

**IN THE COURT OF APPEALS 04/23/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CA-00415 COA**

**DAVID CHARLES RICHARDSON A/K/A D.C. RICHARDSON A/K/A DONNIS DOZIER**

**APPELLANT**

**v.**

**CHRISTINE HOUSTON, EDDIE LUCAS AND EDWARD HARGETT**

**APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. HOWARD Q. DAVIS

COURT FROM WHICH APPEALED: SUNFLOWER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

DAVID C. RICHARDSON-PRO SE

ATTORNEY FOR APPELLEES:

CHARLES W. MARIS

SPECIAL ASSISTANT ATTORNEY GENERAL

NATURE OF THE CASE: HABEAS RELIEF-PETITION TO SHOW CAUSE

TRIAL COURT DISPOSITION: TRIAL COURT AFFIRMED MAGISTRATE'S DISMISSAL OF  
APPELLANT'S SHOW CAUSE PETITION

BEFORE FRAISER, C.J., COLEMAN, AND SOUTHWICK, JJ.

COLEMAN, J., FOR THE COURT:

David Charles Richardson, a prisoner incarcerated in the state penitentiary at Parchman, filed a Petition for an Order to Show Cause against Appellees in the Circuit Court of Sunflower County to obtain credit for time which he served in the California Department of Corrections (CDC) against his sentence of eight years in the custody of the Mississippi Department of Corrections (MDOC) which the Circuit Court of Jackson County imposed on him pursuant to a conviction of armed robbery. The basis of his claim to this credit was the California court's ordering that a sentence for prisoner assault was "to run concurrent with [the Mississippi sentence]." After a hearing on the merits of Richardson's petition, the magistrate for the Sunflower County Circuit Court recommended that his petition be dismissed, and the judge of the Sunflower County Circuit Court entered an Order Adopting Findings and Recommendations of Magistrate in which he dismissed with prejudice Richardson's petition. Richardson has appealed from that order; and for the reasons which follow in this opinion we affirm that order.

### **I. Facts**

On July 7, 1986, the Appellant, David Charles Richardson (Richardson), was convicted in the Superior Court of California, County of Los Angeles, of the crimes of forgery and robbery. That court sentenced Richardson to serve eight months on the forgery conviction, and three years on the robbery conviction. In addition, it enhanced these sentences by adding two years to these two sentences for a total sentence of five years, eight months.

Pursuant to an Executive Agreement executed by William C. Allain, then Governor of Mississippi, on September 3, 1986, and accepted by then Governor of California, George Deukmejian, on September 15, 1986, pursuant to 4 U.S.C. § 112, the State of California surrendered custody of Richardson to the State of Mississippi so that he might be prosecuted for armed robbery in Jackson County. In this executive agreement, the State of Mississippi "mutually agreed that in consideration of [California's] return of the fugitive [Richardson] to the State of Mississippi for trial before the conclusion of his term of imprisonment in the State of California, the fugitive will be returned by the State of Mississippi to the State of California at the expense of the State of Mississippi when the prosecution is terminated." After California's governor had executed this executive agreement, Richardson was returned to Mississippi on March 6, 1987, for prosecution on the charges armed robbery in Jackson County.

On November 12, 1987, Richardson entered a plea of guilty to the crime of armed robbery in the Circuit Court of Jackson County, and that court sentenced him to serve a term of eight years without parole in the care and custody of the Mississippi Department of Corrections. In its judgment rendered on November 12, 1987, the circuit court did not provide for Richardson's return to California as the executive agreement required the State of Mississippi to do. Apparently in response to an inquiry from the Correctional Training Facility (CTF) at Soledad, California, which did not become a part of the record, Ms. Christine Houston, Corrections Chief Records Officer, Mississippi Department of Corrections (MDOC), wrote on March 14, 1988, to CTF to confirm that MDOC had filed CTF's detainer against Richardson. In her letter, Ms. Houston also wrote that MDOC would notify CTF "prior to any type of [Richardson's] release." On April 6, 1988, CTF wrote Ms. Houston to advise her that Richardson's tentative release date from his California term was June 20, 1989. In its letter,

CTF also reminded MDOC that "[i]n accordance with the Executive Agreement on Detainers and your Governor's warrant, [Richardson] should have been returned to California by the State of Mississippi when the prosecution was terminated."

