

No. 25-6561

SUPREME COURT OF THE UNITED STATES

JOSHUA MAGEE

PETITIONER

v.

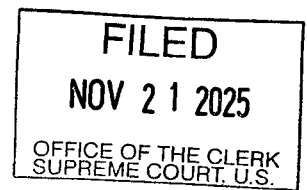
STATE OF MISSISSIPPI

RESPONDENT

On Petition for a Writ of Certiorari to
the Mississippi Supreme Court

PETITION FOR A WRIT OF CERTIORARI

ORIGINAL



BY:

Joshua Magee

Joshua MaGee
SMCI-II, MDOC, #123773
P. O. Box 1419
Leakesville, MS 39451

I.

Question Presented

1) Whether the Mississippi Supreme Court may ignore the ex post facto clause by applying new decision rendered in *Howell v. State*, 358 So. 3d 613, 615-16 (Miss. 2023) to change the procedural standards in effect at the time MaGee was convicted of such crime, was sentenced for crime, and when his direct appeal was affirmed by Mississippi Supreme Court, where new decision circumvents MaGee's ability to seek collateral relief from a sentence in which MaGee has no hope of ever fully completing under Mississippi law.

2) Whether Joshua MaGee's claims that the indictment was defective for failing to inform him that § 97-3-2 classifies his offenses as violent crimes and also whether claims that § 97-3-2's omission from the indictment affected his sentences, resulted in equal-protection and due process violations. Miss. Code Ann. Sec. 97-3-2 (2014).

II.

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IV.

Petition for Writ Of Certiorari

On December 15, 2015, Joshua MaGee, was indicted for the offense of sexual battery in cause number 27241. The indictment was presented pursuant to Miss. Code Ann. § 97-3-97. MaGee was found guilty by a jury on June 14, 2016, and sentenced to a term of 40 years imprisonment, to be released after serving 25 years. MaGee's direct appeal to the Mississippi Supreme Court was affirmed on December 17, 2017. MaGee's post

conviction motion was denied on August 28, 2025. See Appendix "A", Attached.

V.

Opinions Below

The decision by the Mississippi Supreme Court.

ORDER

Before the panel of Coleman, P.J., Maxwell and Chamberlin, JJ., is Joshua D. Magee's Application for Leave to File Petition for Post-Conviction Relief and Leave to Proceed in the Trial Court.

The Court of Appeals affirmed Magee's two sexual-battery convictions and sentences. *Magee v. State*, 231 So. 3d 243, 246 (Miss. Ct. App. 2017). The mandate issued on January 2, 2018.

Since then, Magee has filed two post-conviction applications, which were denied. Order, *Magee v. State*, No. 2019-M-00864 (Miss. Oct. 19, 2023); Order, *Magee v. State*, No. 2019-M-00864 (Miss. June 19, 2019). The order denying the second application warned Magee "that any future filings deemed frivolous may result not only in . . . monetary sanctions, but also in restrictions on filing applications for post-conviction collateral relief (or pleadings in that nature) in forma pauperis." Order, *Magee v. State*, No. 2019-M-00864, **1–2 (Miss. Oct. 19, 2023) (internal quotation marks omitted) (quoting Order, *Dunn v. State*, No. 2016-M-01514, at *2 (Miss. Nov. 15, 2018)).

Here, Magee claims that the indictment was defective for failing to inform him that § 97-3-2 classifies his offenses as violent crimes. He also claims that § 97-3-2's omission from the indictment affected his sentences, resulting in equal-protection and due process violations.

After due consideration, we find that the claims are time barred, waived, and successive. See Miss. Code Ann. § 99-39-5(2), -21(1), -27(9) (Rev. 2020). No statutory exception is met. See *Howell v. State*, 358 So. 3d 613, 615-16 (Miss. 2023). And even if an exception were met, the claims have no arguable basis. See *Means v. State*, 43 So. 3d 438, 442 (Miss. 2010).

We further find that this filing is frivolous. Magee is again warned that frivolous filings may result in sanctions, including restrictions on in forma pauperis status. Order,

Magee v. State, No. 2019-M-00864, **1-2 (Miss. Oct. 19, 2023) (quoting Order, Dunn v. State, No. 2016-M-01514, at *2 (Miss. Nov. 15, 2018)).

