

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2014-CP-01732-CPA

FILED

MAR 21 2016

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

CHARLES EDWARD WILSON

APPELLANT

A/K/A CHARLES E. WILSON A/K/A WINDING

V.

ORIGINAL

STATE OF MISSISSIPPI

APPELLEE

MOTION FOR REHEARING ENBANC

RESPECTFULLY SUBMITTED,

Charles Edward Wilson #44482
CHARLES EDWARD WILSON #44482
APPELLANT --- PRO SE
SMCI-II, D-2, B-ZONE, BED #111
P.O. BOX 1419
LEAKESVILLE, MS 39451

MOTION#

2016

1272

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2014-CP-D1732-LDA

CHARLES EDWARD WILSON
CHARLES E. WILSON A/K/A WINDING

APPELLANT

V.

STATE OF MISSISSIPPI

APPELLEE

MOTION FOR REHEARING ENBANC

Comes Now, The Appellant, Charles Edward Wilson, Pro Se, in the above styled Caption files this Request Motion For Rehearing En Banc of the denial of Post-Conviction Relief. Wherein Disposition Was held March 8th, 2016, Affirming to Successive Writ barred Under Mississippi Code Annotated Section 99-39-23(6); and Procedurally Time-Barred pursuant to MCA Section 99-39-5(2). This Case involves issues of Constitutional Magnitude.

On August 4th, 2014, the Appellant filed his Post-Conviction Relief Motion in the Circuit Court of Amite County, Mississippi, pursuant to MCA Section 99-39-1, et seq. On October 8th, 2014, the Circuit Court denied Appellant's Post-Conviction Relief Motion as procedurally Time-Barred. On Appeal from the Amite County Circuit Court, the Disposition of this Court Affirmed

the Appellant's PCR on March 8th, 2016, as a Successive Writ Barred under MCA Section 99-39-23(b); and Procedurally Time-Barred pursuant to MCA Section 99-39-5(a).

The Appellant admits that he has attempted upon several occasions to have his claims heard and has been denied. However, the Appellant isn't an attorney and is unskilled in the terminology of the exact words to express to the courts' errors which should be heard in light of fundamental fairness. Whereas, this court has stated over and over that errors that affect fundamental constitutional rights exempt one of a procedural bar of UPRCA.

SUCCESSIVE WRIT

The Court of Appeals held that the Appellant's claims is under a second and successive writ is barred because he had previously filed a PCR Motion. However, in Rowland v. State, 42 So. 3d 545 (2010); the Circuit Court of Washington County, summarily dismissed motion with prejudice. The Court of Appeals affirmed, upon finding that defendant's motion was barred by statutory prohibition against successive writs. This court held that Appellant's claims of double jeopardy was time barred pursuant to MCA Section 99-39-5(a) - Time Bar and Section 99-39-23(b), successive writ barred and that his claim did not fit within the statutory exception under Rowland.

However, Appellant and Rowland, were time barred pursuant to MCA Section 99-39-5(a), wherein, this court held in Rowland v. State, 42 So. 3d 503 (Miss. 2010), that defendant's double jeopardy claims implicated

a fundamental right such that it was excepted from the procedural bars of the Uniform Post-Conviction Collateral Relief Act (UPCCRA). Overruling Lockett v. State, 582 So.2d 428; Mann v. State, 490 So.2d 910; Jennings v. State, 700 So.2d 1326; Pinkney v. State, 757 So.2d 297.

The trial court dismissed Appellant's and Rowland's Petition as time barred and the Court of Appeals affirmed. The Appellant should be entitled to the same set forth consideration on the claims as Rowland where procedurally defaulted. However, as held in the Rowland Supra, "Errors that affect fundamental rights are exempt from the procedural bars of UPCCRA."

