

COURT OF APPEALS OF MISSISSIPPI

Frederick D. Small a/k/a Frederick Small v. Mississippi Department of Corrections

Small v. Mississippi Department of Corrections · No. 2025-CP-00654-COA · Decided May 19, 2026

SUMMARY

The Mississippi Court of Appeals affirmed the denial of Frederick Small’s petition for judicial review of the Mississippi Department of Corrections’ refusal to grant trusty earned time or placement in a community work center. The court held that the decision was supported by statutory law and MDOC procedures and did not violate due process or ex post facto protections. It also concluded that the statutory classification of burglary of a dwelling as a violent offense did not alter Small’s punishment or create a new penalty.

CASE DETAILS

COURT	Court of Appeals of Mississippi
WRITING FOR THE COURT	Lassitter St. Pé, J.; Barnes, C.J.; Wilson, P.J.; Lawrence, J.; McCarty, J.; Emfinger, J.; Weddle, J.; Carlton, P.J.; Westbrooks, J.; McDonald, J.
JURISDICTION	Mississippi Court of Appeals
DECIDED	May 19, 2026
DOCKET	2025-CP-00654-COA
DISPOSITION	affirmed
PROCEDURAL POSTURE	Small petitioned for judicial review of the Mississippi Department of Corrections' denial of his request for trusty earned time or placement in a community work center. The Sunflower County Circuit Court affirmed MDOC's decision, and Small appealed.
STANDARD OF REVIEW	The Court applies the same standard governing the circuit court's review of agency action. An agency decision will not be disturbed unless it is unsupported by substantial evidence, arbitrary or capricious, beyond the agency's scope or powers, or violative of the aggrieved party's constitutional or statutory rights. The agency's decision is entitled to a rebuttable presumption of correctness, and the challenging party bears the burden of proving otherwise.
PRECEDENTIAL VALUE	Published opinion

PARTIES

Frederick D. Small a/k/a Frederick Small v. Mississippi Department of Corrections

TOPICS

judicial review of agency action

administrative law

ex post facto

due process

standard of review

PRACTICE AREAS

administrative law

corrections law

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether MDOC's denial of trusty earned time or community work center placement was unsupported by substantial evidence, arbitrary or capricious, beyond its authority, or otherwise unlawful.
2. Whether applying the 2014 statutory classification of burglary of a dwelling as a per se violent offense to Small's eligibility determination violated the ex post facto clauses of the United States and Mississippi Constitutions.
3. Whether MDOC's classification of Small as a violent offender and denial of the requested placement deprived him of due process or a right to challenge the classification.

HOLDINGS

1. MDOC's decision to deny Small trusty status and community work center placement was supported by substantial evidence, was not arbitrary or capricious, was within MDOC's authority, and did not violate Small's constitutional or statutory rights.
2. The application of Mississippi Code Annotated section 97-3-2 did not violate the ex post facto clauses because the statute was procedural rather than substantive and did not create a new offense or increase or otherwise change Small's punishment.
3. Small was not deprived of due process or a right to challenge the classification because the statutory change was procedural, did not affect his punishment, and did not alter the independent eligibility barriers arising from his prior conviction and habitual-offender status.

KEY QUOTATIONS

“An ex post facto law is one which creates a new offense or changes the punishment, to the detriment of the accused, after the commission of the crime.” (at 5)

“Changes in procedural rules after a party is sentenced for a crime are not ex post facto laws.” (at 5)

“Thus, MDOC’s decision not to award Small trusty status or CWC placement does not constitute an ex post facto law, as the decision did not change his punishment in any way or create a new penalty for an earlier crime.” (at 6)

FACTUAL BACKGROUND

Small was convicted in 2010 of burglary of a dwelling and sentenced as a habitual offender to eighteen years in MDOC custody. His prior convictions included aggravated burglary in Tennessee and two residential burglary convictions in Mississippi. In 2023, he requested trusty earned time or placement in a community work center, arguing that burglary of a dwelling was not classified as a per se violent offense when he was convicted. MDOC denied the request because his prior aggravated-burglary conviction and habitual-offender status independently made him ineligible under MDOC procedures and Mississippi law.

PROCEDURAL HISTORY

Small was convicted of burglary of a dwelling in 2010 and sentenced as a habitual offender to eighteen years' imprisonment. In 2023, he pursued MDOC's Administrative Remedy Program, seeking trusty status or community work center placement on the ground that burglary of a dwelling was not classified as per se violent when he was convicted. After exhausting administrative remedies, he filed a petition for judicial review in the Sunflower County Circuit Court under Mississippi Code Annotated section 47-5-807. The circuit court denied relief, and the Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Bentrup v. Epps, 152 So. 3d 1222, 1223 (¶4) (Miss. Ct. App. 2014)
- McDonald v. Jones, 816 So. 2d 448, 450 (¶4) (Miss. Ct. App. 2002)
- Smith v. Wesley, 157 So. 3d 860, 861 (¶8) (Miss. Ct. App. 2015)
- Watson v. State, 329 So. 3d 1215, 1218 (Miss. Ct. App. 2021)
- Bowman v. State, 283 So. 3d 154, 168 (¶55) (Miss. 2019)

OPINION

PER CURIAM.