IT IS, THEREFORE, ORDERED that the application is denied.

SO ORDERED. . SEE APPENDIX 1 ATTACHED

VI.

Jurisdiction

Mr. MaGee's Post Conviction Motion was denied in the Mississippi Supreme Court on ~~May 20, 2025~~ ^{Aug 28, 2026}. Mr. MaGee invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Mississippi Supreme Court's final order and judgment.

VII.

Constitutional Provisions Involved

United States Constitution,
Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be

deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution,
Amendment XIV:

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.

VIII.

Statement of the Case

Joshua Magee was convicted of two counts of sexual battery relating to his then seven-year-old cousin, Abby. At the time of the offense, Magee was thirty-three years of age and living, from time to time on and off, in the same household as the victim. The victim disclosed repeated acts of sexual abuse after she and Magee were caught together late at night without explanation. On appeal, Magee raised a number of evidentiary issues and

challenged the weight and sufficiency of the evidence. Magee have never asserted that he committed such offenses.

After review, the Court found sufficient evidence supported the jury's guilty verdict. The Court also found that the convictions were also supported by the weight of the evidence.

Magee subsequently filed a post conviction motion in this Court raising three claims: (1) an expert witness's "prejudicial and misleading evidence" violated his constitutional right to a fair trial; (2) ineffective assistance of counsel; and (3) newly discovered evidence. The Mississippi Supreme Court denied Magee's post conviction motion on January the 19th, 2019. Magee then presented his successive post conviction motion, challenging the constitutionality of the state's failure to provide him, within the indictment, information regarding the classification of the charges made against him, pursuant to the law created and defined under Mississippi Code Ann. 97-3-2 (2014). The indictment was a complete failure on such requirement..

After deliberating, the jury found MaGee guilty of sexual battery. The judge sentenced MaGee to 40 years, with 25 to serve, in prison. MaGee filed a posttrial motion and an amended motion for a new trial. Both were

denied. MaGee appealed the conviction and sentence to the Mississippi Supreme Court which affirmed the appeal.

Because the Mississippi Supreme Court has applied a Mississippi Supreme Court decision retroactively to subject MaGee to ex post facto treatment of his post conviction claims outlined herein and in the Mississippi Supreme Court, MaGee is bringing this Petition upon the basis of a constitutional presentation that Mississippi, by improperly applying the bar under the decision in *Howell v. State*, 358 So. 3d 613, 615-16 (Miss. 2023) and under Miss. Code Ann. §§ 99-39-5(2); -27(9) (Rev. 2020), the Mississippi Supreme Court was closed minded and never even considered MaGee's post conviction claims when MaGee was before the Court on issues which the difference as to whether he spend the greatest portion of his life in prison or under supervision as a sex offender. MaGee's claims entails the constitutional right to due process of law.

IX.

REASONS FOR GRANTING THE WRIT

MISSISSIPPI HAS FAILED TO ADHERE TO IT'S OWN STANDARDS OF LAW

1) Whether the Mississippi Supreme Court may ignore the ex post facto clause by applying new decision rendered in *Howell v. State*, 358 So.

3d 613, 615-16 (Miss. 2023) to change the procedural standards in effect at the MaGee was convicted of crime, was sentenced for crime, and when his direct appeal was affirmed by Mississippi Supreme Court, where new decision circumvents MaGee's ability to seek collateral from a sentence in which MaGee has no hope of ever completing under Mississippi law.

At the time when MaGee was convicted and sentenced, the plain language of Mississippi Code Ann. § 99-39-5(1)(d) (Rev. 2015) provided standing to "any person sentenced by a court of record of the State of Mississippi, including ... if the person claims that the sentence exceeds the maximum authorized by law or the trial court had no jurisdiction to do what was did.

