

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

2007-CP-02089

**BRENT EDISON MURPHY
APPELLANT**

vs.

**CHRISTOPHER B. EPPS, RONALD KING a/k/a RON KING and ALICIA BOX
APPELLEES**

**On Appeal From the Circuit Court
of Pearl River County, Mississippi**

BRIEF OF APPELLEES

**JIM HOOD, ATTORNEY GENERAL
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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. Brent Edison Murphy, Appellant
2. Michael Eubanks, former Circuit Court Judge
3. Prentiss Greene Harrell, Circuit Court Judge
4. 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: 

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ISSUES

I. Whether the Court Erred in Dismissing Appellant's Motion for Show Cause?

II. Whether the Appellee's Decisions Were Arbitrary and Capricious, Beyond the Appellee's Scope and Powers, or Violated the Constitutional or Statutory Rights of the Appellant?

STATEMENT OF THE CASE

On or about October 12, 2007, Brent Murphy, and inmate legally incarcerated within the Mississippi Department of Corrections, filed a petition entitled “Motion to Show Cause” in the Circuit Court of Pearl River County, Mississippi against various officials of the Mississippi Department of Corrections (“MDOC”). (C.P. at 2)¹. Murphy sought additional credit toward his fifteen (15) year robbery sentence for time spent in custody in Louisiana on unrelated charges. (C.P. at 2-3).

On or about March 9, 2006 Murphy pled guilty in the Circuit Court of Pearl River County, Mississippi on a Bill of Information to one count of robbery. (C.P. 23; 29). He was sentenced to fifteen (15) years in the custody of MDOC with “credit for time spent in the county jail on this charge and credit for time spent in Louisiana.” (C.P. at 29). During the sentencing hearing Murphy’s attorney asked the judge about giving Murphy credit for time served in Louisiana. (C.P. at 78). Judge Michael Eubanks replied that Murphy “can get credit for anything he’s served over there while this charge was pending.” (C.P. 78).

Neither the sentencing order nor the Circuit Clerk’s Notice of Criminal Disposition sets out how much Louisiana jail time Murphy is to receive toward his Mississippi sentence. According to the Inmate Time Sheet Murphy included with his petition, MDOC gave him a total of 985 days of pre-sentence jail time. (C.P. at 16). Murphy committed the Mississippi robbery on June 10, 2002 and was sentenced on March 9, 2006. MDOC gave

¹ C.P. = Clerk’s Papers

him pre-sentence jail credit from May 2, 2003 through June 13, 2005; August 9, 2005 through August 11, 2005, and August 11, 2005 through March 9, 2006. (C.P. at 16). Murphy argues that he is entitled to additional credit from June 13, 2002 through May 2, 2003.² According to Murphy he is entitled to credit from June 13, 2002 because this was the date a hold was placed on him by the Picayune Police Department; and therefore the robbery charge was “pending” from that date forward. (C.P. 3-4). The First Step Response to Murphy’s request for administrative remedy on this issue states that he was being given credit for time served in Louisiana from the date he was indicted forward. (C.P. 15).

In his Order of Dismissal, Circuit Court Judge Prentiss Harrell³ stated that although Murphy was indicted for Armed Robbery in Pearl River County on May 2, 2003 the indicted went unserved while Murphy was incarcerated in Louisiana on unrelated charges. Ultimately, the indictment for Armed Robbery was nolle prosequi and Murphy pled guilty on a Bill of Information to simple robbery. (C.P. at 80). The issue before the court was whether MDOC actions were arbitrary and capricious when it gave Murphy credit toward his current Mississippi sentence for time spent in custody in Louisiana only from date of the Armed Robbery indictment forward. In denying Murphy’s motion the Court held as follows:

²Murphy includes in the record an earlier time sheet dated July 17, 2006 which shows that at one point he was given credit for his Louisiana time beginning June 21, 2002. The time sheet was at some point reviewed and corrected as it can also be seen that he was improperly given credit twice for the same time period from August 11, 2005 through March 9, 2006. (C.P. at 14).

³Michael Eubanks, the sentencing judge in Murphy’s criminal case, was no longer on the bench at the time the instant case was filed.

