

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

2010-CP-00008

**ROBERT E. WHITE, III
APPELLANT**

vs.

**CHRISTOPHER B. EPPS
APPELLEE**

**On Appeal From the Circuit Court
of Jones County, Mississippi**

BRIEF OF APPELLEE

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

**JANE L. MAPP
SPECIAL ASSIST. ATTORNEY GENERAL
MSB# [REDACTED]
510 George Street, Suite 212
Jackson, MS 39202
(601) 359-5770**

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal:

1. Robert E. White, III, Appellant
2. Christopher Epps, Commissioner of Corrections, Appellee
3. Billy Joe Landrum, Circuit Court Judge
4. Jim Hood, Attorney General

The undersigned counsel further certifies that the following attorneys have an interest in the outcome of this case:

For Appellee:

1. Jane Mapp, Special Assistant Attorney General, State of Mississippi

By:  _____

TABLE OF CONTENTS

| | |
|---|-----|
| CERTIFICATE OF INTERESTED PARTIES | ii |
| TABLE OF CONTENTS | iii |
| TABLE OF AUTHORITIES | iv |
| ISSUE..... | v |
| STATEMENT OF THE CASE | 1 |
| SUMMARY OF THE ARGUMENT | 2 |
| ARGUMENT | 3 |
| CONCLUSION | 6 |
| CERTIFICATE OF SERVICE | 7 |

TABLE OF AUTHORITIES

| <u>Case(s)</u> | <u>Page(s)</u> |
|---|-----------------------|
| <i>Lacey v. State</i> , 29 So.3d 786, 787 (Miss. Ct. App. 2009)) | 5 |
| <i>Strickland v. Howell</i> , 654 So.2d 1387 (Miss. 1995)) | 3, 4 |
| <i>White v. State</i> , 796 So.2d 269 (Miss. Ct. App. 2001) | 1, 4 |
| <i>Williams v. State</i> , 872 So. 2d 711 (Miss.Ct.App. 2004) | 4 |

| <u>Other Authorities</u> | <u>Page(s)</u> |
|---|-----------------------|
| Miss. Code Ann. § 99-39-1, et seq. | 4 |
| Miss. Code Ann. § 99-39-5(2) | 4, 6 |
| Miss. Code Ann. § 99-39-7 | 5, 6 |

ISSUE

I. Whether the Lower Court(s) Erred by Not Evaluating the Soundness of the Judgement (Sic) as a Foundation for a Valid Commitment Order.

II. Whether MDOC Holds a Valid Commitment Order.

STATEMENT OF THE CASE

On or about September 11, 2009, Robert E. White, an inmate incarcerated within the Mississippi Department of Corrections (“MDOC”) filed a petition entitled “Writ of Habeas Corpus Ad Subjiciendum (sic)” in the Circuit Court of Greene County, Mississippi. (C.P.¹ at 7). On or about October 16, 2009, Circuit Court Judge Robert Krebs, finding the petition to be in the nature of a post conviction relief motion, entered an order transferring venue to Circuit Court of Jones County, Mississippi. (C.P. at 5).

White was convicted of the crime of manslaughter on or about January 18, 2000 in Jones County, Mississippi following a jury trial. He was subsequently sentenced to serve a term of 20 years in the custody of the Mississippi Department of Corrections (“MDOC”). (C.P. at 63). His conviction and sentence were affirmed on direct appeal by the Mississippi Court of Appeals on October 2, 2001. *See, White v. State*, 796 So.2d 269 (Miss. Ct. App. 2001).

White filed the current action attacking the validity of his conviction and sentence on or about September 11, 2009, some eight (8) years after his criminal case was affirmed on appeal and without first obtaining permission from the Mississippi Supreme Court to file the petition. White argued in his petition that the trial court lacked jurisdiction over his criminal case because the indictment filed against him was invalid because it failed to list all the essential elements of the crime. (C.P. at 12). He further argues that his conviction was invalid the jury instructions did not set out all of the essential elements of

C.P. = Clerk’s Papers

the crime and therefore the jury did not comprehend all the essential elements of the crime. (C.P. at 12). White goes on to argue that since his conviction was invalid that it follows that the commitment order, which he claims is the basis for Respondents restricting his liberty, is likewise invalid.

On or about December 3, 2009, Jones County Circuit Judge Billy Joe Landrum entered an order denying White's petition. Judge Landrum found that the petition was came under to the Mississippi Uniform Post Conviction Relief Act ("the Act") and was filed well outside the statute of limitations. He further found that the circuit court was without jurisdiction to hear the case because White "failed to seek leave from the Mississippi Supreme Court to proceed in the trial court" as required by the Act. (C.P. at 27).

Feeling aggrieved, White filed his notice of appeal to the Mississippi Supreme Court. (C.P. at 28). White was granted leave to appeal *in forma pauperis*. (C.P. at 34).

SUMMARY OF THE ARGUMENT

Both the Circuit Court and this court lack jurisdiction over White's petition. White filed the current action attacking the validity of his conviction and sentence on or about September 11, 2009, some eight (8) years after his criminal case was affirmed on appeal, outside the three (3) year statute of limitations, and without first obtaining permission from the Mississippi Supreme Court to file the petition as required by the post-conviction relief law.

ARGUMENT

I. Whether the Lower Court(s) Erred by Not Evaluating the Soundness of the Judgement (Sic) as a Foundation for a Valid Commitment Order.

