

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

2007-CP-01163

**ALBERT EDMOND
APPELLANT**

v.

**STATE OF MISSISSIPPI
APPELLEE**

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

BRIEF OF APPELLEES

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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. Albert Edmond, Appellant
2. Hon. Gray Evans, Former Circuit Court Judge
3. Hon. Richard A. Smith, Circuit Court Judge
5. Hon. Jim Hood, Attorney General

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. James Norris, Attorney Senior, Mississippi Department of Corrections

By: Jane Mapp

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ISSUES

- 1. Whether the Appellate Court Is Mandated to Grant Appellant an Out of Time Appeal.**
- 2. Whether the Trial Court Erred in Denying Appellant's Habeas Corpus Petition Without the Mandated Evidentiary Hearing.**
- 3. Whether the Appellant Was Afforded Due Process Rights and a Proper Revocation Procedure Before His Parole Was Revoked.**
- 4. Whether the Doctrine of Laches Should Apply to Appellant's Habeas Corpus Petition.**

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Albert Edmond is an inmate serving a life sentence in the custody of the Mississippi Department of Corrections (“MDOC”) for the crime of rape. Edmond was convicted in Hinds County in 1974 and was paroled in June 1982, but his parole was revoked later that same year. (R1:4-5)¹. Since that time Edmond has been reconsidered for parole on numerous occasions, but has been denied a return to parole each time. *See Edmond v. Miller*, 942 So.2d 203, 204 (Miss.Ct.App. 2006). On or about November 22, 1999, Edmond filed, in the Circuit Court of Greene County, Mississippi, a Complaint entitled “Petition for Writ of Habeas Corpus” against the Mississippi Department of Corrections and the Mississippi Parole Board. (R1:4). Edmond alleged in his petition that his parole had been unlawfully revoked some seventeen years earlier. On or about December 21, 1991 Greene County Circuit Court Judge James W. Backstrom issued an Order denying Edmond’s petition finding that Edmond by his own admission had violated the terms of his parole. (R1:46).

Edmond appealed the dismissal and on April 12, 2001, the Mississippi Supreme Court reversed and remanded the case to the circuit court “for an evidentiary hearing to determine whether laches should apply, to determine the terms and conditions of Edmond’s parole revocation, and whether Edmond received his due process rights and a proper revocation procedure before his parole was revoked.” *Edmond v. Miss. Dept. Corrections*, 783 So.2d 675, 680 (Miss. 2001).

¹Citations to the Record will be in the form of (RX:YYY) with “X” representing the volume number and YYY representing the page number.

Upon remand, Judge Backstrom entered on order dated May 14, 2001 changing venue of the case from Greene County to Sunflower County. (R1:83). Thereafter, Circuit Judge Betty W. Sanders, sent a request to the Mississippi Supreme Court asking that retired judge Gray Evans be appointed as special judge in the matter. On July 3, 2001 Mississippi Supreme Court Chief Justice Edwin Pittman entered an Order appointing Gray Evans as "Special Judge to preside and conduct proceedings" in this cause. (R1:84).

On July 12, 2001 Judge Evans entered an Order once again denying Edmond's habeas petition and dismissing the cause with prejudice. (R1:86-87). Judge Evans made a finding pursuant to Miss. Code Ann. § 99-39-11 that the record and institutional files of the Petitioner clearly indicated that he was not entitled to the relief requested; and therefore, no evidentiary hearing was needed in the matter. (R1:86). Judge Evans, in finding that Edmond's parole was sufficiently revoked, found as follows:

On June 16, 1982, Petitioner was granted parole to Bolivar County. Accompanying Petitioner's Certificate of Parole were the condition [sic] of said parole, including number 5 which states, "I will live and remain at liberty without violating the law." Said conditions were signed under oath by Petitioner on June 16, 1982. On July 3, 1982, a warrant for Petitioner's arrest was issued by the City of Cleveland for the charge of Burglary of an Inhabited Dwelling. Petitioner appeared before a Justice Court Judge on July 9, 19982. The charge was reduced to Malicious Trespass and Petitioner was sentenced to six day in the County Jail.

