

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

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**2009-CP-00047-COA**

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**JERRY RICE  
APPELLANT**

**vs.**

**STATE OF MISSISSIPPI  
APPELLEE**

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

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**BRIEF OF APPELLEE**

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

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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. Jerry Rice, Appellant
2. 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, Special Assistant Attorney General, State of Mississippi

By: Jane Mapp

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## ISSUE<sup>1</sup>

**I. Whether MDOC Is Requiring the Appellant to Serve His Sentences in an Order Which Prevents Him from Being Eligible to Receive Trusty Time Pursuant to Miss. Code Ann. § 47-5-138.1 on His 30 Year Sentence for Kidnapping.**

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<sup>1</sup>Although Appellant's Brief does include a section entitled "State of Issue" this section is actually more or less a statement of facts and does not specifically set out an issue to be argued on appeal. For this reason, the State has set out an "issue" which reflects Appellant's argument.

## STATEMENT OF THE CASE

Jerry Rice, an inmate legally incarcerated within the Mississippi Department of Corrections (“MDOC”), is appealing to this Court from the December 3, 2008 Order of the Circuit Court of Sunflower County, Mississippi, dismissing his pleading entitled “ Motion to Show Cause”. (C.P. at 40; 02).<sup>2</sup> Rice sought judicial review of an adverse decision rendered by MDOC’s Administrative Remedy Program denying him trusty status. (C.P. at 8).

Rice was convicted in Bolivar County Circuit Court on or about November 12, 1992 of Aggravated Assault and on March 19, 1993 of Kidnapping and Capital Murder. (C.P. at 22). Rice was given consecutive sentences of 12 years, 30 years and Life respectively. Because of the law in effect at the time his crimes were committed, Rice is parole eligible after serving 25 % of his 12 year sentence, plus 10 years on each on his other two sentences, making him initially parole eligible after serving 23 years of his sentence.

Rice claims in his motion that he was placed in trusty on September 6, 2002, but after receiving a rule violation report (RVR) he was removed from trusty status on January 9, 2003. (C.P. at 3). Rice concedes in his motion that he is not eligible to receive trusty time on his life sentence, but that he is eligible to receive trusty time on his 30 year sentence for kidnapping because it is not a mandatory sentence. (C.P. at 3). Rice contends that MDOC is running his 30 year sentence consecutive to his life sentence instead of vice versa.

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<sup>2</sup>C.P. = Clerk’s Papers

According to him if he was allowed to serve his 30 year sentence before serving his life sentence, he would be eligible to receive trusty time on the 30 year sentence. (C.P. at 3-4). Rice alleges that MDOC refused to return him to trusty status because he is serving a life sentence. (C.P. at 5).

The State filed its Response on or about August 20, 2008 denying that Rice is eligible for trusty status. (C.P. at 21). The State included as an exhibit to its response a copy of Rice's current time sheet. The time sheet reflects that Rice was required to serve the 12 year Aggravated Assault sentence first, and that the 30 year kidnapping sentence is running consecutive to that sentence, with the life sentence for capital murder running consecutive to the 30 year sentence. (C.P. at 22). The time sheet also reflects that he was originally placed in trusty status on March 21, 2001 and was removed from trusty status on March 6, 2002. He was returned to trusty status on September 6, 2002 and removed on January 9, 2003. He has not been returned to trusty status since that time. (C.P. at 22). On or about November 5, 2008 the State filed a Supplemental Report to the Court which included an affidavit from Records Tech Supervisor, Gloris Gibbs, explaining Rice's sentence computation. (C.P. at 35).

A pre-hearing conference was held before Judge Betty Sanders on November 25, 2008. Following that conference Judge Sanders issued an Opinion and Order dismissing Rice's Motion to Show Cause finding that his parole eligibility date of August 27, 2014 was correctly computed and that he is not entitled to have this date reduced further. (C.P. at 40).

Although it does not appear from the record that Rice ever filed a Notice of Appeal, he did file a pleading entitled "Application for Leave to Appeal In Forma Pauperis" on or about February 17, 2009. (C.P.at 58). The trial court subsequently entered an order allowing him to proceed *in forma pauperis* on appeal. (C.P. at59).

