

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

2011-CP-00145

**ARTHUR WILDE
APPELLANT**

v.

**JACKIE SWIMS, ET AL
APPELLEE**

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

BRIEF OF THE APPELLEES

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

**R. STEWART SMITH, JR.
SPECIAL ASSISTANT ATTORNEY GENERAL
MSB # [REDACTED]
510 George Street, Suite 212
Jackson, MS 39202
(601) 359-5770**

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. Arthur Wilde Inmate #38047, Appellant
Jackie Swims, Appellee
Patty Legg, Appellee
Hon. Margaret Carey-McCray, Circuit Court Judge
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. R. Stewart Smith, Jr., Special Assistant Attorney General
2. James Norris, Attorney, Mississippi Department of Corrections

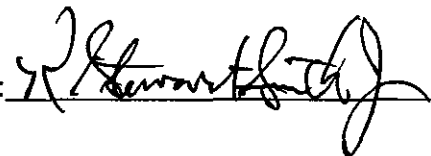
By: 

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
ISSUES	v
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	1
ARGUMENT	1
CONCLUSION	3
CERTIFICATE OF SERVICE	4

TABLE OF AUTHORITIES

Table of Cases	Page
<i>Moore v. Mississippi Department of Corrections</i> , 936 So. 2d 941 (Miss. Ct. App. 2005)	2
<i>Ross v. Epps</i> , 922 So. 2d 847, 849 (Miss. Ct. App. 2006)	2
<i>Stanley v. Turner</i> , 846 So. 2d 279, 282 (Miss. Ct. App. 2003)	2
Other Authorities	
<i>Miss. Code Ann. §47-5-807</i> (1972, as amended)	1

STATEMENT OF ISSUES

- 1. Whether Inmate Jackie Swims timely filed his appeal in the Circuit Court**
- 2. Whether Inmate Jackie Swims received all the process he was due when he was issued Rule Violation Report 1002906.**

STATEMENT OF THE CASE

Arthur Wilde ("Wilde") is an inmate in the custody of the Mississippi Department of Corrections ("MDOC"). He is confined at the Mississippi State Penitentiary at Parchman ("Parchman"). While he was being held at Parchman he was issued a Rule Violation Report ("RVR") for use of an unauthorized drug as the result of a random drug test. CP:8-12¹. He contested the RVR through the MDOC Administrative Remedy Program ("ARP"). CP:8-12. He pursued each of the three steps of the ARP procedure and the final decision denying the appeal of his ARP was issued on November 17, 2009. CP:7. Wilde filed an action in the Circuit Court of Sunflower County January 19, 2010. CP:4-33. On February 28, 2011 an Order was entered upholding the MDOC decision in Wilde's ARP. CP:60-61. He is appealing that decision.

SUMMARY OF THE ARGUMENT

Wilde did not timely file his appeal from the final decision of the ARP, therefore the Circuit Court did not have jurisdiction to hear his appeal. Also, the documentation of Wilde's ARP shows that he received all the process that he was due. The decision in the ARP to uphold the RVR was not arbitrary and capricious. The Circuit Court judge was correct in denying and dismissing Wilde's appeal.

ARGUMENT

An offender's right to appeal a final decision of the Mississippi Department of Corrections Administrative Remedy Program must be asserted within thirty days of the final decision. *Miss. Code Ann. §47-5-807 (1972, as amended)*. Filing within the statutorily mandated thirty days is jurisdictional and if the offender does not file within thirty days, the Circuit Court

¹CP:XX stands for "Court Papers" with "XX" being the page number.

does not have jurisdiction. *Stanley v. Turner*, 846 So. 2d 279, 282 (Miss. Ct. App. 2003). *Moore v. Mississippi Department of Corrections*, 936 So. 2d 941, 944 (Miss. Ct. App. 2005). Wilde filed his action in the Circuit Court of Sunflower County over sixty days after the final decision in his ARP. The Circuit Court was correct in finding that Wilde's appeal was untimely.

The Circuit Court did address whether Wilde had any constitutional rights violated by the process in his ARP. The Court found that Wilde's constitutional rights were not infringed upon during that process.

The administrative decision rendered in the ARP process should not be disturbed unless it was not supported by substantial evidence, was arbitrary and capricious, was beyond the agency's powers, or violated the constitutional or statutory rights of Mr. Wilde. *Ross v. Epps*, 922 So. 2d 847, 849 (Miss. Ct. App. 2006). There is a rebuttable presumption in favor of the agency's decision and Wilde has the burden of proving it should be reversed. *Id.*

The documentation of the ARP indicates that Wilde received all the process he was due during the course of his appeal of the RVR. He was given an opportunity to be heard. He was given an opportunity to present evidence that would support his position. He received all three steps of the process and in his Third Step Response was informed that he must exercise his right to appeal within thirty days.

Wilde never presented any evidence that would call into question the substance of the RVR. He has failed to prove the administrative decision should be reversed.

CONCLUSION

MDOC properly followed its process in handing down the RVR against Wilde and in conducting the ARP filed by Wilde. Wilde did not present any evidence to challenge the RVR. There was substantial evidence to support the RVR and the decision in the ARP was not arbitrary and capricious. The Circuit Court was correct in affirming the administrative decision of the MDOC.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI

R. STEWART SMITH, JR.
SPECIAL ASSISTANT ATTORNEY GENERAL
MS BAR NO.: [REDACTED]

BY: R. Stewart Smith Jr.

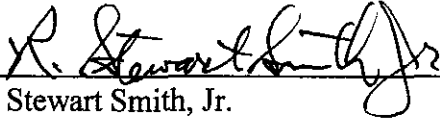
CERTIFICATE OF SERVICE

I, R. Stewart Smith, Jr., Special Assistant Attorney General for the State of Mississippi,
do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the
above and foregoing **BRIEF OF THE APPELLEE** to the following:

Arthur Wilde, # 38047
MSP
Unit 29C Building
Parchman, MS 38738

Hon. Margaret Carey-McCray
Circuit Court Judge
Fourth Circuit Court District
P.O. Box 1775
Greenville, MS 38702-1775

This the 14th day of October, 2011.



R. Stewart Smith, Jr.
Special Assistant Attorney General