

Serial: **220603**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2018-TS-00483

***JAMES ALLEN HIGGINBOTHAM A/K/A
JAMES A. HIGGINBOTHAM A/K/A
JAMES HIGGINBOTHAM***

Appellant

v.

STATE OF MISSISSIPPI

Appellee

ORDER

This matter is before the Court, *en banc*, on the Court's own motion to dismiss the appeal. Higginbotham filed a motion seeking a parole recommendation in the Circuit Court of Winston County. The circuit court denied the motion by Order entered March 30, 2018. Higginbotham appealed to this Court, and on April 2, 2018, the Clerk of this Court issued a Show Cause Notice to Higginbotham, seeking a response as to why the appeal should not be dismissed for lack of an appealable judgment. Higginbotham filed his response, and having duly considered it and the facts of this case, the Court finds the circuit court's order fails to implicate an appealable judgment. Accordingly, the Court concludes that this appeal should be dismissed. See *Gamage v. State*, 2015-CP-00593 (En Banc Order - Oct. 8, 2015).

IT IS THEREFORE ORDERED the appeal shall be dismissed upon the entry of this order. Costs of the appeal, if any, are taxed to Appellant.

SO ORDERED, this the 3rd day of October, 2018.

/s/ James D. Maxwell II

JAMES D. MAXWELL II, JUSTICE
FOR THE COURT

AGREE WITH ORDER: WALLER, C.J., RANDOLPH, P.J., COLEMAN, MAXWELL,
BEAM, CHAMBERLIN, AND ISHEE, JJ.

KING, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN STATEMENT JOINED
BY WALLER, C.J., KITCHENS, P.J., AND ISHEE, J.

IN THE SUPREME COURT OF MISSISSIPPI

No. 2018-TS-00483

*JAMES ALLEN HIGGINBOTHAM A/K/A
JAMES A. HIGGINBOTHAM A/K/A
JAMES HIGGINBOTHAM*

v.

STATE OF MISSISSIPPI

**KING, JUSTICE, SPECIALLY CONCURRING WITH THE ORDER WITH
SEPARATE WRITTEN STATEMENT:**

¶1. This Court, without explanation, enters an order saying, “the circuit court’s order fails to implicate an appealable judgment.” I agree that this case fails to present an appealable issue. However, I write separately to state why I believe this case fails to present an appealable judgment.

¶2. Pursuant to the provisions of Mississippi Code Section 47-7-3(1)(g)(iii) (Rev. 2015), an inmate may ask the sentencing judge or the senior judge to recommend that he or she be paroled. This Court’s summary quotation of the language used in *Gamage v. State*, No. 2015-CP-00593-SCT (Miss. Oct. 8, 2015) (en banc order), that the denial of a recommendation to the parole board for an early release “fails to implicate an appealable judgment,” implies that no denial of a recommendation to the parole board for early release may be appealed. The decision to recommend or not to recommend parole is purely a discretionary power and is not subject to appellate review *unless* exercised for constitutionally impermissible reasons, such as race or gender. Courts in this State have a

duty “to hear and adjudge cases concerning constitutional issues despite a statutory mandate.”

Cotton v. Miss. Parole Bd., 863 So. 2d 917, 921 (Miss. 2003).

¶3. The present submission before this Court provides no factual basis to suggest that the circuit court predicated its decision on a constitutionally impermissible reason. For this reason, I agree that this matter should be dismissed.

WALLER, C.J., KITCHENS, P.J., AND ISHEE, J., JOIN THIS SEPARATE WRITTEN STATEMENT.