IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JOHN H. ADAMS — APPELLANT

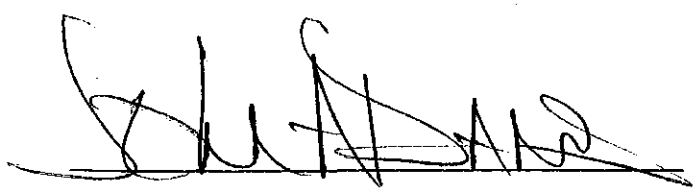
V.

CASE NO. 2007-CP-00623

GLORIA GIBBS, ET AL — APPELLEE

BRIEF FOR APPELLANT

Respectfully Submitted,



Mr. John H. Adams,# 43754
Mississippi State Penitentiary
Unit 30, D-Building
Parchman, Mississippi 38738

Date:
July 31, 2007

CERTIFICATE OF INTERESTED PERSONS

I, John H. Adams, do hereby certify that I have this day caused to be mailed Via United states postal Service a true and correct copy of **Brief For Appellant** to the following persons:

Hon. James M. Jim Norris
Senior Attorney
P.O. Box 36
Parchman, Mississippi 38738

Hon. Betty W. Sanders
Senior Judge 4th District
P.O. Box 244
Greenville, Mississippi 38835

Hon. Jane L. Mapp
Special Assistant Attorney General
P.O. Box 220
Jackson, Mississippi 39205

This the 31 day of July, 2007

Respectfully Submitted,

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BRIEF FOR APPELLANT

STATEMENT OF THE CASE

On April 18, 2006, the Appellant filed in the Circuit Court of Sunflower County, Mississippi, his Petition for an Order to Show Cause or, Alternatively, Petition for Writ of Habeas Corpus (tr.p. 2). On May 25, 2006, the Appellee's filed with the Lower Court their Supplemental Response (tr.p. 25). On May 25, 2006, the Hon. James M. "Jim" Norris, Attorney for the Appellee's, filed his response (tr.p. 31). On June 15, 2006, the Appellant filed with the Circuit Court of Sunflower County, his response to the Appellee's response (tr.p. 34). The very same day of June 15, 2006, the Appellant's Motion for Extension of Time to file a response to the Appellee's response was placed on file (tr.p. 38). Then, on June 23, 2006, a notice of Pre-hearing was issued (tr.p. 41).

On December 12, 2006, the Appellant filed with the Lower Court a Motion for Summary Judgment (tr.p. 54). On February 15, 2007, the Appellant filed with the Lower Court his Motion to Expedite Hearing of Action (tr.p. 100). The very sameday of February 15, 2007, a Notice of Pre-hearing was scheduled (tr.p. 104).

Then, on March 5, 2007, the Hon. Betty W. Sanders, Circuit Court Judge, issued her Opinion and Order (tr.p. 105). On March 26, 2007, the Appellant filed with the Lower Court his Notice of Appeal, Designation of Records, Certificate of Compliance with Rule 11(b)(1), Affidavit for Leave to Appeal in Forma Pauperis (tr.p. 107-114).

On April 27, 2007, the Hon. Betty W. Sanders, Circuit Court Judge, filed with the Clerk of the Lower Court her Order allowing the Appellant to proceed in forma pauperis to the Mississippi Supreme court of Mississippi (tr.p. 117).

This Brief Follows:

a

STATEMENT OF THE FACTS

In July of 1987, the Appellant received from the Circuit Court of Lee County, Mississippi, fifteen (15) years for the offense of Cocaine. In July of 1987, the Appellant received from the Circuit Court of Ponotoc County, Mississippi, twenty-five (25) years for the offense of Armed Robbery to run consecutively to the Cocaine charge, Supra. In July of 1988, the Appellant received from the Circuit Court of Lee County, Mississippi, forty (40) years for the offense of Armed Robbery to run consecutively with the Cocaine Charge of twenty-five (25) years, Supra. Then, in July of 1988, the Appellant received from the Circuit Court of Lafayette County, Mississippi, ten (10) years for the offense of Armed Robbery, and ten (10) years for the offense of Burglary to run concurrent with each other, but to run consecutively with all other sentences. In July of 1989, the Appellant received two (2) years in the Circuit Court of Lee County, Mississippi, for the offense of conspiracy to run consecutively with all other sentences for a total term of eighty-two (82) years. (Pre-hearing tr.p. 32).

In 1987, the Appellant arrived at the Mississippi State Penitentiary. Around May of 1995, the Appellant received from the Mississippi State Penitentiary Records Department, a "Time Computation Data Sheet" showing that Appellant's sentence of eighty-two (82) years had been recomputed and stacked to show a parole date of November 4, 2002. And, a conditional discharge date of March 10, 2012 (tr.p. 79).