On May 2, 1988, nearly six months after it had sentenced Richardson, the Jackson County Circuit Court corrected its failure to return Richardson to California by entering its order from which we quote the following:

NOW, THEREFORE, the Sheriff of Jackson County or any other legal officer of the State of Mississippi is hereby directed to return the said Defendant to the proper California institution and place a hold upon said Defendant to be returned to the State of Mississippi to serve his sentence herein upon completion of his sentence in the State of California.

Pursuant to this order, Richardson was returned to California on May 18, 1988, to resume serving his sentences for forgery and robbery imposed by the California court on July 7, 1986.

This Court can only view through a dark glass what happened following Richardson's return to California pursuant to the circuit court's order dated May 2, 1988. On January 20, 1989, the CTF wrote the MDOC to advise it that "Notations have been entered . . . that subject is WANTED by your department. His tentative release date is 4-24-89." This date was nearly two months earlier than the tentative release date of June 20, 1989, mentioned in the correspondence from CTF to MDOC dated April 6, 1988, to which we have already referred. Nevertheless, three months later, on July 20, 1989, the Superior Court of Monterey County, California sentenced Richardson to serve two years for assault on a prisoner. The abstract of judgment - commitment for this last sentence indicates that the two year sentence imposed on July 20, 1989, was enhanced by an additional three years, so that, including his two earlier sentences for forgery and robbery which totaled five years, eight months, Richardson faced a total sentence of ten years, eight months in the California prison system. This same abstract of judgment - commitment included the additional information that the sentence of two years imposed for prisoner assault on July 20, 1989, was to "run concurrent with out of state sentence."

Richardson was returned to the State of Mississippi on November 5, 1992. He had remained continually incarcerated within the California prison system from May 18, 1988, the date of his return to California pursuant to the Jackson County Circuit Court's order dated May 2, 1988, until he was returned to the custody of MDOC on November 5, 1992. Never was Richardson paroled nor released on bail from his return to the custody of the California Department of Corrections until his return to the custody of MDOC. The record is in chaos on the question of the mechanics of California's return of Richardson to Mississippi. The best guess seems to be, as Mrs. Houston testified at the hearing, that on October 28, 1992, Richardson was paroled to the State of Mississippi. When Richardson was first imprisoned in the MDOC pursuant to the judgment rendered by the Jackson County Circuit Court on November 12, 1987, the MDOC completed a Sentence Computation Data Sheet dated January 4, 1988, in which it determined that Richardson's maximum discharge date for the armed robbery conviction was March 26, 1995, exactly eight years after the date on which he had first been returned to Mississippi from California's custody to be tried on the charge of armed robbery. After Richardson was returned to MDOC's custody on November 5, 1992, the MDOC completed a new

Sentence Computation Data Sheet dated November 17, 1992, in which it determined that Richardson had four years, 171 days "Time Out on Parole," and that accordingly his new maximum discharge date was September 13, 1999, or four years, 171 days after the original maximum discharge date of March 26, 1995. Richardson remains incarcerated in the penitentiary at Parchman, where he will remain until September 13, 1999, unless this Court grants him relief pursuant to this appeal from the Circuit Court of Sunflower County.

## **II. Course of Litigation**

On June 18, 1993, Richardson filed a "Petition for an Order to Show Cause" in the Sunflower County Circuit Court in which he alleged that he should be credited by the State of Mississippi for the sentences which he served in California from May 18, 1988, the date Mississippi returned him to that state, through November 5, 1992, the date California returned him to Mississippi. To his Petition, Richardson attached the two Computation Sheets for Time Served dated January 4, 1988, and November 17, 1992. Richardson understandably maintained at the hearing that he had served all of his time in California, but if he had been sentenced on July 20, 1989, to serve an additional five years on the charge of prisoner assault (a sentence of two years enhanced by an additional period of three years), then that sentence had the potential of incarcerating Richardson in California until July 20, 1994.

Following a hearing on the merits of Richardson's Petition, the Magistrate for the Sunflower County Circuit Court made the following findings of fact in her Findings and Recommendations which she rendered on March 4, 1994:

On July 20, 1989, Richardson was sentenced to serve two (2) years in prison by a California Court. The California Court made the sentence concurrent to an existing Mississippi sentence. However, Mississippi did not take custody of Richardson, and he served the two years in a California prison. Upon completing this sentence, he was released to MDOC to serve the Mississippi sentence. Richardson seeks credit on his Mississippi sentence for the time served in California.

The undersigned finds that there is no authority which supports the position of Richardson. Mississippi is not obligated to credit Richardson for any time not served in the custody of MDOC.

