

In The Court of Appeals
of The State of Mississippi

COPY

Albert Edmond
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Appellant

Versus

DEC 05 2007
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SUPREME COURT
COURT OF APPEALS

Case No. 2007-01163

State of Mississippi

Appellee

Brief For Appellant

Oral Argument Not Requested

Respectfully Submitted.

Albert Edmond
#30523-Unit 29
Parchman, MS 38738

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Statement of 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 Whether Appellant was Afforded Due Process Rights and a Proper Revocation Procedure Before His Parole was Revoked?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 The Case

Appellant avers that on or about March 7, 1974, he was convicted by a Hinds County Circuit Court jury and sentenced to a life term in the Mississippi State Penitentiary* [CP-p. 58]

That on or about June 16, 1982, he was granted a conditional parole - and was paroled to Belvoir County, Mississippi in Cleveland, Mississippi under the supervision of Chaplain Wendy Hatcher as a staff chaplain at the State's Penitentiary in Parchman. [CP-p. 93] About two weeks later, July 1, 1982, he and his supervisor, along with his pastor, Dr. Wilson Benton, went to the sheriff, Mr. Grimmett, and informed him that he, appellant, on the night before had entered an unknown house after becoming drunk; and because no one had made a complaint; nor had anyone arrested him, appellant; the sheriff allowed

* Hereinafter, CP referred to Clerk Papers

him, appellant, to carry on and did not arrest him for any offense;

That thereafter, on or about July 3, 1982, on orders of the sheriff, the Cleveland Police Detectives, upon an arrest warrant, arrested him, appellant, and charged him with Breaking and Entering Occupied Dwelling; but for some reason, the charge was reduced to "Malicious Trespass" [CP-p.95] and was jailed at the Belvoir County Jail; where he remained thereafter for seventeen (17) days without being interviewed by anyone from MDOC via parole officer or Supervisor of parole. [CP-p.71]

That on or about July 9, 1982, he, appellant, was escorted by a sheriff deputy; and without representation of counsel, he went before an unknown Justice of the Peace Judge; that after said judge had learned from appellant that he had been in jail on said charge for "six (6) days", said judge stated "time

served" and released him, but the deputy returned him back to the county jail; [CP- p. 71 and p. 95]

That on or about July 20, 1982, he, appellant, was transported by the sheriff's deputy back to the State's Penitentiary to apparently appear before the Parole Board.

That on or about August 2, 1982, he, appellant, appeared before the Parole Board; and the board's chairman, Mr. Charles Jackson, signed a "Parole Revocation", revoking his conditional parole [CP- p. 100]; and was given a one (1) year setoff; and subsequently sixteen (16) setoffs to the date of filing his state habeas corpus;

That thereafter, on or about November 22, 1999, he, appellant, filed with the Greene County Circuit Court a state Petition for Writ of Habeas Corpus, Challenging the illegal and unlawful revocation of his parole in 1982 [CP- pp. 4-35]; and that on or about December 22, 1999, said petition was

denied without an evidentiary hearing by the trial court [CP- p. 46];

That on or about January 12, 2000, he, appellant, filed his timely notice of appeal with the Circuit Court [CP- pp. 47-51]; That on or about April 12, 2001, the state supreme court in, *Edmond vs. State*, 783 So. 2d 675 (Miss. 2001), reversed and remanded the trial court's decision for an evidentiary hearing on whether appellant was afforded and received due process rights and a proper revocation hearing before his parole was revoked; and whether the doctrine of laches should apply [CP- pp. 56-81];

That on or about May 8, 2001, he, appellant, was transported to Hinds County by Hinds County sheriff's deputies to appear for said evidentiary hearing; but, upon learning that he had been transported to the wrong court for the hearing, he, on May 9, 2001, was returned back to South Mississippi.

