

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

STEVEN LAMONT CROSBY a/k/a STEVE SALTER

APPELLANT

VS.

NO. 2007-CP-1950-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

In this appeal from his quest in a state trial court for out-of-time (C.P. at 81) post-conviction relief sought in the wake of his guilty plea to a reduced charge of manslaughter, STEVEN CROSBY, proceeding *pro se*, apparently seeks to exempt himself from a time bar based upon “exceptions in §99-39-5 MCA (1992).” See appellant’s brief at unnumbered page 3 where Crosby mentions “fundamental rights.”

The “fundamental rights” exceptions relied upon by Crosby involve issues targeting (a) an allegedly defective indictment, (b) an allegedly illegal sentence, (c) denial of a speedy trial, and (d) ineffective assistance of counsel. (Appellant’s brief at unnumbered page 3; C.P. at 7, 10, 12, and 14)

Crosby desires to either vacate his sentence and conviction or enjoy the benefit of an evidentiary hearing.

STATEMENT OF FACTS

Following his indictment for murder (C.P. at 54), Steven Crosby, a twenty-two (22) year old African-American male, transplanted Californian and now a resident of Brandon (C.P. at 34), entered a plea of guilty to manslaughter on December 15, 1999, in the Circuit Court of Hinds County, James E. Graves, Jr., Circuit Judge, presiding. (C.P. at 34-41) Crosby told Judge Graves he shot and killed Larry Wallace during an argument. (C.P. at 37) Crosby was thereafter sentenced to serve only two (2) years and five (5) months in the custody of the MDOC with three (3) years of post-release supervision. (C.P. at 39-41)

On May 23, 2006, more than seven (7) years later, Crosby filed in the Circuit Court of Hinds County a fill-in-the-blank “Motion for Post-Conviction Collateral Relief.” (C.P. at 5-27)

Crosby’s conviction, via guilty plea, of manslaughter did not, in Crosby’s own eyes, become “unlawful” until after it was later used to enhance his punishment as a habitual offender. *See* appellant’s brief at unnumbered page 7 where Crosby states the following: “For this unlawful conviction is a sole cause of the appellant’s current sentence being enhance[d] on other charges.”

We respectfully point out that but for the “other charges” and his status as a recidivist, Crosby, who got only two (2) years and five (5) months for manslaughter, would have been a free man long ago.

The circuit court, Winston Kidd, presiding, dismissed summarily Crosby’s motion on the basis of a time bar. (C.P. at 52; appellee’s exhibit A, attached) Specifically, he found that Crosby’s “. . . petition was filed well beyond the three (3) year limitations period and is untimely.” (C.P. at 52) *See* appellee’s exhibit A, attached.

We concur.

Here and now Crosby invites this Court to reverse the trial judge’s summary dismissal and

either vacate his sentence and conviction or grant him an evidentiary hearing where he will be given an opportunity to prove his claims. (Appellant's Brief at unnumbered page 3 (Summary of Argument) and page 7 (Conclusion)).

We respectfully submit Judge Kidd, found, although implicitly, no error involving fundamental rights, or any other rights, sufficient to exempt Crosby from the statute barring his belated claims. In this posture, Crosby's motion for post-conviction relief was correctly denied by the lower court as time-barred. (C.P. at 52; appellee's exhibit A, attached) This ruling was both judicious and correct.

SUMMARY OF ARGUMENT

Crosby's claims were clearly time-barred by virtue of Miss.Code Ann. § 99-39-5(2). **Trotter v. State**, 907 So.2d 397 (Ct.App.Miss. 2005); **Sones v. State**, 828 So.2d 216 (Ct.App.Miss. 2002).

The fundamental rights exemption provides no basis for relief. Crosby received all the process he was due.

ARGUMENT

CROSBY'S MOTION FOR OUT-OF-TIME POST-CONVICTION RELIEF BASED UPON, *INTER ALIA*, AN ALLEGEDLY INVOLUNTARY GUILTY PLEA AND ILLEGAL SENTENCE ENTERED AND IMPOSED IN 1999, WAS TIME-BARRED BY VIRTUE OF THE THREE (3) YEAR STATUTE OF LIMITATIONS SET FORTH IN SECTION 99-39-5(2).

We respectfully submit the trial judge was eminently correct in denying the requested relief on the basis of a time bar. Indeed, there should be no legitimate question about it. (C.P. at 52; appellee's exhibit A, attached)

We assert with great vigor that post-conviction relief claims based on allegedly involuntary

guilty pleas are subject to the three (3) year statute of limitations and the time bar. **Luckett v. State**, 582 So.2d 428 (Miss. 1991); **Wallace v. State**, 823 So.2d 580 (Ct.App.Miss. 2002). *See also* **Austin v. State**, 863 So.2d 59 (Ct.App.Miss. 2003), reh denied [Claim that defendant's guilty plea to rape was not knowing, intelligent, and voluntary was the type of claim that fell squarely within the three-year statute of limitations governing post-conviction relief.]

