

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE NO. 2011-CP-00265

DENNIS JEFFERSON

APPELLANT

V.

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLEE, STATE OF MISSISSIPPI

**On Appeal from the Circuit Court of Yazoo County, Mississippi
Cause No.: 2010-CI 43**

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel for the Appellee, State of Mississippi, certifies that the following listed persons have an interest in the outcome of this case. This representation is made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Dennis E. Jefferson, Appellant, Appearing *pro se*

State of Mississippi, Appellee, Attorney General Jim Hood

The Honorable Jannie M. Lewis, Circuit Court Judge, Yazoo County, Mississippi

RESPECTFULLY SUBMITTED, this the 20th day of October, 2011.

STATE OF MISSISSIPPI, Defendant

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

BY:



ROGER GOOGE, MSB NO. [REDACTED]
SPECIAL ASSISTANT ATTORNEY GENERAL

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I. STATEMENT OF THE ISSUES

Whether or not the Circuit Court wrongfully dismissed the *pro se* petition filed by Dennis E. Jefferson (Jefferson), which Jefferson had filed in that court seeking compensation for alleged wrongful imprisonment under the provisions of Miss. Code Ann. §11-44-1 *et seq.*

II. STATEMENT OF THE CASE

Dennis Jefferson, along with two co-defendants, was indicted for the crime of house burglary in violation of Miss. Code. Ann. § 97-17-23. Jefferson's two co-defendants entered guilty pleas. Jefferson, however, elected to go to trial, and following the trial Jefferson was found guilty of burglary and sentenced to a term of seven years in the custody of the Mississippi Department of Corrections and ordered to pay a \$10,000.00 fine and court costs and attorneys fees. (Record, p. 7), *Dennis Jefferson a/k/a Dennis E. Jefferson v. State of Mississippi*, 977 So.2d 431 (Miss.App.2008).

After his post-trial motion for new trial was denied, Jefferson filed a direct appeal. The Court of Appeals determined that the evidence presented at trial was insufficient to uphold the jury's verdict and reversed and remanded the case to the trial court for re-sentencing on the lesser included offense of willful trespass. (Record, p. 7), *Jefferson, supra*.

Jefferson, appearing *pro se*, then filed in the Circuit Court of Yazoo County, his "petition pursuant to S.B. 3024" seeking compensation under the provision of §11-44-1 *et*

seq. for allegedly having been wrongfully convicted and incarcerated.¹ The circuit court properly construed Jefferson's petition as being a complaint that was filed pursuant to the provisions of Miss. Code Ann. §11-44-1 *et seq.* (Record, p. 7).

The circuit court, after careful consideration entered its written opinion on November 18, 2010 and determined that Jefferson's petition did not meet the statutory mandates of Miss. Code Ann. §11-44-3. The court, in its dismissal order dated November 18, 2010, (Record, p. 8) also addressed the fact that Jefferson had, in his petition, asked for (1) declaratory judgment declaring that his constitutional and due process rights were violated; (2) an order commanding compensation; and (3) for the appointment of counsel. (Record, p. 8).

Jefferson, after the dismissal of his petition, filed in the Circuit Court of Yazoo County his *pro se* motion for reconsideration of the court's order. The court determined, after a review of the motion, that there were no grounds as a matter of law to grant reconsideration of the November 18, 2010 Order and thus denied Jefferson's motion for reconsideration on January 19, 2011. (Record, p. 9).

It is from the orders of dismissal that Jefferson now appeals to this Court.

III. SUMMARY OF THE ARGUMENT

Jefferson is seeking compensation for allegedly being wrongfully confined. Section 11-44-3 of the Mississippi Code Annotated, which sets forth the pre-requisite for

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Senate Bill 3024 to which Jefferson's petition refers had been enacted into law as § 11-44-1 *et seq.* of the Mississippi Code of 1972, as amended and annotated.

filing a claim for compensation, is specific in its requirements. Section 11-44-3 sets forth the specific requirements that must be met in order to present an actionable claim for wrongful conviction and imprisonment. Section 11-44-3 also specifically states in paragraph (3) of said section that “[i]f the Court finds that after reading the claim that the claimant has not demonstrated the foregoing, it shall dismiss the claim, either on its own motion or on the state’s motion. This dismissal shall be without prejudice to allow adequate refiling within ninety (90) days.” Miss. Code Ann. §11-44-2 (1972). The “foregoing” mentioned above is referring to the specific requirements that are set forth in paragraph (3) of §11-44-3.

Jefferson’s petition seeking compensation is a part of the record that is before this Court and is entitled “Petition Pursuant to S.B. 3024.” Here it should be again noted that S.B. 3024 is the Senate Bill that eventually became §11-44-1 *et seq.* of the Mississippi Code, which became effective from and after July 1, 2009.

