

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

BOBBY EARL WILSON, JR.

APPELLANT

VS.

NO. 2010-CP-0158

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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APPELLANT

VERSUS

NO. 2010-CP-0158-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Bobby Earl Wilson, Jr., has appealed a judgment entered by the Circuit Court of Warren County, which summarily dismissed his self-styled Motion to Amend Petition for a Writ of Error Coram Nobis. (C.P.83)

PROPOSITION:

WILSON'S MOTION WAS PROPERLY DISMISSED

In his Motion to Amend Petition for a Writ of Error Coram Nobis, Wilson attacked a judgment of conviction pursuant to a plea of guilty entered on August 5, 1994. (C.P.36-46) The circuit court, noting that the writ of error coram nobis had been abolished, summarily dismissed the motion. (C.P.83)

The court's order is not subject to reversal "absent a finding" that it "was clearly erroneous." *Taylor v. State*, 766 So.2d 830, 832 (Miss. App. 2000), citing *Kirksey v. State*, 728 So.2d 565, 567 (Miss.1999). Moreover, "In a petition for post-conviction relief, the

petitioner carries the burden of proving that his claim is not procedurally barred.” *Massey v. State*, 843 So.2d 74 (Miss. App. 2003). Accord, *Powers v. State*, 945 So.2d 386, 395 (Miss. 2006).

The court properly could have construed the motion as one for post-conviction relief. *Smith v. State*, 29 So.3d 126 (Miss. App. 2010); *Morris v. State*, 918 So.2d 807, 808 (Miss. 2005). However, dismissal was the proper disposition. The motion clearly was barred by the applicable statute of limitations and the prohibition of successive writs. *Smith*, 29 So.3d at 127-28. No error has been shown in the circuit court’s summary dismissal of Wilson’s motion.

CONCLUSION

The state respectfully submits that the circuit court properly dismissed Wilson’s motion. The judgment entered below should be affirmed.

Respectfully submitted,

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


BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

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 M. James Chaney, Jr.
Circuit Court Judge
P. O. Box 351
Vicksburg, MS 39181-0351

Honorable Richard Smith
District Attorney
P. O. Box 648
Vicksburg, MS 39181

Bobby E. Wilson, Jr., #52274
Mississippi State Penitentiary
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This the 17th day of December, 2010.



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