

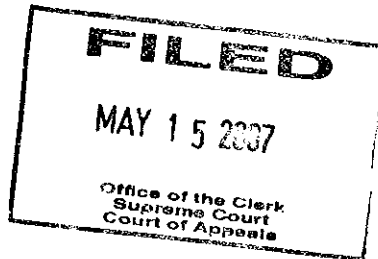
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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ANNIE WALTON IVORY

APPELLANT

VS.



NO. 2007-CP-0092-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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PROCEDURAL HISTORY:

On August 19, 2004, Annie Walton Ivory, "Ivory" pleaded guilty to "felony DUI third offense in five years" and possession of cocaine before the Circuit Court of Monroe County, the Honorable Thomas J. Gardner, III. presiding. C.P. 13-26. Ivory was given a sixteen and a five year concurrent sentence. C.P. 25-26. She was placed in "the intensive supervision house arrest program," "the ISP" for one year, if she abided by the terms of that program. C.P. 25.

In November 2005, Ivory was found to have violated terms for continuing in that house arrest program and placed in the women's general prison custody. C.P. 136.

Ivory filed for relief in "a Habeas Corpus" motion with the trial court. C.P.69-83. The Trial court found it had a lack of jurisdiction. Ivory appealed to this court for relief. C. P. 195.

ISSUE ON APPEAL

I.

**CAN IVORY APPEAL FROM BEING
DISMISSED FROM THE ISP PROGRAM?**

STATEMENT OF THE FACTS

On January 28, 2004, Ivory was indicted for felony DUI, for a third offense in five years, and possession of cocaine by a Monroe County Grand jury. C.P. 7-8 ; 14-15.

On August 19, 2004, a hearing was held on Ivory's guilty pleas to felony DUI third and possession of cocaine. This hearing was before the Circuit Court of Monroe County, the Honorable Thomas J. Gardner, III. presiding. Ivory was represented by Ms. Luanne S. Thompson. C.P. 13-29..

The trial court advised Ivory of the Constitutional rights she was waiving by pleading guilty. This included her right to a jury trial with the right of cross examination of witnesses against her, as well as her right to testify or not based upon her own decision. C.P.17-20 . The trial court questioned Ivory about her understanding of the two separate charges, and the maximum sixteen and five year sentences for convictions. R. 20-21. Ivory testified she understood the maximum sentences for those two offenses. R. 20-21.

Ivory testified that she had not been coerced into pleading guilty or promised anything in exchange for her testimony. R. 17. She also testified that she was not under the influence of drugs or alcohol. R. 15. Ivory admitted the factual basis for her pleas. She admitted that she was guilty of both felonies. R. 20.

Ivory testified she understood the recommendation by the prosecution. R. 23. This was for a sixteen and a five year concurrent sentence, with a year in "the intensive supervision program" of the Mississippi Department of Corrections. R. 22-23. Upon successful completion of "the ISP program," she would have four years of post release supervision if she abided by the terms of her probation. R. 22-23.

Ivory was also informed that should she violate the terms of "the ISP," she would be removed and placed in the general prison population in Rankin County. She would then serve her

sixteen year sentence. C.P. 26.

After advising and questioning Ivory and her counsel about her understanding of “the nature of the charges and the consequences of her plea,” the trial court found that her pleas were voluntarily and intelligently entered. C.P. 24. Ivory admitted that she was satisfied with the advise and counsel of her guilty plea counsel. C.P. 24.

In keeping with the plea recommendation, Ivory was sentenced to serve a sixteen and a five year concurrent sentence. R. 25-26. She was placed in “the intensive supervision program” for one year.

Ivory was found to have been in violation of the terms of her supervision and placed in the general prison population to serve her sixteen and five concurrent year sentences. C.P. 136, 142, 145.

On December 4, 2006, Ivory filed a Motion for Habeas Corpus with the trial court of Monroe County, Judge Gardner. C.P. 69-83. Judge Gardner denied relief, finding a lack of jurisdiction. C.P. 194.

SUMMARY OF THE ARGUMENT

1. The record reflects that the trial court correctly found that it lacked jurisdiction. C.P. 194. Ivory filed a motion for Habeas Corpus with the Circuit Court of Monroe County. C.P. 69-83. Ivory complained of having been revoked from continuing in the Intensive Supervision house arrest program. This court had originally sentenced her to a sixteen year sentence. C.P. 25-26. After finding her pleas were voluntarily and intelligently entered at her guilty plea hearing, Ivory was placed in “the intensive supervision program.” Ivory was also advised that if she violated the rules for “the ISP”, she would be not be given another hearing but merely placed in the general prison population. C.P. 26.

In keeping with that sentencing order, when Ivory was removed from the ISP program for rule violations, she was placed in the general prison population. Ivory’s sentence was a matter for “the classification commission” of the MDOC. Under Miss. Code Ann. §§ 47-5-1001 through 47-5-1015 (1993 & Supp.1999) entitled “Intensive Supervision Program” and decisions of the Mississippi Supreme Court in **Babbitt v. State** 755 So.2d 406, *409 (Miss. 2000) and **Bell v. State** 759 So.2d 1111, *1115 (Miss.1999), the Circuit Court of Monroe County correctly found that it lacked jurisdiction over Ivory’s sentence. C.P. 194.

