

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 2007-CP-00623

JOHN HENRY ADAMS

VERSUS

GLORIA GIBBS, DIRECTOR OF RECORDS

FILED

NOV 07 2007

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

APPELLANT

APPELLEE

REPLY BRIEF OF THE APPELLANT

APPEALED FROM THE CIRCUIT COURT
OF SUNFLOWER COUNTY, MISSISSIPPI

JOHN HENRY ADAMS, pro se
MDOC #43754 SMCI AREA 2
P.O. Box 1419
Leakesville, Ms 39451

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF CASES/AUTHORITIES	ii
CERTIFICATE OF INTERESTED PERSONS	iii
INTRODUCTION	i
ISSUE	i
ARGUMENT	1-10
CERTIFICATE OF SERVICE	ii

TABLE OF CASES / AUTHORITIES

<u>CASE</u>	<u>PAGE NO.</u>
<u>Hicks V. Houston</u> , Sunflower Co. Cir. Ct. No. 94-0234M . . .	2, 4, 5, 7, 9
<u>Puckett V. Abels</u> , 684 So. 2d 671 (Miss. 1996)	10
<u>Stewart V. State</u> , Sunflower Co. Cir. Ct. No. 251-94-392 . . .	5, 7, 9
<u>Williams V. State</u> , 624 So. 2d 496 (Miss. 1993)	2, 4, 5, 7, 9

STATUTE / OTHER

<u>14th Amend., U.S. Const.</u>	10
<u>Miss. Code Ann § 47-5-138</u>	7
<u>Miss. Code Ann § 47-5-139 (1)(E)</u>	9-10
<u>Miss. Code Ann § 47-5-142</u>	7

CERTIFICATE OF INTERESTED PERSONS

The appellant hereby certifies that the following persons have an interest in the outcome of this case. These disclosures are made so that the Justices of this Court may evaluate possible disqualification or recusal :

Hon. Betty W. Sanders,

Circuit Court Judge

Hon. Jim Hood,

Attorney General

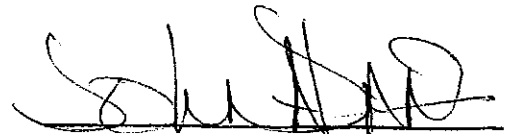
Hon. James "Jim" Norris,

Attorney, MDOC

John Henry Adams,

Appellant, pro se

Certified this the 7 day of ^{NOVEMBER} ~~October~~, 2007:

A handwritten signature in black ink, appearing to read 'John Henry Adams', written over a horizontal line.

John Henry Adams

INTRODUCTION

Although the appellant (hereafter Adams) does not believe that the appellee has materially contested the argument contained in his original brief and have certainly added nothing new, he does renew all of the arguments of his original Brief of Appellant and incorporates those into this Reply Brief of Appellant.

In reply, Adams would address the appellee's Argument and Conclusion at pages 3-6 of the Brief of Appellee.

ISSUE

Whether the lower court erred by not allowing the appellant 50% Earned Time on the appellant's entire sentences and convictions, including the mandatory portion of the appellant's armed robbery sentences and convictions...

ARGUMENT

Adams reiterates and Further assigns that contrary to the appellee's proposition and argument, the issue is not moot because the appellant has not received the 50% Earned Time allowance off of his sentence. Although it may appear that he has, as Adams will now show, that

appearance, in this case, is deceptive.

The crux of Adam's argument is that he is entitled to the full weight and effect of the "common practice" of the Mississippi Department of Corrections, prior to Williams v. State, 624 So.2d 496 (Miss. 1993), which was to grant inmates earned time on their entire sentence, including the mandatory portion of the sentence.

The Circuit Court of Sunflower County, Mississippi, made it clear in Hicks v. Houston, Sunflower County Circuit Court No. 94-0234M, that the "common practice" was to include a 50% reduction of the mandatory portion of an inmate's sentence.

While the appellee has made it abundantly clear that Adams' total term of sentence has been reduced by 50%, (Brief of Appellee at pages 5-6) the appellee's contention that the reduction is "including the mandatory portion" is incorrect.

What the appellee is avoiding is that the "common -- practice" prior to Williams, was to grant inmates earned time on their entire sentence, including the mandatory portion of that sentence.

That practice would have two (2) effects where a mandatory sentence is evident. (1) it would reduce the

total term of sentence by 50% and (2) it would reduce the mandatory portion of the sentence by 50%. Thus, the effect would be two-fold. It would reduce the total sentence by half and it would reduce the mandatory -- portion by half.

