

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 2001-CP-00364-COA**

**HENRY EARL COLEMAN A/K/A HENRY E. COLEMAN A/K/A HENRY
COLEMAN**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF TRIAL COURT JUDGMENT: 02/06/2001

TRIAL JUDGE: HON. GRAY EVANS

COURT FROM WHICH APPEALED: SUNFLOWER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: PRO SE

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: WAYNE SNUGGS

DISTRICT ATTORNEY: FRANK CARROLTON

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF

TRIAL COURT DISPOSITION: PCR DENIED

DISPOSITION: AFFIRMED - 12/18/2001

MOTION FOR REHEARING FILED:

CERTIORARI FILED:

MANDATE ISSUED: 1/8/2002

BEFORE McMILLIN, C.J., THOMAS, AND MYERS, JJ.

MYERS, J., FOR THE COURT:

¶1. Henry Earl Coleman appeals the decision of the Sunflower County Circuit Court, Honorable Gray Evans presiding, dismissing his petition for post-conviction relief. Finding no error, we affirm.

FACTS

¶2. Coleman was convicted of aggravated assault in 1993 and was sentenced to serve twenty years. At some point he was released on probation or parole. This release was revoked when the police raided Coleman's home and found that he was in possession of three firearms. Judge Evans sentenced Coleman to an additional term of three years to be served consecutively with his first sentence.

DISCUSSION

¶3. When Judge Evans reviewed Coleman's petition for post-conviction relief, he found that Mississippi Department of Correction's computation of time was correct. MDOC's calculation that Coleman would have to serve thirteen years before he was eligible for any type of parole was based on the sentence of

twenty years and the sentence of three years to be served consecutively.

¶4. His original sentence for aggravated assault occurred in 1993 under the "50%" law. Miss. Code Ann. § 47-5-138 (Supp. 2001).⁽¹⁾ This means that he was to serve at least ten years of his original twenty year sentence. When his probation was revoked the court reinstated his original sentence and added three years for the firearms violation. The recalculated sentence equals thirteen years. Probation is not part of the original prison sentence. *Carter v. State*, 754 So. 2d 1207, 1209 (¶5) (Miss. 2000). "When a defendant is found to have violated . . . his probation, the court has the power to impose any sentence which would have been originally imposed." *Johnson v. State*, 753 So. 2d 449 (¶15) (Miss. Ct. App. 1999).

¶5. Judge Evans did exactly what our statutes and case law allow. He dismissed a meritless claim because the MDOC correctly calculated the eligibility date of Coleman's possible parole. Finding no error, we affirm.

¶6. THE JUDGMENT OF THE CIRCUIT COURT OF SUNFLOWER COUNTY DENYING POST-CONVICTION RELIEF WITH PREJUDICE IS AFFIRMED. ALL COSTS ARE ASSESSED TO SUNFLOWER COUNTY.

McMILLIN, C.J., KING AND SOUTHWICK, P.JJ., BRIDGES, THOMAS, LEE, CHANDLER AND BRANTLEY, JJ., CONCUR. IRVING, J., NOT PARTICIPATING.

1. No longer applicable to sentences imposed after June 30, 1995.