

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

2008-CP-01683

**KHRISTOFFER MANDELL HEARRON
APPELLANT**

vs.

**MISSISSIPPI DEPARTMENT OF CORRECTIONS
APPELLEE**

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

BRIEF OF APPELLEE

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

**JAMES M. "JIM" NORRIS
ATTORNEY SENIOR, MDOC**

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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. Khristoffer Mandell Hearron, Appellant
2. Christopher Epps, Commissioner of Corrections
3. Betty W. Sanders, 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 Appellee:

1. James Norris, Attorney, Mississippi Department of Corrections
2. Jane L. Mapp, Special Assistant Attorney General

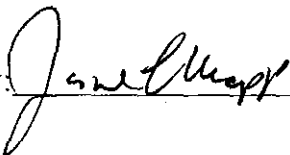
By:  _____

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ISSUE

I. Whether [the] Trial Court Erred in Denying Petitioner's Motion for Judicial Review Regarding His Prior 1990 Conviction Claim as Procedural [Sic] Barred.

STATEMENT OF THE CASE

On or about June 10, 2008, Khristoffer Hearnon ("Hearnon") a state inmate legally incarcerated within the Mississippi Department of Corrections ("MDOC"), filed a motion in the Circuit Court of Sunflower County, Mississippi, seeking judicial review of an adverse decision rendered by MDOC's Administrative Remedy Program ("ARP"). (CP¹ at 1). Hearnon states in his Motion for Judicial Review that he is currently serving a 30 year sentence as a habitual offender for Possession of Cocaine with Intent to Distribute. (CP at 2). Hearnon claims that prior to his current incarceration that he was convicted on November 20, 1990 of possession of cocaine and was sentenced to three (3) years in the custody of MDOC and placed in the Regimented Inmate Discipline ("RID") Program. On or about June 25, 1991, upon completion of the RID program, the remainder of his sentence was suspended and he was placed on five (5) years probation. His probation was subsequently revoked and he was returned to MDOC custody to complete the remainder of the three (3) year sentence previously imposed. Hearnon states the he remained in MDOC custody until he was released due to expiration of his sentence on June 29, 1992. Hearnon claims that when his suspended sentence was revoked and he was ordered to complete the three (3) year sentence MDOC did not give him credit for the 178 days he alleges he was in the RID program or 66 days of Meritorious Earned Time for which he claims he was entitled. (CP at 1). Hearnon seeks \$30,000,000 for compensatory and punitive damages for physical, mental, and emotional

¹For the purposes of this brief the clerk's papers will be abbreviated as "CP" and the transcript will be abbreviated as T.

distress he claims to have suffered as a result of allegedly being held an extra 178 days in 1992.

On or about September 30, 2008, a hearing was held on Hearron's motion before Circuit Court Judge Betty W. Sanders. At the hearing Hearron stated that he was in custody on the 1990 sentence for 590 days, but that on a three (3) year sentence with a 50% earned time allowance he should only have served 548 days. (T. at 7). A difference of only 42 days, not the 178 days he alleged in his motion. Gloria Gibbs testified that in 1990 an offender's time was worked under a class system and they were not necessarily given a straight 50% earned time allowance. (T. at 6). No one at the hearing knew the exact sentence computation rules in effect at that time. At that point in the hearing, Jim Norris, attorney for MDOC, objected stating that Hearron's complaint was untimely as it had been 16 years since he was released on the sentence at issue. (T. at 6).

Hearron then tried to assert that his claim regarding being held too long on his 1990 conviction was properly before the court because that conviction and sentence was used to enhance his current sentence under the habitual offender statute, Miss. Code Ann. § 99-19-81. (T. at 6). Hearron claimed that since the prior conviction was utilized for habitual offender purposes that he is technically still in custody on that prior sentence. (T. at 7). He then went on to try to assert that since he was allegedly held too long on the 1990 sentence the conviction was illegal and could not be utilized to enhance his current habitual sentence. (T. at 11).

Following the hearing, the trial court issued an Order dated September 30, 2008 and filed with the Circuit Clerk on October 9, 2008 dismissing Hearron's claims as time barred. (CP at 38). Feeling aggrieved by the lower court's decision, Hearron filed his Notice of Appeal to this Court and was allowed to proceed *in forma pauperis*. (CP. at 30, 39).

SUMMARY OF THE ARGUMENT

Hearron's claims are barred by both the general statute of limitations and the statute of limitations for post-conviction collateral relief motions. *See*, Miss. Code Ann. §§ 99-39-5(2) and 15-1-49.

Hearron's claims also fail on the merits since the earned time statute in effect in 1990 at the time he committed the crime at issue clearly shows that offenders were not entitled to a 50% earned time allowance.

ARGUMENT

I. Whether [the] Trial Court Erred in Denying Petitioner's Motion for Judicial Review Regarding His Prior 1990 Conviction Claim as Procedural [Sic] Barred.

Hearron argues in his brief that his complaint should not have been dismissed as time barred since he sought judicial review pursuant to Miss. Code Ann. § 47-5-807 within 30 days of receiving a final adverse decision of a grievance filed with MDOC's Administrative Remedy Program ("ARP"). Hearron argues that the statute of limitations normally applicable to a cause of action is irrelevant if the offender utilizes the ARP and then seeks judicial review within the 30 days proscribed by statute. Hearron states that MDOC, by accepting his grievance waived the right to assert that his claims were time barred.