Simply showing that Adams' total sentence of eighty-two (82) years has been reduced by 50% to Forty-one (41) years (Brief of Appellee at page 6) does not -- also demonstrate that Adams mandatory portion of sentence has been reduced by 50%.

In other words, to demonstrate and make evident the 50% reduction of the mandatory portion of Adams sentence, as in all mandatory sentences, the effect would be to advance the parole eligibility date by half of the mandatory portion of the sentence in question.

In the case sub judice, Adams has three (3) armed robbery convictions and sentences, all of which require that Adams serve ten (10) mandatory years on each, for a total mandatory portion of sentences of thirty (30) years.

Application of MDOC's "common practice" to grant inmates earned time on their entire sentence, including the mandatory portion, to Adams mandatory portion, would reduce the

mandatory portion of Adams sentence From thirty (30) years to Fifteen (15) years for parole eligibility.

Therefore, under Williams and Hicks, Adams is required to serve only Fifteen (15) years before parole eligibility.

Simply doing the math demonstrates that Adams was eligible for parole and Trusty status after February 3, 2002.

<u>Begin Date</u>	February 3, 1987
+ 15 years mandatory	February 3, 2002
- 41 years Earned Time	February 3, 2028
- 180 days M.E.T.	August 3, 2027
+ 60 days lost Earned Time	October 3, 2027

Therein lies the crevat. Adams should have been eligible for parole after February 3, 2002. He has received no -- parole hearing. MDOC records reflect that he will not be parole eligible until November 4, 2010.

Adams would also be eligible for trusty status after completion of the mandatory portion of his sentence.

According to the MDOC Adams will not be eligible for trusty status until sometime in 2010.

According to the MDOC (and the lower court) Adams is *still serving* the mandatory portion of his sentence. (P.H. page 55-56) (see also EXHIBIT 6 of this appeal)

These Facts clearly refute the appellee's contention that Adams has been granted the earned time allowance of 50% off his entire sentence, including the mandatory portion.

In summation, Adams would show that under Williams Hicks and Stewart v. State, Circuit Court of Sunflower County No. 251-94-392, Adams is entitled to receive the "common practice" earned time reduction of 50% applied to his entire sentence, including the mandatory portion.

In fact, the Court Found that application of Miss. Code Ann. § 47-5-139 (1)(e) would constitute a violation of ex post facto.

The Court said "It is therefore recommended that the conditional discharge date of Hicks and all other inmates to whom Williams v. State, 624 So.2d 496 (Miss. 1993) was applied be recomputed with the policy in effect immediately prior to Williams. (emphasis added)

Adams has not received the Full weight and benefit of the "common practice", to which everyone agrees he is entitled, because the MDOC has not recomputed his sentence and reduced the mandatory portion (30 years) by 50% (15 years)

Adams' parole date of November 4, 2010, reflects that the MDOC is actually requiring that Adams serve twenty-three (23) years as the mandatory portion of his sentence.

Begin Date	February 3, 1987
Parole Date 11-04-2010 (23 yrs)	$\begin{array}{r} + \quad \quad \quad 23 \\ \hline \text{November 4, 2010} \end{array}$

This error effects Adams in several ways. First, Adams argues that it requires he serve eight (8) more years mandatory than he should under the common practice for parole eligibility. Adams should have been parole eligible after February 3, 2002. Second, Adams argues that had the MDOC properly recomputed his sentence and granted him the 50% reduction, as to the mandatory portion of his sentence, he would have been placed in trusty

Status after February 3, 2002. Accordingly, he would have received additional *Meritorious Earned Time* of ten (10) days for each thirty (30) days served under Miss. Code Ann., Section 47-5-142.

Finally, Adams argues that he would have also received the additional benefit of *Meritorious Earned Time* of thirty (30) days for each thirty (30) days served under Miss. Code Ann. Section 47-5-138, which became effective after April 28, 2004.

The result being that MDOC's error and Failure to recompute his sentence under Williams and its progeny has, to Adams' disadvantage, effected the duration of his sentence.

Had the MDOC properly recomputed Adams' sentence under the common practice and dictate of the Hicks and Stewart Court, Following in the wake of Williams, Adams would have received a parole hearing in 2002. Aside from that he would have received enough additional *Meritorious Earned Time* under §§ 47-5-142 and 47-5-138 that his sentence would have now expired.

CONCLUSION

Adams submits that he is entitled to the full weight and benefit of the common practice approved in Williams.

Adams has only received part of that benefit because, while his overall sentence was reduced by 50% from eighty two (82) years to forty-one (41) years, no 50% reduction was made as to the mandatory portion of his sentence.

