

Serial: 240414

**FILED**

**MAR 31 2022**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

**IN THE SUPREME COURT OF MISSISSIPPI**

**No. 2020-CA-00868-SCT**

***MARLON HOWELL A/K/A MARLON  
LATODD HOWELL A/K/A MARLON  
COX***

**v.**

***STATE OF MISSISSIPPI***

**ORDER**

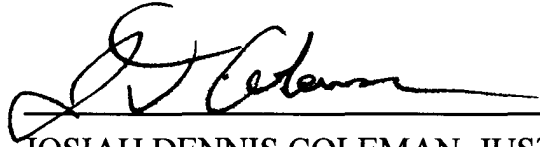
Having carefully considered the instant case, the Court finds that supplemental briefing is necessary. The Court directs the parties to brief the following issue:

Whether the Court should overrule *Rowland v. State*, 42 So. 3d 503 (Miss. 2010), and any other case in which, and to the extent that, we have held the fundamental rights exception to the procedural bars may be applied to the three-year statute of limitations codified by the Legislature in the Uniform Post-Conviction Collateral Relief Act.

IT IS, THEREFORE, ORDERED, that the parties are required to file their supplemental briefs addressing the above question, which shall not exceed fifty pages. The supplemental brief of the Appellant shall be due within twenty days from the entry of the instant order. The Appellee's supplemental brief shall be due within fourteen days after the Appellant's brief is filed. Marlon Howell is invited to file a supplemental brief if he wishes and such shall be due within five days from the day the Appellee's supplemental brief is

filed. No extensions of the above-established deadlines will be granted absent extraordinary circumstances.

SO ORDERED, this the 31 day of March, 2022.

  
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JOSIAH DENNIS COLEMAN, JUSTICE

AGREE: RANDOLPH, C.J., COLEMAN, MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ.

DISAGREE: KITCHENS AND KING, P.JJ.

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

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2020-CA-00868-SCT

**Marlon Howell a/k/a Marlon LaTodd  
Howell a/k/a Marlon Cox**

v.

**State of Mississippi**

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

¶1. I write separately to address my disagreement with the content of the supplemental briefing order. When this Court raises an issue *sua sponte*, it should provide the parties with sufficient context regarding the issues they should brief so as to provide the parties fair notice.

¶2. Generally, this Court does not advocate for arguments or remedies not raised by the parties absent certain exceptional circumstances. See *Gamma Healthcare Inc. v. Est. of Grantham*, No. 2019-CT-00913-SCT, 2022 WL 620585, at \*18 (Miss. Mar. 3, 2022) (Randolph, C.J., dissenting); M.R.A.P. 28(a)(3), (c) (the Court may recognize plain error, but does not generally address issues not raised by the parties).

With rare exceptions, this Court, like all appellate courts, should decide the issues presented by the parties, as the parties present them. When we do otherwise, when we decide an issue *sua sponte*, we invite error because the issue has not been fleshed out fully; it has not been researched, briefed and argued by the parties. Moreover, the parties are blind-sided when an appellate court reaches an issue on its own motion. They have no inkling that the court even thought about such an issue until they receive and read the court's opinion. That is not fair.

*Turner v. Flournoy*, 594 S.E.2d 359, 361–62 (Ga. 2004) (footnote omitted).

¶3. Courts may cure some of the potential unfairness to parties of its raising issues *sua sponte* by ordering supplemental briefing, as this order correctly does. Yet, here, the Court’s statement of the issue for supplemental briefing is so broad that it fails to give the parties any meaningful notice of what issues the parties should address, obviating much of the purpose of ordering supplemental briefing. An order for supplemental briefing should clearly and specifically give the parties adequate notice of the Court’s concerns when the Court raises an issue *sua sponte*. Here, the Court very generally raises the issue of overruling *Rowland v. State*, 42 So. 3d 503 (Miss. 2010), without giving the parties any context regarding what legal bases they should address for potentially overruling or maintaining *Rowland*, leaving the parties to blindly grasp for straws. Thus, in my opinion, the parties should consider addressing whether the statute of limitations provided in the Mississippi Uniform Post-Conviction Collateral Relief Act (UPCCRA), Mississippi Code Section 99-39-5(2) (Rev. 2020), is substantive law or procedural law and whether any such distinction or classification impacts the fundamental-rights exception to the statute of limitations provided in Section 99-39-5(2). Further, the parties should consider addressing whether the privilege against suspension of the writ of habeas corpus found in the Mississippi Constitution, article 3, section 21, would be impacted by eliminating the fundamental-rights exception to the statute of limitations provided in Section 99-39-5(2).

¶4. For these reasons, I respectfully object to the content of the order.

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