Post conviction relief is available to "any person in Mississippi sentenced by a court of record of the State of Mississippi." Miss. Code Ann. § 99-39-5(1)(d) (Rev. 2015); see also *Brown v. State*, 83 So.3d 459 462-64 (Miss. Ct. App. 2012). However, the retroactive decision rendered in *Howell* makes it unavailable per se to any individual not being able to meet the limited statutory provision requirements.

Miss. Code Ann. Sec. 99-39-5 (2)(a)(i) provides the following:

(2) A motion for relief under this article shall be made within three (3) years after the time in which the petitioner's direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty

plea, within three (3) years after entry of the judgment of conviction. Excepted from this three-year statute of limitations are those cases in which the petitioner can demonstrate either:

(a)

(i) That there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of trial, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence; or

Petitioner would aver that his motion challenged FUNDAMENTAL CONSTITUTIONAL issues of legality of the proceedings leading to his conviction and the jurisdiction of the trial court. Moreover, MaGee challenged whether he was entitled to the exception set out in Miss. Code Ann. Sec. 99-39-5 (1), notwithstanding the decision rendered in *Howell v. State*, 358 So.3d 613 (Miss 2024).

As a Mississippi PCR Movant, Joshua MaGee beared the burden to demonstrate his claims were not procedurally barred because an exception applies. *McComb v. State*, 135 So.3d 928, 931-32 (Miss. Ct. App. 2014). Mississippi deprived MaGee of any chance to try by the decision rendered in *Howell v. State*, 358 So.3d 613 (Miss 2024). Movant Joshua MaGee asserted the statutory, "fundamental and constitutional rights exception" to overcome the three-year statutory time bar and successive writ bar and have his claims heard. Miss. Code Ann. § 99-39-5(). *Howell v. State*, 358 So.3d 613 (Miss 2024).d §99-39-23(6), respectively. *Means v. State*, 43 So.3d

438, 441 (Miss. 2010); Howell v. State, ___ So.3d ___ (Miss. 2024).

Under Mississippi's own constitution, no person can be deprived of his liberty except by due process of law. Section 14, Article 3, Mississippi Constitution. This prohibition is intended to guarantee the protection of fundamental and constitutional rights. Where fundamental and constitutional rights are ignored, due process does not exist, and a fair trial in contemplation of the law cannot be had. Brooks v. State, 46 So.2d 94,97 (Miss.1950).

"While no State may "deprive any person of life, liberty, or property, without due process of law, 'it is well settled that only a limited range of interests fall within this provision. Liberty interests protected by the Fourteenth Amendment may arise from two sources, the Due Process Clause and the laws of the States." Hewitt v. Helms, 459 U.S. 460 (1983). State law liberty interests are protected by the Due Process Clause. Phillips v. Turner, No. 4:20-CRP (N.D. Miss. Mar. 11, 2021). The procedural protections of the due process clause is triggered only where there has been a deprivation of life, liberty, or property. Toney, 779 F. 3d 330, 336 (5th Cir. 2015). In the instant case MaGee has a liberty interest in not being prosecuted by the Sttate after the deadline date to do so had came and passed. It is a

constitutionally protected procedural practice and right.

The Mississippi Supreme court in Howell ruled, "only the legislature can define crimes and prescribe punishments. Howell v. State, 300 So. 2d at 781; Winters v. State, 473 So.2d 452, 456 (Miss. 1985); Jones v. State, 122 So.3d 698, 702 (Miss. 2013). Thus, the delegation of authority to define crimes and prescribe punishments to an executive branch agency could violate both the legislative vesting clause and the provisions of the Mississippi Constitution that require the separation of powers. Miss. Const. Art. I§§ 1,2; Art. IV§ 33; Howell at 81 (holding that the delegation of power to an administrative agency to increase punishment was unconstitutional).

2) Whether Joshua MaGee's claims that the indictment was defective for failing to inform him that § 97-3-2 classifies his offenses as violent crimes and also whether claims that § 97-3-2's omission from the indictment affected his sentences, resulted in equal-protection and due process violations. Miss. Code Ann. Sec. 97-3-2 (2014).

