

**COPY**  
**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**TIMOTHY B. ROBINSON**

**APPELLANT**

**FILED**  
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SUPREME COURT  
COURT OF APPEALS**

**VS.**

**NO. 2006-CP-0847-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**STATEMENT OF THE CASE**

Robinson was indicted during the September, 1991 term by a grand jury of the First Judicial District of the Hinds County Circuit Court on one count of aggravated assault and two counts of kidnaping. He was examined by a state-appointed psychiatrist at the request of his attorney, but apparently found competent to stand trial. The case was tried on March 10 and 11, 1992, and the jury returned a verdict of guilty on all three counts. Robinson was sentenced to life in prison on each of the kidnapping charges and twenty years for the aggravated assault charge, with the three sentences to run consecutively. His motion for judgment of acquittal notwithstanding the verdict of the jury, or in the alternative, for a new trial, was denied. Thereafter, he timely perfected this appeal.

*Robinson v. State*, 662 So.2d 1100, 1102 (Miss. 1995).

All of Robinson's convictions and sentences were affirmed. Additionally, it would appear Robinson filed a motion with the Mississippi Supreme Court to seek post-conviction relief in the trial court. Said motion was denied by Mississippi

Supreme Court Order on or about August 12, 1996. (C.p.1, Circuit Court Case Docket).

Within a month defendant filed a petition for writ of habeas corpus in U.S. District Court, Southern District of Mississippi. (Case #: 3:96-cv-00672-HTW). The petition was fully and finally dismissed with prejudice, certificate of appealability and *in forma pauperis* status being further denied. (August, 1997).

At some later point defendant, apparently, filed a brief in the Fifth Circuit Court of appeals, which, evidently, was dismissed. (June 2003, C.p.1, Circuit Court Case Docket).

In May 2005, defendant filed a motion in the Hinds County Circuit Court seeking correction and reduction of sentence. After filing for Mandamus, the trial court denied the motion by order on May 31, 2006. (C.p.6).

Defendant timely filed his notice, appealing the trial court's order of denial.

## STATEMENT OF FACTS

Timothy Robinson and Brenda Rand lived together in the White Rock apartment complex in Jackson. On July 26, 1991, Robinson came home from work, bathed and ate the meal Rand had prepared. While Rand was washing the dishes, she was stabbed in the back. The only other person in the room was Robinson.

Rand's nine-year old daughter, Nicole, ran into the kitchen and saw her mother lying on the floor in a pool of blood. She began screaming and Robinson told her to "shut the f--- up" or he would finish her mother off and stab her, too. He ordered Rand to get up, but she had no feeling in her legs and could not move. He told Rand he would take her to the hospital and before leaving to get his car, directed Nicole to put all the knives in the apartment, including the bloody one on the floor, in the clothes dryer.

Robinson and the child dragged Rand down the stairs and into the car. Rather than taking her to the hospital, Robinson took Rand against her will to Belzoni, his hometown. On the way, when Rand fell from the back seat onto the floorboard, Robinson allegedly told her to get up or he would jump out and drive the car off the Yazoo Bridge. Once in Belzoni, they stopped at a bar called The Ranch, drove around town looking for Robinson's brother, and then returned to The Ranch, where Pat Magee, a friend of Rand's, came out to the car. Magee and her brother then drove Rand to the hospital. Robinson later called Rand's sister, Rebecca Hughes, to determine what hospital she was in because he wanted to "finish her up."

*Robinson v. State*, 662 So.2d 1100, 1102 (Miss. 1995).

## ARGUMENT

### THIS APPEAL IS BARRED.

The only answer appropriate to the numerous issues presented is that they are all time-barred and not within an exception.

The law is clear as is the procedural history of this case.

Defendant had a direct appeal, many of the issues he *still* seeks to have reviewed were addressed in the direct appeal, in his petition to seek post-conviction relief and in his federal habeas. This appeal is time barred, successive writ barred and barred under principles of *res judicata*. Defendant makes to claim to be within any statutory exception,

¶ 5. In addition to being procedurally barred under section 99-39-27(9), Mississippi Code Annotated section 99-39-5(2) (Supp.2006) establishes a three-year time limit in which motions for post-conviction relief may be filed. Section 99-39-5(2) reads in relevant part: “[a] motion for relief under this article shall be made ... in case of a guilty plea, within three (3) years after entry of the judgment of conviction.” Barnes' judgment of conviction was entered on February 7, 2003. However, Barnes' second motion for post-conviction relief was not filed until February 27, 2006. Thus, Barnes' motion is time-barred, unless it fits within some enumerated statutory exception. The same two exceptions enumerated in section 99-39-27(9) discussed above apply to the three-year time limit in section 99-39-5(2). *Nobles v. State*, 843 So.2d 734, 735 (¶¶ 5-6) (Miss.Ct.App.2003). Having already held that the exceptions are inapplicable to Barnes' claims, we find Barnes' second motion for post-conviction relief time-barred under section 99-39-5(2), and affirm the circuit court's denial of Barnes' motion on this additional ground.

*Barnes v. State*, 2007 WL 1248275 (Miss.App. 2007).

No relief should be granted.



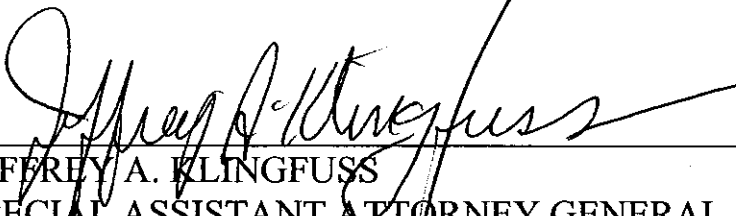
## CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the trial court denial of post-conviction relief.

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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This the 11th day of June, 2007.



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