Citing to *Strickland v. Howell*, 654 So.2d 1387 (Miss. 1995), White argues that he is attacking the validity of his commitment order due to the insufficiency of his indictment and thus his claim was properly brought as a habeas corpus motion and not as a petition for post-conviction relief because it involved a pre-conviction matter. He maintains that pursuant to *Strickland* the circuit court was required to hold an evidentiary hearing to test the sufficiency of the commitment order.

Strickland is readily distinguishable from the case at bar. In *Strickland* the Court opined:

The impetus of Strickland's writ of habeas corpus claim is that not only did he not commit the crime, he was never indicted, tried, convicted or sentenced. The only evidence in the record before this Court, as was with the lower court, is a commitment order issued by the Harrison County Circuit Court clerk stating that Strickland pled guilty to murder and sentencing him to life imprisonment. The State claims that the commitment order is sufficient to support Strickland's claim and therefore, that Strickland has failed to state a claim upon which relief can be granted. We disagree.

Strickland contends, and we agree, that his petition for habeas corpus relief is not a petition for post-conviction relief because, as Strickland argues, he was never convicted. Thus, the petition for habeas corpus relief is not time barred on its face under the provisions of the Post-Conviction Collateral Relief Act, Miss.Code Ann. § 99-39-1, et seq.

Strickland, 654 So.2d at 1388-89.

Unlike Strickland, White was indicted, convicted by a jury, sentenced by the trial court, and had that conviction and sentence affirmed on direct appeal. White is not arguing that he was never actually convicted or sentenced, instead he is attacking the validity of his conviction and sentence, which by definition is a post-conviction relief matter and thus subject to the laws of the Mississippi Uniform Post-Conviction Collateral Relief Act (“the Act”) found at Miss. Code Ann. § 99-39-1, *et seq.* He can not circumvent these rules by stating that his petition concerns a pre-conviction matter, namely the sufficiency of his indictment. The lower court properly found that White’s petition was in fact one for post-conviction relief .

In reviewing a lower court’s decision to dismiss a motion for post-conviction relief an appellate court will not disturb a circuit court’s “factual findings unless they are found to be clearly erroneous.” *Williams v. State*, 872 So. 2d 711, 712 (Miss.Ct.App. 2004). The standard of review for questions of law, however, is de novo. *Id.*

Pursuant to Miss. Code Ann. § 99-39-5(2) (Rev. 2007) a petition for post-conviction relief “shall be made within three (3) years after the time in which the prisoner’s direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired...” White’s conviction and sentence were affirmed on direct appeal by the Mississippi Court of Appeals on October 2, 2001. *See, White v. State*, 796 So.2d 269 (Miss. Ct. App. 2001). His motion for post-conviction relief was filed on September 11, 2009, almost eight (8) years after the Court of Appeal’s

ruling on his direct appeal. Accordingly, the circuit court properly found that Whites motion was procedurally barred as untimely filed. *See, Lacey v. State*, 29 So.3d 786, 787 (Miss. Ct. App. 2009).

Furthermore, the Circuit Court also correctly found that it lacked jurisdiction over White's motion, as he did not first obtain permission from the Mississippi Supreme Court file his post-conviction relief motion in the trial court. Miss. Code Ann. § 99-39-7 provides in pertinent part as follows:

Where the conviction and sentence have been affirmed on appeal or the appeal has been dismissed, the motion under this article shall not be filed in the trial court until the motion shall have first been presented to a quorum of the Justices of the Supreme Court of Mississippi, convened for said purpose either in termtime or in vacation, and an order granted allowing the filing of such motion in the trial court.

Failure to obtain permission from the Supreme Court to file his petition deprives both the trial court and the appellate court of jurisdiction over this matter. *See, Lacey*, 29 So.3d at 788. As there is no evidence in the record to indicate that White complied with the jurisdictional requirement his appeal should be dismissed for lack of jurisdiction.

II. Whether MDOC Holds a Valid Commitment Order.

White again attempts to argue the merits of his case. He maintains that MDOC is unlawfully retraining his liberty base on an invalid commitment order. He argues that the commitment order is invalid because his conviction and sentence are invalid due to a defective indictment.

As argued previously, White's arguments are an attack on his conviction and sentence and thus are in the nature of a motion for post-conviction relief and should be

dismissed for lack of jurisdiction for failure to comply with Miss. Code Ann. § 99-39-7 and/or as procedurally barred as untimely filed pursuant to Miss. Code Ann. § 99-39-5(2).

CONCLUSION

Based on the arguments of fact and law herein above, it is clear that the trial court did not commit reversible error and its order denying Appellant's Petition should be affirmed.

Respectfully submitted,

CHRISTOPHER B. EPPS
APPELLEE

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

JANE L. MAPP
SPECIAL ASSIST. ATTORNEY GENERAL
MS BAR NO. [REDACTED]

BY: Jane L. Mapp

CERTIFICATE OF SERVICE

I, Jane L. Mapp, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day caused to be mailed, via United States Postal Service, first class postage prepaid, a true and correct copy of the foregoing **Brief of Appellee** in the above-styled and numbered cause to the following:

Robert White, III, MDOC #K1670
HHRCF
23234 Hwy 12 East
Lexington, MS 39095

Hon. Billy Joe Landrum
Circuit Court Judge
P.O. Box 685
Laurel, MS 39441

This, the 8th day of July, 2010.

A handwritten signature in cursive script, reading "Jane L. Mapp", is written over a horizontal line.

Jane L. Mapp
Special Assistant Attorney General

510 George Street, Suite 212
Jackson, MS 39202
Telephone: (601) 359-5770