

778 So.2d 786
Court of Appeals of Mississippi.

David JACKSON a/k/a David Donnell Jackson, Appellant

v.

STATE of Mississippi, Appellee.

No. 98-KA-00469-COA.

|

Feb. 27, 2001.

Synopsis

Defendant was convicted in Circuit Court, Madison County, Robert Louis Goza, Jr., J., of possession of cocaine with intent to distribute and was sentenced as an habitual offender. Defendant appealed. The Court of Appeals, King, P.J., held that: (1) trial judge was not required to recuse himself even if he was involved as part of district attorney's office in defendant's prior burglary indictments, and (2) evidence was sufficient to find that defendant's written confession was freely and voluntarily given.

Affirmed.

West Headnotes (5)

[1] Judges  Relationship to party or person interested

Trial judge was not required to recuse himself in prosecution for possession of cocaine with intent to distribute, even if he was involved as part of district attorney's office in prior burglary indictments upon which defendant's prior convictions were based and used as predicate in sentencing him as habitual offender in the present possession case, given that trial judge was not involved with district attorney's office with facts of, or indictment in, the present case. Code of Jud. Conduct., Canon 3, subd. C.

[2] Criminal Law  Mootness

In prosecution on charge of possession of cocaine with intent to distribute, State abandoned and withdrew its efforts to have evidence of defendant's oral confession placed in the record, and thus, issues relating to the timeliness of confession's disclosure, witness

Appendix A

testimony during the suppression hearing, and defendant's need for a continuance to prepare for admission of the confession, were moot.

[3] Criminal Law ➔ Voluntariness

Evidence was sufficient to find that defendant's written confession, in which he admitted to possession of cocaine with intent to distribute, was freely and voluntarily given, though defendant and his mother contended that officer threatened to charge defendant's mother with drug possession and not release her unless defendant confessed; given officer's testimony that defendant's mother was being held on an unrelated charge, she was before a judge at first reasonable opportunity for a bail hearing, and no promises or threats were used to obtain defendant's confession.

1 Case that cites this headnote

[4] Criminal Law ➔ Trial judge as sole arbiter of credibility

Criminal Law ➔ Credibility of Witnesses

Resolution of issues of credibility is the province of the trier of fact, and in a suppression hearing, that trier of fact is the trial judge.

4 Cases that cite this headnote

[5] Criminal Law ➔ Questions of Fact and Findings

Where supported by credible evidence, the findings of fact of the trial court must be accepted by Court of Appeals, and whether Court of Appeals, sitting as trier of fact, would have found otherwise is immaterial.

Attorneys and Law Firms

***786** Gail Shaw-Pierson, Canton, Lisa Mishune Ross, Rigeland, for Appellant.

***787** Office of the Attorney General by Michael C. Moore, Wayne Snuggs, Jeffrey A. Klingfuss, for Appellee.

Before KING, P.J., PAYNE, and IRVING, JJ.

Opinion

KING, P.J., for the Court:

¶ 1. David Jackson was convicted of possession of cocaine with intent to distribute. Jackson was sentenced, as an habitual offender, to serve a term of thirty years in the custody of the Mississippi Department of Corrections and ordered to pay court costs upon release. Aggrieved by his conviction and sentence, he now appeals raising the following issues: (1) whether the trial judge was disqualified from presiding over any matters involving the defendant's convictions for burglary and business burglary, (2) whether the State deprived the defendant of his right to due process by failing to inform the court that the trial judge had actively participated, as an assistant district attorney, in the defendant's prior convictions, (3) whether the trial judge erred by allowing the State to elicit testimony regarding the defendant's alleged oral confession where the State failed to disclose the confession, (4) whether the trial judge erred by allowing the prosecutor to call a non-sequestered witness to testify during the suppression hearing, (5) whether the trial court should have granted the defendant a continuance to prepare for a witness examination of other undisclosed confession, (6) whether the trial judge erred by allowing the State to introduce the defendant's alleged written confession, and (7) whether the cumulative errors in this case denied the defendant a right to a fair trial.

¶ 2. Finding no prejudicial error, this Court affirms.

