

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

HENRY BEAUREGARD JORDAN

APPELLANT

VS.

NO. 2007-CP-0757-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF ISSUES

- I. THE TRIAL COURT CORRECTLY DISMISSED JORDAN'S MOTION FOR POST-CONVICTION RELIEF AS TIME-BARRED.**

STATEMENT OF FACTS

On June 2, 2003, Henry Beauregard Jordan pled guilty to transfer of a controlled substance. C.P. 23. He was sentenced to serve a term of seven years in the Mississippi Department of Corrections. C.P. 24. On January 12, 2007, Jordan filed in the trial court a motion for post-conviction relief. C.P. 4. The trial court dismissed the motion, finding that it was time-barred and met no statutory exception. C.P. 25.

SUMMARY OF ARGUMENT

Jordan's motion for post-conviction relief was filed more than three years from the entry of the judgment of conviction and was properly dismissed as time barred. Further, Jordan does not meet any exception to the time-bar.

ARGUMENT

I. THE TRIAL COURT CORRECTLY DISMISSED JORDAN'S MOTION FOR POST-CONVICTION RELIEF AS TIME-BARRED.

A defendant who has pled guilty has three years from the entry of the judgment of conviction to file a petition for post-conviction relief. Miss. Code Ann. 99-39-5(2). Jordan's judgment of conviction was entered on June 2, 2003. C.P. 23-24. His motion for post-conviction relief was filed more than seven months past the deadline, on January, 12, 2007. C.P. 4. Jordan does not argue, nor does he meet, any of the statutory exceptions to the time-bar found in Mississippi Code Annotated 99-39-5(2). As such, the trial court properly dismissed Jordan's motion for post-conviction relief.

Although not mentioned in Jordan's motion for post-conviction relief, the trial court's order references the fact that Jordan filed a motion to reconsider on July 2, 2003 and another motion to reconsider at a later, unspecified date, as well as a motion to modify sentence on March 22, 2004. C.P. The court's order denying relief also states that the trial court had never ruled on those motions, as they were never set on the court's docket. C.P. 25. For the sake of thoroughness, the State will briefly show that those motions are procedurally dead and have no bearing on Jordan's time-barred motion for post-conviction relief.

A criminal defendant who wishes to file a motion for reconsideration must do so within ten days of the entry of the judgment of conviction. *Sheffield v. State*, 881 So.2d 249, 256 (¶30) (Miss. Ct. App. 2003); *Rogers v. State*, 829 So.2d 1287, 1288 (¶4) (Miss. Ct. App. 2002). Although the trial court never ruled on Jordan's motions for reconsideration, they were clearly filed beyond the ten day deadline, and the only possible outcome would have been to dismiss the motions as untimely filed.

As to Jordan's motion to modify sentence, a circuit court has no authority to modify a

CERTIFICATE OF SERVICE

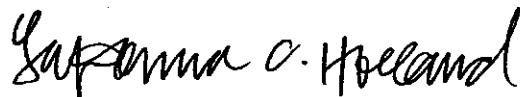
I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Jerry O. Terry, Sr.
Circuit Court Judge
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Honorable Cono Caranna
District Attorney
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This the 25th day of September, 2007.



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