

Serial: 247987

IN THE SUPREME COURT OF MISSISSIPPI

No. 2023-M-00022

FILED

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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

KEVIN JACKSON

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

EN BANC ORDER

Before the en banc Court are (1) Kevin Jackson's Application for Post-Conviction Relief or for Leave to Proceed in the Trial Court and (2) the State of Mississippi's Response to Petitioner's Application for Leave to File Motion for Post-Conviction Relief.

Jackson seeks leave under Mississippi Code Sections 99-39-1 to -27 (Rev. 2020) to file a motion for post-conviction relief in the Hinds County Circuit Court, First Judicial District. In 1999, he was convicted in that court of three felonies—(1) murder, (2) aggravated assault, and (3) firing a handgun into an occupied dwelling. *Jackson v. State*, 815 So. 2d 1196, 1198 (Miss. 2002). He was sentenced to life, a twenty-five-year term, and a five-year term respectively. *Id.* Jackson appealed his convictions, and this Court affirmed. *Id.* at 1199.

In his PCR petition, Jackson asserts his twenty-five-year sentence for aggravated assault is illegal because, at the time of the crime, the maximum statutory penalty was twenty years. Jackson seeks leave to file in the Hinds County Circuit Court a post-conviction-relief motion to vacate his aggravated-assault sentence. But Jackson failed to file his petition

“within three (3) years after the time in which the petitioner’s direct appeal is ruled upon by the Supreme Court of Mississippi.” Miss. Code Ann. § 99-39-5(2) (Rev. 2020). This Court’s mandate issued on May 30, 2002. Jackson did not file his petition until January 6, 2023. So his PCR petition is time-barred. *Howell v. State*, 358 So. 3d 613, 615-16 (Miss. 2023), *overruling Rowland v. State*, 98 So. 3d 1032, 1036 (Miss. 2012).

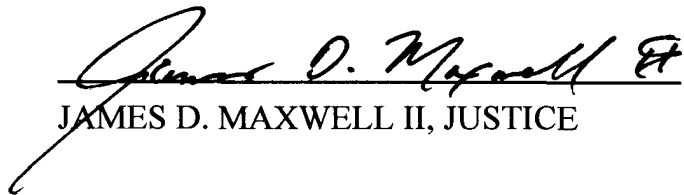
That said, it appears from the face of his petition that the relief Jackson seeks is the correction of a *clerical* error, not a legal one. “[E]very court of record has inherent power not derived from statute to correct its own judgment” *Yeatman v. State*, 142 So. 3d 1091, 1094 (Miss. 2014) (quoting *Fields v. State*, 840 So. 2d 796 (Miss. Ct. App. 2003)). “[T]he inherent authority to correct errors of a purely clerical nature” may be exercised “at any time,” so long as the court has jurisdiction. *Id.*

“The records of a court can be corrected or altered only by the court itself[.]” *Id.* “[A]nother court has no authority to make such corrections, even though it has appellate jurisdiction over the court whose records are sought to be corrected.” *Id.* For this reason, though we deny Jackson’s petition for post-conviction relief as time-barred, we relinquish jurisdiction over his convictions and sentences. We transfer jurisdiction back to the Hinds County Circuit Court, First Judicial District, so Jackson may present his clerical-error claim to that court. If that court finds Jackson’s twenty-five-year sentence was the result of a pure clerical error, the court may issue a corrected sentencing order *nunc pro tunc*. *Id.*

The court may not vacate or otherwise alter Jackson’s convictions or sentences based on any other type of error or claim. Such substantive post-conviction relief is barred.

THEREFORE, IT IS ORDERED that Jackson's Application for Post-Conviction Relief or for Leave to Proceed in the Trial Court is denied. But this Court shall transfer jurisdiction over the convictions and sentences affirmed by *Jackson v. State*, 815 So. 2d 1196 (Miss. 2002), to the Hinds County Circuit Court, First Judicial District, so Jackson may present his clerical-error claim to that court.

SO ORDERED, this the 19th day of September, 2023.


JAMES D. MAXWELL II, JUSTICE

AGREE: MAXWELL, BEAM AND CHAMBERLIN, JJ.

AGREE IN PART: KITCHENS AND KING, P.JJ., AND ISHEE, J.

DISAGREE: RANDOLPH, C.J., COLEMAN AND GRIFFIS, JJ.

KITCHENS, P.J., JOINING IN PART WITH SEPARATE WRITTEN STATEMENT JOINED BY KING, P.J., AND ISHEE, J.

COLEMAN, J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT JOINED BY RANDOLPH, C.J., AND GRIFFIS, J.

