

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

C. D. PICKLE

APPELLANT

VS.

NO. 2009-CP-1404

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
STATEMENT OF FACTS	4
SUMMARY OF THE ARGUMENT	5
ARGUMENT	6
I. - IV.	
DEFENDANT’S FILINGS ARE FRIVOLOUS, SUCCESSIVE WRIT BARRED AND TIME BARRED.	6
CONCLUSION	9
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

STATE CASES

Diggs v. State, 2010 WL 432312 (Miss.App. 2010)	6
Pickle v. State, 345 So.2d 623, 625 (Miss. 1977)	1, 4
Pickle v. State, 942 So.2d 243, 244-245 (Miss.App. 2006)	2, 7
Smith v. State, 2010 WL 703047	7
Williams v. State, 872 So.2d 711, 712(2) (Miss.Ct.App.2004)	6

STATE STATUTES

Miss.Code Ann. § 99-39-11(2) (Supp.2009)	6
Miss.Code Ann. § 99-39-23(6) (Rev.2007)	7
Miss. Code Ann. ¶ 47-5-76	3
Miss. Code Ann. ¶ 99-39-11(2)	6

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STATEMENT OF THE CASE

Defendant, Clanton D. Pickle, Jr., a sixteen-year-old youth, was indicted by the Holmes County grand jury during the April, 1975 Term of court for capital murder. The indictment charged that on November 26, 1974, Pickle killed and murdered Mary Elizabeth Harthcock while committing the crime of rape against her.

Pickle v. State, 345 So.2d 623, 625 (Miss. 1977)(case reversed and remanded for retrial).

¶ 3. Pickle's attempts to challenge his March 1978 conviction and sentence comprise a rich procedural history that is detailed in *Pickle v. State*, 791 So.2d 204, 205-06 (¶¶ 2-9) (Miss.2001). In brief, sometime in the 1970s, Pickle was convicted of capital murder with the underlying felony of rape. On May 4, 1977, the Mississippi Supreme Court reversed Pickle's conviction and remanded the case for a new trial. See *Pickle v. State*, 345 So.2d 623 (Miss.1977). Pickle's second trial was held in March 1978 and again resulted in his conviction of capital murder for which he was sentenced to life imprisonment. Pickle [*245] never perfected an appeal from that conviction.

¶ 4. Between March or April 1978 and December 1981, Pickle filed a motion in the circuit court requesting permission to file an out-of-time appeal from his conviction, which was denied. On review, the supreme court ordered an evidentiary hearing on the issue of whether Pickle had knowingly and intelligently waived his right to appeal. After the hearing, the circuit court concluded that Pickle had knowingly and intelligently waived his right to appeal and denied Pickle's request for an out-of-time appeal. The supreme court affirmed this decision on March 24, 1982.

¶ 5. On September 23, 1997, Pickle filed a PCR again seeking an out-of-time appeal from his March 1978 conviction and sentence. The circuit court denied relief, finding that it already had been determined that Pickle had knowingly and intelligently waived his right to appeal. Pickle appealed the circuit court's decision. On July 19, 2001, the supreme court affirmed, finding that Pickle was collaterally estopped from seeking an out-of-time appeal because his entitlement to an out-of-time appeal had been adjudicated sixteen years previously.

¶ 6. On June 16, 2004, Pickle filed the instant PCR in the Circuit Court of Leflore County. Pickle argued that, in his March 1978 trial, the jury was erroneously instructed and his counsel was ineffective for his failure to ensure that the jury was properly instructed. He further asserted that he was actually innocent. Pickle attached affidavits and excerpts of the trial record as supportive documentation.

¶ 7. On April 11, 2005, the circuit court dismissed the PCR as time-barred and as a successive writ. The court further found that Pickle was collaterally estopped from filing the PCR since the issue of his entitlement to an out-of-time appeal had already been litigated. Pickle has appealed and contends that the court erroneously dismissed his PCR as procedurally barred.

[. . .]

¶ 14. . . . We affirm the dismissal of Pickle's PCR as procedurally barred.

Pickle v. State, 942 So.2d 243, 244-245 (Miss.App. 2006).

Undeterred, defendant petition the Mississippi Supreme Court for Writ of Certiorari which was denied on November 20, 2006. (Order denying No. 2005-CT-00996-SCT, Nov. 9th, 2006)(Circuit Clerk's copy in record at c.p. 391).

In June of 2009 defendant filed with the Circuit Clerk of Leflore County:

“Motion for “Reconsideration” of Court’s Findings of Facts, to vacate it’s ‘Interlocutory Order’ as Void And To Supplement Pending “Petition For Out-of-Time Appeal” Complaint With Joinder of Appeal Claims of Constitutional Trial Errors, Before Final Judgment Order Is Rendered by This Court.” (C.p.394-425).

In August of 2009 the trial court “denied and dismissed as frivolous” all motions filed in their various and sundry forms. (Order denying relief, c.p. 438-441).

Further the trial court noted that defendant had filed at least three frivolous federal suits and three frivolous lawsuits in state court – the court ordered defendant barred from bringing any action before this or any other court, absent immediate danger or physical injury. *Miss. Code Ann.* ¶ 47-5-76.