Correctional Institution (SMCI) in Greene County [CP-p.128];

That thereafter, on or about May 14, 2001, the Greene County Circuit Court Judge transferred the case to Sunflower County Circuit Court for the Honorable Judge Gray Evans' decision via evidentiary hearing [CP- pp. 82-83];

That on or about June 21, 2001, he, appellant, filed with the Supreme Court a Motion for Contempt of Supreme Court Mandate; but said Motion was dismissed without prejudice for premature filing [CP-p.132];

That on or about June 29, 2001, the Honorable Judge Betty Sanders of Sunflower County Circuit Court filed with the Supreme Court a request for an appointment of Judge Gray Evans for "Special Judge" to preside over said case due to his resignation before concluding the case; that on or about July 3, 2001, the supreme court appointed Judge Gray Evans as special judge for the case [CP- pp. 84-85];

That on or about October 8, 2001, he, appellant, after not being transported to and for his mandated evidentiary hearing and not knowing that Judge Evans had in fact already ruled on and dismissed without said hearing (for appellant later learned via supreme court's order that Judge Evans had ruled on said case on June 30, 2001, and had filed his judgment with the clerk on July 12, 2001) his state petition, filed a second Motion for Contempt of Supreme Court Mandate with the supreme court; that the supreme court ordered Judge Evans to respond to said Motion by October 26, 2001 [CP-p.140].

That after not receiving any response from Judge Evans and not receiving any ruling from the supreme court, he, appellant, wrote, on or about December 12, 2002; December 19, 2003; and November 18, 2004 respectively, three separate letters to the supreme court

clerk requesting the status of said Motion; that on each occasion, the clerk responded that the Motion was still before the Court and a written notice of its ruling would be sent to him [CP-pp. 142-144].

That on or about August 17, 2005, he, appellant, filed with the supreme court a Petition for Writ of Mandamus for Judge Evans' failure to respond to his October 8, 2001's Motion [CP-pp. 146-147].

That on or about September 26, 2005, Judge Evans filed his response to the writ of mandamus.

That on or about December 1, 2005, the supreme court dismissed as moot said mandamus due to the fact that Judge Evans had already ruled on his petition and had dismissed it without the mandated hearing.

That thereafter, he, appellant, filed with the Supreme Court several

motions in an effort to have Judge Evans' decision overturned; be afforded the mandated hearing; to be reinstated back on his original conditional parole of 1982;

That on or about January 23, 2006, he, appellant, filed with Sunflower County Circuit Court a Petition for Writ of Mandamus ordering the circuit court clerk to forward to him a certified copy of entry of judgment of Judge Evans; that said Motion is still pending before the Court;

That on or about August 29, 2006, he, appellant, filed a Motion for Out-of-Time Appeal with the trial court; that the trial court denied and dismissed said Motion on or about May 4, 2007.

Statement of Facts

Appellant avers under declaration of penalty of perjury that he was granted, on June 16, 1982, a conditional parole; that about two weeks later, on July 1, 1982, he admitted to Belvoir County Sheriff, Mac Grimmit, of which county he was paroled, that he, the night before, had entered into an unknown residence; that the owner of said residence did not make out any complaint or affidavit against appellant; that the said sheriff, on July 3, 1982, directed the Cleveland Police Detectives, upon a warrant on charge of Breaking and Entering Occupied Dwelling, to arrest him; and he was jailed at the Belvoir County Jail; That on July 9, 1982, he appeared, without the aid of counsel, before a justice of the peace judge on the reduced charge of malicious trespass where he was sentenced to six (6) days time served in the county jail; That at no time did his parole officer, Mr. Robert Donley, come by the jail to interview him; nor did Mr. Donley

place a parole violation hold on him with the sheriff; nor was he, appellant, served with a waiver of preliminary hearing; That on July 20, 1982, he was transported back to the State Penitentiary; That on August 2, 1982, he, appellant, appeared before the Parole Board without any notice of said hearing; that the Chairman signed a parole violation, revoking his parole for one (1) year; and that he has received sixteen (16) setoffs since, until the date of the filing of his petition; that at no time was he afforded a proper revocation hearing; and there was no written notice for the reason(s) for said revocation [CP-p. 99]

That on November 22, 1999, he filed with the Greene County Circuit Court a state Petition for Writ of Habeas Corpus challenging the unlawfulness and illegalities of his parole revocation; that on December 22, 1999, the trial court denied and dismissed said

petition without an evidentiary hearing;

That on January 12, 2000, he filed a notice of appeal to the circuit court; that on April 12, 2001, the Supreme Court reversed the trial court's judgment and remanded it back to Greene County Circuit Court for an evidentiary hearing;

That on May 14, 2001, the trial court transferred the case to Sunflower County Circuit Court where Judge Gray Evans became the presiding official.

