

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

THOMAS J. AMERSON

APPELLANT

VS.

NO. 2009-CP-0630-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Lauderdale County, Mississippi and the denial of a *pro se* motion for post conviction relief filed by Thomas J. Amerson.

STATEMENT OF FACTS

On April 23, 1991, Thomas J. Amerson was convicted, in Circuit Court cause number 111-91, by a Lauderdale County jury of felon carrying a concealed weapon and sentenced to five years as a habitual offender. After waiving his right to a jury trial, Amerson was convicted in a bench trial of 2nd degree arson and received ten years on the arson charge as a habitual offender, to be served consecutive to the sentence in 111-91 but concurrent to time in cause number 409-90. In cause number 218-91, he received five years for destroying public property to be served consecutive to the weapon charge but concurrent to the arson charge. In cause number 214-91, he received five years, as a habitual offender, for simple assault on a police officer, with the sentence to be served consecutive with the other sentences. (CP 32) (CP 30-33).

Aggrieved with the convictions, Amerson appealed. The Mississippi Supreme Court affirmed the concealed weapons charge in *Amerson v. State*, 648 So.2d 62 (Miss.1994), cause 91-KA-0919; affirmed the arson, destroying public proper and causing a riot in *Amerson v. State*, 628 So.2d 1383 (Miss. 1993), 91-KA-0501; and affirmed the simple assault on a police officer in *Amerson v. State*, 648 So.2d58, (Miss. 1994), cause 91-KA-0995.

According to the Circuit Court's order, Amerson "...attempted to collaterally attack his conviction in, but was denied leave to proceed in December 22, 1997. Currently, there is still no order from the Supreme Court allowing the Petitioner to collaterally attack his conviction in this Court." (CP 77). Amerson filed the current motion for post-conviction collateral relief *sub judice* on February 5, 2009. On March 12, 2009, the Circuit Court found that jurisdiction to entertain Amerson's motion was wanting because he failed to make application to the Supreme Court for authority to proceed in the trial court with his post-conviction relief and denied the motion. (CP 76-79.). Aggrieved at the denial of his request for relief, Amerson appealed to this Court. (CP 80).

ISSUE

WHETHER THE COURT OF APPEALS HAS JURISDICTION TO DECIDE AMERSON'S APPEAL?

SUMMARY OF ARGUMENT

The circuit court did not have jurisdiction to consider Amerson's motion for post-conviction collateral relief, and therefore this Court was without jurisdiction to consider his appeal.

ARGUMENT

THE COURT OF APPEALS DOES NOT HAVE JURISDICTION TO DECIDE AMERSON'S APPEAL.

Amerson appealed his conviction and sentence to the Mississippi Supreme Court, therefore in order to proceed with post-conviction relief, it was necessary for him to seek and obtain leave of the Supreme Court to go forward in the trial court. Miss. Code Ann. 99-39-7 (Rev. 2007). Amerson failed to obtain the required permission from the Supreme Court, so the trial court lacked jurisdiction to entertain Amerson's motion and properly dismissed it for lack of jurisdiction. If the trial court did not have jurisdiction to consider the motion, this Court, likewise, has no jurisdiction to entertain the matter. *Doss v. State*, 757 So.2d 1016 (Miss. Ct. App. 2000).

The case is not properly before this Court; therefore, it is unnecessary for the State to respond to Amerson's allegations of error.

CONCLUSION

The order of the Circuit Court of Lauderdale County denying Amerson's motion for post-conviction relief should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

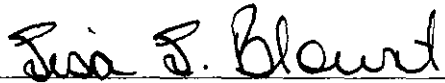
I, Lisa L. Blount, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 21st day of July, 2009.



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