

COPY

In The
Court of Appeals
For The State of Mississippi

Carl Lee Johnson

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Supreme Court
Court of Appeals

Appellant

Versus

Cause No. 2008-CP00204

State of Mississippi

Appellee

Reply Brief Of Appellant

By: Carl Lee Johnson
#39897 Unit 32-Echo
Parchman, Ms. 38738

Pro'se Litigant

In The Court Of Appeals
For The State Of Mississippi

Carl Lee Johnson

Appellant

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Cause No. 2008-CP-00204

State Of Mississippi

Appellee

Certificate Of Interested Person(s)

The undersigned Pro'Se Appellant certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justice of this Court may evaluate possible disqualifications or recusals.

Carl Lee Johnson [and] Family
Defendant / Appellant

Honorable Laurence Mellen
District Attorney's Office
115 First Street

Honorable Kenneth L. Thomas
Circuit Court Judge
Post Office Box 548
Cleveland, Ms. 38732

Clarksdale, Ms. 38614

/s/ Carl Lee Johnson
Pro'Se Litigant

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Statement Of The Case

Carl Lee Johnson was indicted for allegedly committing an aggravated assault upon Clarksdale Police Department Officer William Read on May 25, 1994, by shooting at him with a pistol. (R. E. 4-5)

Following a plea of not guilty in this cause, the first trial of this case commenced in the Circuit Court of Coahoma County, Mississippi, on October 17, 1994; however, Johnson sought and was granted a continuance, owing to the absence of a material witness who was subpoenaed by Johnson to testify on his behalf. A second trial commenced on February 7, 1995; this trial terminated in a mistrial, due to the failure of a State witness to disclose to Johnson's counsel, prior to trial, material evidence relating to the allegations made by the State against Johnson. The question of Johnson's guilt or innocence was submitted to a jury in a third trial on February 23, 1995. At the conclusion of the trial, the jury rendered a verdict of "guilty as charged."

Following the verdict by the jury, Johnson was sentenced on the 15th, day of May, 1995, to serve a term of life imprisonment in a facility under the supervision and control of the Mississippi Department

of corrections. Johnson was sentenced as an habitual offender pursuant to Miss. Code Ann. § 99-19-83 (1972 as amended)--hence, Johnson is ineligible for parole or the suspension of any part of his sentence. Johnson presently is incarcerated under the supervision and control of the Mississippi Department of Corrections at Parchman.

Summary Of The Argument

Appellant Johnson asserts that his Petition for Writ of Habeas Corpus was not filed pursuant to Miss. Code Ann. § 99-39-1 thru 27, cited as the "Post Conviction Relief Act," and that he was not required to obtain leave from the Supreme Court to proceed in the trial court on his Petition for Writ of Habeas Corpus, that is Johnson's Petition was filed pursuant to rule 8.01 of the Uniform Criminal Rules of Circuit Court Practice which was applicable at the time of Johnson's conviction and the circuit court could take jurisdiction over Johnson's petition pursuant to rule 8.01.

Argument

As aforementioned, A Coahoma County, Mississippi, Jury rendered a verdict of "guilty as charge" against Johnson on February 23, 1995, Uniform Criminal Rules of Circuit Court Practice was applicable to this cause at the time of Johnson's conviction. The Mississippi Legislatures adopted Uniform Rules of Circuit and County Court Practice which was effective May 1, 1995, well after Johnson's conviction. Rule 8.01 of the Uniform Criminal Rules of Circuit Court Practice governing Habeas Corpus [now] Rule 2.07 of the Uniform Rules Circuit and County Court Practice, cited as U.R.C.C.P., effective May 1, 1995. Neither of these rules governing Habeas Corpus require obtaining leave from the Supreme Court to proceed in the trial court on Petitions For Writ of Habeas Corpus Relief. Therefore, Miss. Code Ann. § 99-39-27 of the Post Conviction Relief Act, is inapplicable to Johnson's Petition for Writ of Habeas Corpus.

Appellant Johnson is actual innocence of aggravated assault upon Clarksdale Police Officer, William Read and is serving an illegal sentence.

Thus, Johnson can circumvent the inapplicable three-year statute of limitation, or any other bar

imposed by the Mississippi Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. §§ 99-31-1 to 29 (Rev. 2000 and Supp. 2003), as this Court has held, "Errors affecting fundamental constitutional rights, such as the right to a legal sentence, may be excepted from procedural bars which would otherwise prevent their consideration," see e.g., Ivy v. State, 731 So.2d 601 (Miss. 1999); (quoting) Lockett v. State, 582 So.2d 428, 430 (Miss. 1991).

It is well established law in this Court that, "certain exceptions are carved out of procedural bars where there is questions that party's fundamental rights have been violated." see e.g., Ethridge v. State, 800 So.2d 1221 (Miss. 2001); "given the right to be free from an illegal sentence has been found to be fundamental."

"Petitions based upon alleged illegal sentence were not subject to applicable statute of limitations," and this Court should be required to hear evidence on Johnson's claims. see e.g., Weaver v. State, 785 So.2d 1085 (Miss. 2001).

Appellant Johnson is actual innocence of aggravated assault upon Clarksdale Police Officer, William Read, it has been held by this Court, that, "fundamental rights in serious criminal cases rise above mere rules of procedure." see e.g., Brooks v. State, 209 Miss. 150, 155, 46 So.2d 94, 97 (1950).

The Supreme Court tend to disregard procedural niceties where such is necessary to avoid the possibility of a serious miscarriage of justice. see e.g., Richardson v. State, 436 So.2d 790, 791 (Miss. 1983).

If a petitioner, such as Johnson, presents evidence of innocence so strong that a court **cannot** have confidence in the outcome of the trial, unless the court is also satisfied that the trial was free of non-harmless constitutional error, the petitioner shall be allowed to pass through the gateway and argue the merits of his underlying claims. see e.g., Schlup v. Delo, 513 U.S. 298; 115 S.Ct. 851; 130 L.Ed.2d 808; 1995 U.S. Lexis 701; (citing Murray v. Carrier, (1986) 477 U.S. 478, 91 L.Ed.2d 397, 106 S.Ct. 2639; see also Sawyer v. Whitley, (1992) 505 U.S. —, 120 L.Ed.2d 269, 112 S.Ct. 2514.

Conclusion

For the reasons shown above, the Appellant submits that this Honorable Court should grant relief on his petition.

Wherefore Premises Considered, this Court sits to reverse the order and judgement of the circuit court vacating Johnson's conviction and sentence freeing him from his unconstitutional confinement, or in the alternative

this Court should vacate the order of the circuit court and grant Johnson leave to refile his petition in the trial court with instruction for an evidentiary hearing on his claims, with all such other relief this court deem just and proper.

/s/ Carl Lee Johnson
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Parchman, Ms. 38738

Certificate Of Service

I, Carl Lee Johnson, the undersigned, do hereby certify that I have this day as reflected below, mailed, postage prepaid, a true and correct copy of the foregoing Reply Brief For The Appellant to the following:

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This the 15th day of June, 2008

/s/ Carl Lee Johnson
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