[redacted] BOOK 182 PAGE 038

IN THE CIRCUIT COURT OF PONTOTOC COUNTY MISSISSIPPI

ERIC L. BROWN **PETITIONER**

V. **CAUSE NO.** 2021-082F(P)

STATE OF MISSISSIPPI **RESPONDENT**

ORDER

THIS CAUSE is before the Court on Petitioner Eric L. Brown's *pro se* Application to Proceed *in forma pauperis* for purposes of filing a Motion for Post-Conviction Collateral Relief. This Court certifies that the Petitioner is indigent and may proceed *in forma pauperis*.

IT IS THEREFORE ORDERED that Petitioner Eric L. Brown's *pro se* Application to Proceed *in forma pauperis* shall be and same is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk of this Court shall mail a certified copy of this Order to the *pro se* Petitioner at his current facility of incarceration.

SO ORDERED this, the 10th day of MAY, 2021.

KELLY L. MIMS
CIRCUIT JUDGE

FILED
MAY 13 2021
CIRCUIT COURT
PONTOTOC COUNTY

ADMINISTRATOR
MAY 10 2021 BM
PROCESSED
NOT FILED

000010

MANDATE
SUPREME COURT OF MISSISSIPPI

To the Pontotoc County Circuit Court - GREETINGS:

In proceedings held in the Courtroom, Carroll Gartin Justice Building, in the City of Jackson, Mississippi, the Supreme Court of Mississippi entered a judgment as follows:

Eric LaQuinne Brown a/k/a Eric L. Brown a/k/a Eric Brown v. State of Mississippi
Supreme Court Case # 2022-CT-00069-SCT
Trial Court Case #CV2021-000082

Tuesday, 23rd day of May, 2023
Affirmed. Pontotoc County taxed with costs of appeal.

Tuesday, 10th day of October, 2023
The motion for rehearing is denied.

Thursday, 11th day of January, 2024
DISPOSITION OF THE MISSISSIPPI SUPREME COURT - Petition for Writ of Certiorari filed pro se by Eric LaQuinne Brown is denied. To Deny: All Justices. Order entered 12/18/23.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

I, D. Jeremy Whitmire, Clerk of the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, certify that the above judgment is a true and correct copy of the original which is authorized by law to be filed and is actually on file in my office under my custody and control.

Witness my signature and the Court's seal on January 8, 2024, A.D.

PONTOTOC COUNTY
FILED
JAN 23 2024
MELINDA PATTERSON NOWICKI
CIRCUIT CLERK
BY _____ D.C.

D. Jeremy Whitmire
CLERK

MINUTE BOOK 102 PAGE 039

IN THE CIRCUIT COURT OF PONTOTOC COUNTY MISSISSIPPI

ERIC L. BROWN — PETITIONER

V. — CAUSE NO. 2021-089FCPO

STATE OF MISSISSIPPI — RESPONDENT

ORDER

This matter comes before this Court on Petitioner Eric L. Brown's *pro se* Motion for Post-Conviction Collateral Relief filed pursuant to Miss. Code Ann. §99-39-1, *et. seq.* The Court has determined that the State of Mississippi should file a response to the Petition for Post-Conviction Relief. As such, the State of Mississippi shall file a response to the Petition within forty-five (45) days of entry of this Order. The State should address the timeliness of the motion, as well as the merits of the Petitioner's claims, and whether an evidentiary hearing is necessary on this matter.

IT IS THEREFORE ORDERED AND ADJUDGED, that the State of Mississippi shall file its response to the Motion for Post-Conviction Collateral Relief within forty-five (45) days of entry of this Order.

SO ORDERED this, the 10th day of May, 2021.

KELLY L. MIMS
CIRCUIT JUDGE

ADMINISTRATOR

MAY 10 2021 BM

PROCESSED
NOT FILED

FILED

MAY 13 2021

CIRCUIT COURT
PONTOTOC COUNTY

000008

MINUTE BOOK 184 PAGE 203

IN THE CIRCUIT COURT OF PONTOTOC COUNTY, MISSISSIPPI

ERIC LAQUINNE BROWN — PETITIONER

VS. — CAUSE NO. CV21-082(KM)(PO)

STATE OF MISSISSIPPI — RESPONDENT

ORDER TO SHOW CAUSE

This Court has been advised that the State of Mississippi, by and through the Office of the District Attorney, has failed to respond to Petitioner's Motion for Post-Conviction Collateral Relief, as ordered by this Court on May 10, 2021, and filed on May 13, 2021. The Court notes that the State of Mississippi received an additional thirty (30) days in which to file its response on August 20, 2021. The time allowed for the State of Mississippi to respond to the Motion has passed, and based upon such information, the Court, *sua sponte*, does hereby order **District Attorney John Weddle**, or his assistant, to appear in person before this Court and show cause, if any he can, why he should not be held in contempt of this Court and duly punished for his failure to abide by the terms and conditions of said prior order.

IT IS THEREFORE ORDERED that District Attorney John Weddle, or his assistant, shall appear on December 14, 2021, at 9:00 a.m. at the Pontotoc County Circuit Courthouse, to show cause for failing to comply with this Court's prior order.

ORDERED AND ADJUDGED this 28th day of October, 2021.

KELLY L. MIMS
CIRCUIT JUDGE

FILED
NOV 04 2021
CIRCUIT COURT
PONTOTOC COUNTY

ADMINISTRATOR
NOV 01 2021
PROCESSED
NOT FILED

RM

000054

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2022-CP-00069-COA

ERIC LAQUINNE BROWN A/K/A ERIC L. BROWN A/K/A ERIC BROWN — **APPELLANT**

v.

STATE OF MISSISSIPPI — **APPELLEE**

DATE OF JUDGMENT:	12/20/2021
TRIAL JUDGE:	HON. KELLY LEE MIMS
COURT FROM WHICH APPEALED:	PONTOTOC COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	ERIC LAQUINNE BROWN (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: ALLISON ELIZABETH HORNE
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
DISPOSITION:	AFFIRMED - 05/23/2023
MOTION FOR REHEARING FILED:	

BEFORE BARNES, C.J., LAWRENCE AND EMFINGER, JJ.

LAWRENCE, J., FOR THE COURT:

¶1. In 1999, Eric LaQuinne Brown pled guilty to the murder of a pregnant woman and manslaughter of the unborn child. More than twenty years later, Brown filed a motion for post-conviction collateral relief (PCR) challenging both of his convictions on the basis that he received ineffective assistance of counsel. The Pontotoc County Circuit Court denied Brown's PCR motion because it was untimely and barred as successive. He appeals. After due consideration, we affirm the circuit court's order.

FACTS AND PROCEDURAL HISTORY

¶2. Brown appeals from the denial of his sixth PCR motion. In a previous appeal, this Court summarized the events that led to Brown's guilty pleas:

In January 1999, Brown was involved in two relationships with two different women. One of those women was Tennille Brown, his wife, with whom he had at least one child. The other was Shorelonda Moore, his girlfriend. Brown and Shorelanda already had one child together. And Shorelanda was several months pregnant with another of Brown's children. Tennille and Shorelanda did not get along, and the situation was stressful for Brown. In early January 1999, Brown allegedly spoke with friends about getting rid of Shorelanda, as she was causing trouble between him and his wife.

