

Serial: **229092**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2019-M-00727

MARY DIXON

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

EN BANC ORDER

This matter is before the Court on the Motion for Leave to Conduct Post-Conviction DNA Testing filed by Mary Dixon. Also before the Court are the Response filed by the State of Mississippi, the Motion for Permission to File Attached Reply filed by Dixon, and the Response to that Motion filed by the State. The Court finds that the request to file a reply should be granted. After due consideration, the Court further finds that Dixon has not shown that additional DNA testing at this point “would demonstrate by reasonable probability that the petitioner would not have been convicted.” *See* Miss. Code Ann. § 99-39-5 (Rev. 2015). We therefore find that the motion for DNA testing should be denied. The Court further finds that the Petition for a Writ of Mandamus filed by Dixon should be dismissed as moot.

IT IS THEREFORE ORDERED that the Motion for Leave to Conduct Post-Conviction DNA Testing filed by Mary Dixon is denied.

IT IS FURTHER ORDERED that the Petition for a Writ of Mandamus also filed by

Mary Dixon is dismissed.

SO ORDERED, this the 4th day of December, 2019.

/s/ T. Kenneth Griffis, Jr.

T. KENNETH GRIFFIS, JR., JUSTICE
FOR THE COURT

TO DENY THE PETITION FOR POST-CONVICTION RELIEF: RANDOLPH, C.J.,
MAXWELL, BEAM, CHAMBERLIN AND GRIFFIS, JJ.

TO GRANT THE PETITION FOR POST-CONVICTION RELIEF: KITCHENS AND
KING, P.JJ., COLEMAN AND ISHEE, JJ.

TO DISMISS THE PETITION FOR MANDAMUS AS MOOT: RANDOLPH, C.J.,
COLEMAN, MAXWELL, BEAM, CHAMBERLIN AND GRIFFIS, JJ.

TO DISMISS THE PETITION FOR MANDAMUS AS UNTIMELY: KING, P.J.

TO GRANT THE PETITION FOR MANDAMUS: KITCHENS, P.J.

TO DENY THE PETITION FOR MANDAMUS: ISHEE, J.

KITCHENS, P.J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN
STATEMENT JOINED BY KING, P.J., AND ISHEE, J.; COLEMAN, J., JOINS IN PART.

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KITCHENS, PRESIDING JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:

¶1. With respect, I disagree with this Court’s decision to deny Mary Dixon’s Motion for Leave to Conduct Post-Conviction DNA Testing, and I would find that her petition provides sufficient grounds to grant relief under the Uniform Post-Conviction Collateral Relief Act. *See* Miss. Code Ann. § 99-39-5 (Rev. 2015).

¶2. Dixon filed this motion for post-conviction DNA testing following appeal of her conviction in the Circuit Court of the First Judicial District of Hinds County for the 2004 death of Melencia Bell. *See Dixon v. State*, 17 So. 3d 1099 (Miss. Ct. App. 2009). Bell died after an assault left her with numerous puncture wounds to her neck, chest, and abdomen; the victim was discovered at her house “lying naked on the floor in a pool of blood with a screwdriver sticking out of her neck and a bloody axe lying on the daybed.” *Id.* at 1101. A subsequent investigation “found no physical evidence to link Dixon to the assault and robbery [N]one of the evidence collected and analyzed linked Dixon to the crime.” *Id.* at 1102. Notwithstanding a lack of physical evidence, Dixon was indicted for capital murder,

found guilty, and was sentenced to life imprisonment. *Id.* Dixon has maintained her innocence of the offense.

¶3. The investigation into Bell’s assault secured multiple items¹—including articles with suspected blood stains—from the crime scene; some of those items were received into evidence at trial, but according to Dixon, “no DNA testing was ever done on the screwdriver, the maul, the maul handle . . . knives, [a] black purse, [a] cigarette butt, [a] beer can that was fashioned into an improvised smoking device, or any other item collected from 827 Dreyfus Street [Bell’s home].”²

¹According to Dixon, these items, as identified by a Jackson Police Department crime scene report, include the following:

- 1) [A] Green Sheet with Suspected Blood Stains [from the rear bedroom][;]
- 2) [a] Bud Light Can (Improvised Smoking Device) [from the rear bedroom][;]
- 3) [a] Piece of Toilet Paper with Suspected Blood Stains [from the rear bedroom][;]
- 4) [a] Flathead Screwdriver [with suspected blood, from the living room floor][;]
- 5) [a] Butcher Knife [from the kitchen on the stove top][;]
- 6) [a] White Floral Pattern Robe with Suspected Blood Stains and Fecal Matter [from the daybed][;]
- 7) [a] Black Purse containing Makeup [from the living room floor][;]
- 8) Latent Prints[;]
- 9) [a] Cigarette Butt [from the living room floor][;]
- 10) [a] Kitchen Knife [from bedside tray next to daybed][;]
- 11) [a] Wood Maul with Suspected Blood Stain [from the daybed][;]
- 12) [a] Coca-Cola Can [from the front porch][;]
- 13) [a] Piece of Wood Handle with Suspected Blood [on the] Handle [from the living room floor near the daybed][;]
- 14) Comforter, Bed Spread and Blanket [from the daybed][;]
- 15) One Pink Towel and One Blue Towel with Suspected Blood Stains [from the daybed][;]
- 16) [a] Pillow with Suspected Blood Stains [from the daybed][;]
- 17) [a] Homemade Wood Club [from under the daybed][;]
- 18) [and] [a] Suspected Blood Sample [from the front porch].

²Dixon’s clothing allegedly contained blood patches, but prior DNA testing of those items did not link her to Melencia Bell.

¶4. Dixon now moves this Court to proceed with testing of that evidence. Dixon’s petition states, as the investigation determined, that “[e]ach of the items includes biological material in the form of suspected blood, or likely includes biological material in the form of skin tissue, saliva, or other bodily fluid.” She represents that almost all of the items remain in the custody of the Hinds County Circuit Court and that such evidence may be subject to forensic DNA testing in connection with her case. Dixon avers that she has not sought DNA testing of this potential biological evidence before, and her application is not procedurally barred.

¶5. I would find that Dixon has met the requirements for post-conviction DNA testing under Mississippi Code Section 99-39-5. Dixon’s petition reasonably establishes that “there exists biological evidence secured in relation to the investigation or prosecution attendant to the petitioner’s conviction that [has] not [been] tested.” Miss. Code Ann. § 99-39-5(2)(a)(ii) (Rev. 2015). To the extent that a forensic evaluation of those items has not been conducted, Dixon should be allowed to proceed in the trial court for further review and analysis of such potentially probative evidence. Had such testing occurred before, the presence of any biological material from this bloody incident could have provided evidence that placed another person at the scene of the crime. *See* En Banc Order, *Jones v. State*, No. 2018-M-01212-SCT (Miss. June 5, 2019) (The Court granted a Motion for Leave to Conduct Post-Conviction DNA Testing “of . . . biological evidence secured in connection with [defendant’s] case, which either was not tested previously or, if previously tested, can be subjected to additional DNA testing.”). Because physical evidence did not connect Dixon

to the victim and because evidence at trial established that other parties were at or near Bell's home around the time of the assault, there is a reasonable probability that DNA testing of these items would support making an evidentiary link with another person such "that the petitioner would not have been convicted or would have received a lesser sentence" Miss. Code Ann. § 99-39-5(2)(a)(ii).

¶6. I find no reason why this request for an examination of previously untested items should be denied, and I would grant Dixon's Motion for Leave. Dixon has demonstrated sufficient grounds for relief, no harm would result from allowing Dixon to proceed with further evaluation, and testing of this evidence could have made a difference in her conviction "if favorable results had been obtained through such forensic DNA testing at the time of the original prosecution." *Id.*

¶7. Additionally, while the Court dismisses Dixon's Petition for Writ of Mandamus to require Hinds County Circuit Judge Faye Peterson to recuse herself as moot, I would find that Judge Peterson should be required to recuse herself from this matter due to her prior involvement in this case as Hinds County District Attorney, and I would grant Dixon's requested relief. *See, e.g., Davis v. Neshoba Cty. Gen. Hosp.*, 611 So. 2d 904, 906 (Miss. 1992) ("Clearly, the judge's former representation . . . created a conflict of interest which would lead a reasonable-minded person to question the judge's ability to be impartial.").

KING, P.J., AND ISHEE, J., JOIN THIS SEPARATE WRITTEN STATEMENT. COLEMAN, J., JOINS THIS SEPARATE WRITTEN STATEMENT IN PART.