

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

COPY

RODNEY FIELDER

APPELLANT

VS.

NO. 2007-CP-1614

STATE OF MISSISSIPPI

FILED
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SUPREME COURT
COURT OF APPEALS

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. The Trial Court correctly denied Fielder's Motion for Immediate Release from the Department of Corrections, wherein, Fielder claimed that the transcript of his plea hearing was newly discovered evidence which entitled Fielder to post conviction relief.
- II. Fielder's guilty plea was not in violation of Uniform Circuit and County Court Rule 8.04 or Rule 11 of the Federal Rules of Civil Procedure and the Trial Court did not err in accepting Fielder's plea or in denying Fielder's Motion for Immediate Release from the Department of Corrections.
- III. Fielder's assertion that his attorney's representation of his co-defendants constituted a conflict of interest and was therefore ineffective assistance of counsel is without merit and the Trial Court correctly denied Fielder's Motion for Immediate Release from the Department of Corrections.
- IV. The Trial Court did not err in denying Fielder's motion for post conviction relief in the form of a Motion for Immediate Release from the Department of Corrections.

STATEMENT OF THE CASE

A Scott County Grand Jury indicted Rodney Fielder, along with his co-defendants, Anthony Nicholson and Kenneth Jerome Johnson, as follows:

On or about the 8th day of August in the year of our Lord, 2002, in the County and state aforesaid, within the jurisdiction of the court, did willfully, unlawfully and feloniously take from the presence of Bonnie Grant, against the will of said Bonnie Grant, by putting said Bonnie Grant in fear of immediate injury to her person by the exhibition of deadly weapon, namely a pistol, cash money in the form of currency in excess of ten (\$10.00) dollars, good and lawful money of the United States of America. . . . belonging to and being the personal property of Fisherman's Corner, contrary to and in violation of Section 97037-9, Mississippi Code Annotated, 1972. . . .

At a hearing held February 11, 2003, the defendants asked to be rearraigned, waive reading of the indictment and enter a plea of guilty. The Trial Court denied the request to waive the reading of the indictment and the defendants were rearraigned and the indictment was read. Each defendant, including Anthony Fielder, pled guilty. Fielder told the Trial Court that he was 17 and had an eighth grade education. He testified that he was not under the influence of drugs or alcohol and that he had not been threatened or intimidated to cause him to plead guilty. He testified that he had not been promised anything to plead guilty and that his lawyer did not tell him to plead guilty. Fielder testified that he made the decision to plead guilty himself and that no one influenced his decision. Fielder testified that he understood that by pleading guilty he was waiving his right against self incrimination and that he must answer the Court's questions regarding the case. Fielder told the Court that he was satisfied with his lawyers and that he did not have any complaints about the way they represented him.

Attorney Brooks stated that he explained that the defendants were charged with armed robbery and that the minimum penalty was 0 years and the maximum could be life. The judge

could sentence him to anything less than his life expectancy. He also explained that the fine was anywhere from 0 to ten thousand dollars. Fielder testified that Attorney Brooks explained to him the penalty for the crime.

Fielder testified that he understood that he was waiving the right to trial by jury. And that in a trial the State would have the burden of proving him guilty beyond a reasonable doubt.

Fielder testified that he was guilty of the crime of, along with the other two defendants, taking cash money from the presence of Bonnie Grant by putting her in fear of injury by a deadly weapon and taking the personal property of Fisherman's Corner. Fielder testified that he was pleading guilty because he was guilty. Fielder testified that he had been in youth court on a previous occasion for the offense of accessory to stealing some bikes.

The Trial Court sentenced Fielder to serve 15 years in the custody of the Mississippi Department of Corrections.

On or about February 9, 2006, Fielder filed a Motion for Post Conviction Relief alleging improper indictment, ineffective assistance of counsel and involuntary plea. (C.P. 1-5) In his motion, Fielder stated that "there are no facts of this case which are not within his personal knowledge and that the claims are provable on the record and as a matter of law." (C.P. 4) Fielder did not attach any witness affidavits or copies of records or documents and did not make any statements to show good cause as to why any affidavits, records or documents could not be obtained. (C.P. 4)

On or about April 28, 2006, the Trial Judge entered his Order dismissing Petition for Post-Conviction Relief, holding specifically:

