

**IN THE COURT OF APPEALS OF MISSISSIPPI**

**NO. 2006-CA-00950**

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**ARMON ANDRE RANDALL**

**APPELLANT**

**VS.**

**STATE OF MISSISSIPPI**

**APPELLEE**

**ON APPEAL FROM THE CIRCUIT OF HARRISON COUNTY,  
MISSISSIPPI**

**FILED**

**AUG 02 2007**

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COURT OF APPEALS

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**BRIEF OF APPELLEE**

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**ORAL ARGUMENT IS NOT REQUESTED**

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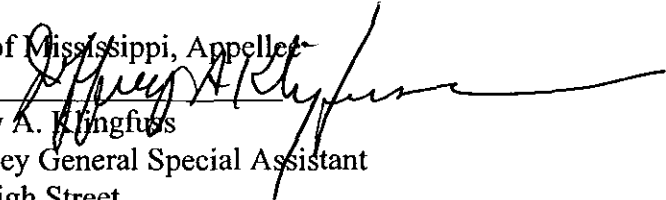
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**Certificate of Interested Parties**

Dennis Jefferson, Appellant v. State of Mississippi, Appellee  
No. 2006-KA-01543-COA

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Appellant Armon Andre Randall;
2. Appellee State of Mississippi, Mississippi Attorney General, 550 High Street P.O. Box 220, Jackson, MS 39205;
3. Honorable Robert H. Walker, U.S. Magistrate Judge/former Harrison County Circuit Court Judge, original Trial/Sentencing Judge, 2012 15<sup>th</sup> Street, Ste. 672, Gulfport, MS 39501;
4. Honorable Roger T. Clark, Harrison County Circuit Court Judge, Sentencing Judge, P.O. Box 1461, Gulfport, MS 39502;
5. Cono Caranna, District Attorney for Harrison County, Mississippi, P.O. Box 1180, Gulfport, MS 39502;
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**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**ARMON RANDALL**

**APPELLANT**

**VS.**

**NO. 2006-CA-0950**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE ISSUES**

- I. Whether Defendant Armon Andre Randall's Petition for Post Conviction Relief, filed two (2) months after the deadline for such notice had tolled, should be considered on the merits.
- II. Whether the Judge below erred by denying Defendant's Petition for Post Conviction Relief, after Defendant was sentenced to life without parole, which was not statutorily available when the capital murder was committed, but became available prior to the time of indictment, trial and sentencing.

## STATEMENT OF THE CASE

Armon Andre Randall appeals to this Court, the denial of his (untimely) Motion for Post Conviction Collateral Relief to Vacate and Set Aside Conviction and Sentence, averring Fifth (5th) and Fourteenth (14th) Amendment violations in the alleged illegal sentencing pursuant to Miss. Code Ann. § 97-3-21.

## STATEMENT OF FACTS

On July 1, 1994, legislation went into effect, amending Miss. Code Ann. § 97-3-21 to include “life without parole” with “life” and “death” as possible sentences for capital murder crimes. Miss. Code Ann. §97-3-21 (1994). Armon Andre Randall (hereinafter “Randall”) was indicted by a grand jury on May 28, 1997, for a capital murder<sup>1</sup> that was committed on October 28, 1993. Randall proceeded to trial, where he was found guilty and sentenced to death by a jury. The Supreme Court of Mississippi, however, remanded the case for a new trial.<sup>2</sup>

On remand, in May of 2002, Randall pled guilty to capital murder and was sentenced to life without parole by Judge Robert H. Walker. The deadline for any motion for post conviction relief was May 2005. In July 2005, Randall filed an untimely Motion for Post Conviction Collateral Relief to Vacate and Set Aside Conviction and Sentence, two (2) months after the May deadline. After reviewing Randall’s motion and hearing oral arguments on October 30, 2006, the Honorable Roger T. Clark, Circuit Court Judge of Harrison County, Mississippi, denied that

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<sup>1</sup>Capital murder charges stemming from an armed robbery which occurred on October 28, 1993 and resulted in the death of Eugene Daniels. Randall was also found guilty of capital murder and armed robbery for a separate, unrelated incident that took place on May 12, 1994. See *Randall v. State*, 716 So.2d 584 (Miss. 1998).

<sup>2</sup>*Randall v. State of Mississippi*, 806 So.2d 185 (Miss. 2001).

motion in an order issued November 3, 2006. Randall appealed to this Court with a notice filed on November 29, 2006.



