

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-CA-00829 COA**

**LARRY JONES**

**APPELLANT**

v.

**CHRISTOPHER EPPS, DIRECTOR OF OFFENDER  
SERVICES, MISSISSIPPI DEPARTMENT OF  
CORRECTIONS**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,  
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	05/22/96
TRIAL JUDGE:	HON. GRAY EVANS
COURT FROM WHICH APPEALED:	SUNFLOWER COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	PRO SE
ATTORNEYS FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JAMES M. NORRIS JANE LANIER MAPP
NATURE OF THE CASE:	CIVIL - OTHER
TRIAL COURT DISPOSITION:	JUDICIAL REVIEW OF ADMINISTRATIVE ACTION DISMISSED
DISPOSITION:	AFFIRMED - 2/24/98
MOTION FOR REHEARING FILED:	3/11/98
CERTIORARI FILED:	
MANDATE ISSUED:	6/2/98

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

THOMAS, P.J., FOR THE COURT:

Larry Jones, a former death-row inmate, appeals pro se the Mississippi Department of Corrections' decision to disqualify him for "A" custody classification status, raising the following issues as error:

**I. WHETHER CRITERIA DISQUALIFYING APPELLANT FROM "A" CUSTODY  
CLASSIFICATION STATUS WAS ARBITRARY CRITERIA SINCE STATE  
STATUTE DELEGATES SUCH DUTIES AS CLASSIFYING INMATES TO A**

**CERTAIN CUSTODY STATUS, TO DETERMINE THE "PRIVILEGES TO BE AFFORDED THE OFFENDER WHILE IN CUSTODY OF THE DEPARTMENT," SOLELY TO THE CLASSIFICATION COMMITTEE AND NOT ANY INDIVIDUAL OR INDIVIDUALS.**

**II. WHETHER MEMORANDUM DISQUALIFYING APPELLANT FROM "A" CUSTODY STATUS CONSTITUTED A CONSTITUTIONALLY OR STATUTORILY IMPERMISSIBLE CRITERIA WHERE SUCH MEMORANDUM THWARTED FURTHER CONSIDERATION OF STATUTORY FACTORS REQUIRED TO BE CONSIDERED BY THE COMMITTEE IN REACHING A CLASSIFICATION DETERMINATION.**

**III. WHETHER THE DECISION IN *SANDIN v. CONNER*, 115 S. Ct. 2293 (1995), IS APPLICABLE WHERE APPELLANT IS NOT SEEKING RELIEF FROM DISCIPLINARY SEGREGATION OR A PUNITIVE CHARGE IN HIS CLASSIFICATION BUT RATHER SEEKS RELIEF FROM AN ARBITRARY ACTION OF A STATE AGENCY.**

**IV. WHETHER THE SUPREME COURT SHOULD ENFORCE THE CLEAR WORDING OF STATE STATUTE WHERE STATUTE CONFLICTS WITH SUBSEQUENTLY CREATED POLICY OF STATE AGENCY.**

**V. WHETHER DISQUALIFYING CRITERIA, ENFORCED AGAINST APPELLANT TO DEPRIVE HIM OF "A" CUSTODY BECAUSE OF HIS FORMER DEATH ROW INMATE STATUS, CONSTITUTES AN UNCONSTITUTIONALLY DISCRIMINATORY PRACTICE.**

**VI. WHETHER TRIAL COURT SHOULD HAVE CONSIDERED FACT THAT RESPONDENTS REPRESENTED TO APPELLANT AND TO COURT THAT DISQUALIFYING CRITERIA LANGUAGE IN POLICY WOULD BE REVISED, THAT APPELLANT WOULD BE REVIEWED IF HE MET PETITION ON SUCH BASIS AND WHERE RESPONDENT MDOC AGENCY SUBSEQUENTLY REENACTED A CARBON COPY OF THE SAME POLICY.**

As most of the issues are interrelated, for clarity's sake we will combine the issues and address two. We will discuss whether memoranda sent by two Mississippi Department of Corrections officials constituted a statutorily impermissible criteria and whether Jones has a protectable liberty interest in his custody status. In view of our discussion herein, we affirm.