On July 3, 1982, upon receipt of notice of Petitioner's arrest, a Warrant for Arrest of Paroled Prisoner was issued by the Department of Corrections. On July 14, 1982, Petitioner waived his right to a preliminary parole revocation hearing and on July 15, 1982, a Warrant for Retaking Parole Prisoner was issued by the Department of Corrections.

On July 22, 1982, a letter was issued to Petitioner stating that he would have a parole revocation hearing on August 2, 1982. Said hearing was conducted and the parole board revoked Petitioner's parole and set off reconsideration for a period of one year.

(R1:86-87). Judge Evans found that Edmond violated his parole when he was convicted of Malicious Trespass and that he received all due process rights and the proper parole revocation procedures were followed. (R1:87). Judge Evans went on to find that while he found it unnecessary to address the doctrine of laches, it was the court's opinion that it would apply "to this matter in that witnesses are no longer employees of the Department of Corrections or are deceased." (R1:87).

A few days after the July 12, 2001 dismissal order was entered Edmond filed a Motion for Appointment of Counsel which was notarized on July 19, 2001. (R1:88). Edmond filed nothing else in the Circuit Court of Sunflower County in this cause until some four and one half (4 ½) years later when he filed a Petition for Writ of Mandamus dated January 17, 2006. (R1:101). Edmond states in his petition that he did not learn of the July 12, 2001 dismissal Order until receiving a copy of the Supreme Court's January 4, 2006 Order in cause number 2004-M-001190. (R1:102-03). Edmond subsequently filed a Motion for Out of Time Appeal in the Circuit Court on or about August 28, 2006, over 180 days after he states he learned of the dismissal order and over five (5) years after the order was actually entered. (R1:110). Judge Gray Evans had since retired from Senior Status Judge and so the matter was assigned to Circuit Court Judge Richard A. Smith.

On May 4, 2007, Judge Smith denied Edmond's Motion for Out of Time Appeal finding that even when giving the time frames the most liberal construction possible, Edmond's motion was well outside the parameters established by Miss.R.App.P. 4(h). (R2:155-158). On or about June 29, 2007, Edmond filed a Notice of Appeal from the May 4, 2007 Order dismissing his Motion for Out of Time Appeal. Once again Edmond claims that he did not receive notice of the Order until it was referred to in an Order of the Supreme Court dated June 1, 2007. Edmond has been allowed to proceed *in forma pauperis* on his appeal of the circuit court's denial of his Motion for Out of Time Appeal. (R2:168).

SUMMARY OF THE ARGUMENT

The lower court properly denied Edmond's Motion for Out of Time Appeal as more than five (5) years had elapsed from the entry of final judgment in this matter and more than 180 days had elapsed from the date Edmond's states he received notice of final judgment. Edmond has failed to show good cause why this court should suspend the rules regarding the time for taking an appeal.

The record as supplemented on remand clearly shows that Edmond was accorded all due process rights and procedural safeguards in regards to his 1982 parole revocation.

The seventeen (17) year delay between Edmond's parole revocation and his filing of a habeas petition and the resulting prejudice to the State demands that the doctrine of laches be applied in this matter.

ARGUMENT

1. Whether the Appellate Court Is Mandated to Grant Appellant an Out of Time Appeal.

Edmond argues that this Court should suspended the rules concerning the time for filing a notice of appeal and the rules for reopening the time for appeal because he claims he was not provided notice of the July 12, 2001 dismissal of his habeas petition within the 180 day period allowed by Miss.R.App.P. 4(h) for reopening the time for appeal. Edmond argues that he was prevented from filing a timely notice of appeal through no fault of his own and therefore he should be allowed to proceed on his appeal of the dismissal of his habeas petition.

Rule 4(a) of the Mississippi Rules of Appellate Procedure states that a notice of appeal “shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from.” Rule 4(h) provides the following exception to the 30 days limit:

The trial court if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that no party would be prejudiced, may, upon motion filed within 180 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

Edmond does not dispute that his motion for out-of time appeal was filed well beyond the 180 days after entry of judgment provided for in Rule 4(h); in fact, Edmond’s motion was even filed more that 180 days after he acknowledges receiving notice of the judgment. The

record indicates that Edmond took no action in this case between 2001 when he filed his motion for appointment of counsel and 2005 when he filed some type of miscellaneous motion with the Clerk of the Supreme Court. It is clear that Edmond made no timely effort to either appeal the circuit court's dismissal of his habeas petition or to discern the status of the case. Edmond's lack of diligence was once again in evidence when even his appeal from the denial of his motion for out of time appeal was filed more than 30 days after entry of the order.

