

Roderick & Solange  
MacArthur Justice Center



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### BAIL SCHEDULES

*Thompson, et al. v. City of Moss Point, Mississippi*  
USDC (So. Miss) Case No. 1:15cv182

43. The Fourteenth Amendment's due process and equal protection clauses have long prohibited keeping a person in jail because of the person's inability to make a monetary payment. Defendant Moss Point violates Plaintiff's rights by placing and keeping her in jail when she cannot afford to pay the amount of money set by the generic secured bail "schedule" used by Moss Point.

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### Access to Public Defenders

*Burks, et al. v. Scott County, Mississippi, et al.*  
USDC (So. Miss) Case No. 3:14cv745

1. Plaintiff Octavious Burks is an unindicted felony arrestee who, at the time this suit was filed originally on September 23, 2014, had been held in the Scott County Detention Center without counsel since November 18, 2013. Plaintiff Joshua Bassett is a felony arrestee who, at the time this suit was filed originally on September 23, 2014, had been held in the Scott County Detention Center without counsel and without indictment since January 16, 2014. They bring this class action suit under 42 U.S.C. § 1983 on behalf of themselves and those similarly situated who have been indefinitely detained without individualized bail hearings in Scott County and who have been indefinitely denied counsel throughout the Eighth Circuit Court District.

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**Circuit Judge Marcus Gordon - Eighth Judicial District of Mississippi (Leake, Neshoba, Newton, and Scott counties)**

- first appointed to the bench in 1977 but resigned in 1987
- returned to the bench by election in 1990
- most recently re-elected in 2014 for a term that expires in 2018

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“Mississippi Code Section 25-32-9, which addresses the appointment of public defenders to represent indigent defendants, provides that:

When any person shall be arrested and charged with a felony, a misdemeanor or an act of delinquency, then the arresting authority shall afford such person an opportunity to sign an affidavit stating that such person is an indigent and unable to employ counsel. Upon the signing of such affidavit by such person, the public defender shall represent said person unless the right to counsel be waived by such person.

So, according to the statute, by operation of law, the [Hinds County Public Defender Office became counsel for each of the fifty-five defendants whose cases are before us today because they signed affidavits stating that they were “indigent and unable to employ counsel.”

*In Re: Office of the Hinds County Public Defender, 2015-M-00397, Order at 1 (Miss. May 21, 2015).*

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“[I]t is established beyond per adventure that an indigent may not be incarcerated because he is financially unable to comply with an otherwise lawfully imposed sentence of a fine. *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983); *Tate v. Short*, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971); *Nelson v. Tullios*, 323 So.2d 539, 543-45 (Miss.1975). So long as [the defendant] is “financially unable to pay a fine” and the trial court so finds, he may not be imprisoned, *period*. Miss.Code Ann. § 99-19-20(2) (Supp.1983).” *Cassibry v. State*, 453 So.2d 1298, 1299 (Miss. 1984) (emphasis in original).

“The defendant may be imprisoned until the fine is paid if the defendant is financially able to pay a fine and the court so finds, subject to the limitations set out. The defendant shall not be imprisoned if the defendant is financially unable to pay a fine....” Miss. Code Ann. § 99-19-20(2).

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PAROLE CASE PLANS

Michael Drankus v. State, 2015-CA-01045 (Miss. Ct. App.)

"Any offender who is aggrieved by an adverse decision rendered pursuant to any administrative review procedure under Sections 47-5-801 through 47-5-807 may, within thirty (30) days after receipt of the agency's final decision, seek judicial review of the decision." Miss. Code Ann. § 47-5-807.

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"In consultation with the Parole Board, the department shall develop a case plan for all parole eligible inmates to guide an inmate's rehabilitation while in the department's custody and to reduce the likelihood of recidivism after release." Miss. Code Ann. § 47-7-3.1(1)

"Mississippi Department of Corrections has determined in its ARP response that [the] House Bill 585 case plan provision is not retroactive and only applies to offenders sentenced on or after July 1, 2014." MDOC's Response, Cause No. 2015-0011 (Sunflower Cnty. Cir. Ct.)

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"Each inmate eligible for parole pursuant to Section 47-7-3, shall be released from incarceration to parole supervision on the inmate's parole eligibility date, without a hearing before the board, if: (a) The inmate has met the requirements of the parole case plan established pursuant to Section 47-7-3.1...." Miss. Code Ann. § 47-7-18(1).

