

IN THE COURT OF APPEALS 12/03/96

OF THE

STATE OF MISSISSIPPI

NO. 96-CA-00379 COA

JAY BEE CUNNINGHAM

APPELLANT

v.

STEVE WILSON PUCKETT, RAYMOND ROBERTS AND BARBARA 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. GRAY EVANS

COURT FROM WHICH APPEALED: CIRCUIT COURT OF SUNFLOWER COUNTY

ATTORNEY FOR APPELLANT:

PRO SE

ATTORNEY FOR APPELLEES:

JAMES M. NORRIS

NATURE OF THE CASE: HABEAS CORPUS PETITION REGARDING COMPUTATION OF
PRISON SENTENCE

TRIAL COURT DISPOSITION: PETITION DISMISSED

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

PER CURIAM:

Jay Bee Cunningham, an inmate in the custody of the Mississippi Department of Corrections, filed a writ of habeas corpus in the Circuit Court of Sunflower County seeking relief that his sentence be re-calculated and that he be given credit for earned time to shorten a recent parole board set-off. Cunningham filed the case on March 1, 1996, against Steve Wilson Puckett, Commissioner of Corrections; Raymond Roberts, Prison Superintendent; and Barbra Bailey, Records Department Director. Cunningham alleges that he should have been eligible for parole after serving ten calendar years, which would have occurred on or about March 1, 1991. Cunningham claims he was required to serve eleven years and four months before becoming eligible for parole. The trial court dismissed his petition after determining Cunningham had already received credit for his time in jail, and that because he is serving a life sentence, Cunningham is not eligible to receive MET (meritorious earned time). Cunningham appeals arguing that the trial court erred in dismissing his petition.

DISCUSSION

WHETHER THE CIRCUIT COURT ERRED IN DISMISSING CUNNINGHAM'S WRIT OF HABEAS CORPUS WHICH ALLEGES THAT THE APPELLEES CAUSED HIM TO SERVE TOO MUCH TIME BEFORE BEING ELIGIBLE FOR PAROLE.

In his initial brief, Cunningham appears to be arguing that he is entitled to earned time credit. However, in his reply brief, Cunningham asserts that his "argument is not that he should receive earned time," rather Cunningham's argument "is simply he should have been considered for parole after he had serve [sic] ten (10) years from May 1St., 1981 [sic]."

Appellees argue that the trial court correctly dismissed Cunningham's petition without a hearing because he failed to state a claim in his petition. Appellees maintain that inmates who are serving life sentences are ineligible to receive earned time pursuant to section 47-5-139(1)(a) of the Mississippi Code. The Appellees conclude that because Cunningham was serving a life sentence, the circuit court was without jurisdiction to hear his claim, and that it was properly dismissed.

Cunningham claims that he should have been considered for parole after serving ten years, and instead he was not considered for parole until after eleven years and four months. Assuming that Cunningham is correct, the issue is now moot. According to Cunningham, he should have first been considered for parole in May of 1991. An additional year and four months would have made him eligible for parole in September of 1992. Both points in time have long since passed. Cunningham's petition was filed in January of 1996. Any re-calculation which would have resulted in his earlier consideration would provide no relief today because he has since been given consideration for parole. We are unable to grant the relief he seeks. Accordingly, his appeal is dismissed as moot.

COSTS

Cunningham asserts that he is indigent and cannot pay the costs of this appeal and requests that we require the Appellees to pay all costs associated with this appeal pursuant to MCA section 47-5-76.

Appellees request that Cunningham be required to pay the costs of this appeal because his claim is

frivolous. We agree.

APPEAL DISMISSED. ALL COSTS OF THIS APPEAL ARE TAXED TO SUNFLOWER COUNTY.

FRAISER, C.J., BRIDGES, P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. THOMAS, P.J., NOT PARTICIPATING.