

~~ORIGINAL~~

IN THE MISSISSIPPI SUPREME COURT
MISSISSIPPI COURT OF APPEALS

VAN GRAY

PETITIONER/APPELLANT

Vs.

FILED
NOV 01 2006
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

APPEAL No. 2006-CP-01139-COA

STATE OF MISSISSIPPI

RESPONDENT/APPELLEES

#####

APPEAL FROM THE DENIAL OF THE TRIAL COURT'S
ORDER DENYING PETITION TO CLARIFY SENTENCE [SIC]
INTERPREDED AS A MOTION FOR POST CONVICTION
COLLATERAL RELIEF UNDER MCA § 99-39-1 THRU
MCA § 99-39-29 .

#####

MS. BETTY W. SEPHTON , CLERK
POST OFFICE BOX 249
OFFICE OF THE CLERK
MISSISSIPPI SUPREME COURT
JACKSON, MISSISSIPPI 39205-0249

Dear Clerk ,

Please find here is the Petitioner/Appellant's Appeal, and/or
MEMORANDUM and BRIEF in SUPPORT of the Aboved styled an Numbered
Action/Appeal in this court .

Thank You for your time and consideration in this matter .

Enclosures:

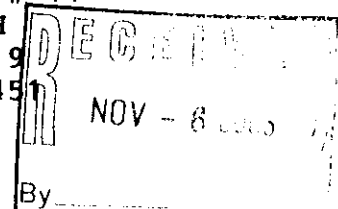
RESPECTFULLY SUBMITTED ,

Mississippi Court of
Appeals, Justices .

Jim Hood, Miss. Atty. Gen.

By: Van Gray #106903 11/1/06

VAN GRAY #106903
SMCI-AREA-1 , UNIT # 11
22689 HWY. 63 NORTH
POST OFFICE BOX 1419
LEAKESVILLE, Ms. 39451



IN THE MISSISSIPPI SUPREME COURT
MISSISSIPPI COURT OF APPEALS

VAN GRAY

PETITIONER/APPELLANT

V.

POST CON. No. 2006-CP-01139-COA

STATE OF MISSISSIPPI

RESPONDENTS/APPELLEES

CERTIFICATE OF INTERESTED PERSONS

The Undersigned has listed the following persons as having an interest in the outcome of the aboved styled an numbered case, and for possible Disqualifications and recusals .

1. The Justices of the Mississippi Supreme Court /Mississippi Court of Appeals ;
2. The LAMAR COUNTY, Mississippi Circuit Court .
3. The Mississippi Dept. of Corrections .
4. Offender VAN GRAY# 106903 .
5. Mr. Jim Hood, The Mississippi Attorney General

RESPECTFULLY SUBMITTED ,

11/1/06
By: *Van Gray* ¹² 106903
VAN GRAY # 106903

IN THE MISSISSIPPI SUPREME COURT

VAN GRAY #106903

PETITIONER/APPELLANT

Vs.

Post Con No. 2006-CP-01139-COA

COUNTY OF GREENE
STATE OF MISSISSIPPI

AFFIDAVIT OF POVERTY

Personally appeared before me, the undersigned Authority, in and for the aforesaid
Jurisdiction _____ # 106903, who being duly
Sworn on his OATH, does Depose and say :

" I VAN GRAY, SOLEMNLY SWEAR THAT I AM A CITIZEN OF THE
STATE OF MISSISSIPPI, AND BECAUSE OF POVERTY I AM NOT ABLE TO PAY THE FEES IN THIS
POST CONVICTION MOTION FOR COLLATERAL RELIEF, WHICH I AM ABOUT TO COMMENCE OR HAVE
COMMENCED.

TO THE BEST OF MY BELIEF I AM ENTITLED TO THE REDRESS THAT I SEEK BY PRESENTATION
OF THE ABOVE STYLED AN NUMBERED ACTION .

