

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60105
Summary Calendar

JAMES DOUGLAS HOLMES,

Petitioner-Appellant,

versus

EDWARD HARGETT, Superintendent,
Mississippi State Penitentiary, Et. Al.,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
(CA 3:92-275-BN)

(February 24, 1995)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

EDITH H. JONES, Circuit Judge:*

In 1982, appellant James Douglas Holmes pled guilty in Mississippi state court to armed robbery and was sentenced, inter alia, to two consecutive twenty-five year terms of imprisonment. Holmes filed a state petition for habeas corpus, alleging that the rescheduling of his parole eligibility date from 1992 to 2002 violated his right to due process and separation of powers. Having

* Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

received no relief in the Mississippi courts, he pursued this federal habeas petition alleging that the rescheduling of his parole eligibility date violates the ex post facto clause of the federal constitution.¹

The district judge, adopting the magistrate judge's analysis, denied relief. We affirm.

Holmes contends that in 1982, when he was sentenced, "an offender serving consecutive sentence [sic], was allowed to aggregate the total sentences and if the sentence or sentences were in excess of thirty (30) years than [sic] the offender(s) would be eligible for parole after serving ten (10) years, excluding life sentences." He suggests that this "common practice" changed in 1986, at least in part as a result of a 1986 Attorney General's opinion, providing that Mississippi Code Ann. § 47-7-3 requires that inmates serve a portion of each consecutive sentence before being eligible for parole.

We assume for purposes of this appeal that Holmes's parole eligibility date was recalculated because of the 1986 Mississippi Attorney General's opinion. This court has held that the application of a newly adopted parole statute to a prisoner who had been sentenced prior to the adoption of that statute can result in an ex post facto violation. Beebe v. Phelps, 650 F.2d 774 (5th Cir. 1981); see also Thompson v. Blackburn, 776 F.2d 118, 121 (5th Cir. 1985). What we have in this case, however, is not the

¹ Holmes also asserted due process and equal protection violations in regard to his parole eligibility date. These claims are meritless and/or were abandoned on appeal.

retroactive application of a new statute to Holmes, but a change in interpretation of that statute by Mississippi's Attorney General. These facts do not result in an ex post facto clause violation.

The Fourth Circuit Court of Appeals has held that a recalculation of an inmate's parole eligibility date as a result of a state attorney general's opinion did not violate the ex post facto clause. Glenn v. Johnson, 761 F.2d 192, 194-95 (4th Cir. 1985). As the Fourth Circuit put it, the state attorney general was simply correcting an erroneous interpretation of law by the state parole commission, not himself effecting a change in the governing law.

Here, the Mississippi attorney general's opinion sought to determine state law for the guidance of the Mississippi Parole Board. The Attorney General's opinion in 1986 has been vindicated by the state Supreme Court in Williams v. Puckett, 624 So.2d 496 (Miss. 1993). Referring to previous Mississippi authorities, the Mississippi Supreme Court rejected precisely the same construction of the statute that Holmes has urged in this court. We must defer to the state court's interpretation of its own law. Consequently, the fact that the Mississippi Parole Board may have misinterpreted the governing law for a period of time cannot support an ex post facto claim. See Cortinas v. U.S. Parole Commission, 938 F.2d 43, 46 (5th Cir. 1991).

The judgment of the district court denying federal habeas relief is therefore AFFIRMED.