While, the sentencing transcript is not exactly clear, as to when the petitioner was to begin accruing credit for jail time, the Court sitting as an appellate court must not reweigh the decision of the MDOC, in light of it's limited scope of review. Moreover, the MDOC's decision to credit the petitioner with jail time at the filing of the detainer is within their discretion, given the petitioner was originally incarcerated in Louisiana on unrelated charges. Lastly, since the petitioner received a substantial amount of pre-sentence jail time, the decision cannot be viewed as arbitrary and capricious.

(C.P. at 82).

Feeling aggrieved, Murphy filed his notice of appeal to the Mississippi Supreme Court. (C.P. at 83).

SUMMARY OF THE ARGUMENT

MDOC staff determined that since Murphy was not being held in Louisiana due to a Mississippi warrant or hold, but was instead serving time in Louisiana for crimes committed in that state, that the Mississippi charge was not officially "pending" as contemplated by the sentencing court until such time as Murphy was actually indicted on those charges. Accordingly, Murphy was given pre-sentence jail time credit for time spent in custody in Louisiana from the date of May 2, 2003 indictment forward. In total, MDOC granted Murphy 985 days of pre-sentence jail time credit. MDOC's decision to give Murphy credit from the date of his indictment forward can not be found to be arbitrary and capricious given the fact that Murphy was incarcerated in Louisiana on unrelated charges and coupled with that fact that he was granted a significant amount of pre-sentence jail time.

ARGUMENT⁴

I. Whether the Court Erred in Dismissing Appellant's Motion for Show Cause?

II. Whether the Appellee's Decisions Were Arbitrary and Capricious, Beyond the Appellee's Scope and Powers, or Violated the Constitutional or Statutory Rights of the Appellant?

Murphy argues that the trial court erred in finding that the decision of MDOC to give him credit toward his Mississippi sentence for time served in Louisiana only from the date of his indictment forward was not arbitrary and capricious. It is undisputed that the sentencing judge ordered that Murphy be given credit toward his sentence for time spent in custody in Louisiana while his robbery charge was pending. Murphy states that he presented evidence including the police report and a transcript of his sentencing hearing to prove that a hold was placed on him by the Picayune, Mississippi Police Department on June 13, 2002; and therefore, he argues, the charges were pending against him from that date forward. The question before the trial court was whether or not MDOC's decision that Murphy was only entitled to Louisiana jail time credit from the date he was indicted forward was arbitrary and capricious and not supported by substantial evidence.

Murphy argues that the trial court erred in dismissing his petition without requiring the defendants to file an answer and without holding an evidentiary hearing. The courts have

⁴Murphy merely restates the same argument in both of the issues presented to the Court for review. That being, that the evidence is overwhelming that he should receive pre-sentence jail time credit for time spent in custody in Louisiana beginning on June 13, 2002 and that MDOC's decision to only give him credit from the date he was indicted on the Mississippi charge is arbitrary and capricious. Since both issues require nearly an identical response, the defendants have combined their arguments into one.

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).

Murphy argues that the lower court erred in finding that the sentencing transcript was not clear as to when he was to begin accruing pre-sentence jail time credit. Murphy points out that his attorney told the Court that he, Murphy, had been in custody since June 13, 2002. The fact that Murphy may have been arrested in Louisiana on June 13, 2002 means little. Although Murphy's attorney failed to point it out to the sentencing judge, it is undisputed that Murphy was arrested in Louisiana on unrelated charges separately brought in that state. Since Murphy was being held in Louisiana for crimes committed in that state, Murphy is not automatically entitled to credit toward his Mississippi sentence for time spent in custody in Louisiana. The sentencing judge in this instance did; however, state that he would grant Murphy credit for time served in Louisiana while the Mississippi robbery charges were pending.

Even though the trial court stated that Murphy was to receive credit for time served in Louisiana while the Mississippi robbery charges were pending, before MDOC can give an offender credit there must be a specific order from the judge stating the number of days credit the offender is to receive, an order specifying the exact dates of pre-sentence

incarceration for which he is to receive credit, or valid documentation of the dates the offender was in jail and the date the charges for the crime for which he was ultimately convicted were filed against him. Since MDOC was not provided with the exact number of days credit that the court intended for Murphy receive, it was left up to MDOC to determine what the sentencing judge meant when he stated that Murphy "can get credit for anything he's served over there while this charge was pending."

