

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TAURUS CALDWELL

APPELLANT

FILED

MAY 20 2008

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

VS.

NO. 2008-CP-0150

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: JOHN R. HENRY
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680**

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TAURUS CALDWELL

APPELLANT

vs.

CAUSE No. 2008-CP-00150-C0A

THE STATE OF MISSISSIPPI

APPELLEE

BRIEF ON BEHALF OF THE STATE OF MISSISSIPPI

STATEMENT OF THE CASE

This is an appeal against an Order of the Circuit Court of Leflore County, Mississippi in which relief on the prisoner's motion in post - conviction relief was denied.

STATEMENT OF FACTS

The record presented on this appeal by the prisoner does not contain his motion in post - conviction relief. The facts of this case are taken from the Circuit Court's Order denying relief on that motion (R. Vol. 1, pp. 8 - 9), supplemented by pleadings previously filed in the Mississippi Supreme Court by the prisoner.

The prisoner was convicted of felony possession of marijuana with intent to distribute and was sentenced to a term of thirty years imprisonment. He appealed that conviction to this

Court; his conviction and sentence were affirmed. *Caldwell v. State*, 938 So.2d 317 (Miss. Ct. App. 2006). The prisoner then filed an application for leave to proceed in post - conviction relief in the trial court in the Mississippi Supreme Court. *Caldwell v. State*, 2007-M-00603. The Supreme Court denied relief on the application, by Order filed on 11 June 2007. In that Order the Court found that the prisoner's claims were either procedurally barred or without merit.

The prisoner then apparently filed a successive application with the Supreme Court; by Order filed 26 March 2008, the Court denied relief on that application, finding that application to be a successive writ. It further found that the allegations contained in it were without merit.

The Circuit Court found that jurisdiction to entertain the prisoner's filing in the Circuit Court was wanting on account of the fact that the Supreme Court denied the prisoner's application to proceed, and dismissed the motion in post - conviction relief with prejudice. (R. Vol. 1, pg. 9).

STATEMENT OF ISSUES

DID THE CIRCUIT COURT ERR IN DENYING RELIEF ON THE PRISONER'S MOTION IN POST - CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING?

SUMMARY OF ARGUMENT

THAT THE CIRCUIT COURT DID NOT ERR IN DENYING RELIEF ON THE PRISONER'S MOTION IN POST - CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING

ARGUMENT

THAT THE CIRCUIT COURT DID NOT ERR IN DENYING RELIEF ON THE PRISONER'S MOTION IN POST - CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING

Since the prisoner appealed his conviction and sentence to this Court, it was necessary for him, in order to proceed in post - conviction relief, to seek and obtain leave of the Supreme Court to proceed in the trial court. Miss. Code Ann. 99-39-7 (Rev. 2007). The prisoner sought leave to proceed in the trial court, but the Supreme Court denied him such relief.

Since the prisoner did not obtain leave to proceed in the trial court, the trial court properly found that it had no jurisdiction to entertain the motion filed there by the prisoner. This Court, likewise, has no jurisdiction to entertain this matter. *Doss v. State*, 757 So.2d 1016 (Miss. Ct. App. 2000).

It also appears that the filing in the trial court occurred after the expiration of the period of time set out in Miss. Code Ann. Section 99-39-5(2) (Rev. 2007).

Since the case is not properly before the Court, it will be unnecessary to respond to the prisoner's allegations of error.

CONCLUSION

The Order of the Circuit Court denying relief on the prisoner's motion in post - conviction relief should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:


JOHN R. HENRY
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [REDACTED]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

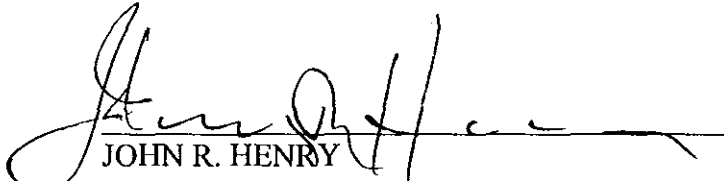
I, John R. Henry, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Richard A. Smith
Circuit Court Judge
P. O. Box 1953
Greenwood, MS 38935-1953

Honorable Dwayne Richardson
District Attorney
P. O. Box 426
Greenville, MS 38702

Taurus Caldwell, #108919
Issaquena County Correctional Facility (I.C.C.F.)
Post Office Box 220
Mayersville, MS 39113

This the 20th day of May, 2008.


JOHN R. HENRY
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680