Here, as did the defendant in Rowland, Appellant's Counsel failed to raise the double jeopardy issue - insofar as jurisdiction; because no additional proof is required for sound judicial determination that Appellant's plea of guilty to rape run afoul of the Federal and State Constitutional provisions concerning former jeopardy, citing Dubart v. State, 981 So.2d 1056, 1058 (Miss. Ct. App. 2008), on the question of whether the kidnapping and a rape occurred at the same time.

In Meek v. State, 604 So.2d 748, 750 (Miss. 1992), where the prosecution has proved the greater, or the lesser included - The defendant may be convicted and punished for one of these offense - not both. The right to be free from double jeopardy is a fundamental right. Thus, the Appellant's plea was as the underlying felony in a capital indictment. This clearly violates the Constitutional prohibition against multiple punishment for the same offense. U.S. Const., V. and Miss. Const., Art., 3, section 22.

On December 18th, 2013, the Honorable David Anthony Chandler, MS. Supreme Court Justice, stated in his order to Appellant, "If a Petitioner has not directly appealed the conviction or sentence, Petitioner "Must" file his or her Motion for Post-Conviction Collateral Relief in the trial court."

Due to this Order from the Justice of the Mississippi Supreme Court does Not Make Appellant's PCR a "Successive Writ".

PROCEDURAL BAR

Appellant request this Rehearing in light of the facts that are set forth in the Rowland v. State, 42 So. 3d 503 (Miss. 2010), holding that imposition of a double jeopardy claim was in fact a fundamental right that was exception from the Procedural Bars of U.P.C.C.R.A.

This Court held that Appellant's claims were denied due to the record of the evidence in the record. In Menna v. New York, 423 U.S. 161, 62, 46 L. Ed. 2d 195, S. Ct. 241 (1975); Blackledge v. Perry, 417 U.S. 21, 30, 40 L. Ed. 2d 628; 94 S. Ct. 2098 (1974), which will be discussed in this Motion regarding Waiver.

The Rowland Supra, is exactly as Appellant in regards to the procedural bar holding, and the fact that the Court overruled the holding in Lockett v. State, 582 So. 2d 428; Mann v. State, 490 So. 2d 910; Jennings v. State, 700 So. 2d 1326; Pinkney v. State, 757 So. 2d 297. In light of double jeopardy as Graves v. State, 969 So. 2d 845-846-47 (Miss. 2007). This Court stated, "However as the protection against double jeopardy is a fundamental right; We will Not apply a procedural bar and will address the Merits of Graves Claim."

Appellant has never received this consideration, ONLY barred and/or waived which double jeopardy is a claim that cannot be waived through a plea... That affected fundamental constitutional rights exempt one of a procedural bar citing Rowland, Graves,

Ivy, Kennedy and others; then Appellant should receive that same consideration, because the sentence that Appellant received for kidnapping and rape constitutes an illegal sentence involving his fundamental rights whatever name or title this court may seek to put on the denial of a protected right. The Procedural bar of Mississippi's Uniform Post-Conviction Relief Act does not apply.

Appellant just like Rowland, Fuselier and Graves argued that because his kidnapping and rape conviction violated the double jeopardy clause. His sentence for kidnapping and rape were illegal; although his petition was filed more than thirty (30) years ago right after he was sentenced. It involved a fundamental constitutional right as Rowland, and others. Because of this fundamental right being involved that affects fundamental rights, it should be exempt.

In Larter v. Rafferty, 601 F. Supp. 533 (1985), the court held in its conclusion, "It would be naive not to recognize that some prejudice, bias and fear lurks in all of us. But to permit a conviction to be urged based upon such factors or to permit a conviction to stand having utilized such factors diminishes our fundamental constitutional rights.