Crosby's complaints are controlled by the following language found in **Trotter v. State**, *supra*, 907 So.2d 397, 402 (Ct.App.Miss. 2005), reh denied, cert denied.

There is one judicially-created exception to the three-year time bar imposed on most post-conviction relief motions. "Errors affecting fundamental constitutional rights may be excepted from procedural bars which would otherwise prohibit their consideration." **Smith v. State**, 477 So.2d 191, 195-96 (Miss. 1985). The circuit court dismissed as time-barred Trotter's claim that he was subjected to double jeopardy, his claim that his guilty plea was involuntary, and his claim that he received ineffective assistance of counsel. In dismissing these claims as time-barred, the court found that these claims affected none of Trotter's fundamental rights. The court cited **Luckett v. State**, 582 So.2d 428, 430 (Miss. 1991), which dismissed as time-barred the defendant's assignment of errors concerning the validity of the indictment, claims of double jeopardy, claims that his guilty plea was involuntary, and claims of ineffective assistance of counsel. The judge's application of the law was correct, and we affirm.

Miss.Code Ann. §99-39-5(2) identifies, in plain and ordinary English, the time limitations for motions to vacate guilty pleas, judgments of conviction obtained other than by plea, and erroneous sentences filed under the Mississippi Uniform Post-Conviction Collateral Relief Act. It reads as follows:

(2) **A motion for relief under this chapter shall be made** within three (3) years after the time in which the prisoner's direct appeal is ruled upon by the supreme court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, **or in case of a guilty plea, within three (3) years after entry of the**

judgment of conviction. Excepted from this three-year statute of limitations are those cases in which the prisoner can demonstrate either that there has been an intervening decision of the supreme court of either the state of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of trial, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence. Likewise excepted are those cases in which the prisoner claims that his sentence has expired or his probation, parole or conditional release has been unlawfully revoked. [emphasis supplied]

The post-conviction relief act applies prospectively from its date of enactment, April 17, 1984. Individuals such as Steven Crosby a/k/a Steve Salter, who entered pleas of guilty or were otherwise convicted *after* April 17, 1984, have three (3) years from the date of the entry of their conviction via guilty plea to file their petition for post-conviction relief. **Lockett v. State**, 656 So.2d 68, 71 (Miss. 1995); **Lockett v. State**, 656 So.2d 76, 78-79 (Miss. 1995); **Freelon v. State**, 569 So.2d 1168, 1169 (Miss. 1990); **Jackson v. State**, 506 So.2d 994, 995 (Miss. 1987); **Odom v. State**, 483 So.2d 343, 344 (Miss. 1986).

In **Odom**, *supra*, we find the following language:

* * * * * This act applies *prospectively* from its date of enactment, April 17, 1984. Individuals convicted prior to April 17, 1984, have three (3) years from April 17, 1984, to file their petition for post conviction relief. **Those individuals convicted after April 17, 1984, generally have three (3) years in which to file a petition for relief as provided for in the UPCCRA, Miss. Code Ann. §99-39-5(2) (Supp. 1985), . . .** [emphasis supplied]

The case of **Lockett v. State**, *supra*, 582 So.2d 428, 430 (Miss. 1991), is applicable to Crosby's scenario even though Lockett entered his plea of guilty *prior* to April 17, 1984. We quote:

Issue Numbers II, III, IV and V are time barred. Miss.Code Ann. § 99-39-5(2) (Supp. 1990). Individuals (as Lockett) convicted prior to April 17, 1984, had three (3) years from April 17, 1984, to file their petition for post-conviction relief. **Freelon v. State**, 569

So.2d 1168 (Miss. 1990); **Odom v. State**, 483 So.2d 343 (Miss. 1986). Lockett's application was filed more than nine (9) years subsequent to the entry of his guilty pleas. No appeal or other pleading for relief was filed by him prior to the application presented, and no exceptions to this procedural bar are applicable.

