

Serial: **201516**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2015-M-00423

RICHARD HARRISON MASON

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

ORDER

This matter is before the Court on the Application for Leave to file Post Conviction Motion Into the Circuit Court of Lee County, Mississippi filed by Richard Harrison Mason. Also before the Court is the Response filed by the State of Mississippi. Mason's direct appeal was decided in 2008. Any petition for post-conviction relief was due to be filed within three years of the mandate in the direct appeal, unless excepted from the procedural bar. Miss. Code Ann. § 99-39-5.

Here, Mason argues for the first time that the State failed to prove venue at his trial. Alternatively, he claims that the trial judge's failure to instruct the jury that it must find that the crime occurred in Lee County requires post-conviction relief. The State's proof of venue was more than sufficient. An investigator from the Lee County Sheriff's Department testified that the crime occurred in Tupelo in Lee County. Venue was never in issue at trial.

While the jury instructions did not require the jury to find venue, no objection was raised at trial or in the direct appeal. This Court has determined that it will not consider venue questions raised for the first time in post-conviction proceedings. See *Moreno v.*

State, 79 So.3d 508 (Miss. 2012). Additionally, in *Cunningham v. State*, Cause Number 2012-CT-00418, this Court rejected similar claims by en banc order.

After due consideration, the Court finds that Mason’s venue claims were not raised until he filed this petition for post-conviction relief. The Court finds that those claims are untimely pursuant to Miss. Code Ann. § 99-39-5. The Court further finds that Mason has presented no “arguable basis” for his remaining claims and that those issues are also procedurally barred as untimely. *See Means v. State*, 43 So. 3d 438, 442 (Miss. 2010). We find that Mason has made no showing that his petition should be excepted from the time bar, and we conclude that the petition should be dismissed.

IT IS THEREFORE ORDERED that the Application for Leave to file Post Conviction Motion Into the Circuit Court of Lee County, Mississippi filed by Richard Harrison Mason is dismissed.

SO ORDERED, this the 14th day of October, 2015.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR., CHIEF JUSTICE

TO DISMISS: WALLER, C.J., DICKINSON AND RANDOLPH, P.JJ., LAMAR, CHANDLER, PIERCE AND COLEMAN, JJ.

KITCHENS AND KING, JJ., DO NOT AGREE.