On January 22, the situation came to a head. The day of the murder, Brown called Shorelanda at her job at McDonald's several times. Witnesses told law enforcement that Brown and Shorelanda made plans to meet once she got off work. Shorelanda believed they were going to spend the weekend together in Memphis, Tennessee. Brown admitted to law enforcement he met Shorelanda behind a restaurant in Pontotoc after she got off work. The two sat in Shorelanda's car, as they often did. But that day their conversation took a dark turn. Shorelanda and Brown began arguing because Shorelanda was upset that Brown had married Tennille only a few days earlier. As the argument escalated, according to Brown, he began to shake her. Soon, Shorelanda was unresponsive.

Brown returned home and told Tennille he had killed Shorelanda. He then told his wife they were leaving for Memphis to ditch Shorelanda's body. Tennille put the children in the car, and Brown loaded a five-gallon gas can in the trunk. Tennille dropped Brown off at Shorelanda's car and followed Brown as he drove Shorelanda's body to Memphis. Once in Memphis, he drove Shorelanda's car down an alley. He parked the car, used the gas can he had brought from Pontotoc to douse the vehicle, and set it and Shorelanda's body on fire.

Early the next day, a man found Shorelanda's car smouldering in the alley. Memphis police discovered Shorelanda's body in the car. Her pants and underwear were pulled below her hips. Her shirt and bra were pulled up, and her bra was partially around her throat. The medical examiner later determined Shorelanda's cause of death was strangulation. The ligature marks on her neck matched the pattern of her bra. Medical examiners also determined Shorelanda was approximately twenty-eight weeks pregnant.

Law enforcement quickly caught up with Brown. Both he and Tennille spun a story about being in Tupelo. But that was determined to be a lie. Tennille eventually gave several statements to officers, each incriminating her

> and her husband in some way. Police found physical evidence that incriminated Brown. And eventually, Brown gave a voluntary statement to law enforcement. Both Brown and Tennille were indicted for Shorelanda's murder and the manslaughter of her unborn child.

Brown v. State (*Brown II*), 198 So. 3d 325, 328-29 (¶¶4-8) (Miss. Ct. App. 2015) (paragraph numbering omitted).

¶3. Brown filed his first unsuccessful PCR motion on May 15, 2000, but he did not appeal after the circuit court denied it. *See Brown v. State* (*Brown I*), 907 So. 2d 979, 980 (¶4) (Miss. Ct. App. 2005). He filed his second unsuccessful PCR motion approximately four months later, but he again did not appeal the circuit court's denial. *See id.* His third unsuccessful PCR motion—filed on August 19, 2003—led to his first appeal. *Id.* This Court upheld the circuit court's decision to summarily dismiss it. *Id.* at 981 (¶10).

¶4. In February 2014, Brown filed his fourth PCR motion. *Brown II*, 198 So. 3d at 330 (¶17). Among other things, Brown claimed that he should have received a competency hearing before he entered his guilty pleas. *Id.* On appeal, this Court held:

> Brown was in fact deemed competent by the psychologist who evaluated him. And the record shows the trial judge indeed considered the psychologist's report, and questioned Brown about his competency, before accepting Brown's guilty plea[s]. Furthermore, neither Brown nor his counsel ever asserted Brown was incompetent to stand trial. So from the face of Brown's own motion and the underlying criminal record, Brown failed to show the absence of a formal competency hearing led to a denial of his due-process rights. . . .

Id. at 328 (¶2).

¶5. Brown subsequently filed a fifth unsuccessful PCR motion that led to another appeal. *Brown v. State* (*Brown III*), 256 So. 3d 643, 643 (¶1) (Miss. Ct. App. 2018). He again attempted to argue that the circuit court should not have accepted his guilty pleas without

conducting a competency hearing. *Id.* This Court upheld the dismissal of that PCR motion because it was time-barred and barred as successive. *Id.*

¶6. In his sixth PCR motion, Brown claimed he received ineffective assistance of counsel because his defense attorney did not obtain an expert psychiatrist, adequately investigate his mental history, obtain an independent competency hearing, or forward his sisters' contact information to the expert who conducted a mental-competency examination. The circuit court ordered the State to respond to Brown's PCR motion. The circuit court ultimately denied Brown's PCR motion because it was time-barred and barred as successive and alternatively lacked merit. On appeal, Brown reiterates his ineffective-assistance-of-counsel claims. He also argues that the circuit court should have granted his motion for "summary judgment" and held the State in contempt. Finally, Brown asserts that the circuit court should have conducted an evidentiary hearing on his sixth PCR motion.

STANDARD OF REVIEW

¶7. "When reviewing a [circuit] court's decision to deny a petition for post[-]conviction relief this Court will not disturb the [circuit] court's factual findings unless they are found to be clearly erroneous." *Brown v. State*, 731 So. 2d 595, 598 (¶6) (Miss. 1999). "Where questions of law are raised the applicable standard of review is de novo." *Id.*

ANALYSIS

I. Brown's ineffective-assistance-of-counsel claims were untimely, barred as successive, and precluded by res judicata.

¶8. According to Brown, the circuit court erred when it did not find that he received ineffective assistance of counsel before he entered his guilty pleas. More precisely, Brown

claimed his attorney provided ineffective assistance because he did not provide information to the Mississippi State Hospital at Whitfield so Brown could undergo a mental-competency examination. Brown also asserted that his attorney should have ensured that Brown received a competency hearing before he entered his guilty pleas. He reiterates his assertions on appeal. The circuit court correctly found that Brown's claims were time-barred and successive.

¶9. Brown collaterally challenged a judgment of convictions that were entered in 1999. Because he entered guilty pleas, he had three years from the "entry of the judgment of conviction" to seek relief under the Mississippi Uniform Post-Conviction Collateral Relief Act (UPCCRA). Miss. Code Ann. § 99-39-5(2) (Rev. 2020). In 2020, he filed the PCR motion that led to the current appeal. Brown's PCR motion clearly was untimely.

¶10. The circuit court also correctly found that Brown's PCR motion was statutorily barred as a successive motion. Miss. Code Ann. § 99-39-23(6) (Rev. 2020). Brown had previously filed five unsuccessful PCR motions. *Brown III*, 256 So. 3d at 643 (¶1). The PCR motion that led to this appeal was his *sixth* attempt to collaterally challenge his guilty-plea convictions. "Mississippi statutory law grants each movant 'one bite at the apple when requesting post-conviction relief.'" *Thomas v. State*, 355 So. 3d 287, 298 (¶25) (Miss. Ct. App. 2023).

¶11. Moreover, as discussed above, Brown has twice attempted to argue that the circuit court should have conducted a competency hearing before accepting his guilty pleas. In his sixth PCR motion, he attempted to repackage his claim by framing it as an ineffective-

assistance-of-counsel issue. So not only has Brown essentially raised this particular argument twice before, he also could have raised it and his other ineffective-assistance claim in previous proceedings. Because he did not, those issues are precluded by res judicata. *Brown v. State*, 306 So. 3d 719, 730 (¶15) (Miss. 2020) ("Res judicata also extends to those claims that could have been raised in prior proceedings but were not.").

