

Serial: **223756**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2017-M-00455

JOSEPH COOK

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

EN BANC ORDER

Now before the Court, en banc, comes the Application for Leave to Proceed in the Trial Court filed pro se by Joseph Cook. Cook's conviction and sentence were affirmed by this Court on direct appeal, and the mandate issued on May 14, 2015. *Cook v. State*, 161 So. 3d 1057 (Miss. 2015). The instant application for leave, Cook's third, is barred by time and as a successive application. Miss. Code Ann. §§ 99-39-5(2) and 99-39-27(9) (Rev. 2015). Additionally, at least one of Cook's claims was raised and rejected in his previous application for leave, and it is now barred by *res judicata*. Miss. Code Ann. § 99-39-21(3) (Rev. 2015). Notwithstanding the procedural bars, we find that Cook has presented no arguable basis for these claims, and the petition should be denied. See *Means v. State*, 43 So. 3d 438, 442 (Miss. 2010).

Further, we find the instant filing also is frivolous. Cook is warned that future filings deemed frivolous may result not only in monetary sanctions, but also in restrictions on filing applications for post-conviction collateral relief (or pleadings in that nature) *in forma pauperis*. Order, *Dunn v. State*, 2016-M-01514 (Miss. Nov. 15, 2018).

IT IS THEREFORE ORDERED that the Application for Leave to Proceed in the Trial Court is hereby denied.

SO ORDERED, this the 12th day of March, 2019.

/s/ Michael K. Randolph

MICHAEL K. RANDOLPH,
CHIEF JUSTICE
FOR THE COURT

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

TO DISMISS AND ISSUE SANCTIONS WARNING: CHAMBERLIN, J.

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. 2017-M-00455

JOSEPH COOK

v.

STATE OF MISSISSIPPI

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

¶1. Although Joseph Cook’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, Cook made reasonable arguments that his sentence was illegal and that he was not afforded due process. As such, I disagree with the Court’s determination that Cook’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

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

in forma pauperis. The imposition of monetary sanctions upon a criminal defendant 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

²See 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.”).

¶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

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 Cook'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.