

IN The Mississippi Supreme Court of Appeals **COPY**

Dennis Dobbs

VS.

Appellant

No. 2007-~~LS~~^{CP}-00900-CA

STATE OF MISSISSIPPI

Appellee

Marshall Co. Bd. Supervisor's; et. al.
Marshall Co. Corr. Facility, et. al.

APPELLANT'S BRIEF

COPY

By: Dennis Dobbs, Pro Se
MDOC [REDACTED]
DCF / CA - 05
3800 County Rd. 540
Greenwood, Ms. 38930

CERTIFICATION OF INTERESTED PERSONS

No. 2007-TS-00900-COA

I, Dennis Dobbs, the appellant do hereby certify that the listed below parties have an interest in the outcome of the proceedings in the court whose judgment is subject of this petition is as follows:

Dennis Dobbs, Appellant Pro Se
Kent Smith, Appellee's Attorney
Christopher B. Epps, Appellants' Custodian (M.D.D.C.)
James M. Hood III, Attorney General; State of MS.
Andrew K. Howarth, Circuit Judge; Marshall Co.

So Certified, this _____ day of _____ 2007

Dennis Dobbs [REDACTED]
DCF / CA-05
3800 County Rd. 540
Greenwood, Ms. 38930

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ISSUES PRESENTED

1. WHETHER HOUSING INMATES IN A NON-AIR CONDITION FACILITY, WINDOWS WILL NOT OPEN, INMATES NOT ALLOWED PERSONALLY FANS, FACILITY DO NOT SUPPLY ANY FANS, IS CRUEL AND UNUSAL PUNISHMENT.
(Warden of Facility in Year(s) of 1997 or 1998 disconnected air condition units)
2. WHETHER HOUSING INMATES IN A FACILITY WITH NO WATER OR FIRE SPINKLER SYSTEM IS A FIRE HAZARD.
3. WHETHER TRIAL JUDGE ERRED IN DENYING APPELLANT'S §1983 COMPLAINT ON CONDITIONS OF CONFINEMENT AS RELATION TO A POST-CONVICTION, WHICH IS DEALING WITH RELATIONS OF SENTENCING

STATEMENT OF THE CASE

That Petitioner was sentenced to serve five (5) years in Mississippi Department of Corrections on July 23rd by Clay County Circuit Court. Petitioner was transferred to Mississippi State Penitentiary in Parchman therein after sentencing.

On March 1st 2006 Petitioner was transferred to Marshall County Correctional Facility, located in Holly Springs, Mississippi.

Marshall County Correctional Facility do not allow inmates to have personal Fans, nor does Facility provide Floor Fans.

Appellant DOBBS move to exhaust his prison remedy by Filing an ARP requesting Marshall County Correctional Facility to allow inmates personal Fans or The Facility to provide two (2) Big Floor Fans per POD, because The Facility windows are not design to open, and only have three (3) blower(s) in the ceiling that blows hot air in off top of the roof, with no way for the air to exist, because windows will not open. Appellant got no response from his ARP, Heat index was rising, Appellant moved to file a complaint, "§1983 complaint on Conditions of confinement" in State Court. Appellant's complaint filed July 2006, raised the claims of "cruel and unusual punishment" being housed in a non-air condition building, windows were not design to open, nor was any Fans allowed in the Facility. Further claim of Fire Hazard environment, because Facilities POD's do not have Fire

Sprinkler's on the zone Pods and the Facility gym do not have a Fire sprinkler system in it, and it has four (4) natural Gas heaters in it.

Appellants complaint was dismiss as a Relation to a Post-Conviction matter on for about May 10th 2007. Appellant appeal raising the issue how was a \$1983 complaint on conditions of confinement, mistaken with a Post Convictions matter, which deals with a prisoner's filings in courts after his conviction or sentencing. Petitioner advised the Trial Court Judge that a inmate that works for Marshall County Correctional Facility Assistance Warden, over heard a conversation between The said Assistance Warden and someone, the Assistance Warden advised the other party on the phone that the Governor of Mississippi Haley Barbour had contacted the Circuit Judge of Marshall County handling the said complaint, and advise the Judge to dismiss the complaint to give the Facility time to re-connect the air-conditioning units and install a fire sprinkler system in the gym.

