IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2002-CP-00324-COA

MORGAN V. MCCLURG, JR. A/K/A MORGAN VANCE MCCLURG **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

DATE OF TRIAL COURT JUDGMENT:	9/13/2001
TRIAL JUDGE:	HON. BETTY W. SANDERS
COURT FROM WHICH APPEALED:	LEFLORE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	MORGAN V. MCCLURG, JR. (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JANE L. MAPP
DISTRICT ATTORNEY:	FRANK CARLTON
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
TRIAL COURT DISPOSITION:	COMPLAINT DISMISSED WITH PREJUDICE; MOTION TO AMEND OR ALTER THE JUDGMENT DENIED
DISPOSITION:	REVERSED AND REMANDED - 06/24/2003
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	

EN BANC.

MCMILLIN, C.J., FOR THE COURT:

¶1. A prisoner in the custody of the Leflore County Delta Correctional Facility filed a civil complaint in that county's circuit court against the State of Mississippi. It was alleged that a recent amendment to a parole statute violated the prisoner's right to equal protection of the law. The circuit court found that even if there was a challenge that could validly be made to the amendment, the inmate did not have standing to

assert it. We largely agree with the trial judge but remand since there is no evidence in the record to support the decision on standing.

Basis of Challenge

¶2. Morgan V. McClurg, Jr. is a prisoner incarcerated by the Mississippi Department of Corrections who claims that he is a "first offender." A central question in this litigation is whether McClurg in fact is in that category. He filed a complaint in circuit court in 2001, asserting that a statute adopted that year was unconstitutional since it provided for parole eligibility only for first offenders who were convicted after a certain date, a date that would not include him. The statutory amendment granted first offenders convicted of nonviolent crimes after January 1, 2000, eligibility for parole consideration after serving twenty-five percent of their sentences. 2001 Miss. Laws ch. 393, § 11, codified as Miss. Code Ann. § 47-7-3 (1) (g) (Supp. 2002). The statute had a few years earlier been amended with the opposite purpose: in 1995, the statute was changed to bar parole to anyone convicted after July 1, 1995. 1995 Miss. Laws ch. 596, § 3.

¶3. The effect of the 2001 change was to continue to bar parole for nonviolent first offenders convicted during the period of July 1, 1995, through January 1, 2000. Those offenders must look solely to the earned time allowance statute for a possible early release from confinement. Miss. Code Ann. § 47-5-138(5) (Supp. 2002). Under the latter statute, an inmate must serve eighty-five percent of his sentence before becoming eligible for release. *Id.* Neither party disputes on this appeal (but no record evidence appears), that McClurg was convicted between the dates of June 30, 1995, and January 1, 2000. He would therefore be ineligible for the consideration for parole even if he were a “first offender.” McClurg argues that the legislature has unconstitutionally treated first offenders differently based solely on the arbitrary circumstance of the date of their convictions.

¶4. The record in this case is sparse. There is no *evidence* of the number of convictions or the sentences to which McClurg is subject. According to the written opinion of the trial judge, McClurg was on November 12, 1996, sentenced to seven years imprisonment for one burglary and to seven years for a separate burglary. On August 6, 1997, he was sentenced to one year imprisonment for grand larceny. The opinion also states that McClurg's records indicate that he has received twelve sentences for different convictions. Perhaps the trial judge was informally provided with this information, but no answer or other response from any defendant appears in the record on appeal. In a later order entered on a post-judgment motion, the trial judge referred to several convictions that she reviewed from the records of the Carroll County Circuit Court. Those too are not in the record.

¶5. McClurg in his appellate brief does not contest that characterization of his conviction and sentence record. Instead, he appears to assert that all his crimes were committed before any of his convictions, i.e., his entire crime "spree" was complete before the first conviction occurred. Then he raises an imaginative legal argument which finds some support in statute and caselaw, that a "first offender" is someone who has committed no offenses after his first conviction. The meaning of "first offender" controls the merits of this case. We will examine the arguments below.

¶6. The trial court denied McClurg any relief based on the factual finding that the inmate was not a "first offender." He therefore would lack standing to mount a constitutional challenge to the statute in its amended form. The court denied McClurg's post-judgment motion.