SUMMARY OF ARGUMENT

MaGee respectfully submits that he is entitled to relief because his indictment was fundamentally constitutionally illegal where it fell far short of providing adequate notice to Magee as to what statutes the state would seek his conviction and mandatory sentencing under, being Miss. Code Ann. Sec. 97-3-2, and here, where such failure deprived the Mississippi Circuit Court of Jurisdiction to proceed on such indictment.

ARGUMENT I

Exemptions from Procedural Bars

1.

As a PCR Movant, Joshua Magee, bears the burden to demonstrate his claims are not procedurally barred because an exception applies. *McComb v. State*, 135 So.3d 928, 931-32 (Miss. Ct. App. 2014). Under Mississippi law, Movant Joshua Magee asserts the "fundamental and constitutional rights exception" to overcome the three-year statutory time bar and successive writ bar. Miss. Code Ann. § 99-39-5() and §99-39-23(6), respectively. *Means v. State*, 43 So.3d 438, 441 (Miss. 2010).

Miss. Code Ann. Sec. 99-39-5 (2)(a)(i) provides the following:

(2) A motion for relief under this article shall be made within three (3) years after the time in which the petitioner's direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three (3) years after entry of the judgment of conviction. Excepted from this three-year statute of limitations are those cases in which the petitioner can demonstrate either:

(a)

(i) That there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence or that he has evidence, not reasonably discoverable at the time of trial, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence; or

Petitioner would aver that his motion challenges FUNDAMENTIAL CONSTITUTIONAL issues of legality of the conviction and sentence and is

entitled to the exception set out in Miss. Code Ann. Sec. 99-39-5 (1), notwithstanding the decision rendered by Mississippi in *Howell v. State*, 358 So.3d 613 (Miss 2024).

Moreover MaGee will submit that he was convicted and sentenced for the crime of sexual battery prior to the decision rendered by the Mississippi Court in *Howell v. State*, 358 So.3d 613 (Miss 2024). The *Howell* decision should not apply to MaGee as to disinherit MaGee or deprive him of a right or favorable procedure which was in effect at the time he was convicted and sentenced or when the alleged crime occurred. Such an action would make *Howell v. State*, 358 So.3d 613 (Miss 2024), be an ex post application of a law. McGee should be treated under the law which was in effect at the time of his conviction of sexual battery which recognized a fundamental constitutional violation, such as an illegal sentence, illegal conviction, or where trial court had no jurisdiction as being an exception and ground for post conviction relief in Mississippi.

ARGUMENT III

Movant argues that: 1) Joshua Magee has a liberty interest in not being subjected to the application of an unconstitutional practice in the classification of crimes being treated violent or non-violent, and not being

notified by the indictment as to the classification of the crime as being a violent crime pursuant to Miss. Code Ann. Sec. 97-3-2 (2014).

On July 1, 2014, the Mississippi Legislature enacted Miss. Code Ann. Sec. 97-3-2 (2014), which provided the following;

(1) The following shall be classified as crimes of violence:

(a) Driving under the influence as provided in Sections 63-11-30(5) and 63-11-30(12)(d);

(b) Murder and attempted murder as provided in Sections 97-1-7(2), 97-3-19, 97-3-23 and 97-3-25;

(c) Aggravated assault as provided in Sections 97-3-7(2)(a) and (b) and 97-3-7(4)(a);

(d) Manslaughter as provided in Sections 97-3-27, 97-3-29, 97-3-31, 97-3-33, 97-3-35, 97-3-39, 97-3-41, 97-3-43, 97-3-45 and 97-3-47;

(e) Killing of an unborn child as provided in Sections 97-3-37(2)(a) and 97-3-37(2)(b);

(f) Kidnapping as provided in Section 97-3-53;

(g) Human trafficking as provided in Section 97-3-54.1;

(h) Poisoning as provided in Section 97-3-61;

(i) Rape as provided in Sections 97-3-65 and 97-3-71;

(j) Robbery as provided in Sections 97-3-73 and 97-3-79;

(k) Sexual battery as provided in Section 97-3-95;

(l) Drive-by shooting or bombing as provided in Section 97-3-109;

(m) Carjacking as provided in Section 97-3-117;

(n) Felonious neglect, abuse or battery of a child as provided in Section 97-5-39;

(o) Burglary of a dwelling as provided in Sections 97-17-23 and 97-17-37;

(p) Use of explosives or weapons of mass destruction as provided in Section 97-37-25;

(q) Statutory rape as provided in Section 97-3-65(1), but this classification is rebuttable on hearing by a judge;

(r) Exploitation of a child as provided in Section 97-5-33;

(s) Gratification of lust as provided in Section 97-5-23; and
(t) Shooting into a dwelling as provided in Section 97-37-29.

