IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2010-CP-00822-COA

GERALD MANGUM **APPELLANT**

v.

MISSISSIPPI PAROLE BOARD, SHANNON WARNOCK, BOBBIE THOMAS, CLARENCE BROWN AND BETTY LOU JONES **APPELLEES**

DATE OF JUDGMENT:	07/02/2009
TRIAL JUDGE:	HON. W. SWAN YERGER
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	GERALD MANGUM (PRO SE)
ATTORNEY FOR APPELLEES:	R. STEWART SMITH JR.
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
TRIAL COURT DISPOSITION:	MOTION FOR POST-CONVICTION RELIEF DENIED
DISPOSITION:	REVERSED AND REMANDED - 11/29/2011
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE IRVING, P.J., MAXWELL AND RUSSELL, JJ.

RUSSELL, J., FOR THE COURT:

¶1. Gerald Mangum appeals the decision of the Hinds County Circuit Court denying his Petition for Writ of Habeas Corpus or for Order to Show Cause and Motion for Evidentiary Hearing as a petition for post conviction relief (PCR). Mangum alleged that he was discriminated against by the Mississippi Parole Board ("Board") because of his race. Mangum asserts on appeal that the circuit court abused its discretion by denying his petition without an evidentiary hearing. Upon review, we find that the circuit court erred in treating Mangum's Petition and Order to Show Cause as a PCR petition. Therefore, we reverse and

remand.

SUMMARY OF FACTS AND PROCEDURAL HISTORY

¶2. Mangum was convicted of murder in 1981 and sentenced to life imprisonment with the possibility of parole in the custody of the Mississippi Department of Corrections. According to Mangum, he has been denied parole nine times.

¶3. Mangum filed a Petition for Writ of Habeas Corpus or for Order to Show Cause against the Board. In his petition, Mangum asked the circuit court to enter an order directing the Board "to show cause as to reasons why [Mangum] has been continuously and discriminatory [sic] denied [p]arole[.]" Subsequently, Mangum filed a supplement to his petition arguing that "although [he] may not have a constitutionally recognized liberty interest in parole . . . , [he] does have a constitutionally recognized right not to be denied parole based on his race." To support his claim, Mangum alleged additional facts, which we rephrase for clarity:

> White prisoners, with similar or worse records than Mangum, have been granted parole by the Board.
>
> Mangum is being discriminated by the Board on the basis of his race.
>
> The Board granted parole to a white male, Douglas Hodgkin, although Hodgkin was convicted of a more heinous crime (rape and murder of a University of Mississippi graduate student) and although there was a large community opposition to Hodgkin's release on parole.
>
> Hodgkin was paroled after serving only twenty-two years, where Mangum has served almost twenty-nine years.
>
> Mangum has a prison[-]conduct record which exhibits the role of a model prisoner, having had no disciplinary action in over seventeen years.

> Mangum did not have the extensive community opposition to parole that Hodgkin had.
>
> Having no disciplinary action in over seventeen years, Mangum has demonstrated his willingness and ability to be a law-abiding citizen.
>
> Unlike Hodgkin, Mangum had numerous favorable recommendations for parole from high-ranking prison personnel.

No summons was ever issued, and neither petition filed by Mangum contained a certificate of service to show that the State of Mississippi or the individual Board members were ever served with process.

¶4. On July 1, 2009, Mangum filed a motion for evidentiary hearing also without a certificate of service. The very next day, on July 2, 2009, the circuit court denied Mangum's request for relief. The order reads, in pertinent part, as follows:

> THIS COURT, having considered Petitioner, Gerald Mangum's [p]ro [s]e, Petition for Writ of Habeas Corpus, is of the opinion that the motion should be and hereby is denied. The instant motion is in the nature of a motion for post-conviction relief and shall be treated as such.[1] The Court finds that it plainly appears from the face of the motion, exhibits and prior proceedings in the case, that Petitioner's [m]otion is without merit and that Petitioner is not entitled to any relief on his claim(s). Miss. Code Ann. § 99-39-11(2) (2000).
>
> IT IS, THEREFORE, HEREBY ORDERED AND ADJUDGED that Petitioner, Gerald Mangum's, Motion for Post-Conviction Collateral Relief should be and hereby is DENIED.

