
IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

2012-CT-01914-SCT

**GLEN CONLEY
PETITIONER**

v.

**CHRISTOPHER EPPS
RESPONDENT**

**RESPONDENT'S SUPPLEMENTAL BRIEF TO
MISSISSIPPI SUPREME COURT UPON GRANTING
PETITIONER'S PETITION FOR WRIT OF CERTIORARI**

SUPPLEMENTAL BRIEF OF RESPONDENT

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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. Glen Conley Inmate # R5467, Petitioner
2. Christopher Epps, Commissioner, Miss. Dept. of Corrections
3. Honorable Richard A. Smith, Circuit Court Judge, 4th District
4. Jim Hood, Attorney General

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

For Respondent:

1. Anthony L. Schmidt, Jr., Special Assistant Attorney General
2. James Norris, Attorney, Mississippi Department of Corrections

SO CERTIFIED this 18th day of June, 2014.

BY: s/Anthony L. Schmidt, Jr.

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITES	iv
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE.....	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	3
I. Conley has failed to file his action in the proper venue and is procedurally barred.	3
CONCLUSION.....	6
CERTIFICATE OF SERVICE	7

TABLE OF AUTHORITES

Cases

<i>Bessent v. Clark</i> , 974 So. 2d 928 (Miss. Ct. App. 2007)	4
<i>Brewer v. State</i> , 819 So. 2d 1165 (Miss. 2000)	4
<i>Bufkin v. King</i> , 2013-CP-00392–COA (Miss. Ct. App. 2014)	5
<i>Chandler v. MDOC</i> , 133 So. 3d 817 (Miss. 2014)	5
<i>Conley v. State</i> , 790 So. 2d 773 (Miss. 2001)	2
<i>Crosby v. State</i> , 982 So. 2d 1003 (Miss. Ct. App. 2008)	5
<i>Graham v. State</i> , 85 So. 3d 847 (Miss. 2012)	5
<i>Maston v. State</i> , 768 So. 2d 354 (Miss. Ct. App. 2000)	4, 5
<i>Moore v. State</i> , 859 So. 2d 1018 (Miss. Ct. App. 2003)	4
<i>Nelson v. Bingham</i> , 116 So. 3d 172 (Miss. Ct. App. 2013)	4
<i>Taylor v. State</i> , 121 So. 3d 329 (Miss. Ct. App. 2013)	5

Statutes

<i>Miss. Code Ann. §99-39-5(1)</i> (1972, as amended)	4
<i>Miss. Code Ann. §99-39-7</i> (1972, as amended)	3, 4, 5

STATEMENT OF ISSUES

- I. Whether Conley has filed his action in the proper venue and is procedurally barred.

STATEMENT OF THE CASE

Petitioner, Glen Conley (“Conley”), is an inmate in the custody of the Mississippi Department of Corrections (“MDOC”). He is confined at the Mississippi State Penitentiary at Parchman (“Parchman”). On July 3, 1998 Conley was convicted in the Circuit Court of Pike County, Mississippi of capital murder. Conley was sentenced to serve life without the possibility of parole.

Conley’s sentencing order specifically states his term to serve as life without parole, but Conley argues he should be eligible for parole consideration. In 1999, Conley filed a direct appeal to this Honorable Court regarding his sentence and parole eligibility. *See Conley v. State*, 790 So. 2d 773 (Miss. 2001). Conley’s conviction for capital murder and sentence of life without parole were affirmed in his direct appeal. *See Id.* In 2001 and 2011, after his direct appeal, Conley has filed two motions for leave to proceed in the trial court, both of which were denied. *See Or. Denying Petrs. ’Mot.* (Aug. 14, 2002); *Or. Denying Petrs. ’Mot.* (Jan. 26, 2012). During this time, Conley unsuccessfully attempted to attack the legality of his sentence through both steps of MDOC’s Administrative Remedy Program (“ARP”). Conley then filed his petition in the Circuit Court of Sunflower County, Mississippi asking MDOC to “disregard the life without parole portion” of his sentence and grant him a parole hearing. On November 1, 2012, the circuit court dismissed Conley’s petition with prejudice.

Feeling aggrieved, Conley filed his Notice of Appeal on November 30, 2012. On December 3, 2013, the Court of Appeals affirmed the circuit court’s holding. Conley subsequently filed a Motion for Rehearing, which was denied on April 1, 2014. Conley then filed his Petition for Writ of Certiorari, which was granted on June 12, 2014 by this

Honorable Court.

SUMMARY OF THE ARGUMENT

Despite Conley's attempt to disguise the nature of his claim, Conley's petition attempts to attack the legality of his sentence, which is not an issue regarding an administrative decision, but is rather an action which must be brought forth under Mississippi Uniform Post-Conviction Collateral Relief Act. Conley has filed his petition in the improper venue, as he must petition the sentencing court pursuant to *Miss. Code Ann.* §99-39-7 (1972, as amended). Furthermore, since Conley has directly appealed his conviction to this Honorable Court, which has affirmed his conviction and sentence, Conley must seek leave to proceed in the trial court before filing such a petition. *See Id.* Conley is apparently aware of the procedural and venue requirements under the Mississippi Uniform Post-Conviction Collateral Relief Act, as has filed two motions for leave to proceed in trial court regarding his "illegal sentence," both of which have been denied. Conley is procedurally barred from filing a motion for post-conviction collateral relief, and has attempted to circumvent this bar by disguising the nature of his petition which attempts to attack the legality of his sentence through MDOC's ARP. If granted leave by this Honorable Court, the Circuit Court of Pike County Mississippi, has *exclusive* jurisdiction to hear Conley's petition regarding an "illegal sentence," therefore the decision of the Circuit Court of Sunflower County, Mississippi should be vacated and the decision of the Court of Appeals be reversed.