That Judge Evans conducted ex parte hearing and heard ex parte testimonies; that Judge Evans failed and refused to call him to said hearings; that the Sunflower County Circuit Clerk, Ms. Sharon McTadden, did file the transferred case (said case records were given a new cause number - 2001-0309C1 - as opposed to retaining its original number) a month after its transfer - June 15, 2001 [CP-p. 1]; which could not have given Judge Evans judicial authority

to preside over the case until some-
time after said filing date; That
fourteen (14) days after said filing,
Judge Letty Sanders petitioned
the Supreme Court and requested
that Judge Evans be appointed as
Special Judge of the case due to his
resignation before concluding the
case; That on June 30, 2001, one day
after said request and three days before
said appointment, Judge Evans signed
an Order denying and dismissing his,
appellant's, state petition without
the mandated evidentiary hearing;
that on July 3, 2001, the supreme court
issued an Order appointing Judge
Evans as Special Judge as requested;
That on July 12, 2001, Sunflower
County Circuit Clerk entered said judg-
ment on the minutes book; but fail-
ed and refused to serve a copy of said
judgment to him, appellant, but only
on Mr. Jim Norris-attorney for the state;
the Supreme Court and Judge Backstrom
the trial judge [CP-p. 4];

That on June 21, 2001, he, appellant, filed with the Supreme Court his Motion for Contempt of Supreme Court Mandate; that said Motion was dismissed without prejudice; That on October 8, 2001, he filed his second Motion for Contempt of Supreme Court Mandate; and on October 10, 2001, Judge Evans was ordered to respond by October 26, 2001; That thereafter, he wrote three letters to the Supreme Court's clerk in the span of four (4) years requesting the status of his Motion; that on each occasion, the clerk responded that his case was before court and that he would be notified by written statement of its ruling;

That on August 17, 2005, he filed with the Supreme Court a Petition for Writ of Mandamus on Judge Evans's refusal to respond to said contempt motion; That on September 26, 2005, Judge Evans responded to said mandamus; that Judge Evans admitted that

he did not respond to said contempt motion; that Judge Evans alleged that the supreme court's clerk did not forward him a copy of the supreme court's order to respond; Judge Evans admitted that he did not conduct the mandated evidentiary hearing (this admission conflicts with Judge Sanders allegations that he had held lengthy hearings prior to his alleged resignation); that he had on June 30, 2001, denied and dismissed appellant's Habeas corpus petition [See Excerpt of record on Judge Evans' response]

That on December 1, 2005, the Supreme Court dismissed said writ as moot; that thereafter, he filed several motions to the supreme court in an effort to secure his mandated evidentiary hearing; that the final order from the supreme court in regards to said case was on August 10, 2006;

That thereafter, on August 29, 2006,

he filed with the Sunflower County Circuit Court the present Motion for Out-of-Time Appeal; that the trial court dismissed his motion as time barred under the 180 days rule on May 4, 2007; that the Sunflower County Circuit Clerk again failed and refused to serve him, appellant, a copy of the entry of judgment; that he filed with the Supreme court a Petition for Writ of Mandamus to compel the trial court to rule on his Motion; [CP-p.159]; that he learned by Order of the supreme court that said Motion had already been ruled upon on May 4, 2007; that he did receive a copy of said judgment until June 18, 2007, after he had written and requested for it;

That on September 20, 2007, he, appellant, received a copy of the Clerk's Papers; that upon examination of said papers - he discovered that the Clerk had in fact made a clear

error and mistake in the compilation; that she alleged that he, appellant, when he filed with the Court his Motion for Appointment of Counsel - he attached as exhibits several documents from and of the Parole Board and MDOC's officials (Note: these are the same documents which Judge Evans alleged to have reviewed in making his decision); That he, appellant, on or about October 9, 2007, submitted to the trial court his Written Statement of the Proposed Corrections to the Record [See Excerpt of Record]; that as of the perfecting this appeal brief - he, appellant, has not received any order from the trial court.