The Appellant was never advised of his rights against double jeopardy; only that he had a right to a jury trial, a right against self-incrimination and a right to cross examine his accusers. Does not and was not advised of any of his protected rights. Bell v. State, 726 So. 2d 93, 94 (Miss. 1998). In the Rowland supra, constitutes a fundamental rights exception. It's also held in Ivy v. State, 731 So. 2d 601, 603 (Miss. 1999) (an illegal sentence was not time barred), (Kennedy v. State, 732 So. 2d 184-186-87

(Miss. 1999) (Holding that Kennedy's Petition alleging an illegal sentence was not time-barred or barred by res judicata), Fuselier v. State, 654 So. 2d 519, 522 (Miss. 1995) (Holding that Fuselier's failure to raise his double jeopardy argument at the trial level was not fatal to his Petition, as the right to be free from double jeopardy is a fundamental right), all cited from Rowland v. State, 42 So. 3d 503 (Miss. 2010).

Then, why cannot the Appellant receive this same consideration? Furthermore, this Court has stated that ~~the~~ the right to be free from an illegal sentence is a fundamental Constitutional right.

Therefore, a claim of an illegal sentence cannot be procedurally barred by the Mississippi Uniform Post-Conviction Collateral Relief Act." Williams v. State, 24 So. 3d 360, 364 (Miss. 2009). Appellant's claims should of been considered.

WAIVER

Appellant is not an attorney and has constantly plead with the Court to consider his claims. However, the Court states that the Appellant has waived his rights. Therefore, let the Court examine this issue.

According to Fuselier v. State, 654 So. 2d 519, 523 (Miss. 1995); the Court stated that convicting Fuselier of both felony murder and the underlying felony was also a violation of Fuselier's Fifth Amendment right against double jeopardy. Fuselier did not raise this issue at the trial level; questions not asserted at the trial level are deemed waived. Fuselier also cited as Bell, Grubb v. State, 584 So. 2d 786 (Miss. 1991). Kennedy v. State, 626 So. 2d 103 (Miss. 1993), Lockett v. State, 582 So. 2d 428, 430 (Miss. 1991); "Errors that affect fundamental Constitutional rights exempt one of a

procedural bar which would otherwise prohibit their consideration... Jefferson v. State, 556 So. 2d 1016, 1019 (Miss. 1989); A plea of guilty does not waive (1) the failure of the indictment to charge a criminal offense or more specifically, to charge an essential element of a criminal offense, and a plea of guilty does not waive (2) subject matter jurisdiction.

In Jones v. Thomas, 491 U.S. 376, 109 S.Ct. 2522, 105 L.Ed. 2d 322 (1989); a case relied on by Fuselier and Bell, the United States Supreme Court held that a "Respondent's initial conviction and sentence for both felony murder and the underlying felony violated the third aspect of the double jeopardy clause, the protection against 'multiple punishments for the same offense' imposed in a single proceeding." 491 U.S. at 381, 109 S.Ct. at 2522, 105 L.Ed. 2d at 331. The U.S. Supreme Court precedents Menna v. New York, 123 U.S. 61, 62, 46 L.Ed. 2d 195, 96 S.Ct. 241 (1975); Blackledge v. Perry, 417 U.S. 21, 30, 40 L.Ed. 2d 628, 94 S.Ct. 2098 (1974), that held: "Where the state precluded by the United States Constitution from hauling a defendant into court on a charge, Federal law requires that a conviction on that charge be set aside even if the conviction was entered pursuant to a counseled plea of guilty."

The state argues that by entering the plea, Bell [Willie] waived his double jeopardy rights. However, "a plea of guilty to a charge does not waive a claim that -- judged on its face -- the charge is one the state may not constitutionally prosecute." Menna, supra...

Brown v. Ohio, 432 U.S. 161, 168-69, 97 S.Ct. 2221, 2226-27, 53 L.Ed. 2d 187 (1977); This follows because a lesser-or-greater included offense is, for double jeopardy, 97 S.Ct. at 2226.

The U.S. Supreme Court has explicitly held that a guilty plea does not preclude a Claimant from asserting a double jeopardy claim. Menna v. New York, 423 U.S. 61, 62, 46 S.Ct. 241, 242, 46 L.Ed.2d 195 (1975) (Per Curiam); "We consistently have read Menna as holding broadly that "the entry of a guilty plea does not waive a challenge based on a violation of the double jeopardy Clause — "reasoning that the issue of factual guilt is irrelevant to a claim of double jeopardy." United States v. Atkins, 834 F.2d 426, 437 (5th Cir. 1987) (Quoting United States v. Broussard, 645 F.2d 504, 505 (5th Cir. 1981))...

