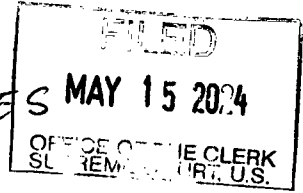


ORIGINAL

23-7705

IN THE
SUPREME COURT OF THE UNITED STATES
NO. _____



ERIC D. JOHNSON,

PETITIONER,

VERSUS

STATE OF MISSISSIPPI,

RESPONDENT.

SUPREME COURT CASE NO. 2024-TS-00249

PETITION FOR WRIT OF CERTIORARI

PETITIONER PRO SE:

ERIC JOHNSON, #39278
SMCI, AREA-2, UNIT B-1
P. O. BOX 1419
LEAKESVILLE, MS 39451

QUESTIONS PRESENTED

Whether Johnson's sentence is improperly calculated--and should be calculated under the fifty percent (50%) Sentencing Law in effect at the time of imposition of said sentence.

Petitioner would answer "Yes"

LIST OF PARTIES

All parties appear in the Caption of the case on the cover page.

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Appendix-A, Order of Mississippi Court of Appeals
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OPINIONS BELOW

The order of The Mississippi Court of Appeals, denying Petitioner's appeal for failure to prepay fees and costs is attached as Appendix-A.

The order of The Mississippi Supreme Court, denying Petitioner's appeal for failure to prepay fees and costs is attached as Appendix-B.

JURISDICTION

The date of which The Supreme Court of The State of Mississippi decided Petitioner's case was April 24, 2024. A copy of this decision appears as Appendix-B. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTION/STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution states in pertinent part: "No person be deprived of life, liberty, or property, without due process of law."

U.S. CONST. AM. XIV.

STATEMENT OF THE CASE

That on or about the 11th day of July, 2023, Petitioner caused to be filed his Petition for Judicial Review-- in the Circuit Court of Greene County, Mississippi... [Circuit Court Cause No. 23-91-CT]... pursuant to Miss. Code Ann. § 47-5-801, et seq.

That on or about the 2nd day of February, 2024, Petitioner received an order from the Court-- dismissing Petitioner's Petition for Judicial Review-- based on the Court's assertion that, "Petitioner did not timely seek judicial review" following the administrative remedy program process... See, Appendix-A, attached hereto.

That on or about the 27th day of February, 2024, Petitioner filed a timely "Notice of Appeal" with "Attachments (to include motion/affidavit in support of motion to proceed in this appeal in forma pauperis).

That on or about this same date, supra. (02/27/24), Petitioner received a copy of an order from the Court (Supreme Court of the State of Mississippi) denying motion to proceed in forma pauperis... See, Appendix-B, attached hereto.

In denying Petitioner's judicial relief-- the

Trial Court erred in its findings of fact and/or conclusions of law.

The Supreme Court of The State of Mississippi-- highest state court with jurisdiction-- denied Petitioner's appeal for failure to pay fees and costs-- on or about the 24th day of April, 2024. This instant petition for a writ of certiorari, is filed within ninety (90) days of said date (04/24/24); being filed in a timely manner.

REASON FOR GRANTING THE WRIT

That on or about the 21st day of June, 2018, Petitioner-- following a conviction in the Circuit Court of County, Mississippi-- was sentenced to consecutive terms of imprisonment, for a total of twenty-five (25) years, (e.g., 15 years Court-1, and 10 years Court-2, armed robbery and possession of a firearm by a convicted felon, respectively). At the time of Petitioner's conviction and sentence-- Mississippi was under the fifty percent (50%) sentencing statute. Thus Petitioner's sentence (release possibilities) should be calculated under the statute (50%) in effect at time of conviction and sentence.

However, The Trial Court (affirmed by appellate courts) did not decide Petitioner's case on the merits of offered claims--instead, The Trial Court held that:

"Pursuant to Miss. code, any offender who is aggrieved by an adverse decision rendered pursuant to any administrative review procedure-- may within thirty (30) days after receipt of the agency's final decision-- seek judicial review of said decision... it further alleged that Petitioner sought judicial review untimely thirty-eight (38) days after the agency's final decision."

