IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00547 COA

ANDREW CLARY **APPELLANT**

v.

ANN LEE, CHARLES WINTERS, AND MIKE BLOUNT **APPELLEES**

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

DATE OF JUDGMENT:	04/23/96
TRIAL JUDGE:	HON. GRAY EVANS
COURT FROM WHICH APPEALED:	SUNFLOWER COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	PRO SE
ATTORNEY FOR APPELLEES:	OFFICE OF THE ATTORNEY GENERAL BY: JANE L. MAPP
NATURE OF THE CASE:	CIVIL - OTHER
TRIAL COURT DISPOSITION:	DISMISSAL OF COMPLAINTS CONCERNING LOSS OF PRISON JOB
DISPOSITION:	REMANDED - 02/24/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/7/98

BEFORE McMILLIN, P.J., DIAZ, AND HERRING, JJ.

DIAZ, J., FOR THE COURT:

Andrew Clary assigns error to the lower court's dismissal of his complaints of racial discrimination which he allegedly encountered while seeking a job within the prison system. Finding that the lower court failed to adequately consider whether or not Clary had exhausted the full administrative review procedure for the racial aspects of his claim, we remand this case for further proceedings in accordance with this opinion.

FACTS

On August 1, 1992, Andrew Clary, an inmate incarcerated within the Mississippi Department of Corrections (MDOC), filed a complaint in the Circuit Court of Sunflower County alleging racially discriminatory job placement practices within the prison system. After receiving a job with the Parchman Fire Department, Clary voluntarily dismissed his complaint. The circuit court subsequently entered an order to that effect. On June 20, 1995, almost three years after Clary filed his initial complaint, the MDOC issued a Rule Violation Report (RVR), citing Clary with "willfully using equipment which is not authorized." As a result, Clary lost his job with the fire department. Clary then filed a motion for leave to re-open his initial lawsuit. The circuit court denied Clary's motion as an impermissible appeal from a decision of the superintendent in a RVR decision. On August 10, 1995, Clary filed a request for administrative remedy, again alleging racial discrimination within the MDOC. The legal claims adjudicator subsequently returned Clary's request, citing the circuit court judge's denial of Clary's motion to re-open his original lawsuit. On March 22, 1996, Clary filed a second complaint in circuit court alleging racial discrimination within the MDOC. On April 23, 1996, the circuit court judge signed an order once again dismissing Clary's original lawsuit and also dismissing his second complaint as repetitive. It is from this order of dismissal that Clary appeals to this Court.

DISCUSSION

Mississippi Code Annotated § 47-5-807 (Rev. 1993) provides for judicial review of an adverse decision rendered pursuant to any MDOC administrative review procedure. However, "[n]o 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." **Miss. Code Ann. § 47-5-803(2) (Rev. 1993).**

In his August 10, 1995 grievance, Clary alleged that the MDOC had discriminated against him because of his race. Clary pointed to alleged incidents of discrimination which had occurred after the settlement of his original lawsuit. Nevertheless, the legal claims adjudicator refused to even consider the grievance, basing his refusal on the circuit court's unwillingness to permit Clary to re-open his original lawsuit. Having had his grievance summarily rejected by the grievance officer, it would therefore appear that Clary had exhausted his administrative remedies and could, at that point, file suit. Therefore, we must remand this case for a determination as to whether Clary has, in fact, exhausted the full administrative review procedure for the racial aspects of his claim, and if he has, then the lower court must deal with the merits of Clary's claim insofar as they invoke disparate treatment based on race.

THE JUDGMENT OF THE SUNFLOWER COUNTY CIRCUIT COURT IS REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEES.

McMILLIN, P.J., COLEMAN, HERRING, KING, AND SOUTHWICK, JJ., CONCUR.

HINKEBEIN, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY BRIDGES, C.J., THOMAS, P.J., AND PAYNE, J.

HINKEBEIN, J., DISSENTING:

With deference to my colleagues, I disagree with the majority in their decision to reverse and remand this case for further proceedings. As I will attempt to explain in this dissent, I believe that this matter should finally be disposed of on this appeal. Several issues were presented to the Circuit Court of Sunflower County in this proceeding including racial discrimination, misinformation, harassment, and forgery. As the lower court stated in its order dated April 23, 1996, "[t]his [c]ourt simply does not know what to do about this [p]etitioner's harassment of this [c]ourt." Now, for the first time on appeal, we are asked to address the issue of an Administrative Remedies Program ("ARP") which the appellant claims is the basis of violations to his statutory and constitutional rights.

I assume that the "ARP" the appellant refers to in his appellate brief is the Administrative Review Procedures set forth in **Sections 47-5-801 to 47-5-807 of the Mississippi Code.** On appeal, the appellant now claims that he was denied access to the appropriate procedures under the ARP. However, because this issue was not raised before the lower court in the action from which this appeal was taken, any such claim has been abandoned. ***See Holland v. State,* 587 So. 2d 848, 868 n.18 (Miss. 1991)** (holding that it is fundamental to principles of appellate review that trial judge may not be put in error on matter which was not presented to him for his consideration). The Mississippi Supreme Court has consistently held that errors raised for the first time on appeal are procedurally barred. ***Ellis v. Ellis,* 651 So. 2d 1068, 1073 (Miss. 1995); *Patterson v. State,* 594 So. 2d 606, 609 (Miss. 1992).**

Even if the appellant's claim were not procedurally barred, I note that the appellant was allowed to file a grievance with a legal claims adjudicator at the Department of Corrections. This claim was dismissed by the claims adjudicator because the circuit court had already denied the appellant's request to re-open the original claim, which had raised the same issues. Even the majority acknowledges that having had his grievance summarily rejected by the grievance officer, it would appear that the appellant had exhausted his administrative remedies. Accordingly, it is my opinion that the appellant had exhausted his administrative remedies and that the circuit court's decision to affirm the claims adjudicator's rejection of the appellant's claim was supported by sufficient evidence.

To allow an inmate at the Mississippi State Penitentiary at Parchman, Mississippi to continue to raise new issues in our court system at his discretion when this is not allowed in other civil or criminal proceedings is not only bad logic, but also bad law. I would affirm the decision of the lower court and put this matter to an end.

BRIDGES, C.J., THOMAS, P.J., AND PAYNE, J., JOIN THIS SEPARATE WRITTEN OPINION.