

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DR. BRYCE DALLAS

FILED

APPELLANT

FEB 12 2008

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

VS.

NO. 2007-CP-1339

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

BRYCE DALLAS

APPELLANT

VERSUS

NO. 2007-CP-1339-COA

STATE OF MISSISSIPPI

APPELLEE

**MOTION TO DISMISS APPEAL, OR IN THE ALTERNATIVE,
BRIEF FOR APPELLEE**

STATEMENT OF THE CASE

Bryce Dallas has attempted to appeal a judgment of the Circuit Court of Copiah County which dismissed his Petition for Relief.

SUMMARY OF THE ARGUMENT

This purported appeal should be dismissed for lack of jurisdiction.

PROPOSITION:

**BECAUSE THE CIRCUIT COURT LACKED JURISDICTION TO
CONSIDER DALLAS'S PETITION, THIS PUTATIVE
APPEAL SHOULD BE DISMISSED**

The circuit court's order dismissing Dallas's motion is set out below:

THIS MATTER is before the Court on the Petitioner, Bryce Dallas', Petition for Relief, which was filed with the Circuit Clerk of this Court on June 1, 2007. This Court having thoroughly reviewed the Petitioner's pending Petition, does hereby find that the Petitioner herein as a Defendant in the above styled matter, pled guilty on or about April 30, 1992, to

Burglary of a Dwelling, that being Count 2 of the indictment therein, and on that date sentenced by this Court to serve Eight (8) years in the custody of the Mississippi Department of Corrections, and that Counts 1, 3, 4, 5, and 6 of said indictment were dismissed, all with regard to the above styled matter.

This Court further finds that the Petitioner herein filed for post conviction relief in this Court through his Motion to Vacate Guilty Plea, and on June 21, 1003, this Court, through its Order, denied said Motion. Therein, the Petitioner herein appealed that final judgment dated June 21, 1993, to the Mississippi Supreme Court in **Cause Number 93-KP-00880-SCT, Bryce Dallas vs. State of Mississippi**, and on the date of August 15, 1996, that Court issued its Mandate affirming this Court's denial of the Petitioner's Motion for post-conviction relief.

This Court further finds that upon a review of this court's file, that the Petitioner herein has not asked leave of this Mississippi Supreme Court to proceed in this Court, and as such, the Petitioner's Petition for Relief is not properly before this Court; therefore, this Court is without jurisdiction to proceed on the pending Petition, and as such said Petition should be dismissed by this Court, without prejudice.

IT IS, THEREFORE, ORDERED that the Petitioner, Bryce Dallas', Petition for Relief, filed with the Clerk of this Court on June 1, 2007, is hereby dismissed, without prejudice, as this Court is without jurisdiction to proceed in this matter.

(C.P.4)

Dallas does not contest the circuit court's finding the Mississippi Supreme Court was the last court to exercise jurisdiction over this case. It follows that no error has been shown in the circuit court's conclusion that it lacked jurisdiction to proceed in this matter. MISS.CODE ANN § 99-39-7 (1972), (as amended), cited in *Perry v. State*, 759 So.2d 1269, 1270 (Miss. App. 2000). Because Dallas had failed to obtain leave to proceed in the circuit court, this latest petition was properly dismissed for want of jurisdiction. Dallas's pleading was a nullity, and his attempt to appeal the dismissal of his petition is a nullity.

CERTIFICATE OF SERVICE

I, Deirdre McCrory, 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 Lamar Pickard
Circuit Court Judge
P. O. Box 310
Hazlehurst, MS 39083

Honorable Alexander C. Martin
District Attorney
P. O. Drawer 767
Hazlehurst, MS 39083

Dr. Bryce Dallas
1361 Riley Creek Road
Whitleyville, TN 38588

This the 12th day of February, 2008.



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