In Chapman v. State, 167 So.3d 1170 (2015), the Court held: Additionally, in Rowland v. State, this Court held "errors affecting fundamental Constitutional rights are excepted from the procedural bars of the [Uniform Post-Conviction Collateral Relief Act (UPCCRA)]", and courts have no discretion in this regard. Rowland v. State, 42 So.3d 503, 507 (Miss. 2010). Accordingly, we find the trial Court erred in ruling Chapman's current PCR Motion procedurally barred, and the Court of Appeals erred in affirming the trial Court's judgment. Chapman raises credible allegations affecting fundamental Constitutional rights, which are excepted from the PCR statutory bars, including the statute of limitations found in UPCCRA. Rowland, 42 So.3d at 506-07 ("We take this opportunity to hold, unequivocally, that errors affecting fundamental Constitutional rights are excepted from the procedural bars of the UPCCRA[," including the statute's time bars]; see also *1175 Bevill v. State, 669 So.2d 14, 17 (Miss. 1996) (recognizing due-process violations are excepted from the PCR procedural bars and that it is possible for a lawyer's performance to be so deficient and so prejudicial

that the defendant's fundamental Constitutional rights are violated); see Douglas, 372 U.S. at 358, 83 S.Ct. 814 (finding all defendants are entitled to a meaningful appeal); Miss. Code Ann. Section 9-7-128 (1985) (requiring the preservation of all criminal files for fifty years where the defendant was indicted and convicted).

CONCLUSION

1. The trial court was incorrect in its procedural ruling of not having proper jurisdiction to review Appellant's claims on PCR. Appellant presented cognizable claims under the Constitution and Statutes of the State of Mississippi upon which relief could be granted. Appellant submits that the October 8th, 2014, decision of the Amite County Circuit Court dismissing his PCR Motion erred in light of this Court's decision in Rowland v. State, 42 So. 3d 503 (2010), and Chapman v. State, 167 So. 3d 1170 (2015). In spite of this decision, the trial court dismissed Appellant's PCR Motion, finding that the claims were time-barred and procedural barred. Appellant is required to show that the trial court's procedural ruling was in error, and a substantial showing the denial of "fundamental Constitutional rights." Rowland, 42 So. 3d at 553; Chapman, 167 So. 3d 1170. Appellant is Actual Innocence.
2. The trial court erred in not reaching the merits in Appellant's claims of actual innocence. Appellant claims that due to an illegal sentence imposed on him to be illegally imprisoned due to fundamental Constitutional errors.
3. The Appellant was seriously prejudiced in the destruction of exculpatory evidence before Appellant's direct appeal was perfected. The trial court erred in its findings that Appellant did not perfect an appeal of his kidnapping conviction within the forty-five (45) day time limitation. The Appellant's claim of exculpatory evidence being destroyed in "bad faith" before his direct appeal was perfected did seriously prejudice Appellant, especially for DNA testing which would prove the Appellant is Actual Innocence.

4. Appellant was seriously prejudiced by the State withholding evidence which was available before and during trial. Which would have made the outcome different if evidence was presented at trial or before trial. However, the evidence in Defendants-Respondents' brief states, "There was never, from the outset, any identification, in-court or out-of-court by Rose Ann Erwin of Plaintiff-Appellant being one of her kidnappers and rapist."

5. The trial court erred in its failure to review Appellant's claim of being put in double jeopardy by imposing multiple punishment for the same offense in violation of Appellant's 5th Amendment rights of the U.S. Constitution and Article 3, Section 22 of the Mississippi Constitution. Appellant's counsel failed to raise the double jeopardy clause issue -- the right to be free from double jeopardy is a fundamental constitutional right. The Appellant's indictments #1857 and #1858 were drafted in a manner that sought to turn one alleged kidnapping-rape into multiple criminal episodes.