¶12. Finally, although Brown argues that his ineffective-assistance claims are not barred because, in his view, effective assistance of counsel qualifies as a "fundamental right," the Mississippi Supreme Court has recently overruled any precedent that has held "the fundamental-rights exception can apply to the substantive, constitutional bars codified by the Legislature in the [UPCCRA]." *Howell v. State*, 358 So. 3d 613, 616 (¶12) (Miss. 2023). Thus, based on the supreme court's holding in *Howell*, we conclude that Brown's claim of a fundamental-rights exception fails to apply to or overcome the UPCCRA's litigation bars.[1]

II. The circuit court was not obligated to grant Brown's motion for summary judgment and acted within its discretion when it declined to find the State in contempt.

¶13. After Brown filed his sixth PCR motion, the circuit court ordered the State to file a response. Although the circuit court gave the State additional time, the State still did not

---

[1] The UPCCRA specifies that certain statutory exceptions exist to the successive-motions bar and the statute of limitations. *E.g.*, Miss. Code Ann. § 99-39-5(2)(a)(i) (Rev. 2020) (providing exceptions to the UPCCRA's three-year statute of limitations); *id.* § 99-39-23(6) (providing substantively identical exceptions to the UPCCRA's successive-motions bar). As the PCR movant, Brown bears the burden to prove a statutory exception to the UPCCRA's litigation bars. *Cook v. State*, 301 So. 3d 766, 777 (¶32) (Miss. Ct. App. 2020). But Brown does not attempt to satisfy his burden. In fact, in his opening brief, Brown expressly states that his ineffective-assistance-of-counsel claims are *not* based on newly discovered evidence.

respond within the extended deadline. Brown filed a motion for summary judgment arguing that he was entitled to judgment in his favor. The circuit court subsequently ordered the State to show cause why it should not be held in contempt for failing to respond to Brown's PCR motion. During the show-cause hearing, the prosecutor said that he thought he had more time to file a response, but he otherwise made no excuse for not doing so. He also submitted a response on the same day of the hearing. The circuit court ultimately declined to find the prosecutor in contempt. By denying Brown's PCR motion, the circuit court inherently denied his motion for summary judgment.

¶14. On appeal, Brown insists that he was entitled to summary judgment in his favor. He also claims that the circuit court should have found the prosecutor in contempt. But he cites no authority for the former assertion, and no relevant authority for the latter. Consequently, both claims are barred. *Byrom v. State*, 863 So. 2d 836, 853 (¶35) (Miss. 2003).

III. The circuit court was not obligated to conduct an evidentiary hearing on Brown's PCR motion.

¶15. Finally, Brown argues that the circuit court erred because it did not conduct an evidentiary hearing on his sixth PCR motion. "However, a circuit court may dismiss a PCR motion without an evidentiary hearing if the movant fails to show that his claim is 'procedurally alive.'" *Ford v. State*, 336 So. 3d 1146, 1150 (¶12) (Miss. Ct. App. 2022) (collecting cases). Brown was not entitled to an evidentiary hearing because his PCR motion was untimely, barred as successive, and precluded by res judicata. It is of no moment that the circuit court directed the State to file a response to Brown's PCR motion. Indeed, Mississippi Code Annotated section 99-39-19(1) (Rev. 2020) expressly provides:

> If the motion is not dismissed at a previous stage of the proceeding, the judge, *after the answer is filed* and discovery, if any, is completed, shall, upon a review of the record, determine whether an evidentiary hearing is required. *If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the motion as justice shall require.*

(Emphasis added). Thus, a circuit court may clearly deny a PCR motion without an evidentiary hearing even if the State has filed an answer to the motion.

CONCLUSION

¶16. Brown's sixth PCR motion was untimely, subject to the successive-motions bar, and precluded by res judicata. He was not entitled to an evidentiary hearing. The circuit court was not obligated to grant his motion for summary judgment or find the State in contempt. Accordingly, we affirm the circuit court's order.

¶17. **AFFIRMED.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE, WESTBROOKS, McDONALD, McCARTY, SMITH AND EMFINGER, JJ., CONCUR.

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

October 10, 2023

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 10th day of October, 2023.

Court of Appeals Case # 2022-CP-00069-COA
Trial Court Case # CV2021-000082

Eric LaQuinne Brown a/k/a Eric L. Brown a/k/a Eric Brown v. State of Mississippi

Current Location:
MDOC # K0577
P. O. Box 1057
Parchman, MS 38738

The motion for rehearing is denied.

* 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."

IN THE SUPREME COURT OF MISSISSIPPI
2022-CP-00069-COA

Eric LaQuinne Brown **APPELLANT**

VS.

STATE OF MISSISSIPPI **APPELLEE**

****

PETITION FOR WRIT OF CERTIORARI

****

This petition is being filed seeking review of the conflicting decision entered by the Mississippi Court of Appeals; wherein the court's decision to retroactively apply **Howell v. State,** 358 So. 3d 613, 616 (¶ 12) **(Miss. January 26, 2023)** to Appellant's July 14, 2020, filed **UPCR** Motion, is conflicting with the Court of Appeals' previous decision 'not to apply **Sanders** retroactively, to Appellant's case in, (**Brown v. State,** 198 So. 3d 325 (Ct. App. 2015), due to their interpretation of the " retroactively analysis" in **Manning v. State,** 929 So. 2d 885, 900 (¶42) (Miss. 2006).

Appellant pro se
Eric LaQuinne Brown # K0577
MSP, unit 30-C
Parchman, MS. 38738

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES

The undersigned pro se' petitioner certifies the following listed persons have an interest in the outcome of the case. This representation is made in order that the Judge of this Honorable Court may evaluate possible disqualifications or refusals:

Lynn Fitch, Attorney General, Appellee

Eric L. Brown, Pro Se' Appellant

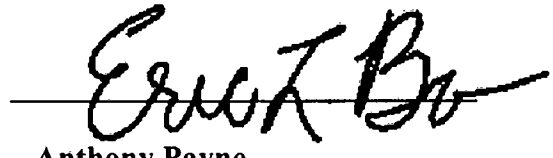
James O. Ford, Court-appointed-Attorney

Thomas J. Gardner III, retired senior Circuit Court Judge

Kelly L. Mims; Circuit Court Judge

Clay Joyner, Assistant District Attorney (no longer with Pontotoc)

John Waddle, Pontotoc County Prosecutor (currently)



Anthony Payne
For
Eric LaQuinne Brown # K0577
MSP, unit 30-C
Parchman, MS. 38738

TABLE OF AUTHORITIES

OTHER CITES:

CERTIFICATE OF SERVICE

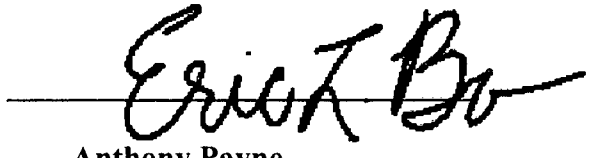
I, the undersigned Eric L. Brown, Pro Sè Appellant, in the above style and numbered cause, do hereby certify that a true and correct copy of the above and foregoing Motion for Rehearing has been mailed by the United States Mail, postage prepaid to the following:

1) Honorable Lynn Fitch
Attorney General
Post Office Box 22947
Jackson, MS. 39205-2947
www.ago.state.ms.us

2) D. Jeremy Whitmire
Post Office Box 249
Jackson, MS. 39204-0249
sctclerk@court.ms.gov

3) Eric L. Brown #K0577
MSP, unit 30-C
Parchman, MS. 38738

This the 13th day of October, in the year of 2023.