Around May of 1995, the Appellant received from the Mississippi State Penitentiary Records Department a "Computation Data Sheet" showing that his sentence of eighty-two (82) years had been stacked and cut in half pursuant to (50%) of his time and to **Hicks v. Houston, No. 94-0234-M**, which gave him a total of (41) years of earntime.

The Appellee's admit to allowing the Appellant (50%) off of the total sentence of (82) years (Pre-hearing tr.p. 15). However, the Appellee's refused to allow the Appellant the (50%) off of the

mandatory portion of his sentences for the Armed Robbery charges, which was the "Common Practice" at that time pursuant to **Hicks v. Houston, No. 94-0234-M.**

The Appellee's through their attorney admits that it was a Common Practice prior to May 14, 1992, for Offenders with Armed Robbery sentences to receive (50%) off of the Mandatory Portion of their sentences. The Appellee's goes on to admit that the Appellant had his Armed Robbery charges prior to May 14, 1992, and therefore, the Appellant falls under the "Common Practice Law" at that time (tr. 77).

During the Pre-hearing held on February 27, 2007, the Appellee's attorney refused to discuss the Common Practice had for Mandatory Sentences of Armed Robbery prior to May 14, 1992, stating that he was only concerned with the law subsequent to May 14, 1992 (Pre-hearing tr.p. 17).

During the Pre-hearing held on February 27, 2007, the Circuit Court Judge, refused to accept the Appellant's "Computation Data Sheet," dated May 5, 1995, stating that "there was a problem with the authenticity of the sheet," because Ms. Houston, the Director of Records, was no longer employed, she had left the job in 1994 (Pre-hearing tr.p. 28). However, the Appellee's presented the very same type of Computation Data Sheet, showing only a three month differences, Mrs. Houston was still unemployed, Mrs. Houston is identified as Chief Records Director, dated February 27, 1995, the Lower Court Judge accepted the Appellee's Computation Data Sheet (Pre-hearing, Exhibits 1&6). (Pre-hearing, tr.p. 30).

However, the Lower Court judge admits that it doesn't matter whether the Appellant'have the Computation Data Sheet or not. The Lower Court Judge went on to say, that if "this is within the law of 1995, we can compute it again like it should have been done in 1995. This just makes--it's easy to have something to see, track where we are going (Pre-hearing, tr.p. 39).

The Appellee's admits that the Appellant during the period of 2001 through 2003, were receiving trusty status time of (10) days a month. However, the Appellee's recinded the trusty status time and all earntime received prior to the Common Practice for Armed

Robbery of May of 1992, because according to the New Law after 1992, the Appellant had not completed the Mandatory Portion of his sentence (Pre-hearing, tr.p. 45, Exhibit 2).

The Appellee's admits that the computer is trying to make the Appellant serve more time, because the computer is not programed to go back before 1992; which meant the Appellee's had to manually put in 2010 for a parole date for Appellant (Pre-hearing, tr.p. 44).

The Appellee's attorney in the Lower Court admits that the Appellant received earntime on the Mandatory Portion of his sentence; but the record does not reflect that the Appellant received earntime (Pre-hearing, tr.p. 46).

SUMMARy OF THE ARGUMENT

In 1987, when the Appellant arrived at the Mississippi State Penitentiary, he had a total tern of seven (7) sentences and convict ions, and three (3) of the sentences and convictions were Arned Robbery convictions. All seven sentences and convictions were to run consecutively to each other, which gave the Appellant a total tern of (82) years.

In May of 1995, the Appellant received fron the Mississippi State Penitentiary Records Departnent, a "Tine Conputation Data Sheet" informing the Appellant that his tine had been stacked and that the Appellant had been given (50%) of earntine for his total sentence of (82) years, which allowed the Appellant to have (41) years.

In May of 1995, the Appellant received fron the Mississippi State Penitentiary Records Departnent, a "Tine Conputation Data Sheet" informing the Appellant his tine had been stacked and that the Appellant had been given (50%) of earntine for his total sentence of (82) years, which allowed the Appellant to have (41) years.

Due to the Appellant having been sentenced and convicted for three (3) Arned Robbery charges, he was not legally entitled to receive earntine on the Arned Robbery charges. However, when the Appellant arrived at the Mississippi State Penitentiary, in 1987, it was a Connon Practice for Offenders with Arned Robbery sentences and convictions to receive earntine on the "Mandatory Portion" of their Arned Robbery convictions. The Appellant was allowed under the Connon Practice for Arned Robbery Offenders to receive (50%) earntine off of all of his arn robbery convictions; including, the nandatory portion of his sentences.

Fron 2001 through 2003, the Appellant was placed in trusty status. Appellant was allowed to receive (50%) earntine on the Mandatory Portion of his Arned Robbery convictions based upon the Connon Practice had prior to May of 1992. The Appellant was receiving the (50%) earntine for the remainder of his sentences and convictions as well.