### **SUMMARY OF THE ARGUMENT**

Randall's Motion for Post Conviction Relief was filed two months past the deadline articulated in the Mississippi Uniform Post-Conviction Collateral Relief Act, and therefore should be denied. If this Court so chooses to overlook Petitioner's untimely filing, the Court should find the Motion for Post Conviction Relief to be without merit. On numerous occasions, it has been held that imposing the life without parole sentencing for crimes committed before the 1994 revision of Miss. Code Ann. § 97-3-19 is not a violation of ex post facto laws. Accordingly, the court below's denial of Randall's Motion of Post Conviction Relief should be affirmed.

### **STANDARD OF REVIEW**

"When reviewing a trial court's decision to deny a petition for post conviction relief, this Court will not disturb the trial court's factual finding unless they are found to be clearly erroneous." *Twillie v. State*, 892 So.2d 187, 189 (Miss. 2004) *citing* *Brown v. State*, 731 So.2d 595, 598 (Miss. 1999). See also: *Cochran v. State*, 2007 WL 2107560 (Miss. 2007); *Smith v. State*, 806 So.2d 1148, 1150 (Miss.Ct.App. 2002).

All questions of law presented before the Court shall be reviewed de novo. *Id.* See also *Felder v. State*, 876 So.2d 372, 373 (Miss. 2004); *Brown v. State*, 731 So.2d 595, 598 (Miss. 1999).

## ARGUMENT

I. Defendant Armon Andre Randall's Petition for Post Conviction Relief, filed two (2) months after the deadline for such notice had tolled, should not be considered on the merits.

Motions for Post Conviction Relief:

“shall be made within three (3) years after the time in which the prisoner's direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three (3) years after entry of the judgment of conviction.”

Miss. Code. Ann. §99-39-5(2). In May of 2002, Randall pled guilty and was sentenced to life without parole by the Honorable Judge Robert H. Walker. He did not file a post conviction appeal by May of 2005, at which point the time to file any motion for relief had tolled. Nor does the defendant qualify under any of the exceptions allotted under the Miss. Code Ann. § 99-39-5(2). *Id.* The State concedes that this deadline does not apply to “errors affecting fundamental constitutional rights, such as the right to a legal sentence.” *Ivy v. State*, 731 So.2d 601, 603 (Miss. 1999). However, “[t]here must at least appear to be some basis for the truth of the claim before the limitation period will be waived.” *Cochran v. State*, 2007 WL 2107560 (Miss.App. 2007) *citing Stovall v. State*, 873 So.2d 1056, 1058 (Miss.App. 2004). The courts of this state have continuously held that life without parole for crimes committed prior to the 1994 is not an illegal sentence. (See below.) Accordingly, there is no basis for the truth of the claim asserted in Petitioner's Motion for Post Conviction Relief.

II. The Judge below appropriately denied Randall's Motion for Post Conviction Relief, after he was sentenced to life without parole, which was not statutorily available when the capital murder was committed, but was enacted prior to the time of indictment, trial and sentencing.

Randall contends that the court below erred in denying his Motion for Post Conviction Relief because life without parole was not a sentencing option under Miss. Code Ann. § 97-3-21 when he committed the capital murder. Further, Randall claims this to be an illegal sentence, absent a jury, of which is a substantive Constitutional violation of his Fifth (5th) and Fourteenth (14th) Amendment rights. However, this case does not present a new issue before the Court. On numerous occasions, the courts of this state have dealt with "matters where crimes were committed before the statute allowing life imprisonment without parole was enacted" and "[t]he trials were not held until after the effective date of the statute." *Swann v. State*, 806 So.2d 1111, 1119 (Miss. 2002). See also: *Conley v. State*, 790 So.2d 773, 803-804 (Miss. 2001); *Watts v. State*, 733 So.2d 214, 233 (Miss. 1999); *West v. State*, 725 So.2d 872, 877 (Miss. 1998); *Foster v. State*, 2007 WL 1558750 (Miss. 2007).

In *Swann*, the defendant committed a capital murder in 1986, was indicted in 1998, and tried and sentenced to life without parole in 1999. *Swann* at 1114-1115. It was held in that case, and each of the others cited above, the most recent of which was decided by the Supreme Court of Mississippi on May 31, 2007, "that imposing the new sentencing option of life without parole does not violate the prohibition against ex post facto laws." *Id.* Furthermore, the proper sentence for capital murder cases, committed before or after July 1, 1994, is death or life without parole. *Rubenstein v. State*, 941 So.2d 735 (Miss. 2006); *Flowers v. State*, 842 So.2d 531 (Miss. 2003).