FACTS

¶ 3. On February 14, 1997, at approximately 4:20 p.m., nearly twenty members of the Madison County Sheriff's Department entered the home of Claudette Luckett of Canton, Mississippi to execute a search warrant. Luckett was not home, but several guests and three of her children, including David Jackson, were present.

¶ 4. Deputies entered the house and began to search various rooms. Jim Marlett, chief narcotics investigator, interviewed and searched several women who were in the house. Marlett excused the women when no drugs were found. When Deputy Brad Harbour of the K-9 unit entered the house, Jackson was found in the hallway. After ordering Jackson to lie on the floor, Deputy Harbour secured the house to make sure no other occupants were inside it.

¶ 5. Harbour and Deputy Joey Ledlow then searched a closet in a nearby bedroom and found a white plastic bag with individual bags of crack cocaine inside. Deputy Mike Brown recovered a Raven .25 caliber automatic pistol from a dresser drawer in the southwest bedroom of the house.

From the same dresser, Deputy Brown recovered two plastic bags that contained a number of smaller plastic bags.

¶ 6. Luckett finally arrived home and Marlett questioned her about the crack cocaine. Luckett indicated a lack of knowledge of the drugs. Marlett warned Luckett, Jackson and several other male guests that someone had to accept ownership of the crack cocaine. Initially, Demetrius Robinson claimed ownership of the drugs, but Marlett did not believe him. Marlett then threatened to send the minor children to social services and to arrest Jackson's mother. Shortly thereafter, Jackson confessed to being the owner of the drugs. Luckett and Jackson were taken to the Madison County Detention Center where they were held without bond. On February 17, 1997, while in Marlett's office, Jackson signed a statement admitting that the drugs belonged to him. The next day Luckett was released.

*788 ¶ 7. When the prosecution attempted to question Marlett about the alleged oral confession made the day of Jackson's arrest, the defense objected and made a motion to suppress. The defense argued that the prosecutor failed to disclose the substance of Jackson's February 14, 1997 oral confession during discovery. A suppression hearing was held on this motion, during which the State voluntarily withdrew and abandoned its request to introduce this oral confession. When testimony resumed, the prosecution attempted to elicit testimony from Marlett regarding Jackson's alleged written confession given on February 17, 1997. Defense counsel objected and moved to suppress the written confession. During this suppression hearing, both Luckett and Jackson testified that Marlett offered Luckett's freedom in exchange for Jackson's signature on the written confession. The trial judge indicated that having considered Jackson's experiences and familiarity with the criminal justice system, he found this testimony incredible. The judge found that Jackson's written confession was freely and voluntarily given, without coercion or promise of reward and therefore allowed its admission in evidence.

¶ 8. At the end of the prosecution's case, defense counsel, with the prosecution joining in, moved for a directed verdict on the charge of possession of a firearm by a convicted felon, which the court granted. The defense then moved for a mistrial because of the several weapons which had been displayed on the prosecutor's table. This motion was denied. Jackson was found guilty of possession of cocaine with intent to distribute, sentenced, as an habitual offender, to serve a term of thirty years in the Mississippi Department of Corrections, and ordered to pay court costs upon his release.

ISSUES AND ANALYSIS

I

(1) Whether Judge Richardson was disqualified from presiding over any matters involving Jackson's conviction for burglary and business burglary

(2) Whether the State deprived Jackson of his right to due process by failing to inform Judge Richardson and Jackson that Judge Richardson, as an assistant district attorney, actively participated in Jackson's convictions for burglary and business burglary

[1] ¶ 9. Issues 1 and 2 both relate to the propriety of the trial judge serving in a case where he was a part of the district attorney's office, when the underlying convictions relied upon for habitual status were obtained.

¶ 10. The State relied upon Jackson's convictions of burglary and business burglary to establish habitual offender status. The indictments for these offenses were signed by Judge Richardson while an assistant district attorney, and pleas of guilty taken while he was a member of the district attorney's staff. Judge Richardson was not affiliated with the district attorney's office when Jackson was arrested on the present charge. Jackson appears to suggest that these facts required that the trial judge should have recused himself pursuant to Cannon 3C(1) of the Code of Judicial Conduct, which provides:

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it....

¶ 11. Recusal under Cannon 3C of the Code of Judicial Conduct is left to the sound discretion of the individual judge *789 and is subject to review in case of abuse of discretion. *Tubwell v. Grant*, 760 So.2d 687(¶ 7) (Miss.2000).