On April 1, 1994, the judge of the Sunflower County Circuit Court entered an Order Adopting Findings and Recommendations of Magistrate. Richardson appeals from this order.

## **III. Analysis and Resolution of the Issues**

In his brief, Richardson poses the following two issues for our analysis and resolution:

I. The lower court and the Mississippi Department of Corrections violated Appellant's right to due process of law by not expediting him to the State of Mississippi from

California although California had given formal notice to the State of Mississippi in that his sentence had been run concurrently with his Mississippi sentence and that Appellant was ready for transportation back to the State of Mississippi.

II. The trial court abused its discretion when it adopted the Magistrate's findings and recommendations to dismiss the case although newly discovered evidence had not yet been revealed to the Appellant by the trial court.

#### **A. First Issue:**

I. The lower court and the Mississippi Department of Corrections violated Appellant's right to due process of law by not expediting him to the state of Mississippi from California although California had given formal notice to the state of Mississippi in that his sentence had been run concurrently with his Mississippi sentence and that Appellant was ready for transportation back to the state of Mississippi.

The heart of Richardson's argument on the first issue is that he is "entitled to the time he served in the State of California while awaiting for the Mississippi authorities to pick him up" as credit against his sentence of eight years in the custody of the MDOC. He predicates his entitlement to that credit on the proposition that the "California Court is not in error for the Mississippi Department of Corrections' oversight of not picking the Appellant up after being notified of such on or about July 20, 1989. And to hold the Appellant responsible for this due process violation is to entirely overlook the United States Constitution."

Were we inclined to resolve this first issue on the basis of whether Mississippi failed to requisition Richardson in accordance with Richardson's notion of timeliness -- and we are not so inclined -- we could not do so because from our review of the record in this case, we find no evidence that the California Department of Corrections (CDOC) notified MDOC on or about July 20, 1989, that it was ready for MDOC to come for him. The only evidence which supports Richardson's argument on this issue are the two written communications from CTF at Soledad. The first was to Mrs. Christine Houston dated April 6, 1988, in which it notified her that Richardson's "tentative release date from his California term is June 20, 1989;" and the second was a general communication from CTF at Soledad addressed to Department of Corrections, State of Mississippi, Parchman, Mississippi, dated January 20, 1989, in which its Correctional Case Records Manager notified MDOC that Richardson's tentative release date was April 24, 1989.

Moreover, at the hearing which the magistrate conducted on Richardson's petition, Ms. Houston testified as follows:

Your Honor, the State of California never told us to pick him up. They did at one time

[tell us] to pick him up. On an earlier date, [Richardson] got a rule violation report, and we were notified that we could not get him; that he could not be picked up until -- I believe it was October 28th, of '92. Those other notices, one was in response to the detainer that we filed with the State of California, which merely told us that [Richardson] had a tentative release date at that time of a certain date. It did not, in any way, indicate that the State of Mississippi could take custody . . . .

The abstract of judgment - commitment for the Superior Court of Monterey County dated September 14, 1989, demonstrated that Richardson had been sentenced on July 20, 1989, to two years for prisoner assault with an enhancement of three years for some reason not readily ascertainable from this Court's study of the abstract of judgment - commitment. The date of this sentence, July 20, 1989, follows the date of the second notice, which was January 20, 1989. Thus, this Court finds that these two dates are consistent with Ms. Houston's testimony that California did at one time notify MDOC to pick Richardson up, but later notified her that Richardson had received a rule violation report so that Mississippi could not get him. From our review of the record; we find the evidence to be substantial that Mississippi requisitioned Richardson from CDOC's custody within days of California's notice on October 28, 1992, that it had paroled Richardson to Mississippi to permit Richardson to serve the balance of Mississippi's eight-year. Thus, we could resolve this issue adversely to Richardson simply on the evidentiary ground that he failed to prove that Mississippi had dallied in requisitioning him from CDOC's custody.