Anthony Payne
For
Eric LaQuinne Brown # K0577
MSP, unit 30-C
Parchman

IN THE SUPREME COURT OF MISSISSIPPI
2022-CP-00069-COA

Eric LaQuinne Brown **APPELLANT**

VS.

STATE OF MISSISSIPPI **APPELLEE**

PETITION FOR WRIT OF CERTIORARI

COME NOW, Eric L. Brown, pro se', respectfully, moving this Honorable Court to exercise its discretionary authority to review the decision of the Court of Appeals pursuant to M. R. A. P. Rule 17 (a) (1). [1]

INTRODUCTION

This case was appealed after the Pontotoc, County, Circuit Court, denied Appellant's UPCR Motion that was filed July 14, 2020, and stamped filed August, 2020. There are three issues which Brown earnestly and soberly believes this Court, out of a sense of its status as a High Court of Errors and Appeals, and in light of the members' sworn obedience to the State Constitution, and that of the United States Constitution as well, should examine this conflict, because the impression, that it would put even on a lay person, to read that the Court of Appeals contradicted itself through two different rendered opinions. It would weaken anyone's trust in the justice, that is actually handed down from that Court. There is no doubt that Brown did not receive a competency hearing, after he was Court ordered to undergo a mental examination. For some reason, the Court of Appeals, equates the prosecutor's reading of the State's psychologist expert witness report to the Judge, as a competency hearing under then UCCCR 9.06, and it simply does not amount to the plan reading of the then Rule 9.06.

Notwithstanding, Brown suffers from two Constitutional rights being violation, due to the fact his court-appointed-counsel allowed the prosecutor to read the psychologist experts. Brown

[1] M.R.A.P. rule 17 (a) (1): Cases in which it appears that the Court of Appeals has rendered a decision which is in conflict with a prior decision of the Court of Appeals or the published Supreme Court decision.

was denied any opportunity to confront his accuser, Dr. Lott. And Brown was denied any opportunity to present any evidence of his competency to the Court, that would have come from himself, Diane and Charlene. Who are Brown's sisters, who have first-hand knowledge concerning Brown's epilepsy, and mental illnesses, and his previous diagnose which resulted in Brown being placed of Disability for a mental illness? Diane and Charlene, both submitted affiliates in support of Brown's 2020, filed UPCCRA.[2] Notwithstanding, Brown timely filed a Motion for Summary Judgment, in the Circuit Court of Pontotoc, in which the County prosecutor refused to respond to it. In fact, the Circuit Court Judge had to issue an order to show cause, in an attempt to force the prosecutor to file a response to the actual UPCR Motion. In any other case, Brown's Motion have Summary Judgment should had been granted, if not for any other reason, but for the failure of the prosecutor to actually file a response to it. Due to the civil procedural standards found in **Harrison v. MS. Bar**, 637So. 2d 204, 205 (Miss. May 26, 1994), if not for the legal standing of the Motion for Summary Judgment.

REASON ONE

Whether the Court of Appeals entered an opinion that is contrary to their earlier opinion in Brown v. State, (2015), quoting Manning v. State, (2006)

The Court of Appeals erroneously applied the new decision from **Howell v. State,** 358 So. 3d 613, 616 (¶ 12) **(Miss. January 26, 2023),** retroactively, to Applicant's case that was adjudicated by Pontotoc Circuit Court, on **December 15, 2021,** conflicting with the Court of Appeals ruling in **Brown v. State,** 198 So. 3d 325 (Ct. App. 2015), (quoting **Manning v. State,** 929 So. 2d 885, 900 (¶42) (Miss. 2006)). "That any new rule that changes the procedural standards are not applied retroactively." Thus, the court of appeals stated: "Brown could not rely on **Sanders v. State,**[3] *9 So. 3d 1132, 1136 (¶16) (Miss. 2009)* because **Sanders** was ruled on ten years after **Brown's** 1999, conviction." Citing **Manning v. State.**

---

[2] These two affidavits should be considered newly discovered evidence, due to the fact Brown never told any of his family members about his mental illness, and did not know what they know concerning his visit to the Social Security's psychologist.

[3] **Rule 9.06** was in effect at the time of **Brown's** guilty plea. The rule was adopted effective May 1, 1995, and altered by **Pitchford v. State,** 240 So. 3d. 1061 (Miss. 2017).

"In his latest motion, he cites a 2009 Mississippi Supreme Court case, ***Sanders v. State,*** *9 So. 3d 1132, 1136 (¶16) (Miss. 2009), to argue his convictions must be reversed. He insists, under* ***Sanders****, his fundamental rights were violated because the trial court did not conduct an on-the-record competency hearing before accepting his plea, despite having ordered Brown to undergo a psychological exam. But* ***Sanders*** *and its progeny do not apply retroactively to undo Brown's 1999 guilty plea.*

Appellant states; ***Sanders***, did not alter or overrule any prior interpretation of Rule 9.06, the Court of Appeals erroneously applied the retroactivity analysis from **Manning v. State, Id.** to find that ***Sanders*** created a new rule of criminal procedure that cannot be applied retroactively. ***Sanders*** simply articulated the plain language in Rule 9.06 which provides, when the trial court has reasonable ground to believe the defendant is incompetent, the trial court shall order a mental evaluation followed by a competency hearing. See **URCCC 9.06.** (The rule was adopted effective May 1, 1995, altered 2017, by **Pitchford v. State,** 240 So. 3d. 1061 (Miss. 2017), which overruled **Sanders, Id.** and **Smith v. State,**

Now the Court of Appeals, has retroactively applied **Howell. Id.** which did alter the procedural standards in Miss. Code Ann. § 99-39-5 (2); § 99-39-23 (6). Thus, **Howell. Id.** Is considered a procedural rule, due to the fact **Howell. Id.** actually overruled several cases that held: "errors that effect the fundamental constitutional right exception". This Supreme Court previously stated in **Manning Id.** "As to **watershed** requirement, the Supreme Court found the "evidence[was] simply too equivocal to support the conclusion" that "judicial factfinding so 'seriously diminished[s]' accuracy that there is an 'impermissible large risk' of punishing conduct the law does not reach." Id. at 2525. Therefore, the Supreme Court held that "***Ring***[4] announced a new procedural rule which did not retroactively apply to cases already on direct review." Id. at 2526. *Applying the rule found in* ***Teague***[5]***Schriro***[6] *and* ***Nixon,***[7] *we find that* ***Weatherspoon***[8] *announced a procedural rule which does not retroactively apply to cases already final on direct review."*

> " In **Teague**, the United States Supreme held a new rule of constitutional law will not be applied retroactively to a case on habeas review unless it falls within one of two limited exceptions: The first exception [is] that a new rule should be applied

---

[4] **Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002)**
[5] **Teague v. Lane,** 489 U.S. 228, 209 S. Ct. 1060, 203 L. Ed. 2d 334 (1998)
[6] **Schriro** v. **Summerlin**, 542 U.S. 348 (2004)
[7] **Nixon v. State,** 641 So. 2d 751 (Miss. 1994)
[8] **Weatherspoon v. State, 732 So. 2d 158 (Miss. 1999)**

retroactively if it places certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe,' "(Citing **Mackey v. United States,** 401 U.S. 667, 692, 91 S. Ct. 1160, 1180, 28 L. Ed. 2d 404 (1971) The second exception is "reserved for watershed rules of criminal procedure." **Teague,** 489 U.S. at 311, 109 S. Ct. 1060. In approving this plurality decision, the United States Supreme Court later held that: The principle announced in ***Teague*** serves to ensure that gradual developments in the law over which reasonable jurists may disagree are not later used to upset the finality of state convictions valid when entered. This is but a recognition that the purpose of federal habeas corpus is to ensure that the state convictions comply with the federal law in existence at the time the conviction became final, and not to provide a mechanism for the continuing reexamination of final judgments based upon later emerging legal doctrine. ***Sawyer,***497 U.S. at 234, 110 S. Ct. 2822."