¶5. Mangum appeals the circuit court's order denying his petitions. We consider three

---

[1] As discussed more fully herein, we note that the circuit court erred in treating Mangum's petition as a motion for post-conviction relief because the relief requested by Mangum did not fall under Mississippi Code Annotated section 99-39-5 (Supp. 2011), which includes, among other things, disputes over criminal convictions and sentences.

issues on appeal: (1) whether the circuit court erred in treating Mangum's petition as one for post-conviction relief; (2) whether the circuit court had jurisdiction over Mangum's racial-discrimination claim; and (3) whether Mangum stated a claim upon which relief may be granted.

DISCUSSION

¶6. Whether the circuit court has jurisdiction is a question of law and is reviewed de novo. *Siggers v. Epps*, 962 So. 2d 78, 80 (¶4) (Miss. Ct. App. 2007) (citing *Edwards v. Booker*, 796 So. 2d 991, 994 (¶9) (Miss. 2001)). Likewise, "this Court reviews the trial court's dismissal of a lawsuit based on a question of law under a de novo standard of review." *Rochell v. State*, 36 So. 3d 479, 481 (¶7) (Miss. Ct. App. 2010) (citing *Horton v. Epps*, 20 So. 3d 24, 27 (¶5) (Miss. Ct. App. 2009)).

I. Whether the Circuit Court Erred in Treating Mangum's Petition As One for Post-Conviction Relief

¶7. Although not raised by either party, we must address whether the circuit court properly treated Mangum's petition as one for post-conviction relief. Our PCR statute provides limited grounds upon which a person may seek relief from, among other things, convictions and sentences:

> Any person sentenced by a court of record of the State of Mississippi, including a person currently incarcerated, . . . may file a motion to vacate, set aside or correct the judgment or sentence, a motion to request forensic DNA testing of biological evidence, or a motion for an out-of-time appeal if the person claims:
>
> > (a) That the conviction or the sentence was imposed in violation of the Constitution of the United States or the Constitution or laws of Mississippi;

> (b) That the trial court was without jurisdiction to impose sentence;
>
> (c) That the statute under which the conviction and/or sentence was obtained is unconstitutional;
>
> (d) That the sentence exceeds the maximum authorized by law;
>
> (e) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
>
> (f) That there exists biological evidence secured in relation to the investigation or prosecution attendant to the petitioner's conviction not tested, or, if previously tested, that can be subjected to additional DNA testing, that would provide a reasonable likelihood of more probative results, and that testing would demonstrate by reasonable probability that the petitioner would not have been convicted or would have received a lesser sentence if favorable results had been obtained through such forensic DNA testing at the time of the original prosecution.
>
> (g) That his plea was made involuntarily;
>
> (h) That his sentence has expired; his probation, parole[,] or conditional release unlawfully revoked; or he is otherwise unlawfully held in custody;
>
> (i) That he is entitled to an out-of-time appeal; or
>
> (j) That the conviction or sentence is otherwise subject to collateral attack upon any grounds of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

Miss. Code Ann. § 99-39-5(1)(a)-(j) (Supp. 2011). In the instant case, Mangum did not dispute his conviction, sentence, plea, or any of the other grounds under the PCR statute. Rather, Mangum asserted a racial-discrimination claim. Therefore, the circuit court erred in treating Mangum's petition as one for post-conviction relief.

¶8. Under Mississippi Code Annotated section 99-39-9(4) (Supp. 2011), "[i]f the motion received by the clerk does not substantially comply with the requirements of this section, it

shall be returned to the petitioner if a judge of the court so directs, together with a statement of the reason for its return." Mangum's petition was not one seeking relief under the PCR statute, but an attempt to file a lawsuit against the Board and four of its members alleging constitutional violations based on his race. The circuit court could have returned Mangum's petition to him with an explanation of its reason for doing so pursuant to Mississippi Code Annotated section 99-39-9(4).

¶9. Further, Mangum never served process on any of the named defendants as required under Rule 4 of the Mississippi Rules of Civil Procedure. Indeed, no summons was ever issued. Rule 4(h) provides that if the defendants are not served with the summons and complaint "within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion." M.R.C.P. 4(h).

