IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 2007-CP-00623

JOHN HENRY ADAMS — APPELLANT

VERSUS

GLORIA GIBBS, DIRECTOR OF RECORDS — APPELLEE

REPLY BRIEF OF THE APPELLANT

APPEALED FROM THE CIRCUIT COURT
OF SUNFLOWER COUNTY, MISSISSIPPI

JOHN HENRY ADAMS, pro se
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P.O. Box 1419
Leakesville, MS 39451

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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 ~~October~~ NOVEMBER, 2007:

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 certainely 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 manditory 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 manditory 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 *manditory 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 manditory 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 manditory portion of that sentence.*

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

total term of sentence by 50% and (2) it would reduce the *manditory 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 *manditory* -- *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 *manditory portion* of sentence *has been reduced by 50%.*

In other words, to demonstrate and make evident the 50% reduction of the manditory portion of Adams sentence, as in all *manditory sentences*, the effect would be to *advance the parole eligability date* by half of the *manditory 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) manditory years on each, For a total *manditory portion of sentences* of thirty (30) years.

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

manditory portion of Adams sentence From thirty (30) years to *fifteen* (15) years for parole eligability.

Therefore, under Williams and Hicks, Adams is required to serve only *fifteen* (15) years before parole eligability.

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

Begin Date	February 3, 1987
+ 15 Years *manditory*	Februavy 3, 2002
- 41 years Earned Time	Februavy 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 eligable For parole after Februavy 3, 2002. He has received no -- parole hearing. MDOC records reflect that he will not be parole eligable until November 4, 2010.

Adams would also be eligable for trusty status after completion of the *manditory portion* of his sentence.

According to the MDOC Adams will not be eligable For trusty status until sometime in 2010.

According to the MDOC (and the lower court) Adams is *still serving* the manditory 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 manditory 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 *manditory 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 *manditory 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 *manditory portion* of his sentence.

Begin Date	February 3, 1987
Parole Date 11-04-2010 (23 yrs)	+ 23
	November 4, 2010

This error effects Adams in several ways. First, Adams argues that it requires he serve eight (8) more years *manditory* than he should under the common practice For parole eligability. Adams should have been parole eligable after February 3, 2002. Second, Adams argues that had the MDOC properly recomputed his sentence and granted him the 50% reduction, *as to the manditory 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 *manditory 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 vaque 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 manditory 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 arrieved 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 manditory 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 manditory 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 *manditory portion* of his sentence, (thirty (30 years) reduced by 50%. (fifteen (15) years). Adams would have been eligable 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 2 day of November 2007:

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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