Serial: **224277**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2011-M-00743

WILLIAM RAY COLLINS ***Petitioner***

v.

STATE OF MISSISSIPPI ***Respondent***

ORDER

The instant matter is before the Court en banc on William Ray Collins's Application for Leave to Proceed in the Trial Court. Collins was convicted of armed robbery and sentenced to serve forty years in the custody of the Mississippi Department of Corrections. Collins appealed, and the Court of Appeals affirmed his conviction and sentence. ***Collins v. State***, 817 So. 2d 644 (Miss. Ct. App. 2002). The mandate issued on June 18, 2002.

The instant matter is Collins's sixth application for post-conviction relief, with each prior application resulting in a dismissal or denial of the application. Further, Collins has been sanctioned on two separate occasions for filings deemed to be frivolous. In the instant matter, Collins raises the same argument regarding an amendment to his indictment that the Court previously has considered and rejected in at least three of his prior applications.

After due consideration, the Court finds that Collins's Application for Leave to Proceed in the Trial Court should be denied as it is time-barred pursuant to Mississippi Code Section 99-39-5(2) (Rev. 2015), and it is barred as a successive application pursuant to Mississippi Code Section 99-39-27 (Rev. 2015). Further, Collins fails to meet any exception

to the time bar or the bar on successive applications. Collins's application also is barred by the doctrine of *res judicata*.

Lastly, while Collins has been warned of the possibility of future sanctions for filings deemed frivolous and even has had monetary sanctions imposed by order of the Court, we take the opportunity to warn Collins that any future filings deemed frivolous may subject him to further monetary sanctions and restrictions on his ability to proceed *in forma pauperis* in the future. *See* Order, ***Dunn v. State***, 2016-M-01514 (Miss. Nov. 15, 2018).

IT IS THEREFORE ORDERED that William Ray Collins's *pro se* Application for Leave to Proceed in the Trial Court is denied.

SO ORDERED, this the 10th day of April, 2019.

/s/ Robert P. Chamberlin

ROBERT P. CHAMBERLIN, JUSTICE
FOR THE COURT

TO DENY AND ISSUE SANCTIONS WARNING: RANDOLPH, C.J., COLEMAN, MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ.

TO DENY: KITCHENS AND KING, P.JJ.

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

IN THE SUPREME COURT OF MISSISSIPPI

No. 2011-M-00743

WILLIAM RAY COLLINS

v.

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

¶1. Although William Ray Collins's application for post-conviction relief does not merit relief, I disagree with the Court's finding that the application is frivolous and with the warning that future filings deemed frivolous may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief *in forma pauperis*.[1]

¶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). In his application for post-conviction relief, Collins made reasonable arguments. As such, I disagree with the Court's determination that Collins'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 imposition of monetary sanctions upon a criminal defendant

[1]*See* Order, ***Dunn v. State***, 2016-M-01514 (Miss. Nov. 15, 2018).

proceeding *in forma pauperis* only serves to punish or preclude that defendant from his lawful right to appeal. Black's Law Dictionary defines sanction as "[a] provision that gives force to a legal imperative by either rewarding obedience or *punishing disobedience*." *Sanction*, Black's Law Dictionary (10th ed. 2014) (emphasis added). Instead of punishing the defendant for filing a motion, I believe that this Court should simply deny or dismiss motions that lack merit. As Justice Brennan wisely stated,

> The Court's order purports to be motivated by this litigant's disproportionate consumption of the Court's time and resources. Yet if his filings are truly as repetitious as it appears, it hardly takes much time to identify them as such. I find it difficult to see how the amount of time and resources required to deal properly with McDonald's petitions could be so great as to justify the step we now take. Indeed, the time that has been consumed in the preparation of the present order barring the door to Mr. McDonald far exceeds that which would have been necessary to process his petitions for the next several years at least. I continue to find puzzling the Court's fervor in ensuring that rights granted to the poor are not abused, even when so doing actually increases the drain on our limited resources.

In re McDonald, 489 U.S. 180, 186–87, 109 S. Ct. 993, 997, 103 L. Ed. 2d 158 (1989) (Brennan, J., dissenting).[2]

¶4. 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

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[2]*See also* ***In re Demos***, 500 U.S. 16, 19, 111 S. Ct. 1569, 1571, 114 L. Ed. 2d 20 (1991) (Marshall, J., dissenting) ("In closing its doors today to another indigent litigant, the Court moves ever closer to the day when it leaves an indigent litigant with a meritorious claim out in the cold. And with each barrier that it places in the way of indigent litigants, and with each instance in which it castigates such litigants for having 'abused the system,' . . . the Court can only reinforce in the hearts and minds of our society's less fortunate members the unsettling message that their pleas are not welcome here.").

> 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.***

¶5. Therefore, although I find no merit in Collins's application for post-conviction relief and agree it should be denied, I disagree with this Court's contention that the application merits the classification of frivolous and with its warning of future sanctions and restrictions.

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