¶ 12. The trial judge was not involved with the facts of the present case or the indictment in the present case. He was involved in the indictments upon which the prior convictions were based, but had no involvement in that portion of the trial (sentencing) where these prior convictions were

relevant. While total recusal may have been the better course of action, this Court, under these specific facts, does not find an abuse of discretion.

II

[2] (3) Whether Judge Richardson erred in allowing the State to elicit testimony from Jim Marlett regarding Jackson's alleged February 14, 1997 oral confession when the oral confession was not disclosed until the day of trial and in the absence of testimony from all law enforcement that the defendant's statement was freely and voluntarily given.

(4) Whether the trial judge should not have allowed the prosecutor to call Brad Harbor to testify during the suppression hearing because he was present in the courtroom after the Rule was invoked and where the prosecutor would later call Harbour to corroborate Jim Marlett's testimony regarding Jackson's alleged February 14, 1997 confession

(5) Whether the trial court should have granted Jackson a continuance to prepare for Jim Marlett's testimony regarding Jackson's alleged February 14, 1997 confession the substance of which was not disclosed by the prosecutor until the day of trial.

¶ 13. Jackson's issues 3, 4 and 5 all relate to the alleged oral confession of February 14, 1997. The record reflects that the State abandoned and withdrew its efforts to have evidence of the February 14 oral confession placed in the record. These issues are therefore moot.

III

(6) Whether the trial judge erred in allowing the State to introduce Jackson's alleged February 17, 1997 written confession.

[3] ¶ 14. Jackson asks this Court to hold that his written confession, given on February 17, 1997, was neither freely nor voluntarily given. Jackson asks this Court to hold that his decision to confess was the result of Officer Marlett's threat to charge Jackson's mother with possession of the drugs and his promise to have her released if Jackson confessed. Both Jackson and his mother testified to this slate of facts.

¶ 15. Officer Marlett testified that there were no promises or threats used to obtain Jackson's confession. According to Marlett, Jackson's mother was being held on an unrelated charge. Because she was arrested on the weekend and Monday was a holiday, no judge was available to set bond. At the first reasonable opportunity, Marlett alleged that he took Jackson's mother

before a judge, who set bail, after which she was released. Marlett also testified that because Jackson's mother was presently in jail on an unrelated charge, he had her present when Jackson was questioned and confessed on February 17, 1997.

[4] [5] ¶ 16. The trial judge heard this testimony and, in declining to suppress the confession, found the testimony of Officer Marlett to be credible, and that of the defense witnesses incredible. The resolution of issues of credibility is the province of the trier of fact. *Hester v. State* 753 So.2d 463(¶ 24)(Miss.Ct.App.1999). In a suppression hearing, that trier of fact is the trial judge. Where supported by credible evidence, the findings of fact of the trial court must be accepted by this Court. *Id.* Whether this Court, sitting as trier of fact, would have found otherwise is immaterial. There is credible evidence upon which the trial court could, and did, find this confession to be properly admissible.

*790 ¶ 17. Having said that, this Court can only wonder what purpose Officer Marlett felt would be achieved by having Jackson's mother present during questioning. She was not charged on that offense and Jackson was an adult, who, as noted by the trial court, was familiar with the criminal justice system.

¶ 18. This Court finds that the appellant has failed to demonstrate prejudicial error in the admission of the February 17, 1997 confession.

¶ 19. The Court's holding renders the remaining issue moot.

¶ 20. **THE JUDGMENT OF THE MADISON COUNTY CIRCUIT COURT OF CONVICTION OF POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE AND SENTENCE OF THIRTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AS AN HABITUAL OFFENDER IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO MADISON COUNTY.**

McMILLIN, C.J., SOUTHWICK, P.J., PAYNE, BRIDGES, THOMAS, LEE, IRVING, MYERS and CHANDLER, JJ., concur.

All Citations

778 So.2d 786

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

D. Jeremy Whitmire
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082
e-mail:sctclerk@courts.ms.gov

August 10, 2021

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 10th day of August, 2021.