Appellant was granted appealability on for about June 14th 2007.

SUMMARY OF THE ARGUMENT

The eighth (8th) Amendment prohibits the imposition of prison conditions that constitute "cruel and unusual punishment." *Rhodes v. Chapman*, 452 U.S. 337, 345, 101 S. Ct. 2392, 2398, 69 L. Ed. 2d 59 (1981). The Fourteenth (14th) Amendment prohibits the imposition of conditions of confinement on pretrial detainees that constitute "punishment." *Bell v. Wolfish*, 441 U.S. 520, 535, 99 S. Ct. 1861, 1872, 60 L. Ed. 2d 447 (1979). These allegations, challenging the conditions of DOBB's confinement in and of themselves, are unrelated to the validity of DOBB's subsequent convictions and sentences. Thus, a judgment finding the conditions at the Marshall County Correctional Facility unconstitutional would not necessarily imply the invalidity of DOBB's subsequent convictions and sentences.

Therefore, in order for this claim to be cognizable claim § 1983, DOBB needs not prove that his convictions or sentences have been reversed, expunged, invalidated, or otherwise called into question. Prison conditions constitute cruel and unusual punishment if they involve the "wanton and unnecessary infliction of pain [or if they are] grossly disproportionate to the severity of the crime warranting imprisonment." *Rhodes*, 452 U.S. at 347, 101 S. Ct. at 2399; [* 104] see also *Estelle v. Gamble*, 429 U.S. 97, 103, 97 S. Ct. 285, 290, 50 L. Ed. 2d 251 (1976).

Hutto v. Finney, 437 U.S. 678, 687, 98 S. Ct. 2565, 2571, 57 L. Ed. 2d 522 (1978) (finding prison conditions marked by insufficient diet, severe overcrowding, rampant violence, vandalism, improper ventilation, poor heating, extended punitive isolation to be cruel and unusual)

To obtain relief under 42 § 1983, a prisoner must prove two (2) elements ① a deprivation of a right secured by the Constitution and Laws of the United States, and ② a deprivation of that right by the defendant acting under color of state law.

Marshall County Correctional Facility was design by engineer's for Air, and install prior to it's open. During some indefinite period of time while Emmitt Sparkman was the Warden at Marshall County Correctional Facility he had the air-condition units disconnected because prisoner's complain about being cold all the time. (Inmate's Lee Poole MDOC # 72586 and Larry McBride MDOC # 67619 was housed at Marshall County Correctional Facility when Emmitt Sparkman had units disconnected, and are willing to give testimony on the Facts) (Officer Wendy Faulkner was an officer in 2007 at said Facility, however was terminated, and is willing to give testimony that Facility was not using air condition units in 2006 and 2007)

Closing Argument

Appellant suggest that these allegations, if proven, could be sufficient to establish a callous indifference to Prisoner's safety. DOBBS can not testify that Facility ever had air condition units himself, however can testify that the Facility was design for air condition, because window are not design to open, plus one (1) of the units, the one that is in the center of each POD has an over flow pipe on the side of unit, DOBBS being a contractor himself, knows that a unit with an over-flow pipe, is a heating and air condition unit.

Thus meaning that the Facility has air-condition, but fail, or refuse to run, causing an "wanton and unnecessary infliction of pain" OVER HEATING, HEAT index To High inside a prison cell or pod.

This was a intentional act, because facility had air conditions, but they was disconnected

Any building with gas heater's must have Fire sprinkler systems or it is considered a Fire Hazard.

