

5/20/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-01129 COA

DONNIE SINGLETON

APPELLANT

v.

EDWARD HARGETT, ANN LEE, JOAN ROSS, DWIGHT PRESLEY, JOHN BECK, ROGER COOK, BARBARA BAILEY AND WALTER BOOKER 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 FOR APPELLANT:

PRO SE

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: JIM NORRIS
NATURE OF THE CASE: HABEAS CORPUS PETITION REGARDING
INMATE CLASSIFICATION

TRIAL COURT DISPOSITION: CIRCUIT COURT RULED IT DID NOT HAVE
JURISDICTION TO HEAR PRISON RULE VIOLATION MATTERS, AND THAT DOUBLE
JEOPARDY DOES NOT APPLY TO ADMINISTRATIVE DECISIONS.

MOTION FOR REHEARING FILED: 6/3/97

MANDATE ISSUED: 8/19/97

BEFORE BRIDGES, C.J., HERRING, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

Donnie Singleton, 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 as relief to have his prison classification changed from close confinement to general population. Singleton also alleges that administrative action and criminal prosecution on the same set of facts constitutes double jeopardy. Singleton filed the case on September 17, 1995, against Edward Hargett, Superintendent of the Mississippi State Penitentiary; Ann Lee, Director of Offender Service; Joan Ross, Disciplinary Chairperson; Dwight Presley, Warden of Area II; John Beck, Warden of Area III; Walter Booker, Warden of Treatment and Support Services; Barbara Bailey, Chief of Records; Roger Cook, Superintendent of South Mississippi Correctional Facility; and all correctional officials of the Mississippi Department of Corrections. The circuit court reviewed the allegations of the petition and held that it did not have jurisdiction to hear prison rule violation matters. The circuit court held further that double jeopardy does not apply to administrative decisions. Singleton appeals from this decision. In a separate issue in this appeal, Singleton challenges the Hinds County Circuit Court's calculation of his six year sentence which was imposed in 1982.

FACTS

On September 13, 1994, inmate, Donnie Singleton, received three rule violation reports for having in his possession illegally altered money orders. Singleton was caught with a total of eight money orders. Singleton was found guilty of this violation by a disciplinary committee on August 31, 1994. Singleton alleges that the disciplinary committee penalized him for these violations by reducing his inmate classification from general population to close confinement, by taking away one-half of his "earn time," and by placing him on mail censorship special management for money orders. Singleton claims further that these violations were referred to the Sunflower Circuit Court for prosecution and that the circuit court sentenced him to three eight-year terms to run concurrently but consecutively to all other previously imposed sentences.

I. WHETHER THE SUNFLOWER CIRCUIT COURT ERRED IN DISMISSING SINGLETON'S WRIT OF HABEAS CORPUS ON THE GROUND THAT THE CIRCUIT COURT LACKED JURISDICTION TO REVIEW AN ADVERSE DECISION RENDERED BY AN ADMINISTRATIVE BODY.

Singleton contends that Appellees violated his Eighth, Thirteenth, and Fourteenth Amendment rights when they conducted a disciplinary hearing and imposed punishment for three Rule Violation Reports in which Singleton was found to be in possession of eight (8) illegally altered money orders. The Sunflower Circuit Court dismissed Singleton's petition for writ of habeas corpus on the ground that the circuit court lacked jurisdiction to review the petition. We find that the circuit court was correct in its finding.

The Mississippi Supreme Court recently addressed an identical issue in *Carson v. Hargett*, No. 95-CA-00578, 1997 WL 45333 (Miss. Feb. 6, 1997). In *Carson*, the court stated:

In *Tubwell v. Griffith*, 742 F.2d at 250, (5th Cir.1984), the Fifth Circuit ruled that, based on the

Code, the classification of inmates is the responsibility of the Mississippi Department of Corrections. Citing Miss.Code Ann. 47-5-99 through 47-5-103 and *Meachum* [*v.Fano*, 427 U.S. 215, (1976)], the Fifth Circuit found that an inmate has no liberty interest in his custody classification. *Tubwell*, 742 F.2d at 253.

Likewise, we hold that Carson has no liberty interest in his classification to the general population. The Mississippi Code commits to the classification committee the duties of hearing evidence and the making of decisions in all cases whereby an offender is subject to being demoted. Miss.Code Ann. 47-5-104 (1972). None of the statutes confers a right to a particular classification. His new classification, while less appealing than his prior classification, does not lengthen his sentence nor does it impose an atypical and significant hardship in relation to the ordinary incidents of prison life. There is no indication he is treated any differently than those in his unit. While he may have lost the privileges he had in Unit 29, his behavior clearly posed a security risk, and the committee was free to classify him where they saw fit. The loss of these privileges does not illustrate a significant hardship amounting to a liberty interest for the purposes of judicial intervention per *Sandin* [*v. Connor*, 115 S.Ct. 2293 (1995)]. This challenge is merely one based on classification, which is an administrative decision beyond judicial reproach in this instance.

