

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2020-CP-00115-COA**

**JAMES ALLEN HIGGINBOTHAM A/K/A  
JAMES A. HIGGINBOTHAM A/K/A JAMES  
HIGGINBOTHAM**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

DATE OF JUDGMENT: 01/21/2020  
TRIAL JUDGE: HON. JOSEPH H. LOPER JR.  
COURT FROM WHICH APPEALED: WINSTON COUNTY CIRCUIT COURT  
ATTORNEY FOR APPELLANT: JAMES ALLEN HIGGINBOTHAM (PRO SE)  
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL  
BY: BILLY L. GORE  
NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF  
DISPOSITION: AFFIRMED - 12/01/2020  
MOTION FOR REHEARING FILED:  
MANDATE ISSUED:

**BEFORE BARNES, C.J., McDONALD AND LAWRENCE, JJ.**

**LAWRENCE, J., FOR THE COURT:**

¶1. On May 18, 2009, James Allen Higginbotham entered a plea of guilty to murder pursuant to Mississippi Code Annotated section 97-3-19(1)(a) (Rev. 2006). On May 21, 2009, he was sentenced to serve the remainder of his natural life in the custody of the Mississippi Department of Corrections (MDOC). On April 7, 2011, Higginbotham filed his first post-conviction relief motion (2011 PCR motion), which the circuit court denied after an evidentiary hearing. This Court upheld the circuit court's ruling in *Higginbotham v. State*, 114 So. 3d 9 (Miss. Ct. App. 2012). Nearly ten years later, on October 7, 2019,

Higginbotham filed a motion to vacate his conviction, which the circuit court treated as his second PCR motion (2019 PCR motion). On January 21, 2020, the circuit court entered an order and opinion that denied Higginbotham's motion to vacate his conviction. Aggrieved by the circuit court's judgment, Higginbotham appealed. Finding no error, we affirm the circuit court's judgment.

### **FACTS AND PROCEDURAL HISTORY**

¶2. On March 26, 2008, a Winston County grand jury indicted Higginbotham on one count of capital murder pursuant to Mississippi Code Annotated section 97-3-19(2)(d) (Rev. 2006). On May 18, 2009, Higginbotham pled guilty to the lesser-included offense of murder pursuant to section 97-3-19(1)(a). At the plea hearing, the State presented its factual basis of the charge against Higginbotham as follows:

The State would show that his part in this was that he knew about the plot to kill Mr. Vowell. He provided the gun to his cousin, J.C. Higginbotham, drove him to the chicken house the morning of the murder to let him commit the murder.

After the murder was committed, he picked him up, helping him dispose of the firearm and drove him away, helped him dispose of the firearm and his gloves, burned his clothes and helped him after the fact, as well.

As a result of his guilty plea, Higginbotham was sentenced to spend the remainder of his natural life in the custody of the MDOC.

¶3. On April 7, 2011, Higginbotham filed his first PCR motion. Following an evidentiary hearing, the circuit court denied Higginbotham's 2011 PCR motion. This Court upheld the ruling of the circuit court. *Higginbotham*, 114 So. 3d at 18 (¶27).

¶4. On October 7, 2019, eight years after filing his 2011 PCR motion and nearly ten years

after the entry of his guilty plea, Higginbotham filed a motion to vacate the conviction, which the circuit court treated as his second PCR motion. In his 2019 PCR motion, Higginbotham claimed that (1) there was an “insufficient factual basis for his guilty plea” resulting in an illegal sentence, and (2) that his right to due process was violated by the circuit court’s placing restrictions on the motions that he was allowed file. On January 21, 2020, the circuit court entered an order and opinion that denied Higginbotham’s 2019 PCR motion. Higginbotham appealed.

### **STANDARD OF REVIEW**

¶5. “When reviewing a trial court’s denial or dismissal of a [PCR motion], we will only disturb the trial court’s factual findings if they are clearly erroneous; however, we review legal conclusions under a de novo standard of review.” *Chapman v. State*, 167 So. 3d 1170, 1172 (¶3) (Miss. 2015).

### **ANALYSIS**

¶6. Higginbotham alleges that there was an “insufficient factual basis for his guilty plea,” which resulted in an illegal sentence. More specifically, he claims that the alleged facts presented by the State at his plea hearing were consistent with the crime of accessory after the fact pursuant to Mississippi Code Annotated section 97-1-5, and therefore he should have been sentenced under that statute. Higginbotham also alleges that his right to due process was violated as a result of the circuit court’s placing restrictions on the motions that he was allowed to file.

¶7. First, we recognize that Higginbotham’s 2019 PCR motion is clearly time-barred

pursuant to Mississippi Code Annotated section 99-39-5(2) (Rev. 2015), which states:

A motion for relief under this article shall be made within three (3) years after the time in which the petitioner's direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three (3) years after entry of the judgment of conviction.