AFFIANT SAITH NAUGHT

SWORN TO AND SUBSCRIBED BY ME THIS

1 DAY OF November

November 2006
~~SEPTEMBER 2005.~~

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE
MY COMMISSION EXPIRES: June 2, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

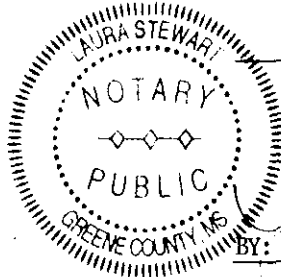
MY COMMISSION EXPIRES ON:

BY: VAN GRAY #106903 AFFIANT

VAN GRAY #106903
SMCI-AREA 1, UNIT #11

22689 HWY. 63 NORTH
POST OFFICE BOX 1419

LEAKESVILLE, MS. 39451



BY: Laura Stewart

NOTARY PUBLIC

JURISDICTION OF THIS COURT

This court Has Jurisdiction of this action pursuant to the "UNIFORM POST CONVICTION COLLATERAL RELIEF ACT" §§ 99-39-1 - thru - §§ 99-39-29 M.C.A. (1972); The Mississippi Rules of Civil Procedure according to the Mississippi Consitution, and the Consitution of the United States of America .

DISCUSSION

VAN GRAY , was the Petitioner in the aboved styled and numbered case. He claimed that he is entitled to a "TRUSTY TIME" statue that was in effect at the time he was sentenced, because his crime was committed during the ~~date~~ the Statue granting the additional earned time was effective . The Petitioner GRAY claims that when the statue was amemded, it effected the duration/lenght of sentence that he would have to serve increasng his sentence.

VAN GRAY alleges that because the MCA 41-29-139 (Post, APRIL 28, 2004) as amended Statue, does not allow him to receive 10 days for every 30 days that he would have to serve up-front, as other offenders similarly situated have been classified, Gray submitts that he would have to serve an **additional 10 days on every 30 days that he would serve equaling**
$$\frac{(30)(7 \times 12)}{(10)(7 \times 12)} = \text{Up-front "TRUSTY TIME"}$$
 without "TRUSTY TIME" the total amount of time GRAY will serve without being afforded the construction of Miss.Code Annoted Section 47-5-138 , as computed would be (10) ten days , Multiplied by (7) years, the total amount of time GRAY must serve, multiplied by 12 months in the year equals 2520 two-thousand, five hundred-twenty days .

VAN GRAY here submitts that MCA 47-5-138.1 (Amended April 28, 2004) excluded GRAY from the up-front TRUSTY TIME of (10) ten days, Multiplied by (7) years, the total amount of time Gray would serve/must serve/will serve, Multiplied by twelve (12) Months which

demonstrates the reduction of the sentence per statue MCA §47-5-138 which was in effect at the time VAN GRAY consummated this crime which he plead guilty too . 10 x 7 x 12= 840 days

***Eight-Hundred, forty days**, is over two years worth of "TRUSTY TIME" that GRAY is not receiving, but other offenders similarly situated are receiving. It was not Gray's fault that the State took 8 days before the two year deadline to secure an indictment against him, and neither did Gray require any additional time to prepare his case, the lenght of delay is attribited to the State.

GRAY could not have foresaw a change in the Law: For Gray to demonstrate a violation of the STATE'S EX POST FACTO, and/or U.S. Constitutions EX POST FACTO Clauses two (2) Elements must be present: (1) law must apply to events occurring before it's enactment, and (2) it must disadvantaged offender affected by it. **INFRA** .

The Order appealed here from stated in pertinate part:

["While it is true that Section 47-5-138.1 was amended following the consummation of the Petitioner's criminal act and therefore the petitioner's ability to earn additional earned time was then eliminated,".....]

Its Manifestly flawed "ORDER" is why an evidentiary hearing would reveal that all offender's having received the benifit of 47-5-138.1 , before APRIL 28, 2004 amendment, did not "**EARN**" any of the "**TRUSTY TIME**"; that all addi tional earned time was accumulated, recompu- tated, an given to offender's similarly situated as VAN GRAY "**UP- FRONT**" . The Ex Post facto Clause may apply to Guidelines, classifi- cation(s), if it increases sentence(s) by 2 years .

Last, the Evidentiary Hearing, and/or discovery process may very well prove an infinite amount of claims of time miscalculations made by MDOC .