II. Whether Mangum Stated a Claim Upon Which Relief May Be Granted

¶10. Mangum argues he asserted "non-conclusory claims which were fact-based." On the other hand, the Board argues Mangum failed to state a claim for relief based on racial-discrimination because "his [s]upplemental pleading made the conclusory allegation that the Parole Board had denied him parole based on the fact that he is African American."

¶11. To prevail on a racial-discrimination claim, Mangum must offer proof, "either in his petition or in the record[,] that establishes that he suffered [an] equal[-]protection violation

by the application of the statute based on a suspect classification." *Hopson v. Miss. State Parole Bd.,* 976 So. 2d 973, 976-77 (¶12) (Miss. Ct. App. 2008). Further, proof of a racially discriminatory purpose is required in equal-protection-violation cases. *Terrell v. State*, 573 So. 2d 732, 734 (Miss. 1990) (citing *Foster*, 823 F.2d at 220). However, proof rarely consists of direct evidence. *Terrell*, 573 So. 2d at 734 (citing *Foster*, 823 F.2d at 222). Instead, the evidence is usually circumstantial. *Id*.

¶12. Rule 8(a)(1) of the Mississippi Rules of Civil Procedure only requires "the plaintiff provide a short and plain statement of the claim showing that he is entitled to relief." *Singleton v. Stegall*, 580 So. 2d 1242, 1245 (Miss. 1991) (citing M.R.C.P. 8(a)(1)). Under Rule 8(a), "a plaintiff must set forth factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory." *Scott v. City of Goodman*, 997 So. 2d 270, 276 (¶14) (Miss. Ct. App. 2008) (quoting *Penn Nat'l Gaming, Inc. v. Ratliff*, 954 So. 2d 427, 432 (¶11) (Miss. 2007)). "However, the pleadings need only 'provide sufficient notice to the defendant of the claims and grounds upon which relief which is sought.'" *Id*. (quoting *Estate of Stevens v. Wetzel*, 762 So. 2d 293, 295 (¶11) (Miss. 2000)). "When a complaint is tested on its face, we must take its well-pleaded allegations as true." *Singleton*, 580 So. 2d at 1246 (citing *Overstreet v. Merlos*, 570 So. 2d 1196, 1197 (Miss. 1990)).

¶13. Additionally, a pro se litigant is held "to less stringent standards than formal pleadings drafted by lawyers." *Terrell*, 573 So. 2d at 733 (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)). Further, a pro se "prisoner's meritorious complaint may not be lost because [it is]

inartfully drafted." *Id*. (quoting *Moore v. Ruth*, 556 So. 2d 1059, 1061 (Miss. 1990)). With these thoughts in mind, we note that had Mangum properly served the appropriate parties, the circuit court would have been obligated to review Mangum's petition and "ask whether it suggested a set of facts which might support relief." *Singleton*, 580 So. 2d at 1246. The circuit court had no authority to deny Mangum's petition on the basis that it failed to state a claim "unless it may fairly and objectively be said that the plaintiff could prove no set of facts in support of his claim which would entitle him to relief." *Id*. (citing *Overstreet*, 570 So. 2d at 1197).

¶14. Mangum raised the issue of discrimination in his first petition when he asked the circuit court to enter an order directing the Board "to show cause as to reasons why [Mangum] has been continuously and discriminatory [sic] denied [p]arole[.]" Of course, in his supplemental petition, Mangum went into much more detail on his racial-discrimination claim, citing a specific example of another similarly situated white inmate who was granted parole. Specifically, Mangum stated: (1) the white inmate was convicted of a more serious crime, that being the rape and murder of a University of Mississippi graduate student, while Mangum was convicted of murder; (2) the white inmate had extensive community opposition to his release on parole, whereas Mangum did not have such extensive community opposition; (3) the white inmate had served only twenty-two years, whereas Mangum had served twenty-nine years; and (4) unlike the white inmate, Mangum had numerous favorable recommendations from high-ranking prison officials.