As the petition that Jefferson filed in the lower court did not comply with the requirements of §11-44-3, the circuit judge dismissed the claim on its own motion. (Record, p. 7-8). The dismissal of Jefferson’s petition was proper as the petition does not meet the requirements of §11-44-3, and the court, under the statutory scheme, has the authority, which it properly exercised, to dismiss the claim for compensation for alleged wrongful confinement. Miss. Code Ann. §11-44-3 (3)

IV. ARGUMENT

The pertinent parts of §11-44-3 of the Mississippi Code of 1972, as amended, state

the following:

(1) In order to present an actionable claim for wrongful conviction and imprisonment under this section, a claimant must establish by documentary evidence that:

(a) The claimant has been convicted of one or more felonies and subsequently sentenced to a term of imprisonment and has served all or any part of the sentence;

(b) On grounds not inconsistent with innocence:

(i) The claimant was pardoned for the felony or felonies for which sentenced and which are the grounds for the complaint and the pardon is based on the innocence of the claimant which must be affirmatively stated in the pardon; or

(ii) The judgment of conviction was vacated and/or reversed;

(c) If there was a vacatur or reversal, either the accusatory instrument was dismissed or nol prossed; or if a new trial was held, the defendant was found not guilty;

(d) The claimant's claim is not time-barred by the provisions of this act; and

(e) The claimant did not intentionally waive any appellate or post-conviction remedy otherwise available in order to benefit under this chapter.

(2) The claim shall be verified by the claimant.

Mississippi Code Annotated §11-44-3, Supp. 2010.

Jefferson, in his petition, also asked for a declaratory judgment declaring that his constitutional and due process rights were violated and requested appointment of counsel. All of the relief being sought by Jefferson was properly dismissed and denied by the circuit judge.

First of all, a reading of Jefferson's "Petition Pursuant to S.B. 3024" clearly shows that it is a petition that is filed pursuant to §11-44-1 *et seq.* of the Mississippi Code, as amended. As pointed out above, §11-44-3 sets forth very specific requirements which the legislature has mandated that must be complied with in order for an individual to present

an actionable claim for wrongful conviction and imprisonment. A review of the petition filed by Jefferson (Record, pp. 2-6) clearly shows that it does not comply with the statutory requirements.

Jefferson's petition does not include any documented evidence whatsoever as is required under paragraph (1) of §11-44-3. There is no documentary evidence showing that Jefferson, on grounds not inconsistent with innocence, was pardoned or that his judgment of conviction was vacated or reversed and/or the accusatory instrument was dismissed or nol prossed or that a new trial was held that he was found not guilty. None of the above requirements are met in Jefferson's petition nor can they be met or demonstrated because Jefferson's original conviction was reversed and the case was remanded to the trial court for re-sentencing on the lesser included offense of willful trespass. *Dennis Jefferson a/k/a Dennis E. Jefferson v. State of Mississippi*, 977 So.2d 431 (Miss.App. 2008).

Therefore, none of the above provisions of §11-44-3 were met and also the accusatory instrument has never been dismissed or nol prossed, nor was there a new trial held in which the Defendant, Jefferson, was found not guilty. Miss. Code Ann. §11-44-3 (1)(c). Jefferson's petition simply does not meet any of the mandated requirements of §11-44-3.

Jefferson, appearing *pro se*, has also asked for declaratory judgment declaring that his constitutional and due process rights were violated. Jefferson's arguments that his constitutional rights have been violated are unsupported by any facts other than his

allegation that he is proceeding *pro se* and that he is not “learned in the law.” Jefferson claims the court, in dismissing his complaint, did not allow him to re-file within the ninety (90) days that are allowed for refileing of a complaint that is dismissed under §11-44-3. The order that was entered by the circuit judge simply dismissed the matter and §11-44-3 (3) states that the dismissal is without prejudice and that claimant has ninety (90) days in which to properly refile his complaint. The lower court’s order did not prohibit the claimant from refileing and there is no indication whatsoever in the record before this Court that Jefferson ever attempted to refile his complaint. The record only reflects that Jefferson filed a motion for the court to reconsider its order entered on November 19th. The court found that there were no grounds as a matter of law to support a reversal of its prior order.

With regard to Jefferson’s argument concerning his not being “learned in the law,” the Court of Appeals of this State has held that *pro se* litigants, while being afforded a certain amount of latitude, are nevertheless held to the same rules of procedure as represented parties. *Black v. City of Tupelo*, 853 So.2d 1221 (Miss.2003), *Dethlefs v. Beau Maison Dev. Corp.*, 511 So.2d 112, 118 (Miss. 1987).

The Court of Appeals in *Black*, in addressing a *pro se* claimant’s claim under the Tort Claims Act, Miss. Code Ann. §11-46-1 *et seq.*, noted that the specific notice requirements that are set forth by statute under the Tort Claims Act are a prerequisite to maintaining a cause of action against a governmental agency. The Court held in *Black*, *supra* that even though a *pro se* complainant should be provided latitude, they are

nevertheless held to the same rules of procedure as represented parties. In *Black*, the Court found that Black did not file a notice of claim as was required by the statute and, thus, his suit was barred by the Mississippi Tort Claims Act.