Under the former version of Miss. Code Ann. § 97-3-21, the sentencing options for the crime of capital murder included life and death. Miss. Code Ann. §97-3-21 (1972). Randall argues that “[t]he trial court cannot impose a sentence more harsh than the law allowed at the time the alleged criminal conduct is said to have occurred without first obtaining a knowing, intelligent and voluntary waiver of the individual’s right against the ex post facto application of the new law.” (A.B. at 3-4). The State concedes that such an application of a “more harsh” sentence might be unconstitutional, however, our courts have maintained that “[b]ecause death, the ultimate penalty, was allowed under the prior statute, the imposition of a sentence of life without parole is not a more punitive sanction, and, therefore, does not violate the prohibition against ex post facto laws.” *Twillie v. State*, 892 So.2d 246, 247 (Miss.App. 2004) citing *Swann v. State*, 806 So.2d 1111 (Miss. 2002); *West v. State*, 725 So.2d 872 (Miss. 1998).

Since Randall pled guilty and waived his right to a jury, he was sentenced accordingly by the Honorable Judge Robert H. Walker, pursuant to Miss. Code Ann. § 99-19-101. Under Miss. Code Ann. § 97-3-21:

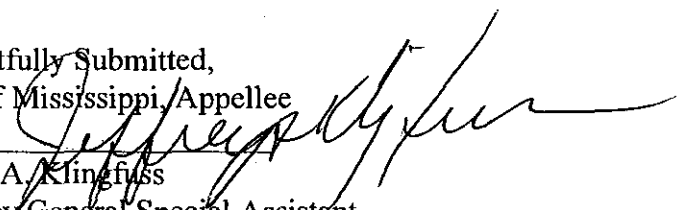
“Every person who shall be convicted of capital murder shall be sentenced (a) to death; (b) to imprisonment for life in the State Penitentiary without parole; or (c) to imprisonment for life in the State Penitentiary with eligibility for parole as provided in Section 47-7-3(1)(f).”

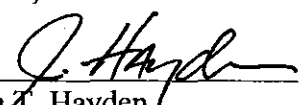
Miss. Code Ann. § 97-3-21 (1994). § 47-7-3(1) states that “[n]o person shall be eligible for parole who is charged, tried, convicted and sentenced to life imprisonment under the provisions of § 99-19-101.” Miss. Code Ann. § 47-7-3(1). Life without parole was the only proper sentence for Randall since: (1) only a jury can sentence a person to death; (2) Randall did not qualify for the eligibility for parole pursuant to § 47-7-3(1)(f), and; (3) Randall was tried, convicted and sentenced after the July 1, 1994 revisions to Miss. Code Ann. § 97-3-21. See *Flowers v. State*, 842 So.2d 531 (Miss.

2003).

## CONCLUSION

This Court should affirm the trial court's dismissal of Randall's untimely Motion for Post Conviction Relief. If the untimely Motion is not procedurally barred, the Court should find it to be without merit. On numerous occasions, the courts of this state have held that imposing the life without parole sentence for crimes committed before the 1994 revision of Miss. Code Ann. § 97-3-21 is not a violation of the prohibition against ex post facto laws. While the ex post facto application of a more harsh sentence would be unconstitutional, our courts have maintained that life without parole is a lesser sentence than death, a permitted sentencing option before the 1994 revision. Randall was properly sentenced pursuant to Miss. Code Ann. §§ 47-3-21; 47-7-3(1)(f); and 99-19-101. Accordingly, the court below's denial of Randall's Motion of Post Conviction Relief should be affirmed.

Respectfully Submitted,  
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## CERTIFICATE OF SERVICE

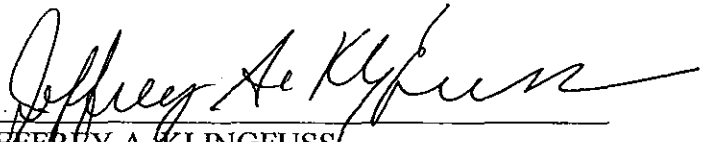
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

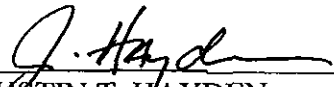
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