The subject matter of Issues II, III, IV, and V that were time barred in **Lockett** were fatally *defective indictments* (issue II); double jeopardy (issue III); *coerced, involuntary, and unintelligent pleas of guilty* (issue IV), and the *ineffective assistance of counsel* (issue V). Accordingly, Crosby's claim that his plea was neither knowing nor intelligent because of an allegedly defective indictment, a coerced and involuntary guilty plea, and ineffective counsel is time barred by virtue of **Lockett** alone. *See also* **Kelly v. State**, 797 So.2d 1003 (Miss. 2001); **Crawford v. State**, 787 So.2d 1236 (Miss. 2001); **Kirk v. State**, 798 So.2d 345 (Miss. 2000); **Jones v. State**, 700 So.2d 631 (Miss. 1997); **Harris v. State**, 819 So.2d 1286 (Ct.App.Miss. 2002); **Beamon v. State**, 816 So.2d 409 (Ct.App.Miss. 2002); **Creel v. State**, 814 So.2d 176 (Ct.App. 2002); **Thomas v. State**, 798 So.2d 597 (Ct.App.Miss. 2001), reh denied; **Isaac v. State**, 793 So.2d 688 (Ct.App.Miss. 2001); **Williams v. State**, 726 So.2d 1229 (Ct.App.Miss. 1998); **Sanford v. State**, 726 So.2d 221 (Ct.App.Miss. 1998).

Crosby entered his plea of guilty to manslaughter December 15, 1999, well *after* the enactment on April 17, 1984, of the Mississippi Uniform Post-Conviction Collateral Relief Act (UPCCRA), Miss.Code Ann. §99-39-1 *et seq.* (C.P. at 58-71) Pursuant to a recommendation by the State, Crosby was sentenced to serve two (2) years with five (5) months to serve and three (3) years of post-relief supervision, said sentence to run concurrent with a sentence imposed in a Rankin County case. (C.P. at 36)

It is no secret that Crosby had three (3) years from December 15, 1999, the date of the entry of the judgment of conviction for manslaughter, to file in the trial court his motion to vacate

conviction and sentence or to otherwise seek post-conviction collateral relief.

Consequently, the deadline for filing Crosby's post-conviction papers was on or about December 15, 2002.

Crosby's motion for post-conviction relief was not filed, however, until on or about May 23, 2006, more than four (4) years after the time for assailing his conviction by way of guilty plea had expired. This was excruciatingly tardy and too little too late. The old adage that "it's better late than never," once again, does not apply here.

The post-conviction relief act provided Crosby with a statutory procedure for assailing his guilty plea within a reasonable time. Crosby, however, missed the window of opportunity by fifty-three (53) months.

The three year statute of limitations bars a post-conviction relief motion absent a showing the case falls within any one of the three statutory exceptions. **Phillips v. State**, 856 So.2d 568 (Ct.App.Miss. 2003).

We concur with the finding made implicitly by the trial judge that the case at bar clearly does not exist in this posture. *See* appellee's exhibit A, attached.

In the final analysis, none of the exceptions, statutory or judicially created, to the time bar, which is alive and well, apply to this case. The findings and conclusions made by the trial judge in his order denying relief were eminently correct and not clearly erroneous.

Moreover, Crosby's plea of guilty operated to waive and/or forfeit all non-jurisdictional rights and defects incident to trial. **Rowe v. State**, 735 So.2d 399 (Miss. 1999); **Anderson v. State**, 577 So.2d 390, 392 (Miss. 1991); **Dennis v. State**, 873 So.2d 1045 (Ct.App.Miss. 2004).

We find in **Anderson v. State**, *supra*, 577 So.2d 390, 391 (Miss. 1991), the following language applicable to Crosby's complaint:

Moreover, we have recognized that a valid guilty plea operates as a waiver of all non-jurisdictional rights or defects which are incident to trial. *Ellzey v. State*, 196 So.2d 889, 892 (Miss. 1967). We have generally included in this class “those [rights] secured by the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, as well as those comparable rights secured by Sections 14 and 26, Article 3, of the Mississippi Constitution of 1890.” *Sanders v. State*, 440 So.2d 278, 283 (Miss. 1983); *see also* *Jefferson v. State*, 556 So.2d 1016, 1019 (Miss. 1989). We take this opportunity to specifically include in that class of waivable or forfeitable rights the right to a speedy trial, whether of constitutional or statutory origin.

This view is in accord with that of our sister states. [citations omitted]

This rule also prevails in the federal arena. [citations omitted; emphasis ours]

See also **Bishop v. State**, 812 So.2d 934, 945 (Miss. 2002); **Turner v. State**, 961 So.2d 734 (Ct.App. Miss. 2007), reh denied [Voluntary and knowing guilty plea operates as a waiver of all non-jurisdictional defects or rights incident to trial, and this includes a defendant’s right to a speedy trial.]

Stated differently, Steven Crosby’s voluntary plea of guilty waived and forfeited all rights and non-jurisdictional defects incident to trial, including any issues targeting an allegedly defective indictment, the denial of a speedy trial and imposition of an allegedly illegal sentence. **Drennan v. State**, 695 So.2d 581 (Miss. 1997); **Luckett v. State**, *supra*, 582 So.2d 428 (Miss. 1991); **Anderson v. State**, *supra*, 577 So.2d 390 (Miss. 1991).

