

Serial: **221179**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2014-M-01073

T. W. KING

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

EN BANC ORDER

This matter is before the Court on the Motion to Reopen Original Direct Appeal Based on Newly Discovered Evidence Regarding Prosecutorial Misconduct and Confusing Jury Instructions filed pro se by T. W. King. The filing is in the nature of a petition for post-conviction relief and is considered as such. The mandate in King's direct appeal issued in 2001. The present filing is subject to the time bar. Miss. Code Ann. § 99-39-5. Further, King's previous petitions for post-conviction relief were denied in 2003, 2009, again in 2009, in 2012, and in 2014. The present filing is successive. Miss. Code Ann. § 99-39-27. After due consideration, the panel finds that no exception to the procedural bars exists and that the petition should be dismissed. Notwithstanding the procedural bars, the panel finds that the petition is without merit.

The Court further finds that the present filing is frivolous. King is hereby warned that future filings deemed frivolous could result in (1) monetary sanctions and (2) restrictions on his ability to file 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 the Motion to Reopen Original Direct Appeal Based on Newly Discovered Evidence Regarding Prosecutorial Misconduct and Confusing Jury Instructions filed by T.W. King is 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.**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2014-M-01073

T. W. KING

v.

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

¶1. Although T.W. King’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). King made reasonable arguments regarding his claims of newly discovered evidence and improper jury instructions. As such, I disagree with the Court’s determination that King’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 King'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.