

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

**CHARLES H. RUDD**

**APPELLANT**

**FILED**

**VS.**

**APR 11 2008**

**NO. 2006-CP-1249**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: JEFFREY A. KLINGFUSS  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680**

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**VS.**

**NO. 2006-CP-1249**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE CASE**

The grand jury of Madison County indicted defendant, Charles J. Rudd for the crimes of Armed Robbery & Escape in two separate indictments. On July 17<sup>th</sup>, 2002 defendant, aided by counsel pled guilty to both charges. Subsequently, about 15 months later, defendant was sentenced to 20 years on the Armed Robbery with 10 suspended and 5 years post-release supervision in addition to 5 years for the Escape to be served consecutively with the other sentence. (Judgment & Sentence, c.p. 49-55).

Within the statutory period for such, defendant did file a motion seeking post-conviction relief. (Filed Mar. 4, 2005, c.p. 7-21). It would appear that motion was

## **STATEMENT OF FACTS**

Defendant robbed a Shell Mart gas station convenience store at gun point. He was captured then later escaped from the custody of the Madison Sheriff's department.

## **SUMMARY OF THE ARGUMENT**

### **I.**

**THE TRIAL COURT FOUND DEFENDANT'S SECOND PETITION FOR POST-CONVICTION RELIEF TIME BARRED. THE PETITION WAS ALSO A SUCCESSIVE PETITION AND FURTHER BARRED.**

Defendant filed a motion (and amendment) for post-conviction relief. The trial court ruled denying the motion. Defendant did not appeal from the lower courts final order.

After the running of the time for filing motions for post-conviction relief, defendant filed a second, successive petition. The trial court denied this motion as time-barred.

In addition to being time barred it would also be successive writ barred.

No relief should be granted as all of defendant claims are barred and not within an exception.

## ARGUMENT

### I.

**THE TRIAL COURT FOUND DEFENDANT'S SECOND PETITION FOR POST-CONVICTION RELIEF TIME BARRED. THE PETITION WAS ALSO A SUCCESSIVE PETITION AND FURTHER BARRED.**

Defendant, *pro se*, seems to be submitting this appeal while operating under several misapprehensions of fact, – and law for that matter.

First, we are in State court, not federal. The applicable statute for the time for filing of post-conviction motions is Miss. Code Ann. § 99-39-5, not § 99-29-5 (Hearing for Arrested Vagrant). And the State does understand how easily that can happen.

Be that as it may, defendant's current appeal is barred in two ways. Defendant would prefer that it all be treated as one loooong petition and denial. The State sees is as several discreet steps – each with a specific legal consequence.

First, Miss. Code Ann. § 99-39-5 clearly states (as defendant quotes)

**(2) A motion for relief under this article 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)

The judgment of conviction was entered on July 17<sup>th</sup>, 2002. (C.p. 49-51).

According to statute defendant would have three years, until July 17<sup>th</sup>, 2005 to file a motion requesting relief.

And defendant did, – filing a motion for post-conviction relief December 6, 2004. (C.p.25-38). That would appear was supplemented by yet another petition for post-conviction relief docketed March 4, 2005 (C.p. 7-24).

On April 7, 2005 the trial court denied relief. (C.p 46). The State can find no attempt by defendant to appeal from this order denying relief.

Then in December 2007 *after* the time had expired for filing, defendant filed a second, successive, petition for relief. (Supplemental Volume pages 1-111; C.p. 58-97, filed Dec. 2, 2005).

The trial court denied the motion as time barred outside the time permitted by *Miss. Code Ann.* § 99-35-5(2). (C.p. 47)

The truth is not only was defendant time barred he was also successive writ barred. *Miss. Code Ann.* § 99-39-23(6). Such double filing on each side of the expiration date is not uncommon and has been dealt with before, to wit:

¶ 5. Thirty days after Stroud's first motion for post-conviction collateral relief was denied, his ability to challenge the validity of his 1997 guilty pleas was exhausted.FN1 See Stroud, 839 So.2d at 610-11 (¶ 4, 6). In the case of his second motion for relief, such finality results not only from its timing, as it was filed well after the three-year limit mandated by the Act, but also from the fact that the February 2006 motion was Stroud's second motion for post-conviction collateral relief, in violation of section 99-39-23(6). Therefore, pursuant to sections 99-39-5(2) and



99-39-23(6), Stroud's current motion for post-conviction relief was properly denied by the trial court.

*Stroud v. State*, 2008 WL 928666 (Miss.App. 2008).

Defendant is double barred. Time barred as found by the trial court. And, successive writ barred as defendant did not appeal his first denial of post-conviction relief.

Accordingly, the State submits the trial court was correct and the time-bar, alone is sufficient to deny any requested relief. Alternatively, the successive writ bar also prevents defendant from prevailing. Defendant has not claimed that his claims are within an exception to either bar.

The State would ask that no relief 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,

JIM HOOD, ATTORNEY GENERAL

BY:

  
\_\_\_\_\_  
JEFFREY A. KLINGHUSS  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. [REDACTED]

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680

## CERTIFICATE OF SERVICE

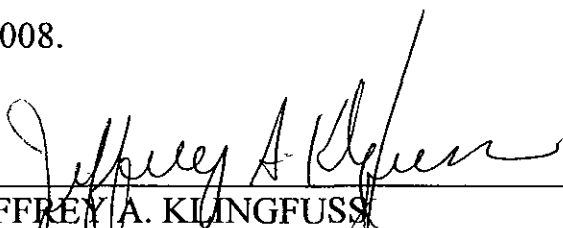
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Samac S. Richardson  
Circuit Court Judge  
Post Office Box 1662  
Canton, MS 39046

Honorable Michael Guest  
District Attorney  
Post Office Box 121  
Canton, MS 39036

Charles Rudd, #L7678  
Unit 29 - I Building  
Post Office Box 1057  
Parchman, MS 38738

This the 11th day of April, 2008.

  
\_\_\_\_\_  
JEFFREY A. KLINGFUSS  
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MISSISSIPPI 39205-0220  
TELEPHONE: (601) 359-3680