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THE DATE AND ENTRY OF JUDGEMENT AND CONVICTION

Van Gray # 106903 plead Guilty to the Charge on September 14, 2004 and was later sentenced on October 1, 2004, to (15) fifteen years with (7) Seven to serve and (8) eight suspended in lieu of post-release supervision .

STATEMENT UPON WHICH CLAIMS ARE BASED

I.

That the Circuit Court erred by dismissing Petitioner's Ex Post Facto Claim without the Benefit of an Evidentiary hearing;

II.

that the Petitioner was subjected to an Ex Post Facto Violation by not being afforded the Classification Construction of MCA § 47-5-138 (Pre-APRIL 28, 2004) as applied to his conviction/Sentence resulting from an October 24, 2001 Criminal Act which he plead guilty too, because Classification Actions may be akin to Sentencing guidelines which allow for increases/decreases in actual time to be served toward convictions after the new statute acting as a classification guideline took effect .

AFFIDAVIT OF OATH.....

THE SPECIFIC STATEMENT OF FACTS WITHIN THE PETITIONER'S KNOWLEDGE

1. I, am VAN GRAY, Mississippi Number 106903 ; I plead Guilty to sell ,and/or Transfer of a contolled substance, amount less than 0.1 gram in violation of MCA 41-29-139, on OCTOBER 1,2004 ;
2. That Petitioner had been indicted by a LAMAR County,Ms. Grand Jury on OCTOBER 16,2003, and that the Indictment stated in part that VAN GRAY has violated MCA 41-29-139 ,on OCTOBER 24,2001 ;
3. I,Plead Guilty to the aboved discribed charge on SEPTEMBER 14, 2004, and received 15 years with 7 years to serve and 8 years suspended in lue of post-relese supervision ;
4. I, had been advised by court appointed counsel that all of the laws that were in effect at the time I comitted the alledged Act of transfer/Sell of a Controlled Substance were relevant;
5. I, Plead Gulity because I was under the impression that I could Receive some earned time, styled "TRUSTY EARNED TIME" ;
6. That When I Arrived at the Mississippi Dept. of Corrections, and received a time Computation sheet, I inquired about the TRUSTY EARNED TIME, of 10 days for every thirty days served because :
7. My time sheet did not reflect that I had been awarded up front the ten (10) days for every thirty (30) days that I would serve on my sentence like other offenders had on their time sheets:
8. That had been convicted of Transfer/Seli, on or about OCTOBER 24,2001, in violation of 41-29-139 (MCA) ;
9. That I am claiming that there are offender's at present, that are similarly situated as myself that are receiving the upfront TRUSTY EARNED TIME of 10 days for 30 days I (WOULD) have to Serve;
10. That I do not have to be a "TRUSTY" to receive "TRUSTYTIME" is not my argument ;
11. That I allege that MCA 47-5-138.1 as it read at the time my crime was consummated applies to me, because I did not have to factually "EARN" the "TRUSTY TIME" because it was given to all
12. offenders convicted of Miss.Code Annoted § 41-29-139 up-front until[MCA § 47- 5 -138.1 amended effectively April 28,2004, and a second subsection was added to exclude inmates convicted of
13. certain offenses from being eligible for additional earned time designating Section MCA §47- 5 -138.1 as one for which] I would not be entitled to addidtional earned time ;
14. I exhausted my Mississippi Dept. of Corrections Administrative Remedies, and filed a Petition To Clarify Sentence in criminal Files 2003K-685P and 2003K-397E) in LAMAR COUNTY,Ms. Cir.Ct ,
15. Which complained that MCA § 47- 5 -138.1 (Ame ded April 28,2004) is an EX POST FACTO violation as applied to my sentence, as it is to my determent, requiring me to serve a longer sentence than
16. the law previously required me to serve, before the amendment.