The ruling in ***Howell v. State,*** **Id.** abolishes the exception to Miss. **UPCCRA**, thus, taking away any opportunity for Appellant to have his fundamental constitutional errors corrected in his case. Thus, to apply ***Howell*** is Appellant's finalized UPCCR, would be failing to implications the "fundamental fairness and accuracy of the criminal proceeding." **Tyler v. Cain,** 533 U.S. 656, 667, n. 7, 121 S. Ct. 2478, 150 L. Ed. 2d 632 (2001) (quoting **Sawyer v. Smith,** 497 U.S. 227, 243, 110 S. Ct. 2822, 111 L. Ed. 2d 193 (1990).

> *"When a decision of this Court results in a "**new rule,**" that rule applies to all criminal cases still pending on direct review.*[9] *As to convictions that are already final, however, the rule applies only in limited circumstances. New substantive rules generally apply retroactively. This includes decisions that narrow the scope of a criminal statute by interpreting its terms . . . as well as constitutional determinations that place particular conduct or persons covered by the statute beyond the State's power to punish. Such rules apply retroactively because they necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him."*

New rules of procedure, on the other hand, generally do not apply retroactively. [10] This Supreme Court has the issue; of what is and what is not applied retroactively. See **Manning v. State**, 726 So. 2d 1152 (Miss.1998), and **Manning** v. State, 929 So. 2d 885 (2006); **"***Recently, in **Manning v. State,** 726 So. 2d 1152 (Miss.1998), relying on **Conner**[11] decision, this Court held that the testimony of State's witness Earl Jordan that he had volunteered to take a polygraph*

---

[9] Brown's UPCR Motion was adjudicated on December 15, 2021, in the Pontotoc Circuit Court. Thus, Appellant's case was not on direct review.

[10] **Manning** v. State, 929 So. 2d 885 (2006)

[11] **Conner v. State**, 632 So. 2d 1239, 1257-58 (Miss. 1993)

*examination "was proper redirect after Jordan's credibility had been attacked on cross-examination by the defense." **Manning**, 728 So. 2d at 1179. Upon careful consideration and further review, we find that testimony pertaining to a witness's offer to take a polygraph, whether it be a witness for the State or the defense, is not admissible at trial. To the extent that this holding affects **Conner v. State, Lester v. State**, [,692 So. 2d 755 (Miss. 1997)], and **Manning v. State,** cited supra, those cases are overruled."*

The Mississippi Supreme Court's interpretation of the legislation enactment of Miss. Code Ann. §99-39-5 (2) and § 99-39-23 (6) in 1985, through 2023, started with the Mississippi Supreme Court ruling in **Smith v. State,** 477 So. 2d 191, 195 (Miss. 1985) (overruled in 2023, by ***Howell.*** **Id.**) in which This Court ruled; "*that the fundamental errors were so great that **Smith**, shall overcome any procedural bar that would restrict said Court from hearing his Post-Conviction Motion. Thus, by interpreting the procedural law, rules and how the Circuit courts are to apply said bars.".*

The issue in which the Appellant has today; is not that the Mississippi Supreme Court handed down an Ex-Post-Facto prohibition rule on January 26, 2023, but said ruling was erroneously retroactively applied to Appellant's 2020, filed case. Which is contrary to the Court of Appeals ruling in 2015. **Brown v. State,** 198 So. 3d 325 (Ct. App. 2015), "**Sanders *v. State***, 9 So. 3d 1132, 1136 (¶16) (Miss. 2009). **Smith v. State,** 149 So. 3d 1027, 1031 (¶8) (Miss. 2014)

*"Brown is correct that the due-process right not to stand trial or be convicted while incompetent is a fundamental right not subject to the procedural bars of the Mississippi post-conviction-relief statutes. See **Smith v. State**, 149 So. 3d 1027, 1031 (¶8) (Miss. 2014) (citations omitted). But having evaluated the merits of Brown's allegations, we find he has failed to establish a claim that this right was violated. See **Smith v. State,** 129 So. 3d 243, 245 (Miss. Ct. App. 2013) (citation omitted) ("We affirm dismissals or denials of PCR motions when the movant fails to demonstrate a claim procedurally alive substantially showing the denial of a state or federal right.").*[12]

However, Justice James, wrote a ten-page dissenting opinion, that pointed out the Appellant's procedural issues, and how Brown could correct it by altering his ground, and

---

[12] **This Honorable Mississippi Supreme Court reversed the 2013, Court of Appeals decision in *Smith*.** Applying **Rowland's** procedural exception standards *See* **Smith v. State,** 149 So. 3d 1027, 1031 (¶8) (Miss. 2014) and allow Smith over all of his procedural bars under the ruling in **Rowland v. State**, 98 So. 3d 1032 (Miss. 2012) (Smith v. State, 149 So. 3d 1027, 1031 (Miss. 2014), overruled on other grounds by Pitchford v. State, 240 So. 3d 1061 (Miss. 2017))

assigning the error to his court-appointed-counsel, and not the Circuit Court. See **Brown v. State,** 198 So. 3d (¶61) 325 (Ct. App. 2015)

The majority, relying on the holding in Manning v. State, 929 So. 2d 885, 898-99 (¶35) (Miss. 2006), holds that Sanders does not apply retroactively because it announced a procedural rule. The majority concludes that Sanders's requiring a competency hearing did not control at the time Brown entered his guilty plea. I disagree. The Mississippi Supreme Court applied the holding in Sanders retroactively in a PCR case where the movant was convicted in 1999. See Goodin v. State, 102 So. 3d 1102, 1105, 1118-19 (¶¶3, 48-50) (Miss. 2012). The majority distinguishes Goodin from this case by finding that the movant in Goodin claimed ineffective assistance of counsel because the defense attorney failed to ensure that the defendant was afforded a competency hearing, which was required by Rule 9.06. Consequently, under the majority's view, Brown could circumvent this retroactive bar, and would be better served by filing a PCR motion alleging ineffective assistance of counsel, essentially alleging the same set of facts, but assigning error on the part of his counsel rather than the trial court for failing to comply with Rule 9.06. I would not hold that Sanders applies retroactively depending on the label of the claim.[13]

REASON TWO

Whether Appellant's issues of Ineffective- Assistance- of- Counsel fall into the exceptions in Rowland v. State,

Appellant, relied on **Smith v. State,** 149 So. 3d 1027, 1031 (¶8) (Miss. 2014) and on the exceptions that **Rowland** created, which is quoted in **Smith**, Id. Thus, **Rowland.** Id. was in effect and all Mississippi courts was applying **Rowland v. State**, 42 So. 3d 503, 506 (Miss. 2010) "*errors that effect fundamental constitutional right exception standard*" at the time appellant drafted and filed his **UPCCRA** Motion, on July 14, 2020, and stamped filed in August 12, 2020, in Pontotoc circuit Court, relying on the procedural standards in **Rowland**.