## **FACTS**

In October 1995, Larry Jones, a former death-row inmate, presently serving a life sentence for murder, went before the Classification Committee seeking to have his custody classification upgraded from "B" custody to "A" custody. The MDOC has in place a custody classification designation used by the Classification Committee to measure the level of privileges and job assignments available to inmates during their confinement. "A" custody classification allows an inmate to receive maximum privileges such as: visitation, phone calls, home mailed packages, participation in emergency disaster

details allowing inmates to receive executive meritorious earned time, ability to receive a pass in case of death or serious illness in family, housing in a more relaxed atmosphere, better job assignments, and ability to possess more items of personal property.

Jones states that during the Committee hearing the Committee informed him that as an ex-death-row inmate he was not eligible to be classified for "A" custody. Jones then filed a request for relief through the MDOC's Administrative Remedies Program.

The administration informed Jones that the criterion for "A" custody was in the process of being revised, and after they made the revisions, if he met the criteria, he would be considered for "A" custody. Jones filed a complaint in the Circuit Court of Sunflower County against Christopher Epps. Epps, Director of Offender Services/Records, had sent a memorandum to certain MDOC officials and employees concerning the disqualifiers and factors to be considered when recommending or reviewing an inmate for "A" custody. The memorandum specifically excluded former death-row inmates from consideration for "A" custody status. The Circuit Court of Sunflower County dismissed Jones's petition on November 9, 1995, stating that the criterion for "A" custody was under revision and the court would not take any action on the matter while these revisions were in the process of being made.

Jones filed an objection to the lower court's order on November 28, 1995. On December 12, 1995, Edward M. Hargett, Bureau Director, sent out a memorandum that stated that effective from that date an inmate who had been sentenced to death was disqualified from "A" custody. Jones made this memorandum part of the record. On March 14, 1996, Jones filed a motion to expedite the ruling on his earlier objection. On March 27, 1996, Jones filed a Rule 60(b) motion seeking relief from the lower court's previous order of dismissal and asking for a hearing to be held in the matter.

Judge Gray Evans held an evidentiary hearing on May 22, 1996 and subsequently denied Jones's motion, stating that no inmate was entitled, as a matter of right, to any particular custody status.

## ANALYSIS

### I.

#### **WHETHER MEMORANDUM DISQUALIFYING APPELLANT FROM "A" CUSTODY STATUS CONSTITUTED A CONSTITUTIONALLY OR STATUTORILY IMPERMISSIBLE CRITERIA WHERE SUCH MEMORANDUM THWARTED FURTHER CONSIDERATION OF STATUTORY FACTORS REQUIRED TO BE CONSIDERED BY THE COMMITTEE IN REACHING A CLASSIFICATION DETERMINATION.**

Jones opines that Mississippi Code Annotated § 47-5-103 (Rev. 1993) prohibits any individual or individuals from altering any classifications. **Mississippi Code Annotated § 47-5-103** states in pertinent part: "The committees shall establish substantive and procedural rule and regulation governing the assignment and alterations of inmate classification . . . ." Jones argues that the memorandums sent by Epps and Hargett, stating that ex-death-row inmates were to be excluded from consideration for "A" custody status, failed to provide that Epps or Hargett were actual members of the Classification Committee or that a duly convened Classification Committee took and approved such actions by a majority vote.

Jones states that when he appeared before the Classification Committee they showed him the Epps/Hargett memoranda and that the Committee used these memoranda as their denial for his "A" classification. His argument seems to be that Epps/Hargett, who were not members of the Committee, dictated the rules to the Committee, which by statute the Committee was bound to promulgate. The statute does not set forth how the Committee is to adopt its criteria. By having used the criteria set forth by the Epps/Hargett memoranda and using this as its denial of change in custody, the Committee necessarily adopted the guidelines in the memoranda, even if it did not initially draft the criteria.

