

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

2007-CP-00623

**JOHN HENRY ADAMS
APPELLANT**

vs.

**GLORIA GIBBS, DIRECTOR OF RECORDS
APPELLEE**

**On Appeal From the Circuit Court
of Sunflower County, Mississippi**

BRIEF OF APPELLEE

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record 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 may evaluate possible disqualifications or recusal:

1. John Henry Adams, Appellant
2. Betty W. Sanders, Circuit Court Judge
4. Jim Hood, Attorney General

The undersigned counsel further certifies that the following attorneys have an interest in the outcome of this case:

For Appellees:

1. Jane Mapp, Special Assistant Attorney General, State of Mississippi
2. James Norris, Attorney Senior, Mississippi Department of Corrections

By: Jane Mapp

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ISSUE

I. Whether the Lower Court Erred by Not Allowing the Appellant 50% Earn Time on the Appellant's Entire Sentences and Convictions; Including, the Mandatory Portion of the Appellant's Armed Robbery Sentences and Convictions.

STATEMENT OF THE CASE

On or about April 18, 2006, John Henry Adams, an inmate legally incarcerated within the Mississippi Department of Corrections ("MDOC") filed a "Petition for an Order to Show Cause or, Alternatively, Petition for Writ of Habeas Corpus" in the Circuit Court of Sunflower County, Mississippi, against the Gloria Gibbs, Records Tech Supervisor at the Mississippi State Penitentiary. (C.P. at 2)¹. According to the time sheet attached to his complaint, Adams is serving two concurrent 15 year sentences for Cocaine-Sell, a consecutive 25 year sentence for Armed Robbery, a concurrent 15 year sentence for Robbery, a consecutive 40 year sentence for Armed Robbery, a concurrent 10 year sentence for Residential Burglary, a concurrent 10 year sentence for Armed Robbery and a consecutive 2 year sentence for Conspiracy to Commit a Crime. Adams has a total term to serve of 82 years. (C.P. at 19). He was sentenced for all of these crimes prior to May 14, 1992. (C.P. at 19).

In his Petition Adams states that on December 12, 2005 he received a copy of an Order in the Sunflower County Circuit Court case of *Travis Levy v. Christopher Epps*, Cause No. 2004-0062-M, in which the court noted that he, John Adams, # 43754, received his armed robbery sentence before May 14, 1992 and therefore had received earned time on the entire sentence, including the mandatory portion, as was the practice at that time. (C.P. at 3, 14). Adams argues that his current time sheet does not reflect that he has received the 50%

¹C.P. = Clerk's Papers

earned time allowance off his entire sentence. He states that an earlier time sheet he received which he attaches to his complaint as Exhibit "D" is actually correct. He states that on that time sheet he was properly given 41 years of earned time off his 82 year sentence and an addition 15 years off the mandatory portion of his sentence giving him a conditional discharge date of March 10, 2012.² (C.P. at 4). He also states that on or about March 10, 200 he was placed in trusty status and was awarded 2 years, 205 days of trusty time, plus 180 Meritorious Earned Time (M.E.T.). Adams states that he did not receive any trusty time off the mandatory portion of his sentence. These allowances advanced his parole date to January 4, 2008. (C.P. at 4). Adams received yet another time sheet date May 5, 2003 showing all of the trusty time had been taken away making his parole eligibility date November 4, 2010. (C.P. at 5).³ Adams argues that his current time sheet shows that his has 30 years of mandatory time and that he has never been granted any earned time off the mandatory portion of his sentence. (C.P. at 5, 19). He states that the time sheet reflects only 32 years, 180 days of earned time where previously he had received 41 years of earned time and 180 of M.E.T. (C.P. at 6, 19).

²Adams never explains why he believes he is entitled to an additional 15 years of earned time off the mandatory portion of his sentence when he had already received 41 years or 50% off his entire 82 year total term.

³The Mississippi Court of Appeals in *Adams v. Epps*, 900 So.2d 1210, 1213 (Miss.Ct.App. 2005) held that Adams was not eligible to receive trusty time while serving the mandatory portion of his sentence and that MDOC had correctly removed the trusty earned time allowance from his time sheet.

Adams argues that MDOC has improperly denied him earned time on the mandatory portions of his armed robbery sentences in violation of the *ex post facto* clause of the constitution.

The Circuit Court dismissed Adams's complaint finding he had in fact received the 50% earned time allowance off his entire 82 year sentence, plus an additional 180 days of M.E.T. (C.P. at 105).

Feeling aggrieved, Adams filed his notice of appeal to the Mississippi Supreme Court and was granted leave to proceed *in forma pauperis*. (C.P. at 107; 117).

STANDARD OF REVIEW

In an administrative agency appeal, the standard of review applied by this Court is identical to that of the circuit court. This Court cannot disturb the decision of an administrative agency, here the MDOC, unless the decision was unsupported by substantial evidence, was arbitrary or capricious, was beyond the agency's scope or powers or violated the constitutional or statutory rights of the aggrieved party.

Siggers v. Epps, 962 So.2d 78, 80 (Miss. Ct. App. 2007)(internal citations omitted).

SUMMARY OF THE ARGUMENT

Adams argument is moot because he has in fact received the 50% earned time allowance off his entire 82 year sentence, including the mandatory portion.

