

Serial: **220725**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2013-M-01725

JIMMY WREN
A/K/A JIMMY LEE WREN

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

ORDER

Before the Court, en banc, is the “Motion for Permission to File a Second or Successive Petition” filed pro se by Jimmy Wren. Wren’s conviction of capital rape of a child under fourteen years of age and sentence of life imprisonment were affirmed on direct appeal, and the mandate issued on July 22, 1999. *Lester v. State*, 726 So. 2d 598 (Miss. Ct. App. 1998) (reversed and remanded as to co-defendant Lester only). This is not Wren’s second application for leave as he purports in his filing. It is his eighth application for leave.

The instant application for leave is barred by time and as a successive application, and it does not meet any of the exceptions. Miss. Code Ann. § 99-39-5(2) and 99-39-27(9). Notwithstanding the bars, the post-conviction filing is without merit. Accordingly, the Court finds it should be dismissed.

Wren previously was sanctioned in the amount of \$100 on two separate occasions for having filed frivolous applications for leave. The total of \$200 in sanctions is still outstanding. We find the instant filing is also frivolous. Wren is hereby warned that future

filings deemed frivolous may result not only in additional monetary sanctions, but also restrictions on filing applications for post-conviction collateral relief (or pleadings in that nature) in forma pauperis. En Banc Order, *Dunn v. State*, 2016-M-01514 (Miss. Nov. 15, 2018); En Banc Order, *Fairley v. State*, 2014-M-01185 (Miss. May 3, 2018) (citing Order, *Bownes v. State*, 2014-M-00478 (Miss. Sept. 20, 2017)).

IT IS THEREFORE ORDERED that Wren’s “Motion for Permission to File a Second or Successive Petition” is hereby dismissed.

SO ORDERED, this the 5th day of December, 2018.

/s/ James D. Maxwell II

JAMES D. MAXWELL II, JUSTICE
FOR THE COURT

**AGREE: WALLER, C.J., RANDOLPH, P.J., COLEMAN, MAXWELL, BEAM,
CHAMBERLIN AND ISHEE, JJ.**

**KING, J., OBJECTS TO THE ORDER IN PART WITH SEPARATE WRITTEN
STATEMENT JOINED BY KITCHENS, P.J.**

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KING, JUSTICE, OBJECTING TO THE ORDER IN PART WITH SEPARATE WRITTEN STATEMENT:

¶1. Although Jimmy Wren’s application for post-conviction relief does not merit relief, I disagree with this Court’s contention that the application merits the classification of frivolous and with this Court’s warning of future sanctions and restrictions.

¶2. This Court previously has defined a frivolous motion to mean one filed in which the movant has “no hope of success.” *Roland v. State*, 666 So. 2d 747, 751 (Miss. 1995). However, “though a case may be weak or ‘light-headed,’ that is not sufficient to label it frivolous.” *Calhoun v. State*, 849 So. 2d 892, 897 (Miss. 2003). Wren made reasonable arguments regarding violations of due process in his application for post-conviction relief. As such, I disagree with the Court’s determination that Wren’s application is frivolous.

¶3. Additionally, I disagree with this Court’s warning that future filings may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief *in forma pauperis*. The Eighth Amendment to the United States Constitution provides that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. The imposition of monetary sanctions upon

a criminal defendant proceeding *in forma pauperis* only serves to punish or to preclude that defendant from his lawful right to appeal. The same logic applies to the restriction on filing subsequent applications for post-conviction relief. To cut off an indigent defendant's right to proceed *in forma pauperis* is to cut off his access to the courts. This, in itself, violates a defendant's constitutional rights, for

Among the rights recognized by the Court as being fundamental are the rights to be free from invidious racial discrimination, to marry, to practice their religion, to communicate with free persons, to have due process in disciplinary proceedings, and to be free from cruel and unusual punishment. As a result of the recognition of these and other rights, the right of access to courts, which is necessary to vindicate all constitutional rights, also became a fundamental right.

Joseph T. Lukens, *The Prison Litigation Reform Act: Three Strikes and You're Out of Court-It May Be Effective, but Is It Constitutional?*, 70 Temp. L. Rev. 471, 474–75 (1997).

This Court must not discourage convicted defendants from exercising their right to appeal. *Wisconsin v. Glick*, 782 F.2d 670, 673 (7th Cir. 1986). Novel arguments that might remove a criminal defendant from confinement should not be discouraged by the threat of monetary sanctions and restrictions on filings. *Id.*

¶4. Although I find no merit in Wren's application for post-conviction relief and agree it should be dismissed, I disagree with the Court's finding that the application is frivolous and with this Court's warning of future sanctions and restrictions.

KITCHENS, P.J., JOINS THIS SEPARATE WRITTEN STATEMENT.