Legal Issues

1. Procedural mechanism for suit

¶7. The State on appeal and the dissenting opinion agree that the proper avenue for McClurg to seek his requested relief was under the post-conviction relief statutes. Miss. Code Ann. § § 99-39-1 through

99-39-29 (Rev. 2000). Included among the grounds for relief available to a prisoner in custody is a challenge "that the conviction or the sentence was imposed in violation of the Constitution of the United States or the Constitution or laws of Mississippi." Miss. Code Ann. § 99-39-5(1)(a) (Rev. 2000). For reasons we will shortly set out, we need not decide whether that or any other subsection applies to the issue of parole eligibility. If the specific post-conviction statutory regime applies, then it is argued that McClurg is barred from pursuing those claims because he has previously filed different claims under those statutes. With certain exceptions, only one petition may be brought under the post-conviction relief statutes. Miss. Code Ann. § 99-39-23(6) (Rev. 2000). The trial court did not initially rule that the matter was a post-conviction procedure. We find no legal support for the proposition that the post-conviction relief statutes which contain this statutory prohibition to successive petitions must apply here. That will be discussed below. Just as a matter of due process, though, it is difficult to justify a bar to making a complaint about a statute that had not even been adopted at the time of an earlier claim.

¶8. Another avenue that might be available to McClurg is under the grievance procedures made available to inmates under the Mississippi Department of Corrections' Administrative Remedy Program. Miss. Code Ann. §§ 47-5-801 through 47-5-807 (Rev. 2000). Under this program, the judiciary may not entertain a prisoner's suit complaining of a matter "which falls under the purview of the administrative review procedure unless and until such offender shall have exhausted the remedies as provided in such procedure." Miss. Code Ann. § 47-5-803(2) (Rev. 2000).

¶9. The implementing regulations indicate that this procedure applies to a range of grievances "arising from policies, conditions, or events within the Department of Corrections that affect them personally . . . ." Miss. Dep't of Corr., Administrative Remedy Program. Even though the statutes and regulations make

no explicit reference to contesting the computation of parole eligibility through this procedure, we find no error if an inmate begins with an internal grievance and then appeals.

¶10. Regardless of what arguments might be made regarding the propriety of either procedure for McClurg's claims, we find substantial and controlling judicial precedent that eliminates the need to evaluate those arguments. A direct action may be filed in circuit court by an inmate to complain that a change to a parole statute is unconstitutional in a manner that adversely affects that prisoner. In an earlier case, it was the 1995 change to eliminate parole prospectively that was attacked. *Puckett v. Abels*, 684 So. 2d 671 (Miss. 1996). A group of inmates filed a complaint asking for a declaratory judgment that it was unconstitutional to apply that change to them as it would violate the bar to *ex post facto* laws. *Id.* at 671-72. The court did not question the inmates' procedure in bringing the suit as a civil action against the Commissioner of the Department of Corrections. A declaratory judgment was entered that the law was unconstitutional as to certain inmates. *Id*. at 678. If McClurg has standing, he similarly may bring a civil suit saying the latest change violates equal protection.

¶11. We also consider the question of the ripeness of McClurg's claim. Based on the record before us, we cannot determine if he has nearly served twenty-five percent of his sentence. However, an inmate's being on the verge of eligibility for release if his arguments are accepted has not been a requirement in the precedents. In one suit, the inmate argued that he should have been eligible for early release in January 1995 but brought his claim in January 1991. *Williams v. Puckett*, 624 So. 2d 496, 498 (Miss. 1993). The court considered Williams's claim on the merits. Similarly, in *Abels*, the court did not even discuss whether the invalidation of a statutory change to parole eligibility would immediately affect the complaining inmates; instead, the inmates' challenge that the statute eliminating parole and requiring that an inmate serve 85% of his sentence could not be applied to a prisoner whose crimes were committed prior to the effective

date of the new statute. *Puckett v. Abels*, 684 So. 2d at 678. The present suit was not potentially premature.

2. Proper parties

¶12. McClurg brought his suit solely against the State of Mississippi. The relief he seeks is the invalidation of the amended parole provision because of equal protection arguments. He also sought to have his parole eligibility computed "to coincide with other first time, nonviolent offenders convicted after January 1, 2000." Unlike the *Abels* inmates, McClurg did not join any departments, agencies, or officials who administered the statute about which he complains or who could provide the relief that he seeks if the statute is declared unconstitutional. If he succeeds in this litigation, the mandate of the Court could only be against the State of Mississippi and not any specific entity or individual. Since there is no answer in the record, there was no pleading that might have addressed the absence of parties needed for complete relief to be granted. M.R.C.P. 19(a).