ARGUMENT

I. Whether the Lower Court Erred by Not Allowing the Appellant 50% Earn Time on the Appellant's Entire Sentences and Convictions; Including, the Mandatory Portion of the Appellant's Armed Robbery Sentences and Convictions.

The crux of the Appellant John Henry Adams' argument is that since he was sentenced prior to May 14, 1992 he is entitled to received the 50% earned time allowance off his entire 82 year sentence, including the mandatory portions of his two consecutive armed robbery sentences.

Miss. Code Ann. § 47-5-139(1)(e) was amended effective May 14, 1992 to state that an inmate is not eligible for the earned time allowance if he "has not served the mandatory time required for parole eligibility for a conviction of robbery or attempted robbery with a deadly weapon."⁴ Adams was sentenced, prior to the enactment of § 47-5-139(1)(e) and at that time it was MDOC practice to allow an inmate to accrue earned time on his entire sentence, including mandatory portion. However, as has always been the practice of MDOC, this earned time is only applied to the non-mandatory portion of the sentences and can not be used to reduce the time to be served on a mandatory portion of a sentence. Furthermore, the earned time allowance has no bearing on an offender's parole eligibility, only his discharge date.

Adams is getting confused by two things: 1) the 1995 time sheet found at page 16 of

⁴The Mississippi Supreme Court in *Williams v. Puckett*, 624 So.2d 496 (Miss. 1993), held that this amendment was merely a codification of existing MDOC practice and therefore was not ex post facto when applied retroactively. The Circuit Court of Sunflower County, Mississippi in *Hicks v. Houston*, No. 94-0234M found that this was "not a codification of practice that existed prior to the adoption of that statute." The Circuit Court found that it had previously been the practice of MDOC to grant earned time off the entire sentence, including the mandatory portion, and therefore application of § 47-5-139(1)(e) to any sentence imposed before May 14, 1992 was ex post facto. MDOC has since abided by the Circuit Court's decision and has granted the 50% earned time allowance off an offender's entire sentence if imposed prior to May 14, 1992.

the clerk's papers shows an obviously incorrect sentence computation and 2) his current time sheet while granting him the 41 years of earned time off his tentative release date shows only 32 years, 180 days earned time in the summary section. The 1995 time sheet will be addressed first. The time sheet shows that Adams has an 82 year total term with a Begin Date of February 3, 1987. However, the time sheet lists his Earliest Conditional Discharge Date as March 10, 2012, just a little more than 25 years from his begin date. This would mean that Adams received nearly 57 years of earned time on a 82 year sentence, well in excess of the 50% earned time allowance. This time sheet was clearly incorrect. The Mississippi Court of Appeals in an earlier case brought by Adams regarding trusty time held that "[a]n MDOC employee's clerical mistake or oversight does not actually confer eligibility for earned time allowances." *Adams v. Epps*, 900 So.2d 1210, 1213 (Miss.Ct.App. 2005).⁵

Secondly, as the trial court found, Adams has been granted a 50% earned time allowance totaling 41 years off his entire 82 year sentence. The probable reason the summary section of his time sheet shows only 32 years, 180 days of total earned time and zero (0) days M.E.T. is because the computer calculated his time under the post-May 14, 1992 rules and a manual override of his release dates had to be done.⁶ Simply doing the math

⁵In *Adams I* the court held that Adams was not eligible for trusty earned time on the mandatory portion of his sentence.

⁶An even more recent time sheet is found at page 28 of the clerk's papers. This time sheet shows that the computer calculated Adams' time using current law which is that armed robbery sentences are mandatory in their entirety. As can be seen on the time sheet, a manual override of his parole date and tentative discharge date was done to comply with pre-May 14, 1992 law and practice.

shows that Adams has actually received 41 years of earned time, plus 180 days M.E.T. less 60 days lost earned time due to a frivolous lawsuit.

| | |
|----------------------------|------------------|
| Begin Date: | February 3, 1987 |
| + 82 years | February 3, 2069 |
| - 41 years Earned Time | February 3, 2028 |
| - 180 days M.E.T. | August 3, 2027 |
| + 60 days lost Earned Time | October 3, 2027 |

Adams' current Tentative Discharge Date as reflected on his most recent time sheet is October 3, 2027. Accordingly, Adams argument is moot because he has in fact received the 50% earned time allowance off his entire 82 year sentence, including the mandatory portion.

CONCLUSION

Based on the arguments of fact and law herein above, it is clear that the trial court did not commit reversible error and the dismissal of this action by the lower court should be affirmed.

Respectfully submitted,

GLORIA GIBBS
DEFENDANT-APPELLEE

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BY: Jane L. Mapp

CERTIFICATE OF SERVICE

I, Jane L. Mapp, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day caused to be mailed, via United States Postal Service, first class postage prepaid, a true and correct copy of the foregoing **Brief of Appellee** in the above-styled and numbered cause to the following:

John Henry Adams, #43754
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P.O. Box 1419
Leakesville, MS 39451

Hon. Betty W. Sanders
Circuit Court Judge
P.O. Box 244
Greenwood, MS 38935-0244

This, the 24th day of October, 2007.

A handwritten signature in cursive script, reading "Jane L. Mapp", is written over a horizontal line.

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