

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TERRY SANDERS

APPELLANT

VS.

NO. 2008-CP-1396

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: DEIRDRE MCCRORY
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**

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

SUMMARY OF THE ARGUMENT 1

PROPOSITION:
NO ERROR HAS BEEN SHOWN IN THE CIRCUIT
COURT’S DENIAL OF SANDERS’ SUCCESSIVE
PETITION FOR POST-CONVICTION COLLATERAL
RELIEF 2

CONCLUSION 3

CERTIFICATE OF SERVICE 4

TABLE OF AUTHORITIES

STATE CASES

<i>Black</i> , 963 So.2d 47, 49 (Miss. App. 2007)	2
<i>Buice v. State</i> , 751 So.2d 1171 (Miss. Ct. App.1999)	2
<i>Graham v. State</i> , 914 So.2d 1256, 1258 (Miss. App. 2005)	2
<i>Kirksey v. State</i> , 728 So.2d 565, 567 (Miss.1999)	2
<i>Massey v. State</i> , 843 So.2d 74 (Miss. App. 2003)	3
<i>Powers v. State</i> , 945 So.2d 386, 395 (Miss. 2006)	3
<i>Sago v. State</i> , 978 So.2d 1285, 1287(Miss. App. 2008)	2
<i>Sanders v. State</i> , 700 So.2d 329 (1997)	2
<i>Taylor v. State</i> , 766 So.2d 830, 832 (Miss. App.2000)	2

STATE STATUTES

MISS. CODE ANN. § 99-39-23(6) (1972)	2
--	---

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TERRY SANDERS

APPELLANT

VERSUS

NO. 2008-CP-1396-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Terry Sanders filed a Petition for Post-Conviction Relief in the Circuit Court of the Second Judicial District of Harrison County. On July 23, 2008, the circuit court summarily denied this petition as a successive writ. (C.P.42) Aggrieved by the judgment rendered against him, Sanders has perfected an appeal to this Court.

SUMMARY OF THE ARGUMENT

No error has been shown in the circuit court's determination that Sanders' petition was barred as a successive writ. Accordingly, the court properly denied the petition. The judgment entered below should be affirmed.

PROPOSITION:

**NO ERROR HAS BEEN SHOWN IN THE CIRCUIT COURT'S
DENIAL OF SANDERS' SUCCESSIVE PETITION FOR
POST-CONVICTION COLLATERAL RELIEF**

The circuit court denied Sanders' petition with an order set out below:

THIS MATTER is before the Court on Sanders' Petition for Post Conviction Relief filed June 24, 2008. Sanders previously filed a Petition for Post Conviction Relief based on the same allegations. (A2402-95-189)

The Court, having reviewed this filing, finds that it is a reiteration of the claims made and relief previously sought in cause number A2402-95-189 which was appealed and affirmed. Sanders v. State, 700 So.2d 329 (1997) [unpublished opinion]. As such it is a successive writ and barred. *See generally Buice v. State*, 751 So.2d 1171 (Miss. Ct. App.1999). It is therefore,

ORDERED AND ADJUDGED that the Petition for Post Conviction Collateral Relief is denied.

(C.P.42)

The court thus found that the petition should be denied as a successive writ, pursuant to MISS. CODE ANN. § 99-39-23(6) (1972) (as amended). *Black*, 963 So.2d 47, 49 (Miss. App. 2007).

The court's order is not subject to reversal "absent a finding" that it "was clearly erroneous." *Taylor v. State*, 766 So.2d 830, 832 (Miss. App.2000), citing *Kirksey v. State*, 728 So.2d 565, 567 (Miss.1999). Accord, *Black v. State*, 963 So.2d 47, 48 (Miss. App. 2007). This judgment comes before this Court cloaked with the presumption of correctness, and the burden is on the appellant to demonstrate reversible error. *Sago v. State*, 978 So.2d 1285, 1287(Miss. App. 2008). That burden includes the duty to present a record sufficient to undergird his assignments of error. *Id.* Accord, *Graham v. State*, 914 So.2d 1256, 1258 (Miss. App. 2005).

Moreover, “[i]n a petition for post-conviction relief, the petitioner carries the burden of proving that his claim is not procedurally barred.” *Massey v. State*, 843 So.2d 74 (Miss. App. 2003). Accord, *Powers v. State*, 945 So.2d 386, 395 (Miss.2006). Sanders has failed to present a record sufficient to show error in the court’s implicit finding that he failed to sustain this burden.

No basis exists for overturning the circuit court’s judgment. The state respectfully submits it should be affirmed.

CONCLUSION

The state respectfully submits no error has been shown in the court’s judgment. Accordingly, it should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**


BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

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 Roger T. Clark
Circuit Court Judge
P. O. Box 1461
Gulfport, MS 39502

Honorable Cono Caranna
District Attorney
P. O. Drawer 1180
Gulfport, MS 39502

Terry Sanders, #61224
Leake County Correctional Facility
399 C.O. Brooks Street
Carthage, MS 39051

This the 29th day of December, 2008.



DEIRDRE MCCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

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