It is from that order denying relief that defendant timely filed his notice of appeal. (C.p. 443).

STATEMENT OF FACTS

[Defendant], a sixteen-year-old youth, was indicted by the Holmes County grand jury during the April, 1975 Term of court for capital murder. The indictment charged that on November 26, 1974, Pickle killed and murdered Mary Elizabeth Harthcock while committing the crime of rape against her.

Pickle v. State, 345 So.2d 623, 625 (Miss. 1977).

SUMMARY OF THE ARGUMENT

I. - IV.

DEFENDANT'S FILINGS ARE FRIVOLOUS, SUCCESSIVE WRIT
BARRED AND TIME BARRED.

Defendant's previous petitions for post-conviction relief were
procedurally barred and time barred. So is this latest petition for post-
conviction relief.

ARGUMENT

I. - IV.

DEFENDANT'S FILINGS ARE FRIVOLOUS, SUCCESSIVE WRIT BARRED AND TIME BARRED.

The trial court again, reiterating the repeated holdings of the trial court, Mississippi Court of Appeals and the Mississippi Supreme Court have consistently and continuously held defendant assertions without merit.

In this case the trial court specifically found the filings to be frivolous and they were dismissed. Such action by the trial court is contemplated and is a valid reason for dismissal *Miss. Code Ann.* ¶ 99-39-11(2).

The applicable standard of appellate review of a trial court's actions based upon such a ruling is:

¶ 5. The trial court may dismiss a motion for post-conviction relief without an evidentiary hearing where "it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief[.]" *Miss.Code Ann.* § 99-39-11(2) (Supp.2009). This Court will not disturb the trial court's dismissal of a motion for post-conviction relief absent a finding that it was clearly erroneous. *Williams v. State*, 872 So.2d 711, 712(2) (Miss.Ct.App.2004). However, issues of law are reviewed de novo. *Id.*

Diggs v. State, 2010 WL 432312 (Miss.App. 2010)(dec. 2-9-2010)

The State will rely upon the order of the trial court in finding ALL of defendant's asserts and claims and frivolous. *Miss.Code Ann.* § 99-39-11(2) (Supp.2009).

¶ 9. The Mississippi Uniform Post-Conviction Collateral Relief Act delivers a clear message regarding successive post-conviction relief writs. An order denying a motion for post-conviction relief is considered a final judgment and a bar to a second or successive motion. *Miss. Code Ann.* § 99-39-23(6) (Rev.2007). Essentially, an appellant is granted one bite at the apple when requesting post-conviction relief. See, e.g., *Sykes v. State*, 919 So.2d 1064, 1066(¶ 8) (Miss.Ct.App.2005) (holding that a prisoner's successive claims were procedurally barred by the prohibition against successive writs as well as res judicata).

Dobbs v. State, 18 So.3d 295, 298 (Miss.App. 2009).

The State will argue without belaboring the point:

¶ 9. Without doubt, Pickle's PCR was time-barred and barred as a successive writ. . . . The instant PCR was Pickle's second pertaining to his March 1978 conviction; his first PCR was dismissed. Therefore, the instant PCR was barred as a successive writ.

Pickle v. State, 942 So.2d 243 (Miss.App. 2006).

It is the succinct position of the State that if the second writ was successive writ barred, most assuredly so is the third. *Smith v. State*, 2010 WL 703047 (¶ 10)(Miss.App. 2010)(second writ was successive, third is procedurally barred).

In addition this petition is not only frivolous and subject to statutory dismissal, successive writ barred it is also time barred.

¶ 14. This Court has previously held that a circuit court properly dismissed as time-barred a prisoner's claims that he was subjected to double jeopardy, that his guilty plea was involuntary, and that he received ineffective assistance of counsel. *Trotter*, 907 So.2d at 402 (¶ 14). In dismissing these claims as time-barred, this Court found that these claims did not affect the petitioner's fundamental rights. *Id.* Likewise, we find that none of *Dobbs's* claims are exempt from the

three-year statute of limitations. It follows that we find no merit to Dobbs's claim that the circuit court erred when it found that his motion for post-conviction relief was time-barred.

Dobbs v. State, 18 So.3d 295, 298 (Miss.App. 2009)

While not specifically mentioned in the order denying relief this petition was also subject to the time bar. Additionally, it does not appear that defendant makes any attempt whatsoever to claim there is an applicable exception to any of these procedural bars.

The State would ask that no relief be granted on any of the enumerated, alluded or added claims or error.

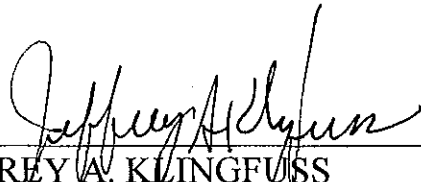
CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the trial court denial of post-conviction relief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



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CERTIFICATE OF SERVICE

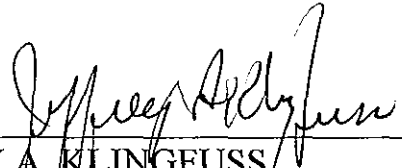
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Richard A. Smith
Circuit Court Judge
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This the 10th day of March, 2010.



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