

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RONALD GENE JOHNSTON

APPELLANT

VS.

NO. 2011-CP-0825-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

Petitioner Johnston was indicted for three Counts of Armed Robbery and pled guilty to each. At that time, defendant was sentenced to 30 years on each count to be served consecutive to each other. (C.p. 5-35, indictments, petitions to plead guilty, transcript of plea and sentencing orders).

In May 2011, petitioner filed a motion for post-conviction relief on all three convictions. (C.p. 36-53). The trial court denied the motion(s) as time barred and without merit.

It is from that final order that petitioner timely noticed this instant appeal.

STATEMENT OF FACTS

While it appears petitioner has had numerous cases before the reviewing courts of Mississippi, it would appear this was the first time Johnston sought to challenge his three armed robbery conviction from 1983.

The trial court found the petition(s) to challenge his three convictions to be without merit and denied relief.

The State would ask this Court to Affirm the ruling of the trial court.

SUMMARY OF THE ARGUMENT

In a time barred petition for post-conviction defendant pleading no exceptions to the bar in the petition to the trial court, now claims double jeopardy bar to overcome the procedural bars.

This too late claim is based on mere unsupported assertions of petitioner.

The trial court was correct in that this petition is barred and without merit as there was no evidence to support his claim.

ARGUMENT

I.

Petitioner's motion was time-barred and without merit.

The trial court specifically noted this petition challenging his three convictions was time barred and not within an exception *Miss. Code Ann.* § 99-39-5.

Further, petitioner now claims for the first time on appeal the intervening decision of *Rowland v. State*, 43 So.3d 503 (Miss. 2010) as an intervening decision. However, this claim was never raised in the petition before the trial court, no were there any supporting facts to support his allegation of double jeopardy.

As recently reiterated in *Grogan* mere assertions unsupported in the record and not presented to the trial court are found wanting.

¶ 14. Finally, we find that the successive-writ bar also applies to Grogan's subsequent assignments of error concerning his constitutional rights. While we recognize that “[t]he procedural bars of the UPCCRA do not apply to ‘errors affecting fundamental constitutional rights[,]’ ” *White*, 59 So.3d at 636 (¶ 11), we note that “mere assertions of constitutional-rights violations do not suffice to overcome the procedural bar.” *Id.* (citations omitted). Moreover, this Court will affirm the dismissal of a PCR motion if the movant fails to demonstrate “a claim procedurally alive substantially showing the denial of a state or federal right.” *Robinson*, 19 So.3d at 142 (¶ 6) (citations omitted).FN3

Grogan v. State, 2011 WL 5372116 (Miss.App. 2011).

See also:

¶ 24. As this Court has held, great weight may be placed on a defendant's sworn testimony given at a plea hearing, and the defendant faces a “high hurdle in recanting that testimony.” *Pevey v. State*, 914

So.2d 1287, 1290 (¶ 8) (Miss.Ct.App.2005) (citing Calvert v. State, 726 So.2d 228, 231 (¶ 10) (Miss.Ct.App.1998)). ***The only evidence offered by Conwill in support of his claim were his own unsupported assertions.***

Conwill v. State, 2011 WL 6215617 (Miss.App. 2011)(emphasis added).

The State would argue the ruling of the trial court is supported by the record on appeal and ask this reviewing court to affirm the trial court's denial of post-conviction relief.

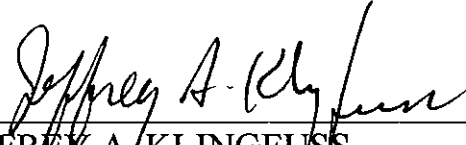
CONCLUSION

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,

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CERTIFICATE OF SERVICE

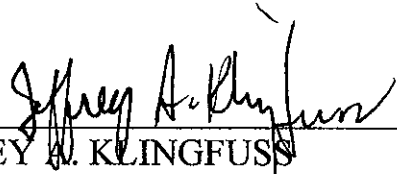
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 26th day of January, 2012.



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