

Appendix "A"

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2017-CP-00723-SCT

TIMOTHY GENE PRYER

v.

THOMAS GARDNER, III

DATE OF JUDGMENT:	03/30/2017
TRIAL JUDGE:	HON. T. K. MOFFETT
TRIAL COURT ATTORNEYS:	TIMOTHY GENE PRYER (PRO SE) JUSTIN L. MATHENY
COURT FROM WHICH APPEALED:	ITAWAMBA COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	TIMOTHY GENE PRYER (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JUSTIN L. MATHENY
NATURE OF THE CASE:	CIVIL - OTHER
DISPOSITION:	AFFIRMED - 05/17/2018
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE KITCHENS, P.J., BEAM AND CHAMBERLIN, JJ.

KITCHENS, PRESIDING JUSTICE, FOR THE COURT:

¶1. A prisoner, Timothy Gene Pryer, filed an action in chancery court against the Itawamba County Sheriff's Department and the Itawamba County Circuit Clerk. Pryer claimed that the defendants wrongfully had denied him access to public records under the Mississippi Public Records Act, entitling him to civil damages. *See* Miss. Code Ann. § 25-61-15 (Rev. 2010). More than three years after filing the complaint, Pryer filed a motion for leave to amend it to add a Public Records Act claim against Circuit Judge Thomas Gardner, III. Pryer alleged that, in deeming his public records request a motion for post-conviction

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relief, and then denying it, Judge Gardner had violated the Public Records Act, entitling Pryer to civil damages. The Chancery Court of Itawamba County granted Judge Gardner's motion to dismiss, and Pryer appeals. Because Pryer's claim against Judge Gardner is barred by the doctrine of judicial immunity, we affirm the dismissal of his amended complaint.

FACTS

¶2. This cause of action arises from a request Pryer filed in the Circuit Court of Itawamba County for "the Order givin[g] Carol Gates the Office of Judge de facto or pro tempore and the order givin[g] Carol Gates authority to appoint indigent counsel for December 2, 2004 [hearing] and the names of the 40 plus souls and their addresses according to the record."

Pryer v. State, 139 So. 3d 713, 713-14 (Miss. 2014). According to Pryer's allegations in a subsequent Motion to Show Cause, the circuit court entered an order on June 6, 2011, that denied his request and construed it as a motion for post-conviction relief.¹ *Id.* at 714. In his show cause motion, Pryer alleged that, in the absence of the circuit judge, the Circuit Clerk of Itawamba County, Carol Gates, presided over arraignments and appointed counsel for some or all of the "forty (40) plus souls." *Id.* Pryer filed a petition for mandamus in this Court, requesting that we compel the circuit court to rule on his Motion to Show Cause. *Id.* We granted the petition; and, on February 1, 2012, the circuit court entered an order that denied the motion. *Pryer v. State*, 139 So. 3d 719, 720 (Miss. Ct. App. 2013). Although the

¹ Although the order does not appear in the record, in a prior decision of this Court, we quoted Pryer's allegations concerning the order made in his "Motion to Show Cause," filed on June 20, 2011. *Pryer*, 139 So. 3d at 714.

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record now before the Court does not contain that order, the Court of Appeals quoted from it as follows:

This cause comes before this [c]ourt on [Pryer's] pro se [m]otion to [s]how [c]ause. [Pryer] requests this [c]ourt to order the Itawamba County Circuit Clerk to forward [Pryer] a free copy of the documents not contained within the [c]ircuit [c]lerk's file. This motion contains the exact same requests as the previously filed motions. In addition, the [m]otion to [s]how [c]ause contains completely unfounded and slanderous allegations against several court offices. The [m]otion to [s]how [c]ause has no legal merit and shall be DENIED.

Id. at 721.

