

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

2007-CP-00836

**LOUIS CLAY, JR. a/k/a LOUIS CLAY a/k/a SPOOLA BOO
APPELLANT**

vs.

**CHRISTOPHER EPPS, et al.
APPELLEES**

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

BRIEF OF APPELLEES

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

**JAMES M. NORRIS, ATTORNEY SENIOR
MISSISSIPPI DEPT. OF CORRECTIONS**

**JANE L. MAPP
SPECIAL ASSIST. ATTORNEY GENERAL**

**[REDACTED]
510 George Street, Suite 212
Jackson, MS 39202
(601) 359-5770**

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. Louis Clay, Jr., Appellant
2. Robert P. Krebs, Circuit Court Judge
3. 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

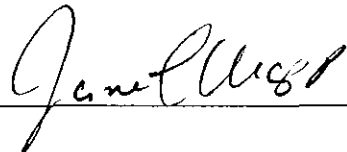
By: 

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
ISSUES	v
PROCEDURAL HISTORY	1
STATEMENT OF THE FACTS	2
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
CONCLUSION	9
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

<u>Case(s)</u>	<u>Page(s)</u>
<i>Carter v. Miss. Dept. of Corrections</i> , 860 So.2d 1187 (Miss. 2003)	6, 7
<i>Estelle v. Gabel</i> , 429 U.S. 97, 104-05 (1976)	8
<i>Farmer v. Brennan.</i> , 511 U.S. 825(1994)	6, 7
<i>Longoria v. Texas</i> , 473 F.3d 586 (5 th Cir. 2006)	6, 7
<i>Mayweather v. Foti</i> , 959 F.2d 91 (5th Cir. 1992)	8
<i>McBride v. Sparkman</i> , 860, 1237 (Miss.Ct.App. 2003)	4, 5
<i>McMahon v. Beard</i> , 583 F.2d 172 (5th Cir. 1992)	8
<i>McNabb v. State</i> , 915 So.2d 478, 480 (Miss.Ct.App. 2005)	4, 5

<u>Other Authorities</u>	<u>Page(s)</u>
Miss. Code Ann. § 11-46-9	5
Miss. Code Ann. § 99-39-11(2)	4, 5

ISSUE

I. Whether to Lower Court Erred by Issuing an Order Affirming Decision Rendered by the Administrative Remedy Program, Without an Evidentiary Hearing, Without Giving Clay an Opportunity to Amend Complaint, Denying a Trial by Jury and in Conflict with Mississippi Rules of Civil Procedure.

PROCEDURAL HISTORY

On or about April 25, 2005 Mississippi State Inmate Louis Clay ("Clay") filed a petition in the Circuit Court of Greene County, Mississippi wherein he sought judicial review pursuant to Miss. Code Ann. § 47-5-807 of an adverse decision of the Administrative Remedy Program ("A.R.P.") of the Mississippi Department of Corrections ("MDOC"). (C.P. at 7).¹ Clay, an inmate legally incarcerated within MDOC, had previously filed a grievance through the A.R.P. complaining that MDOC failed to protect him from assault by another inmate and also failed to provide him adequate medical care. (C.P. at 16-25) .

On August 11, 2005, the Circuit Court dismissed Clay's complaint as untimely, finding that "this appeal was filed outside of 30 days of the adverse decision at issue." (C. P. at 36). Subsequently, Clay filed a Notice of Appeal and was allowed to proceed *in forma pauperis*. (C.P. at 40). The Court of Appeals reversed and remanded the case finding that Clay had in fact filed his complaint within thirty (30) day of receiving notice of the agency's adverse decision. (C.P. at 41-44).

On remand, the Circuit Court entered a decision dated February 21, 2007 affirming the decision of MDOC's Administrative Remedy Program and dismissing Clay's complaint. (C.P. at 45). Thereafter, Clay filed a "Motion to Reinstate Complaint." (C.P. at 46). That motion was denied by the trial court on or about April 3, 2007. Still aggrieved, Clay filed his Notice of Appeal on April 17, 2007.

¹ C.P. = Clerk's Papers

STATEMENT OF THE FACTS

In his complaint, Clay argued that MDOC Commissioner Christopher Epps and various other MDOC officials and employees violated his rights when they failed to protect him from assault by another inmate. He also claimed that he was denied adequate medical care following the assault. According to his complaint, Clay was assaulted on November 9, 2004 in the dining hall by fellow inmate John Smith, #R8486. (C.P. at 9). Clay stated that he suffered wounds to his head which required eight (8) stitches in the front and five (5) stitches in the back and that due to loss of blood he lost consciousness on the way to the infirmary. (C.P. at 9-10). Clay states that he was taken to the infirmary where he received stitches and x-rays and was kept under observation by medical staff for three (3) days. (C.P. at 10).

Clay asserts that after being released from the infirmary he was placed back in the same compound as Inmate Smith and that they were not separated until he, Clay, signed a "red-tag"² against Inmate Smith and requested protective custody. (C.P. at 10). Clay does not allege that he was assaulted or threatened by Inmate Smith following his release from the infirmary prior to placing a red-tag on Inmate Smith.