¶13. When governmental actions are the target of a suit, the proper department, agency or officials of the government should be joined. Governmental immunity may apply to some potential parties and not others. There is no immunity from suit, though, when as here a declaratory judgment finding a statute unconstitutional is sought. *State v. Hinds County Bd. of Sup'rs*, 635 So. 2d 839, 842 (Miss. 1994). It is not for a plaintiff to bring suit against the "State of Mississippi" and then trust the court and the Attorney General to give notice to the correct division of that government. There are statutes that guide the conduct of certain suits against the government and its agencies, but they are not all-encompassing. *E.g.*, Miss. Code Ann. §§ 11-45-1 & 11-45-3 (Rev. 2002) (claims over which state auditor has authority); Miss. Code Ann. §§ 11-46-1 through 11-46-23. (Rev. 2002) (Tort Claims Act). When no specific statute controls, normal rules for determining parties should be followed. M.R.C.P. 15-21.

¶14. A party in interest whenever the constitutionality of a state statute is contested is the State itself, who through its legislative and executive branches adopted the measure. The Office of the Attorney General defends, as it does whenever the subject matter of a suit against a state agency "is of statewide interest . . . ." Miss. Code Ann. § 7-5-1 (Rev. 2002). Other state agencies or officials may be needed. As a sister state held, in a suit against "an agency of the State, the proper party defendant is any officer, office, department, agency, authority, commission, board, or institution against whom the plaintiff has alleged a right to final relief." *Maine State Employees Ass'n SEIU Local 1989 v. Department of Corrections*, 682 A.2d 686, 689 (Me. 1996); *see also United States v. Mississippi*, 380 U.S. 128, 141 (1965) (proper state defendants are the officials with the "power, authority, and responsibility to help administer" the questioned program). The agency with ultimate responsibility to administer the challenged program and provide requested relief should be a party.

¶15. In order for relief to be given if the statute is declared unconstitutional, McClurg's parole eligibility would need to be recomputed. It is the State Parole Board who "shall by rules and regulations establish a method of determining a tentative parole hearing date for each eligible offender," a determination to be made within ninety days after the Department of Corrections "has assumed custody of the offender." Miss. Code Ann. § 47-7-3(3) (Supp. 2002). Cases in which such officials and agencies have been made defendants in order to compute effective sentences include *Puckett v. Abels*, 684 So. 2d 671 (Miss. 1996) and *Williams v. Puckett*, 624 So. 2d 496 (Miss. 1993).

¶16. We acknowledge that when the State is a party and is represented by the Attorney General, and that is the same attorney who would represent individual departments and officials, the need for other governmental parties may appear a quibble. However, orders of the court may need to be enforced, or

the matter may be of unique interest and familiarity to a particular state agency. Having the correct parties is not merely incidental to the proper decision and mandate by the courts.

¶17. McClurg should have named the agency and individuals in their official capacities who could both defend the statute and provide any ordered relief. The court should not have acted without an answer to the suit. Not waiting for an answer is permitted under the post-conviction relief statutes. Miss. Code Ann. § 99-39-11 (2) & (3) (Rev. 2000). However, the trial court did not in her initial order find that these claims were being brought under that statute. It is true that at the time of appeal the judge finally did reach that conclusion. We discuss below why we find that the post-conviction statutes do not apply here. Consequently, there is no unique statutory procedure to be followed in this suit. The normal civil suit pleading and practice rules apply.

¶18. There is a certificate of service by McClurg indicating that he mailed a copy of the complaint to the district attorney for Washington County. Perhaps that was the county in which some of the convictions occurred. On the civil docket sheet that McClurg completed at the time of the filing of his suit, he stated that it was the "State of Mississippi (Dept. of Corrections)" that was the defendant. How or even if the Department was notified about the suit is unknown. Certainly the district attorney may have been the conduit for information.

¶19. We accept that prisoners' suits cause considerable practical problems for trial courts who must address them on a regular basis. Reviewing appeals in which informal procedures have been applied cause significant problems for this Court. The trial judge need not provide a seminar to the inmate-plaintiff nor otherwise seek to correct serious deficiencies. When no defendant has made an appearance since none has been served, and the issues therefore were not joined, there should not be a ruling on the merits no matter how faulty the complaint is found to be.

¶20. Under a court rule, the failure to serve a defendant within 120 days of the filing of the complaint results in the dismissal of the suit. M.R.C.P. 4(h). The sending of a copy of the complaint to the district attorney does not suffice to serve even the State of Mississippi, much less a proper entity or official who could provide the relief that McClurg seeks.

