

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DEMARIO WALKER

APPELLANT

VS.

NO. 2008-CP-1988-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: LA DONNA HOLLAND
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 ISSUE	i
STATEMENT OF FACTS	i
SUMMARY OF ARGUMENT	3
ARGUMENT	4
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

STATE CASES

McLamb v. State, 974 So.2d 935, 939 -940 (Miss. Ct. App. 2008)	4
Roland v. State, 939 So. 2d 810, 812 (Miss. Ct. App. 2006)	4
Walker v. State, 861 So. 2d 354, 355 (Miss. Ct. App. 2003)	2
Walker v. State, 910 So.2d 584, 585 (Miss. Ct. App. 2005)	1, 2

STATE STATUTES

Miss. Code Ann. §99-39-5(2)	4
Mississippi Code Ann. §47-7-47 (Rev.2004)	1
Mississippi Code Ann. §99-39-23	4

disposal of Demario Walker's frivolous claims, the Court stated the facts as follows.

The facts of this case have been twice published by this honorable Court. In its most recent

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

BRIEF FOR THE APPELLEE

VS. NO. 2008-CP-1988-COA

DEMARCO WALKER

APPELLANT

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

conviction relief in the trial court was denied without a hearing. *Walker v. State*, 861 So. 2d 354, 355 (¶1) (Miss. Ct. App. 2003). In 2003, this honorable Court affirmed the trial court's denial of relief. *Id.* Walker subsequently filed numerous motions in the trial court, all of which were characterized by the trial court as motions for post-conviction relief. C.P. 149. Again in 2005, this honorable Court affirmed the trial court's denial of relief, finding that Walker's motion was barred as a successive writ. *Walker*, 910 So. 2d at 586 (¶10). Refusing to give up, Walker filed yet another motion for post-conviction relief in the trial court on August 1, 2008¹. C.P. 140-142. The motion was dismissed as successive writ barred. C.P. 149-152.

¹To be precise, Walker filed a motion to show cause and a motion to clarify sentence, both of which were treated and disposed of as a single motion for post-conviction relief.

SUMMARY OF ARGUMENT

Walker's motion is time-barred and successive writ barred. As such, the trial court's dismissal of Walker's PCR motion must be affirmed.

ARGUMENT

More than six years have passed since Walker's revocation. As such, his most recent motion for post-conviction relief is time barred. Miss. Code Ann. §99-39-5(2). More importantly, Mississippi Code Annotated § 99-39-23 bars successive motions for post-conviction relief. This Court has twice affirmed the trial court's denial of post-conviction relief in this case. Without question, the trial court properly dismissed Walker's filing as successive writ barred. Walker meets no exception to the time bar or successive writ bar. The trial court has explained to Walker numerous times that his sentence after revocation of eight years, six months, and three weeks correctly reflects the balance of that portion of his sentence which had been suspended, minus credit for time served. C.P. 150.

Although the trial court merely warned Walker that he is subject being sanctioned for repeatedly wasting the court's time and resources with numerous, frivolous filings, this Court also has the authority sanction Walker for his repetitive, frivolous filings. *McLamb v. State*, 974 So.2d 935, 939-940 (¶¶17-20) (Miss. Ct. App. 2008); *Roland v. State*, 939 So. 2d 810, 812 (¶9) (Miss. Ct. App. 2006). In point of fact, Walker has another appeal pending before this Court in which he attacks the very same judgment that is the subject of the current appeal. See Case No. 2008-CP-1987-COA.

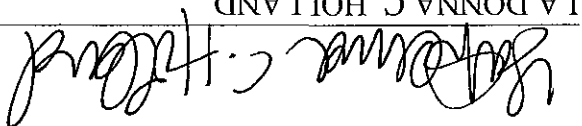
CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm the trial court's dismissal of Walker's motion for post-conviction relief. The State would also ask this Court to consider whether Walker's repetitive, frivolous filings warrant the imposition of sanctions.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



LA DONNA C. HOLLAND

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

CERTIFICATE OF SERVICE

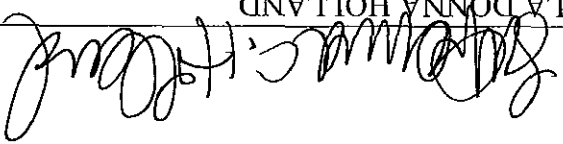
I, La Donna Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable R. I. Pritchard, III
Circuit Court Judge
P. O. Box 1075
Picayune, MS 39466

Honorable Haldon Kittrell
District Attorney
500 Courthouse Square, Ste. 3
Columbia, MS 39429

Demario Walker, # 4625
S.M.C.I.
P. O. Box 1419
Leakesville, MS 39451

This the 25th day of June, 2009.


LA DONNA HOLLAND
SPECIAL ASSISTANT ATTORNEY GENERAL

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