

APPENDIX - A (5 pages)

Serial: 220860

FILED

IN THE SUPREME COURT OF MISSISSIPPI

DEC - 6 2018

No. 2013-M-01425

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SUPREME COURT
COURT OF APPEALS

**DARRYL MIXON A/K/A DARRELL
MIXON A/K/A DARYL MIXON A/K/A
LARRY WILLIAMS A/K/A REGINALD
WELLS**

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

ORDER

Now before the Court, en banc, is Darryl Mixon's Petition for Extraordinary Writ Seeking Collateral Relief.

Mixon filed this, his fifth, application for leave to seek post-conviction relief outside the three-year limitations period. Miss. Code. Ann. § 99-39-5(2). He raises three issues: (1) the trial court lacked jurisdiction because there was no "formal complainant"; (2) actual innocence; and (3) disproportionate sentence.

After due consideration, we find the following.

Mixon's first claim does not meet any recognized exception to the time, waiver, and successive-writ bars. *Rowland v. State*, 98 So. 3d 1032, 1034–36 (Miss. 2012), *overruled on other grounds by Carson v. State*, 212 So. 3d 22 (Miss. 2016); *Bell v. State*, 123 So. 3d 924, 924–25 (Miss. 2013); *see also Boyd v. State*, 155 So. 3d 914, 918 (Miss. Ct. App. 2014) ("[S]ince *Rowland*, only four types of 'fundamental rights' have been expressly found to

survive PCR procedural bars: (1) double jeopardy; (2) illegal sentence; (3) denial of due process at sentencing; and (4) ex post facto claims.”). Even if it did, it lacks any arguable basis to overcome those bars. *Means v. State*, 43 So. 3d 438, 442 (Miss. 2010).

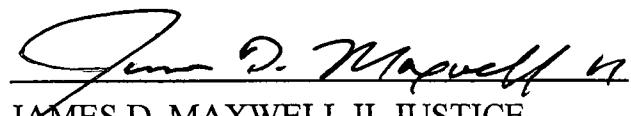
Second, an actual-innocence claim can constitute an exception to the time bar. *See Lee v. State*, 78 So. 3d 330, 332 (Miss. 2012); *see also Sneed v. State*, 85 So. 3d 298, 300 (Miss. Ct. App. 2012). Yet Mixon’s claim is insufficient to overcome either that bar or the waiver and successive-writ bars.

Finally, an illegal-sentence claim is a recognized exception to the bars. *Rowland*, 98 So. 3d at 1034–36. Mixon’s claim, however, lacks any arguable basis.

Mixon was previously sanctioned \$100 for filing a frivolous application for leave to seek post-conviction collateral relief. Order, *Mixon v. State*, 2013-M-01425 (Miss. July 20, 2016). We find this filing is frivolous. Mixon is hereby warned that future filings deemed frivolous may result not only in additional monetary sanctions, but also restrictions on filing applications for post-conviction collateral relief (or pleadings in that nature) in forma pauperis. En Banc Order, *Dunn v. State*, 2016-M-01514 (Miss. Nov. 15, 2018); En Banc Order, *Fairley v. State*, 2014-M-01185 (Miss. May 3, 2018) (citing Order, *Bownes v. State*, 2014-M-00478 (Miss. Sept. 20, 2017)).

IT IS THEREFORE ORDERED that the petition is dismissed.

SO ORDERED, this the 5th day of December, 2018.


JAMES D. MAXWELL II, JUSTICE
FOR THE COURT