¶21. We would conclude that the suit should be dismissed if for no other reason than the absence of any proof of service of process, except for one other unorthodox matter. The State has participated in the appeal. The assistant attorney general who filed an appellate brief did so for the named appellee, the State of Mississippi. A defendant may through an appearance waive the absence of proper service. M.R.C.P. 4(e). To make that appearance for the first time on appeal is not unique, since if a statutory post-conviction petition is dismissed without an answer being required, the State still appears to brief the appeal. It would be a waste of judicial resources to dismiss this suit for the failure to serve an uncomplaining participant in the appeal.

¶22. The remaining problem of the absence of the state department and officials necessary for a complete resolution also need not at this late date end the litigation. Since we find that the Office of the Attorney General would have been representing the proper defendants had they been joined, the defect in parties is largely academic unless there is relief to be granted. We therefore proceed beyond this threshold issue to consider the next procedural matter.

3. "First offender"

¶23. Addressing now the merits, McClurg contests the validity of the following provision:

> A first offender convicted of a non-violent crime after January 1, 2000, may be eligible for parole . . . .

Miss. Code Ann. 47-7-3(1)(g) (Supp. 2002). The circuit court found that McClurg was not a "first offender." He thus lacked standing to pursue this claim. "First offender" is not defined in this statute. The statutory amendment containing this phrase appeared as part of a larger enactment. 2001 Miss. Laws ch. 393, § 11. All the sections of this 2001 act dealt with parole and amended various sections in title 47. No where else in title 47 does the phrase "first offense" or "first offender"occur.

¶24. The only section of the entire Mississippi Code that attempts a definition of “first offender” is a statute regarding parole eligibility for those convicted of drug crimes:

> *For the purposes of the sentencing provisions of this article,* a first offense shall be deemed to be and include any offense, offenses, act or acts prohibited by said law, or any prior law superseded by said law, committed prior to a first indictment under said law or under prior law superseded by said law.

Miss. Code Ann. § 41-29-149(e) (Rev. 2001) (emphasis added). The referenced "article" concerns controlled substance crimes only. The use of the defined term of “first offender” is only in the section on sentencing. As representative of that use, we quote the first section:

> (1) In the case of controlled substances classified in Schedule I or II, as set out in Sections 41-29-113 and 41-29-115, except one (1) ounce or less of marihuana, and except a *first offender as defined in Section 41-29-149(e)* who violates subsection (a) of this section with respect to less than one (1) kilogram but more than one (1) ounce of marihuana, such person may, upon conviction, be imprisoned for not more than thirty (30) years and shall be fined not less than Five Thousand Dollars ($5,000.00) nor more than One Million Dollars ($1,000,000.00), or both . . . .

Miss. Code Ann. § 41-29-139(b) (Rev. 2001) (emphasis added). A defendant is a first offender under the drug statutes if all that person’s drug offenses were committed before his or her first indictment under the drug laws.

¶25. We do not find this definition, explicitly limited to crimes under the Controlled Substances Act, necessarily translatable to other offenses. The clear legislative definition for "first offenders" under the

Controlled Substances Act was not repeated in the general statutes regarding other crimes. Multiple drug crimes may occur before discovery and arrest. The potentially remedial effects of prosecution and sentencing are then applied. We find it a possible legislative distinction that those convicted under the Controlled Substances Act would be "first offenders" no matter how many drug crimes were committed before the first indictment, but the repeated commission of other kinds of crimes before initial discovery and indictment would not be given that latitude.

¶26. McClurg finds support for his position in a decision by the United States Court of Appeals for the Fifth Circuit. *Holst v. Owens*, 24 F. 2d 100, 101 (5th Cir. 1928). *Holst* concerned a statute that was the 1920's equivalent of the Controlled Substances Act, namely, the National Prohibition Act. The sentence for unlawful possession of alcohol was increased with each subsequent offense. The Fifth Circuit concluded that an offense under the Volstead Act was not legally committed until there was a conviction; therefore, a second offense could only be committed after there was a conviction for a first offense. *Holst*, 24 F. 2d at 101. *Holst* does not indicate that there is any due process or similar imperative for that definition of a first offense. Since we have found the matter to be one of statutory construction, we do not further explore the *Holst* reasoning regarding a different and federal statute.