²A "red-tag" is a MDOC term used to denote that certain offenders should not be housed in the building. An inmate can "red-tag" another inmate requesting that they be kept separate and if there is justification for the separation a notice will be placed in the files of both offenders.

Clay alleges that prior to Inmate Smith's assault on him, Inmate Smith had placed a red-tag against him, Clay. (C.P. at 11). This was because Clay had previously assaulted Inmate Smith. (C.P. at 22). Clay argues that since Inmate Smith had lodged a red-tag against him they should have been kept separate at all times and that MDOC's failure to do so put his life in danger. (C.P. at 11).

Clay alleges that since the assault he has reported to medical staff and MDOC administration that he has "severe headaches, weakness, blackouts, memory loses, numbness and tingling in the fingers and toes, pain in both arms and back, slur in speech, uncontrollable urine and bowel movement, vision loss, deficient reflect [sic], paranoia and mood swings" but that he has not received any treatment. (C.P. at 11).

Clay filed a grievance with MDOC's Administrative Remedy Program seeking to be transferred to the Central Mississippi Correctional Facility ("CMCF"), to be protected from further harm, and \$5,000.000.00 in damages.³ In response to his grievance it was explained to Clay that a red-tag does not mean that inmates will be kept separated at all times, only that they will not be housed in the same building, which Clay and Smith were not. It was also pointed out to Clay that it was Inmate Smith that had a red-tag against him because Clay had previously assaulted Smith. Warden James Brewer also stated that he had investigated the incident and Clay stated to him that he was not seriously hurt and that he had previously

³According to Clay's return address he is currently housed at CMCF and he has made no allegation that he has been assaulted or threatened by Inmate Smith since the November 9, 2004 assault.

assaulted inmate Smith. Clay was also informed that if he felt his life was in danger he could request protective custody. (C.P. at 21-22).

Following remand, the circuit court affirmed the decision of the Administrative Remedy Program denying Clay the relief sought. (C.P. at 45). In reaching this decision, the trial court stated:

Having reviewed the record before the Court, the Court finds that the decision rendered by the ARP was not arbitrary or capricious, was supported by substantial evidence, was not beyond to [sic] powers of the ARP, and was not in violation of the rights of the plaintiff. *Ross v. Epps*, 922 So.2d 847 (Miss. App. 2006)[Quoting *State Bd. of Pub. Accountancy v. Gray*, 674 So.2d 1251 (Miss. 1996)]. Nothing has been presented by the plaintiff that would lead this Court to disturb the decision rendered by the ARP.

(C.P. at 45).

SUMMARY OF THE ARGUMENT

A circuit court may dismiss a petition without a hearing when it is clear from the record that the prisoner is not entitled to any relief. *McNabb v. State*, 915 So.2d 478, 480 (Miss.Ct.App. 2005); *McBride v. Sparkman*, 860, 1237, 1240-1241 (Miss.Ct.App. 2003); Miss. Code Ann. § 99-39-11(2).

The trial court correctly found that Clay asserted no allegations in his complaint that would indicate that MDOC's response to his grievance was arbitrary and capricious, unsupported by substantial evidence, or in was violation of his constitutional rights.

ARGUMENT

I. Whether to Lower Court Erred by Issuing an Order Affirming Decision Rendered by the Administrative Remedy Program, Without an Evidentiary Hearing, Without Giving Clay an Opportunity to Amend Complaint, Denying a Trial by Jury and in Conflict with Mississippi Rules of Civil Procedure.

Clay argues that the trial court erred in affirming the decision of the ARP and dismissing his complaint without giving him the benefit of an evidentiary hearing, discovery, and a jury trial.

The courts have repeatedly held that an offender has no right to an evidentiary hearing in matters such as the one currently before the court. A circuit court may dismiss a petition without a hearing when it is clear from the record that the prisoner is not entitled to any relief. *McNabb v. State*, 915 So.2d 478, 480 (Miss.Ct.App. 2005); *McBride v. Sparkman*, 860, 1237, 1240-1241 (Miss.Ct.App. 2003); Miss. Code Ann. § 99-39-11(2).

The trial court correctly found that Clay asserted no allegations in his complaint that would indicate that MDOC's response to his grievance was arbitrary and capricious, unsupported by substantial evidence, or in was violation of his rights. Furthermore, the defendants, as state employees, have immunity from suit as to any state law claims pursuant to the Mississippi Tort Claims Act. Specifically, Miss. Code Ann. § 11-46-9 states in pertinent part as follows:

- (1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

...

(m) Of any claimant who at the time the claim arises is an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution, regardless of whether such claimant is or is not an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution when the claim is filed;

See also, *Carter v. Mississippi Dept. of Corrections*, 860 So.2d 1187 (Miss. 2003). Since the defendant have immunity from any state tort claims, Clay's claims must rise to the level of constitutional violations.