Summary of Argument

The appellate court has discretionary authority to grant an out-of-time appeal where the trial court could not grant one due to the 180 days rule of the appellate court - when it is shown that the failure to file a timely appeal's notice was no fault of the appellant.

The trial court was in error when it failed to conduct the mandated Evidentiary Hearing; since the Supreme Court had already concluded that such a hearing was warranted and remanded the reversed judgment for that purpose.

That the State failed to afford the appellant with a full due process rights pursuant to the Morrissey Court before revoking appellant's parole.

Because of plain error, the courts could not determine that the Doctrine of Laches was applicable to appellant's habeas corpus petition, therefore, erred in its remand and denial.

Argument

1. Whether the Appellate Court is Mandated to Grant Appellant an Out-of-Time Appeal?

Appellant avers that this Appellate Court should grant the appellant an out-of-time appeal because the clerk of court failed and refused to mail him and the ^{A.F.} opposing parties a copy of the trial court's judgment which was allegedly filed with the trial court's clerk on July 12, 2001 - dismissing his State Habeas corpus petition without an evidentiary hearing; and because the trial judge was without jurisdiction to re-open his case due to the 180 days rule; That to no fault of his own, he was hindered and prevented to file a timely notice of appeal - which had he known, he would have filed said appeal - appealing the denial and dismissal of

his state habeas corpus without the mandated evidentiary hearing. See Parker vs State, 921 So. 2d 397 (Miss. Ct. App. 2006); Bell vs State, 909 So. 2d 103 (Miss. Ct. App. 2005); Deloach vs. State, 890 So. 2d 934, 937 (Miss. Ct. App. 2004); Mc Gruder vs. State, 886 So. 2d 1, 2 (Miss. 2003); Miss. R. App. P. 4(h)

Therefore, this Court should grant the appeal and proceed to determine the remaining issues and reverse and render the present appeal and reinstate appellant's original parole of 1982.

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

Appellant avers that the trial court was clearly erroneous when denying and dismissing his state habeas corpus petition without the mandated evidentiary hearing. That this Court should reverse said judgment on ground that it was clearly erroneous for Judge Evans to dismiss appellant's petition after he, Judge Evans, had held ex parte lengthy hearings and had heard testimony without his presence. See Kirksey vs. State, 728 So. 2d 565, 567 (Miss. 1999) ("When reviewing a trial court's denial of a motion for post-conviction relief, an appellate court will reverse only where the decision of the trial court was clearly erroneous") Bell vs. State, 909 So. 2d 103 (Miss. Ct. App. 2005).

The trial court heard "testimony" from witnesses (the witnesses' identity is not known by appellant) and held "lengthy hearings" without appellant's presence; and then ruled on his petition solely on the affidavit or/and records from MDOC. In Harris vs. State, 578 So. 2d 617, 619 (Miss. 1991), the Supreme Court reversed the trial court's decision and remanded it for an evidentiary hearing, noting that "this court eschews trial by affidavit" Id. at 619, 620.

A trial court may summarily dismiss a petition for post-conviction relief if it plainly appears from the face of the petition that the movant. Kill vs. State, 797 So. 2d 1006, 1008 (Miss. Ct. App. 2001) citing Miss. Code Ann. Sec. 99-39-11(2) (Rev. 2000). Appellant avers that the Greene County Circuit Court (original trial court) had dismissed his habeas petition on its face-but, after he appealed its judgment, the

Supreme Court reversed and remanded the case for an evidentiary hearing. See Edmond; therefore, the trial court on remand (note: Greene County transferred said case to Sunflower County Circuit Court for the sole purpose of the mandated hearing) was without jurisdiction to summarily dismiss said petition on its face - since the Supreme Court had decided that the trial court had erred in dismissing said petition without an evidentiary hearing. That because of said lengthy hearings and testimony, were ex parte the trial court violated appellant's right to respond as provided in Miss. Code Ann. Sec. 99-39-17(3); See Harris vs. State, 578 So. 2d 617 (Miss. 1987) (citing Neal vs. State, 525 So. 2d 1279 (Miss. 1987)) ("we delineated the responsibility of a trial court with respect to petition under the Post-Conviction Collateral Relief Act claiming a denial of a substantial right"). Appellant avers that if the trial judge had promptly

ordered him to be at said lengthy hearings - he could have confronted those alleged witnesses as to the credibility of their testimony; and that he could have contested the alleged documents of the records before the court.

