

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)