> *Additionally, in **Rowland v. State**, this Court held "errors affecting fundamental constitutional rights are excepted from the procedural bars of the [Uniform Post-Conviction Collateral Relief Act (**UPCCRA**)]," and courts have no discretion in this regard. **Rowland v. State**, 42 So.3d 503, 507 (Miss.2010). Accordingly, we find the trial court erred in ruling Chapman's current PCR motion procedurally barred, and the Court of Appeals erred in affirming the trial court's judgment. Chapman raises credible allegations affecting fundamental constitutional rights, which are excepted from the PCR*

[13] **Brown v. State,** 198 So. 3d 325 (¶61) (Ct. App. 2015),

statutory bars, including the statute of limitations found in UPCCRA. ***Rowland****, 42 So.3d at 506-07 ("We take this opportunity to hold, unequivocally, that errors affecting fundamental constitutional rights are excepted from the procedural bars of the UPCCRA[,]" including the statute's time bars); see also* ***Bevill v. State****, 669 So.2d *1175 14, 17 (Miss.1996) (recognizing due-process violations are excepted from the PCR procedural bars and that it is possible for a lawyer's performance to be so deficient and so prejudicial that the defendant's fundamental constitutional rights are violated); See* ***Chapman v. State,*** *167 So.3d 1170 (2015).*

Appellant's second ground is an **extraordinary circumstance and a showing of actual prejudice affects** that he received. ineffective-assistant-of-counsel, due to his court-appointed-counsel failed to ensure that Appellant received the court ordered mental evaluation from Mississippi State Hospital (Whitfield), that would have uncovered his previous mental diagnose from the Social Security administration, through an expert psychologist examination in 1991. In which allowed Appellant to receive a monthly disability check. Notwithstanding, A short investigation would have revealed Appellant was actively diagnose by Dr. Wing, and prescribed a known mind-altering drug called "Elavil".[14] See **Ake v. Oklahoma,** 47 U.S. 68, 105 St. Ct. 1087, 84 L. Ed. 2d 53 (1985) "*the Supreme Court has echoed the principle, holding that a trial court must provide expert assistant to an indigent defendant, when the State employees an expert witness. When denied of such expert assist would render the trial fundamentally unfair.*" Also see. **Harrison v. State**, 635 So. 2d 894, 901 (Miss. 1994); (quoting) **Ake v. Oklahoma,** Id.

Appellant's third issue was ineffective-assistant-of-counsel claim that has been recognized by this Supreme Court as an **extraordinary circumstance** that overcomes all procedural bars, through an Ineffective-assistant-of-counsel, for the failure to ensure defendant received a competency hearing after undergoing the court ordered mental evaluation, that the prosecutor filed November 12, 1999, pursuant to URCCC 9.06. In 2012, this Supreme Court found the claim, as a reversible error, once the "errors of an **extraordinarily circumstances"** exception was applied. See ***Goodin v. State***, 102 So. 3d 1102, 1105, 1118-19 (¶¶3, 48-50) (Miss.2012). ***Goodin***, was allowed over all the procedural bars. This Supreme Court stated: "*Considering all of the evidence in this case and the failure to follow the procedure in* ***9.06****, we*

[14] **Elavil,** was prescribed to Brown September 24, 1999, by Dr. Wing, after a suicide attempt, while in the County jail. However, Brown's attorney coached him for over two hours, into not telling the judge this information at the peal hearing. See exhibit "E" 1-3.

*find that trial counsel's performance was deficient on the issue on competency at the conviction phase." **(Reversed on other grounds)**.*

This Honorable Supreme Court also reversed in **Smith v. State,** 149 So. 3d 1027, 1031 (¶8) (Miss. 2014) (quoting) **Rowland**.[15] Which is the same reason Appellant claims today; 'failure to conduct a competency hearing after being court ordered to undergo a mental exam' in which Appellant claims his counsel failed to ensure.

> *In **Smith,** on the day of trial, the defendant orally moved for a continuance and a psychiatric examination. Smith, 149 So. 3d at 1029 (¶2). The trial court entered an order compelling the defendant to undergo a psychiatric evaluation. Id. at 1030 (¶2). The record was unclear as to why the trial court entered the order. Id. at 1034 (¶18). The examination was never done, and the defendant later pled guilty. Id. at 1029-30 (¶2). Because of the ambiguity surrounding the reason the trial court ordered a mental examination, the Court remanded the case for an evidentiary hearing. Id. at 1031 (¶9). The Court concluded that "if, after the evidentiary hearing, the trial court determines that the purpose of the court-ordered mental evaluation was to determine Smith's competency to stand trial, Smith's conviction cannot stand, and Smith must be either retried or institutionalized following a mental evaluation and competency hearing under Rule 9.06." Id. at 1035 (¶19). Here, both orders unambiguously state that a purpose of the mental examinations was to determine Brown's competency to stand trial.*[16]

However, Appellant's claim stands out a little more, because Appellant shows; had counsel ensured a competency hearing was conducted. (1) Appellant would have had an opportunity to enter evidence showing his previous diagnosis and suicide attempt. (2) Appellant, would have had an opportunity to question the State's expert psychologist witness (Dr. Lott), where there are a number of inconsistent statements in his mental evaluation report, in which Brown and his sisters would have had an opportunity to testify concerning his diagnosis of epilepsy[17]; dyslexia[18] and him receiving two monthly checks for his mental disability, which are not mentioned in said report. Thus, the Court was deprived of all the facts and circumstances of Brown's mental issue, and that is not fair. In fact, this leaves Brown defenseless from the State's attempt to claim the defendant was not suffering from any mental illness. (3) Appellant would

---

[15] **Rowland v. State**, 42 So. 3d 503, 506 (Miss. 2010)

[16] **Brown v. State,** 198 So. 3d 325 (¶59) (Ct. App. 2015),

[17] **Epilepsy**: disorder of the nervous system, characterized either by mild episode loss of attention or sleeping or by sever convulsion with loss of consciousness.

[18] **Dyslexia**: a learning disability marked by difficulty in reading, writing and spelling.

have presented evidence of his previous psychologist diagnoses from 1991-1992, from the Social Security Administration Office. However, the records show that Brown was actually on prescription psy-medication at the time he plead guilty, in which the Court had no idea[19]. Because of the failure to conduct a mandated competency hearing, pursuant to the then standing URCCC 9.06, also See **Ake v. Oklahoma,** 47 U.S. 68, 105 St. Ct. 1087, 84 L. Ed. 2d 53 (1985). The prejudice affects in this case calls for Appellant's case to be reversed, and Appellant should receive a new trial after the court ordered mental evaluation is complete, and a competency hearing is conducted.