There is no dispute of the Fact that Adams is entitled to the benefit of this common practice which had the Force of law. The state and lower court have conceded this point. (P.H. at pages 21-39)

Seemingly, the lower court denied Adams relief based upon a vague calculation of his sentence (by MDOC Records) "under the parole and earned time laws in effect at the time of his sentencing." (Opinion and order, C.P. at pages 105-106)

However a review of the Pre-Hearing Transcript (P.H.) at pages 50, lines 17-22, 28-29; 51, lines 1-7; 52 lines 10-15, reflects that the real problem was with an MDOC Sentence Computation Data Sheet (EXHIBIT 1 of EXHIBITS) which reflects an "Earliest Parole Eligability Date" of "11-04-02."

The lower court refused to enter this document into evidence based upon MDOC's contention that the document could not be found in records. However, testimony of MDOC Records Officer Gloria Gibbs corroborates Adams' contentions and, indirectly, the authenticity of the document. Gibbs acknowledges that Adams was placed in trusty status. (and therefore that he had served the mandatory portion of his sentence) (P.H. at pages 45, in lines 25-29; 46, in line 1) Yet because MDOC Records Officer Christine Houston was no longer employed by the MDOC, the document's authenticity became problematic for the court. (P.H. at pages 35, lines 22-26, 36-38)

39 lines 6-10) However, Exhibit 6 (EXHIBITS) is also an MDOC Sentence Computation Data Sheet From the time when Ms. Houston was MDOC Chief Records Officer, and this document was accepted by the court and entered into evidence with no authenticity question.

To deny Adams the full weight and benefit of the common practice under Williams, Hicks and Stewart, which has been done, is to violate the Federal and State constitution's prohibition against application of law ex post -- Facto.

Judge Sanders arrived at the conclusion here in Hicks where she held: "The question, therefore, is does the application of 47-5-139.(1)(e) to deny earned time on the mandatory sentence imposed prior to May 14, 1992, constitute the imposition of an ex post Facto law on Hicks. It is clear that prior to May 14, 1992, and -- Williams, MDOC granted inmates earned time on the entire sentence, without regard to the mandatory portion. As the Supreme Court enunciated in Williams, "out of deference to the agency charged with administering the statute and to stare decisis we are obliged to leave that practice undisturbed." Since the practice had the force of law the next question is whether application of a new practice which increases

the discharge date of an inmate is unlawful. The undersigned finds that the application of 47-5-139 upon Hicks and other similarly situated inmates constitutes the imposition of an ex post facto law which increases the length of his confinement unconstitutionally because the practice in effect when he was sentenced did not deny this earned time." (see also Puckett v. Abels, 684 So.2d 671 (Miss. 1996))

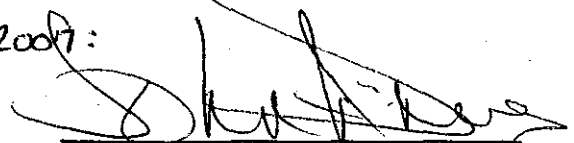
Adams further submits that to grant the full weight and benefit of this common practice to Hicks, Stewart and other similarly situated inmates, and to deny the same to him, violates the Equal Protection Clause of the Fourteenth (14th) Amendment to the United States -- Constitution.

Adams is entitled to receive the full benefit of the common practice. That is to have the mandatory portion of his sentence, (thirty (30) years) reduced by 50%. (fifteen (15) years). Adams would have been eligible for parole and trusty status after February 3, 2002.

Adams should receive all additional Earned Time to which he is entitled.

Respectfully submitted,

this the 5 day of November 2007:



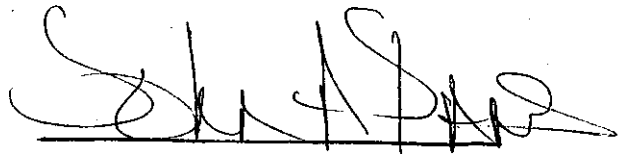
John Henry Adams
#43754, SMCI Area 2, C-1
P.O. Box 1419
Leakesville, Ms 39451

CERTIFICATE OF SERVICE

This will certify that I, the undersigned, have this day caused to be mailed, via the U.S. Postal Service, First Class postage pre-paid, by delivery to the Inmate Legal Assistance Program, the original, along with copies as indicated below, of the foregoing REPLY BRIEF OF THE APPELLANT to the following persons:

1. Hon. Betty W. Sephton, (original + 3 copies)
Mississippi Supreme Court
P.O. Box 249
Jackson, Ms 39205-0249
2. Hon. Jim Hood, Attorney General (1 copy)
Attorney General's Office
P.O. Box 210
Jackson, Ms 39205-0210

So CERTIFIED this the 2 day of November, 2007:


John Henry Adams