Jones contends that Mississippi Code Annotated § 47-5-103, which requires "that the committee provide the parole board with a copy of the classification assigned to each offender" will diminish his chance for parole. We find this argument not to have merit. The parole board, when determining whether an inmate should be considered for parole, would have all the inmate's information before them at that time. They would know all of Jones's history, including the fact that he had once been on death-row, and that as a former death-row inmate he was ineligible for "A" custody classification, and therefore, the fact that Jones had not attained "A" custody would not be considered against him in a parole decision.

During Jones's evidentiary hearing, Ann Lee testified on behalf of MDOC. Jones states that Lee was not a member of the Classification Committee, which conducted the personal interview with him. Lee testified that the Committee was required to review Jones's "entire criminal history under the law" and "by law we look at his institutional behavior and conduct. He's had nine RVRs [rules violation reports] while he's been confined. His entire criminal history is reviewed." Jones opines that Lee was not competent to testify about what the Committee considered. Jones takes this argument one step further and argues that if the Committee only considered his former death-row status, this criterion is arbitrary, and thwarts further statutory consideration where an inmate is seeking to be upgraded to "A" custody that is inconsistent with § 46-5-103, which states that the Committee shall consider such things as the "offender's age, offense and surrounding circumstances, the complete record of the offender's criminal history including records of law enforcement agencies or of a youth court regarding that offender's juvenile criminal history, family background . . . ." Since one criterion to be considered in assigning classification is "the complete record of the offender's criminal history" and § 47-5-103 further states that the Classification Committee is to establish "substantive and procedural rules and regulations governing the assignment and alteration of inmate classifications" this is precisely what was done with the criteria excluding certain offenders from "A" custody. This rule is merely a substantive rule concerning the application of the statutory criteria. This issue has no merit.

## II.

### WHETHER JONES HAS A LIBERTY INTEREST IN BEING CONSIDERED FOR "A" CUSTODY?

Jones argues that he has a liberty interest in being considered for "A" custody. There is a United States Supreme Court decision that is germane to Jones's situation. *Sandin v. Conner*, 515 U.S. 472 (1995). In *Sandin*, the Supreme Court criticized its former precedent under which courts examined the language in state statutes and regulations to determine whether a liberty interest was created. In *Sandin*, the petitioner was given thirty days disciplinary segregation for misconduct. *Id.* at 475-76.

The Court recognized:

that States may under certain circumstances create liberty interests which are protected by the Due Process Clause. But these interests will be generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.

***Id.* at 483-84** (citations omitted).

Applying this test to the case before it, the *Sandin* Court ruled that the respondent's thirty-day segregated confinement though concededly punitive, did not present a dramatic departure from the basic conditions of his indeterminate sentence. ***Id.* at 487.**

More recently, the United States Supreme Court decided a case called *Edwards v. Balisok*, **117 S. Ct. 1584 (1997)**. Some courts hold that *Edwards* overruled *Sandin* in some aspects. *See Barone v. Hatcher*, No. CV-N-95-029-ECR, **1997 WL 726071, at \*6 (D. Nev. Oct. 30, 1997)**. The issue in *Edwards* was whether a claim for damages and declaratory relief brought by a state prisoner challenging the validity of the procedures used to deprive him of good-time credits was cognizable under § 1983. ***Edwards*, 117 S. Ct. at 1586.** Specifically, the Court rejected the Ninth Circuit's ruling that "a claim challenging only the procedures employed in a disciplinary hearing is always cognizable under § 1983." ***Id.* at 1587.** *Edwards* may have overruled *Sandin* based on the *Edwards* Court's interpretation of a state prisoner's nature of his challenge in federal court; however, it did not overrule *Sandin*'s holding that liberty "interests will be generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." ***Sandin*, 515 U.S. at 484.**

Jones argues that *Sandin* does not apply because his complaint is not centered around the imposition of discipline. We disagree. Jones argues that the decision to hold him in "B" custody is arbitrary and capricious or, put another way, he has a liberty interest in reaching and being considered for "A" custody. Although the factual scenario in *Sandin* involved discipline, the holding was much more extensive.