¶3. Pryer appealed from the order of February 1, 2012, and this Court assigned his appeal to the Court of Appeals, which affirmed. *Id.* at 721. The Court of Appeals found that "we have no reason to believe that any such documents do exist," and deemed Pryer's filings a "fishing expedition." *Pryer*, 139 So. 3d at 721. This Court granted Pryer's petition for *certiorari*. *Pryer*, 139 So. 3d at 713. On *certiorari*, Pryer complained that, because he had filed a public records request, the circuit court had lacked jurisdiction to treat the request as a motion for post-conviction relief. *Id.* at 714. This Court found that Pryer had filed a motion to show cause in circuit court rather than following the statutory procedure set forth by the Public Records Act, which provides for the institution of a suit in chancery court by "any person denied the right granted by Section 25-61-5 to inspect or copy public records." *Id.* at 715-16 (citing Miss. Code Ann. § 25-61-13(1)(a) (Rev. 2010)). We held that the circuit court had jurisdiction to rule on Pryer's motion and that nothing in the circuit court's order indicated that it had treated Pryer's motion as one for post-conviction relief. *Id.* at 716. We found that the Court of Appeals had been incorrect to assume that the circuit court had

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considered the motion as a motion for post-conviction relief; but we agreed with the Court of Appeals' finding that there was no reason to believe the documents Pryer sought actually existed. *Id.* Therefore, we affirmed the decision of the Court of Appeals that affirmed the Circuit Court of Itawamba County's denial of the public records request. *Id.* In our decision, we did recognize that

If Pryer so desires, he may, pursuant to the statute, institute a suit in the Chancery Court of Itawamba County. Nothing in the Court of Appeals decision or in the order of the circuit court prevents his doing so, and this Court's ruling today does not impede Pryer's statutory right to file such an action, should he choose to do so.

Id.

¶4. During the pendency of his appellate litigation, on July 3, 2013, Pryer filed the instant action in the Chancery Court of Itawamba County against the Itawamba County Sheriff's Department and the Itawamba County Circuit Clerk. He claimed that these entities were liable for civil penalties for failing to respond to his public records requests made on May 18, 2011; July 5, 2011; August 2, 2012; and September 13, 2012, asking for copies of capiases served on December 2, 2004. Pryer claimed that, because the defendants had ignored his public records requests on four occasions, he was entitled to damages of \$400, plus reasonable expenses, pursuant to Mississippi Code Section 25-61-15, which provides:

Any person who shall deny to any person access to any public record which is not exempt from the provisions of this chapter or who charges an unreasonable fee for providing a public record may be liable civilly in his personal capacity in a sum not to exceed One Hundred Dollars (\$100.00) per violation, plus all reasonable expenses incurred by such person bringing the proceeding.

Miss. Code Ann. § 25-61-15 (Supp. 2017).

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¶5. Despite his efforts at achieving proper service, Pryer never served the defendants with his complaint. On June 23, 2014, he filed a motion to amend his complaint to add Judge Gardner as a defendant. On October 13, 2016, the chancellor entered an order granting the motion to amend, finding that no responsive pleading had been filed and that amendment would not be prejudicial to adverse parties. Pryer filed his amended complaint on November 1, 2016. In the amended complaint, Pryer made the following allegations against Judge Gardner:

Defendant Thomas J. Gardner is Circuit Court Judge in Itawamba County. After receiving the request for Public Records addressed to Defendant Gates, Gardner held the request to be a Post-Conviction Relief Petition, and denied those records to Pryer on June 3, 2011. On June 15, 2011 A.D. Pryer filed a Motion to Show Cause in the Circuit Court asking why he was being denied access to Public Records by the Circuit Court even after offering payment for said records. On December 19, 2011 A.D., Pryer filed a Petition for Writ of Mandamus with the Supreme Court of Mississippi to compel Defendant Gardner to answer Pryer[']s Motion to Show Cause. Defendant Gardner was ordered to respond and on January 20, 2012 denied Pryer Public Records citing "no free documents." Defendant Gardner has denied Pryer access to Public Records twice in violation of MCA §25-61-5.

He claimed that Judge Gardner's two alleged violations of the Public Records Act entitled him to an additional \$200 in damages.

