

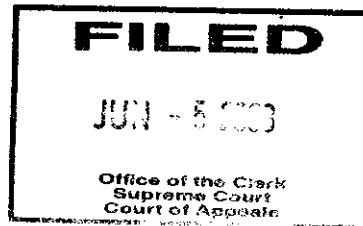
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**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**CARLOS F. JACKSON**

**APPELLANT**

**VS.**



**NO. 2007-CP-1470**

**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**

**CARLOS F. JACKSON**

**APPELLANT**

**VERSUS**

**NO. 2007-CP-1470-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR APPELLEE**

**STATEMENT OF THE CASE**

On October 12, 2001, Carlos F. Jackson pleaded guilty in the Circuit Court of Pearl River County to one count of murder and one count of aggravated assault. On October 19, 2001, the court entered its order of conviction, sentencing Jackson to a term of life imprisonment on the murder conviction and to a term of 20 years in the custody of the Mississippi Department of Corrections with ten years suspended on the conviction of aggravated assault. The court also entered an order of *nolle prosequi* with respect to Counts III, IV and V of the indictment. (C.P.26-29)

More than five years later, on August 9, 2007, Jackson filed in the circuit court a Motion for Post Conviction Relief. (C.P.2) Finding that this motion was barred by the applicable statute of limitations, the circuit court summarily dismissed it. (C.P.62-63)

Aggrieved by the judgment rendered against him, Jackson has perfected an appeal to this Court.

### **SUMMARY OF THE ARGUMENT**

There is no error in the circuit court's determination that Jackson's motion for post-conviction relief was barred by the applicable statute of limitations. Accordingly, the court properly dismissed the motion without a hearing.

### **PROPOSITION:**

#### **THE CIRCUIT COURT PROPERLY DISMISSED JACKSON'S TIME-BARRED MOTION FOR POST-CONVICTION RELIEF**

The circuit court dismissed Jackson's motion with a finding set out in pertinent part below:

In short, Miss. Code Ann. § 99-39-5(2) reads as follows concerning timeliness of filing, "in case of a guilty plea, within three years after entry of the judgment of conviction." See *also Steen v. State*, 748 So.2d 156 (Miss.1999). Here the record reflects, that the petitioner pled guilty on October 12, 2001, and that the order of conviction was entered by this Court on October 19, 2001. Therefore, it is clear that petitioner's motion is time-barred.

Furthermore, petitioner's motion fails to raise any arguments which would allow for filing outside the three-year window, such as an intervening Supreme Court decision or new evidence not available at trial, or at the time of the plea. Finally, petitioner's separate judgment argument is without merit

(C.P.62)

This order is not subject to reversal "absent a finding" that it "was clearly erroneous." *Taylor v. State*, 766 So.2d 830, 832 (Miss. App. 2000), citing *Kirksey v. State*, 728 So.2d 565, 567 (Miss.1999). Accord, *Black v. State*, 963 So.2d 47, 48 (Miss. App. 2007).

The state submits this finding clearly was correct. Attempting to attack a judgment entered in 2001, the motion at issue here, filed more than five years and nine months later, plainly was barred by the three-year statute of limitations.

"In a petition for post-conviction relief, the petitioner carries the burden of proving that his claim is not procedurally barred." *Massey v. State*, 843 So.2d 74 (Miss. App. 2003). Accord, *Powers v. State*, 945 So.2d 386, 395 (Miss. 2006). No error has been shown in the court's determination that Jackson failed to sustain this burden.

Summary dismissal was the proper disposition of this time-barred and successive motion. The judgment entered below should be affirmed.

#### **CONCLUSION**

The state respectfully submits the circuit court properly dismissed Jackson's motion without a hearing. The judgment entered below should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL  
STATE OF MISSISSIPPI**

  
BY: DEIRDRE McCRORY  
SPECIAL ASSISTANT ATTORNEY GENERAL

## **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 R. I. Prichard, III  
Circuit Court Judge  
P. O. Box 1075  
Picayune, MS 39466

Honorable Haldon J. Kittrell  
District Attorney  
500 Courthouse Square, Suite 3  
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Carlos Jackson, #K8610  
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This the 5th day of June, 2008.

  
\_\_\_\_\_  
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