All the issues and arguments that the Appellant raised in his PCR were not waived, nor time-barred or procedural barred, All issues do have merits.

WHEREFORE, PREMISES CONSIDERED, the Appellant respectfully Request that these matters should be reconsidered and Reversed Rendered.

Done This the 17th day of March, 2016 A.D.

Respectfully Submitted,
Charles Edward Wilson #44482
CHARLES EDWARD WILSON #44482

CERTIFICATE OF SERVICE

This do I Certify, that I, the Undersigned, have this day Cause to be Mailed, via the U.S. Postal Service, First Class Postage pre-paid, the Original of the foregoing MOTION FOR REHEARING ENBANC to the Clerk of the Court of Appeals of the State of Mississippi, as indicated below:

Honorable Muriel B. Ellis

Post Office Box 249

Jackson, Mississippi 39205-0249

SO CERTIFIED this the 17th day of March, 2014, A.D.

Charles Edward Wilson #44482
Charles Edward Wilson #44482
SMCI-II, D-2, B-ZONE, Bed #111
P.O. Box 1419
Leakesville, MS 39451

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Muriel B. Ellis
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082
e-mail: sctclerk@courts.ms.gov

March 8, 2016

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 8th day of March, 2016.

Court of Appeals Case # 2014-CP-01732-COA
Trial Court Case # 1857

Charles Edward Wilson a/k/a Charles Wilson a/k/a Charles E. Wilson a/k/a Winding v. State of Mississippi

The judgment of the Circuit Court of Amite County denying the motion for post-conviction relief is affirmed. All costs of this appeal are assessed to Amite County.

*** NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS ***

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

Please note: Pursuant to MRAP 45(c), amended effective July, 1, 2010, copies of opinions will not be mailed. Any opinion rendered may be found at www.mssc.state.ms.us under the Quick Links/Supreme Court/Decision for the date of the decision or the Quick Links/Court of Appeals/Decision for the date of the decision.

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2014-CP-01732-COA

**CHARLES EDWARD WILSON A/K/A CHARLES
WILSON A/K/A CHARLES E. WILSON A/K/A
WINDING**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	10/08/2014
TRIAL JUDGE:	HON. FORREST A. JOHNSON JR.
COURT FROM WHICH APPEALED:	AMITE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	CHARLES EDWARD WILSON (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BARBARA WAKELAND BYRD
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
TRIAL COURT DISPOSITION:	DENIED APPELLANT'S MOTION FOR POST-CONVICTION RELIEF
DISPOSITION:	AFFIRMED – 03/08/2016
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE IRVING, P.J., BARNES AND ISHEE, JJ.

IRVING, P.J., FOR THE COURT:

¶1. Charles E. Wilson appeals from the judgment of the Circuit Court of Amite County, denying his motion for post-conviction relief (PCR). He alleges: (1) the trial court erred in ruling that his PCR motion was time-barred; (2) the trial court erred by not deciding his claim of actual innocence on the merits; (3) he was prejudiced by the State withholding evidence and the State's destruction of exculpatory evidence; and (4) and he was subjected to double jeopardy.

¶2. Finding no error, we affirm.

FACTS

¶3. On October 29, 1982, an Amite County grand jury indicted Wilson, along with three codefendants, for kidnapping one adult female and three children in Tangipahoa Parish, Louisiana, and removing them to Amite County, Mississippi, with the intent to secretly confine and imprison them in Amite County against their will. In addition, Wilson, along with the same three codefendants, was also indicted for the rape of the female victim.¹ On March 10, 1983, following a trial, a petit jury convicted Wilson of the kidnapping charge, and the circuit court sentenced him to a term of life imprisonment in the custody of the Mississippi Department of Corrections (MDOC). After that conviction and sentencing, Wilson took a plea deal on the separate, yet related, rape charge. The plea agreement provided that Wilson would waive his right to an appeal of the kidnapping conviction² and plead guilty to the rape charge. Also, the plea agreement provided that the State would recommend that Wilson be sentenced to forty years on the rape charge, with the sentence to run concurrently to his life sentence on the kidnapping conviction.