ARGUMENT

I. Conley has failed to file his action in the proper venue and is procedurally barred.

Conley's claims plainly fall under the post-conviction relief statute since they

involve a claim that “his conviction or the sentence was imposed in violation of the Constitution of the United States or the Constitution or laws of Mississippi... or he is otherwise unlawfully held in custody....” *See Miss. Code Ann. §99-39-5(1)* (1972, as amended). The Mississippi Uniform Post-Conviction Collateral Relief Act provides the *exclusive* and uniform procedure for the collateral review of convictions and sentences in this state. *Moore v. State*, 859 So. 2d 1018, 1019 (Miss. Ct. App. 2003) (citing *Brewer v. State*, 819 So. 2d 1165, 1166 (Miss. 2000)). *Miss. Code Ann. §99-39-7* provides that a motion for post-conviction relief “shall be filed as an original civil action in the trial court....” *Maston v. State*, 768 So. 2d 354, 355 (Miss. Ct. App. 2000). Furthermore, “[w]here the conviction and sentence have been affirmed on appeal ..., [a PCR motion] 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, ... and an order granted allowing the filing of such motion in the trial court. *Nelson v. Bingham*, 116 So. 3d 172, 174, 175 (Miss. Ct. App. 2013) (citing *Miss. Code Ann. §99-39-7*). This procedure is not merely advisory, but jurisdictional. *Nelson*, 116 So. 3d at 175 (citing *Bessent v. Clark*, 974 So. 2d 928, 933 (Miss. Ct. App. 2007).

Conley attempts to disguise the premise of his claim, but in actuality is alleging his sentence of life without parole is in violation of the Ex Post Facto Clause. Such a claim is an attack on a sentence and not an administrative decision cognizable under MDOC’s ARP. The Mississippi Uniform Post-Conviction Collateral Relief Act provides the *exclusive* and uniform procedure for the collateral review of convictions and sentences in this state. *Moore*, 859 So. 2d at 1019 (Miss. Ct. App. 2003) (citing *Brewer*, 819 So. 2d at 1166). Notwithstanding procedural bars, such a claim must be filed as an

original action in the trial court. *See Maston*, 768 So. 2d at 355. Conley is apparently aware of the venue requirements under the Mississippi Uniform Post-Conviction Collateral Relief Act, as has filed two motions for leave to proceed in trial court regarding his “illegal sentence,” both of which have been denied. Since Conley’s conviction and sentence were affirmed by direct appeal, Conley failed to obtain permission to file the present petition, and hence the trial court lacked jurisdiction to hear the matter. *See Taylor v. State*, 121 So. 3d 329, 331 (Miss. Ct. App. 2013) (citing *Miss. Code Ann. §99-39-7*); *Crosby v. State*, 982 So. 2d 1003 (Miss. Ct. App. 2008). Consequently, the Court of Appeals should not have addressed the merits of Conley’s petition. *See Graham v. State*, 85 So. 3d 847, 850 (Miss. 2012).

This is not a case where the MDOC is misinterpreting the language of a sentencing order, and the failure properly to interpret and execute the order is subject to administrative review. *Bufkin v. King*, 2013-CP-00392–COA (Miss. Ct. App. 2014). The MDOC is applying the literal language of the order along with the decision rendered by this Honorable Court affirming Conley’s sentence and conviction. *See Id.* It would be an absurdity to imply MDOC has the power administratively to simply “ignore the without parole” portion of a life sentence imposed by the circuit court which has subsequently been affirmed on direct appeal to this Honorable Court. Notwithstanding procedural bars, Pike County, where Conley was convicted and received his sentence, has *exclusive*, original jurisdiction to hear and determine his petition for post-conviction relief, therefore the holding of the Circuit Court of Sunflower County should be vacated and the decision of the Court of Appeals should be reversed. *See Chandler v. MDOC*, 133 So. 3d 817 (Miss. 2014).

CONCLUSION

Conley's petition alleges his sentence of life without parole is illegal and in violation of the Ex Post Facto Clause. Conley's conviction and sentence were directly appealed and affirmed by this Honorable Court. Conley is attempting to circumvent the procedural bars of the Mississippi Uniform Post-Conviction Collateral Relief Act, and has appealed the decision of MDOC's ARP for a claim attacking his sentence. A claim questioning the legality of a sentence is not cognizable under MDOC's ARP, as MDOC has no authority to change a sentence. If granted leave by this Honorable Court to file such a claim, the Circuit Court of Pike County, Mississippi, where Conley was convicted and sentenced has *exclusive* original jurisdiction to hear such a claim attacking his sentence; therefore, the holding of the Circuit Court of Sunflower County should be vacated and the decision of the Court of Appeals should be reversed

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Anthony L. Schmidt, Jr., 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 **RESPONDENT'S SUPPLEMENTAL BRIEF**, to the following:

Glen Conley# R5467
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Honorable Richard A. Smith
Circuit Court Judge, 4th District
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SO CERTIFIED this 18th day of June, 2014.

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