

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

FILED

ANTHONY M. BERRYHILL

JUN 25 2007

APPELLANT

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

VS.

NO. 2007-CP-0243

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: LA DONNA C. HOLLAND
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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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ANTHONY M. BERRYHILL

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VS.

NO. 2007-CP-0243

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STATEMENT OF THE ISSUE

- I. BERRYHILL'S MOTION FOR POST-CONVICTION RELIEF WAS PROPERLY DISMISSED AS BOTH SUCCESSIVE WRIT-BARRED AND TIME-BARRED.**

PROCEDURAL HISTORY

On February 14, 1995, Anthony Mark Berryhill pled guilty to murder in the Alcorn County Circuit Court. C.P. 63-76. Berryhill twice moved for post-conviction relief in the trial court on November 20, 1997 and February 2, 2001. While the record is unclear as to whether Berryhill sought appellate review of the 1997 denial of relief, he did file a notice of appeal regarding the 2001 denial. However, Berryhill's appeal was ultimately dismissed for his failure to file an appellate brief. See attached exhibits.

On October 27, 2006, Berryhill filed a third motion for post-conviction relief in the trial court. C.P. 2-58. The petition was dismissed upon a finding that it was procedurally barred as a successive writ. Berryhill now appeals his third denial of post-conviction relief.

SUMMARY OF ARGUMENT

Berryhill's most recent motion for post-conviction relief was both successive writ-barred and time-barred. He neither argues nor meets any of the exceptions to the procedural bars. Accordingly, the trial court properly denied relief.

ARGUMENT

I. BERRYHILL'S MOTION FOR POST-CONVICTION RELIEF WAS PROPERLY DISMISSED AS BOTH SUCCESSIVE WRIT-BARRED AND TIME-BARRED.

Mississippi Code Annotated § 99-39-23 provides that “any order dismissing the prisoner’s motion or otherwise denying relief under this article is a final judgment and shall be conclusive until reversed. It shall be a bar to a second or successive motion under this article.” As stated above, the trial court had twice denied Berryhill post-conviction relief in 1997 and 2001, prior to his third filing in 2006. Because the 1997 order was never reversed, it was conclusive and stood as a procedural bar to the 2001 and 2006 motions. Further, Berryhill does not allege nor meet any of enumerated exceptions found in Mississippi Code Annotated § 99-39-23 (6).

Additionally, because Berryhill pled guilty in 1995, his most recent motion for post-conviction relief was also time-barred by Mississippi Code Annotated § 99-39-5(2). Accordingly, the trial court properly dismissed his motion for relief.

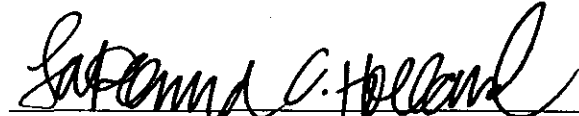
CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm the trial court's dismissal and denial of post-conviction relief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



LA DONNA C. HOLLAND

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



**MANDATE
SUPREME COURT OF MISSISSIPPI**

To the Lee County Circuit Court - GREETINGS:

In proceedings held in the Courtroom, Carroll Gartin Justice Building, in the City of Jackson, Mississippi, the Supreme Court of Mississippi entered a final judgment as follows:

**Supreme Court Case # 2001-CP-00398
Trial Court Case #97-147 (R)L**

Anthony M. Berryhill a/k/a Anthony Mark Berryhill a/k/a "MOP" v. State of Mississippi

Thursday, 26th day of July, 2001

Pursuant to M.R.A.P. 2(a)(2), this appeal is dismissed for failure to file the brief of appellant. Costs of appeal are taxed to Lee County.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

Michael C. Moore

2001-CP-00398

Wayne Snuggs
Assistant Attorney General
P O Box 220
Jackson, MS 392050220

2001-CP-00398

WITNESS, the Honorable Edwin Lloyd Pittman, Chief Justice of the Supreme Court of Mississippi; also the signature of the Clerk and the Seal of said Court hereunto affixed, in the City of Jackson, on August 16, 2001, A.D.

CLERK

2J 7/2

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Betty W. Sephton
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082
e-mail: sctclerk@mssc.state.ms.us

July 6, 2001

Re: Anthony M Berryhill v. State of Mississippi
2001-CP-00398
Lee County, Case# 97-147 (R)L

Pursuant to the Rule 2(a) (2), M.R.A.P., "The clerk of the Supreme Court shall give written notice to the party in default, apprising the party of the nature of the deficiency. If the party in default fails to correct the deficiency within 14 days after notification, the appeal shall be dismissed...."

The docket in this cause shows that the Appellant has substantially failed to prosecute this appeal as indicated below:

The Brief of Appellant has not been filed.

Accordingly, the Brief of the Appellant must be **received** fourteen (14) days from the date of this letter or the appeal shall be dismissed.


CLERK

Michael C. Moore

2001-CP-00398

Wayne Snuggs

2001-CP-00398

P O Box 220

Assistant Attorney General

Jackson, MS 392050220

fmb

D

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Betty W. Sephton
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082
e-mail: sctclerk@mssc.state.ms.us

July 26, 2001

Anthony M Berryhill a/k/a Anthony Mark Berryhill a/k/a " MOP"

v.

State of Mississippi

Case # 2001-CP-00398

NOTICE

Pursuant to M.R.A.P. 2(a)(2), this appeal is dismissed for failure to file the brief of appellant. Costs of appeal are taxed to Lee County.


CLERK

Michael C. Moore

2001-CP-00398

Wayne Snuggs

2001-CP-00398

Assistant Attorney General

P O Box 220

Jackson, MS 392050220

CERTIFICATE OF SERVICE

I, La Donna C. Holland, 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 Paul S. Funderburk
Circuit Court Judge
Post Office Drawer 1100
Tupelo, MS 38802-1100

Honorable John R. Young
District Attorney
Post Office Box 212
Corinth, MS 38834

Anthony Berryhill, 78551
SMCI-II
D-2, Bed 69
Post Office Box 1419
Leakesville, MS 39451

This the 25th day of June, 2007.


LA DONNA C. HOLLAND
SPECIAL ASSISTANT ATTORNEY GENERAL

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