

In The Supreme Court Of The State Of Mississippi

COPY

Bobby Dene

Appellant

v.

State of MS

CAUSE # ~~NO. 2007-0007-M~~
2007-CP-584-COA
Appellee

Brief of Appellant

FILED

JUN 11 2007

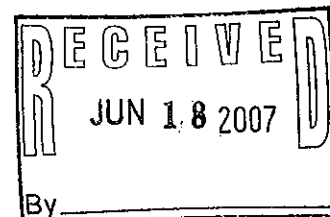
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Bobby Dene

E.M.C.F.

P.O. Box 4217

Maiden, MS 39304



In The Supreme Court Of The State Of Mississippi

Bobby Deere

Appellant

v.

CAUSE NO. [#] 2007-0007-M

State of MS

Appellee

Certificate of Interested Persons

The undersigned, appellant, pro se, certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court can evaluate possible disqualifications or recusal.

1) State of MS

2) Bobby Deere

This the 11 day of June, 2007.

Bobby Deere

Bobby Deere
Appellant

Table of Contents

Certificate of Interested Persons	I
Table of Contents	II
Table of Authorities	III
Statement of Issues	I
Statement of Case	I
Facts	I
Summary of the Argument	I
Argument	I
Issue #1	I
Issue #2	2
Conclusion	2
Certificate of Service	3

Table of Authorities

State Cases:

Dalby v. State, Nev. 1990, 787 P.2d 386, 106 Nev. 63 2

Gonzalez v. State, Fla App. 5 Dist. 1992, 596 So.2d 701 2

Norris v. State, Ga. 1992 913 S.E.2d 439, 241 Ga.
859, on remand 417 S.E.2d 223, 2013
Ga. App. 322 1

State v. Ballard, Ohio App. 12 Dist. 1991, 602 N.E. 2d 1239, 77
Ohio App. 3d 595 2

Statement of Issues

Whether the trial court could amend Appellant's sentence, in the absence of Appellant, & after sentence has begun to be served?

Whether Appellant was revoked to serve the full 15 years or the 5 years as stated by the court at the revocation hearing.

Statement of Case

This appeal proceeds from the Circuit Court of Sunflower County, MS. & a judgment of conviction for the crime of Armed Robbery & the resulting sentence of 20 years in the M.D.O.C. with the last 15 years suspended & with the first 5 suspended years to be served on probation, following a guilty plea on June 22, 1990, & a denial of Appellant's Motion for Post-Conviction Relief on March 14, 2007.

Argument

Issue #1: whether the trial court could amend Appellant's sentence, in absence of Appellant, & after sentence has begun to be served?

The trial court stated in its denial of Appellant's Motion for Post-Conviction Relief that it entered an order amending Appellant's sentence to 15 years, instead of the revoked 5 years imposed at the revocation hearing. The trial court is in error as the "sentencing court may not increase sentence once defendant begins serving it without violating prohibitions against Double Jeopardy." Norris v. State, Ga. 1992, 413 S.E.2d 439, 261 Ga 859 on remand 417 S.E.2d 223, 205 Ga App 322. See also:

Solby v. State, Nev. 1990 787 P.2d 588, 106 Nev. 63 ; Gonzalez
v. State, Fla. App 3 Dist. 1992 586 So. 2d 711 ; State v. Ballard,
Ohio App. 12 Dist. 1991, 602 N.E. 2d 1234, 77 Ohio App. 3d
595.

Issue #2: Whether Appellant was revoked to serve the full 15 years or 5 years as stated by the court at the revocation hearing?

Transcripts, as well as records of M.D.C., establish that the court intended for Appellant to serve the 5 years. See also attached Exhibits A (M.D.C. commitment report), Exhibit B (Order of Revocation of Probation & notation from Clerk of Sunflower County Circuit Court). These documents establish that Appellant was revoked to serve the 5 years, not the full 15 years.

Conclusion

Appellant is entitled to have the Circuit Court reenter an Order notifying all parties (M.D.C., Circuit Clerk, & Appellant) that the correct sentence is 5 years.

Respectfully Submitted,

Bobby Deere
Bobby Deere, Appellant

Certificate of Service

That certifies that I have this day & date caused
to be made a true & correct copy of the foregoing
to:

Jim Board
Attorney General
P.O. Box 200
Jackson, MS
39205

This for 11 day of June, 2007.