¶15. Upon review of Mangum's petition, we cannot say that he could not prove any set of

facts in support of his racial-discrimination claim. As such, we find Mangum stated a claim upon which relief may be granted.

III. Whether the Circuit Court had Jurisdiction over Mangum's Racial-Discrimination Claim

¶16. We recognize that "[p]risoners have no constitutionally recognized liberty interest in parole." *Hopson*, 976 So. 2d at 975 (¶6) (citing *Mack v. State*, 943 So. 2d 73, 75 (¶6) (Miss. Ct. App. 2006)). In Mississippi, the "Board is given 'absolute discretion' to determine who is entitled to parole" by statute. *d*. (citing *Cotton v. Miss. Parole Bd.*, 863 So. 2d 917, 921 (¶11) (Miss. 2003)). Specifically, Mississippi Code Annotated section 47-7-5(3) (Rev. 2011) provides "the [parole] board shall have exclusive responsibility for the granting of parole as provided by Sections 47-7-3 and 47-7-17 and shall have the exclusive responsibility for revocation of the same." Further, "there is no statutory right of appeal from the denial of parole." *Rochell*, 36 So. 3d at 482 (¶9) (citing *Mack*, 943 So. 2d at 76 (¶8)). However, where constitutional issues are raised, a trial court asserts jurisdiction over those claims. *d*. In fact, the Mississippi Supreme Court has stated:

> State courts are not free to refuse or ignore jurisdiction over rights of action which arise under the constitution and laws of the United States. If the ordinary jurisdiction of the state court as prescribed by local law is adequate to the case, the court *must* accept jurisdiction of such federally created rights[.]

Lewis v. Delta Loans, Inc., 300 So. 2d 142, 144-45 (Miss. 1974) (citing *Testa v. Katt*, 330 U.S. 386, 394 (1947)) (emphasis added); *see also Cotton*, 863 So. 2d at 921 (¶11) (recognizing that "Mississippi courts have a duty to hear and adjudge cases concerning constitutional issues despite a statutory mandate"). Indeed, we enforce such rights even

when convinced that their federal source has erred greatly. *See Sanders v. State*, 429 So. 2d 245, 248, 251 (Miss. 1983); *Bolton v. City of Greenville*, 253 Miss. 656, 666, 178 So. 2d 667, 672 (1965).

¶17. Further, because Mangum "has no liberty interest in obtaining parole in Mississippi, he cannot complain of the denial of parole based on [an] allegation of a denial of due process, abuse of discretion, or consideration of false or improper factors." *Cotton v. Booker*, 166 F.3d 341, 1998 WL 912201 *1 (5th Cir. 1998). But, Mangum's allegations that he was denied parole based on race is a different issue. *Id*. "Such an allegation, if prove[n], would constitute denial of a cognizable federal right[.]" *Irving v. Thigpen*, 732 F.2d 1215, 1218 (5th Cir. 1984). To make out an [e]qual[-]protection claim, Mangum "must prove the existence of purposeful discrimination, which implies that the decisionmaker [sic] selected a particular course of action at least in part because of the adverse impact it would have on an identifiable group." *Cotton*, 1998 WL 912201 at *1 (citing *Johnson v. Rodriguez*, 110 F.3d 299, 308-09 (5th Cir. 1997)). Additionally, Mangum "must allege that he was denied parole based upon discriminatory treatment due to his race or other improper motive, and not just due to an inconsistent application or result." *Id*. "To the extent that [Mangum's] claim is based on a mere claim of inconsistent outcomes in particular, individual instances, his equal[-]protection claim fails." *Id*. But "to the extent that his claim is based on an allegation of improper motive, race, he has asserted a [cognizable] constitutional claim." *Id*. Thus, although the circuit court had no jurisdiction to review whether the Board properly denied parole, the court did have jurisdiction to determine Mangum's racial-discrimination claim

if service of process had been accomplished.

