

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. Inmate Edward James Hopson, Appellant
2. Hon. W. Ashley Hines, Circuit Court Judge
3. Jim Hood, Attorney General for the State of Mississippi

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

For Appellee:

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

By: Jane Mapp

2007-CP-00643-SCT

Appellee Brief

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ISSUE

I. Whether the State Court Erred in Not Ruling in a Show Cause Motion by Failing to Make a Factual Analysis of the Basis in the Motion.

STATEMENT OF THE CASE

On or about February 12, 2007 Edward J. Hopson (“Hopson”), a state inmate legally incarcerated within the Mississippi Department of Corrections, filed a Complaint against the Mississippi State Parole Board (“the Board”) in the Circuit Court of Sunflower County, Mississippi, entitled “Petition for an Order to Show Cause.” (C.P. at 3)¹. In his petition, Hopson alleges that the Parole Board committed perjury when denying him parole. (C.P. 3). Although Hopson failed to include the Parole Board’s action sheet in the record, he claims that three of the reasons the Board allegedly gave for denying him parole were invalid. He claims that he has no prior police and/or juvenile record and therefore the Board members perjured themselves when listing this a reason for denying him parole. (C.P. at 3). He also claims the Board unconstitutionally used a prior misdemeanor conviction against him when that charge had been dismissed. (C.P. at 4). Lastly, takes issue with the Board’s statement that they do not believe he can be a law-abiding citizen. (C.P. at 4).

On or about February 22, 2007, the Board filed a Motion to Dismiss for failure to state a claim and lack of jurisdiction. (C.P. at 7). The trial court entered an Order dated March 7, 2007 dismissing Hopson’s petition. The trial court held that it had no authority to review the Parole Board’s decision absent evidence of a constitutional violation and that Hopson had presented no such evidence. (C.P. at 12). While there is no separate notice of appeal in the record, Hopson did file a document with the trial court on March 19, 2007 requesting

¹C.P. = clerk’s papers

permission to appeal the court's order *in forma pauperis*. (C.P. at 15). On April 4, 2007, the trial court granted Hopson leave proceed *in forma pauperis* on appeal and this matter now ensues. (C.P. at 16).

SUMMARY OF THE ARGUMENT

The Parole Board and not the trial court has jurisdiction over parole matters and Plaintiff's failure to state a viable claim against the Defendant leaves the Circuit Court without jurisdiction in this cause.

ARGUMENT

I. Whether the State Court Erred in Not Ruling in a Show Cause Motion by Failing to Make a Factual Analysis of the Basis in the Motion.

Hopson argues that the Board violated his constitution rights of equal protection and due process in relying on allegedly false information in making their parole decision. Specifically he contests the Board's alleged use of the following factors: that he had a prior police and/or juvenile record, that he had a prior misdemeanor conviction, and that the Board believed that his ability to be a law-abiding citizen was lacking. Hopson maintains that the trial court should have held an evidentiary hearing for the purpose requiring the Parole Board to submit proof that it did not commit "perjury" in setting out these three reasons for denying him parole. Hopson relies on *Monroe v. Thigpen*, 932 F.2d 1437 (11th Cir. 1991), to support his claim that the reliance of false information by the Parole Board violates an offender's due process rights.

In *Monroe*, the Eleventh Circuit Court of Appeals held that “by relying on the false information in Monroe’s file, the Board has exceeded its authority ... and treated Monroe arbitrarily and capriciously in violation of due process.” *Id.* at 1442. Hopson’s reliance on *Monroe* is misplaced. In *Johnson v. Rodriguez*, 110 F.3d 299, 309 (5th Cir. 1997), the Fifth Circuit Court of Appeals refused to follow *Monroe* stating that “[t]he protections of the Due Process Clause are only invoked when State procedures which may produce erroneous or unreliable results imperil a protected liberty or property interest.” *Id.* at 308. (citations omitted). The Court went on to state that “allegations that the Board considers unreliable or even false information in making parole determinations, without more, simply do not assert a federal constitutional violation.” The Fifth Circuit went on to state:

It is our view that the procedural Due Process protections created in *Monroe* and *Paine [v. Baker]*, 595 F.2d 197 (4th Cir. 1979), cert. denied, 444 U.S. 925, 100 S.Ct. 263, 62 L.Ed.2d 181 (1979),] are in essence inconsistent with subsequent precedent in their respective circuits and that both cases have thus been effectively overruled. Whatever the viability of these anomalous cases today, our precedent is definite and precise on this point: in the absence of a cognizable liberty interest, a state prisoner cannot challenge parole procedures under the Due Process Clause.

Id. at 309, fn 13.

It is well settled that Mississippi prisoners have “no constitutionally recognized liberty interest” in parole. *See, Cotton v. Mississippi Parole Board*, 863 So.2d 917 (Miss. 2003) (Held that the parole Board has “absolute discretion” to grant or deny parole within the boundaries established in Miss. Code Ann. § 47-7-3 and that absent a viable constitutional claim the circuit court has no jurisdiction over appeals concerning the denial or parole);

Shanks v. State, 672 So.2d 1207, 1208 (Miss. 1996) (Held that the Parole Board and not the trial court has jurisdiction over parole matters.); *Mitchell v. State*, 561 So.2d 1037, 1039 (Miss. 1990)(Pursuant to Miss. Code Ann. § 47-7-3, parole matters are the exclusive responsibility of the parole board); *Scales v. Mississippi State Parole Board*, 831 F.2d 565, 566 (5th Cir. 1987)(Mississippi's parole statutes confers absolute discretion on the Parole Board.) The circuit court had no jurisdiction to re-weigh the factors considered by the Board in making its parole decision.

Since Hopson has no liberty interest in being granted parole the possibility that the Board may have relied on false information in making their decision does not give rise to a due process claim. Furthermore, since Hopson failed to include a copy of the Parole Board's action sheet in the record, this court has no way of knowing whether or not these were the only reason given by the Board for denying Hopson parole or if these reasons were even given at all. Additionally, Hopson admits that beyond his previous criminal record the Board also cited their belief that he lacked the ability to be a law-abiding citizen as one of reasons for denying him parole. This is a subjective reason which neither Hopson nor the court could state is false since only the Board members themselves know what they believe. The court has no authority to require the Board to offer tangible evidence to support their parole decisions.

Hopson also mentions in the brief that the Board violated his equal protection rights, but he does state how the Board's alleged "perjury" in fact violates these rights. As the Fifth

Circuit has stated, “if the challenged government action does not appear to classify or distinguish between two or more relevant persons or groups, then the action –even if irrational– does not deny them equal protection of the laws.” *Johnson*, 110 F.3d at 306, *citing, Brennan v. Stewart*, 834 F.2d 1248, 1257 (5th Cir. 1988). Hopson does not claim to be a member of any particular group or that the Board treated him differently than any other person or group. Accordingly, Hopson has failed to state an Equal Protection claim.

CONCLUSION

Based on the arguments of fact and law herein above, it is clear that the trial court did not commit reversible error and its decision dismissing Plaintiff’s complaint should be affirmed.

Respectfully submitted,

MISSISSIPPI STATE PAROLE BOARD
DEFENDANT-APPELLEE

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

JANE L. MAPP
SPECIAL ASSISTANT ATTORNEY GENERAL
MS BAR NO.: [REDACTED]

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 Appellees** in the above-styled and numbered cause to the following:

Hon. W. Ashley Hines
Circuit Court Judge
P.O. Box 1315
Greenville, MS 38702-1315

Edward J. Hopson, #74709
Kemper County Correctional Facility
300 Industrial Park Road
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This, the 12th day of September, 2007.

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

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