

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 2001-CP-00162-COA**

WILLIE LEE JAMES A/K/A CHIP

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF TRIAL COURT JUDGMENT: 12/13/2000

TRIAL JUDGE: HON. KENNETH L. THOMAS

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: WILLIE LEE JAMES, PRO SE

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: JEAN SMITH VAUGHAN

DISTRICT ATTORNEY: LAURENCE Y. MELLEN

NATURE OF THE CASE: CIVIL - POST CONVICTION RELIEF

TRIAL COURT DISPOSITION: MOTION TO RECONSIDER SENTENCE IS DENIED.

DISPOSITION: REVERSED AND REMANDED - 10/29/2002

MOTION FOR REHEARING FILED:

CERTIORARI FILED:

MANDATE ISSUED:

BEFORE KING, P.J., LEE, AND IRVING, JJ.

KING, P.J., FOR THE COURT:

¶1. Willie Lee James appeals from the Coahoma County Circuit Court's denial of his motion to reconsider sentence. Finding error, this Court reverses.

FACTS

¶2. On February 22, 2000, James pled guilty to burglary of a dwelling, and escape. The trial court ordered a pre-sentence report, and conducted a sentencing hearing on March 15, 2000. James was sentenced to eleven years on the burglary charge and five years on the escape charge, which sentences were to be served concurrently.

¶3. On April 7, 2000, James filed a motion to have the trial court reconsider his sentence, and impose instead a sentence of five years. On April 14, 2000, James' counsel filed a motion for leave to withdraw. On August 30, 2000, James' new attorney entered her appearance and requested a hearing on the motion to reconsider sentence.

¶4. On December 13, 2000, the trial court denied James' motion, stating "the term of court during which Mr. James was sentenced has expired and the Court did not reserve jurisdiction within its sentencing order for the purpose of modifying the sentence. Therefore, this Court no longer has jurisdiction over the case and is therefore without power and authority to take any further action"

DISCUSSION

¶5. When the trial court decided this case, this matter was controlled by *Dickerson v. State*, 731 So. 2d 1082 (Miss. 1998). *Dickerson* held, " a judge may not alter or vacate a sentence once the term of court in which the defendant was sentenced has ended." *Id.* at (¶18)

¶6. However, on June 14, 2001, the Mississippi Supreme Court overruled *Dickerson*, saying, "With respect to the term of court issue, we find Miss. Code Ann. § 11-1-16 (Rev. 1991) clearly gives a circuit court authority to consider a pending motion after a term has ended. *Dickerson v. State* is therefore overruled to the extent it is inconsistent with the statute." *Presley v. State*, 792 So. 2d 950 (¶13) (Miss. 2001).

¶7. Because James' appeal was pending when *Presley* was decided, he is entitled to have his case decided in accordance with it. It is therefore appropriate to reverse the denial of James' motion for reconsideration, and remand it to the trial court, for determination in light of the *Presley* case.

¶8. THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY IS REVERSED AND REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. ALL COSTS OF THE APPEAL ARE ASSESSED TO COAHOMA COUNTY.

McMILLIN, C.J., SOUTHWICK, P.J., BRIDGES, THOMAS, LEE, IRVING, MYERS, CHANDLER AND BRANTLEY, JJ., CONCUR.