

**COPY**

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

**CARL LEE JOHNSON**

**FILED**

**APPELLANT**

**MAY 29 2008**

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

**VS.**

**NO. 2008-CP-0204**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**IN THE COURT OF APPEALS OF MISSISSIPPI**

**CARL LEE JOHNSON**

**APPELLANT**

**VERSUS**

**NO. 2008-CP-00204-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

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

**STATEMENT OF THE CASE**

In May 1995, Carl Lee Johnson was convicted in the Circuit Court of Coahoma County on a charge of aggravated assault on a law enforcement officer and was sentenced as an habitual offender to a term of life imprisonment without possibility of parole. He perfected an appeal to this Court, which affirmed the conviction and sentence. *Johnson v. State*, No. 95-KA-00563-COA (decided December, 1996) (per curiam). The Mississippi Supreme Court denied his petition for writ of certiorari. *Johnson v. State*, No. 95-CT-00563-SCT (decided July 17, 1997).

On or about December 28, 2006, Johnson filed in the circuit court a self-styled "Petition for Writ of Habeas Corpus for Post-Conviction Relief." (C.P.1) The court summarily denied that motion on January 9, 2008. (C.P.60) Aggrieved by the judgment rendered against him, Johnson has perfected an appeal to this Court.

## **SUMMARY OF THE ARGUMENT**

His conviction having been affirmed on direct appeal, Johnson was required to obtain leave from the Supreme Court to proceed in the trial court for post-conviction relief. Because he failed to do so, the circuit court lacked jurisdiction to review this obviously time-barred petition.<sup>1</sup> It follows that this Court lacks jurisdiction to hear this appeal; it should be dismissed accordingly.

### **PROPOSITION:**

#### **THIS OSTENSIBLE APPEAL SHOULD BE DISMISSED FOR LACK OF JURISDICTION**

As shown above, Johnson appealed his conviction and sentence to this Court, and the Supreme Court denied his petition for writ of certiorari. It follows that he was required to "receive leave from the supreme court to seek post-conviction relief at the trial court." *Craft v. State*, 966 So.2d 856 (Miss. App. 2007), citing MISS. CODE ANN. § 99-39-7 (Rev.2000). "This procedure is not merely advisory, but jurisdictional." *Doss v. State*, 757 So.2d 1016, 1017 (Miss. App. 2000). Thus, the failure to obtain an order allowing him to proceed in the trial court deprived that court of jurisdiction to hear the motion for post-conviction relief. *Taylor v. State*, 956 So.2d 994, 996 (Miss. App. 2007).

Counsel for the appellee submits that neither the record nor the docket of the Mississippi Supreme Court contains evidence that Johnson obtained leave to proceed

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<sup>1</sup>Johnson could not circumvent the applicable three-year statute of limitations, or any other bar imposed by the Mississippi Uniform Post-Conviction Collateral Relief Act, MISS. CODE ANN. §§ 99-31-1 to -29 (Rev.2000 & Supp.2003), by styling his motion for post-conviction relief a petition for writ of a habeas corpus. *Morris v. State*, 918 So.2d 807, 808 (Miss. 2005); *Walker v. State*, 863 So.2d 1, 9 (Miss. 2003).

below.<sup>2</sup> Absent such record evidence, this purported appeal should be dismissed.

*Harveston v. State*, 967 So.2d 55, 56 (Miss. App. 2007)

**CONCLUSION**

For the reasons stated above, the state respectfully submits this appeal should be dismissed for want of jurisdiction.

Respectively submitted,

JIM HOOD, ATTORNEY GENERAL  
STATE OF MISSISSIPPI

A handwritten signature in black ink, appearing to read "Deirdre McCrory", written in a cursive style.

BY: DEIRDRE McCRORY  
SPECIAL ASSISTANT ATTORNEY GENERAL

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<sup>2</sup>A court may take judicial notice of its own docket. See *Gulley v. State*, 870 So.2d 652, 656 (Miss.2004).

## 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 Kenneth L. Thomas  
Circuit Court Judge  
P. O. Box 548  
Cleveland, MS 38732

Honorable Laurence Y. Mellen  
District Attorney  
P. O. Box 848  
Cleveland, MS 38732

Carl Lee Johnson, #39897  
Unit 32 - B  
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This the 29th day of May, 2008.

  
\_\_\_\_\_  
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