

IN THE COURT OF APPEALS 12/17/96

OF THE

STATE OF MISSISSIPPI

NO. 96-CA-00328 COA

JOHN DAVID MILLSAP

APPELLANT

v.

**KENNETH SKIFFER, WILLIE CATCHINGS, JOHN BOOTH, SGT. JORDON AND
STEVE PUCKETT, COMMISSIONER OF CORRECTIONS DEPARTMENT**

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JOHN B. TONEY

COURT FROM WHICH APPEALED: RANKIN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PRO SE

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JANE LANIER MAPP

NATURE OF THE CASE: PRISONER GRIEVANCE

TRIAL COURT DISPOSITION: LOWER COURT DISMISSED ACTION FOR FAILURE TO
EXHAUST ADMINISTRATIVE REMEDIES.

BEFORE FRAISER, C.J., DIAZ, AND KING, JJ.

FRAISER, C.J., FOR THE COURT:

John David Millsap (Millsap) sued the Mississippi Department of Corrections (MDOC) and several of its employees for the theft of personal property. Because Millsap failed to exhaust his administrative remedies, the trial court dismissed his case. Millsap appealed to this Court *pro se*.

It is not entirely clear what Millsap is arguing; however, Millsap appears to argue that he complied with the Administrative Remedy Procedures (ARP) by filing a Relief Request Form on November 23, 1995, and that he was entitled to a ninety (90) day stay of court proceedings, for completion of the procedure and exhaustion of the remedies under section § 47-5-80 of the Code.

STATEMENT OF THE CASE

Millsap is legally incarcerated as an inmate within the Mississippi Department of Corrections (MDOC) at Parchman, Mississippi. Millsap claimed that several articles of his personal property were confiscated and held in the property room of the Central Mississippi Correctional Facility (CMFC). After being admitted to the property room by a prison officer, Millsap searched for, but was unable to locate his confiscated property. Millsap also claimed that his mother sent a package to him at the CMFC "quick-bed-facility" while he was being detained in a "receiving center" isolation cell in a separate part of the CMFC. The package allegedly contained forty-eight dollars and a radio. The package was never found by the prison officers, nor was it ever returned to Millsap's mother.

On February 28, 1996, Millsap, filed a complaint in the Circuit Court of Rankin County, Mississippi, alleging that his property had been stolen out of the CMFC property room and that he never received a package mailed to him by his mother. Millsap named several employees of the CMFC, as well as Steve Puckett, the Commissioner of the Mississippi Department of Corrections, as Defendants (Appellees).

Appellees filed a motion to dismiss the Complaint because Millsap had failed to first exhaust the remedies provided by the ARP prior to filing his complaint in the circuit court, as required by section § 47-5-803. The Circuit Court dismissed the complaint with prejudice for this reason. Millsap filed a Motion to Appeal In Forma Pauperis, which the circuit court granted on May 1, 1996. On June 20, 1996, Millsap, proceeding *pro se*, filed this appeal, claiming that the trial court erred in dismissing his complaint.

DISCUSSION

I. WHETHER THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S COMPLAINT FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDY PROCEDURES.

Our standard of review is *de novo* when passing on questions of law. *Peterson v. State*, 671 So. 2d 647, 652 (Miss. 1996).

section § 47-5-803(2) provides:

No state court shall entertain an offender's grievance or complaint which

falls under the purview of the administrative review procedure unless and until such offender shall have exhausted the remedies as provided in such procedure. 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 (90) days to allow for completion of the procedure and exhaustion of the remedies thereunder.

Miss. Code Ann. § 47-5-803(2) (1972).

In his complaint, Millsap made no assertion, nor did he provide any evidence that he attempted to utilize the ARP. Instead, Millsap claimed that he was not required to exhaust the ARP because "it would be futile to comply with the administrative procedures." In addition Millsap also stated that he was exempt from the ARP because he "can not [sic] afford to keep going through ARP."

The language of section § 47-5-803(2) is unambiguous: "No state court shall entertain an offender's grievance or complaint which falls under the purview of the administrative review procedure unless and until such offender shall have exhausted the remedies as provided in such procedure." *Id.* Clearly, before Millsap filed a complaint in state court, he should have first exhausted all remedies available under the ARP. Millsap failed to comply with the statutory requirements, and as a result, his complaint was properly dismissed by the lower court.

On appeal, Millsap argues that his case should not have been dismissed because he attempted to comply with ARP. In his reply brief, Millsap argues that he did file an ARP form with the prison, complaining that he was denied access to the prison law library. Millsap asserts that he was unable to "adequately reserve copies of ARP's or other legal papers to use in court." However, Millsap failed to argue this in the lower court.

Millsap's failure to present evidence of his compliance with the ARP in the lower court bars him from now asserting that he has complied with the ARP, as this matter was not presented to the trial court. "[A] trial judge cannot be put in error on a matter not presented to him for his decision." *Bender v. North Meridian Mobile Home Park*, 636 So.2d 385, 389 (Miss. 1994); *Mills v. Nichols*, 467 So.2d 924, 931 (Miss. 1985). We cannot hold the trial court in error for something it never had the opportunity to address. *Crowe v. Smith*, 603 So.2d 301, 301 (Miss. 1992).

Even if we were to waive this rule, Millsap's argument is still insufficient. While he did file an ARP form complaining of his denial of access to the prison library, this has no correlation to his current complaint of stolen property. Millsap obviously knew how to file an ARP form with the prison, but simply failed to file a proper ARP form complaining of his missing property.

Finally, Millsap mistakenly argues that under section § 47-5-803(2), he was entitled to a ninety (90) day stay of court proceedings, in order to allow for the completion of the procedure and exhaustion

of the ARP remedies. In order to take advantage of the ninety (90) day stay, Miss. Code Ann. § 47-5-803(2) requires that ARP forms be initiated prior to filing a complaint in state court.

Millsap never filed the correct ARP for stolen property, and as a result was not entitled to the ninety (90) day stay of state court proceedings.

For the above stated reasons, the judgement of the trial court is affirmed.

THE JUDGMENT OF THE RANKIN COUNTY CIRCUIT COURT IS AFFIRMED.

COSTS ARE ASSESSED TO RANKIN COUNTY.

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