Bobby Deere
Bobby Deere
Appellant

**Mississippi Department of Corrections
Commitment Report**

NAME: DEERE, BOBBY L

MDOC #: 00000748908

ENTRY TYPE: PROB REV FROM

RECEIVED: 04-DEC-00

OFFENSE	INVOLVEMENT	SENTENCE DATE	COUNTY OF CONVICTION
ARMED ROBBERY		02-MAR-00	SUNFLOWER

SENTENCE: 005 YEARS 00 MONTHS 00 DAYS

RACE: BL SEX: M DATE OF BIRTH: 31-JAN-65 AGE: 35 EYES: BROWN

HEIGHT: 5 08 WEIGHT: 175 COMPLEXION: MEDIUM BUILD: MEDIUM HAIR: BLACK

MARKS, SCARS, TATOOS, AMPUTATIONS:

BURN ON HEAD

Incase of accident notify: LOUISE DEERE
PO BOX 144, BELZONI, MS 39038

Relation: MOTHER
(662) 247-4881

PHYSICIAN'S REPORT

Physical Handicaps/Impairments: NO

Mental/Psychiatric Disorder evident? NO

WORK CLASSIFICATION:

☒ CLASS 1: Able to work any job to which assigned. Includes road crew, field crew, etc.

☐ CLASS 2: May do light outdoor work (Includes light 10 - 15 lb. lifting, some construction, etc.) - - No logging, heavy lifting, strenuous field work.

☐ CLASS 3: May do any type indoor work (Includes cleaning, lifting, etc.) No direct exposure.

☐ CLASS 4: May do light indoor work (Includes clerical, other desk work, etc.).

☐ CLASS 5: Medically unable to work; disabled; must sign authorization/waiver to be assigned to any duty/work responsibility.

DATE

12/06/00

PHYSICIAN

[Signature]

OCCUPATION: UNEMPLOYED

FBI NUMBER:

SSN: 426-19-0358

Y OF SUNFLOWER CAUSE 10,159

TO THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS

are hereby notified that at the JUNE term, 19 90, of the circuit court,
e HOWARD Q. DAVIS, JR. presiding, the following named person was tried, convicted,
sentenced to a term in the state penitentiary, as follows:

PRISONER'S NAME BOBBY DEERE ALIAS NONE

SS# 426-19-0358 DOB 1/31/65 RACE BLACK SEX MALE

CRIME ARMED ROBBERY MS CODE SECTION _____

DESCRIPTION OF CRIME SEE ATTACHED COPY OF INDICTMENT ✓

DATE OF SENTENCE JUNE 22, 1990 LENGTH OF SENTENCE TWENTY YEARS

SUSPENDED LAST 15 YEARS TO SERVE _____ FIRST 5 YEARS
PROBATION TO FOLLOW ✓

CONCURRENT TO # _____

CONSECUTIVE TO # _____

HABITUAL _____ PROBATION REVOCATION _____

RID _____ SHOCK PROBATION _____ ALCOHOL/DRUG TREATMENT _____

DATE APPEALED _____ DATE AFFIRMED _____

RELEASED ON BOND _____ TO _____

_____ TO _____

_____ TO _____

CONFINED IN JAIL _____ TO _____

_____ TO _____

_____ TO _____

PRESENTLY HOUSED IN _____ SUNFLOWER COUNTY JAIL

FINE _____ COURT COST \$172.50 RESTITUTION _____ INDIGENT FEE _____

CONDITIONS OF PAYMENT _____

Handwritten initials: PD

SAM J. ELY, JR.
CIRCUIT CLERK

STATE OF MISSISSIPPI

Vs.

Bobby L. Deere
Defendant

In the Circuit Court

Sunflower County, Mississippi

¹⁵⁹
No. 10,519

ORDER OF REVOCATION OF PROBATION

THIS CAUSE coming to be heard, and being heard in the March term of the Court before the Honorable Ashley Hines, Judge, and it appearing that Bobby Deere hereinafter referred to as the aforesaid, was on the 22 day of June A.D. 1990, convicted of the offense of Armed Robbery in the Circuit Court of Sunflower County, which Court sentenced him to serve 20 years in the Mississippi Department of Corrections and suspended the execution of said sentence and placed the aforesaid on probation for a term of 5 years, in accordance with the provisions of Mississippi Code 1972, Annotated Sections 47-7-33 and 47-7-35.