THE SPECIFIC FACTS THAT ARE NOT WITHIN THE PETITIONER'S KNOWLEDGE

1. I Do not have the exact amount of inmates who are serving sentences under MCA 47-5-138.1 (Pre-APRIL 28,2004) and are receiving 10 days for every 30 days they(would have to serve);
2. I do not know why I was not granted relief in the Request For an Administrative Remedy Program three steps .
3. I do not know why the LARMAR CIRCUIT COURT ORDER construed TRUSTY TIME [Earned as a trusty] when offenders don't have to be in MORA/MOA Custody to receive the addidtional earned time.
4. I don't know why I Didn't receive an EVIDENTIARY HEARING to determine If other offenders similarly situated were receiving the benifit of 10 days for 30 days, upfront time (not earned) as defined pursuant and LIMITED TO MCA § 47-5-138.1 (Pre-APRIL 28,2004) .
5. I don't have any other information at present within my knowledge.

AFFIANT SAITH NAUGHT.....

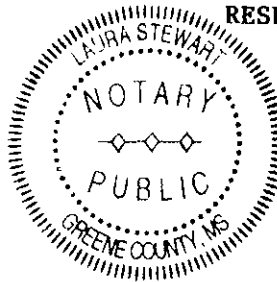
SWORN TO BY ME UNDER THE PENALTY OF PERJURY THAT THE SPECIFIC FACTS WITHIN THE

PETITIONER'S KNOWLEDGE, AND FACTS NOT WITHIN THE PETITIONER'S KNOWLEDGE ARE

TRUE TO BY BEST BELIEF AND UNDERSTANDING....ON :

THIS THE 1 DAY OF November, 2006 .

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE
MY COMMISSION EXPIRES: June 2, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS



RESPECTFULLY SUBMITTED ,

My Commission Expires On:

By: Vandy 106903
AFFIANT

By: [Signature]
NOTARY PUBLIC

IDENTITY OF A PREVIOUS PROCEEDING IN STATE/FEDERAL COURT

The Petitioner/Appellant VAN GRAY was indicted by the LAMAR COUNTY GRAND JURY on OCTOBER 16, 2003, on the charge of sell or transfer of a Schedule II controlled substance, in an amount less than 0.1 gram, in violation of Mississippi Code Annotated Section 41-29-139. the Petitioner Plead Guilty to the charge on September 14, 2004, and was later sentenced on OCTOBER 1, 2004, to 15 years with 8 suspended, 7 years to serve in lieu of post-release supervision.

The Petitioner aggrieved with his sentence computation from the Mississippi department of Corrections, filed an Administrative Remedy Request. See ,CERTIFICATE OF COMPLETION requirement of Adminstrative Remedy Program, dated December 22, 2005.

The Petitioner aggrieved with the results of the Administrative Remedy Program, FILED a "NOTICE OF MOTION" January 17, 2006, in the LAMAR COUNTY, Mississippi Circuit Court, with "PETITION TO CLARIFY SENTENCE", including **Nine (9) Exhibit(s)**.

The LAMAR COUNTY, Ms. Circuit court Filed it's Opinion/ORDER on **June 16, 2006**, [**ORDER FOR SUMMARY DISMISSAL**] dismissing his request for post conviction relief without evidentiary hearing .

The Petitioner has not filed anyother motions in state/Federal Court after June 16, 2006, an appeals this case directly to the Mississippi Supreme Court/Mississippi Court of Appeals .

CONCLUSION

Grant the Petitioner/Appellant the Construction of MCA §47-5-138.1 an afford the Petitioner/Appellant upfront 840 (eight-hundred, forty days "TRUSTY TIME") as other offenders similarly situated in the Mississippi Dept. of corrections, and/or Evidentiary hearing to substantiate all fact pertainate to relief ;

IN THE MISSISSIPPI SUPREME COURT
MISSISSIPPI COURT OF APPEALS

VAN GRAY

PETITIONER/APPELLANT

Vs.

APPEAL No. 2006-CP-01139-COA

STATE OF MISSISSIPPI

RESPONDENT/APPELLEES

MEMORANDUM and BRIEF ON APPEAL FROM THE
TRIAL COURT'S ORDER DENYING PETITION TO CLARIFY
SENTENCE [SIC] INTERPREDED AS A MOTION FOR
POST CONVICTION COLLATERAL RELIEF UNDER
MCA § 99-39-1 thru MCA § 99-39-29 .