On this day came the motion of Petitioner, Rodney Fielder,

who prays for relief under the Mississippi Uniform Post-Conviction Collateral Relief Act, Miss. Code. Ann. § 99-39-1 *et seq.* In his Motion for Post-Conviction Collateral Relief, the Petitioner alleges that his plea was made involuntarily, improper indictment and ineffective assistance of counsel. On February 11, 2003, during the Petitioner's guilty colloquy, the Petitioner affirmed, in open court, that his guilty plea was voluntary thereby belying any assertion of involuntariness. In addition, the Petitioner has failed to demonstrate any deficiencies on the part of the defense counsel which resulted in prejudice to the Petitioner. Furthermore, the Petitioner has failed to substantiate the manner in which his indictment could be rendered (sic) improper. Therefore, the Court finds that the Petitioner is not entitled to any relief and his Motion should be denied and dismissed without the necessity of an evidentiary hearing.

Fielder appeals from his April 26, 2007, Motion for Immediate Release from the Department of Corrections, which the Trial Court properly treated as a Motion for Post Conviction Relief pursuant to Mississippi Code Annotated § 99-39-1, *et seq.* Said motion is time barred since it was filed more than three years from the entry of judgment of conviction and sentence imposed on February 11, 2003. It is further barred as a successive writ, since Fielder filed his first Motion for Post-Conviction Collateral Relief on February 9, 2006.

SUMMARY OF THE ARGUMENT

Fielder's Motion is barred as a successive writ and is time barred since Fielder appeals from his April 26, 2007, Motion for Immediate Release from the Department of Corrections. The Trial Court properly treated the pleading as a Motion for Post Conviction Relief pursuant to Mississippi Code Annotated § 99-39-1, et seq. Said motion is time barred since it was filed more than three years from the entry of judgment of conviction and sentence imposed on February 11, 2003. It is barred as a successive writ, since Fielder filed his first Motion for Post-Conviction Collateral Relief on February 9, 2006.

To the extent that Fielder argues in the instant appeal that his constitutional rights have been violated, it has been held that constitutional rights can be subject to a time bar. In *Cole v. State*, 608 So.2d 1313, 1319 (Miss.1992), the court stated, "It is a well-settled principle that a state may attach reasonable time limits to the assertion of federal constitutional rights" (citations omitted). These assignments of error are without merit.

The Trial Court correctly denied Fielder's claim that the transcript of his plea hearing was newly discovered evidence which entitled Fielder to post conviction relief. Fielder's guilty plea was not in violation of Uniform Circuit and County Court Rule 8.04 or Rule 11 of the Federal Rules of Civil Procedure and the Trial Court did not err in accepting Fielder's plea. Fielder's assertion that his attorney's representation of his co-defendants constituted a conflict of interest and was therefore ineffective assistance of counsel is without merit and the Trial Court correctly denied Fielder's Motion for Post Conviction Relief. The Trial Court did not err in denying Fielder's motion for post conviction relief.

ARGUMENT

I. The Trial Court correctly denied Fielder's claim that the transcript of his plea hearing was newly discovered evidence which entitled Fielder to post conviction relief.

Fielder appeals from his April 26, 2007, Motion for Immediate Release from the Department of Corrections, which the Trial Court properly treated as a Motion for Post Conviction Relief pursuant to Mississippi Code Annotated § 99-39-1, et seq. Said motion is time barred since it was filed more than three years from the entry of judgment of conviction and sentence imposed on February 11, 2003. It is further barred as a successive writ, since Fielder filed his first Motion for Post-Conviction Collateral Relief on February 9, 2006.

To the extent that Fielder argues in the instant appeal that his constitutional rights have been violated, it has been held that constitutional rights can be subject to a time bar. In *Cole v. State*, 608 So.2d 1313, 1319 (Miss.1992), the court stated, "It is a well-settled principle that a state may attach reasonable time limits to the assertion of federal constitutional rights" (citations omitted). These assignments of error are without merit.

Fielder pled guilty to armed robbery and entry of judgment of conviction and sentence was imposed on February 11, 2003. Fielder filed a Motion for Post-Conviction Collateral Relief on February 9, 2006, which was subsequently denied by the Trial Court on or about April 28, 2006. (C.P. 1, 10) The Trial Court clearly referenced the plea hearing in its order denying relief. (C.P. 10) On December 27, 2006, Fielder filed a Motion for Guilty Plea Hearing Transcript pursuant to Mississippi Code Annotated § 99-39-1, Post Conviction Relief Proceedings, in which Fielder moved for permission to file an out-of-time appeal before the Mississippi Supreme Court or a Rule 60(b) Motion based on newly discovered evidence before the Trial Court. On or about

April 26, 2007, Fielder filed a Motion for Immediate Release from the Department of Corrections and attached the affidavit of co-defendant Anthony Nicholson as “newly discovered evidence.” In the instant appeal, Fielder also argues that the plea hearing transcript is “newly discovered evidence.”