The question for this Court is whether Jones has a liberty interest in seeking "A" custody, such that under the Fourteenth Amendment he was entitled to due process before that privilege could be revoked. The test articulated in *Sandin* precludes us from finding a liberty interest and bars relief. Jones inability to qualify for "A" custody does not subject him to conditions different from those ordinarily experienced by many other inmates serving their sentences in customary fashion. ***Id.* at 486.** Similarly here, any hardship is not "atypical" in relation to the ordinary incidents of prison life. ***Id.***

The Mississippi Supreme Court applied *Sandin* in a case that is factually similar to Jones's case. ***Carson v. Hargett*, 689 So. 2d 753 (Miss. 1996)**. In *Carson*, the inmate was seeking to be reclassified from "C" custody. ***Id.* at 754.** The Court stated that in order for Carson's claim to succeed, "he would need to show different conditions for those similarly situated inmates in ["C" custody]." ***Id.*** "[T]he classification of inmates is the responsibility of the Mississippi Department of Corrections. . . [and] *an inmate has no liberty interest in his custody classification.*" ***Id.*** (citing *Tubwell v. Griffith*, 742 F.2d 250, 253 (5th Cir. 1984) (emphasis added)). "None of the [Mississippi]

statutes confers a right to a particular classification. . . . [T]he committee [is] free to classify [an inmate] where they [see] fit. This challenge is merely one based on classification, which is an administrative decision beyond judicial reproach . . . ." *Id.* at 755.

Another case that is applicable to Jones's situation is that of *Luken v. Scott*, 71 F.3d 192 (5th Cir. 1995), in which the Fifth Circuit Court of Appeals addressed an argument where the plaintiff contended that the mere opportunity to earn "good time" constituted a constitutionally cognizable liberty interest sufficient to trigger the protection of the Due Process Clause. *Id.* at 193. Luken claimed that taking away that opportunity violated a liberty interest because the effect was to reduce his opportunity to earn "good time" in order to reduce his sentence and accelerate his eligibility to earn parole. *Id.* The Fifth Circuit Court of Appeals held that the loss of the opportunity was a collateral consequence of the plaintiff's status "[y]et, such speculative, collateral consequences of prison administrative decisions do not create constitutionally protected liberty interests." *Id.* (citing *Mechum v. Fano*, 427 U.S. 215, 229 n.8 (1976) (noting that possible effect on parole decision does not create liberty interest in confinement in particular prison)). *See also Wolff v. McDonnell*, 418 U.S. 539, 557 (1974) (stating that good time credits alone are not liberty interests). "Any of a host of administrative or disciplinary decisions made by prison authorities might somehow affect the timing of a prisoner's release, but such effects have never been held to confer a constitutionally protected liberty interest upon a prisoner . . . ." *Luken*, 71 F.3d at 193-94.

We must first note that Jones is serving a life sentence. *See Jones v. Smith*, 685 F. Supp. 604 (S.D. Miss. 1988). Under Mississippi Code Annotated § 47-5-139(1)(a) (Rev. 1993 & Supp. 1997), inmates serving life sentences are held ineligible for earned time allowances. This does not seem to be Jones's argument. We will assume that his complaint is predicated under Mississippi Code Annotated § 47-5-142 (Rev. 1993), where an inmate can achieve meritorious earned time. Jones's argument would only succeed if the awarding of meritorious earned time in Mississippi is mandatory. We conclude that it is not. This statute is couched in discretionary terms. For example, the statute provides that subject to the approval of the commissioner an inmate "may be awarded" meritorious earned time. Thus, although Jones cannot acquire some meritorious earned time because of his custody status, no time is being added to his sentence. Therefore the loss of the higher classification and the corresponding ability to achieve some meritorious earned time at the same rate as other inmates in higher custody status, does not cause an "atypical and significant hardship" in relation to the ordinary incidents of prison life in Mississippi. *Sandin*, 515 U.S. at 486.

Applying the above cases to Jones's situation, it is clear that he has no protectable property or liberty interest in any custodial classification.

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

**BRIDGES, C.J., McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING,  
PAYNE, AND SOUTHWICK, JJ., CONCUR.**