Court of Appeals Case # 2020-CP-00714-COA
Trial Court Case # 45CI1:18-cv-00186-JA

David Jackson a/k/a David Donnell Jackson v. State of Mississippi

Current Location:
MDOC # 39640
P. O. Box 88550
Pearl, Ms 39288

Affirmed. Madison County taxed with costs of appeal.

* NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS *
If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

Please note: Pursuant to MRAP 45(c), amended effective July, 1, 2010, copies of opinions will not be mailed. Any opinion rendered may be found by visiting the Court's website at: <https://courts.ms.gov>, and selecting the appropriate date the opinion was rendered under the category "Decisions."

APPENDIX B.

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2020-CP-00714-COA

**DAVID JACKSON A/K/A DAVID DONNELL
JACKSON**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	06/19/2020
TRIAL JUDGE:	HON. DEWEY KEY ARTHUR
COURT FROM WHICH APPEALED:	MADISON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	DAVID JACKSON (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL
	BY: ALLISON ELIZABETH HORNE
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
DISPOSITION:	AFFIRMED - 08/10/2021
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE CARLTON, P.J., WESTBROOKS AND McDONALD, JJ.

CARLTON, P.J., FOR THE COURT:

¶1. David Donnell Jackson appeals from the Madison County Circuit Court's order denying his motion for post-conviction relief (PCR) as procedurally barred and without merit. Finding no error, we affirm the circuit court's judgment.

FACTS

¶2. In February 1987, Jackson pleaded guilty to the charge of burglary of an inhabited dwelling at night while armed with a deadly weapon. The Madison County Circuit Court sentenced him to serve eight years in the custody of the Mississippi Department of Corrections (MDOC). Jackson served his sentence and was released from custody.



¶3. In 1998, Jackson was convicted of possession of cocaine with intent to distribute. The circuit court sentenced Jackson, as a habitual offender, to serve thirty years in the custody of the MDOC. Jackson's 1987 burglary conviction was used as a basis for his habitual-offender status.

¶4. On August 24, 2018, more than thirty years after his guilty plea for his 1987 burglary conviction, Jackson filed a PCR motion challenging his 1987 burglary conviction. The trial court dismissed Jackson's PCR motion after finding that Jackson lacked standing to bring his motion because he was no longer in custody under his 1987 burglary conviction and sentence. On appeal, this Court found that pursuant to *Howell v. State*, 283 So. 3d 1100, 1105 (¶18) (Miss. 2019), "Jackson has standing to bring his PCR motion." *Jackson v. State*, 287 So. 3d 1060, 1061 (¶4) (Miss. Ct. App. 2019). This Court accordingly reversed the order dismissing Jackson's PCR motion and remanded the case to the circuit court with instructions for the trial court "to consider the merits of Jackson's claims." *Id.*¹

¶5. On remand, the circuit court reviewed the following claims in Jackson's PCR motion: (1) the denial of his right to counsel; (2) involuntary guilty plea; (3) no factual basis for his guilty plea; (4) ineffective assistance of counsel; and (5) insufficient indictment. In reviewing Jackson's PCR motion, the circuit court discovered that the transcript from the 1987 guilty plea hearing no longer exists. The circuit court judge stated that he contacted the

¹ The record reflects that on May 11, 2020, after this Court remanded his case to the circuit court, Jackson filed a motion in the circuit court titled "motion for summary judgment" in which he reiterated his PCR claims.



court reporter from Jackson's plea hearing and confirmed that the court reporter did not maintain the notes from the guilty plea hearing. However, the record does contain Jackson's indictment for burglary of an inhabited dwelling at night with a deadly weapon, his guilty plea petition, the pre-sentence investigation report, and Jackson's judgment of conviction and sentencing order.

¶6. On June 19, 2020, the circuit court entered an order denying Jackson's PCR motion. The circuit court found that Jackson's claims were time-barred and also barred as a successive motion. The circuit court additionally found that Jackson's claims lacked merit.

¶7. Jackson now appeals from the circuit court's order denying his PCR motion.