### **SUMMARY OF THE ARGUMENT**

When Miss. Code Ann. § 47-5-138.1 was amended effective April 28, 2004 to increase the trusty earned time allowance from 10 days per month to 30 days per month, MDOC took the opportunity to institute an administrative correction of a prior misinterpretation of law and stopped applying trusty time to parole eligibility dates. Pursuant to current policy, which conforms with state law, trusty time may only reduce an offender's Earned Release Supervision (ERS) date or Tentative Discharge date. Since trusty time does not reduce an offender's parole eligibility date and Rice has no ERS or Tentative Discharge date due to his life sentence, placing him in trusty status would have no effect on his release dates.

### **ARGUMENT**

#### **I. Whether MDOC Is Requiring the Appellant to Serve His Sentences in an Order Which Prevents Him from Being Eligible to Receive Trusty Time Pursuant to Miss. Code Ann. § 47-5-138.1 on His 30 Year Sentence for Kidnapping.**

Rice wrongly assumes that the order in which his sentences are served affect his eligibility for trusty status and therefore the amount of time required to serve for parole eligibility. Rice states in his brief that MDOC initially arranged his sentences as follows: the



12 year sentence for aggravated assault, followed by the 30 year sentence for kidnapping, followed by the life sentence for capital murder. Rice argues that this sequence works well because he can expire the 30 year sentence before the life sentence begins and receive the benefit of trusty time to reduce the time to be served on the 30 year sentence. He argues that he is not eligible to received trusty time on the life sentence so if he has to serve it first the 30 year sentence will never commence and therefore he can never receive trusty time on that sentence. The State interprets Rice argument to be that his parole eligibility date may be reduced by trusty time earned during the service of his 12 and 30 year sentences, but not his life sentence. According to Rice if these two sentences are served first he could earn trusty time off his parole eligibility date until such time as he is either paroled or these two sentences expire and he begins to serve his consecutive life sentence. It is his belief that MDOC is requiring him to serve the life sentence before the 30 year sentence and it is for that reason that he is being denied trusty status.

Rice's time sheet clearly shows that MDOC has arranged Rice's sentence so that the consecutive life sentence for capital murder is to be served last. What Rice has failed to understand is that trusty time is no longer applied to parole eligibility dates. Since trusty time does not reduce an offender's parole eligibility date and Rice has no Earned Release Supervision<sup>3</sup> (ERS) or Tentative Discharge date due to his life sentence, placing him in trusty status would have no effect on his release dates. It is not that MDOC is requiring Rice to

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<sup>3</sup>Commonly referred to as the 85% date.

serve his life sentence prior to his 30 year sentence which is preventing him from receiving trusty time, it is the fact that he has a life sentence at all.

All of Rice crimes were committed in 1992. At that time Miss. Code Ann. § 47-7-3 read in pertinent part as follows:

(1) Every prisoner who has been or may hereafter be convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi State Penitentiary for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the Penitentiary, and who has served not less than one-fourth ( 1 / 4 ) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole ....

Miss. Code Ann. § 47-7-3 (Supp. 1992).

This means that Rice was initially parole eligible after serving 25% of his 12 year sentence, plus 10 years each on his 30 year sentence and his life sentence, or after 23 years. With a sentence begin date of June 20, 1992, as reflected on his time sheet, his initial parole eligibility date would have been June 17, 2015.<sup>4</sup> Miss. Code Ann. § 47-7-3(2) allowed an offender's parole eligibility date to be reduced by meritorious earned time<sup>5</sup> (MET). According to his time sheet Rice received 180 days MET which would have reduced his parole eligibility date to December 19, 2014.

In 1999 the Legislature passed Miss. Code Ann. § 47-5-138.1 into law. This statute

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<sup>4</sup>MDOC's sentence computation system treats one year as equaling 365 days without consideration of leap years.

<sup>5</sup>Meritorious Earned Time was created pursuant to Miss. Code Ann. § 47-5-142.

created what is referred to as the trusty earned time allowance and read as follows:

In addition to any other administrative reduction of sentence, an offender in trusty status as defined by the classification board of the Department of Corrections may be awarded a trusty time allowance of ten (10) days' reduction of sentence for each thirty (30) days of participation in an approved program while in trusty status, including satisfactory participation in education or instructional programs, satisfactory participation in work projects and satisfactory participation in any special incentive program.