Edmond claims he never received notice from the Sunflower County Circuit Clerk of the entry of the July 12, 2001 Order dismissing his habeas petition or the May 7, 2007 Order denying his Motion for Out of Time Appeal; and therefore, the rules should be suspended. Edmond's does not explain why he waited more than 180 days to file his motion for out of time appeal after the date he acknowledges learning of the dismissal of his habeas petition by the circuit court.

Furthermore, the Court only has Edmond's word that he did not receive notice of these orders. Edmond's assertion is unlikely in that the only two orders Edmond's claims not to have received were the two orders from which he could appeal to this court. Edmond has never seemed to have trouble receiving orders in the past. In fact, since the Supreme Court's remand of this case in 2001, Edmond has had at least three other cases concerning his conviction and/or parole travel easily through the courts and at least one of these cases, *Edmond v. Miller*, 942 Sol.2d 203 (Miss.App.Ct. 2006) was appealed from the Circuit Court

of Sunflower County.² If in fact Edmond did not receive copies of these orders it could be because he appears never to include his MDOC number or mailing address on any of his pleadings filed with the circuit court and as an inmate he has been transferred to several different facilities over the years.

Edmond has shown no good cause why this court should suspend the rules and allow Edmond to appeal an order over five (5) years after its entry. Accordingly, the lower courts Order Denying Motion for Out of Time Appeal should be affirmed.

2. Whether the Trial Court Erred in Denying Appellant's Habeas Corpus Petition Without the Mandated Evidentiary Hearing.³

Edmond argues that the trial court erred when it dismissed his habeas petition on remand without holding an evidentiary hearing as ordered by the Supreme Court. Edmond claims the Judge Evans held ex parte hearings in the matter without Edmond himself being present and therefore violated his right to respond under Miss. Code Ann. § 99-39-17(3). Edmond argues that if he had been present at the "lengthy hearings" he could have attacked the credibility of any witnesses and contested any records presented to the court. Edmond states that none of the documents allegedly considered by the judge were made part of the record; and therefore, there was nothing to disprove his version of the events surrounding his 1982 parole revocation.

²The other two cases were *Edmond v. Hancock*, 830 So.2d 658 (Miss.Ct.App. 2002) and *Edmond v. State*, 845 So.2d 701 (Miss.Ct.App. 2003).

³While the State believes the first issue is dispositive Edmond's other issues will be addressed.

On the contrary, the record has been supplemented with various documents associated with Edmond's parole revocation.⁴ These documents include Edmond's Certificate of Parole, conditions of parole, parole violation report form, a Waiver of Right to Preliminary Parole Revocation Hearing signed by Edmond, Warrant for Retaking Paroled Prisoner, notice of parole revocation hearing including charges, written statement of the Parole Board following the Revocation Hearing, and Edmond's Parole Revocation certificate. (R1:93-100). These documents clearly show that Edmond's due process rights were not violated in regards to his parole revocation.

Even though the Supreme Court did state in their opinion that the case was being remanded in part for an evidentiary hearing, the hearing was to "determine whether laches should apply, to determine the terms and conditions of Edmond's parole revocation, and whether Edmond received his due process rights and a proper revocation procedure before his parole was revoked." (R1:66). The documents contained in the record at pages 93-100 clearly show the terms and conditions of Edmond's parole, the reason for the revocation, and that Edmond received his due process rights and a proper revocation hearing. The issue of laches is irrelevant since the evidence was sufficient to dismiss the case on the merits, but the lower court did find that laches would apply due to the seventeen plus year delay making witnesses unavailable.

⁴It is unclear if the parole documents found at R1:93-100 were filed by Edmond as attachments to his July 23, 2001 Motion for Appointment of Counsel or if they were made part of the record by the court in support of the dismissal order and filed out of sequence.