By definition, a plea of guilty negates any notion that there is some undiscovered evidence which could prove a defendant’s innocence. *Jones v. State*, 915 So.2d 511514 (Miss. Ct. App.2005). Both Nicholson and Fielder are presumed to have told the truth in the plea hearing conducted by the trial court. This is simply another case of the story changing drastically from the version told to the trial court judge under oath during the original plea hearing. The bottom line here is that, at one time or the other Fielder was obviously lying. Under oath, Fielder testified that he was guilty of this crime. This new version claiming that Anthony Nicholson committed the robbery without the knowledge of Fielder and Johnson was not convincing to the trial judge who had considered the pleas of both men under oath. Trial judges are entitled to place great weight upon a defendant's initial plea under oath. Here, the trial court who originally accepted Fielder’s and Nicholson’s pleas, apparently placed great weight upon their truthfulness at that time, but from the entire record before him on PCR, obviously did not find this new version to be worthy of belief.

Where the record and Fielder's prior sworn testimony on their very face belie his claim, an evidentiary hearing is not required. *Harris v. State*, 578 So.2d 617, 620 (Miss.1991). This Court in *King v. State*, 679 So.2d 208, 211 (Miss.1996), highlighted the importance of prior sworn testimony taken during guilty pleas by stating, “We must also take note of the emphasis which trial judges may place upon a defendant's prior representations under oath during guilty

pleas .”

In *Mowdy v. State*, 638 So.2d 738 (Miss.1994), the Mississippi Supreme Court held that:

There should be a strong presumption of validity of anyone's statement under oath. However, we are now faced with one statement or the other not being the truth.... “Where the petitioner's version is belied by previous sworn testimony, for example, as to render his affidavit a sham we will allow summary judgment to stand.”

Mowdy, 638 So.2d at 743 (quoting *Harris v. State*, 578 So.2d 617, 620 (Miss.1991)).

Furthermore, in *Smith v. State*, 636 So.2d 1220, 1224 (Miss.1994), the Mississippi

Supreme Court held:

In contrast, Smith's current contentions and credibility are certainly suspect. When we compare his previous sworn testimony during his guilty plea with his current affidavit, the latter is practically rendered a “sham,” thus allowing the summary dismissal of the petition to stand. See *Harris v. State*, 578 So.2d 617, 620 (Miss.1991). At one time or the other Smith has obviously committed perjury, which may warrant appropriate actions by a grand jury. See *Sanders v. State*, 440 So.2d 278, 289 (Miss.1983)

Smith, 636 So.2d at 1224.

The trial judge here, as in the foregoing cases, was correct in his judgment in refusing to vacate Fielder's plea and sentence. Based upon the entirety of the record before him, the trial court was entitled to place a strong presumption of validity upon Fielder's prior admission under oath where he pled guilty. Fielder's claim now amounts to a mere “sham”. There is no merit to any of Fielder's claims and the instant appeal should be dismissed.

II. Fielder's guilty plea was not in violation of Uniform Circuit and County Court Rule 8.04 or Rule 11 of the Federal Rules of Civil Procedure and the Trial Court did not err in accepting Fielder's plea.

As noted earlier, Fielder's appeal is time barred since the underlying Motion for Post Conviction Relief was filed more than three years from the entry of judgment of conviction and sentence imposed on February 11, 2003. It is further barred as a successive writ, since Fielder filed his first Motion for Post-Conviction Collateral Relief on February 9, 2006.

To the extent that Fielder argues in the instant appeal that his constitutional rights have been violated, it has been held that constitutional rights can be subject to a time bar. In *Cole v. State*, 608 So.2d 1313, 1319 (Miss.1992), the court stated, "It is a well-settled principle that a state may attach reasonable time limits to the assertion of federal constitutional rights" (citations omitted). These assignments of error are without merit.