Because Crosby entered a plea of guilty, he also waived any defenses he might have had to the charge. **Taylor v. State**, 766 So.2d 830, 835 (Ct.App.Miss. 2000).

Miss.Code Ann. § 99-39-11 (Supp. 1999) reads, in its entirety, as follows:

(1) The original motion together with all the files, records, transcripts and correspondence relating to the judgment under attack,

shall be examined promptly by the judge to whom it is assigned.

(2) *If it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief, the judge may make an order for its dismissal and cause the prisoner to be notified.*

(3) If the motion is not dismissed under subsection 2 of this section, the judge shall order the state to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.

(4) This section shall not be applicable where an application for leave to proceed is granted by the supreme court under section 99-39-27. [emphasis added]

It does. He did. And he was.

Crosby's belated claims were time-barred. They were manifestly without merit as well.

CONCLUSION

Not every motion for post-conviction relief filed in the trial court must be afforded an adversarial hearing. **Rodolfich v. State**, 858 So.2d 221 (Ct.App.Miss. 2003).

Put another way, the right to an evidentiary hearing is not guaranteed in every case. **Brister v. State**, 858 So.2d 181 (Ct.App.Miss. 2003).

"This Court reviews the denial of post-conviction relief under an abuse of discretion standard." **Phillips v. State**, *supra*, 856 So.2d 568, 570 (Ct.App.Miss. 2003). No abuse of judicial discretion has been demonstrated here.

Crosby is time barred from bringing his claims at this late date. He failed to file his motion for post-conviction relief within the three-year time frame prescribed by Miss.Code Ann. §99-39-5(2), and he fails to make a claim falling under any of the recognized exceptions to the statutory time bar.

Appellee respectfully submits this case is devoid of error. Accordingly, summary dismissal,

10

FILED

APR 24 2007

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

BARBARA DUNN, CIRCUIT CLERK
BY _____ D.C.

STEVEN CROSBY

RECEIVED

PETITIONER

v.

APR 24 2007

Civil Action, File No. 251-06-494

STATE OF MISSISSIPPI

BARBARA DUNN
CIRCUIT CLERK

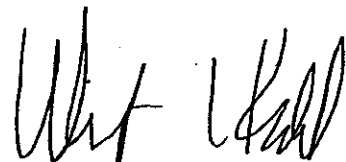
RESPONDENT

ORDER DISMISSING
MOTION FOR POST-CONVICTION COLLATERAL RELIEF

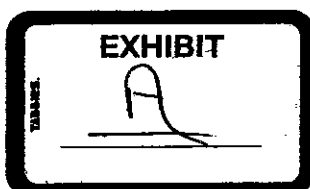
BEFORE THE COURT is the matter of the Petitioner's Motion for Post-Conviction Collateral Relief filed by Steven Crosby. A motion for relief under the Uniform Post-Conviction Collateral Relief Act, MISS. CODE ANN. § 99-39-1, et seq., shall be made within three(3) years after the time in which the prisoner's direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from judgment of conviction or sentence has expired, or in case of a guilty plea, within three(3) years after entry of judgment of conviction. Petitioner states in his petition that he plead guilty to manslaughter and was sentenced on December 15, 1999. Accordingly, this Court finds that the petition was filed well beyond the three (3) year limitations period and is untimely.

IT IS, THEREFORE, HEREBY ORDERED AND ADJUDGED that Petitioner's Motion for Post-Conviction Collateral Relief should be and hereby is DISMISSED.

SO ORDERED AND ADJUDGED this 24th day of April, 2007.



WINSTON L KIDD
CIRCUIT COURT JUDGE



609-635

CERTIFICATE OF SERVICE

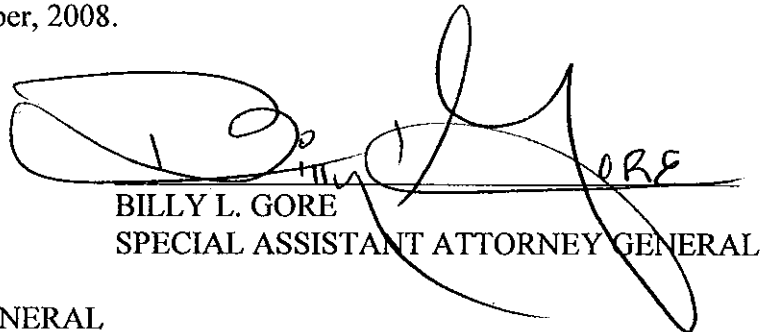
I, Billy L. Gore, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 21st day of November, 2008.



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