¶18. We note that it is not the intention of this Court to burden the trial courts by requiring them to spend valuable time and resources on meritless allegations of constitutional violations filed by inmates. However, where a trial court treats a claim raising a constitutional issue as a PCR claim without considering any of the allegations in the petition and denies the claim, inmates are left without a forum for adjudicating those constitutional claims. Inmates must be able to seek the protection of constitutionally protected rights from the courts, and the courts must accept jurisdiction to enforce federally created rights if the ordinary jurisdiction of the state court is adequate to the case. *Lewis*, 300 So. 2d at 144-45.[2]

¶19. In a 2006 decision, an inmate alleged that the board discriminated against him based on his race in denying him parole. *Mack*, 943 So. 2d at 77 (¶12). This Court noted that the inmate provided "no specific examples to show that his treatment [was] not equal to the parole treatment received by other inmates." *Id*. Further, the inmate failed to "point out even one incident of a similarly situated inmate receiving the parole that ha[d] been denied to [Jerry Lee] Mack." *Id*. This Court acknowledged that "[w]hile there are certainly factual scenarios in which we might find that the Parole Board improperly considered race in making its determination, there is no evidence that any such impropriety occurred in the present

[2] The Mississippi Supreme Court has recognized that our state courts exercise concurrent jurisdiction with federal courts in the enforcement of federally created rights. *Koehring Co. v. Hyde Constr. Co.*, 254 Miss. 214, 229-30, 178 So. 2d 838, 842-43 (1965). The only exceptions to this rule are those cases in which the federal statutes expressly provide for exclusive jurisdiction in the federal courts. The circuit court had jurisdiction to decide the present case.

case." *Id*. at (¶13). Therefore, we held: "In the absence of any evidence showing that the Parole Board improperly took into account [the inmate's] race or his victim's status, we find that no error occurred." *Id*.

¶20. In a similar case, an inmate appealed the denial of his parole alleging a violation of his equal-protection rights. *Hopson*, 976 So. 2d at 977 (¶11). This Court held: "While race is a suspect class entitled to strict scrutiny, [the inmate] [had] failed to show evidence either in his petition or in the record that establishe[d] that he suffered any equal[-]protection violation by the application of the [parole] statute based on a suspect classification." *Id*. at 976-77 (¶12).

¶21. Mangum cites *Terrell*, 573 So. 2d at 734 to support his contention that he was entitled to a hearing on his racial-discrimination claim. In that case, a black inmate was hired as a clerk in the correctional institution, and he trained a white inmate to be his assistant clerk. *Id*. at 733. Approximately two weeks into the training, the black inmate was notified that the white inmate had been assigned to his job. *Id*. As a result, the black inmate alleged that the prison officials racially discriminated against him because the white inmate did not have the qualifications that the black inmate had for the clerk position. *Id*. The record only contained the inmate's allegations, as the prison officials never filed a response. *Id*. at 733, 734. Our supreme court noted that while inmates do not have a constitutional right to a job while incarcerated, "inmates are protected against racial[-]discrimination by the Equal Protection Clause of the Fourteenth Amendment." *Id*. at 733-34. Further, the core purpose of the Equal Protection Clause "is the prevention of official conduct discriminating on the basis of race."

Id. at 734 (quoting *Foster v. Wyrick*, 823 F.2d 218, 220 (8th Cir. 1987)). Therefore, "[p]rison officials are prohibited from racial[-]discrimination in all areas of prison administration." *Id*. (citing *Battle v. Anderson*, 376 F. Supp. 402, 421 (E.D. Okla. 1974) (overruled on other grounds)). The supreme court held that because the inmate alleged a racial-discrimination claim, and because the record only contained the inmate's allegations and no response from prison officials, it was not beyond doubt that the inmate could not prove his allegations. *Id*. Therefore, our supreme court reversed the judgment and remanded the case for a hearing on the inmate's motion. *Id*.

¶22. In the instant case, Mangum raised the issue of discrimination in his first petition. Mangum provided much more detail on his racial-discrimination claim in his supplemental petition, citing a specific example of another similarly situated white inmate who was granted parole. The record only contains Mangum's allegations of racial-discrimination, but unlike the inmates in *Mack* and *Hopson*, Mangum provided specific examples of unequal treatment. Looking at Mangum's petition, we find, as in *Terrell*, that it is not beyond doubt that Mangum could not prove his allegations of racial-discrimination.