Fielder argues on appeal that the entry of his guilty plea violates Rule 8.04 of the Uniform Circuit and County Court Rules. However, the plea colloquy clearly shows that the court questioned Fielder about the voluntariness of the plea. The indictment was read, and the trial court questioned Fielder as to whether he was guilty of the crime stated in the indictment. The Trial Court further questioned Fielder as to whether he understood the maximum and minimum penalties and the nature and consequences of the plea. The trial court questioned Fielder about the quality of his counsel's representation and whether he was satisfied with that representation. The trial court questioned Fielder about the waiver of right to trial by jury. Through all of these questions, the Trial Court sought separate answers from each of the three defendants and the record is clear that Fielder understood the charge against him and clearly pled guilty to that charge. The record is further clear that Fielder was advised of the minimum and maximum penalties and that he understood those penalties. The record is clear that Fielder was advised of the rights he was waiving by pleading guilty and that he understood those rights. The record

clearly shows that Fielder made a knowing and voluntary guilty plea.

Again, this issue is barred as a successive writ and is time barred. There is no violation of Rule 8.04 of the Uniform County and Circuit Court Rules. Further, while a Motion for Post-Conviction Relief is a quasi-civil action, Rule 11 of the Mississippi Rules of Civil Procedure has no applicability. This assignment of error is without merit and should be dismissed and the ruling of the trial court should be affirmed.

III. Fielder's assertion that his attorney's representation of his co-defendants constituted a conflict of interest and was therefore ineffective assistance of counsel is without merit and the Trial Court correctly denied Fielder's Motion for Post Conviction Relief.

As previously noted, Fielder's appeal is barred since the underlying motion was filed more than three years from the entry of judgment of conviction and sentence imposed on February 11, 2003. It is further barred as a successive writ, since Fielder filed his first Motion for Post-Conviction Collateral Relief on February 9, 2006.

To the extent that Fielder argues in the instant appeal that his constitutional rights have been violated, it has been held that constitutional rights can be subject to a time bar. In *Cole v. State*, 608 So.2d 1313, 1319 (Miss.1992), the court stated, "It is a well-settled principle that a state may attach reasonable time limits to the assertion of federal constitutional rights" (citations omitted). These assignments of error are without merit.

Fielder argues that his attorney had a conflict of interest in representing the three co-defendants and that this adversely affected his performance as Fielder's attorney.

This Court readily recognizes the rule that effective assistance of counsel encompasses the right to representation by an attorney who does not owe conflicting duties to other defendants as set forth in *Glasser v. U.S.*, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942).

However, the Court has repeatedly held that joint representation of co-defendants is not *per se* violative of the Sixth Amendment right to effective assistance of counsel. *Holloway v. Arkansas*, 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426, (1978); *Beran v. U.S.*, 580 F.2d 324 (8th Cir.1978); *U.S. v. Lawriw*, 568 F.2d 98 (8th Cir.1977).

In *Cuyler v. Sullivan*, 446 U.S. 335, 350, 100 S.Ct. 1708, 1719, 64 L.Ed.2d 333, 348 (1980), the court stated:

We hold that the possibility of conflict is insufficient to impugn a criminal conviction. In order to demonstrate a violation of his Sixth Amendment rights, a defendant must establish that an actual conflict of interest adversely affected his lawyer's performance.

The Court in *Irving v. Hargett*, 518 F.Supp. 1127 (N.D.Miss.1981), set forth the necessary determination of whether counsel in fact, slighted the defense of one defendant for that of another in order to establish a conflict. It has been firmly established that a potential for conflict or hypothetical or speculative conflicts will not suffice for reversal. The conflict must be actual. *U.S. v. Alvarez*, 580 F.2d 1251 (5th Cir.1978); *Cuyler*, supra. Therefore, we need not consider speculative possibilities of conflicts in attempts to plea bargain or use other possible defenses that were not raised at trial.

The petitioner in this case was tried first and all three defendants testified for the defense. Each defendant had similar interests and each consistently asserted the theory of alibi as a defense. Petitioner failed to show any instance where any of the three were in any adversarial or conflicting position during or as a result of the joint representation during either the guilt or sentencing phase of the trial.

In *Thomas v. State*, 472 So.2d 428 (Miss.1985), petitioners argued that their guilty pleas should be set aside because of a conflict of interest which existed because they were both represented by the same attorney. This Court held that since both appellants insisted on sticking together and entering the same plea, there was no actual conflict of interest.

It is the opinion of this Court that the petitioner in this case has also failed to show any actual conflict of interest or prejudice as a

result of the joint representation of multiple defendants.

