

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2025-CP-01265-COA

**DAVID E. PAYNE A/K/A DAVID PAYNE A/K/A
DAVID EDWARD PAYNE**

APPELLANT

v.

STATE OF MISSISSIPPI AND BURL CAIN

APPELLEES

DATE OF JUDGMENT:	02/19/2025
TRIAL JUDGE:	HON. KATHY KING JACKSON
COURT FROM WHICH APPEALED:	GREENE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	DAVID E. PAYNE (PRO SE)
ATTORNEY FOR APPELLEES:	OFFICE OF THE ATTORNEY GENERAL BY: KRISTEN SHEPPARD JONES
NATURE OF THE CASE:	CIVIL - OTHER
DISPOSITION:	AFFIRMED - 10/13/2026
MOTION FOR REHEARING FILED:	

BEFORE CARLTON, P.J., WEDDLE AND LASSITTER ST. PÉ, JJ.

LASSITTER ST. PÉ, J., FOR THE COURT:

¶1. David E. Payne reported that he was assaulted by a fellow inmate in the South Mississippi Correctional Institution (“SMCI”). Following the completion of an investigation by SMCI staff, Payne requested through the Mississippi Department of Corrections’ (“MDOC”) Administrative Remedy Program to obtain the personal information of the inmates who were responsible for the alleged assault. Following two denials of his requested remedy, Payne filed a petition in circuit court for judicial review of the administrative findings. The circuit court dismissed Payne’s petition for lack of jurisdiction after finding no evidence that Payne had properly given notice to any of the interested parties. Payne appeals, asserting that he served MDOC Commissioner Burl Cain with notice of the judicial review

sought in circuit court.

¶2. After reviewing the record, we do not find sufficient evidence that Payne noticed any of the relevant parties to the case, and thus we affirm.

FACTS AND PROCEDURAL HISTORY

¶3. David E. Payne asserts that he was assaulted by a fellow SMCI inmate. After Payne reported the incident and SMCI staff investigated the incident, Payne filed a request for relief with MDOC's Administrative Remedy Program ("ARP"), seeking compensation for the incident along with the names and MDOC identifying numbers of the inmates involved in the alleged altercation. MDOC issued a first-step response denying Payne's requests and stating that the information that Payne sought was confidential. Payne then filed a request for review, which MDOC also denied in its second step response.

¶4. Payne subsequently filed a petition for an injunction in the Greene County Circuit Court. On the bottom of this petition, Payne had written "cc: U.S.A.G.," but no certificate of service was included with the petition. The circuit court dismissed the petition for lack of jurisdiction on the ground that the petition did "not include a certificate of service indicating that [Payne] mailed copies of his petition to any party necessary for the review of this matter." Payne then filed a motion for rehearing and asserted that Cain was served with the original petition. Payne attached multiple documents to the motion for rehearing, including his "Affidavit for Criminal Arrest Warrants," "Authorization for Release of Medical Records" and "Request Access to Records." Payne also included a certificate of service with

the motion for rehearing listing Cain as served. The circuit court subsequently denied Payne’s motion for rehearing, leading Payne to appeal. On appeal, Payne included documents in his brief “Addendum” that were not presented to the circuit court, including an “Emergency Motion for Restraining Order” and Inmate Legal Assistance Program (“ILAP”) mail logs.

ANALYSIS

¶5. On appeal, Payne argues that his copying the United States Attorney General, along with his service on Cain of both the document labeled “Emergency Restraining Order” and the document labeled “Request Access of Records,” is adequate to meet the good-faith requirement of pro se litigants to notice the defendants under Rule 5.04 of the Uniform Civil Rules of Circuit and County Court Practice (“UCRCCC”).

¶6. Jurisdictional matters are a question of law, and the standard of review is de novo. *Clark v. Middlebrooks*, 328 So. 3d 1272, 1273 (¶2) (Miss. Ct. App. 2021).

¶7. Service of process is not required when a prisoner files a petition for review of an ARP decision in circuit court. *Smith v. State*, 293 So. 3d 238, 242 (¶19) (Miss. 2020). However, a prisoner filing a petition for review of an ARP decision in circuit court is required to provide notice of the intent to seek judicial review under UCRCCC 5.04. *Hesler v. Alcorn Cnty. Corr. Facility*, 315 So. 3d 1040, 1041 (¶6) (Miss. 2021). Rule 5.04 states that a “party desiring to appeal a decision from a lower court must file a written notice of appeal with the circuit court clerk,” and “[a] copy of that notice must be provided to all parties or their attorneys of record and the lower court or lower authority whose order or judgment is

being appealed.” UCRCCC 5.04. A petition for judicial review must comply with UCRCCC 5.04 for the circuit court to have personal jurisdiction over a named party. *Walker v. Miss. State Parole Bd.*, 399 So. 3d 949, 953 (¶10) (Miss. Ct. App. 2025).