STANDARD OF REVIEW

¶8. We review a circuit court's denial or dismissal of a PCR motion for abuse of discretion. *Purvis v. State*, 240 So. 3d 468, 470 (¶7) (Miss. Ct. App. 2017). We "will not disturb the [circuit] court's factual findings unless they are clearly erroneous." *Id.* "Questions of law are reviewed *de novo*." *Id.*

DISCUSSION

¶9. In February 1987, Jackson pleaded guilty to the charge of burglary of an inhabited dwelling at night while armed with a deadly weapon. As stated, he filed a PCR motion challenging his conviction and sentence in August 2018, more than thirty years after his conviction. Unless an exception applies, Jackson's PCR motion is time-barred because he filed it well after the three-year statute of limitations set forth in Mississippi Code Annotated

section 99-39-5(2) (Rev. 2015).

¶10. The circuit court found that in addition to the time bar, Jackson's PCR motion was barred as a successive motion. The circuit court explained that Jackson "failed to raise the claim regarding his underlying burglary conviction in either the direct appeal of his 1998 possession of cocaine with intent [to distribute] appeal or any of his previous PCR motions." The circuit court held that Jackson "should have raised this claim in his direct appeal or his original [p]ost-[c]onviction motions."

¶11. Mississippi Code Annotated section 99-39-23(6) (Rev. 2015) states that "any order dismissing the petitioner's motion or otherwise denying relief under this article is a final judgment and shall be conclusive until reversed. It shall be a bar to a second or successive motion under this article." Our review of the record shows that Jackson has filed previous PCR motions relating to his 1998 possession-of-cocaine conviction. However, the PCR motion before us, which Jackson filed in 2018, "takes issue with a new, separate and distinct, plea, conviction, and sentence." *Smith v. State*, 271 So. 3d 691, 694 (¶13) (Miss. Ct. App. 2018). The challenge here relates to his 1987 burglary conviction. Like *Smith*, we find that "[n]othing in the record reflects any previous proceeding in which [Jackson] requested relief from this . . . conviction and sentence. Consequently, [Jackson's] [2018] PCR motion is not successive." *Id.* (citing Miss. Code Ann. § 99-39-23(5)-(6)).

¶12. Turning to examine whether Jackson's PCR claims are excepted from the time-bar, we recognize that section 99-39-5(2) sets forth several exceptions to the time-bar, including

“evidence, not reasonably discoverable at the time of trial, which . . . would have caused a different result,” or the movant’s “probation, parole[,] or conditional release has been unlawfully revoked.” Miss. Code Ann. § 99-39-5(2)(a)(i), (b). When a time-barred PCR motion is filed, “the burden falls on the movant to show he has met a statutory exception.” *White v. State*, 59 So. 3d 633, 635 (¶8) (Miss. Ct. App. 2011). In the case before us, Jackson failed to demonstrate that any of the statutory exceptions apply to the time-bar.

¶13. The Mississippi Supreme Court has also held that “errors affecting fundamental constitutional rights are excepted from the procedural bars” of the Uniform Post-Conviction Collateral Relief Act (UPCCRA). *Nichols v. State*, 265 So. 3d 1239, 1242 (¶10) (Miss. Ct. App. 2018) (quoting *Rowland v. State*, 42 So. 3d 503, 507 (¶12) (Miss. 2010)). “The following fundamental-rights exceptions have been expressly found to survive procedural bars: (1) the right against double jeopardy; (2) the right to be free from an illegal sentence; (3) the right to due process at sentencing; and (4) the right not to be subject to ex post facto laws.” *Higginbotham v. State*, 307 So. 3d 1253, 1256 (¶9) (Miss. Ct. App. 2020) (internal quotation mark omitted) (quoting *Nichols*, 265 So. 3d at 1242 (¶10)). The supreme court has additionally stated that “a claim of ineffective assistance of counsel may be excepted from the statute of limitations . . . bar in ‘exceptional circumstances’ . . . or ‘extraordinary circumstances[.]’” *McDonald v. State*, 307 So. 3d 497, 500 (¶7) (Miss. Ct. App. 2020) (quoting *Conley v. State*, No. 2011-M-01006, 2020 WL 949240, at *1 (Miss. Feb. 26, 2020) (order); *Chapman v. State*, 167 So. 3d 1170, 1174 (¶12) (Miss. 2015)). However, “the mere

assertion of a constitutional right violation does not trigger the exception. . . [Rather,] there must be some basis of truth for his claim.” *Higginbotham*, 307 So. 3d at 1256 (¶9) (citations omitted).

