

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

BRIAN RUNNELS

APPELLANT

VS.

NO. 2008-CP-2053-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	2
PROPOSITION: RUNNELS' SO-CALLED "MOTION FOR WRIT OF HABEAS CORPUS" WAS TIME BARRED AND SUCCESSIVE; THE CIRCUIT COURT PROPERLY DISMISSED IT IN A SUMMARY FASHION	3
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

STATE CASES

<i>Freshwater v. State</i> , 914 So.2d 328, 329 (Miss. App. 2005)	3
<i>Graves v. State</i> , 822 So.2d 1089 (Miss. 2002)	4
<i>Johnson v. State</i> , 8 So.3d 907, 908-09 (Miss. 2009)	3
<i>Massey v. State</i> , 843 So.2d 74 (Miss. App. 2003)	4
<i>Morris v. State</i> , 918 So.2d 807, 808 (Miss. 2005)	3
<i>Powers v. State</i> , 945 So.2d 386, 395 (Miss. 2006)	4
<i>Runnels v. State</i> , 919 So.2d 1072, 1073 (Miss. 2005)	1, 2
<i>Runnels v. State</i> , 957 So.2d 424 (Miss. 2007)	2
<i>Skinner v. State</i> , 864 So.2d 298, 299-300 (Miss. App. 2003)	3
<i>Walker v. State</i> , 863 So.2d 1, 9 (Miss. 2003)	3

STATE STATUTES

MISS. CODE ANN. §§ 99-31-1 to -29 (1972)	3
MISS. CODE ANN. § 99-39-5(2) (1972)	3

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STATEMENT OF THE CASE

The procedural history of this case is set out as follows in *Runnels v. State*, 919 So.2d 1072, 1073 (Miss. 2005):

In 1995, Runnels, along with four co-defendants, was indicted for the October 29, 1994, armed robbery and murder of Timothy Tillman. On April 21, 1995, Runnels pled guilty to manslaughter and armed robbery and received a sentence of twenty years and sixteen years, respectively, to be served consecutively.

On November 1, 1995, Runnels filed his first motion for post-conviction relief. This motion was denied on December 22, and, on January 17, 1996, Runnels filed a notice of appeal. On April 7, 1997, Runnels filed affidavits of arrest for four persons. On October 24, 1997, the Mississippi Supreme Court affirmed the trial court's December 22 ruling without published opinion. On February 28, 1998, Runnels filed his second motion for post-conviction relief; however, he did not bring his motion for a hearing or pursue it further. On June 6, 2000, Runnels filed his third motion for post-conviction relief, which was denied. Runnels then filed a motion for reconsideration on July 17, 2000. On May 16, 2001, Runnels filed his first petition to show cause, which was denied. Runnels then filed

a notice of appeal. On February 17, 2004, Runnels filed a second petition for an order to show cause, which was also denied.

After Runnels perfected an appeal, this Court affirmed the judgment of the lower court. *Runnels*, 919 So.2d at 1075. Approximately one year later, on or about May 10, 2006, Runnels filed in the circuit court a Motion for Relief from Judgment in Order. (C.P.23) The court summarily denied that motion on May 17, 2006. On appeal, this Court again upheld the judgment of the circuit court. *Runnels v. State*, 957 So.2d 424 (Miss. 2007).

On September 8, 2008, Runnels filed in the circuit court a so-called Motion for Writ of Habeas Corpus, alleging that he was being held under an illegal sentence. (C.P.29-34) The circuit court summarily denied that motion on November 19, 2008. (C.P.52) Once again, Runnels has perfected an appeal to this Court.

SUMMARY OF THE ARGUMENT

Runnels' latest foray into the Circuit Court of Claiborne County was clearly successive and time-barred. The court properly dismissed this motion without a hearing.

PROPOSITION:

**RUNNELS' SO-CALLED "MOTION FOR WRIT OF HABEAS CORPUS"
WAS TIME BARRED AND SUCCESSIVE; THE CIRCUIT COURT
PROPERLY DISMISSED IT IN A SUMMARY FASHION**

As shown by the foregoing procedural history, Runnels' motion¹ was on its face barred by the applicable statute of limitations and by the prohibition of successive writs. MISS. CODE ANN. § 99-39-5(2) (1972) (as amended), provides that in the case of a guilty plea, the motion for post-conviction relief must be made within three years after conviction, unless an exception can be established. Moreover, "all successive petitions are barred if a petitioner has filed a previous post-conviction motion." *Skinner v. State*, 864 So.2d 298, 299-300 (Miss. App. 2003), citing § 99-39-23(6). See also *Freshwater v. State*, 914 So.2d 328, 329 (Miss. App. 2005).

The controlling statutes do provide for the following exceptions:

Excepted from this three-year statute of limitations are those cases in which the prisoner can demonstrate either that there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of trial, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence. Likewise excepted are those cases in which

¹Runnels could not circumvent the applicable three-year statute of limitations, the prohibition of successive writs, or any other bar imposed by the Mississippi Uniform Post-Conviction Collateral Relief Act, MISS. CODE ANN. §§ 99-31-1 to -29 (1972) (as amended), by styling his motion for post-conviction relief a motion for writ of a habeas corpus. *Morris v. State*, 918 So.2d 807, 808 (Miss.2005); *Walker v. State*, 863 So.2d 1, 9 (Miss.2003). The motion was properly treated as one for post-conviction collateral relief. *Johnson v. State*, 8 So.3d 907, 908-09 (Miss.2009).

the prisoner claims that his sentence has expired or his probation, parole or conditional release has been unlawfully revoked.

§ 99-39-5(2).²

The Mississippi Supreme Court has carved out an additional exception to the time and/or successive-writ bars: that the prisoner's conviction or sentence was a violation of a fundamental constitutional right, e.g., to be free from an illegal sentence, *Graves v. State*, 822 So.2d 1089 (Miss. 2002). Attempting to sustain his burden of showing that his claim was not procedurally barred,³ Runnels asserted that he was being held pursuant to illegal sentences and suggested that the sentences had expired. This claim is patently false. Runnels was sentenced on April 25, 1995, to consecutive terms of imprisonment of 20 years on the conviction of manslaughter and 16 years on the conviction of armed robbery. Both sentences are authorized by statute, and they have not

²§ 99-39-23(6), which prohibits successive writs, delineates the same exceptions as the exceptions to the time bar.

³ *Massey v. State*, 843 So.2d 74 (Miss. App. 2003). Accord, *Powers v. State*, 945 So.2d 386, 395 (Miss.2006).

expired.⁴ It follows that Runnels has not begun to establish that his claim was not procedurally barred.

Summary dismissal was the proper disposition of this time-barred and successive motion. The judgment entered below should be affirmed.

CONCLUSION

For the reasons set out above, the state respectfully submits the circuit court's judgment should be affirmed.

Respectfully submitted,

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



BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

⁴ §§ 97-3-25 and 97-3-79 (setting out range of punishment for manslaughter and armed robbery, respectively).

CERTIFICATE OF SERVICE

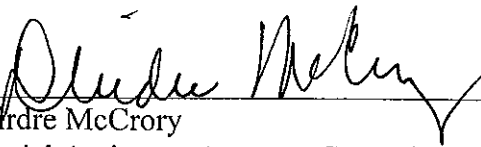
I, Deirdre McCrory, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 9th day of July, 2009.


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