Miss. Code Ann. § 47-5-138.1 (Supp. 1999).<sup>6</sup>

According to Rice's time sheet he was he was twice placed into and removed from trusty status. The last time Rice was removed was on January 9, 2003 and by his own admission his removal was due to a rule violation. The parole date on Rice's time sheet of August 27, 2014 reflects that the trusty time he earned while in trusty status was applied to his parole eligibility date. MDOC's practice of applying trusty time to an offender's parole eligibility date was contrary to Miss. Code Ann. § 47-7-3(2) which states as follows:

Notwithstanding any other provision of law, an inmate shall not be eligible to receive earned time, good time or any other administrative reduction of time which shall reduce the time necessary to be served for parole eligibility as provided in subsection (1) of this section; however, this subsection shall not apply to the advancement of parole eligibility dates pursuant to the Prison Overcrowding Emergency Powers Act. Moreover, meritorious earned time allowances may be used to reduce the time necessary to be served for parole eligibility as provided in paragraph (c) of subsection (1) of this section.

Per this statute, only MET can reduce the time required to be served for parole eligibility.

Miss. Code Ann. § 47-5-138.1 was amended effective April 28, 2004 to increase the trusty earned time allowance from 10 days for every 30 days an offender is in trusty status

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<sup>6</sup>This is commonly referred to as "10 for 30" or 10/30 trusty time.

to 30 days for every 30 days and offender is in trusty status.<sup>7</sup> MDOC took this as an opportunity to correct its prior misinterpretation of the law and put an end to the practice of applying trusty time to an offender's parole eligibility date.<sup>8</sup> The only type of release for which Rice is eligible is a release to parole and since 30 for 30 trusty time does not reduce an offender's parole eligibility date he is not eligible for trusty status.

This change in how MDOC applies trusty time is not *ex post facto* as to Rice for at least two reasons. First, the courts have held that an administrative correction by MDOC of a prior misinterpretation of law, even if it causes the offender to serve more time on his sentence, does not violate the offender's rights. *See, Snow v. Johnson*, 913 So.2d 334 (Miss.Ct.App. 2005), citing *Taylor v. Mississippi State Probation and Parole Board*, 365 So.2d 621, 622 (Miss. 1978). Miss. Code § 47-7-3(2) clearly prohibits the amount of time an offender must serve for parole eligibility from being reduced by trusty earned time. Accordingly, this belated correction as to the application of the law does not violate Rice's rights.

Secondly, at the time Rice committed his crimes there was no such thing as a trusty earned time allowance. Miss. Code Ann. § 47-5-138.1 was not enacted until 1999, approximately seven (7) years after Rice's incarceration began. The Mississippi Supreme

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<sup>7</sup>This is commonly referred to as "30 for 30" or 30/30 trusty time.

<sup>8</sup>This practice is referred to in at least two places on MDOC's public website [www.mdocr.state.ms.us](http://www.mdocr.state.ms.us). First, in the FAQs section under "What is Trusty Earned Time?" and secondly under Institutions → Classification and Records → Division of Records → Trusty Status/Trusty Earned Time

Court in *Puckett v. Abels*, 684 So.2d 671 (Miss. 1996), held that a statute violates the *ex post facto* clause when “applied retroactively ... has the effect of increasing the punishment beyond what was prescribed when the crimes were committed.” *Id.* at 678. Since trusty earned time did not exist when Rice committed his crimes, a denial of trusty time could not amount to a violation of the *ex post facto* clause.

In summary, since trusty time does not reduce an offender’s parole eligibility date and Rice has no ERS or Tentative Discharge date due to his life sentence, placing him in trusty status would have no effect on his release dates regardless of the order in which his sentences are theoretically served.

### **CONCLUSION**

Based on the arguments of fact and law herein above, the dismissal of Appellant’s Motion to Show Cause by the lower court was appropriate and should be affirmed.

Respectfully submitted,

STATE OF MISSISSIPPI  
DEFENDANT-APPELLEE

**JIM HOOD, ATTORNEY GENERAL**  
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JANE L. MAPP  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MS BAR NO. [REDACTED]

BY: Jane Mapp

**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:

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

This, the 3<sup>rd</sup> day of September, 2009.

  
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