

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

**PATRICK DANTRE FLUKER**

**APPELLANT**

**VS.**

**NO. 2008-CP-1182-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**NO. 2008-CP-1182-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**STATEMENT OF ISSUE**

- I. FLUKER'S CLAIM ON APPEAL IS PROCEDURALLY BARRED FOR FAILURE TO RAISE THE ISSUE IN HIS MOTION FOR POST-CONVICTION RELIEF BEFORE THE TRIAL COURT.

**STATEMENT OF FACTS**

On February 13, 2007, Patrick Dantre Fluker pleaded guilty to armed robbery. C.P. 40. He was sentenced to serve twenty years in the custody of the Mississippi Department of Corrections. C.P. 40. Fluker subsequently filed a motion for post-conviction relief in the trial court, alleging that his plea was involuntary and that he received ineffective assistance of counsel. Fluker's motion was summarily dismissed. C.P. 54. He now appeals the trial court's denial of post-conviction relief.

## **SUMMARY OF ARGUMENT**

Fluker's claim is procedurally barred for failure to raise the issue before the trial court. He seeks only an explanation for why he is not entitled to appointment of counsel in a motion for post-conviction relief. In addition to being procedurally barred, Fluker fails to state a claim upon which relief may be granted.

## ARGUMENT

### **I. FLUKER'S CLAIM ON APPEAL IS PROCEDURALLY BARRED FOR FAILURE TO RAISE THE ISSUE IN HIS MOTION FOR POST-CONVICTION RELIEF BEFORE THE TRIAL COURT.**

Fluker has abandoned the issues raised before the trial court, and on appeal seeks only an explanation of why he is not entitled to counsel on a motion for post-conviction relief. His sole “issue” on appeal was not raised in his motion for post-conviction relief in the trial court and is procedurally barred from review by this Court on appeal. *Long v. State*, 982 So.2d 1042, 1045 (¶13) (Miss. Ct. App. 2008). In addition to Fluker’s claim being procedurally barred, he fails to state a ground upon which post-conviction relief may be granted. Miss. Code Ann. 99-39-5. Accordingly, the trial court correctly disposed of Fluker’s motion by summary dismissal.

Without abandoning the State’s claim that Fluker’s issue is both procedurally barred and not an enumerated statutory ground for post-conviction relief, the State will briefly answer the question posed by Fluker. Both this honorable Court and the Mississippi Supreme Court have repeatedly held that Mississippi prisoners seeking post-conviction relief have neither a state nor federal right to appointment of counsel. *Thornhill v. State*, 919 So.2d 238, 241 (¶11) (Miss. Ct. App. 2005) (citing *Moore v. State*, 587 So.2d 1193, 1195 (Miss. 1991)). Trial courts may, however, appoint counsel to post-conviction relief petitioners who have been granted an evidentiary hearing. *Id.* (citing Miss. Code Ann. § 99-39-23(1)). Fluker’s reliance on *Halbert v. Michigan*, 545 U.S. 605 (2005), is misplaced, because the appeal of a trial court’s denial of post-conviction relief is not a “first appeal as of right” which would require the appointment of counsel. As such, Fluker is not entitled to appointed counsel.


## CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm the trial court's denial of relief.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

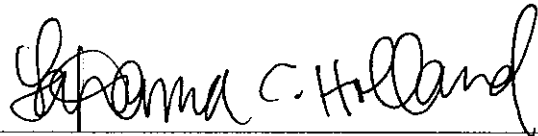
I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Robert B. Helfrich  
Circuit Court Judge  
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Honorable Jon Mark Weathers  
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This the 13th day of February, 2009.



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