This Court has carefully considered each of the petitioner's claims for relief and finds that all issues raised on direct appeal have been addressed and final determination made. Each of petitioner's claims were raised on direct appeal or they were not appealed at all, or were not raised at the trial level, rendering them procedurally barred or res judicata and are not subject to further review. *Dufour v. State*, 483 So.2d 307 (Miss.1985); *Tokman v. State*, 475 So.2d 457 (Miss.1985); *Leatherwood v. State*, 473 So.2d 964 (Miss.1985). We further find that the claims brought forth in this petition are without merit. Therefore, petitioner's Motion to Vacate or Set Aside Judgment and Sentence is denied.

Stringer v. State, 485 So.2d 274 (Miss. 1986).

It is well-settled that joint representation is not *per se* violative of the constitution guarantees of effective assistance of counsel; however, prejudice is presumed if the defendant demonstrates that counsel actively represented conflicting interests and than an actual conflict of interest adversely affected his lawyer's performance. The Mississippi State Supreme Court adopted this standard in *Stringer* and elaborating further, held that this presumption is insufficient to impugn a criminal conviction. To demonstrate a violation of his sixth amendment rights, a defendant must establish and an actual conflict of interest adversely affected his lawyer's performance. *Blansett v. State*, 841 So.2d 165 (Miss. Ct. App. 2002). Not only is there nothing in the record to demonstrate such a conflict of interest, at the plea hearing, Fielder himself testified that the plea hearing that he was satisfied with his lawyer's representation.

Additionally, the United States Supreme Court has held that "trial courts may assume either that multiple representation entails no conflict or that the lawyer and his client knowingly accept such risk of conflict as may exist Unless the trial court knows or reasonably should know that a particular conflict exists, the court need not initiate an inquiry." *Cuyler v. Sullivan*,

But, what about no unity of interest?
What about D. J. Nulken
who said he told M. J. Nulken
to take plea?
M. J. Nulken

446 U.S. 335, 346, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980).

This issue is without merit and the trial court correctly dismissed Fielder's Motion for Post Conviction Relief.

IV. The Trial Court did not err in denying Fielder's motion for post conviction relief.

Fielder argues that the trial court failed to consider the merits of Fielder's Rule 60 (b) Motion resulting in a fundamental miscarriage of justice. However, as noted earlier, Fielder's Motion is barred as a successive writ and is time barred since Fielder appeals from his April 26, 2007, Motion for Immediate Release from the Department of Corrections. The Trial Court properly treated the pleading as a Motion for Post Conviction Relief pursuant to Mississippi Code Annotated § 99-39-1, et seq. Said motion is time barred since it was filed more than three years from the entry of judgment of conviction and sentence imposed on February 11, 2003. It is barred as a successive writ, since Fielder filed his first Motion for Post-Conviction Collateral Relief on February 9, 2006.

To the extent that Fielder argues in the instant appeal that his constitutional rights have been violated, it has been held that constitutional rights can be subject to a time bar. In *Cole v. State*, 608 So.2d 1313, 1319 (Miss.1992), the court stated, "It is a well-settled principle that a state may attach reasonable time limits to the assertion of federal constitutional rights" (citations omitted). These assignments of error are without merit.

Fielder argues that the Rule 60(b) Motion was a Motion to be relieved of the Judgment of the Court denying his initial Post Conviction Relief Motion. This argument fails, since Fielder's proper relief from the denial of his initial Post Conviction Relief Motion, entered on or about May 1, 2006, was a timely appeal to the Mississippi Supreme Court. Fielder did not file his

appeal until August 17, 2007. The Rule 60(b) Motion was properly treated by the Trial Court as a Motion for Post-Conviction Collateral Relief. While the Trial Court did address it on the merits, the Motion was time-barred and barred as a successive writ.

In addressing merits of the Motion, the Trial Court held that:

[A] motion containing material facts, not readily obtainable during trial, is a ground enumerated within the Post Conviction Relief Act for relief; however, this Court is not persuaded that there is any relevant information concerning the trial of the Petitioner. The affidavits attached to Petitioner's Motion clearly state that the Petitioner knew about the crime for which he was incarcerated before the crime was committed thereby rejecting his claim that he was wrongly incarcerated for a crime committed by someone else.