CONCLUSION

¶23. The circuit court erred in treating Mangum's petition, which properly stated a claim for racial-discrimination, as a PCR petition. Further, the circuit court clearly would have jurisdiction to hear Mangum's racial-discrimination claim provided he had properly served the defendants.

¶24. Therefore, for the above reasons, we reverse the judgment of the circuit court and

remand this case for further proceedings consistent with this opinion. On remand, the circuit court shall either return the petition to Mangum, with a statement of the reason for its return, or dismiss the petition without prejudice so that Mangum, at his option, can refile his petition and serve each of the defendants with process.

¶25. **THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT DENYING THE MOTION FOR POST-CONVICTION RELIEF IS REVERSED, AND THIS CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEES.**

LEE, C.J., IRVING AND GRIFFIS, P.JJ., MYERS, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. BARNES, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION.

CARLTON, J., DISSENTING:

¶26. I respectfully dissent from the majority's decision. I would dismiss Mangum's habeas corpus petition for lack of jurisdiction due to his failure to state a claim upon which relief could be granted.[3] Mangum failed to raise a constitutional claim of discrimination sufficiently, and Mangum possessed no right of appeal of a decision of the Mississippi Parole Board (Board) to the circuit court.

¶27. With respect to the sufficiency of the constitutional claim, the record reflects Mangum failed to state a sufficient claim for relief based upon racial discrimination. I respectfully submit that the cases of *Rochell v. State,* 36 So. 3d 479 (Miss. Ct. App. 2010), *Hopson v. Mississippi State Parole Board,* 976 So. 2d 973 (Miss. Ct. App. 2008), and *Mack v. State,*

[3] Mangum also failed to include the proper parties. However, even if he had included the proper parties, the trial court still lacked jurisdiction in this case.

943 So. 2d 73 (Miss. Ct. App. 2006) provide controlling guidance to the resolution of the case before us.

¶28. In *Rochell,* 36 So. 3d at 480 (¶1), Arvin Dale Rochell appealed the trial court's dismissal of his complaint in which he sought the trial court's interpretation of the statutes concerning parole, alleged that the parole statutes were unconstitutional, and claimed that the Board arbitrarily denied him parole. The court reviewed the case and found that Rochell's complaint failed to raise a constitutional justiciable issue sufficient for the trial court to assert jurisdiction. *Id.* at 483 (¶12) (citing *Mack*, 943 So. 2d at 76 (¶8)). *See Vice v. State,* 679 So. 2d 205, 208 (Miss. 1996). In making its findings, the *Rochell* court explained:

> The law is clear that "parole eligibility is a matter of legislative grace, and the grant or denial of parole is entirely at the discretion of the Parole Board." *Garlotte v. State,* 915 So. 2d 460, 466 (¶19) (Miss. Ct. App. 2005) (citing *Shanks v. State,* 672 So. 2d 1207, 1208 (Miss. 1996)); *see* Miss. Code Ann. § 47-7-5(3) (Supp. 2009). Thus, an inmate has no absolute entitlement to parole. *See Edmond v. Hancock,* 830 So. 2d 658, 660 (¶5) (Miss. Ct. App. 2002) (finding that inmates do not have a constitutionally recognized liberty interest in parole). Additionally, there is no statutory right of appeal from the denial of parole. *Mack v. State,* 943 So. 2d 73, 76 (¶8) (Miss. Ct. App. 2006) (citing *Cotton v. Miss. Parole Bd.,* 863 So. 2d 917, 921 (¶10) (Miss. 2003)). However, the trial court may assert jurisdiction over those claims which raise constitutional issues. *Id.*

Rochell, 36 So. 3d at 482 (¶9).

¶29. The trial court in the present case, much like the court in *Rochell,* lacks jurisdiction due to Mangum's failure to plead a constitutional issue sufficiently. We should, therefore, remand this case to the trial court to dismiss Mangum's petition for lack of jurisdiction. The trial court treated Mangum's petition as a petition for post-conviction relief (PCR), and the

court consequently denied Mangum's petition as a PCR petition. However, Mangum filed a pleading entitled, "Petition for Writ of Habeas Corpus or for Order to Show Cause." In his writ of habeas corpus, Mangum argued that since the Board granted parole to one Caucasian that Mangum alleged committed a similar violent offense, then the Board engaged in discrimination in the denial of his parole. Mangum cites no discriminatory criteria, comment, or act as a basis of his allegation of discrimination.