¶6. Pryer served Judge Gardner with process. On January 12, 2017, Judge Gardner moved to dismiss Pryer's claim against him under Mississippi Rule of Civil Procedure 12(b)(6) on the basis of judicial immunity or, alternatively, because the statute of limitations had expired. On March 30, 2017, the chancellor granted Judge Gardner's motion to dismiss. The chancellor found that Pryer's complaint was against a judge in his judicial capacity and that judicial immunity shielded Judge Gardner from liability. The chancellor also held that the

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action against Judge Gardner was time barred because the amended complaint was filed outside the limitations period. Finding no just reason for delay, the chancellor directed the entry of a final judgment in favor of Judge Gardner pursuant to Mississippi Rule of Civil Procedure 54(b). The chancellor denied Pryer's motion for reconsideration. Pryer has appealed.²

STANDARD OF REVIEW

¶7. On review of the disposition of a motion to dismiss for failure to state a claim, this Court does not defer to the trial court's ruling. *Jourdan River Estates, LLC v. Favre*, 212 So. 3d 800, 803 (Miss. 2015). Rather, the issue presents a question of law, which is reviewed *de novo*. *Id.* A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint. *Lagnianne Logistics, Inc. v. Buras*, 199 So. 3d 675, 677 (Miss. 2016). The Court limits its review to the face of the complaint, accepting all allegations therein as true. *City of Meridian v. \$104,960.00 U.S. Currency*, 231 So. 3d 972, 974 (Miss. 2017). A Rule 12(b)(6) motion should not be granted unless "it appears beyond a reasonable doubt that the plaintiff will be unable to prove any set of facts in support of the claim." *Id.* (citing *Rose v. Tullos*, 994 So. 2d 734, 737 (Miss. 2008)).

² On December 11, 2017, the State filed a motion to strike six exhibits attached to Pryer's reply brief and his arguments associated with those exhibits on the ground that the exhibits were not in the record. By order entered on February 2, 2018, the motion was passed for consideration with the merits of the appeal. Mississippi Rule of Appellate Procedure 30(a) provides that "[a]ppeals shall be on the record as designated pursuant to Rule 10." M.R.A.P. 30(a). It is well established that this Court does not consider information outside the record. We grant the State's motion and strike the extra-record exhibits attached to Pryer's reply brief and the portions of Pryer's reply brief that rely on those exhibits.

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DISCUSSION

THE CHANCELLOR PROPERLY DISMISSED PRYER'S AMENDED COMPLAINT AGAINST JUDGE GARDNER BECAUSE IT WAS BARRED BY THE DOCTRINE OF JUDICIAL IMMUNITY.

¶8. The doctrine of judicial immunity long has been recognized in Mississippi. *Newsome v. Shoemake*, 234 So. 3d 1215, 1223 (Miss. 2017). “[T]he best interests of the people and public order require that judges be immune from civil liability.” *Loyacano v. Ellis*, 571 So. 2d 237, 238 (Miss. 1990). It is the sound public policy of this state that judges are empowered to make decisions in the absence of fear that they will be held liable for their actions. *Id.* A person who believes a judge has acted contrary to or in excess of his or her authority may, however, file a complaint with the Mississippi Commission on Judicial Performance. *Newsome*, 234 So. 3d at 1225.

¶9. In *Stump v. Sparkman*, 435 U.S. 349, 355-56, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978), the United States Supreme Court held that “judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly.” In *Loyacano*, this Court recognized that, in the prior case of *DeWitt v. Thompson*, 192 Miss. 615, 7 So. 2d 529, 532 (1942), the Court seemingly left for another day the question of whether judicial immunity applies to malicious or corrupt acts. But *Loyacano* ultimately held that “[t]he doctrine of judicial immunity is fully recognized in Mississippi.” *Loyacano*, 571 So. 2d at 238. In *Newsome*, the Court held that, notwithstanding the plaintiff’s allegation that a judge was corrupt in his handling of a conservatorship, the judge was immune from civil