There are, however, more compelling legal reasons for resolving this issue adversely to Richardson. The State of Mississippi's effort to return Richardson to its jurisdiction was expressly undertaken by then Governor Allain as an executive agreement pursuant to and as allowed by federal statute, which we previously quoted. The United States Court of Appeals for the Fifth Circuit considered the effect of a state imposed sentence with one imposed by federal authorities in *Saulsbury v. United States*, 591 F.2d 1028 (5th Cir. 1979). The Fifth Circuit relied on the earlier decision of *Lebosky v. Saxbe*, 508 F.2d 1047 (5th Cir. 1975) to hold that a prisoner may not question an arrangement between sovereigns for the order in which sentences are to be served. That court opined:

*Lebosky* acknowledged "the principle that a prisoner may not question an arrangement between sovereigns concerning the order in which sentences are to be executed . . .", 508 F.2d at 1050, citing this court's decision in *Chunn v. Clark*, 451 F.2d 1005 (5th Cir. 1971) . In *Chunn* the court stated:

It is well-established that a prisoner has no standing to contest an agreement between two sovereigns concerning the temporary exchange of custody of the prisoner on a writ of habeas corpus ad prosequendum, or their agreement as to the order of his prosecution and execution of sentences. *Dorrrough v. Texas*, 440 F.2d 1063 (5th Cir. 1971); *Nelson v. United States*, 406 F.2d 1322 (5th Cir. 1969); *Montos v. Smith*, 406 F.2d 1243 (5th Cir. 1969).

*Saulsbury* 591 F.2d at 1034-35 (citing *Chunn v. Clark*, 451 F.2d 1005, 1006 (5th Cir. 1971)).

Pursuant to *Saulsbury v. United States*, Richardson has no standing to challenge the order of the service of his sentences in California and Mississippi. We observe that *Saulsbury* dealt with separate federal and state sentences, but we think its holding is equally applicable to the case *sub judice* which is concerned with separate state sentences.

Of greater importance to this Court is the implication in Richardson's argument on this issue that the Jackson County Circuit Court is bound by the judgment of the court of another state. Were this Court to grant Richardson his wish, *i.e.*, establish his maximum discharge date as March 26, 1995, rather than September 13, 1999, it would establish the subserviency of our state's court to the court of another state by giving effect to the order of the out-of-state court. The United States Supreme Court has repeatedly elaborated upon such sovereignty as each of the fifty states enjoys in its relationships with each of her sister forty nine states. For example, in *Pink v. A. A. Highway Express, Inc.*, 314 U.S. 201, 209-10, (1941), that Court observed:

Every state has authority under the Constitution to establish laws through both its judicial and its legislative arms, which are controlling upon its inhabitants and domestic affairs. When it is demanded in the domestic forum that the operation of those laws be supplanted by the statute of another state, that forum is not bound, apart from the full faith and credit clause, to yield to the demand, and the law of neither can, by its own force, determine the choice of law for the other.

....

This Court has often recognized that, consistent with the appropriate application of the full faith and credit clause, there are limits to the extent to which the laws and policy of one state may be subordinated to those of another.

It was the purpose of that provision to preserve rights acquired or confirmed under the public acts and judicial proceedings of one state by requiring recognition of their validity in others. But the very nature of the federal union of states, to each of which is reserved the sovereign right to make its own laws, precludes resort to the Constitution as the means for compelling one state wholly to subordinate its own laws and policy concerning its peculiarly domestic affairs to the laws and policy of others. When such conflict of interest arises it is for this Court to resolve it by determining how far the full faith and credit clause demands the qualification or denial of rights asserted under the laws of one state, that of the forum, by the public acts and judicial proceedings of another.

(citations omitted).

The Full Faith and Credit Clause does not require that sister states enforce a foreign penal judgment. *See Huntington v. Attrill*, 146 U.S. 657, 13 S. Ct. 224, 36 L. Ed. 1123 (1892). The United States Supreme Court relied on *Huntington v. Attrill* in the case of *Nelson v. George*, 399 U.S. 224, 228-29, 90 S. Ct. 1963, 1966, 26 L. Ed.2d 578 (1970), in which a California prison inmate sought to challenge the enforceability of a detainer which the State of North Carolina had placed against him, to state the following:

Since the Full Faith and Credit Clause does not require that sister States enforce a foreign penal judgment, *Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224, 36 L.Ed. 1123 (1892); *cf. Milwaukee County v. M. E. White Co.*, 296 U.S. 268, 279, 56 S. Ct. 229, 235, 80 L. Ed. 220 (1935), California is free to consider what effect, if any, it will give to the North Carolina detainer in terms of George's present 'custody.

The Supreme court elaborated:

We note only that . . . the Full Faith and Credit Clause does not require California to enforce the North Carolina penal judgment in any way.

*Id.* n.6.