Comes Now, Appellant Van Gray, Mississippi Prisoner
Number 106903, with this his Appeal from the Denial of the Trial
Court's Order Denying Petition to Clarfy Sentence [] Intrepeded
as a [M]tion for Post Conviction Collateral Relief for the follow-
ing Grouds to wit :

GROUND I.

THAT THE CIRCUIT COURT ERRED BY DISMISSING PETITIONER'S
EX POST FACTO CLAIM WITHOUT THE BENIFIT OF AN EVIDENTIARY HEARING .

In the case before the Court, here on appeal, it is the
Appellant Contention , that the Lamar County Circuit Court should
not have dismissed his case Summarily pursuant to MCA §99-39-11(2)
without an evidentiary hearing. It was in-fact almost two (2) years

before the jury returned an indictment against him in this case .

Also, the record was not developed to demonstrate, that, many offenders in the Mississippi Department of Corrections, still receive 10 days for every 30 day prospective, of sentences handed down by thier individual Circuit Court's .

The Lamar Couty circuit court Suggest , but does not opine, Here, Gray's arguement has no merit .(Frivilous)

Gray would suggest that, MCA 47-5-138.1 is, a sentencing guideline for the Mississippi Dept. of Correction Classification dept. to allow offenders to receive an additional earned time allowance according to State statue in effect at the time the cosummation of the criminal act .

This Court recently opined in McKnight v. State, 751 So.2d 471, at *473; 1999 Miss. LEXIS 161, **6 P.18 :

.....["Therefore he is is entitled to parole and earned time according to the law on the date the crime occured. Stated differently McKnight believes that because the crime he committed was complete on September 29,1993, the legislation known as the "truth in Sentencing" is not applicable to his circumstances. Thus he believes that he is entitled to parole and earned time."]

Because Gray is proceeding "Pro se" without the benifit or asistance of Counsel; the Lamar County Trial Court may have misunderstood him. However, Gray did cite : McKnight, Supra ,because his crime was committed before House Bill 686 excluded person(s) convicted under MCA §41-29-139(A) of earning Trusty Earned Time. Thus Gray Beleives that he is entitled to 10 days earned time from the day he originally requested it for eary 30 days to be served. That this issue is not frivilous, and may require a evidentiary hearing.

GROUND II.

The Crime plead guilty too by Gray was Committed on or about the 21st, day of October 2001. The indictment was returned on the 16, day of October 2003 and Gray was sentenced on October 1, 2004 .

During the course of these proceeding(s) Gray's conviction consummated on On October 21, 2001, did establish that his actions applied to the Law(s) MCA §47-5-138.1 . (Citations ommitted) .

This Subsection provided for Offenders convicted of offenses under MCA 41-29-139(a) to receive 10 days of what is discribed as "Trusty Earned Time" (This trusty Earned time however is acumulated) by the total term of sentence to be served by the offender, by him being placed in Trusty status, not necessary mening that the Offender is place in MORA CUSTODY / MOA CUSTODY (GREEN PANTS) .

Trusty earned Time status is a Classification Placing the of-fender under a Sentencing Guideline , that allows the offender to receive "ALLOTTED TIME" for "work" "Good Conduct", and other meritorious deeds by Offenders according to Personell and Staff Observvation(s) after rigerous counseling by caseworks and conformations by MDOC Staff .

The Majority of the Offender placed into "TRUSTY STATUS" before the confirmation of: HOUSE BILL 686 (Effective 28th, day of APRIL, 2004, still retain their "TRUST STAUS as to a GRANDFATHER CLAUSE .

Gray here request that this court respect MCA §47-5-138.1 as an [!constitutional sentencing guideline, instructing the Mississippi Department of Correction classification Committee under MCA §47-5-801 through MCA §47-5-807 . Gray's Argument is that the enactment of House Bill 686 prevents him from receiving whats amounts to be a two (2) year

reduction in the amount of time he would serve on the sentence he received, amounts to a sentence increase pursuant to an amendment of the Miss. Code Ann. § 47-5-138.1, by House Bill 686 which was not in effect when Gray committed the Sale of a Controlled Substance October 24, 2001 under Miss. Code Ann. § 41-29-139(a) .

