

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-7612
Summary Calendar

BILLY DALE HILL,

Petitioner-Appellant,

VERSUS

EDWARD HARGETT,
Superintendent, Mississippi
State Penitentiary,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
(3:92-CV-157)

(June 3, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

DAVIS, Circuit Judge:¹

Hill challenges the district court's denial of his habeas petition in which he contended that Mississippi failed to give him proper credit for good time and thereby incorrectly calculated his parole eligibility date. We affirm.

I.

¹Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Billy Dale Hill is a prisoner in the custody of the State of Mississippi. The following facts are reported in **Hill v. State**, 388 So. 2d 143, 144 (Miss. 1980).

On September 5, 1974, Hill was charged with murder of 87-year old Minnie Hamilton for which he was tried, convicted and sentenced to death. On his appeal here, we reversed and remanded for a new trial. **Hill v. State**, 339 So. 2d 1382 (Miss. 1976). At the October 1977 term of the Circuit Court of Calhoun County, he was indicted for murder in Cause No. 3137 and forcible rape in Cause No. 3138. During that term, he (accompanied by his attorney who advised him) petitioned the court to accept his guilty pleas to the charges and enter pleas of guilty to both the murder and rape indictments. He was sentenced to life imprisonment for each of the two offenses which were ordered to run consecutively. Both orders stated that the sentence was to be "without probation or parole."²

Hill sought post-conviction relief by way of his petition for writ of error coram nobis. After an evidentiary hearing, the lower court denied Hill the relief he sought.

The Supreme Court of Mississippi affirmed the lower court's denial of relief. **Id.** at 146.

In June 1991, Hill filed a motion to show cause in the Circuit Court of Sunflower County, Mississippi. The motion was construed as a habeas corpus petition seeking to clarify his sentence. **See Davis v. State**, 429 So. 2d 262, 263 (Miss. 1983). Hill argued that under Miss. Code Ann. §§ 47-5-139(3) and 47-7-3 (1972), he became eligible for parole after 15 years. He had served 17 years and was thus overdue for parole by two years.

The respondent presented an affidavit from Christine Houston,

² The Mississippi Supreme Court deleted the "without probation or parole" language because it was of no legal effect. **Hill**, 388 So. 2d at 146.

Records Director of the Mississippi State Penitentiary, who determined that Hill would be eligible for parole on October 11, 1994, after serving ten years of each sentence. The state magistrate determined that the law in effect in 1974 applied to the computation of Hill's parole eligibility. Therefore, Hill would be eligible for parole when he had served 20 years, ten years for each life sentence, less 30% of his earned good time. **See Davis**, 429 So. 2d at 264. The Circuit Court of Sunflower County declined to adopt the magistrate's recommendations and held that the Records Office had correctly computed the time. The Supreme Court of Mississippi dismissed the appeal as untimely, pursuant to its own motion.

Hill filed a federal habeas petition alleging that his parole eligibility date was overdue. The magistrate judge determined that no constitutional violation had occurred because the Mississippi statute did not create a liberty interest in deducting earned good time from the offender's parole eligibility time. Hill filed objections to magistrate judge's report, arguing that a liberty interest had been created through the established practice of awarding good time credits to those serving life sentences. The district court denied relief, dismissed the case with prejudice, and issued a certificate of probable cause.

II.

Hill was sentenced on October 24, 1977, following his guilty pleas. **See Hill**, 388 So. 2d at 144. Under the 1977 version of § 47-5-138(1) in force at the time of sentencing, earned time

allowances were not permitted for offenders sentenced to life imprisonment. Hill's record was adjusted to show that he had been confined since October 11, 1974, the date he was sentenced to death. The records officer, applying the 1977 version of the statute, set the date for eligibility for parole consideration at October 11, 1994, 20 years after he began his confinement with no allowance for earned good time.

Hill asserts that under the version of § 47-5-139 in force in 1974, at the time he committed the offense, he is entitled to a credit on his parole eligibility date equal to 30% of his earned good time. Hill concedes that even if the 1974 version applied, the statute is discretionary. Thus, even if the 1974 version applies it does not create a liberty interest. **See Scales v. Mississippi State Parole Board**, 831 F.2d 565, 565-66 (5th Cir. 1987). Hill argues further, however, that Mississippi created a liberty interest through its practice from 1975 to 1982 of awarding earned good time to those with life sentences.

This court's concern as a habeas court is confined to reviewing for constitutional violations. **Kyles v. Whitley**, 5 F.3d 806, 811 (5th Cir. 1993), **cert. granted**. 128 L.Ed.2d 338 (1994). A liberty interest may be created by state regulations or administrative practices. **See Parker v. Cook**, 642 F.2d 865, 867, 876-77 (5th Cir. 1981).

As support for his assertion that Mississippi has an established practice of awarding good time to prisoners serving life sentences, Hill presented documents in the district court

showing that three inmates serving a life sentence were credited with earned time. In his reply brief Hill offers various exhibits which he states were not available to present to the district court and requests that this court consider them on appeal. This court "will not ordinarily enlarge the record on appeal to include material not before the district court." **United States v. Flores**, 887 F.2d 543, 546 (5th Cir. 1989) (citing **Kemlon Prods. & Dev. Co. v. United States**, 646 F.2d 223, 224 (5th Cir.), **cert. denied**, 454 U.S. 863 (1981)). Even if the court considers the new material they offer no help to Hill. All of the exhibits concern the award of earned good time under the statute in effect before the 1977 amendment. Hill has not established that there was a practice of awarding earned good time to prisoners serving life sentences after 1977. Thus, under the applicable 1977 statute both facially and as applied, Mississippi created no liberty interest in awarding good time to defendants serving life sentences. Thus, federal constitutional due process rights are not implicated.

If Hill's challenge is construed as an argument that for all purposes the Penitentiary Board should apply the law in force at the time of his sentence to death in 1974, instead of the law at the time of his life sentence in 1977, his argument fails. This court does not interfere with a state's application of its law unless the application violates due process. **Springer v. Coleman**, 998 F.2d 320, 324 (5th Cir. 1993) (citing **Smith v. McCotter**, 786 F.2d 697, 700 (5th Cir. 1986)).

AFFIRMED.