ARGUMENT

PROPOSITION I.

THE LOWER COURT ERRED BY NOT ALLOWING THE APPELLANT 50% EARNTIME ON THE APPELLANT'S ENTIRE SENTENCES AND CONVICTIONS; INCLUDING, THE MANDATORY PORTION OF THE APPELLANT'S ARMED ROBBERY SENTENCES AND CONVICTIONS..

The Appellant in this case is not a license attorney, and he implores this Court to not look upon him as one with professional legal skills.. In **Haines v. Kerner, 404 U.S.519,92 S.Ct.594,,,30 L.Ed 652,1972 U.S. LEXIS 99,,**the United States Supreme Court stated in relevant part: Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons,allegations such as those asserted by appellant,however inartfully pleaded,are sufficient to call for the opportunity to offer supporting evidence. We can not say with assurance that under the allegations of the pro se complaint,which we hold to less stringent standards than formal pleadings drafted by lawyers,it appears "beyond doubt that the Appellant can prove no set of facts in support of his claim which would entitle him to relief."

The Appellant asserts that the Hon.Betty W.Sanders,Circuit Court Judge,in **Hicks v.Houston,94-0234-M,** issued in her Corrected Findings and Recommendations,a decision almost identical to the Appellant's present situation..

In 1987, when the Appellant arrived at the Mississippi State Penitentiary,he had a total term of seven (7) sentences and convictions; and three (3) of the sentences and convictions were armed robbery convictions. All seven (7) sentences and convictions were to run consecutively to each other, which gave the Appellant a total of eighty-two (82) years (Pre-hearing,tr.p. 32).

In May of 1995, the Appellant received from the Mississippi State Penitentiary Records Department a "Time Computation Data Sheet" showing that Appellant's sentence of (82) years had been recomputed and stacked to show a parole date of November 4, 2002.

And, conditional discharge date of March 10, 2012 (tr.p. 79). It is the Appellant's contention that the data supra, was obviously determined by granting earntime on his entire sentences; including, the mandatory portion of his armed robbery sentences.

Here, it must be pointed out that the Hon. Betty W. Sanders, Circuit Court Judge, in a Pre-hearing held on February 27, 2007, refused to accept the Appellant's Computation Data Sheet, dated May 5, 1995, stating that there was a problem with the authenticity of the sheet, because Ms. Christine Houston, Director of Records, was not employed at the time, she left her job in 1994 (Pre-hearing, tr.p. 28).

Appellant asserts that although the Lower Court Judge refused to accept his Computation Data Sheet showing only a three (3) month differences, which means, when the Appellee's presented their Computation Data Sheet, dated February 27, 1995, Ms. Houston was unemployed at that time too, and therefore, the Appellee's Computation Data Sheet should have been refused as well (See: Pre-hearing, Exhibits 1&6).(Pre-hearing, tr.p. 28). Also see: **Johnson v. State, 260 So.2d 436 (Miss.1972)**, the Mississippi Supreme Court stated in relevant part: An ambiguity in sentencing must be resolved in favor of an accused.

However, the Lower Court Judge admits that it doesn't matter whether the Appellant have the Computation Data Sheet of 1995 or, not. The Lower Court Judge went on to say that, if "this is within the law of 1995, we can compute it again like it should have been done in 1995. This just makes--it's easy to have something to see, track where we are going (Pre-hearing, tr.p. 39).

In **Hicks v. Houston, 94-0234-M**, the Mississippi Department of Corrections (MDOC) improperly computed his conditional discharge date just as in the Appellant's case. **Hicks** argued that MDOC improperly denied him earn time on the mandatory portion of his armed robbery sentences. Hicks' sentence was the result of an armed robbery con viction just as the Appellant (Pre-hearing, tr.p. 8).

Appellant asserts that when Ms. Houston calculated his time, she obviously calculated it pursuant to **Section 47-5-138 (Supp.19 92)**, which provides in pertinent part that "an inmate shall be

eligible to receive an earn time allowance of one half ($\frac{1}{2}$) of the period of confinement imposed by the court..." in this computation, however, MDOC did not grant Appellant Adams any earn time for the mandatory portion of his armed robbery sentences. Therefore, in his latest computation, Appellant has only (32) years of earn time, and (180) days meritorious earn time. In the May 5, 1995, Computation Data Sheet, Appellant Adams received (41) years of earn time and (180) days meritorious time.

Hicks v. Houston, Supra, pointed out that in **Williams v. State, 624 So.@d 496 (Miss.1993),** the Supreme Court had occasion to inter pret **Miss. Code Ann. , Section 47-5-139 (Supp. 1992).** The Court determined that **Section 47-5-139 (1)(e)** prohibits an inmate from being eligible to earn "earn time" during the service of the mandatory time. That this portion of the statute became effective May 14, 1992. (Emphasized by the Appellant).