Higginbotham's 2019 PCR motion was filed well outside the three-year time limit allowed by statute and nearly ten years after the entry of his guilty plea. Therefore, Higginbotham's 2019 PCR motion is time-barred.

¶8. Further, Higginbotham's 2019 PCR motion is barred as a successive motion pursuant to Mississippi Code Annotated section 99-39-23(6) (Rev. 2015), which states that "any order dismissing the petitioner's motion or otherwise denying relief under this article is a final judgment and . . . shall be a bar to a second or successive motion under this article." Higginbotham filed his 2011 PCR motion on April 7, 2011. His 2011 PCR motion was denied by the circuit court pursuant to an order dated August 17, 2011. This Court upheld the circuit court's ruling in *Higginbotham*, 114 So. 3d at 18 (¶27). In fact, this Court addressed one of the exact issues that Higginbotham asserts in his current appeal concerning the alleged "insufficient factual basis for his guilty plea." In its prior opinion, this Court stated, "A valid guilty plea waives the right to challenge the sufficiency of the State's evidence' . . . Higginbotham can no longer challenge the sufficiency of the State's evidence of his guilt regarding murder. This argument is without merit." *Id.* (citation omitted). Therefore, Higginbotham's 2019 PCR motion is barred as a successive motion.

¶9. Higginbotham claims a fundamental-right exception to the procedural bars in

Mississippi Code Annotated section 99-39-5(2) (Rev. 2015) and Mississippi Code Annotated section 99-39-23(6) (Rev. 2015). The following “fundamental-rights exceptions have been expressly found to survive procedural bars: (1) the right against double jeopardy; (2) the right to be free from an illegal sentence; (3) the right to due process at sentencing; and (4) the right not to be subject to ex post facto laws.” *Nichols v. State*, 265 So. 3d 1239, 1242 (¶10) (Miss. Ct. App. 2018), *cert. denied*, 265 So. 3d 181 (Miss. 2019). But “the mere assertion of a constitutional right violation does not trigger the exception.” *Evans v. State*, 115 So. 3d 879, 881 (¶3) (Miss. Ct. App. 2013) (internal quotation marks omitted). There must be some basis of truth for his claim. *Mays v. State*, 228 So. 3d 946, 948 (¶5) (Miss. Ct. App. 2017).

### **I. Illegal Sentence**

¶10. Higginbotham claims that he suffered from an illegal sentence as a result of his guilty plea to a defective indictment. More specifically, he argues that the State presented an “insufficient factual basis” for the crime of murder, and therefore he should not have been sentenced accordingly. He claims that the factual basis presented by the State at the plea hearing was consistent with the crime of accessory after the fact and that he should have been sentenced as such. Higginbotham claims that his PCR motion should survive any applicable procedural bars because he received an allegedly illegal sentence as a result of his guilty plea to a defective indictment.

¶11. In *Higginbotham*, 114 So. 3d at 15 (¶19), this Court stated that “[a]fter reviewing the record, we find no evidence in the record contrary to the finding of the circuit court that Higginbotham entered a knowing, voluntary, and intelligent plea.” Further, this Court stated,

“A valid guilty plea waives the right to challenge the sufficiency of the State’s evidence.” *Id.* at 16 (¶24) (quoting *Grissom v. State*, 66 So. 3d 1280, 1282 (¶6) (Miss. Ct. App. 2011)). Given the fact that Higginbotham has waived his right to challenge the sufficiency of the State’s evidence, he has no basis for his argument that he received an illegal sentence. Further, this Court has already held that the facts presented at Higginbotham’s guilty plea hearing were sufficient and that he entered a voluntary waiver of his rights. Higginbotham’s sentence was required by statute. Therefore, Higginbotham’s claim that he suffered an alleged illegal sentence as a result of a defective indictment is both time-barred and successive-writ barred and not contrary to Mississippi law.

## **II. Due Process**

¶12. Higginbotham alleges that his due process rights were violated as a result of the circuit court’s placing restrictions on the motions that he was allowed to file. He asserts that his due process claim should survive any applicable procedural bar as a fundamental-right exception. The record is completely devoid of any evidence that would support Higginbotham’s claim. In fact, to the contrary, the fact that Higginbotham was allowed to file his current PCR motion belies that claim. Higginbotham’s claim is without merit and does not qualify as a fundamental-right exception. Therefore, Higginbotham’s claim that his right to due process was allegedly violated is both time-barred and successive-writ barred.

## **CONCLUSION**

¶13. Because Higginbotham failed to substantiate his claim that a fundamental-right exception exists, we find that both of the claims in his PCR motion are barred as untimely

and successive. Accordingly, we affirm the circuit court's judgment.

¶14. **AFFIRMED.**

**BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE,  
WESTBROOKS, McDONALD AND McCARTY, JJ., CONCUR.**