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PAROLE ELIGIBILITY

SALE OR MANUFACTURE OF CONTROLLED SUBSTANCES BETWEEN JUNE 30 1995 AND JULY 1, 2014

*Sinko v. State*, 2015-CA-00107-COA (Miss. Ct. App.) (Jim Waide)

*State v. Hill*, 2015-CA-01060 (Miss. Ct. App.)

*State v. Colon*, 2015-TS-01295 (Miss. Ct. App.)

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"[I]t is not improper for an inmate to pursue a question regarding his parole eligibility date by way of the MDOC's ARP. Nevertheless, an inmate may also challenge his parole eligibility as an original action in a circuit court." *McGovern v. MDOC*, 89 So.3d 69, 71 (Miss. Ct. App. 2011)

"Any person sentenced by a court of record of the State of Mississippi, including a person currently incarcerated ... may file a motion to vacate, set aside or correct the judgment or sentence ... if the person claims: ... (h) That his sentence has expired; his probation, parole or conditional release unlawfully revoked; or he is otherwise unlawfully held in custody...." Miss. Code Ann. § 99-39-5(1)(h).

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"No person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30, 1995, except that an offender convicted of only nonviolent crimes after June 30, 1995, may be eligible for parole if the offender meets the requirements in subsection (1) and this paragraph. In addition to other requirements, if an offender is convicted of a drug or driving under the influence felony, the offender must complete a drug and alcohol rehabilitation program prior to parole or the offender may be required to complete a post-release drug and alcohol program as a condition of parole. **For purposes of this paragraph, "nonviolent crime" means a felony other than** homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping, felonious abuse of vulnerable adults, felonies with enhanced penalties, **the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law**, felony child abuse, or exploitation or any crime under Section 97-5-33 or Section 97-5-39(2) or 97-5-39(1)(b), 97-5-39(1)(c) or a violation of Section 63-11-30(5). **An offender convicted of a violation under Section 41-29-139(a), not exceeding the amounts specified under Section 41-29-139(b), may be eligible for parole.** In addition, an offender incarcerated for committing the crime of possession of a controlled substance under the Uniform Controlled Substances Law after July 1, 1995, shall be eligible for parole. This paragraph (f) shall not apply to persons convicted on or after July 1, 2014." Miss. Code Ann. § 47-7-3(1)(f).

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"None of the provisions of Section 41-29-139(b) pertain to selling an amount of a controlled substance other than marijuana. They do not apply to an offender convicted of selling amphetamines. Because McGovern is incarcerated for selling amphetamines, he is not eligible for parole." *McGovern v. MDOC*, 89 So.3d 69, 72 (Miss. Ct. App. 2011).

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**Ensure nonviolent offenders are parole eligible**

Parole eligibility is restricted to nonviolent offenders, but current parole statutes exclude certain classes of nonviolent offenders, including offenders sentenced for enhanced felonies such as possession of a controlled substance within 1,500 feet of a church. Additionally, **recent court rulings have identified a lack of clarity in the parole statute, rendering some commercial drug offenders ineligible for technical reasons.**

*Recommendation:* Ensure that parole eligibility is available to nonviolent offenders by:

- a. Lifting restrictions on parole eligibility for nonviolent offenders sentenced under an enhancement; and
- b. Clarifying that lower-level commercial drug offenses are nonviolent for the purposes of parole consideration **and thereby permitting MDOC to continue issuing parole hearing dates to these offenders**, while retaining ineligibility for traffickers and habitual offenders.

Mississippi Corrections and Criminal Justice Task Force, Final Report at 16 (December 2013)

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(1) In the case of controlled substances classified in **Schedule I or II**, as set out in Sections 41-29-113 and 41-29-115, **except thirty (30) grams or less of marijuana or synthetic cannabinoids, and except a first offender as defined in Section 41-29-149(e) who violates subsection (a) of this section with respect to less than one (1) kilogram but more than thirty (30) grams of marijuana or synthetic cannabinoids, such person may, upon conviction for an amount of the controlled substance of:**

- (A) Less than two (2) grams or ten (10) dosage units, be imprisoned for not more than eight (8) years or fined not more than Fifty Thousand Dollars (\$50,000.00), or both.
- (B) Two (2) grams or ten (10) dosage units or more but less than ten (10) grams or twenty (20) dosage units, be imprisoned for not less than three (3) years nor more than twenty (20) years or fined not more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both.
- (C) Ten (10) grams or twenty (20) dosage units or more, **but less than thirty (30) grams or forty (40) dosage units**, be imprisoned for not less than five (5) years nor more than thirty (30) years or fined not more than Five Hundred Thousand Dollars (\$500,000.00).

Miss. Code Ann. § 41-29-139(b)(1).

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