139 >>

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

(a) The inmate was sentenced to life imprisonment; but an inmate, except an inmate sentenced to life imprisonment for capital murder, who has reached the age of sixty-five (65) or older and who has served at least fifteen (15) years may petition the sentencing court for conditional release;

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

Ch. 596, § 6

SECTION 6. Section 47-7-9, Mississippi Code of 1972, is amended as follows:

Ex 7-8-9

Citation
MS ST S 47-7-3
Miss. Code Ann. § 47-7-3

Found Document

Rank 1 of 1

Database
MS-ST-ANN

Old Law

This document has been updated. Use KEYCITE.

WEST'S ANNOTATED MISSISSIPPI CODE
TITLE 47. PRISONS AND PRISONERS; PROBATION AND PAROLE
CHAPTER 7. PROBATION AND PAROLE
PROBATION AND PAROLE LAW
§ 47-7-3. Parole eligibility; earned time; tentative hearing date; program priority

(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;

wrong language

(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;

(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

(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;

Correct Language within ex post facto Laws which state newly Programmed Laws that Increase Punishment

Oct 1 1994 Effect date For all criminal Issues Sec 24 - a - Bill Dig

§47-7-3, Parole eligibility, earned time, tentative hearing date, program priority

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;

(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;

(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;

(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;

(g) No person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30, 1995, except that a first offender convicted of a nonviolent crime after January 1, 2000, may be eligible for parole if the offender meets the requirements in subsection (1) and this paragraph. In addition to other requirements, if a first offender is convicted of a drug or driving under the influence felony, the offender must complete a drug and alcohol rehabilitation program prior to parole or the offender may be required to complete a post-release drug and alcohol program as a condition of parole. For purposes of this paragraph, "nonviolent crime" means a felony other than homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping, resulting in death, or +>><<+ serious bodily injury resulting in the loss of a limb or dismemberment, loss of eyesight, a coma, permanent dysfunction of any vital organ, paralysis or resulting in an individual's permanent bedridden state+>>. <<+For purposes of this paragraph, "first offender" means a person who at the time of sentencing has not been convicted of a felony on a previous occasion in any court or courts of the United States or in any state or territory thereof.+>>

MISSISSIPPI CODE 1972 ANNOTATED
TITLE 47. PRISONS AND PRISONERS; PROBATION AND PAROLE
CHAPTER 7. PROBATION AND PAROLE
PROBATION AND PAROLE LAW

§ 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;

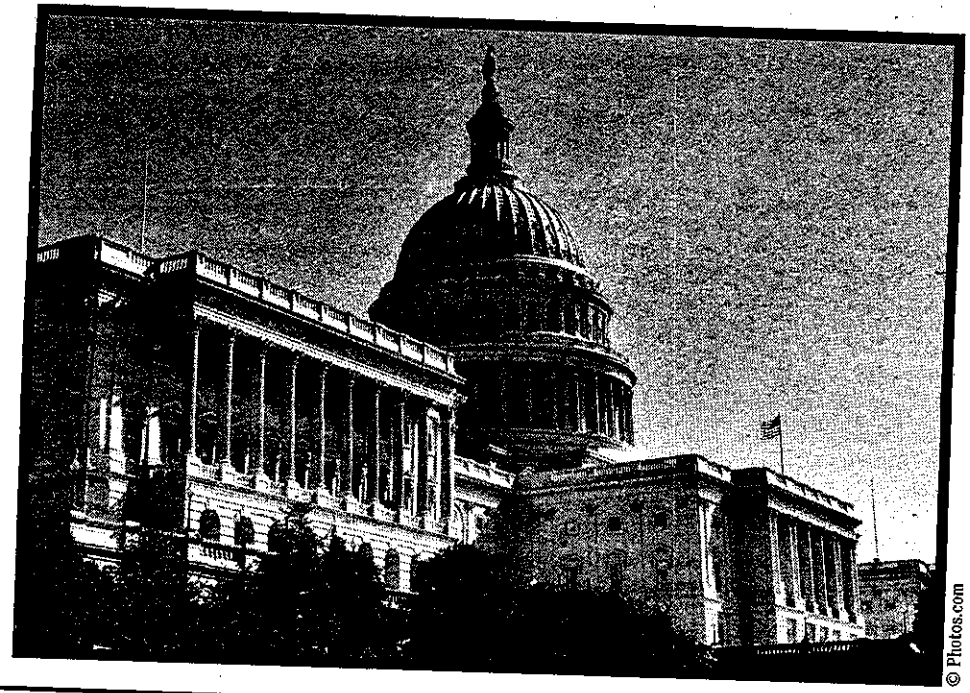
(2) Notwithstanding any other provision of law, an inmate shall not be eligible to receive earned time, good time or any other administrative reduction of time which shall reduce the time necessary to be served for parole eligibility as provided in subsection (1) of this section; however, this subsection 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.

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.

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Review Thoroughly

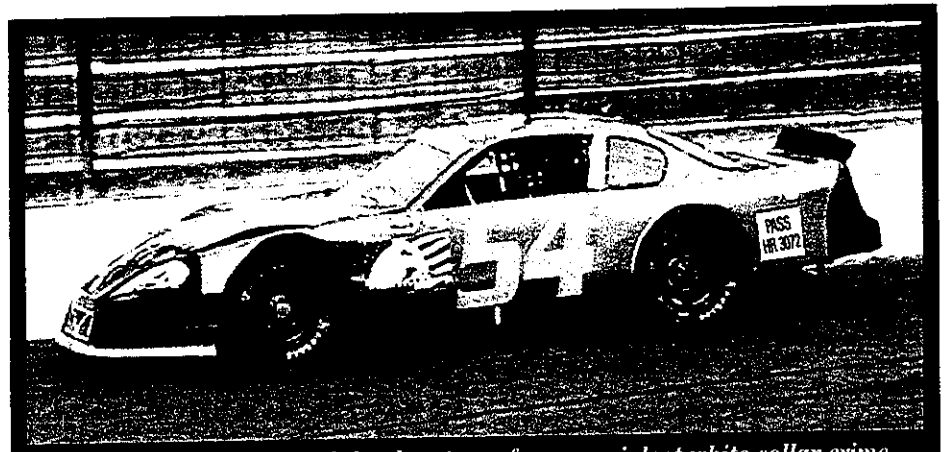
NASCAR Driver Seeks Checkered Flag for Parole

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 CORRECTI

From the Panhandle to South Florida, Florida inmate work teams show up rig after school closes. Teams of hand-picke 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, Ro Woody, chief of the Bureau of Communi Relations, said. "Our inmate work squa take great pride in helping get schools 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 Correcti staff in Florida contributed more than $150,000 in donated school supplies. D ment of Corrections staff collected pap pencils, crayons, glue, folders, notebool erasers, markers, scissors, lunchboxes, backpacks. Some staff even served brea for seniors on the first day of school at County High in Raiford.