The court went on to hold that "[c]lassification is an administrative decision and no constitutional right of Carson's was violated; therefore, the lower court correctly ruled that it had no jurisdiction." *Carson*, slip op. at 2. We find *Carson* to be directly on point and we therefore find that the Sunflower Circuit Court did not have jurisdiction to review Singleton's petition.

II. WHETHER ADMINISTRATIVE PUNISHMENT AND CRIMINAL PROSECUTION FOR THE SAME CRIME CONSTITUTES DOUBLE JEOPARDY.

Singleton contends that the prison administration cannot punish him separately for a crime in which he is being criminally prosecuted. Singleton argues that such action amounts to double jeopardy and therefore violates his due process rights and his right to be free from cruel and unusual punishment.

We find Singleton's argument to be without merit. The law is clear that when an inmate is given administrative punishment by the Mississippi Department of Corrections for the commission of an offense, it is not double jeopardy for the same inmate to be prosecuted by the State for the same offense. *Moore v. State*, 461 So. 2d 768, 769 (Miss. 1984).

III. WHETHER THE MISSISSIPPI DEPARTMENT OF CORRECTIONS ERRED IN CALCULATING A SIX YEAR SENTENCE IMPOSED ON SINGLETON BY THE HINDS COUNTY CIRCUIT COURT IN 1982.

Singleton complains that the Appellees have miscalculated his "earn time" which he accumulated sometime between 1982 and 1985. Singleton contends that this miscalculation caused him to serve additional time in that a six year sentence imposed in 1982 should have been fulfilled in 1986 instead of 1987. We note that, at the present time, Singleton has received sentences totaling forty-one (41) years and according to the Third Step Response Form, research was conducted and it was determined that no error had been made in calculating Singleton's sentences and applicable "earn time."

Singleton raises this issue in his petition to the Sunflower Circuit Court but we note that the circuit court, for whatever reason, did not address this issue in its final order. Furthermore, the record that has been provided this Court is silent as to this issue with the exception of Singleton's petition and the Third Step Response Form prepared by the staff at the Administrative Remedy Program. Such being the case, we find that this issue is not properly before the Court.

IV. WHETHER SINGLETON SHOULD BE REQUIRED TO PAY THE COSTS OF THIS APPEAL.

The State contends that Singleton should pay the costs of this action. Section 47-5-76 of the Mississippi Code requires the Mississippi Department of Corrections to pay court costs for an inmate plaintiff proceeding in forma pauperis in a civil action against department employees pertaining to conditions of confinement. This applies at the trial level and not at the appellate level. *Moreno v. State*, 637 So. 2d 200, 202 (Miss. 1994). The State argues that this action is a civil action which Singleton has disguised as a petition for writ of habeas corpus in order to take a free appeal. The State asserts that because Singleton did not seek release of his body from incarceration, but rather a different classification, then habeas corpus is not available to him. The State argues further that habeas corpus relief was abolished by the Post-Conviction Collateral Relief Act. Singleton makes no mention of the payment of costs in his appellant's brief or in his reply brief.

Again we look to *Carson v. Hargett* for guidance. The supreme court in *Carson* disposes of this issue as follows:

The purpose of the writ of habeas corpus is to give a person restrained of his liberty an immediate hearing so that it can be determined whether that person is being deprived of constitutional rights, such as the right to due process of law. 39 C.J.S. Habeas Corpus 6 (1976). In this instance, the petition for habeas corpus was an acceptable document within which to address this issue. The Petition challenges the inmate's classification as violating the inmate's constitutional rights. Because we hold today that there is no liberty interest in an inmate's classification status, any future challenges to such status should not come to this Court by way of the writ of habeas corpus.

Furthermore, the State is incorrect in its argument that the writ of habeas corpus was abolished by the Post-Conviction Collateral Relief Act. The Court stated in *Walker v. State*, 555 So. 2d 738 (Miss. 1990), "[w]e read nothing in the Post-Conviction Relief Act [cites omitted] which purports to suspend this right [habeas corpus], nor could the right ever be suspended except in the limited circumstance provided for by the constitution." *Id.* at 740.

Carson, slip op. at 2.

Because *Carson* establishes that cases such as the one before us shall be classified as civil and may no longer proceed under the guise of a habeas corpus petition, we find that the costs of this appeal shall be taxed to Singleton despite his status as in forma pauperis. We do note, however, that the United States Supreme Court in December 1996 handed down a decision that allows parties to proceed in forma pauperis in certain types of civil cases. *M. L. B. v. S. L. J.*, 117 S. Ct. 555 (1996) (holding that Mississippi statutes that conditioned an indigent mother's right to appeal judgment terminating her parental rights on prepayment of costs violated the equal protection and due process clauses of the Fourteenth Amendment). Having carefully reviewed *M. L. B.*, we find the Supreme Court's decision

is not so broad as to include cases such as the one presently before us.

**THE JUDGMENT OF THE SUNFLOWER COUNTY CIRCUIT COURT IS AFFIRMED.
ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, KING,
AND SOUTHWICK, JJ., CONCUR. HINKEBEIN, J., NOT PARTICIPATING.**