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with determining whether Section 21-61-15 abrogates the common law doctrine of judicial immunity. "The function of the Court is not to decide what a statute should provide, but to determine what it does provide." *Lawson v. Honeywell Int'l, Inc.*, 75 So. 3d 1024, 1027 (Miss. 2011). When engaging in this function, the Court seeks to give effect to the intent of the legislature. *Id.* The Court first examines the language of the statute; if the statutory language is plain and unambiguous, the Court will apply the plain meaning of the statute and refrain from applying principles of statutory construction. *Id.*

¶13. The State points out that the United States Supreme Court rejected an extremely similar argument to Pryer's in *Pierson*. There, the Supreme Court examined 42 U.S.C. § 1983, which creates a cause of action against "every person" who under color of law deprives another person of his civil rights, to determine whether the statute abrogated judicial immunity. *Pierson*, 386 U.S. at 554, 87 S. Ct. 1213. The Supreme Court held that the language of the statute itself contained no indication that Congress intended to abolish the hallowed common law principle of judicial immunity to provide a cause of action against a judge for a Section 1983 violation. *Id.* at 554-55, 87 S. Ct. 1213. Likewise, the language of Section 25-61-15 contains no indication that, by its enactment, the Mississippi Legislature intended to abrogate judicial immunity. Because there is no textual indication whatsoever that the legislature intended to abrogate judicial immunity, we decline to read the "any person" language in Section 25-61-15 as a limitation on judicial immunity. See *Burns v. Allen*, 202 Miss. 240, 243, 31 So. 2d 125, 126 (1947) (if the legislature intended to abrogate

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a requirement of the common law, "it must be held to have retained so much thereof as is not specifically dispensed with.").

¶14. Finally, Pryer argues that this Court, in its opinion affirming the denial of his documents requests, held that he was entitled to seek damages from Judge Gardner in chancery court. This argument is without merit. While in the earlier case we mentioned that Pryer could file a suit seeking the documents under Section 25-61-13(1)(a) in chancery court, the Court in no way condoned, encouraged, or authorized Pryer to file an action against Judge Gardner seeking civil damages under Section 25-61-15. *Pryer*, 139 So. 3d at 716.

¶15. Pryer and Judge Gardner both make arguments pertaining to the circuit court's finding, in the alternative, that the amended complaint against Judge Gardner was barred by the statute of limitations. Because we affirm the dismissal of Pryer's amended complaint on the ground of judicial immunity, we decline to address the circuit court's alternative finding that the claim also was time barred.

CONCLUSION

¶16. Because Pryer's claim against Judge Gardner is barred by the doctrine of judicial immunity, we affirm the chancery court's dismissal of the amended complaint for failure to state a claim.

¶17. **AFFIRMED.**

**WALLER, C.J., RANDOLPH, P.J., KING, COLEMAN, MAXWELL, BEAM,
CHAMBERLIN AND ISHEE, JJ., CONCUR.**

Appendix "B"

IN THE CHANCERY COURT OF ITAWAMBA COUNTY, MISSISSIPPI

TIMOTHY PRYER

PLAINTIFF

v.

CAUSE NO. 2013-0203-29-TKM

ITAWAMBA COUNTY SHERIFF'S DEPARTMENT,
ITAWAMBA COUNTY CLERK'S OFFICE, *et al.*

DEFENDANTS

MEMORANDUM ORDER DISMISSING COMPLAINT AND ENTERING RULE 54(b) JUDGMENT

This matter is before this court pursuant to Timothy Pryer's (Pryer) Amended Complaint, filed November 1, 2016, in which Pryer amended his suit to add Thomas Gardner, III (Gardner) as a defendant, alleging that Gardner "denied Pryer [p]ublic [r]ecords twice in violation of MCA § 25-61-5." Following service of the Amended Complaint upon Gardner, Gardner filed a Motion to Dismiss and For Entry of Rule 54(b) Judgment, on January 10, 2017, requesting dismissal of the Amended Complaint on the basis of judicial immunity and a statute of limitations. On January 17, 2017, this Court issued an Order for Determination of Motion Without Oral Argument, pursuant to M.R.C.P. 78, wherein this Court gave the parties until March 20, 2017, to file any "brief written statements of reasons in support and opposition," to the motion. Both parties filed timely statements.