Thus, The only reason for denial of relief in The Trial Court was allegedly because Petitioner was approximately eight (8) past The thirty (30) days limit in which to file petition for judicial review... which amounts to plain error; in violation of Petitioner's substantial rights; and calls into serious question the fairness, integrity, or public reputation of judicial proceedings... U.S. v. Burns, 526 F.3d 852, 858 (5th Cir. 2008); U.S. v. Page, 520 F.3d 545, 547 (6th Cir. 2008); U.S. v. Evans, 478 F.3d 1332, 1338 (11th Cir. 2007); U.S. v. Baker,

489 F.3d 366, 374 (D.C. Cir. 2007); U.S. v. Reid, 523 F.3d 310, 315 (4th Cir. 2008); and, U.S. v. Gonzalez-Terrazas, 529 F.3d 293, 296 (5th Cir. 2008).

Notwithstanding the fact, that SMC1 has an Administrative Remedy Program (ARP)-- Petitioner only first sought ARP relief--merely out of courtesy to SMC1 Administration; when in this cause of action it was not necessary to exhaust administrative remedies via ARP. As to the relief sought herein--correct computation of potential release dates during the service of his sentence--ARP has no authority or power to grant such relief. Thus, denying Petitioner relief, solely because he was eight (8) days late in filing petition for judicial review--amounts to violation of Petitioner's due process rights... U.S. v. St. Pierre, 488 F.3d 76, 80 n. 2 (1st Cir. 2007); U.S. v. Chisum, 502 F.3d 1237, 1244 (10th Cir. 2007); and, U.S. v. Johnson, 525 F.3d 493, 502 (2d Cir. 2008).

As for the ARP process not being necessary or required in this cause--the Mississippi appellate courts have previously been confronted with inmates who have sought judicial review of the length of their sentence and proper date for parole consideration... Hill v. State, 838 So.2d 994, 997-98 (Miss. Ct.

App. 2002).

in Hill, The court noted that, there were precedents that allowed inmates to have judicial review of whether sentence(s) contained proper credits for earned time, that would cause reductions in their sentence(s)... Williams v. Puckett, 624 So.2d 496, 497 (Miss. 1993) and Wilson v. Puckett, 721 So.2d 1110, 1111-12 (Miss. 1998). These causes were brought as habeas corpus suits directly in circuit court. The Supreme court did not discuss whether the administrative remedy program should have been utilized. Thus, the trial court erred (with appellate court's affirmation) in denying relief based solely on petitioner's failure to timely file ARP-- when ARP not necessary or required... U.S. v. Wolfe, 245 F.3d 257, 261 (3d Cir. 2001); U.S. v. Banks, 464 F.3d 184, 189 (2d Cir. 2006); and, U.S. v. Williams, 527 F.3d 1235, 1240 (11th Cir. 2008).

It is ironic that the Mississippi Court of Appeals would affirm the trial court denial of relief because of an untimely ARP-- when the Mississippi Court of Appeal itself-- was instrumental in setting precedents that inmates may seek judicial review directly in the circuit court without first exhausting administrative remedies that do not apply... Lattimore v. Sparkman,

858 So.2d 936 (Miss. Ct. App. 2003) and Keys v. State, 67 So.3d 758, 761 (Miss. 2011).

This case presents a pure question of law. Insofar as the record appears-- there are no facts disputed or disputable. The question, rather regards the interpretation and correlated reading of the relevant statutes. In such a posture, no evidentiary hearing is required-- and the court may and should act summarily (Petitioner's right to this first appeal) and should be sustained-- despite Petitioner's inability to prepay fees and costs for said appeal... See, Miss. Code Ann. § 99-39-11(2); also, Brooks v. State, 573 So.2d 1350, 1352 (Miss. 1990); Jordan v. State, 577 So.2d 368, 369 (Miss. 1990); and, Garlotte v. State, 530 So.2d 693, 694 (Miss. 1988).

CONCLUSION

In denying Petitioner the right to appeal in forma pauperis-- knowing that Petitioner is totally indigent-- would be the same as informing Petitioner that, because he is poor and cannot prepay fees and costs, his constitutional claims will not be reviewed by the appellate-- and he is to remain unconstitutionally

incarcerated.

Petitioner Johnson's overall prison sentence should be properly calculated to reflect potential release dates as provided.

Respectfully Submitted,

Eric Johnson
ERIC D. JOHNSON

SWORN TO AND SUBSCRIBED BEFORE ME,
this the 15th day of May, 2024.

[Signature]
"NOTARY PUBLIC"

[Signature]
"MY COMMISSION EXPIRES"