¶8. The Mississippi Supreme Court has held that appellate courts “will take into account when a prisoner is proceeding pro se and grant some degree of leniency.” *Hesler*, 315 So. 3d at 1042 (¶11). The supreme court found a “good-faith effort” to provide notice where a petitioner mailed a motion for judicial review to the correctional facility where the ARP decision he appealed was made. *Id.* This Court has found a good-faith effort by a pro se litigant where he provided the civil litigation division of the Mississippi Attorney General’s Office with notice of intent to seek judicial review of a parole decision because the Attorney General’s Office represented the MDOC Parole Board. *Walker*, 399 So. 3d at 953 (¶12). But when a petitioner fails to provide notice to MDOC or its correctional facilities, this Court has held that providing notice to a circuit clerk and district attorney is not sufficient to establish personal jurisdiction for judicial review proceedings. *Clark v. Middlebrooks*, 328 So. 3d 1272, 1273 (¶5) (Miss. Ct. App. 2021); *see also Robinson v. Miss. Dep’t of Corr.*, 359 So. 3d 237, 240 (¶15) (Miss. Ct. App. 2023).

¶9. In his petition for judicial review, Payne named only Burl Cain in his capacity as the MDOC Commissioner as a defendant. The petition did not contain a certificate of service or any evidence that Cain, MDOC, SMCI, or the Mississippi Attorney General’s Office had been provided notice of the petition for judicial review. Payne attached to his appellate brief

addendum additional evidence that was not provided to the trial court, including his ILAP mail log to prove that he mailed copies of his petition to Cain. Our Mississippi Supreme Court has held that evidence that is not in the record should not be considered, including evidence that is attached to an appellant’s brief. *Shumake v. Shumake*, 147 So. 3d 352, 355 (¶8) & n.1 (Miss. 2014). As such, this evidence will not be considered in this appeal. However, even if this Court were to consider this evidence, the mail logs show an outgoing mailing to Cain on February 5, 2025 for a “Petition for Em.” This mailing correlates to the certificate of service for Payne’s “Emergency Restraining Order” petition. This “Emergency Restraining Order” petition does not mention or address any of the issues relating to this matter or the underlying alleged altercation. As such, even if this evidence were to be considered, it would not be sufficient to prove notice of this judicial review was given to Cain in his official capacity.

¶10. There are three certificates of service in the record that Payne insists gave notice to Cain. These certificates were for a motion to appoint counsel dated October 22, 2025; Payne’s motion for a rehearing dated February 26, 2025; and an “Access of Records” request dated April 10, 2024.¹ Payne asserts specifically that the certificate of service for the “Access of Records” request proves that Cain had notice of this judicial review. This document addresses the alleged incident that caused Payne to seek the administrative remedy, but it

¹ We note that Payne routinely attached a certificate of service to other court filings, including one that was filed before this petition for an injunction. Payne did not address why he failed to attach a certificate of service to his petition for an injunction.

does not give notice or even reference a judicial review of MDOC's decision. Rather, Payne requests that his alleged attackers be arrested and prosecuted. As such, this is not sufficient to satisfy the UCRCCC 5.04 notice requirements, even with the leniency given to pro se litigants.

¶11. Payne did write "cc: U.S.A.G." on the bottom of his petition for an injunction. The circuit court acknowledged this writing in the order dismissing Payne's petition for an injunction, stating that while the United States Attorney General was copied on the petition for an injunction and Cain was copied on the "Access to Records" request, Payne did not indicate by certificate of service that any relevant party was served. As mentioned above, this Court has held that service of process is not required for a pro se litigant to give notice of a judicial review. However, while a pro se litigant is afforded leniency by the court, the United States Attorney General is too attenuated to be considered a good-faith effort to provide sufficient notice to Cain or MDOC. As there is no evidence that the proper parties were given notice of this judicial review, we affirm the circuit court's dismissal of the petition for judicial review for lack of jurisdiction.

¶12. **AFFIRMED.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., WESTBROOKS, McDONALD, LAWRENCE, McCARTY, EMFINGER AND WEDDLE, JJ., CONCUR.