The Supreme Court has held that the "unnecessary and wanton infliction of pain" upon an inmate violates the eighth amendment. Gregg v. Georgia, 428 U.S. 153, 173, 96 S. Ct. 2909, 2925, 49 L. Ed. 2d 859 (1976) It must exhibit "deliberate indifference" to a prisoner's serious medical needs and safety. Estelle v. Gamble, 429 U.S. 97, 104-06, 97 S. Ct. 285, 291-92, 50 L. Ed. 2d 251 (1976)

CONCLUSION

Trial Judge Erred in dismissing Appellants § 1983 complaint as a relation to a Post Conviction matter. Appellant respectfully request this Honorable Court to Reverse the Trial Courts Judgement, so an hearing can be held on this § 1983 complaint on conditions of confinement.

WHEREFORE, PREMISES CONSIDERED, Appellant hopes and prays that this honorable court will grant him the relief he seeks.

This the ___ day of _____ 2007

Respectfully Submitted

Dennis Dobbs

Dennis Dobbs / Appellant
MDOC # 96145

DCF / CA-05

3800 County Rd. 540

Greenwood, Ms. 38930

In The Supreme Court of The State of Mississippi
Court of Appeals

Dennis Dobbs

VS.

STATE OF MISSISSIPPI

Appellant

Cause No. 2007-^{-TS-}~~XX~~-00900-6

Appellee

SUMMONS

THE STATE OF MISSISSIPPI

TO: WENDY FAULKNER

Address: Holly Springs, Ms.

You have been named a witness in the suit appealed, filed in this court by Dennis Dobbs seeking damages. Witness'es other than you in this action is Lee Poole # 72586 and Larry McBride # 67619

You are summoned to appear and give testimony in behalf of appellant in the complaint or petition filed against the State of Mississippi in this action at — O'Clock — m. on the — day of — 20[—], in the courtroom of the — Courthouse at —, Mississippi and in case of your failure to appear and give testimony, a judgement will be entered against you for money or other things for failure to comply with Rule 1.14 and or Rule 45.

You are not required to file an answer or other pleadings, but you may do so if you desire.

Issued under my hand and the seal of said Court, this — day of — 20[—].

Clerk of — Court
County, Mississippi

IN The Supreme Court of The State of Mississippi
Court of Appeals

Dennis Dobbs

vs.

STATE OF MISSISSIPPI

Appellant
-TS-

Cause No. 2007-~~KA~~-00900-CA

Appellee

SUMMONS

THE STATE OF MISSISSIPPI

TO: LARRY McBRIDE

MDQC # 67619

You have been named a witness in the suit appealed, filed in this court by Dennis Dobbs seeking damages, Witness'es other than you in this action is Wendy Faulkner and Lee Poole.

You are summoned to appear and give testimony in behalf of appellant in the complaint or petition filed against the State of Mississippi in this action at 0'Clock .M. on the day of 20 , in the courtroom of the Courthouse at , Mississippi and in case of your failure to appear and give testimony, a judgement will be entered against you for money or other things for failure to comply with Rule 1.14 or Rule 45. You are not required to file an answer or other pleadings, but you may do so if you desire.

Issued under my hand and the seal of said Court, this day of 20 .

Clerk of Court
 County, Mississippi

IN The Supreme Court of The State of Mississippi
Court of Appeals

DENNIS DOBBS

VS.

STATE OF MISSISSIPPI

Appellant
-TS-

Cause No. 2007-~~RR~~-00900-COA

Appellee

SUMMONS

THE STATE OF MISSISSIPPI

TO: LEE POOLE

MDOC # 72586

You have been named a witness in the suit appealed, filed in this Court by Dennis Dobbs seeking damages. Witness's other than you in this action is Wendy Faulkner and Larry McBride.

You are summoned to appear and give testimony in behalf of appellant in the complaint or petition filed against the State of Mississippi in this action at O'Clock M. on the day of 20 , in the courtroom of the Courthouse at , Mississippi and in case of your failure to appear and give testimony, a judgement will be entered against you for money or other things for failure to comply with Rule 1.14 or Rule 45. You are not required to file an answer or other pleadings, but you may do so if you desire.