Appellant notes: that none of the alleged documents which the trial judge considered and reviewed were made a part of the records (as requested by appellant) by the State in its "Answer" to his petition in Greene County Circuit; nor were they made a part of the records in the Supreme Court on appeal by the State's "Appellees Brief". The Supreme Court stated clearly that the state had failed to submit any documents in the record that would disprove or discount Edmond's claims; that there were no affidavit or records from the parole officer; Bolivar County Sheriff; Cleveland Police; or Parole Board other than the appellant himself. See

Edmond, Id. P. 19. The failure of the trial court to conduct said mandated evidentiary hearing was in fact an error. See Harris vs. State. The Court went on and stated in Harris, "In order for a contested fact to require an evidentiary hearing it must be material." See also Albertson vs. T.I. Stevenson and Co., 749 F. 2d 223 (5th Cir. 1984)

Appellant further avers that the trial judge was without jurisdiction to rule on his petition any time before July 3, 2001. That because of Judge Evans' resignation from the bench before he concluded the matter of the case; he was without judicial authority to later, on June 30, 2001, make his ruling and dismiss appellant's petition without the mandated hearing, due to the fact that the supreme court did not appoint him as "Special Judge" until July 3, 2001 (See Orders of Supreme Court); furthermore, he, Judge Evans, never mentions in his

"Order" that he had conducted the alleged lengthy hearings and heard testimony prior to his decision to dismiss said petition - only that no hearing was necessary. Where he used Miss. Code Ann. Sec. 99-39-11 to deny the petition without the mandated hearing; he was in error, because said Section was inapplicable to said petition due to the fact that the supreme court had already concluded that an evidentiary hearing was warranted, and the judgment reversed and remanded for said hearing. See Edmond

The Court does, upon examination of the application, have the authority to dismiss his petition outright - "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..." Miss. Code Ann. Sec. 99-39-11(2). On the other hand, if the application meets these pleading requirements and presents a claim procedurally alive "substantially

showing denial of a state or federal right," the petitioner is entitled to an in court opportunity to prove his claims. Miss. Code Ann. Sec. 99-39-27(5)

Appellant avers that the alleged conviction of Malicious Trespass by the justice of the peace judge (note: said conviction was the reason Judge Evans' dismissal of said petition) was illegal and unlawful because the records do not reflect there was a complaint filed or affidavit sworn out by anyone to give the justice judge "jurisdiction" to hear the case. Bramble vs. State, 193 Miss. 24; 8 So. 2d 234; 1942 Miss. LEXIS 95. An affidavit is the foundation of the jurisdiction of the justice of the peace; The affidavit is a prerequisite to prosecution for misdemeanor. Code 1930, Section 2098 (Mississippi); Iry vs. State, 141 Miss. 877, 106 So. 111; Coulter vs. State, 75 Miss. 356, 22 So. 872; Bingham vs. State, 59 Miss. 529 (the court has no jurisdiction without affidavit); That the alleged conviction and sentence

and the fact that appellant was not represented by counsel were a denial of a substantial right and due process of law. The Supreme Court stated in Edmond vs. State, 783 So. 2d 675 (Miss. 2001), "There is some question however, as to whether Edmond admitted a bona fide 'parole violation', and whether he was ever convicted of 'malicious trespass'. If no one filed a charge against Edmond and he was never convicted for the crime, then upon what is the revocation based?"; That, if the supreme court states that the record was completely devoid of any information that would substantiate the existence of a malicious trespass complaint filed or conviction received, then the state, upon remand for an evidentiary hearing, was required to present said documents; and the appellant should have been given an in court opportunity to contest said documents. Therefore, the Supreme Court justified its reason

for remanding for an evidentiary hearing. Dillon vs. State, 641 So. 2d 1223, 1225 (Miss. 1994); Grayson vs. State, 648 So. 2d 1129, 1134 (Miss. 1994); State vs. Espinal, 488 So. 2d 228, 229 (La. Ct. App. 1986).