It further appearing that the aforesaid has not properly conducted him self, but has violated the conditions of his probation in a material respect by:

- 3) Failure to regularly report as directed ✓
- 6) Not own or carry with him any weapon
- 0) Not violate any law of the United States
- 6) Failure to pay supervision fees as directed ✓
- 8) Pay the following to the clerk of Sunflower County: \$172.00 ✓

IT, THEREFORE, IS ORDERED AND ADJUDGED that the probation of the aforesaid defendant ought to be revoked and it is hereby revoked in accordance with Mississippi Code 1972, annotated, Section 47-7-37 and the said defendant is hereby remanded into the custody of the Sheriff to await transportation to the Mississippi Department of Corrections.

DONE AND ORDERED IN OPEN COURT, this 2d day of March, A.D. ²⁰⁰⁰19.

cc: Circuit Clerk
Deputy Commissioner of Community Services
Field Officer

MDOC-CS-4-1983-117

FILED

MAR 16 2000

SHARON McFADDEN
CIRCUIT CLERK

By

MB96
PG 114

Judge

SHARON MCFADDEN
CLERK OF THE CIRCUIT COURT
SUNFLOWER COUNTY
P.O. BOX 576
INDIANOLA, MISSISSIPPI
PHONE: 601-887-1252 FAX: 601-887-7077

TO: Bobby Deere # 74890 Pearl, MS
SUBJECT: Documents
CASE NO. 030200 DATE 080801

Mr. Deere,
Order of Revocation dated 030200 shows you are
serving 5 years. This document was provided to
MDOC - Copies of documents are 50¢ each page.

PLEASE REPLY TO

SIGNED

Sharon McFadden

DATE

SIGNED

Mississippi Department of Corrections Inmate Time Sheet

Offender: DEERE, BOBBY L 74890

Housing: EAST MISS. CCF

Computation Date: 08/08/2006 11:09

Date Printed: 08/10/2006 13:48

Sentences:

DATE	CAUSE/COUNT	OFFENSE	COMMITTED	COUNTY	SERVE	HOUSE	PROBATION HAS	DEFERRED	OVERRIDE	CONCURRENT	CONSECUTIVE
03/02/00	10,159/1	1288:ARMED ROBBERY	03/01/80	Shuflower	15Y		60M	N			
01/16/03	20-8662/2	1288:ARMED ROBBERY	12/30/89	Yazoo	5Y		60M	N			10,159/1

First Time Offender

Pre Trial/Pre Sentence Jail Time:

FROM	TO	DAYS
12/30/99	02/28/00	60

Total Jail Time: 60

Override: 3

Computation Details:

DATE	DESCRIPTION
03/02/00	10,159/1 1288:ARMED ROBBERY 15Y
01/09/03	Text ENTRY 01/09/03 ADD 5YRS CS MAND.
01/16/03	20-8662/2 1288:ARMED ROBBERY 5Y CS to 10,159/1

Summary:

Begin Date	House Arrest Date	Parole Date	Tent. ERS Date	Tentative Discharge	Max Discharge	End Date
01/02/2000				12/28/2019	12/28/2019	
Total Term To Serve: 20Y		Total Earned Time: 0D	Earned Time Lost: 0D	Total MET Earned: 0D	Total Trusty Time Earned: 0D	

Comments:

Exhibit II

*This one here was before I went
back to court and got the other five yr.
in 2003, Then it went from 2005 to 2010*

```
DCOSTD41      ***** MISSISSIPPI DEPARTMENT OF CORRECTIONS *****      DCOSED53
< 2 more      - SENTENCE COMPUTATION -      11:08 AM
                                           Sentence Begin 02/29/2000
*Action (B,D,N):      Offender Number: 0000074890 B Total MET
Name: BOBBY L DEERE      Date / Time: 05/02/2002 18:00 (1 OF 1)
----- Release Dates -----
   Date      Time      Credit      ERS      Parole      Tentative      Maximum
1 POSTING START DATES      02/28/2005 02/28/2005 02/28/2015
2
3
4
5
6
7

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
confm help retrn quit      flip calc bkwrđ frwrđ print left right main
-----
4-©      1 Sess-1      10.247.17.29      COTN213      4/29
```