¶27. When statutory words are undefined, the "words and phrases contained in the statutes are used according to their common and ordinary acceptation and meaning; but technical words and phrases according to their technical meaning." Miss. Code Ann. § 1-3-65 (Rev. 1998). We find no reason to conclude that "first offender" was used in the 2001 amendment as a technical term, *i.e.*, that it was intended to incorporate an unusual criminal law or parole definition. Instead, the legislature was permitting parole consideration for certain prisoners who committed nonviolent crimes. Since parole eligibility was being created only for a subset of all prisoners, the context for the phrase "first offender" is a focus on those most

amenable to early release. To utilize the definition that appears in the Controlled Substances Act for "first offender" would create parole eligibility for inmates who committed multiple crimes but managed to commit them all before being indicted for any. We do not find that to be the proper interpretation of the term in this context.

¶28. We conclude that the "common and ordinary" meaning of the phrase "first offender," when used in a statute that carves out from the entire inmate population those who as a category would be most responsive to parole, is to describe those incarcerated for their first and sole offense. Later convictions end "first offender" status even if the offenses occurred before the first conviction. The language in an habitual offender statute is relevant, since multiple crimes can arise from one incident: the inmate is a "first offender" under the general parole statute unless if he has been convicted upon two or more "charges separately brought and arising out of separate incidents at different times . . . ." Miss. Code Ann. § 99-19-81 (Rev. 2000). If this judicial construction does not conform to current legislative purposes, the legislature has the authority to amend the statute.

¶29. There is no usable record evidence regarding McClurg's offenses. The trial court relied on non-record evidence to conclude that McClurg had twelve felony convictions. McClurg's suit was dismissed on the basis that he was not a first offender and therefore lacked standing to attack the constitutionality of the statute. We agree that if McClurg had multiple convictions as we have just defined them, he should not be considered a "first offender" under Section 47-7-3 (1) (g).

¶30. Since McClurg's constitutional claims against the statute were dismissed not because of evidence but instead because of what appears to be extra-record information, we reverse and remand the judgment so that further proceedings may occur. The State should present proof sufficient to determine whether McClurg is a "first offender" under this statute, *i.e.*, does he have two or more convictions under charges

separately brought and arising out of separate incidents at different times? If he does, then it would be proper to enter judgment dismissing the suit on the basis that McClurg does not have standing to assert these claims.

¶31. **THE JUDGMENT OF THE CIRCUIT COURT OF LEFLORE COUNTY DISMISSING THE COMPLAINT IS REVERSED AND THIS CAUSE IS REMANDED FOR SUCH FURTHER PROCEEDINGS AS ARE APPROPRIATE UNDER THIS OPINION. ALL COSTS OF THIS APPEAL ARE ASSESSED TO LEFLORE COUNTY.**

SOUTHWICK, P.J., THOMAS, LEE, AND MYERS, JJ., CONCUR. CHANDLER, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KING, P.J., BRIDGES AND GRIFFIS, JJ. IRVING, J., NOT PARTICIPATING.

CHANDLER, J., DISSENTING:

¶ 32. With respect, I disagree with the majority, and would affirm the trial court's dismissal of McClurg's filing.

¶33. The majority likens McClurg's filing to that in a suit filed by a group of prisoners challenging the MDOC's application of the statutory 85% rule to prisoners who had committed crimes prior to the statute's effective date. I believe that McClurg's filing is most logically viewed as a motion for post-conviction relief controlled by the Uniform Post Conviction Collateral Relief Act (UPCCRA). McClurg's challenge to an amendment altering prisoners' opportunities for parole fits well within the grounds on which a prisoner may seek post-conviction relief. Mississippi Code Annotated § 99-39-5 (1) (Supp. 2002) enumerates these grounds, which include claims "that the conviction or sentence was imposed in violation of the Constitution of the United States or the Constitution or laws of Mississippi; "that the sentence exceeds the maximum allowed by law; . . . or "that his sentence has expired; his probation, parole or conditional release unlawfully revoked; or he is otherwise unlawfully held in custody . . . ." Miss. Code Ann. § 99-39-5 (1) (a), (d), (g) (Supp. 2002).