Finally, the Petitioner pled guilty to the crime and acknowledged that his plea was voluntarily forthcoming, and that he understood his plea bargain. He further testified under oath about his involvement in the crime. For these reasons, the Post-Conviction Relief Act offers the Petitioner no relief in this instance. Therefore, Petitioner's Motion for Post-Conviction Relief should be denied.

C.P. 100.

Fielder alleges that he was unable to get his plea transcript in time to file his Post Conviction Relief Motion. However, There is nothing beyond his allegation to show that he made the appropriate efforts to acquire the transcript in a timely manner. Further, the language of the orders entered by the Trial Court reflect that the Trial Court clearly reviewed the transcript prior to ruling on both of Fielder's Motions. Thus, even if he did not receive the transcript after a timely and appropriate effort to obtain it, there was no prejudice to either of his Motions since the Court references the transcript in the orders denying both Motions. Further, there is nothing in the transcript to help Fielder with his claim that his is actually innocent of the crime to which he

pled guilty, since the transcript contains his sworn testimony that he understood the charge, was freely and voluntarily entering his plea of guilty, understood that he was waiving his right to a jury trial, that he was satisfied with the representation he received and, most importantly, that he did indeed commit the crime with which he was charged

“[A] criminal defendant who has entered a guilty plea cannot litigate his actual guilt on appeal from a denial of post-conviction relief , unless the defendant can show that the guilty plea was not knowingly, voluntarily, or intelligently entered.” *Jones v. State*, 948 So.2d 499, 505(¶ 17) (Miss.Ct.App.2007) (citing *Graham v. State*, 914 So.2d 1256, 1259 (Miss.Ct.App.2005)). “In reviewing a defendant's claim that his guilty plea was not entered knowingly and voluntarily, [an appellate court] must determine if the trial court's finding was clearly erroneous.” *Hall v. State*, 906 So.2d 34, 36 (Miss.Ct.App.2004) (citing *Swindoll v. State*, 859 So.2d 1063, 1065 (Miss.Ct.App.2003)).

In the plea hearing, Fielder admitted his guilt in the armed robbery of Bonnie Grant, and pleaded guilty. A “factual basis for a plea may be established by the admission of the defendant.” *Templeton v. State*, 725 So.2d 764, 766 (Miss.1998). The trial court in this case found that there was a factual basis for the entry of Jones's guilty plea and that his plea of guilty was intelligently, knowingly, understandingly, freely, and voluntarily given. A review of the record finds that the trial court thoroughly examined Fielder during the proceedings to ascertain whether he was competent to enter the guilty plea. Fielder bears the burden to show that his guilty plea was not voluntarily and intelligently given. However, Fielder has failed to provide any evidence indicating that his guilty plea was not voluntarily and intelligently given. Since Fielding cannot show that his guilty plea was not voluntarily and intelligently given, he cannot litigate his actual

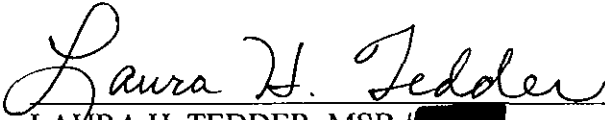
guilty from the Trial Court's denial of his Motion for Post-Conviction Collateral Relief (Fielder's Rule 60(b) Motion). The judgment of the trial court should therefore be affirmed.

CONCLUSION

The Appellant's assignments of error are without merit. Further, the Trial Court's denial of Fielder's Rule 60(b) Motion was proper since the Motion was correctly treated as a Motion for Post Conviction Relief and as such was time barred. The Trial Court's denial of Fielder's Rule 60(b) Motion is further proper since the motion was his second pursuant to the Post Conviction Relief Act and was therefore barred as a successive writ. The judgment of the Trial Court should be affirmed.

Respectfully submitted,

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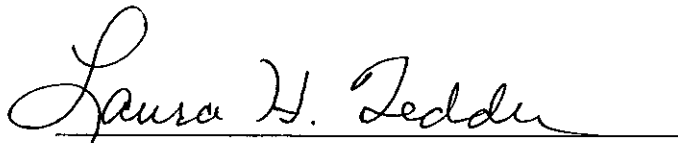
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Mark Duncan
District Attorney
P. O. Box 603
Philadelphia, MS 39350

Honorable Marcus D. Gordon
Circuit Court Judge
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Decatur, Mississippi 39327

Rodney Fielder, #L4507
M.W.C.F.
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This the 7th day of August, 2008.



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