¶30. Significantly Mangum does not complain of any illegality pertaining to the conviction or the sentence that he is currently serving. Thus, the trial court improperly treated Mangum's request for relief as falling under the purview of the PCR statutes.[4] The trial court

---

[4] I pause to note that with respect to the summary denial by the trial court in this case, Mangum failed to set forth sufficient facts to state a claim for relief. However, even if the matter had fallen under the purview of the PCR statute, the trial court could properly dismiss the petition for Mangum's failure to allege sufficient facts in support of a claim for relief. *See Hamilton v. State,* 44 So. 3d 1060 (Miss. Ct. App. 2010). In *Hamilton,* the court explained that a trial court may summarily dismiss a PCR motion "if it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief." *Id.* at 1063 (¶3) (quoting Miss. Code Ann. § 99-39-11(2) (Supp. 2009)). "On appeal, this Court will affirm the summary dismissal of a PCR petition if the petitioner has failed to demonstrate a claim procedurally alive substantially showing the denial of a state or federal right." *Id.* (quoting *Robinson v. State,* 19 So. 3d 140, 142 (¶6) (Miss. Ct. App. 2009)). Furthermore, "[t]his Court reviews the dismissal of a PCR motion for an abuse of discretion[;] [b]ut we will reverse and remand for a hearing if the movant has 'alleged facts which require further inquiry in the expanded setting of an evidentiary hearing.'" *Id.* (internal citations omitted). The *Hamilton* court provided that a trial court need not hold an evidentiary hearing where a petitioner fails to demonstrate, by affidavit or otherwise, that unresolved issues of fact existed that, if concluded favorably to the petitioner, would warrant relief. *Id.* at 1067 (¶21) (quoting *McCuiston v. State,* 758 So. 2d 1082, 1085 (¶9) (Miss. Ct. App. 2000)). This Court then provided that "[t]his may not be accomplished through Hamilton's own unsupported allegations[,]" and proceeded to find no abuse of discretion in the trial court's dismissal of Hamilton's PCR motion without an evidentiary hearing. *Id.*

should have dismissed Mangum's petition for lack of jurisdiction due to his failure to state a claim.[5]

¶31. Furthermore, in *Hopson,* 976 So. 2d at 975–77 (¶¶8-12), this Court held the Board was not required to provide tangible evidence supporting its denial of parole to an inmate, and Edward James Hopson failed to show evidence either in his petition or in the record that established he suffered any equal-protection violation. The *Hopson* Court provided: "Prisoners have no constitutionally recognized liberty interest in parole." *Id.* at 975 (¶6) (citing *Mack,* 943 So. 2d at 75 (¶6)). *See Scales v. Miss. State Parole Bd.,* 831 F.2d 565, 566 (5th Cir. 1987). Further, this Court, upon review of the statutes setting forth the Board's review criteria, found the statute neutral on its face with no separation of individuals based upon suspect classifications. *Hopson,* 976 So. 2d at 976 (¶12).

¶32. I submit this Court should take judicial notice of our prior decision in *Hopson*, 976 So. 2d at 976-77 (¶¶11-12), and its determination that a presumption of validity applies to government actions taken based upon such neutral statutes predicated upon rational purposes; and like the case before us, Hopson failed to provide evidence sufficient to raise an equal-protection violation.[6]

¶33. Additionally, in *Mack,* 943 So. 2d at 75 (¶7), this Court held the trial court should

---

[5] The record reflects Mangum also failed to join proper parties. *See* M.R.C.P. 4(d)(5).