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2023-M-00022

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State of Mississippi

KITCHENS, PRESIDING JUSTICE, JOINING IN PART WITH SEPARATE WRITTEN STATEMENT:

¶1. I join the Court’s order to the extent it relinquishes jurisdiction of this case to the circuit court for correction of a very consequential clerical error. I agree that this approach is different from a consideration of the Mississippi Uniform Post Conviction Collateral Relief Act (UPCCRA).

¶2. I write separately to renew my objection to this Court’s recent elimination of the fundamental rights exception to the procedural bars of the UPCCRA. *See Howell v. State*, 358 So. 3d 613, 617 (Miss. 2023) (Kitchens, P.J. dissenting). Until *Howell*, this Court’s position was that “a claim of illegal sentence . . . must be considered regardless of when it was raised, because the State is without authority or right to impose a sentence illegally.” *Rowland v. State*, 98 So. 3d 1032, 1036 (Miss. 2012), *overruled by Howell*, 358 So. 3d 613.. Our unanimous stance in *Rowland* and subsequent cases was not a novel proclamation but rather a reiteration of the longstanding principle that, if the Legislature has set an upper limit on a sentence for a crime, a judge may not order a convicted defendant to serve a longer term. *See Grayer v. State*, 120 So. 3d 964, 969 (Miss. 2013); *Foreman v. State*, 51 So. 3d 957, 962

(Miss. 2011); *Means v. State*, 43 So. 3d 438, 442 (Miss. 2010). The purpose of the fundamental rights exception was to protect “rights we hold so fundamental to our societal ideals that they cannot be waived by failure to pursue them in a timely fashion.” *Howell*, 358 So. 3d at 618.

¶3. Here, the Court’s order explicitly finds that Jackson’s PCR petition is time-barred and directs that on remand the “court may not vacate or otherwise alter Jackson’s conviction or sentence based on any other type of error or claim [than a clerical error]. Such substantive post-conviction relief is barred.”

¶4. I do not agree that this restriction on Jackson’s ability to seek relief for his illegal sentence is proper. Therefore, I join the Court’s order only in part.

KING, P.J., AND ISHEE, J., JOIN THIS SEPARATE WRITTEN STATEMENT.

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COLEMAN, JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:

¶1. The applicable three-year statute of limitations codified at Mississippi Code Section 99-39-5(2) (Rev. 2020) bars Kevin Jackson’s petition for leave to proceed in the trial court to seek post-conviction relief based on a claim of an illegal sentence. In his petition, he contends that the judicially-created exceptions to the statute of limitations that have their genesis in *Rowland v. State*, 98 So. 3d 1032 (Miss. 2012), *overruled by Howell v. State*, 358 So. 3d 613, 616 (¶ 12) (Miss. 2023), operate to save his claim from the statute of limitations. However, we overruled *Rowland* “to the extent that we have held that the fundamental-rights exception can apply to the substantive, constitutional bars codified by the Legislature in the Uniform Post-Conviction Collateral Relief Act.” *Howell*, 358 So. 3d at 616 (¶ 12). Accordingly, the argument he presents is without merit.

¶2. In contravention of the statute of limitations and on grounds not argued by Jackson, the majority grants Jackson’s petition for leave to proceed. *Howell* left the door open to the possibility that a petitioner could show the statute of limitations should not apply to a particular petition due to as yet unaddressed arguments regarding constitutionality or other reasons, *Howell*, 358 So. 2d at 616 (¶ 12), but the majority does something else entirely.

Here, the majority labels Jackson’s complaint as a “clerical error,” thereby employing an effective rhetorical device to grant his petition. “We transfer jurisdiction back to the Hinds County Circuit Court . . . so Jackson may present his clerical—error claim to that court,” writes the majority in its order.

¶3. It has been thirty-one years since the Mississippi Supreme Court held that the statute of limitations at issue constitutes a constitutionally acceptable bar to claims for post-conviction relief—even when the claims at issue are constitutional in nature. *Cole v. State*, 608 So. 2d 1313, 1318-1319 (Miss. 1992). For many of those years, and certainly from *Rowland* in 2012 to *Howell*, decided earlier in the current year, the Court has struggled to act like it really means it. The majority’s current “clerical-error” exception is just as absent from the statute as *Rowland*’s fundamental-rights exception. In *Howell*, we wrote, “[T]he Supreme Court of Mississippi cannot lawfully amend or ignore constitutionally sound law enacted by the Legislature” *Howell*, 358 So. 3d at 616 (¶ 12). Unfortunately, it appears that the majority nonetheless does so here.

¶4. For the foregoing reasons, I disagree with the order granting Jackson leave to proceed in the trial court.

RANDOLPH, C.J., AND GRIFFIS, J., JOIN THIS SEPARATE WRITTEN STATEMENT.