As stated above, the fact that Murphy's attorney informed the judge that Murphy had been arrested in Louisiana on June 13, 2002 provides little guidance since Murphy was arrested on separate Louisiana charges and there is nothing in the record to show that the Mississippi robbery charges were pending against Murphy at that time. The only piece of evidence that Murphy provides is a single page of what he purports to be a Picayune Police Department report. The page does seem to indicate that a hold was placed on Murphy with the Slidell, Louisiana Police Department, but it is unclear as to exactly what date the hold was placed. At the top of the page it shows the date of the Original Report as probably June 10, 2002 which is the date of the robbery and three days before Murphy states he was arrested. There is a second date of June 13, 2002 at the top of the page under "Report Date" and in the text of the report is a reference to something that happened on June 21, 2002. Clearly, the report was updated at various times. There is no indication as to when this report was actually completed or when the hold was actually lodged against Murphy.

Since MDOC was given no guidance as to how to determine at what point the charges against Murphy were "pending" the law concerning the pre-sentence jail time should be

reviewed. Miss. Code Ann. § 99-19-23 provides for pre-sentence jail time credits as follows:

The number of days spent by a prisoner in incarceration in any municipal or county jail while awaiting trial on a criminal charge, or awaiting an appeal to a higher court upon conviction, shall be applied on any sentence rendered by a court of law or on any sentence finally set after all avenues of appeal are exhausted.

The courts; however, have held that § 99-19-23 does not entitle an offender to any credit for time served in the custody of another state if the offender has fled Mississippi, until such time as he waives extradition. *See, Holland v. State*, 418 So.2d 73, 74 (Miss. 1982).

In reaching their decision in *Holland* the Supreme Court stated as follows:

For us to hold otherwise would encourage an accused to flee this State and seek refuge in a state or locality of his own choosing, and fight extradition knowing that any time spent in jail in such state would be credited to any sentence received by him upon conviction. Such holding would be an impediment to, rather than an aid to, criminal justice.

Clearly, Murphy fled the State of Mississippi after he committed the robbery and there is no evidence in the record as to when, or if, Murphy ever waived extradition to Mississippi. The record only reflects that he was not transferred to Mississippi to face the charges here until more than three (3) years after being arrested in Louisiana.

The three (3) year delay in his being returned to Mississippi, as well as, the trial court's own findings show that Murphy was in fact incarcerated in Louisiana during this time on unrelated charges. As a general rule an offender is not entitled to credit for time served in another state even if charges are pending in Mississippi and the defendant has waived extradition if he is actually serving time on a conviction for a crime committed in the other

state. In *Stanley v. State*, 850 So.2d 154, 157 (Miss.Ct.App. 2003), the Court held that “a prisoner actually serving time for another conviction is not, within the meaning of Section 99-19-23, being held to await trial.”

MDOC staff was placed in the unenviable position of trying to properly interpret and enforce the sentencing order while at the same time following the law as to pre-sentence jail time credit. MDOC staff determined that since Murphy was not being held in Louisiana because of a Mississippi warrant or hold, but was instead serving time in Louisiana for crimes committed in that state, that the Mississippi charges were not officially “pending” as contemplated by the sentencing court until such time as Murphy was actually indicted on those charges. Accordingly, Murphy was given pre-sentence jail time credit for time spent in custody in Louisiana from the date of May 2, 2003 indictment forward. In total, MDOC granted Murphy 985 days of pre-sentence jail time credit. As stated by the trial court, MDOC’s decision to give Murphy credit from the date of his indictment forward can not be found to be arbitrary and capricious given the fact that Murphy was incarcerated in Louisiana on unrelated charges and coupled with that fact that he was granted a significant amount of pre-sentence jail time. Accordingly, this issue is without merit and the decision of the lower court should be affirmed.

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,

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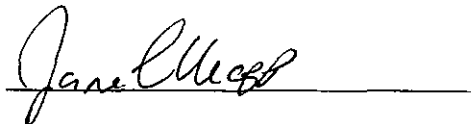
CERTIFICATE OF SERVICE

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

Brent Murphy, #118863
MWCF
503 South Main Street
Columbia, MS 39429

Hon. Prentiss Harrell
Circuit Court Judge
P.O. Box 488
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This, the 15th day of April, 2008.

A handwritten signature in cursive script, appearing to read "Jane L. Mapp", is written over a horizontal line.

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