Appellant has the same facts and circumstances as ***Goodin***, that this Court has recognized to meet the first prong of the **Strickland**. The two prong tests, through a ***Sanders*** violation of **URCCC 9.06,** and more. Appellant also argued, the second prong in **Strickland**, the prejudice affect is. The second prong is simply to show, there would have been a different outcome had not said error occurred. (2) The court-appointed attorney, failed to object while the prosecutor, read the State's expert psychologist report to the court, without the expert being present, in violation of Appellant's, **Sixth Amendment's Confrontation Clause**[20] "*gives the accused, "[i]n all criminal prosecutions, ... the right ... to be confronted with the witnesses against him."* In **Crawford v. Washington**, 541 U.S. 36, 2707 59, 124 S.Ct. 1354, 158 L.Ed.2d 177, this Court held that the Clause permits admission of "[t]estimonial statements of witnesses absent from trial ... only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine." Later, in **Melendez-Diaz v. Massachusetts,** 557 U.S. 305, 129 S.Ct. 2527, 174 L.Ed.2d 314, the Court declined to create a "forensic evidence" exception to Crawford, holding that a forensic laboratory report, created specifically to serve as evidence in a criminal proceeding, ranked as "testimonial" for Confrontation Clause purposes. Absent stipulation, the Court ruled, the prosecution may not introduce such a report without offering a live witness competent to testify to the truth of the report's statements." 557 U.S., at 324, 129 S.Ct. 2527.

---

[19] **Elavil,** was prescribed to Brown September 24, 1999, by Dr. Wing, after a suicide attempt, while in the County jail. However, Brown's attorney coached him for over two hours, into not telling the judge this information at the peal hearing. See exhibit "E" 1-3.

[20] **Bullcomings v. New Mexico,** 564 US 647, 131 S. Ct. 2705, 180 L. Ed. 2d 610 (2011)

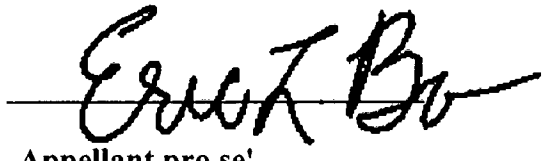
Appellant, has presented two extraordinarily circumstances which is a very rare **Ake. Id.** violation, and a Sixth Amendment violation; "Confrontation Clause" under **Bullcomes v. New Mexico,** 564 US 647, 131 S. Ct. 2705, 180 L. Ed. 2d 610 (2011), both claims are the prejudicial effect (showing that there would have been a different outcome had counsel's performance was not erroneous) under the second prong of **Strickland v. Washington,** 466 U. S. 668, 104 S. Ct. 2064, 80 L. Ed. 2d 674 (1984). Also see **U.S. v. Avila-Gonzalez**, 2018WL6720641 (Dec. 20, 2018).

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Brown prays that the Honorable Mississippi Supreme Court will grant this petition for writ of Certiorari, to settle the conflict between the two decisions in **Brown v. State.** 198 So. 3d 325 (Ct. App. 2015), stating: "***Sanders v. State,*** *9 So. 3d 1132, 1136 (¶16) (Miss. 2009)*, could not be applied, because ***Sanders***, was ruled on ten years after Brown's conviction, holding to **Manning v. State,** 929 So. 2d 885, 900 (¶42) (Miss. 2006), and the Appeals Court now retroactively applies **Howell v. State**, 358 So. 3d 613, 616 (Miss. 2023) to Brown's case that was filed years prior to the ruling of ***Howell.*** Which one is the fair and correct interpretation of **Manning v. State?**

Furthermore, that the Mississippi Supreme Court will consider Brown's claim on the merits after the Court of Appeals declined said invitation and that this Honorable Court will grant any other relief that it seems just under these extraordinary circumstances, in the interest of justice.

RESPECTFULLY SUBMITTED, the. 12, day of October, in the year of the Lord 2023.



Appellant pro se'
Eric LaQuinne Brown # K0577
MSP, unit 30-C
Parchman, MS. 38738

IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI
CAUSE # 2022-CP-00069-COA

ERIC LaQUINNE BROWN **APPELLANT**

VS.

STATE OF MISSISSIPPI **RESPONDENT(S)**

APPELLANT'S MOTION TO APPLY THE MAILBOX RULE AND CONSIDER APPELLANT'S REPLY BRIEF TIMELY FILED AUGUST 29, 2022

Eric L. Brown

Anthony Payne ***for***
Eric L. Brown
MSP, unit 30-C
Parchman, MS. 38738

IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI
CAUSE # 2022-CP-00069-COA

ERIC LaQUINNE BROWN **APPELLANT**

VS.

STATE OF MISSISSIPPI **RESPONDENT(S)**

APPELLANT'S MOTION TO APPLY THE MAILBOX RULE AND CONSIDER APPELLANT'S REPLY BRIEF TIMELY FILED AUGUST 29, 2022

COMENOW ERIC L. Brown through Anthony Payne and stands as a pro se' Appellant and files this his Motion requesting the court to apply the "MAILBOX Rule" and consider his Reply Brief timely filed on August 29th in the year of 2022. Eric did receive a copy back that week thus, Eric thought Mr. Hall mailed it to the Court.

On September 8th in the year of 2022, Eric called Anthony, and he advised Eric that the court had not yet received the August 29th brief. Eric then filed out another I.L.A.P form and requested mailing services that same Sunday. On September 13th in the year of 2022, (on Tuesday) the staff member of the I.L.A.P. (namely Mr. Hall) came to pick up Eric's Reply Brief however, Mr. Hall did this reluctantly, advising Eric that the court did not need multiple copies of the same brief and that he remembered that Eric just mailed the court that same brief a few weeks prior. Eric still gave Mr. Hall the Reply Brief to be mailed to the court. Eric received a copy back that week thus, Eric again believed Mr. Hall had mail it off.

I.

On August 29, 2022, Eric L. Brown placed in the hands of the MDOC's legal library program staff member named Mr. Hall; the original Reply Brief, that replied to the State's response to Appellant's initial brief.

II.

The process for Appellant to mail any legal paper work out through the MDOC's legal library program is: **1)** the inmate has to correctly feel out the I.L.A.P. form issued out every Sunday in Parchman.

> **2.** After correctly filling out the I.L.A.P. form said form must be handed to the officer in the tower of the correct unit/building.
> **3.** The I.L.A.P. forms are picked by the "watch commander" assigned to that unit and placed in an assigned box marked specifically for I.L.A.P. .
> **4.** Monday morning a staff member of the I.L.A.P. will drive around to each and every unit in Parchman, and pick up the I.L.A.P. forms and convey them all to the assigned office of the I.L.A.P. on Parchman facility.
> **5.** All of the I.L.A.P. forms are then screened for any errors on the face of the forms. (any errors on the face of the form will render to form "invaluable" and say inmate will not receive any service form the I.L.A.P that week.) Meaning: that inmate will not receive any cases, paper or mailing service/ notary public.
> **6.** After the I.L.A.P forms has been screened for errors, the I.L.A.P staff member will make a list of the inmates that correctly requested case logs, notary public or mailing service. Any and all legal supplies are sent out only on the first week of the month.
> **7.** After the list has been composed, a staff member will the drive to their assigned unit to pick up the inmates legal paperwork for mailing. All inmates that has correctly requested mailing services from the I.L.A.P has to file out a form authorizing the I.L.A.P to remove the amount of the postage in order to pay for said postage stamps. The form also list (in the inmates handwriting, the addresses and the actual titles of said legal paperwork that is to be mailed out but I.L.A.P. And for the most part the I.L.A.P staff member will not have on hand a full size envelope big enough for a (non- bending legal brief can fit in this, the inmate never sees his legal paperwork placed in the mailing envelope more less seeing the actual legal paperwork placed in the mail. (All legal paperwork that has been picked up from the unit is then takin to the office of the I.L.A.P staff member and the staff then places say inmates legal mail in the mail after copies has been made.)