[6] *See Heafer v. State,* 947 So. 2d 354, 357 (¶11) (recognizing parole eligibility constitutes an executive decision rather than a judicial decision). *See also* Miss. Code Ann. § 47-7-5(3) (Rev. 2011) (stating exclusive power over granting and rendering parole rests with the Board).

have dismissed Mack's case because of his failure to name the proper parties in interest in the petition, which was in the nature of a civil suit and not a PCR petition. *Id.* We provided:

> In *McClurg,* this Court found that the complaint of an inmate who filed an action regarding the calculation of his sentenced time to serve and parole eligibility was a civil action and not a petition for post-conviction relief, and therefore should have been "dismissed for failure to properly name and serve the actual parties in interest, namely the Parole Board and Department of Corrections." *McClurg [v. State],* 870 So. 2d [681,] 682 (¶6) [(Miss. Ct. App. 2004)]. As in *McClurg,* the petition in the present case was filed only against the State of Mississippi, and not against the Department of Corrections or the Parole Board. Therefore, the circuit court should have dismissed the petition for Mack's failure to file against the proper parties. As stated in *Puckett v. Stuckey,* 633 So. 2d 978, 980 (Miss. 1993), we will affirm a trial court['s judgment] where it reaches the correct result (here dismissal) even if the court's reasoning was incorrect: "On appeal, we will affirm a decision of the circuit court where the right result is reached even though we may disagree with the reason for that result." *Id.* (citing *Stewart v. Walls,* 534 So. 2d 1033, 1035 (Miss. 1988)).

Id. at 75-76 (¶7). The *Mack* Court further found, even if the petitioner had filed against the proper parties, the circuit court would still be correct in its finding it lacked jurisdiction over this case, stating:

> "A circuit court has no authority to judicially create a right of appeal from an administrative agency in the absence of clear statutory authority therefore." Since Title 47, Chapter 7 does not contain a statutory mandate granting circuit courts jurisdiction over appeals concerning the denial of parole, the circuit court was correct in dismissing the petition due, in part, to lack of jurisdiction.
>
> *Cotton v. Miss. Parole Bd.*, 863 So. 2d 917, 921 (¶10) (Miss. 2003) (citations omitted). The Mississippi Supreme Court went on in *Cotton* to recognize that "a constitutional challenge can justify the assertion of jurisdiction." *Id.* at 921 (¶11). However, here, as in *Cotton,* the complaint fails to allege a constitutional violation sufficient to create jurisdiction in the circuit court. As explained in *Vice v. State,* 679 So. 2d 205, 208 (Miss. 1996) (citations omitted):
>
> The United States Supreme Court held that while maintenance

> of a parole system does not, in and of itself, create a protected interest in parole, one exists only where mandatory language creates a presumption of entitlement to parole once certain objective criteria are met. However, because the Mississippi parole statutes contain no such mandatory language, employing the permissive "may" rather than "shall," prisoners have "no constitutionally recognized liberty interest" in parole.
>
> Therefore, the Parole Board's determination did not violate one of [Jerry Lee] Mack's vested constitutional interests. As noted in *Cotton,* "the Parole Board is given 'absolute discretion' to determine who is entitled to parole within the boundaries of factors set forth in Mississippi Code Annotated section 47-7-3." *Cotton,* 863 So. 2d at 921 (¶11). As in *Cotton,* the complaint here basically "called for the circuit court to review the board's determinations." *Id.* Nothing in the present case's complaint rose to the level of a judicable constitutional issue. Therefore, regardless of the fact that the complaint should have been dismissed for failure to file against the proper parties, the circuit court would not have had jurisdiction even had the complaint been properly filed and served.
>
> *(2) The Boundaries of the Board's Discretion*
>
> In this point of error, Mack contends that the Parole Board went beyond its discretionary boundaries when it denied his application for parole. However, as noted above, the Parole Board's discretion is "absolute." Additionally, the Parole Board in this case based its decision on factors that are in "areas which [the Parole Board has] been given the authority to consider pursuant to Mississippi Code Annotated section 47-7-17." *Justus [v. State],* 750 So. 2d [1277,] 1279 (¶6) [Miss. Ct. App. 1999].

Id. at 76-77 (¶¶7-9).

¶34. In conclusion, I respectfully dissent based upon the foregoing precedent and facts. The record shows that even if Mangum had joined the proper parties, the trial court still lacked jurisdiction for failure to state a claim upon which relief could be granted since Mangum failed to plead a constitutional issue sufficiently, and since the trial court possessed no authority to create a right of appeal from a decision of the Board.