Miss. Code Ann. § 99-39-11 states in part concerning a petition for post-conviction collateral relief:

(2) If it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief, the judge may make an order for its dismissal and cause the prisoner to be notified.

As Judge Evans found, all the witnesses, other than Edmond, who had personal knowledge of the 1982 revocation proceedings were either dead or were no longer employed by the MDOC. It is clear from the record what Edmond's claims were so his testimony was not necessary if along as there was documentary evidence to show that all procedural safeguards were adhered to in the revocation process. The supplemental documents that were placed in the record clearly show that Edmond's due process rights were not violated and that proper parole revocation procedures were followed in his case. For these reasons, the mere fact that the trial court did not hold an actual evidentiary hearing is not sufficient to reverse the trial court's decision at this stage.

Edmond also claims that Judge Evans retired from the bench before his case was concluded and he was not appointed as special judge in the matter until July 3, 2001; and therefore, the order of dismissal signed on June 30, 2001 was invalid. While Judge Evans did sign the Order prior to his having been appointed Special Judge in this matter, the Order was not actually filed until after his appointment by Chief Justice Pittman. The record is unclear as to when Judge Evans retired from the bench, but the record seems to indicate that he was actively on the bench when the case was initially assigned to him and he began his

review of the record, but he retired before the case was actually disposed of. His Order of dismissal was properly withheld from filing until after he was appointed Special Judge in this matter. Accordingly, this issue is without merit.

3. Whether the Appellant Was Afforded Due Process Rights and a Proper Revocation Procedure Before His Parole Was Revoked.

Edmond points out that one of the reasons the Supreme Court remanded his case to the trial court was because the record was insufficient to determine whether or not he was accorded due process in his parole revocation proceedings. Edmond continues to argue that due process were violated, and therefore; his parole must be reinstated. The United States Supreme Court in *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed2d 484 (1972) set out the minimum due process requirements for a parole revocations as follows:

(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

Id. at 489.

In his Order dismissing Edmond's petition, Judge Evans found that all of the requirements of due process had been met and he set out his findings as follows:

On June 16, 1982, Petitioner was granted parole to Bolivar County. Accompanying Petitioner's Certificate of Parole were the condition [sic] of said parole, including number 5 which states, "I will live and remain at liberty without violating the law." Said conditions were signed under oath by Petitioner on June 16, 1982. On July 3, 1982, a warrant for Petitioner's arrest

was issued by the City of Cleveland for the charge of Burglary of an Inhabited Dwelling. Petitioner appeared before a Justice Court Judge on July 9, 19982. The charge was reduced to Malicious Trespass and Petititoner was sentenced to six day in the County Jail.

On July 3, 1982, upon receipt of notice of Petitioner's arrest, a Warrant for Arrest of Paroled Prisoner was issued by the Department of Corrections. On July 14, 1982, Petitioner waived his right to a preliminary parole revocation hearing and on July 15, 1982, a Warrant for Retaking Parole Prisoner was issued by the Department of Corrections.

On July 22, 1982, a letter was issued to Petitioner stating that he would have a parole revocation hearing on August 2, 1982. Said hearing was conducted and the parole board revoked Petitioner's parole and set off reconsideration for a period of one year.

Edmond argues that the trial court did not supplement the record with the documents he used to make these finding and he argues that he was not given a preliminary hearing, written notice of the charged violation, disclosure of the evidence against him, or a written statement of the reason for revocation. The record before the court contradicts each of these claims. The conditions of parole document sign by Edmond on June 16, 1982 lists his agreement to "live and remain at liberty without violating the law." (R1:94). There is no distinction made in the agreement between a felonious violation of the law or a misdemeanor. The record contains a copy of a parole violation report which states that on July 3, 1992 Edmond was arrested and charged with Breaking and Entering Occupied Dwelling and that on July 9, 1982 the charge was reduced to Malicious Trespassing and Edmond was sentenced

to six (6) days in jail.⁵ The Warrant notes that Edmond signed a Waiver of Preliminary Parole Hearing and copy was given to Edmond. (R1:95). Next is a Waiver of Right to Preliminary Parole Revocation Hearing which includes the charged violation of "malicious trespassing" and was signed by Edmond on July 14, 1982 and witnessed by two individuals. (R1:96). The record also contains a copy of a notice of Edmond's scheduled parole revocation hearing which lists the charge as "Being in violation of your parole agreement in that you violated condition No. 5 by being arrested and charged with Malicious Trespassing. (R1:98). The record also reflects that a parole revocation hearing was held before the Parole Board on August 2, 1982 and Edmond's parole was revoked for the reason charged.