This Court will address Gardner's arguments for dismissal as well as his arguments regarding entering a Rule 54(b) Judgment. The undersigned Chancellor has reviewed the pleadings and exhibits, and having considered the arguments therein does hereby FIND:

This Court finds that Pryer's action against Gardner should be dismissed as it is barred by complete judicial immunity. Pryer seeks relief for an alleged violation of access to public records by Gardner based upon Gardner's orders which held "the request for [p]ublic [r]ecords addressed to Defendant Gates [...] to be a Post-Conviction Relief Petition, and denying those records to

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Pryer on June 3, 2011," and based on Gardner "on January 20, 2012 [denying] Pryer [p]ublic [r]ecords citing 'no free documents.'" (Amended Complaint, 2). In his Response, Pryer argues that he "is not prosecuting Gardner as a judge. The complaint names Thomas J. Gardner, III as a defendant, not 'Judge Gardner.' The complaint states that Gardner is a Circuit Judge in order to establish that he is a 'Public Body' in accordance to [SIC] MCA § 25-61-5 (1) (a) (13)." (Response, page 2). Pryer goes on to argue that Gardner is liable in his "personal capacity" for denying Pryer access to public records as a "Public Body" pursuant to Miss. Code Ann. § 25-61-13.

However Pryer words his complaint ("Judge Gardner," versus "Thomas J. Gardner,"), the basis of his complaint is that Gardner's judicial orders had the effect of denying him public records. As such, this is a complaint against a judge in his judicial capacity since a judge is necessarily acting judicially when he or she issues orders. In so-holding, this Court follows *Vinson v. Prather*, 879 So. 2d 1053, 1057 (Miss. Ct. App. 2004), wherein the Court of Appeals held that a Supreme Court Justice's action in appointing a special chancellor could not have been done in her individual capacity, since "she had absolutely no authority to act as she did in Appointing a special chancellor other than by virtue of her position as chief justice of the Mississippi Supreme Court." Similarly, Judge Gardner could not have been acting as a private citizen in issuing the orders of which Pryer complains, given that private citizens do not have the authority to issue judicial orders.

Judicial immunity, which shields Gardner's orders from being subjected to this action, serves an important public interest while protecting the process of appeal. In our system of laws, a judge's orders, errant or inerrant, are not to be the subject of a civil suit. Instead, if redress is to be had, it must be had via an appeal, or, as the Supreme Court pointed out in *Mississippi*

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Comm'n of Judicial Performance v. Russell, 691 So. 2d 929, 947 (Miss. 1997), if a person believes "a judge has acted either contrary to or in excess of his/her authority," he or she may "file a complaint with the [Mississippi Judicial Performance] Commission." However, "[p]ublic policy mandates that a judge should have the power to make decisions without having to worry about being held liable for his actions," and as such, Gardner is shielded from suit under the doctrine of judicial immunity. *Id.*, citing *Loyacono v. Ellis*, 571 So. 2d 237, 238 (Miss. 1990).

Similarly, this Court finds that this matter should be dismissed since the record demonstrates that the matter is barred by a statute of limitations. Miss. Code Ann. § 15-1-49 (2) states, "[i]n actions for which no other period of limitation is prescribed and which involve latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury." Pryer argues that he had three years from when the Supreme Court determined *Pryer v. State*, 139 So. 3d 713 (Miss. 2014), however, Pryer misunderstands or misconstrues the Supreme Court's ruling in that case. Pryer did not have a latent injury which was only uncovered by *Pryer v. State*: assuming, *arguendo*, Gardner's orders could be cause of an injury subject to civil suit (an argument this Court rejects *supra*), the injury was patent, not latent, since he was aware of the orders and certainly capable of understanding their implications from the time they were issued.

