

No. 22-550

In The
Supreme Court of the United States

CARLOS JACKSON,

Petitioner;

v.

STATE OF MISSISSIPPI,

Respondent.

**On Petition For Writ Of Certiorari
To The Supreme Court Of Mississippi**

PETITION FOR REHEARING

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTRODUCTION	1
REASONS TO GRANT REHEARING.....	3
CONCLUSION.....	7
CERTIFICATE OF COUNSEL.....	9

TABLE OF AUTHORITIES

	Page
CASES	
<i>Boyd v. United States</i> , 116 U.S. 616 (1886)	4, 5, 7
<i>In re Murchison</i> , 349 U.S. 133 (1955).....	6
<i>In re Oliver</i> , 333 U.S. 257 (1948)	6
<i>Marlon Howell a/k/a Marlon LaTodd Howell a/k/a Marlon Cox v. State of Mississippi</i> , 2020-CA-00868-SCT, 2023 WL 412469 (Miss. January 26, 2023)	1, 4, 5, 6, 7
<i>Morgan v. Illinois</i> , 504 U.S. 719 (1992)	6
<i>Pate v. Robinson</i> , 383 U.S. 375 (1966)	4, 6
<i>Tumey v. Ohio</i> , 273 U.S. 510 (1927).....	6
CONSTITUTION	
U.S. Const. Amend. XIV.....	2, 5, 7
U.S. Const. Art. VI, Clause 2 (Supremacy Clause).....	2
COURT RULES	
S. Ct. R. 44.2.....	1, 9
ONLINE INVESTIGATIVE REPORT	
“Mississippi Now Leads The World In Mass Incarceration.” Jerry Mitchell, Mississippi Center for Investigative Reporting, August 10, 2022	3

INTRODUCTION

On January 23, 2023, this Court denied Carlos Jackson's Petition for Writ of Certiorari to the Mississippi Supreme Court. 2023 WL 350028. Carlos Jackson respectfully files this *Petition for Rehearing* pursuant to Rule 44.2 of this Court's rules. S. Ct. R. 44.2.

Since the filing of Carlos Jackson's Petition in this Court on December 15, 2022, on January 26, 2023, the Mississippi Supreme Court handed down its opinion in *Marlon Howell a/k/a Marlon LaTodd Howell a/k/a Marlon Cox v. State of Mississippi*, 2020-CA-00868-SCT, 2023 WL 412469 (Miss. January 26, 2023).

In *Howell v. State*, the Mississippi Supreme Court held that the three (3) year statute of limitations for post-conviction relief is a substantive law passed by the legislature. The Court held that because the statute of limitations is substantive, the judicial branch cannot alter the post-conviction statute by allowing one convicted of a crime to assert certain rights more than three (3) years after conviction or direct reviews. *Howell v. State of Mississippi*, 2023 WL 412469.

The critical holding from January 26, 2023 that is pertinent to Carlos Jackson's case is that in *Howell*, the Mississippi Supreme Court recognized:

We acknowledge that other arguments may be used to attack the constitutionality of the statutory bars, either as applied to particular cases or on their face, and we have no intent to address their validity one way or the other.

Howell v. State of Mississippi, 2023 WL 412469 at (¶12).

The due process clause of the Fourteenth Amendment to the Constitution of the United States mandates:

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment XIV, Constitution of the United States.

The Supremacy Clause mandates that Mississippi must honor the Fourteenth Amendment, and this Court's jurisprudence regarding competency to stand trial:

Supremacy Clause:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Law of any State to the Contrary notwithstanding.

Article VI, Clause 2, Constitution of the United States.

It is no big secret that Mississippi has a long and storied history of ignoring and failing to enforce federal constitutional rights. Even today, Mississippi is recognized as having the highest incarceration rate – not only in the United States, **but in the world**. “Mississippi Now Leads The World In Mass Incarceration.” Jerry Mitchell, Mississippi Center for Investigative Reporting. August 10, 2022.

We see this pervasive mindset in the instant case, where Carlos Jackson’s maximum sentence for any of his five (5) convictions was 20 years, without killing anyone, yet he received consecutive sentences totaling 80 years. Carlos Jackson was 29 years old at the time of sentencing. Carlos Jackson’s sentence is a life sentence for all practical and actuarial purposes.

This case is a gross miscarriage of justice, and Mississippi refuses, for whatever reason, to recognize Carlos Jackson’s federal due process right to a competency hearing and an adjudication of his competence to stand trial before conviction and (what amounts to) a life sentence.



REASONS TO GRANT REHEARING

Rehearing of the denial of certiorari is appropriate where, since the filing of Carlos Jackson’s petition on December 15, 2022, the Mississippi Supreme Court handed down a case on January 26, 2023, which recognizes “ . . . that, in specific cases, other arguments or doctrines, e.g. equitable tolling, might be available to

afford relief from the statute of limitations.” *Howell v. State of Mississippi*, 2023 WL 412469 at ¶12 (Miss. January 26, 2023).

