

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

James Odell McLamb

Appellant

V.

**FILED**

No. 2007-CP-0496

AUG 01 2007

State of Mississippi

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

Appellee

REPLY BRIEF FOR THE APPELLANT

=====

COMES NOW, James Odell McLamb, [McLamb] pro se, appellant, and pursuant to MRAP Rule 28(a)(c)(1), and anyother rules of this Hon. Court, do submit his Reply Brief in response to the appellee's Brief, and would show concisely the following:

1.) Under argument #1, the State alleged three reasons why McLamb's appeal is not properly before the Court.

First, The prisoner notice of appeal was filed long after the expiration of the time allowed to file an appeal under Rule 4 MRAP.

McLamb submit, it would have been inconsistent under Rule 4 MRAP to file notice of appeal with a motion for reconsideration pending, which was filed after circuit judge order issued on November 15, 2006.

Second, the claim raised by the prisoner in his petition was barred by Miss. Code Ann. Section 99-39-21(1), (2), (3) (Supp.2006).

McLamb submit, under Lockett v. State, 582 So 2d 428(Miss. 1991) and Ivy v. State, 731 So. 2d 601(Miss. 1999) standard the procedural bar do not apply, also pursuant to U.S. v. White, 258 F. 3d 374 (5th Cir. 2001), an illegal sentence, defective indictment or expired sentence can be raised at anytime.

Thirdly, while it may be that the prisoner styled his motion as one in habeas corpus, the fact of the matter is that it was to be considered one in post-conviction relief.

McLamb submit, that he filed a State Writ of Habeas Corpus, see "Black's Law Dictionary" definition:

Habeas Corpus, "that you have the body". A writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal.

Accordingly to the above definition, a writ is issued to compel the holding party to bring the confined prisoner before the court to be heard expeditedly. See Miss. Code Ann. Section 11-43-9(2006):

Application for a writ of habeas corpus shall be by petition, in writing, sworn to by the person for whose relief it is intended, or by someone in his behalf, describing where and by whom he is deprived of liberty, and the facts and circumstances of the restraint, with the ground relied on for relief;

**and the application shall be made to the judge or chancellor of the district in which the relator is imprisoned, unless good cause be shown in the petition to the contrary. See:**

Moore v. Miss. Dept. of Corr. -- So. 2d -- (Miss. Ct. App. Nov. 29, 2005) at [P15], the Mississippi Court of Appeals held:

Also, under Mississippi Code Annotated Section 11-43-9(Rev. 2002), a petition for writ of habeas corpus **should be filed in the county where the inmate is detained.**

Ally

2.) McLamb filed in the proper circuit court of Rankin County on the grounds of URCCCP adopted and effective May 1, 1995, Rule 2.07 which gives the circuit court venue as stated under Rule 2.07. The writ of habeas corpus "shall" extend to all case of **illegal confinement** by which any person is deprived of his liberty or by which a rightful custody of the person is withheld from the person entitled thereof.

McLamb claim his sentence has expired, the motion for habeas corpus shall be filed with the clerk of the circuit court appellant detained. Therefore this circuit court of Rankin County Mississippi were the proper court and correct venue. That this circuit court denied appellant due process right by refusing to hear appellant's motion for resideration of that court order so ordered and adjudged this the 15th day of November, 2006, without authority of the legislature, accordly also to Senator Bennie turner, see attachment.

===== CONCLUSION =====

McLamb submit to this Honorable Court that the State through it's appellee's brief is trying to "red-herring" this Court as to the real issue...whether McLamb is the victim of an illegal and expired sentence, as pursuant to the "ex post facto" law.

McLamb do pray that this Honorable Court would execute sole jurisdiction, remand back to the circuit court for the correction of sentence.

===== CERTIFICATE OF SERVICE =====

This is to certify that I had mailed a copy of the above by U.S. Mail, prepaid postage to the following:

Jim Hood, State Attorney General  
P.O. Box 220  
Jackson, Ms. 39205

Betty W. Sephton, Clerk  
P.O. Box 249  
Jackson, Ms. 39205

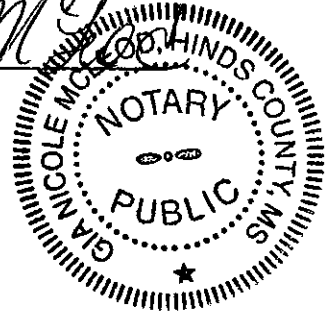
Respectfully Submitted,

*Jan M. Leach*

Subscribed and sworn before me this 1 day of August 2007

*Gina Nicole McLeod*  
Notary Public

MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES SEPT. 28, 2007  
BONDED THRU STEGALL NOTARY SERVICE





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### SENATOR BENNIE TURNER

16th District  
Clay-Lowndes-Noxubee-Oktibbeha Counties  
P.O. Drawer 1500, West Point, MS 39773  
601-494-6611

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February 15, 2007

Mr. Abudul Jamil Muhammed  
James Odell McLamb  
CMCF 3B1, Bed#5  
P.O. Box 88550  
Pearl, MS 39288

Dear Mr. McLamb:

I am in receipt of your question concerning the meaning of an effective date clause for a bill that was enacted in the year 1976 but not effective until January 1, 1977.

Your understanding of statutory construction is exactly what it says, that the statute, or the particular amendments to that statute, did not become law until January 1, 1977.

I hope that this information is of assistance to you.

Sincerely,

A handwritten signature in black ink, appearing to read "B. L. Turner", with a long horizontal flourish extending to the right.

Bennie L. Turner

/bt

*Attachment*