Clearly, the record has been supplemented since the case was remanded and those documents show that Edmond was accorded due process in the revocation of his parole. Accordingly, this issue is without merit.

4. Whether the Doctrine of Laches Should Apply to Appellant's Habeas Corpus Petition.

In their decision remanding the case to the trial court the Supreme Court stated that the doctrine of laches may be applicable in this case if it can be shown that the State has been prejudiced by the passage of time since Edmond's parole was revoked. Edmond argues that the trial court erred in failing to determine whether or not the doctrine of laches should be applied to his habeas petition.

⁵The facts of the crime as outlined in the warrant state that Edmond entered a home of a female at 5:00 a.m. on July 1, 1982 by removing a screen and climbing in through a bathroom window. Edmond, who was dressed only in a tee shirt grabbed an 18 year old female and attempted to pull off her clothes. The victim was able to escape and run out of the room.

This argument must fail because the lower court did in fact find that the doctrine of laches would be applicable to this matter had the case not been dismissed on the merits. The trial court found that the doctrine of laches would be applicable because any witness [who had knowledge of the revocation proceedings] were either dead or no longer employees of the Mississippi Department of Corrections.

In determining whether or not the doctrine of laches can be applied to a matter, a court looks at three things: 1) whether there was a delay in asserting a right or claim; 2) whether the delay was inexcusable; and 3) whether the delay caused undue prejudice to the party against whom the claim is asserted. *See, Bailey v. Estate of Kemp*, 955 So.2d 777, 784 (Miss. 2007). All three of these criteria are present in the case at bar. First, there was a seventeen (17) year delay between the time when the claim arose and when Edmond filed his Petition for Writ of Habeas Corpus. Second, there is absolutely no justifiable excuse for the seventeen (17) year delay since no new facts or intervening case law arose during that time. Lastly, as the trial court pointed out, because of the delay there were no state witnesses with personal knowledge of Edmond's parole revocation available. Further, requiring the State to defend proceedings that occurred nearly two decades before when the claims could easily have been filed earlier erects a huge hurdle that the State must climb simply to provide any type of adequate defense. For these reasons, the Court should find that the trial court correctly held that the doctrine of laches would be applicable to this case.

Edmond also argues that the Supreme Court erred in remanding the case on the issue of laches because the Court had previously ruled in *Miss. Dept. of Human Services v. Lonnie*, 644 So.2d 1230 (Miss. 1994) that "the doctrine of laches is simply inapplicable where a claim has not yet been barred by the applicable statute of limitations." This argument must fail since the court has

held there is no statute of limitations applicable to filing a post-conviction relief motion or habeas petitions regarding a prisoner's claims that his parole has been unlawfully revoked. *See, Edmond v. Miss. Dept. of Corrections*, 783 So.2d 685, 678 (Miss. 2001). Under Edmond's theory the doctrine of laches could never be applicable to parole revocation hearings. The State would argue since there is no applicable statute of limitation the rule that "the doctrine of laches is simply inapplicable where a claim has not yet been barred by the applicable statute of limitations" is not on point. This issue is accordingly without merit.

CONCLUSION

Based on the arguments of fact and law herein above, it is clear that the lower court did not commit reversible error and its decision denying Edmond's Motion for Out of Time appeal should be affirmed, or in the alternative, the July 12, 2001 order dismissing Edmond's habeas petition should be affirmed.

Respectfully submitted,

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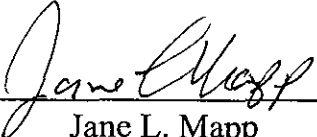
CERTIFICATE OF SERVICE

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

Hon. Richard A. Smith
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This, the 7th day of March, 2008.



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