Appellant avers that Miss. Code Ann. Sec. 47-7-27 states, "An offender convicted of a felony while on parole, whether in the State of Mississippi or another state, shall immediately have his parole revoked upon presentation of a certified copy of the commitment order to the Board" (Emphasis added); Appellant notes: the statute states that the offender shall have been convicted of a felony, as opposed to a misdemeanor - malicious trespass is a misdemeanor. That Judge Evans stated in his "Order" that appellant's parole was revoked due to his conviction of "malicious trespass"; but, the state failed to submit to the trial court any certified copy of commitment paper on the alleged conviction of the justice

of the peace judge.

Appellant further avers that Section 47-7-27 was violated in several manners and therefore, the trial court was without jurisdiction to dismiss his petition thereof: It is stated in pertinent parts; "The board is hereby authorized at any time, in its discretion, and upon a showing of probable ^{A.E.} cause violation of parole, to issue a warrant for the return of any paroled offender to the custody of MDOC". That, Judge Evans stated in his Order, "July 15, 1982, a warrant for Retaking Parole Prisoner was issued by the Department of Corrections"; said warrant could easily be argued that it was void due to the fact that the statute authorizes only the board to issue said warrant, as opposed to MDOC. See Order. Therefore, the trial court was in error for accepting said warrant as one of the reasons for denying and dismissing his petition without the mandated hearing.

Appellant also avers that the record was void before the court as to a "written report" by the parolee's field supervisor to the Board. (Note: no one ever made an arrest upon appellant for violation of parole) Section 47-7-27 further states in pertinent parts: "The field supervisor, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. The field supervisor shall at once notify the board.... and shall submit a written report showing what manner the offender has violated the conditions of parole...." (Emphasis added) Therefore, the trial court erred in dismissing said petition without the evidentiary hearing. It is further stated in Section 47-7-27, "Pending hearing, as hereinafter provided, upon any charge of parole violation, the offender shall remain incarcerated in any other place of detention designated by the department." This section provides a preliminary

revocation hearing for the appellant. Judge Evans states in his Order; "On July 14, 1982, Petitioner waived his right to a preliminary parole revocation hearing." It is noted in his state habeas petition - Appellant alleged that he never had the opportunity to and was ^{not} ^{AE} afforded a preliminary hearing by the parole officer. So, it was a factual material dispute whether appellant actually had an opportunity or whether he waived the right to said hearing; which would have automatically required an evidentiary hearing. See Harris vs. State ("In order for a contested fact to require an evidentiary hearing it must be material"). The trial court erred in refusing to order the mandated evidentiary hearing.

Therefore, the judgment of trial court should be reversed and rendered and appellant's original parole reinstated.

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

Appellant avers that in Edmond vs. State, 783 So. 2d 675; 2001 Miss. LEXIS 91, the Supreme Court reversed and remanded the trial court's judgment due to the fact that, "The record provided to the Court is insufficient to determine whether Edmond was denied proper revocation procedure in this case." Therefore, because of said remand, the trial judgment was mandated to conduct said evidentiary hearing to give him, appellant, an in court opportunity to prove that there was a substantial right violated. See Billiot vs. State, 515 So. 2d 1234; 1987 Miss. LEXIS 2914.

Appellant avers that, in Miss. Code Ann. Sec. 47-7-27, states in pertinent part, "At the next meeting

of the board held after the issuance of a warrant for the retaking of any offender, the board shall be notified thereof; and if the offender shall have been taken into custody, he shall then be given an opportunity to appeal to the board in writing or in person why his parole should not be revoked." (Emphasis added by appellant)