¶4. On June 20, 1986, Wilson filed a PCR motion, seeking relief from his kidnapping

¹ The indictment for the rape charge was not made a part of the clerk's papers in the matter before this Court. However, the indictment is provided as Exhibit "E-1" within Wilson's brief.

² This information was not made a part of the record before us; however, it was revealed through a search of documents found withing the Mississippi Supreme Court's record in Wilson v. State, cause number 57,888.

conviction. In that motion, Wilson argued that (1) his trial counsel was ineffective; (2) evidence that was seized pursuant to an illegal search was admitted during his trial; (3) his confession was coerced; (4) the indictment was defective and, therefore, invalid; and (5) the State failed to prove the intent element of kidnapping. On July 21, 1986, the circuit court denied Wilson's PCR motion. He appealed. On August 24, 1988, the Mississippi Supreme Court, in an unpublished opinion, found no error in the circuit court's denial of Wilson's PCR motion and, on September 16, 1988, issued its mandate to the trial court.³

¶5. On August 4, 2014, after a host of other motions had been filed by Wilson and ruled on by both the supreme court and the circuit court, Wilson filed his second PCR motion, the denial of which by the circuit court forms the basis of this appeal. Wilson argued in his motion before the circuit court that (1) the circuit court erred by proceeding on a "fatally defective indictment"; (2) cumulative errors in his trial proceedings violated his due-process rights under the Fourteenth Amendment of the United States Constitution; (3) he was actually innocent; (4) exculpatory evidence in his case was destroyed "in bad faith" before a direct appeal was processed, thereby violating his due-process and equal-protection rights under the Fourteenth Amendment of the U.S. Constitution; and (5) he received ineffective assistance of counsel. On October 8, 2014, the circuit court denied Wilson's PCR motion

³ We note that the record before us in this matter does not include the unpublished opinion rendered in this case. However, we were able to find a portion of the subject opinion upon a search of the Mississippi Supreme Court's records. The unpublished opinion, addressing Wilson's first PCR motion, was issued in *Wilson v. State*, cause number 57,888.

as both time-barred and without merit. This appeal followed.

DISCUSSION

¶6. “We review the dismissal or denial of a PCR motion for abuse of discretion. We will only reverse if the trial court’s decision is clearly erroneous.” *Hughes v. State*, 106 So. 3d 836, 838 (¶4) (Miss. Ct. App. 2012) (internal citation omitted). We review issues of law de novo. *Small v. State*, 141 So. 3d 61, 65 (¶7) (Miss. Ct. App. 2014). Under Mississippi Code Annotated section 99-39-11(2) (Rev. 2015), a trial court may deny a PCR motion if “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.”

¶7. We note at the outset that the circuit court addressed only the time-bar, but it seems clear that Wilson’s PCR motion was also a successive writ. Therefore, we address the successive-writ bar as well.

I. Successive Writ

¶8. Mississippi Code Annotated section 99-39-23(6) (Rev. 2015) provides that an order “denying relief . . . is a final judgment and shall be conclusive until reversed. It shall be a bar to a second or successive motion under this article.” As we have already noted in the fact section of this opinion, Wilson filed his first PCR motion on June 20, 1986, and the circuit court denied that motion. Wilson appealed, and the supreme court affirmed the judgment of the circuit court. Based on the provisions of section 99-39-23(6), Wilson was precluded from filing the PCR motion that is the subject of this appeal.