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI NO. 2025-CP-00654-COA
FREDERICK D. SMALL A/K/A FREDERICK APPELLANT SMALL v. MISSISSIPPI
DEPARTMENT OF APPELLEE CORRECTIONS DATE OF JUDGMENT: 05/12/2025 TRIAL
JUDGE: HON. CAROL L. WHITE-RICHARD COURT FROM WHICH APPEALED:
SUNFLOWER COUNTY CIRCUIT COURT ATTORNEY FOR APPELLANT: FREDERICK D.
SMALL (PRO SE) ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: WILLIAM R. COLLINS NATURE OF THE CASE: CIVIL - OTHER DISPOSITION:
AFFIRMED - 05/19/2026 MOTION FOR REHEARING FILED: BEFORE WILSON, P.J.,
EMFINGER AND LASSITTER ST. PÉ, JJ. LASSITTER, ST. PÉ, J., FOR THE COURT: ¶1.

Frederick Small appeals the Sunflower County Circuit Court's order denying his complaint for judicial review. After reviewing the record, we find no error and affirm. FACTS AND

PROCEDURAL HISTORY ¶2. In 2010, Small was convicted of burglary of a dwelling in violation of Mississippi Code Annotated section 97-17-23 (Supp. 2008) in the Circuit Court of DeSoto County.

In accordance with Mississippi Code Annotated section 99-19-81 (Rev. 2007), Small was sentenced as a habitual offender and ordered to serve eighteen years in the custody of the Mississippi Department of Corrections. Small's underlying convictions for his habitual offender sentence included a 1996 conviction of aggravated burglary in Tennessee, a 2001 conviction from Tate County for residential burglary, and a 2001 conviction from Panola County for residential burglary. ¶3.

In 2014, the Legislature enacted Mississippi Code Annotated section 97-3-2, codifying for the first time a list of offenses to be considered per se violent. Burglary of a dwelling under section 97-17-23 was included in that list. Miss. Code Ann. § 97-3-2(o) (Rev. 2014). ¶4. Nearly ten years later, in 2023, Small filed a request through MDOC's Administrative Remedy Program (ARP) and requested that he be placed in a community work center (CWC) or be deemed eligible to receive trusty earned time.

In his ARP request, Small claimed that he was a nonviolent offender and therefore eligible for placement in a CWC or trusty to receive earned time because when he was convicted of burglary in 2010, burglary of a dwelling was not considered a per se violent offense. ¶5.

In 2025, after exhausting his administrative remedies, Small filed a petition for judicial review in the Circuit Court of Sunflower County pursuant to Mississippi Code Annotated section 47-5-807 (Rev. 2023). In his petition, Small claimed that he was entitled to trusty earned time or CWC placement. Small also argued that MDOC violated his right to due process and subjected him to ex post facto laws by classifying him as a violent offender because burglary of a dwelling was not a statutory crime of violence when Small was convicted in 2010.

2 ¶6. The circuit court denied Small's requested relief and affirmed MDOC's decision. Relying heavily on *Watson v. State*, 329 So. 3d 1215 (Miss. Ct. App. 2021), the circuit court reasoned that a "legislative change" made burglary of a dwelling a violent offense, so therefore, Small was not subjected to an ex post facto law. ¶7.

The circuit court also noted that to establish a due process violation, Small had to show that MDOC misapplied its reasonable prisoner classification regulations, and he failed to do so. The court concluded by finding that under the federal and state constitutions, there is no constitutional right to a requested housing assignment.

The circuit court found that MDOC's decision to deny Small's request for placement in a CWC or to receive trusty earned time was "supported by substantial evidence, [wa]s not arbitrary,

capricious, or beyond the scope of the [MDOC's powers]." ¶8. Now Small appeals, raising three points of error.

First, he claims that the circuit court erred by denying judicial review of MDOC's "retroactive reclassification" of his offense from nonviolent to violent. Second, he asserts that the retroactive application of the reclassification violated ex post facto laws of both the United States and Mississippi Constitutions. Lastly, he argues that the reclassification deprived him of due process and the ability to be heard.

Due to the interconnectivity of the issues Small raised, his arguments will be addressed together. ANALYSIS ¶9. On appeal, Small argues that the circuit court erred by affirming MDOC's decision 3 to deny him eligibility for trusty earned time or placement in a CWC because his status was "retroactively" changed from nonviolent to violent in violation of his due process rights.

However, we find this argument unpersuasive and affirm the judgment of the circuit court. ¶10. "This Court applies the same standard of review that the lower courts are bound to follow when considering a decision by a chancery or circuit court regarding an agency action, in this case the MDOC." *Bentrup v. Epps*, 152 So. 3d 1222, 1223 (¶4) (Miss. Ct. App. 2014).

