

The Supreme Court of The State of Mississippi

Scott Leavitt

COPY

vs.

No: 2006-CP-1654

State of Mississippi.

FILED

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Reply Brief

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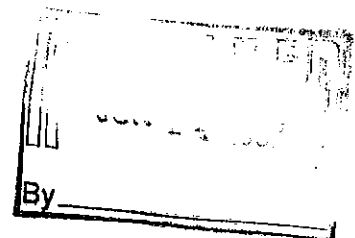


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The very document that the appellee claims is not included in appellate's Motion for Post Conviction Relief is attached as Exhibit "J" of the appeal.

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In the Supreme Court of the State of Mississippi

Scott Leavitt

vs.

NO. 2006-CP-1654

State of Mississippi

Reply Brief for The Appellant

Statement of the Case

This appeal is from Appellants filing a Post Conviction Relief Motion in the Circuit Court of Marshall County, that was incorrectly dismissed as time-barred.

Exhibit "J" (Attached to Appellant's Brief) Clearly shows that the Judgement and Sentencing order signed by Circuit Judge Andrew Howorth is dated May 30th, 2003. Appellants PCR was filed May 8th, 2006 in the Circuit Court of Marshall County, Miss.

(Please see Exhibit "K" of Appellants Brief/appeal.

Summary of the Argument.

The Marshall County Circuit Court judge, the honorable Andrew Howorth, erred in summarily dismissing Appellants (PCR) motion as time-barred, when the Sentencing order signed by Judge Howorth shows May 30th 2003 and the Motion for Post Conviction Collateral Relief was filed in the Circuit Court by Circuit Clerk Lucy Carpenter May 8th 2006. (See Exhibit "J" and "K" of Appeal Brief)

Proposition

The Circuit Court of Marshall County erred when Judge Howorth dismissed Appellants PCR as time-barred.

It is settled that Appellant, Scott Leavitt filed his PCR May 6th 2006 (Pg 1, Brief for the appellee) and that the circuit court denied the motion, August 23rd 2006 (Page 1, Brief for the Appellee), and that Appellants Filed and Record Shows plainly, that Appellant was adjudged guilty and Sentenced on May 30th 2003 (See Exhibits "J" and "K" of Appellants Appeal Brief) *Issac v. State* 993 So 2d 688 (2001) .

So I, Scott Leavitt, Appellant Pro-Se, fails

to see how the Circuit Judge and the State of Mississippi Attorney Generals office can even allege that the 3 year time bar can be applied to this case.

It is an elemental fact that this time bar cannot be applied to this case. (MCA 99-39-5(21) Booker V. State 699 So2d 132 (Miss 1997)

Assistant Attorney McCrory alleges on page 2, Paragraph -1 of the appellee brief that nothing in the record documents that the judgement under attack was rendered on May 30th, 2003.

Petitioner appellant respectfully directs this courts attention to exhibit "J" of the appellants brief.

And Again Assistant Attorney General McCrory alleges on page 3, paragraph 2 of the appellee brief, "By failing to include documentation of the date of the judgement under attack, Leavitt (clearly has failed to sustain this burden." (Quotations mine)

And again, petitioner appellant respectfully directs this courts attention to the Sentencing order that is attached to the appellants brief as exhibit "J".

Appellant Leavitt is pro-se, appellant is not an attorney, nor does appellant have any funds to hire an attorney. Appellant respectfully

requests that this Honorable court will use its discretion and look to this inartfully drafted appeal, to the merits of this appeal. (MCA 99-39-3(4).) The Post Conviction Collateral Relief Motion, and the appeal has merit, Logan v. State, 771 So 2d. 970 (Miss 2000).

This legal work is new to petitioner appellant, the appellant has no experience in the law and is doing the best he can. Myers v State 583 So 2d. 174 (Miss 1991).

Conclusion

The Circuit Court of Marshall County erred when Judge Howorth dismissed Appellants Post Conviction as time-barred. The record is clear with the date of Judgement (Exhibit "J" of appellants brief) and the date the PCR was filed (Exhibit "K" of the appellants brief) The State of Mississippi over-looked these documents. Appellant is pro-se, and is doing the best he can do.

Appellant respectfully requests that the relief requested in his PCR, and the appeal, be granted by this Honorable Court.

Sincerely, Scott Leavitt LS916

Scott Leavitt, Pro-Se

(1A)

Certificate Of Service

I, Scott Leavitt, Appellant do hereby certify
that I have caused to be mailed, this day, postage
Pre-paid, a true and correct copy of the foregoing
Appellant Reply Brief to the following:

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This the 6th day of June, 2007

Scott Leavitt