

IN THE COURT OF APPEALS 01/28/97

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-01098 COA

GARRY LEE MOORE

APPELLANT

v.

DWIGHT PRESLEY, IRA MANNING, AND CLIFTON BAILEY

APPELLEES

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

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

TRIAL JUDGE: HON. SHIRLEY BYERS

COURT FROM WHICH APPEALED: SUNFLOWER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PRO SE

ATTORNEY FOR APPELLEES:

OFFICE OF THE ATTORNEY GENERAL

BY: JAMES M. NORRIS

NATURE OF THE CASE: DISMISSAL OF COMPLAINT FOR FAILURE TO PURSUE
ADMINISTRATIVE REVIEW

TRIAL COURT DISPOSITION: DISMISSED

BEFORE BRIDGES, P.J., COLEMAN, AND PAYNE, JJ.

PER CURIAM:

This is an appeal from Garry Lee Moore and two other Parchman inmates who filed a complaint against three correctional officers alleging civil rights violations, including physical mistreatment. The circuit court judge stayed action in the case pending completion of the administrative review process. Moore failed to exhaust administrative remedies, and the case was dismissed. On appeal, Moore argues that the court erred in dismissing his complaint because he was never given notice that failure to follow up on his initial request for administrative review would result in dismissal of his suit. The Appellee Dwight Presley, senior attorney for Parchman, contends that the circuit court properly dismissed the complaint due to Moore's failure to exhaust administrative remedies, as provided by sections 47-5-801 through 47-5-807.

ARGUMENT AND DISCUSSION OF LAW

I. WHETHER THE TRIAL COURT ERRED IN GRANTING APPELLEES' FINAL JUDGMENT BASED ON FAILURE OF APPELLANT TO PURSUE HIS CLAIM.

The Appellant/Plaintiff, Moore, filed a civil rights complaint on March 16, 1994, against Dwight Presley, Ira Manning, and Clifton Bailey, correction officials of the Mississippi Department of Corrections. The Appellees/Defendants submitted their answer on April 5, 1994.

On May 6, 1994, the Defendants provided Moore with sections 47-5-801 through 47-5-807, which authorizes the court to adopt administrative review procedures, and a copy of an order signed by Chief U.S. District Court Judge Senter certifying the administrative procedure and implementing it on April 18, 1994.

This administrative procedure directs that, "If at the time the petition is filed the administrative review process has not yet been completed, the court shall stay the proceedings for a period not to exceed ninety days to allow for completion of the procedure and exhaustion of the remedies thereunder." Miss. Code Ann. § 47-5-803(2) (1972).

On May 13, 1994, Judge Howard Davis, Jr. stayed action in Moore's case for completion of the administrative review procedures. According to section 47-5-805, if Moore failed to initiate administrative review within thirty days of the receipt of the order, the case could be dismissed. Miss. Code Ann. § 47-5-805 (1972).

On September 27, 1994, the correction officers filed a motion to dismiss the case, as no request for administrative remedy had been filed as of September 24, 1994. One year later, on September 18, 1995, Judge Shirley Byers held a hearing on the matter and found that Moore did not exhaust the administrative review procedures in a timely fashion, since he sent only one memo regarding the

matter, dated June 1, 1994, a memo which was never received.

According to section 47-5-805, "If an offender fails to completely utilize the administrative review procedure during the period of the stay, then the court may consider this as a factor in deciding whether the case may proceed." Miss. Code Ann. § 47-5-805 (1972). Here, the judge dismissed the case as allowed by the statute. We affirm the decision and find Moore's claim to be without merit.

THE JUDGMENT OF THE SUNFLOWER COUNTY CIRCUIT COURT DISMISSING GARRY LEE MOORE'S COMPLAINT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO SUNFLOWER COUNTY.

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