Issued under my hand and the seal of said Court, this day of 20 .

Clerk of _____ Court

County, Mississippi

IN THE CIRCUIT COURT OF MARSHALL COUNTY, MISSISSIPPI

DENNIS DOBBS

PETITIONER

VS

CAUSE NO. M2006-³⁰⁵~~350~~

STATE OF MISSISSIPPI

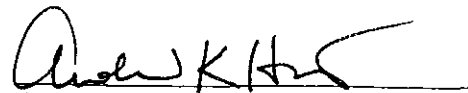
RESPONDENT

ORDER

THIS DAY this cause came before the court by virtue of the filing by Petitioner of a certain document with the Court, entitled "Motion To Proceed In Forma Pauperis." The Court considered the relief requested in the document and is of the opinion that the motion is well taken and should be and is hereby sustained. The Court, having found that the Petitioner is indigent and cannot afford the filing fee, hereby orders that said fee be waived in the above stated case. It is, therefore, ordered that the Petitioner may appeal to the Supreme Court. The Court, having found the Petitioner to be indigent and unable to pay the filing fee, hereby orders that the Marshall County Board of Supervisors pay the One Hundred Dollar (\$100.00) filing fee to the Mississippi Supreme Court for the appeal of the above case. Furthermore, the Petitioner is entitled to a copy of all records and transcripts.

The Clerk is hereby directed to forward a copy of this Order to the Petitioner.

SO ORDERED AND ADJUDGED this the 14th day of June, 2007.



ANDREW K. HOWORTH
CIRCUIT COURT JUDGE

CERTIFIED COPY

Order

JUN 19 2007

LUCY CARPENTER
CIRCUIT CLERK, MARSHALL CO. MS

BY Dia Hubbard D.C.

FILED

JUN 19 2007

MINUTE BOOK 87 PAGE 122

LUCY CARPENTER, CIRCUIT CLERK

BY Dia Hubbard D.C.

IN THE CIRCUIT COURT OF MARSHALL COUNTY MISSISSIPPI
THIRD JUDICIAL DISTRICT

DENNIS DOBBS

APPELLANT

VS

M2006-305

STATE OF MISSISSIPPI
MARSHALL COUNTY
BOARD OF SUPERVISORS

APPELLEE

NOTICE OF COMPLETION

THIS IS TO CERTIFY that I, Lucy Carpenter, Clerk of the Third Judicial Circuit Court of Marshall County Mississippi, have this day completed the assembly of record in the above styled and numbered appeal case and do hereby serve notice of such as required by rule 11 (d) (2) of the Mississippi Supreme Court Rules.

This is the 18th day of July, 2007.

S E A L

Lucy Carpenter
Lucy Carpenter
Clerk of the Circuit Court
Marshall Co., MS
By: Da Hubbard, D.C.

By Copy of this letter, I hereby service notice on the following:

Hon. Betty Sephton
Supreme Court Clerk
P.O. Box 249
Jackson, MS 39205

Kent Smith
Smith Whaley, PLLC
P.O. Drawer 849
Holly Springs, MS 38635

Pro Se
Dennis Dobbs
MDOC# 96145
MSP/Unit 30-D/B-Zone/Bed# 136
Parchman, MS 38738


CERTIFICATE OF SERVICE

This is to certify that I have this date, caused to be mailed, via United States Mail, postage pre-paid, a true and correct copy of the above and foregoing Pleading to:

Petty W. Septon - Clerk
Supreme Court
P.O. Box 249
Jackson, Ms. 39205-0249

Kent Smith
Smith Whaley, PLLC
P.O. Drawer 849
Holly Springs, Ms. 38635

SO CERTIFIED, this the _____ day of _____ 2007

Dennis Dobbs
Petitioner
Dennis Dobbs 
DCF / CA - 05
3800 County Rd. 540
Greenwood, Ms. 38930