

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ROTHELEO DIXON

APPELLANT

VS.

NO. 2009-CP-0948

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ROTHELEO DIXON

APPELLANT

VERSUS

NO. 2009-CP-0948-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

In the Circuit Court of Yazoo County, Rotheleo Dixon filed a petition for sentence reduction, which the court treated as a motion for post-conviction collateral relief. (C.P.2-7) The court dismissed the motion summarily upon a finding that it was barred by the applicable statute of limitations. (C.P.8-9) Aggrieved by the judgment rendered against him, Dixon has perfected an appeal to this Court.

SUMMARY OF THE ARGUMENT

Dixon's petition was time-barred on its face. The circuit court properly dismissed it in a summary manner.

PROPOSITION:

**DIXON'S PETITION WAS PROPERLY DISMISSED
AS TIME-BARRED**

The circuit court summarily dismissed Dixon's petition with an order set out in pertinent below:

BEFORE this Court is a pro se motion filed by Rotheleo Dixon ("Dixon") taken as a Motion for Post-Conviction Collateral Relief. Dixon's ground for his petition is that his plea of guilty was unintelligently and involuntarily made because his counsel failed to inform him of a lesser offense of murder being manslaughter. After reviewing the motion and applicable records in this cause, the Court finds as follows:

Dixon entered a free a voluntary plea of guilty to the crime of murder on April 5, 2005. Dixon was sentenced to a term of life in the custody of the Mississippi Department of Corrections. This Court finds that Dixon's motion failed to comply with the statute of limitations set forth in Miss. Code Ann. §99-39-5(2) as follows ...

(C.P.9)

The court went on to quote the statute, which of course provides that "in case of a guilty plea," a motion for post-conviction collateral relief "shall be made... within three (3) years after entry of the judgment of conviction."¹

Dixon's petition was filed on April 21, 2009, more than four years after his conviction. (C.P.2) On its face, it was barred by the applicable statute of limitations. Dixon did not attempt to sustain his burden of showing that his petition was not procedurally

¹The statute goes on to list exceptions to the bar, which the court noted in its order. Dixon did not attempt to demonstrate that any of these exceptions applied to his case.

barred. *Powers v. State*, 945 So.2d 386, 395 (Miss. 2006). Accordingly, the court correctly disposed of this petition in a summary manner.² The judgment entered below should be affirmed.

CONCLUSION

The state respectfully submits that the circuit court properly dismissed Dixon's petition without a hearing.. Accordingly, the judgment entered below should be affirmed.

Respectfully submitted,

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


BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

²The court correctly observed that Dixon had made two claims for relief: that his plea had been involuntarily entered, and that he had received ineffective assistance of counsel. (C.P.2-8) Neither of these claims operated to except the petition from the statute of limitations. Moreover, no claims other than those presented by the petition are properly before this Court at this juncture. *Rivers v. State*, 807 So.2d 1280, 1281 (Miss.App.2002); *Patterson v. State*, 594 So.2d 606, 609 (Miss.1992); *Gardner v. State*, 531 So.2d 805, 808-09 (Miss.1988).

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 Jannie M. Lewis
Circuit Court Judge
P. O. Box 149
Lexington, MS 39095

Honorable James H. Powell, III
District Attorney
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Yazoo City, MS 39194

Rotheleo Dixon, #K6493
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This the 20th day of April, 2010.


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