Appellant avers that the Parole Board of August 1982 (and subsequent parole boards' failure to correct the alleged unlawful revocation) denied him his "Due Process Rights" guaranteed by the Fourteenth Amendment to the United States Constitution and pursuant to Morrissey vs. Brewer, 408 U.S. 471, 92 S. Ct. 293, 33 L. Ed. 2d 484 (1972) before revoking his conditional parole; that the board failed and refused to afford him the proper revocation hearings, as dictated by the Morrissey Court. The revocation

of parole requires two (2) types of hearings: (1.) A preliminary hearing to determine whether there is probable cause or reasonable grounds to believe that the parolee has violated the term of parole; and (2.) a final hearing to determine any contested relevant facts and to consider whether those facts support revocation. The Supreme Court stated, in Berdin vs State, 648 So. 2d 73 (Miss. 1994) quoting Morrissey, "the court must adhere to the following procedures to have a proper preliminary hearing. 1)... 2)... 3) Notice of the hearing and a statement that the purpose is to determine if there is probable cause to believe a violation has been committed. 4) the notice should state what... violations have been alleged. 5)... 6)... 7)... 8) The hearing officer shall determine whether there is probable cause to "hold" the [defendant] for the final decision.

and 9) The decision maker should express the grounds for holding the defendant for final hearing. (Emphasis added by appellant).

Appellant avers that during his incarceration in the Bolivar County Jail after the Cleveland Detectives had arrested him upon a warrant, no one from the Mississippi Department of Corrections (MDOC) nor any field supervisor nor parole officer came once to interview him nor to give him an opportunity for a preliminary hearing. Nor was he given any documentations to reflect that he, appellant, had in fact violated any term of his parole. That the only person he saw was an unknown justice of the peace judge, who sentenced him without the presence of an attorney to six (6) days time served in the county jail for the alleged "Malicious Trespass" offense; That the parole officer never presented to him any arrest warrant,

nor any waiver of preliminary hearing; that after he had been released by the justice of the peace judge - he was escorted back to the county jail where he remained an additional eleven (11) days - and thereafter, escorted and transported back to the penitentiary in Parchman to allegedly appear before the Parole Board.

The requirements for the final revocation hearing are: 1) A written notice of the probation (parole) violation. 2) Disclosure of evidences against probationer (parolee). 3)... 4)... 5).... 6) A written statement of the reason for revocation. (Emphasis added by appellant) See also Liley vs. State, 562 So. 2d 1206, 1210-11 (Miss. 1990).

Appellant avers that none of the above requirements were adhered to or afforded him before his conditional parole was finally revoked. That after he had returned

back to Parchman, the Board failed and refused to afford him with a proper final revocation hearing. That he only appeared before the Board sometime in August of 1982 in the same manner as he had appeared before them for to be granted parole; that said hearing was not conducted pursuant to the dictates and requirements of Marrisey; Berlin; Riley; and said applicable statute. That the Board did not present to him any evidences of an alleged violation; that the Board only discussed the alleged "Police Report" of the alleged malicious trespass offense; that he was not given any opportunity to have an attorney present; nor was he given an opportunity to confront any witnesses or anyone who may have filed a complaint; that he was not given any opportunity to present any evidences that could have mi-

tigated the reason for revocation of his parole; that he was not given any statement / written for the reason for revocation of parole; That the only statement he received from the Board was a one (1) year set-off. See Armstrong vs. Mango, 380 U.S. 545, 85 S.Ct. 1187, 14 L. Ed. 62 (1965);

That Judge Evans (trial judge) stated in his Order, "On July 22, 1982, a letter was issued to Petitioner stating that he would have a parole revocation hearing on August 2, 1982." Appellant avers that the alleged letter is no substitute for "written notice of the probation (parole) violation" as required by Marrissay; Berdin and Riley; that the record reflects that a "Parole Revocation" certificate was signed on August 2, 1982 by the Chairman of the Parole Board - Mr. Charles Jackson; and it stated, "he violated condition No. 5"; "No. 5 arrested and charged

with Malicious Trespass"; that the records do not reflect any certified copy of the commitment order of a conviction.