¶34. Our precedent indicates that the proper and reasonable posture of McClurg's request for relief was as a motion for post-conviction relief. In *Harden v. State*, 547 So. 2d 1150 (Miss. 1989), Harden filed a petition styled "Petition for Writ of Habeas Corpus" contending that he was entitled to due process of law incident to his application for parole. The court found that Harden's petition must be treated as a motion for post-conviction relief, citing Miss. Code Ann. § 99-39-5 (g) (Supp. 1989), and also Miss. Code Ann. § 99-39-3 (1) (Supp. 1989), which abolished common law avenues for post-conviction relief. *Id.* In *Milam v. State*, 578 So. 2d 272, 272-73 (Miss. 1991), the court found a prisoner's challenge to the MDOC's denial of "good time" credits presented a claim cognizable under Miss. Code Ann.§ 99-39-5 (1) (d) and (g) (Supp. 1990). *Milam*, 578 So. 2d at 272-73. In *Williams v. Puckett*, 624 So. 2d 496, 497 (Miss. 1993), relied upon by the majority, the court stated that it was affirming the trial court's denial of Williams' petition for post-conviction relief. *Id.* at 500. Finally, in the recent case of *Bolar v. Bailey*, 840 So. 2d 734, 737 (¶ 11) (Miss. Ct. App. 2003), this court affirmed the denial of Bolar's motion for post-conviction relief challenging the loss of his earned time credit.

¶35. The majority's treatment of McClurg's filing as a civil complaint necessitates its address of the several failures of McClurg to follow and the trial court to enforce the Mississippi Rules of Civil Procedure. I find this approach needlessly artificial, as the procedural failures are explained by the fact that McClurg's filing was a motion for post-conviction relief. As such, the filing was subject to the procedures prescribed by the Uniform Post-Conviction Collateral Relief Act (UPCCRA), and supplemented by the M.R.C.P. *Reeder v. State*, 783 So. 2d 711, 715 (¶ 12) (Miss. 2001).

¶36. The UPCCRA provides for summary dismissal before the State files an answer. Miss. Code Ann. § 99-39-11 (2), (3) (Rev. 2000). This is perfectly consistent with the trial court's treatment of McClurg's filing. In fact, the majority imports this attribute of the UPCCRA to its interpretation of M.R.C.P. 4 (e),

in which it posits that in this case it is permissible for the State to make its initial appearance by filing an appellate brief. Also consistent with the UPCCRA is McClurg's submission to the Washington County District Attorney; Miss. Code Ann. § 99-39-9 (5) (Supp. 2002) requires that a prisoner serve the motion for post-conviction relief on the State of Mississippi.

¶37. The majority expresses concern over McClurg's ability to have a favorable ruling enforced because he has sued the State of Mississippi and declined to join specific state agencies and officials. Again, McClurg's failure to join those parties is consistent with the UPCCRA, under which joinder is not required because the statutory remedy, if any, is against the State. Miss. Code Ann. §§ 99-39-9 (1) and 99-39-23 (5) (Supp. 2002). The UPCCRA allows constitutional challenges like McClurg's to be brought against the State without joinder of agencies or officials. Miss. Code Ann. §§ 99-39-5 (1) and 99-39-9 (1) (Supp. 2002). This is in accord with the statutory purpose expressed in Miss. Code Ann. § 99-39-3 (Supp. 2002) to "revise, streamline and clarify the rules and statutes pertaining to post-conviction collateral relief law and procedures . . . ." Presumably, the absence of a joinder requirement is to provide prisoners with an opportunity for redress of grievances without forcing them to correctly resolve the potentially complex determination of whom to sue.

¶38. Further, the trial court expressly found that McClurg's motion was one for post-conviction relief in its order allowing McClurg to appeal *in forma pauperis* pursuant to § 99-39-25. This ruling was in accordance with the supreme court's exception of UPCCRA actions from the general prohibition on *in forma pauperis* appeals of civil actions. *See Moreno v. State*, 637 So. 2d 200, 202 (Miss. 1994). The majority fails to explain how McClurg's civil action is excepted from this prohibition on free civil appeals.

¶39. Notwithstanding the question of McClurg's standing to challenge the 2001 amendment, I do not believe there is any merit to McClurg's argument that the amendment violates the Equal Protection Clause.

For this reason, and because McClurg filed unsuccessful motions for post-conviction relief from his multiple convictions in 1998, I would find the instant complaint barred as a successive motion for post-conviction relief. Miss. Code Ann. § 99-39-23 (6) (Supp. 2002); *See McClurg v. State*, 758 So. 2d 473 (Miss. Ct. App. 2000).

KING, P.J., BRIDGES AND GRIFFIS, JJ., JOIN THIS SEPARATE WRITTEN OPINION.