A latent injury is defined as one where the plaintiff is precluded from discovery of the harm or injury because of the secretive or inherently undiscoverable nature of the wrongdoing in question, or when it is unrealistic to expect a layman to perceive the injury at the time of the wrongful act. [...] For an injury to be latent it must be undiscoverable by reasonable methods. [...] if there is no latent injury, the discovery rule cannot apply.

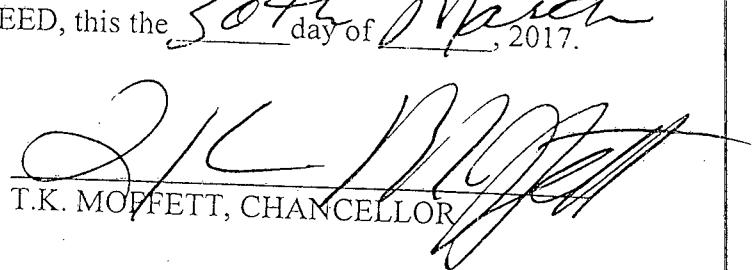
Raddin v. Manchester Educ. Found., Inc., 175 So. 3d 1243, 1249 (Miss. 2015) citing *PPG Architectural Finishes, Inc. v. Lowery*, 909 So. 2d 47, 50 (Miss. 2005) and *Donald v. Amoco Prod. Co.*, 735 So. 2d 161, 168 (Miss. 1999). The statute of limitations ran on February 1, 2015,

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three years after the later of the two orders. *See Pryer v. State*, 139 So. 3d 713, 714 (Miss. 2014). Pryer did not amend the complaint to add Gardner within this statute of limitations, and neither Rule 9 nor Rule 15 provides an excuse since Pryer was certainly not ignorant of Gardner's name, and since Gardner did not have notice without prejudice of the action prior to the amendment and did not know "or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party." *Wilner v. White*, 929 So. 2d 315, 321-22 (Miss. 2006). Pryer's Amended Complaint was filed outside of the statute of limitations and, accordingly, is an additional bar to his claim.

Since this Court finds that grounds exist for dismissal, it will now take up Gardner's argument for a Rule 54(b) Judgment. This Court finds that no just reason for delay exists as to the claims against Gardner, especially since this Court has fully heard the arguments as to the complaint against Gardner, and since there are no just or equitable arguments in favor of postponing a final adjudication as to Gardner in order to await adjudication of Pryer's claims against the other defendants.¹ As such, though there is more than one party involved, entry of a final judgment as to Pryer's claims against Gardner is proper. This Court therefore finds a Rule 54(b) Judgment proper, directs that it be entered, and directs that the Amended Complaint be dismissed as to defendant Gardner.

SO ORDERED, ADJUDGED AND DECREED, this 30th day of March, 2017.



T.K. MOFFETT, CHANCELLOR

¹ This cause will not likely conclude imminently as the record demonstrates that Pryer has not yet accomplished service of process upon all the other defendants. The record further demonstrates that Pryer has filed a Petition for Writ of Mandamus to "compel [t]he Itawamba Constable to do his/her duty [...]," arguing that this official has failed to comply with a statutory duty (service of process), and that this Court has transferred this petition to the Circuit Court for Itawamba County pursuant to Miss. Const. § 162 and the Circuit Court's jurisdiction under Miss. Code Ann. § 11-41-1.

**Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
*Office of the Clerk***

D. Jeremy Whitmire
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082
e-mail:setclerk@courts.ms.gov

August 2, 2018

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 2nd day of August, 2018.

Supreme Court Case # 2017-CP-00723-SCT
Trial Court Case # 2013-0203-29-TKM

Timothy Gene Pryer v. Thomas Gardner, III

Current Location:
MDOC #115393 Unit 26-A
P.O. Box 1057
Parchman, MS 38738

The Motion for Rehearing filed by Appellant is denied.

*** NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS ***

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

Please note: Pursuant to MRAP 45(c), amended effective July, 1, 2010, copies of opinions will not be mailed. Any opinion rendered may be found at www.courts.ms.gov under the Quick Links/Supreme Court/Decision for the date of the decision or the Quick Links/Court of Appeals/Decision for the date of the decision.