

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DERRICK POSS

APPELLANT

VS.

NO. 2008-CP-1686-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF ISSUES

- I. POSS'S MOTION FOR POST-CONVICTION RELIEF WAS PROPERLY DISMISSED AS SUCCESSIVE-WRIT BARRED.

STATEMENT OF FACTS

Derrick Poss pleaded guilty in the Lee County Circuit Court to armed robbery and was sentenced to a term of twenty years in the custody of the Mississippi Department of Corrections, with fifteen years to serve and five years on post-release supervision. C.P. 63. Poss subsequently filed a motion for post-conviction relief which was denied by the trial court. This Court affirmed the trial court's denial of relief. C.P. 63. Thereafter, Poss filed a second motion for post-conviction relief in the trial court, which was dismissed as successive writ barred.

SUMMARY OF ARGUMENT

Poss's second motion for post-conviction relief is barred as a successive writ. He has failed to meet any exception to the procedural bar.

ARGUMENT

This Court's previous opinion affirming the trial court's denial of post-conviction relief is a final judgment which has not been reversed. As such, Poss's second motion for post-conviction relief is successive-writ barred. Miss. Code Ann. § 99-39-23(6). Poss claims that his second motion for post-conviction relief is excepted from the successive writ bar because he is serving an illegal sentence. His belief that he is serving an illegal sentence is based on the erroneous belief that the application of Mississippi Code Annotated §47-7-3 to his sentence constitutes an ex-post facto violation. Poss apparently believes that amendments to §47-7-3 after he committed the armed robbery in 2003 retroactively applied and deprived him of parole eligibility. However, it has been the law since 1995 that only nonviolent offenders are eligible for parole. See Miss. Code Ann. §47-7-3 Historical and Statutory Notes. "For purposes of this paragraph, 'nonviolent crime' means a felony other homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping" Miss. Code Ann. §47-7-3(1)(g)(emphasis added).



Poss is not serving an illegal sentence, and he has failed to overcome the applicable procedural bar. Accordingly, the trial court properly dismissed Poss's motion for post-conviction relief.

CONCLUSION

The State asks this honorable Court to affirm the trial court's dismissal of Poss's motion for post-conviction 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 Paul S. Funderburk
Circuit Court Judge
Post Office Drawer 1100
Tupelo, MS 38802-1100

Honorable John Young
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Derrick Poss, #104788
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This the 9th day of February, 2009.



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