8. Once the inmate has given the I.L.A.P staff member his legal paperwork, a copy will be sent to him with in a week after the I.L.A.P staff member mailed said legal paperwork.

III.

On August 28, 2022, Eric L. Brown did cause to be placed in the hands of the Parchman's staff member(office) the correctly filed out I.L.A.P form. And the next day (Monday afternoon) a staff member of the I.L.A.P (Mr. Hall) came to unit 30- C building and collected Eric's Reply Brief, after Eric filed out the authorized form to allow the I.L.A.P to withdraw the amount of money out of his account to match the price of the postage stamp cost used to mail out the legal paperwork from Parchman.

Eric L. Brown never seen his Reply Brief placed in a full size envelope, however, Eric was allowed to write the address of the court on a regular size (white) envelope in which the Reply Brief could not fit in.

Eric L. Brown did receive a copy of his Reply Brief with in a week. Thus, he thought Mr. Hall actually mailed it out as Eric requested through the I.L.A.P

On or around September 7th in the year 2022, Eric called home and was told that the court had not received his Reply Brief. Eric caused another I.L.A.P form to be filled out requesting legal mailing services. Eric handed said form to the tower officer on Sunday September 11th in the year of 2022.

On Tuesday the 13th day of September in the year of 2022, I.L.A.P staff member Mr. Hall came to the faith based initiative program (Where Eric was taking classes) and Mr. Hall warned

Eric about mailing multiple copies of the Brief to the Court. Eric informed Mr. Hall that the court had not received the Reply Brief that Eric had given to him on the 29th day of August in the year of 2022. See the I.L.A.P mailing log sheet.

Appellant is entitled to have his Reply Brief considered filed timely in the MAIL BOX RULE. See. Houston v. Lack, 487 U.S. 266 (1988),

In *Houston v. Lack*, 487 U.S. 266 (1988), this Court held that filings by prisoners receive the benefit of the mailbox rule, which means that a prisoner's filing is deemed timely if it is placed in the prison mail system by the date it is due. This case presents a recurring question on which the courts of appeals are split. In some instances, a prisoner who is nominally represented by counsel submits a filing through the prison mail system. Such filings can result from miscommunication over representation status, abandonment by counsel, or as was the case here, counsel's inability to submit the filing.

Conclusion

WHEREFORE, Appellant ask that this Court consider his Reply Brief timely filed under the ***MAILBOX RULE,*** and do not adjudicate on said appeal without applying the Reply Brief arguments that refuses the State's. Response to Eric s Initial Brief.

Mississippi Department of Corrections
Mail Transaction History
Legal
Timeframe 08/29/2022 between and 08/29/2022

Offender Name: BROWN, ERIC

Offender Number: K0577

Mail:	Correspondent:	Address:	Log Date:	Postage:	Document Type:
Out	FITCH, LYNN ATTY GEN	P.O. BOX 220, JACKSON, 39205	08/29/2022	2.64	REPLY BRIEF
Out	SUPREME COURT, MISSISSIPPI MS SUI	P O BOX 249, JACKSON, 39205	08/29/2022	2.64	REPLY BRIEF

CERTIFICATE OF SERVICE

This is to certify that Eric LaQuinne Brown, has this date, placed in the hands of MDOC's legal library program staff member a true copy of the forgoing motion for this Court to apply the "MAILBOX RULE" and consider Appellant's Reply Brief timely filed, to be mailed, via United States Mail, postage pre- paid, a true and correct copy of the above Reply Brief to the Mississippi Court of Appeals:

1) D. Jeremy Whitmore
   Post Office Box 249
   Jackson, Mississippi 39205-0249

2) Lynn Fitch
   Mississippi Attorney General
   Post Office Box 220
   Jackson, Mississippi 39205-0220

SO, certified, this the 29day of October,2022.

Eric L. Brown

Anthony Payne ***for***
Eric L. Brown
MSP, unit 30-C
Parchman, MS. 38738

Serial: **247438**

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

No. 2022-CP-00069-COA

ERIC LAQUINNE BROWN A/K/A ERIC L. BROWN A/K/A ERIC BROWN ***Appellant***

v.

STATE OF MISSISSIPPI ***Appellee***

EN BANC ORDER

This matter comes before the Court en banc on Eric LaQuinne Brown's pro se motion for additional time to file a motion for rehearing and pro se motion to recall the mandate. This Court handed down its opinion on May 23, 2023. The rehearing deadline lapsed on June 6, 2023. M.R.A.P. 40(a). The mandate issued on June 13, 2023. M.R.A.P. 41(b).

On June 16, 2023, this Court's clerk received Brown's pro se motion for a rehearing extension. It is dated June 5, 2023, and it bears a June 7, 2023 postmark. It is unclear whether Brown timely delivered his motion to prison authorities for mailing or missed the deadline by one day.

On July 10, 2023, the clerk's office received Brown's pro se motions for rehearing and to recall the mandate. In his motion to recall the mandate, Brown asserts that he delivered his motion for additional rehearing time to prison authorities for mailing on June 6, 2023.[1] Based on the logistical difficulties that Brown faces as an inmate, we find good

[1] Brown mistakenly asserts that because he received a copy of this Court's opinion on May 26, 2023, the rehearing deadline did not lapse until June 9, 2023. Rule 40(a) provides that "[a] motion for rehearing may be filed within 14 days after a decision is handed down on the merits . . . ." Accordingly, the rehearing deadline began to run when this Court handed down its opinion. It did not begin when Brown received a copy of the opinion.

cause to recall the mandate and grant his request for a rehearing extension.

THEREFORE, the appellant's pro se motions to recall the mandate and for additional rehearing time are both granted. The mandate is hereby recalled. The appellant's July 10, 2023 motion for rehearing is accepted as timely.

SO ORDERED, this the 2 day of August, 2023.

DAVID NEIL McCARTY, JUDGE
FOR THE COURT

Serial: 249907

IN THE SUPREME COURT OF MISSISSIPPI

No. 2022-CT-00069-SCT

ERIC LAQUINNE BROWN A/K/A ERIC L. BROWN A/K/A ERIC BROWN ***Appellant/Petitioner***

v.

STATE OF MISSISSIPPI ***Appellee/Respondent***

ORDER

Before the Court is the Petition for Writ of Certiorari filed pro se by Eric LaQuinne Brown. Having duly considered the petition, the Court finds that it should be denied.

IT IS THEREFORE ORDERED that the Petition for Writ of Certiorari is denied.

SO ORDERED.

TO DENY: ALL JUSTICES.

DIGITAL SIGNATURE
Order#: 249907
Sig Serial: 100007985
Org: SC
Date: 12/18/2023

Robert P. Chamberlin, Justice

PONTOTOC COUNTY
FILED
JAN 23 2024
MELINDA PATTERSON NOWICKI
CIRCUIT CLERK
BY _____ D.C.