The trial court properly dismissed Hearron's claims as they are doubly time barred and without merit. First he argues that he was held 42 days too long on the sentence for which he was released on June 29, 1992. He seeks both monetary damages and a ruling that due to being held too long on this sentence his conviction was illegal. Both the general statute of limitations and the statute of limitations for post-conviction collateral relief motions is three (3) years. *See*, Miss. Code Ann. §§ 99-39-5(2) and 15-1-49. Hearron is well outside the statute of limitations for filing any type of claim regarding this sentence.

Secondly, any claim that his current sentence is illegal or invalid because the 1990 conviction should not have been used to enhance his current sentence under the habitual offender statute is also time barred by the three (3) year statute of limitations. Hearron's 30 year habitual sentence was affirmed by the Mississippi Court of Appeals on February 10, 1998 more than 10 years before Hearron's present case was filed. *See, Hearron v. State*, 708 So.2d 98 (Miss.Ct.App. 1998), cert. denied 726 So.2d 594 (Miss. 1998)². Accordingly, any post conviction collateral relief motion is time barred.

Hearron's contention that his claims were not time barred because he timely sought judicial review of a grievance pursuant to Miss. Code Ann. § 47-5-807 is spurious. The trial court did not dismiss Hearron's Motion for Judicial Review as untimely pursuant to Miss. Code Ann. § 47-5-807, she dismissed his underlying claims as untimely. The trial court did

²These were unpublished opinions, but a copy of the Court of Appeals opinion can be found on the Mississippi Supreme Court's website by searching the Mississippi Court of Appeals Hand Down list for February 10, 1993 for *Hearron v. State*, Appeal No. 96-KA-00047.

in fact review the denial of Hearon's grievance by the ARP and found that he was appropriately denied relief because his claims were procedurally barred. An inmate may not attempt to utilize the ARP in an attempt to circumvent the statute of limitations which apply to a cause of action. Miss. Code Ann. § 47-5-807 simply allows an offender who is aggrieved by an adverse decision rendered through the ARP to seek judicial review of that decision within 30 days. It does not allow an inmate to attack the validity of his conviction or sentence or advance procedurally barred causes of action through a back door.

The statute of limitations notwithstanding, Hearron's underlying claim that his 1990 conviction was illegal because he served more than 50% of the three (3) term fails for two other reasons. First, there is no merit to Hearron's argument that if an offender is held past his release date then the conviction becomes illegal and can not be used for enhancement purposes in later proceedings and Hearron has failed to cite any authority that would hold otherwise. "It is well established that appellate courts in Mississippi will not review any issues on appeal if the party fails to cite relevant support of his or her arguments." *Jackson Motor Speedway, Inc. v. Ford*, 914 So.2d 779, 783 (Miss.Ct.App.2005) quoting, *Lambert v. Lambert*, 872 So.2d 679, 682 (Miss.Ct.App.2003).

Secondly, the law in effect at the time Hearron committed his crime in 1990 did not require that an offender serve only 50% of his sentence. Hearron argues that when his RID time and post-revocation time are taken together he served a total of 590 days on this three (3) year sentence for possession of cocaine. According to Hearron he should have only served 50% or 542 days of the three (3) year sentence. While Miss. Code Ann. § 47-5-138

(1990) did limit the maximum amount of earned time and MET an offender could receive to ½ of his total sentence, nothing in the statute automatically entitled the offender to a 50% earned time allowance. In fact, Miss. Code Ann. § 47-5-139(1990), specifically forbade MDOC from automatically granting an offender a 50% earned time allowance on his entire sentence. That statute read in pertinent part as follows:

(2) The classification committee shall group all inmates into one (1) of four (4) separate and distinct classes with earned time to be earned as follows:

(a) Offenders in Class I shall be allowed to earn up to thirty (30) days reduction for each month served.

(b) Offenders in Class II shall be allowed to earn up to twenty (20) days reduction for each month served.

(c) Offenders in Class III shall be allowed to earn up to eight (8) days reduction for each month served.

(d) Offenders in Class IV shall not be allowed to earn any earned time.

Provided further, an inmate shall be placed in Class IV when received at the correctional system and shall remain in such class for at least thirty (30) calendar days. Any subsequent promotion, whether original or after having been demoted, shall be made only to the next highest class in which the inmate must remain for a reasonable time to evaluate performance before being again promoted.

Miss. Code Ann. § 47-5-139 (1990).

This statute is consistent with the testimony given by Gloria Gibbs at the evidentiary hearing that Hearn's records reflect that the earned time granted to Hearn on the 1990 sentence was based on the class system and that he did receive credit for the time he spent in the RID program. Accordingly, Hearn's claims are not only procedurally barred as outside the statute of limitations, but they fail on the merits as well.

CONCLUSION

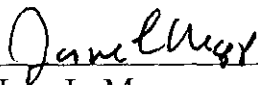
Based on the arguments of fact and law herein above, the dismissal of Appellant's motion for judicial by the lower court was appropriate and should be affirmed.

Respectfully submitted,

Mississippi Department of Corrections
Defendant

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

**JAMES M. "JIM" NORRIS
ATTORNEY SENIOR, MDOC
MS BAR NO. 3882**

BY: 
Jane L. Mapp
Special Assistant Attorney General


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:

Kristoffer Hearn, #75793
D.C.F.
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Greenwood, MS 38930

Hon. Betty W. Sanders
Circuit Court Judge
P.O. Box 244
Greenwood, MS 38935-0244

This, the 5th day of June, 2009.



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