Accordingly, "[t]he decision of an administrative agency shall not be disturbed unless unsupported by substantial evidence; arbitrary or capricious; beyond the agency's scope or powers; or violative of the constitutional or statutory rights of the aggrieved party." *McDonald v. Jones*, 816 So. 2d 448, 450 (¶4) (Miss. Ct. App. 2002).

Moreover, "[t]his Court has held that there is a rebuttable presumption which favors the agency's decision and the challenging party has the burden of proving the contrary." *Smith v. Wesley*, 157 So. 3d 860, 861 (¶8) (Miss. Ct. App. 2015). ¶11.

We note that the circuit court's order correctly pointed out that MDOC's decision to deny Small trusty status or placement in a CWC was supported by substantial evidence, was not arbitrary or capricious or beyond the scope of its powers, nor did the decision violate Small's constitutional or statutory rights. See generally *McDonald*, 816 So. 2d at 450 (¶4). ¶12.

In fact, after Small filed his ARP request seeking trusty status or placement in a CWC, MDOC promptly notified Small that he was ineligible for either based on his previous convictions of aggravated burglary in Tennessee, a violent offense under Tennessee Code 4 Annotated section 40-35-120. MDOC was also prevented from awarding Small CWC placement by its own operating procedures.

Specifically, Standard Operating Procedure 22- 01-01 states that "violent offenders will not be considered for CWC placement." ¶13. Additionally, as discussed supra, the DeSoto County Circuit

Court sentenced Small as a habitual offender in accordance with Mississippi Code Annotated section 99-19-81.

As a consequence of his sentence as a habitual offender, Small was ineligible to receive trusty earned time. See Miss. Code Ann. § 47-5-138.1(2)(b) (Rev. 2004) (stating inmates convicted as habitual offenders under section 99-19-81 are ineligible to receive trusty earned time). ¶14. Essentially, statutory law and MDOC's own operating procedures prevented MDOC from granting Small trusty status or placement in a CWC.

Therefore, we cannot find that the circuit court erred in upholding MDOC's decision to not award Small trusty status or CWC placement. ¶15. Small also argues that MDOC's "retroactive reclassification" of his offense from nonviolent to violent violated the ex post facto clauses of both the United States and Mississippi Constitutions and that he was deprived of the opportunity to challenge the reclassification. "An ex post facto law is one which creates a new offense or changes the punishment, to the detriment of the accused, after the commission of the crime." *Watson v. State*, 329 So.

3d 1215, 1218 (¶8) (Miss. Ct. App. 2021). However, "[c]hanges in procedural rules after a party is sentenced for a crime are not ex post facto laws." *Id.* at (¶9). Our Supreme Court has also maintained that "section 97-3-2 is not a substantive criminal statute." 5 *Id.* ¶16.

Here, a legislative change occurred in 2014, and burglary of a dwelling was statutorily deemed a violent offense under Mississippi Code Annotated section 97-3-2. This Court has already followed Supreme Court precedent determining that section 97-3-2 is procedural, not substantive, and we have held that changes in procedural rules do not implicate the ex post facto clause.

See *Watson*, 329 So. 3d at 1218 (¶¶9-10) (citing *Bowman v. State*, 283 So. 3d 154, 168 (¶55) (Miss. 2019)). Similarly, because the enactment of section 97-3-2 was a procedural, not a substantive, change in the law and because it did not affect Small's punishment, he was not deprived of due process or his "right" to challenge the classification. ¶17. Most importantly, just as in *Watson*, the reclassification of this crime did not violate Small's ex post facto rights, as no "new offense or changes [in] punishment" occurred.

Id. at (¶8). There was no "new offense" or "change" in Small's punishment after the legislative enactment because, even before the statute, MDOC's regulations excluded Small from trusty status or CWC placement by virtue of his 1996 conviction of aggravated burglary.

Thus, even before section 97-3-2, Small was prevented from attaining trusty status or CWC placement by MDOC's internal procedures. ¶18. Furthermore, Small was sentenced as a section 99-19-81 habitual offender in 2010, and at that time, Mississippi Code Annotated section 47-5-138.1(2)(b) prevented habitual offenders from receiving trusty status or CWC placement.

See Miss. Code Ann. 47-5- 138.1(2)(b) (Supp. 2010). Thus, MDOC's decision not to award Small trusty status or CWC 6 placement does not constitute an ex post facto law, as the decision did not change his punishment in any way or create a new penalty for an earlier crime. CONCLUSION ¶19.

We find that Small failed to prove that MDOC's decision was not supported by credible evidence, arbitrary or capricious, beyond MDOC's scope or powers, or violative of his constitutional rights. Therefore, we affirm the order of the circuit court and hold that MDOC's decision to deny Small eligibility for trusty earned time or CWC placement did not violate the ex post facto clauses or his right to due process. ¶20.

AFFIRMED. BARNES, C.J., WILSON, P.J., LAWRENCE, McCARTY, EMFINGER AND WEDDLE, JJ., CONCUR. CARLTON, P.J., WESTBROOKS AND McDONALD, JJ., CONCUR IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION. 7