

IN THE COURT OF APPEALS 10/01/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00935 COA

TIMOTHY GROSE

APPELLANT

v.

EDDIE LUCAS, ED HARGETT, JIMMY PARKER,

AND AUBREY DAVES

APPELLEES

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: SUNFLOWER COUNTY CIRCUIT COURT

ATTORNEY(S) FOR APPELLANT: PRO SE

ATTORNEY(S) FOR APPELLEE:

JAMES M. NORRIS

NATURE OF THE CASE: INMATE REQUEST FOR SENTENCE REDUCTION

TRIAL COURT DISPOSITION: REQUEST FOR SENTENCE REDUCTION DISMISSED.

BEFORE THOMAS, P.J., BARBER, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

Timothy Grose, a Department of Corrections inmate, contends that the State improperly denied him earned time credits for the hours he worked in assisting various groups during an ice storm in early 1994. We find that Grose's appeal has no merit and therefore affirm.

FACTS

Grose filed a Petitioner's Motion to Show Cause on August 25, 1994, requesting earned time credits. The circuit court denied the petition on August 30, 1994. He then filed a second petition on September 3 requesting the same sentence reduction for earned time credits. On November 29, a circuit court district magistrate found that both petitions were identical, that the first petition had been denied by the circuit court on August 30, 1994, and recommended that the second petition be dismissed with prejudice. The circuit court dismissed the second petition with prejudice on August 18, 1995. Gross now appeals the dismissal of his second petition on the ground that the State gave other inmates sentence reduction credit for time worked but denied his request for time credit.

ANALYSIS

I. DID THE CIRCUIT COURT ERR IN DISMISSING GROSE'S PETITION BASED ON THE PRINCIPLES OF COLLATERAL ESTOPPEL OR RES JUDICATA?

Grose contends that he was wrongfully denied earned time credits for work he did during the 1994 ice storm that was in addition to the work that he was normally required to do. He argues that his request for credit is appropriate for the exercise of judicial discretion.

The Mississippi Supreme Court has stated that it will not consider issues on appeal with no citation to authority. *Armstrong v. Armstrong*, 618 So. 2d 1278, 1282 (Miss. 1993) (citations omitted); *Estate of Mason v. Fort*, 616 So. 2d 322, 327 (Miss. 1993) (citations omitted); *Smith v. Dorsey*, 599 So. 2d 529, 532 (Miss. 1992) (citations omitted). This Court likewise has the discretion to refuse consideration of issues without citation to authority. *Kelly v. State*, 553 So. 2d 517, 521 (Miss. 1989) (the court, in its discretion, may consider an assignment of error due to the novelty of the events surrounding it, even if a party fails to cite authority in support of that assignment). Also, the supreme court has held that "where a prisoner is proceeding pro se, we will take that into account and, in our discretion, credit not so well pleaded allegations so that a prisoner's meritorious complaint may not be lost because inartfully drafted." *Ivy v. Merchant*, 666 So. 2d 445, 448 (Miss. 1995).

Our standard of review is guided by the court's determination that "[a] trial judge's finding [of fact] is entitled to the same deference as a jury verdict and will not be reversed upon appeal unless manifestly wrong." *R.C. Constr. Co. v. National Office Sys., Inc.*, 622 So. 2d 1253, 1255 (Miss. 1993) (citation omitted). The principle of collateral estoppel precludes parties to an action from relitigating a specific issue that was (1) actually litigated in a former action, (2) determined by the former action, and (3) essential to the judgment in the former action. *Estate of Stutts v. Stutts*, 529 So. 2d 177, 179 (Miss. 1988) (citation omitted). Collateral estoppel acts as a rule of evidence and establishes that the determination of a question of an essential fact, when litigated and determined by a valid and final judgment, is conclusive between the same parties in a subsequent suit on a different cause of action. *Royal Oil Co. v. Wells*, 500 So. 2d 439, 445 (Miss. 1987) (citations omitted); *see also Sanders v. State*, 429 So. 2d 245, 251 (Miss. 1983) (collateral estoppel functions as a rule of evidence and requires that an issue of fact, which is actually litigated and resolved in one trial and which was essential to the judgment, is taken as established in subsequent trials involving the same

parties); *Lyle Cashion Co. v. McKendrick*, 87 So. 2d 289, 293 (Miss. 1956) (collateral estoppel precludes relitigating specific questions which were actually litigated and determined by and essential to the judgment in a prior suit, even though a different cause of action is the subject of the present suit).

The principle of res judicata establishes that a final judgment from a court on the merits of a case is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action. Black's Law Dictionary 1305 (6th ed. 1990). Moreover, res judicata bars relitigating the same cause of action between the same parties when there is a prior judgment, whereas collateral estoppel bars relitigating a particular issue or determinative fact. *Id.*

In the present case, Grose fails to cite any authority supporting his appellate arguments and we are not obligated to address his contentions. However, we exercise our discretion here and nevertheless address the merits of his arguments. Grose filed the present petition four days following the dismissal of a previous petition which the record indicates involved the same issues, parties, and request for relief. The circuit court dismissed the first petition on its merits and, instead of appealing that decision, Grose filed another identical petition. The court clearly made findings of fact within the first petition that were essential to its final judgment, so that these findings became conclusive regarding the second petition involving exactly the same parties. Moreover, under *Royal Oil Co.*, collateral estoppel establishes the conclusiveness of the fact finding determination between the same parties in a subsequent suit on a different cause of action. *Royal Oil Co.*, 500 So. 2d at 445. Therefore, as in this case, that determination is clearly conclusive between the same parties in a subsequent suit on *the same* cause of action. Additionally, res judicata bars Grose from relitigating the same cause of action, i.e, denial of his request for earned time credits, in the second petition.

We hold that the circuit court was not manifestly in error in dismissing Grose's second petition with prejudice as barred by collateral estoppel and res judicata.

COSTS OF APPEAL

The State requests that Grose pay the costs of this appeal. Mississippi statutory law establishes that if an inmate plaintiff in the Department of Corrections files, as a pauper, a civil action pertaining to the inmate's conditions of confinement and the defendant is a department employee, the department shall pay all costs of court. Miss. Code Ann. § 47-5-76 (1972). Moreover, the Mississippi Supreme Court has held that section 47-5-76 only applies at the trial level and not at the appeal level. *Moreno v. State*, 637 So. 2d 200, 201 (Miss. 1994). We hold that Grose must therefore bear the costs of his appeal. Finally, the State requests that sanctions be imposed against Grose for this action which it considers frivolous. We exercise our discretion regarding the State's request and decline to impose sanctions in this case.

CONCLUSION

We find that the trial court did not err and therefore affirm its dismissal of Grose's petition.

**THE JUDGMENT OF THE CIRCUIT COURT OF SUNFLOWER COUNTY OF
DISMISSAL WITH PREJUDICE OF THE PETITION REQUESTING SENTENCE**

REDUCTION IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO SUNFLOWER COUNTY.

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