Appellant avers that the alleged charge of malicious trespass was improperly submitted to the Board by the parole officer because his parole officer never once interviewed him about said charges and given him an opportunity to testify and confront adverse witnesses of such charges pursuant to Merrissay, supra, and that his parole officer only accepted the Cleveland Police's Report as his Report for reason to present and submit to the Board to have his parole revoked. Appellant avers that charges of an offense and an arrest are not sole reasons for revocation of one's parole. See Alexander vs. State, 667 So. 2d 1 (Miss. 1995); Mare vs. Ruth, 556 So. 2d 1059, 1061 (Miss. 1990); That the Board

never gave a written statement of its decision stating the facts and reason upon which his parole was revoked. See Johnson v. Kelsch, 664 F. Supp. 162, 164 n. (S.D. N. Y. 1981); United States vs. Martinez, 650 F.2d 744, 755 (5th Cir. Unit A. July 1981) - this material fact violated Appellant's due process rights to Miss. Code Ann. Sec. 47-7-27.

Therefore, this issue warrants a reversal and rendered of the trial court's judgment.

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

Appellant avers that the trial judge erred in failing to determine whether laches apply to his habeas corpus petition. That the Supreme Court in Edmond vs. State, 783 So. 2d 675; 2001 Miss. LEXIS 91, specifically reversed and remanded his case back to the trial court for the purpose of determining should laches apply, since the state had raised the doctrine of laches as one of its affirmative defenses and had argued it on its appellee's brief.

The appellant further avers that the supreme court should not have remanded his case on the issue of whether laches should apply because: the Court had previously ruled that laches could not apply to a case where the statute of limitation

had not run out. Miss. Dept. of Human Service vs. Charles Lonnie, 644 So. 2d 1230 (Miss. 1994) ("The Court has held that 'the doctrine of laches is simply inapplicable where a claim has not yet been barred by the applicable statute of limitation'"). See also Greelee vs. Mitchell, 607 So. 2d 97, 111 (Miss. 1992) citing Nest End Corp. vs. Royals, 450 So. 2d 420, 425 (Miss. 1984); That because the state's post-conviction three (3) year statute of limitations could not bar his state habeas corpus petition from being reviewed and adjudicated, (See Edmond; Alexander vs. State, 667 So. 2d 1 (Miss. 1995); Tartson vs. Hargett, 662 So. 2d 633, 635 (Miss. 1995); and Miss. Code Ann. Sec. 99-39-5(2), which states in pertinent part: "A motion for relief under this chapter shall be made within three (3) years after... Likewise excepted are those cases in

which the prisoner claims... parole or conditional released has been unlawfully revoked" (Emphasis added), the rule of doctrine of laches could not bar his claims, even after seventeen (17) years.

Therefore, since the applicable three (3) years statute of limitation could not bar appellants' claims on his state habeas corpus petition (which the courts construed as a post-conviction motion), the supreme court was in error when it remanded said case for determination of whether laches should apply; and that the trial judge, upon remand, was in error when he failed to conduct said mandated evidentiary hearing to allow appellant an in court opportunity to prove that laches should not apply to his claims of due process rights violation. Furthermore, the state could ^{not} have met the three (3) factors of said doctrine of

laches which are required for the state to invoke said rule: 1. that there was a delay; 2. the reason for the delay; and 3. prejudice caused by the delay. Appellant avers that first, there was no delay because he presented to the parole board each time he was reconsidered for reinstatement or a new parole that the previous board had denied him a preliminary and final revocation hearing before revoking his parole; Secondly, there was no one who allegedly caused a delay; and thirdly, the state was not and could not be prejudiced because all the alleged witnesses but one were still alive and all the records were still intact even to the present because, as a "lifer" on parole, he could be reconsidered indefinitely for parole of the revocation; and the records could ^{not} be destroyed after three (3) years. Therefore, reversal and rendered are warranted.

Conclusion

Therefore, Premises Considered,
Appellant prays this Court would
grant the out-of-time appeal;
Because of the trial court failure
to adhere to the Supreme Court's
Mandate - reverse the trial court's
judgment and render; reinstate
Appellant's original conditional
parole and order his immediate
release; in the alternative,
remand the mandated Evidenti-
ary Hearing; and any other relief
this Court deems appropriate
and justice required.

Respectfully submitted.

s/Albert Edmond

This the 5th day of December 2007.

Certificate of Service

I do hereby certify that I have this date mailed via United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief for Appellant, to the following:

Hon. Jim Hood
Attorney General
P.O. Box 220
Jackson, MS 39205

This the 5th day of December, 2007.

s/ Albert Edmond