The United States Court of Appeals for the Eighth Circuit followed this principle in *Piercy v. Black*, 801 F.2d 1075 (8th Cir. 1986). In *Piercy*, a Nebraska prisoner named Piercy, who had been granted parole, resisted Iowa's efforts to return him to that state to serve the balance of a ten-year sentence which it had imposed on him for burglary after Piercy had already been sentenced in Nebraska for various infractions, among which were burglary, possession of burglary tools, and escape from the Nebraska penitentiary. *Id.* at 1077. Like Richardson in the case *sub judice*, Piercy argued that the Iowa sentence was to run concurrently with his Nebraska sentences, the result of which was that he was entitled to credit on his Iowa sentence for the time that he had served in the Nebraska penitentiary after Iowa returned him to Nebraska's custody. *Id.* at 1078. The basis of Piercy's argument was that Nebraska must give full faith and credit to Iowa's judgment and sentence of ten years on the burglary conviction. *Id.* The Court of Appeals dismissed Piercy's contention on this issue in the following language, "Piercy's full faith and credit argument is baseless because one state cannot control the manner in which another state administers its criminal justice system." *Id.*

In *Braun v. Rhay*, 416 F.2d 1055, 1057 (9th Cir. 1969), Braun escaped from custody in Washington



and was convicted of a crime in California. The United States Court of Appeals for the 9th Circuit held that there was no due process requirement (1) that Washington either had to accept California's tendered surrender of Braun or lose the right to assert jurisdiction over him or (2) that Washington must credit time served by Braun in California where Braun was given a California sentence to be served concurrently with any unexpired terms. *Id.* The court also rejected an argument that Washington had to give full faith and credit to California's order authorizing the release of Braun to Washington.

In summation on this issue, we conclude that California cannot control the manner in which Mississippi administers its criminal justice system; neither can Richardson complain of the manner in which Mississippi and California arranged, first, his removal from and return to California and, secondly, the order of his service of the sentences which these two states imposed upon him. From Mississippi's perspective, Richardson had been paroled to California for four years, 171 days while he served enough time in California to satisfy it, and now Richardson must serve the balance of his eight-year sentence in the custody of the MDOC to satisfy Mississippi.

## **B. Second Issue**

II. The trial court abused its discretion when it adopted the Magistrate's findings and recommendations to dismiss the case although newly discovered evidence had not yet been revealed to the Appellant by the trial court.

In his brief, Richardson states that the "newly discovered evidence [that] had not yet been revealed to the Appellant by the trial court" was "the letter sent to the California authorities to ascertain whether or not the Appellant's claim was true and supported." He then acknowledges that since he has not received a copy of "this paper work," he doesn't know whether this information would help or hinder him. He concludes that:

The trial court should have afforded the Appellant with a copy of such documents, that is, of course, if any documents ever arrived from the California authorities."

From its review of the record this Court cannot determine to what documents Richardson refers in this issue. Nevertheless, whatever those documents might be, this issue becomes moot because of the basis on which this Court has decided Richardson's First Issue. If Mississippi is entitled to enforce its own sentence of eight years regardless of what the California court may have ordered -- as we have held -- then any other documentation or information from that state's department of corrections becomes irrelevant and immaterial. We need consider this issue no further. We resolve it adversely to Richardson.

## **IV. Conclusion**

The sentence of eight years which the Jackson County Circuit Court imposed on Richardson was to

run concurrently with no other sentence. The second California sentence imposed July 20, 1989, on Richardson for prisoner assault was to run concurrently "with out of state sentence." Had Richardson been returned to the MDOC to resume serving his eight-year sentence after the California court imposed the second sentence for prisoner assault on July 20, 1989, then it would have been the California sentence which would have been satisfied by Richardson's serving time in the MDOC. However, as we have endeavored to demonstrate in this opinion, the sovereignty to which Mississippi is entitled in its relation with her sister state of California allows Mississippi to manage its own system of criminal justice, including the satisfaction of sentences which its courts impose on defendants who stand convicted of violating her criminal laws. The Full Faith and Credit Clause of the Constitution does not apply to penal judgments of the various states. Richardson's recourse, if indeed he had any at all, was in the California courts -- not Mississippi's.

**THE JUDGMENT OF THE SUNFLOWER COUNTY CIRCUIT COURT IS AFFIRMED.  
COSTS ARE ASSESSED TO SUNFLOWER COUNTY.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, DIAZ, KING, McMILLIN,  
PAYNE, AND SOUTHWICK, JJ., CONCUR.**