The same situation exists here. Jefferson, proceeding *pro se*, must be held to the same rules of procedure as represented counsel on procedural matters. Section 11-44-3 clearly sets forth what must be procedurally done in order to file a claim for compensation. Jefferson's petition simply does not meet these procedural requirements. Therefore, the lower court properly dismissed the petition.

With regard to the claims of Jefferson in his petition concerning alleged violations of his constitutional and due process rights, Jefferson does not set forth or point to any fact which would even indicate any violation of any constitutional or due process rights. In fact, the record before this Court clearly shows that Jefferson was awarded due process in that his petition was heard, he then filed for reconsideration, and he has now filed this appeal. Furthermore, as to Jefferson's totally unsupported and bare bones allegations that his constitutional rights have been violated, it has been consistently held by the courts of this State that mere allegations in pleadings that are unsupported are not sufficient. There must be more. *Delarosa v. State of Mississippi*, 800 So.2d 1288 (Miss.App.2001); *McCuiston v. State of Mississippi*, 758 So.2d 1082 (Miss.App.2000); *Brooks v. State*, 573 So.2d 1350 (Miss.1990). Thus, there is no merit to any of Jefferson's totally unsubstantiated claims of constitutional or due process rights violations.

Finally, Jefferson's petition also asked for appointment of counsel. It must be

remembered that this is a civil case, and in civil matters the decision to appoint counsel rests in the sound discretion of the court. The criteria that may be used by the court to determine whether or not to appoint counsel includes, but is not necessarily limited to, such factors as the legal and factual merits of the claims presented and the complexity of the issues. In the instant case, the issues are not complex, and furthermore, based upon the record and the fact that Jefferson's underlying criminal case was sent back for re-sentencing on a lesser included offense demonstrates the strong probability that Jefferson is not entitled to the relief of compensation that he requested in his petition. Therefore, the Court did not abuse its discretion in not appointing counsel for the Plaintiff. *See generally*, 14A C.J.S. Civil Rights Section 316; *Marshall v. Columbia Lea Regional Hosp.*, 345 F.3d 1157 (10th Cir.2003); *Davis v. Scott*, 94 F.3d 444 (8th Cir.1996).

V. CONCLUSION

Mississippi Code Annotated §11-44-3 sets forth with specificity the elements that are required as a prerequisite for filing a claim for alleged wrongful conviction and imprisonment. Those requirements must be met in order to file a proper claim. Jefferson, even though appearing *pro se* and being afforded some latitude in his *pro se* status, must be held to the same rules of procedure as represented parties. The circuit court judge acted properly under that authority in dismissing Jefferson's claim. Jefferson's failure to re-file a proper claim within ninety (90) days is a problem of his own making based on his failure to adhere to the procedural requirements that are statutorily mandated.

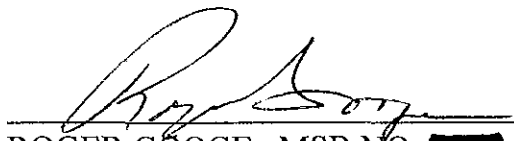
In the final analysis, and as shown by the record that is before this Court,

Jefferson's original charge for which he was incarcerated was not, on grounds not inconsistent with innocence, vacated and/or reversed with the accusatory instrument being dismissed or nol prossed. Nor was a new trial held in which the defendant was found not guilty. Thus, the facts demonstrate that Jefferson's claim would have, in any instance, failed and, thus, Jefferson's petition and his motion for reconsideration were properly denied. Therefore the actions of the lower court should be affirmed.

RESPECTFULLY SUBMITTED, this the 20th day of October, 2011.

STATE OF MISSISSIPPI, Defendant

**BY: JIM HOOD, ATTORNEY GENERAL
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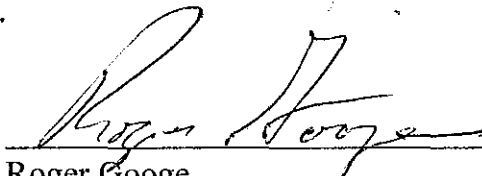
CERTIFICATE OF SERVICE

I, Roger Googe, Special Assistant Attorney General for the State of Mississippi, do hereby certify that on this date I caused to be delivered via United States Mail, first class postage pre-paid, a true and correct copy of the above and foregoing *Brief of Appellee, State of Mississippi* to the following:

Dennis E. Jefferson
878 Rusche Road
Benton, MS 39039
Appellant, *pro se*

Hon. Jannie M. Lewis
Circuit Court Judge
Yazoo County Circuit Court
P. O. Box 149
Lexington, MS 39095

THIS the 20th day of October, 2011.



Roger Googe