When a conviction and 80-year sentence deprive someone of a fair trial for want of due process, this is a textbook example of when “other arguments or doctrines” should afford someone relief who is asserting federal constitutional rights. With Carlos Jackson, the Mississippi court entered a conviction and imposed an 80-year sentence without a competency hearing and without any finding that Mr. Jackson was competent to stand trial:

... Constitutional provisions for the security of the person and property should be liberally construed. . . . It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments therein.

Boyd v. United States, 116 U.S. 616, 635 (1886).

When Mississippi ignores this Court’s jurisprudence for a defendant like Carlos Jackson, who the state admitted had mental problems, then this Court’s jurisprudence about competence to stand trial, and due process are allowed by Mississippi courts to stop at the Mississippi border. “The court’s failure to make such (competency) inquiry thus deprived Robinson (the defendant) of his constitutional right to a fair trial.” *Pate v. Robinson*, 383 U.S. 375, 385 (1966). The same rule applies to Carlos Jackson: no competency hearing and no competency adjudication means that

Carlos Jackson did not receive a fair trial, and his conviction and sentence are fatally flawed for want of due process.

When Mississippi ignores this Court’s jurisprudence on competency to stand trial, the Mississippi courts are refusing to liberally construe Carlos Jackson’s rights, and instead are allowing “stealthy encroachments thereon.” *Boyd v. United States*, 116 U.S. at 635.

To further illustrate the importance and applicability of the Mississippi Supreme Court’s January 26, 2023 opinion in *Howell v. State of Mississippi*, this 2023 case, by its own language, cites equitable estoppel as a non-exclusive exception to the Mississippi’s legislature’s attempt to arbitrarily cut off the assertion of federal constitutional rights three (3) years after conviction or appellate review:

We acknowledge that other arguments may be used to attack the constitutionality of statutory bars. . . .

Howell v. State of Mississippi, 2023 WL 412469 at ¶12.

The Fourteenth Amendment right to due process is an argument and claim that is not and should not be subject to an arbitrary statute of limitations from the Mississippi legislature.

This Court should remand this case to the Mississippi Supreme Court, and direct that the Mississippi Supreme Court recognize that the Fourteenth Amendment due process clause of the Constitution of the United States is one of the “. . . other arguments (that)

may be used to attack the constitutionality of statutory bars.” *Id.* at ¶12.

This Court’s long-standing competency jurisprudence from 1966 (which applies in favor of and should be liberally construed in favor of Carlos Jackson) is exactly the type of fair trial due process claim that Mississippi should be required to recognize. In the instant case, no competency hearing and no competency adjudication when competency was before the Mississippi court means that Carlos Jackson did not receive a fair trial. “The court’s failure to make such (competency) inquiry thus deprived Robinson (the defendant) of his constitutional right to a fair trial.” *Pate v. Robinson*, 383 U.S. 375, 385 (1966).

In 1992, this Court recognized that depriving a defendant of a fair trial violates “even the minimal standards of due process”:

The failure to accord an accused a fair hearing violates even the minimal standards of due process. *In re Oliver*, 333 U.S. 257 (1948); *Tumey v. Ohio*, 273 U.S. 510 (1927). A fair trial in a fair tribunal is a basic requirement of due process. *In re Murchison*, 349 U.S. 133, 136 (1955).

Morgan v. Illinois, 504 U.S. 719, 727 (1992).

From 1966, in *Pate v. Robinson*, this Court has recognized that the failure to hold a competency hearing, and failure to adjudicate competency deprives a defendant of a fair trial. *Pate v. Robinson*, 383 U.S. 375, 385 (1966).

The Mississippi Supreme Court’s January 16, 2023 opinion in *Howell v. State* clearly, by its express language, recognizes that there are claims that are not subject to the Mississippi legislature’s three (3) year statute of limitations. Fundamental due process claims regarding competency to stand trial are Fourteenth Amendment fair trial claims that should not be placed off limits because of the Mississippi legislature’s arbitrary statute of limitations. “Constitutional provisions for the security of the person and property should be liberally construed. . . . It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.” *Boyd v. United States*, 116 U.S. 616, 635 (1886).

CONCLUSION

For the foregoing reasons, Carlos Jackson respectfully requests that the Court grant rehearing of its order denying the petition for certiorari, vacate that order, and remand this case to the Mississippi Supreme Court. In so doing, this Court should require that the Mississippi Supreme Court recognize and follow this Court’s jurisprudence that the failure to hold a competency hearing and adjudicate competency is a clear due process violation that deprived Carlos Jackson of a fair trial, and that fundamental constitutional rights cannot be swept away into nothingness with an

arbitrary statute of limitations set by the state of Mississippi.

February 16, 2023

Respectfully submitted,
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CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, I, William C. Bell, counsel for Petitioner Carlos Jackson, hereby certify that the petition for rehearing is restricted to the grounds specified in rule 44.2. I further certify that the petition for rehearing is presented in good faith and not for delay.

February 16, 2023

WILLIAM C. BELL