II. Time-Bar

¶9. In this appeal, Wilson’s first argument is that the circuit court erred in dismissing his PCR motion as time-barred. He asserts that he raised issues affecting his fundamental constitutional rights. Therefore, according to him, his PCR motion is exempt from the procedural bars. More specifically, Wilson contends that his indictment was defective in that it failed to allege that all of the actions constituting the essential elements of kidnapping occurred in Amite County. Wilson is correct that if his indictment failed to allege an essential element of the crime that he was convicted of, he would not be precluded from raising that issue now. However, we note that Wilson raised in his first PCR motion the issue of his indictment being defective. So this issue is *res judicata* and cannot serve to remove the procedural bars. Therefore, we find no merit to Wilson’s argument that the circuit court erred in ruling that his PCR motion was procedurally time-barred.

¶10. Mississippi Code Annotated section 99-39-5(2) (Rev. 2015) provides, in pertinent part:

A motion for relief under this chapter 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 entry of the judgment of conviction.

As noted in our recitation of the facts, Wilson’s kidnapping conviction occurred on March 10, 1983. However, the subject PCR motion was not filed until August 4, 2014. As such, the circuit court found the motion to be time-barred because it was not made within the three-year time limitation set out in section 99-39-5(2). It is true that our supreme court has stated that “errors affecting fundamental constitutional rights are excepted from the procedural bars of

the [Uniform Post-Conviction Collateral Relief Act (UPCCRA)].” *Rowland v. State*, 42 So. 3d 503, 506 (¶9) (Miss. 2010). However, “merely asserting a constitutional-right violation is insufficient to overcome the procedural bars.” *Means v. State*, 43 So. 3d 438, 442 (¶12) (Miss. 2010).

¶11. As noted, Wilson also argues that (1) his counsel was ineffective; (2) the State withheld information regarding a confidential informant; (3) he is innocent; (4) the State destroyed biological and physical exculpatory evidence; and (5) he was subjected to double jeopardy. First, as to Wilson’s claim that his counsel was ineffective, we find this issue was raised and rejected in his first PCR motion. Therefore, this claim is barred by the doctrine of res judicata. Second, we note that Wilson’s claim that biological and physical exculpatory evidence was destroyed by the State in bad faith refers to evidence introduced during Wilson’s trial but later destroyed by the Mississippi Crime Laboratory after Wilson had been convicted. We fail to see how the destruction of such evidence affects any fundamental right that Wilson possessed or possesses. This is particularly true since, pursuant to the plea deal, Wilson agreed not to pursue his appeal of the kidnapping charge. Third, as to Wilson’s claim that the State failed to disclose that an informant was instrumental in securing his arrest, suffice it to say that this issue was not raised in the circuit court, but even if it had been, it would have been procedurally barred as are all of the issues that he did raise. Fourth, Wilson’s claim that he has been subjected to double jeopardy is premised on his notion that the rape charge, to which he pleaded guilty, is a lesser-included offense of the kidnapping charge that he was

found guilty of. This argument is so baseless on its face that no discussion of it is warranted. Moreover, as noted, he pleaded guilty to the rape charge.

CONCLUSION

¶12. We find that since Wilson was convicted prior to the passage of the UPCCRA, he had three years from April 17, 1984, or until April 17, 1987, to file his PCR motion. *Rowland v. State*, 42 So. 3d 545, 549 (¶12) (Miss. Ct. App. 2009) (reversed on other grounds). Since his motion was filed on August 4, 2014, more than twenty-seven years after it was required to be filed, the circuit court did not err in finding that it was time-barred. We also find that his PCR motion is barred as a successive writ because he had previously filed a PCR motion. And lastly, we find that Wilson has failed to prove that any of the exceptions set forth in section 99-39-5 apply or that errors affecting a fundamental right were committed so as to exempt him from the procedural bars. Therefore, we affirm the judgment of the circuit court.

¶13. THE JUDGMENT OF THE CIRCUIT COURT OF AMITE COUNTY DENYING THE MOTION FOR POST-CONVICTION RELIEF IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO AMITE COUNTY.

LEE, C.J., GRIFFIS, P.J., BARNES, ISHEE, CARLTON, FAIR, JAMES, WILSON AND GREENLEE, JJ., CONCUR.