¶14. Jackson argues his PCR claims allege errors affecting his fundamental constitutional rights, and therefore his claims are excepted from the time-bar in section 99-39-5(2). Jackson asserts the following assignments of error in his PCR motion: (1) his indictment was insufficient because it did not contain all of the essential elements of burglary of an inhabited dwelling at night while armed with a deadly weapon; (2) the court failed to establish a factual basis for his guilty plea; (3) his guilty plea was involuntary; (4) he was entitled to an evidentiary hearing; (5) he received ineffective assistance of counsel. Jackson, as the PCR movant, bears the burden of showing that a fundamental-rights exception applies to the time-bar. *Creel v. State*, 305 So. 3d 417, 421 (¶9) (Miss. Ct. App. 2020).

¶15. We find that Jackson’s first four claims do not implicate any exception to the statute of limitations. As to Jackson’s claim of ineffective assistance of counsel, our review of Jackson’s PCR motion shows that he has failed to identify any exceptional or extraordinary circumstances for excepting his claim of ineffective assistance of counsel from the time-bar. Jackson argues that his defense counsel failed to object to the circuit court’s sentencing Jackson for a crime for which he was not indicted (possessing a deadly weapon) and that his defense counsel failed to advise Jackson of the essential elements of the charge against him. However, Jackson’s indictment stated that he was charged with the offense of “burglary of

an inhabited dwelling at night while armed with a deadly weapon.” Furthermore, Jackson’s guilty plea petition, which he signed under oath, reflects that his defense counsel advised him about the elements of the charge to which he was pleading guilty and that Jackson understood the elements of the charge. Jackson then handwrote the elements of the charge of burglary of an inhabited dwelling at night while armed with a deadly weapon. Jackson’s plea petition also reflects that he “believe[d] that [his] lawyer is competent and has done all that anyone could do to counsel and assist [him] and that [he is] fully satisfied with the advice and help” provided by his defense counsel.

¶16. In addition to finding Jackson’s PCR claims procedurally barred, the circuit court also found that Jackson’s claims lacked merit. We find that the circuit court’s findings are supported by the record.

¶17. After our review, we find that Jackson failed to meet his burden of proving that his PCR claims are excepted from the UPCCRA’s time-bar. Although the circuit court incorrectly characterized Jackson’s PCR motion as a successive motion, we find that the circuit court did not abuse its discretion in determining that Jackson’s PCR motion was time-barred and without merit. We therefore affirm the circuit court’s denial of Jackson’s PCR motion.

¶18. **AFFIRMED.**

GREENLEE, WESTBROOKS, McDONALD, LAWRENCE, McCARTY AND SMITH, JJ., CONCUR. BARNES, C.J., AND WILSON, P.J., CONCUR IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. EMFINGER, J., NOT PARTICIPATING.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-90030



In re: DAVID JACKSON,

Petitioner

A True Copy
Certified order issued Jun 04, 2020

Tyler W. Cayer
Clerk, U.S. Court of Appeals, Fifth Circuit

Motion for Permission to Proceed after Sanction

O R D E R:

David Jackson, Mississippi prisoner # 39640, has filed a motion for permission to proceed after having been sanctioned. He seeks permission to file a second or successive 28 U.S.C. § 2254 application challenging his conviction and sentence for possession of cocaine with intent to distribute. In 2010, we imposed a \$100 sanction on Jackson that remains unpaid. *See In re Jackson*, No. 10-60735 (5th Cir. Oct. 6, 2010) (unpublished).

To obtain permission to proceed as a sanctioned litigant, Jackson must show that he raises a nonfrivolous issue. *See Gelabert v. Lynaugh*, 894 F.2d 746, 748 (5th Cir. 1990). He has not made the required showing. Accordingly, his motion to proceed is DENIED.

Despite the previous sanction and repeated warnings, Jackson has persisted in filing frivolous motions. Therefore, Jackson is ORDERED to pay an additional sanction in the amount of \$200 to the Clerk of this Court. Until he has paid in full all the sanctions that he owes, Jackson is BARRED from filing any pleading or motion in this court or any court subject to this court's jurisdiction, unless he first obtains leave from the court in which he seeks to

**Additional material
from this filing is
available in the
Clerk's Office.**