ARGUMENT

PROPOSITION I

THE TRIAL COURT CORRECTLY FOUND IT LACKED JURISDICTION OVER IVORY'S ATTEMPTED APPEAL.

In Ivory's Petition For Habeas Corpus, she complained about her sixteen year sentence, as well as the alleged arbitrariness of the decision to revoke her from continuing under the terms of the Intensive Supervision Program. C.P. 69-83.

The trial court found that it lacked jurisdiction. C.P. 194. The Court stated in its Order that "the Intensive Supervision Program", an electronically monitored house arrest program, was by its statutory authority under "the exclusive control and direction" of the Mississippi Department of Corrections. As stated in the trial court's Order:

Petitioner violated her terms and conditions as outlined in the Intensive Supervision Agreement by the Mississippi Department of Corrections. The Intensive Supervision Program is an administrative program of the Department of Corrections, and this Court has no jurisdiction to grant relief to those who are removed from the program. C.P. 194.

This was also in conformity with the trial court's instructions to Mrs. Ivory at her sentencing hearing.

Court: I want to caution you of one thing. If during the course of your ISP service, this time, the Department of Corrections finds you in violation of any term or condition, you will not come back here, you will not have a court hearing, you will be transported to Rankin county where the facility there is I think the women's prison, and that's where you'll go.

Defendant: I understand. C.P. 26. (Emphasis by Appellee).

In **Babbitt v. State** 755 So. 2d 406, *409 (Miss. 2000), the Supreme Court found that the circuit court correctly found that it lacked jurisdiction to reinstate Babbitt's sentence. Babbitt's sentence was for "the Classification Committee" of the Department of Corrections.

It is undisputed that the Disciplinary Committee, an arm of the Classification Committee, determined that Babbitt was not guilty of the alleged rule violation. This determination was made prior to the post-conviction relief hearing in the circuit court. **The circuit court was correct in dismissing Babbitt's motion of for post-conviction relief, but under section 47-5-1003(3) the circuit court lacked the jurisdiction to reinstate Babbitt's twenty (20) year sentence. This power is given to the Classification Committee by the aforementioned statute.**

(Emphasis by Appellee).

In **Babbitt v. State**, 755 So.2d 406, *409 (Miss. 2000), the Supreme Court also pointed out that under M. C. A. §47-5-1001 through 1015 (Supp 1993 and 1999), the classification committee of the MDOC has “full and complete” jurisdiction “in matters relating to violations of the standards for remaining in that house arrest program.

¶ 11. Miss. Code Ann. §§ 47-5-1001 through 47-5-1015 (1993 & Supp.1999) are titled “Intensive Supervision Program; Electronic Home Detention,” and governs all matters relating to the ISP. Section 47-5-1003, titled, “Intensive supervision program; eligibility; procedure; time limits; program violations,” is the controlling authority of this case. (emphasis added). Specifically, section 47-5-1003(3) confers “full and complete” jurisdiction on the classification committee in matters relating to violations of the ISP. It reads:

To protect and to ensure the safety of the state's citizens, any offender who violates an order or condition of the intensive supervision program shall be arrested by the correctional field officer and placed in the actual custody of the Department of Corrections. Such offender is under the full and complete jurisdiction of the department and subject to removal from the program by the classification committee.

In **Bell v. State** 759 So.2d 1111, *1115 (Miss.1999), the Supreme Court found that a trial court could not modify a sentence after the term of court in which an inmate was sentenced.

Also, the sentence would, in effect, be modified after the end of the term of court in which Bell was sentenced, a practice which this Court has forbidden. See **Dickerson v. State**, 731 So.2d 1082, 1084 (Miss. 1998); see also **Mississippi Comm'n of Judicial Performance v. Russell**, 691 So. 2d 929 (Miss.1997).

The Appellee would submit that the trial court correctly found under Miss. Code Ann. §§ 47-5-1001 through 47-5-1015 (1993 & Supp.1999) entitled “Intensive Supervision Program;

Electronic Home Detention,” the classification committee of the Mississippi Department of Corrections has “full and complete” jurisdiction over any violation of its terms for continuing in that electronically monitored correctional program. This is also in keeping with the case law of the Mississippi Supreme Court as cited above.

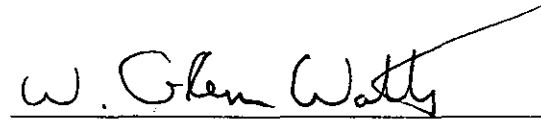
CONCLUSION

This appeal should be dismissed for lack of jurisdiction. Ivory's convictions and sixteen and concurrent five year sentence should be left to the determination of the Mississippi Department Of Corrections under M. C. A. § 47-5-1001 through 47-5-1015 (1993 & Supp.1999).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, W. Glenn Watts, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 15th day of May, 2007.



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