In his complaint, Clay alleges that since Inmate Smith had placed a red tag against him then MDOC officials violated his constitutional rights by allowing them to come into contact with each other. The United States Supreme Court in *Farmer v. Brennan*, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994), held that under an Eighth Amendment claim for failure to protect, the Plaintiff must show that the official/defendant acted with deliberate indifference to inmate health or safety and that mere negligence on part of the official is not sufficient.

In discussing the Supreme Court's ruling in *Farmer*, the Fifth Circuit Court of Appeals in *Longoria v. Texas*, 473 F.3d 586 (5th Cir. 2006) opined:

It is well established that prison officials have a constitutional duty to protect prisoners from violence at the hands of their fellow inmates. *See Farmer v. Brennan*, 511 U.S. 825, 832-33, 114 S.Ct. 1970, 1976-77, 128 L.Ed.2d 811 (1994). Under *Farmer*, an inmate "must show that he is incarcerated under conditions posing a substantial risk of serious harm" and that prison officials were deliberately indifferent to an inmate's safety. *Id.* at 834, 114 S.Ct. at 1977. An official acts with the requisite deliberate indifference if he is aware of an "excessive risk to inmate ... safety" and disregards that risk. *Id.* at 837, 114 S.Ct. at 1979. In this context, an officer's awareness of the risk is evaluated subjectively. [T]he official must both be aware of facts from which

the inference could be drawn that a substantial risk of serious harm exists” and must in fact also have drawn the inference. *Id.* No liability exists, however, if an official reasonably responded to a known substantial risk, “even if the harm was ultimately not averted.” *Id.* at 844, 114 S.Ct. at 1983.

Longoria, 473 F.3d at 592-93.

Clay does not assert that he ever informed any of the defendants or any other MDOC employee prior to the November 9, 2004 assault that he felt threatened by Inmate Smith. On the contrary, it was Inmate Smith who had placed a red tag against Clay. As Warden Brewer pointed out to Clay in his ARP response, a red tag does not mean that inmates will be kept apart at all times only that their chances of contact are minimized because they are not housed in the same building. Clay and Smith were apparently housed in different buildings within the same compound when the incident occurred in the dining hall. Clay made no allegation that would support a finding that any of the defendants personally knew that housing Smith in the same compound posed a “substantial risk of serious harm” and that knowing of such threat were “deliberately indifferent” to Clay’s. Accordingly, the trial court did not err in affirming the ARP’s decision regarding Clay’s “failure to protect” claim.

Likewise, Clay failed to state a claim for denial of adequate medical care. The same “deliberate indifference” standard that applies to “failure to protect” claims applies to prisoner medical claims. Clay must show that the defendants “acted or failed to act with deliberate indifference to [his] basic human needs....” *Carter*, 860 So.2d 1195 (internal quotations omitted). The fact that Clay feels like he should have received better or different treatment is not relevant. Clay has no right to the “best” medical treatment available and mere

disagreement as to the treatment he received is not enough to state a claim for deliberate indifference. *See, McMahon v. Beard*, 583 F.2d 172, 174 (5th Cir. 1992). As noted above, Clay's claim for inadequate medical care can succeed only if he proves that the denial of care constituted "deliberate indifference to serious medical needs." *Estelle v. Gabel*, 429 U.S. 97, 104-05, 97 S. Ct. 2845, 50 L. Ed. 2d 251, 261 (1976); *Mayweather v. Foti*, 959 F.2d 91, 91 (5th Cir. 1992).

Clay admits that after he was assaulted that he was taken to the infirmary, that he received stitches and x-rays, and that he was kept for three (3) days of observation. He contends, however, that he has since suffered an inordinate number of medical problems that he attributes to the assault and that officials have failed to give him proper follow-up treatment which he states would include an MRI or CAT-scan, medication, and transfer to CMCF where there is a medical unit. Clay's return address on his most recent court filings indicate that he has in fact been transferred to CMCF. As to whether or not he should receive an MRI, a CAT-scan, or medication, such treatment decisions are left to the discretion of medical professionals. Clay does not allege that he has not been seen by medical personal since his initial treatment following the assault, only that he has not been provided the treatment that in his non-professional opinion, is warranted. Clay has stated no facts that would support a claim of deliberate indifference to his serious medical needs on the part of the defendants.

Accordingly, the trial court did not err in affirming the decision of the ARP denying Clay the relief requested.

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,

Christopher Epps, et al. - Appellees,

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

**JAMES M. NORRIS, ATTORNEY SENIOR
MISSISSIPPI DEPT. OF CORRECTIONS**

JANE L. MAPP
SPECIAL ASSISTANT ATTORNEY GENERAL


BY:  _____

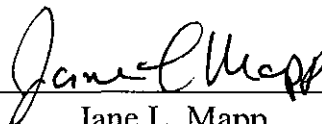
CERTIFICATE OF SERVICE

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. Robert P. Krebs
Circuit Court Judge
P.O. Box 998
Pascagoula, MS 39568

Lois Clay, #08452
CMCF 3 - Bldg A
P.O. Box 88550
Pearl, MS 39208

This, the 5th day of December, 2007.



Jane L. Mapp
Special Assistant Attorney General

510 George Street, Suite 212
Jackson, MS 39202
Telephone: (601) 359-5770