The Court then opined that **47-5-139(1)(e)** "appears to be...a mere codification of the prevailing administrative construction and practice..." Unfortunately, **47-5-139(1)(e)** is not a codification of the practice that existed prior to the adoption of that statute.

Prior to **Williams, Supra,** MDOC allowed an inmate to receive earned time on the entire ternof his sentence, without any regards to any mandatory time. This is obviously what was done on Appellant's Adams,,May 5,,1995,Computation Data Sheet.(Pre-hearing,tr.p. 18&32).

In **Hicks v. Houston, Supra, the** Assistant Chief Records Officer presented a sworn statement which states: That his [Hicks] time computation was corrected to comply with the State Supreme Court decision in **William v. Puckett,624 So.2d 496 (Miss. 1993),**which rules an inmate is ineligible to participate in an earn time program while serving a mandatory sentence.

The Appellant asserts that he is presently being subjected to the law outlined within **Williams v. Puckett, Supra,** which is denying the Appellant all the rights he should be receiving under **Hicks v. Houston, Supra,**simply because the Appellant was incarcerated at the MDOC in 1987; therefore,the Appellant should be awarded (50%) off of the mandatory portion of his Armed Robbery sentences prior to

May of 1992.

In Hicks, the first 10 years of his (25) year sentence is mandatory just as the Appellant; therefore, he could not begin to accumulate earned time until 10-24-91, which is the date the first ten years was completed.

In Hicks, the Appellee's earned time allowed previously was an Administrative Misinterpretation of the application of the statute and was corrected to conform with the State Supreme Court decision in **William v. Puckett, Supra.** (Emphasis added).

Here, the Appellant in the case at bar argues that the very same mistake that happen to Hicks, has been applied to the Appellant. Just as in **Hicks v. Houston, Supra,** the Appellant has been subjected to his sentences and convictions being erroneously to comply with **William v. Puckett, Supra.** In **Hicks v. Houston, Supra,** the Hon. Betty W. Sanders, Magistrate, which was the Lower Court Judge, admits that she has been presented with numerous instances where MDOC has admitted that it was the practice to grant an inmate earned time on his entire sentence prior to the advent of Williams (See: **Hicks v. Houston, Supra, tr.p. 62).**

Appellee's attorney admits that the Appellant received earned time on the mandatory portion of his armed robbery sentences; but the record does not reflect that the Appellant received earned time on his mandatory portion (See: Pre-hearing, tr.p. 46).

Appellee's attorney admits that this was the whole confussion, Appellant's ten (10) years is still mandatory, which is the armed robberies convictions. It is a separate law for parole eligibility, but the Appellee's has given the Appellant half off on the total of the (82) years.(Pre-hearing, tr.p. 46 & 47).

The question, therefore, is does the application of **47-5-139 (1)(e)** to deny earned time on mandatory sentences imposed prior to May 14, 1992, constitute the imposition of an **Ex Post Facto Law** on Hicks and now the Appellant. Hon. betty W. Sanders, Circuit Court Judge, went on to say that 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 (See: Pre-hearing,

CERTIFICATE OF SERVICE

I, John H. Adams, do hereby certify that I have this day caused to be mailed Via United States Postal Service a true and correct copy of **Brief For Appellant** to the following persons:

Hon. James M. "Jim" Norris
Senior Attorney
P.O. Box 36
Parchman, Mississippi 38738

Hon. Betty W. Sanders
Senior Judge 4th District
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Special Assistant Attorney General
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This the 31 day of July, 2007

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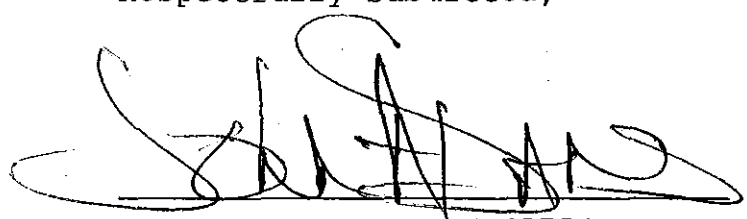

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July 31, 2007

Mrs. Betty Sephton, Clerk
Mississippi State Supreme Court
P.O. Box 249
Jackson, Mississippi 39205-0249

RE: John H. Adams v. Gloria Gibbs, et al
Case No. 2007-CP-00623

Dear Mrs. Sephton:

Please find enclosed the original and three (3) copies of **Brief For Appellant** to be filed in your everyday manner. I have already forwarded copies to those listed within my Certificate of Service.

I thank you and your Staff in advance for your time and cooperation in this matter.

With warm and kind regards, I am:

Sincerely,