The Mississippi State cases cited by Gray to the Lamar County, Mississippi Circuit Court , McKnight v. State, Supra, 751 So.2d 471 (Miss.1999), See Also Puckett v. Ables, 684 So.2d 671 , Suggest that a'sentence increase pursuant to an amendment of the guidelines effective after the offense was committed violates the State's Ex Post Facto Clause Miss. Const. Art. 3 § 16 : Which States:

" ...Ex Post Facto laws shall not be passed."

See Also, Article I § 10 of the United States Constitution , Which prohibits States from passing Ex Post facto Laws .

Gray Submitts that he has proven each prong of the violation of both the state, and/or federal Ex Post facto Clauses prima Facie by the record he presented to this court. The two elements which must be present are .

To prove a violation of the Ex Post Facto clause (1) law Must apply to Events occuring before it's enactment, and (2) it must dis-advantage offender affected by it . Which appears the case here. in order to avoid an Expost Facto violation, "[w]hen the guidelines are amended after the defendant committs a criminal offense, but but before he is sentenced, and the amended provision calls for a more severe penalty than the original one, those guidelines in effect at te time the offense was committed govern the imposition of sentence."

CONCLUSION / RELIEF

Wherefore Premises Considered, the Appellant Van Gray, a Mississippi Prisoner respectfully presents this his Argument concerning guidelines, the Classification Committed used to grant offenders similarly situated 10 days trusty earned time prospectively for every 30 days prospective by placing an offender in even a general classification status as common labor . House Bill 686 allowed offenders to receive 30 days Trusty Earned Time Status for every 30 days the offender actually Serves (Do 30, get 30) where as under the 10 or 30 guidelines/ Classification (All time was calculated prospectively) . This information was/has never been provided to the courts .

Because this 10 days trusty time was given in such a prospective manner, upfront, Gray Calculates that he is serving an Eight (8) year sentence, 12 months in the year times 10 days equals a total of 120 days trusty earned time he would receive per year times 7 years, or the date of the original request, because he claims in this appeal that House Bill 686 restricting offenders convicted of Miss. Code Ann. § 41-29-139(a) does not apply to him as an Ex Post facto Law .

The Only question to Clarify is whether the Mississippi Dept. of corrections Classification Committee Statues in intrepreting Sentencing Statues cited in it's various Policy & Procedures SOP/DOC 22.01.01 ; 22.02.01 ; 22.03.01 ; 22.04.01 ; 22.07.01 , and 22.08.01 are in-fact guilines which affect sentencing .

Petitioner/Appellant respect request this court grant any relief it deems just and proper in accordance with the appellant's argument .

CERTIFICATE OF SERVICE

I Van Gray, Mississippi Prisoner number # 106903 , hereby
Certify that I have this day Mailed an "APPEAL FROM THE DENIAL
OF THE TRIAL COURT'S ORDER DENYING PETITION TO CLARIFY SENTENCE
[SIC] INTERPREDED AS A MOTION FOR POST CONVICTION COLLATERAL REMEDY
UNDER MCA § 99-39-1 thru § 99-39-29 ,to the following interested
persons U.S. POSTAGE PREPAID .

1. MS. BETTY W. SEPHTON, CLERK, MISSISSIPPI SUPREME COURT,
POST OFFICE BOX 249 , JACKSON, MISSISSIPPI, 39205-0249.
2. MR. JIM HOOD , THE MISSISSIPPI ATTORNEY GENERAL ,
POST OFFICE BOX 220 , JACKSON, MISSISSIPPI. 39205-0220 .
3. LESLIE WILSON ,CIRCUIT CLERK , 203 MAIN STREET,
COURTHOUSE , P.O. BOX 369 PURVIS, Ms. 39475-0369 .

EXECUTED BY ME THIS 1 DAY OF November ~~OCTOBER~~ , 2006 .

FLIP
FILE
BCCI:

RESPECTFULLY SUBMITTED ,

By: Van Gray #106903
VAN GRAY #106903
SMCI-AREA 1, UNIT # 11
22689 HWY. 63 NORTH
POST OFFICE BOX 1419
LEAKESVILLE, MISSISSIPPI 39451