(2) In any felony offense with a maximum sentence of no less than five (5) years, upon conviction, the judge may find and place in the sentencing order, on the record in open court, that the offense, while not listed in subsection (1) of this section, shall be classified as a crime of violence if the facts show that the defendant used physical force, or made a credible attempt or threat of physical force against another person as part of the criminal act. No person convicted of a crime of violence listed in this section is eligible for parole or for early release from the custody of the Department of Corrections until the person has served at least fifty percent (50%) of the sentence imposed by the court.

MaGee was charged by a two count indictment to have committed the crime of sexual battery on July 23, 2015. See Appendix 1, Attached hereto. Miss. Code Ann. Sec. 97-3-2 (1)(k) (2014) was already the law at that time. The indictment filed against MaGee on December 15, 2015, failed to provide or include within it the information regarding the crime as being a crime of violence under Miss. Code Ann. Sec. 97-3-2 (2014). MaGee would assert that the trial court was without jurisdiction to render any conviction and sentence upon either count where the indictment failed to provide sufficient notice of the law that such offenses were crimes of violence pursuant to the provisions of Miss. Code Ann. Sec. 97-3-2 (2014).

Mississippi Code Annotated Section 97-3-2, codified in 2014, defines sexual battery as a violent crime for the first time. Prior to that statute's

enactment, sexual battery under Miss. Code Ann. Sec. 97-3-95(1)(d) was not treated or considered automatically a crime of violence. *Hughes v. State*, 892 So. 2d 203, 211 (¶19) (Miss. 2004) (holding that rape, other than statutory rape, i.e., nonforcible, nonviolent sex, is a crime of violence). Moreover, the enactment of section 97-3-2 allowed that MaGee could be early releasable or parolable after serving 50% of such as opposed to the complete sentence being mandatory. Since the state failed to include Miss. Code Ann. Sec. 97-3-2 (2014), in MaGee's indictment, the trial court never included such information in the sentencing order thereby depriving MaGee of his right to be subjected to and applied under Miss. Code Ann. Sec. 97-3-2(2) (2014).

Before proceeding with MaGee's prosecution, the State was required to have filed an indictment with the circuit court setting forth Miss. Code Ann. Sec. 97-3-2 (2014) and placing MaGee on notice that he was charged under such code section with having committed a crime of violence. The failure to comply with such notice requirements deprived the trial court of jurisdiction and the underlying convictions, sentences, and anything which followed, are null and void. Therefore, the circuit court never obtained jurisdiction over MaGee on either of the two charges.

ARGUMENT IV

Joshua Magee has the right under the Equal Protection Clause of the Fourteenth Amendment to have his sentence computed in the same way similarly situated prisoners. See: *Smith v. State*, 477 So.2d 191, 195 (Miss.1985) (providing that an exception to procedural bars exists for assertions of errors affecting certain constitutional rights). (Claim of illegal sentence not time-barred or barred by res judicata); *Lockett v. State*, 582 So.2d 428,430 (Miss.1991)(denial of due process in sentencing is an exception to time bar); *Grubb v. State*, 584 So.2d 786,789 (Miss.1991) (illegal sentence exception to procedural bars); *Smith*, 477 So.2d at 95 (a deprivation of due process in sentencing "too significant a deprivation of liberty to be subjected to a procedural bar").

No person can be deprived of his liberty except by due process of law. Section 14, Article 3, Mississippi Constitution. This prohibition is intended to guarantee the protection of fundamental and constitutional rights. Where fundamental and constitutional rights are ignored, due process does not exist, and a fair trial in contemplation of the law cannot be had. *Brooks v. State*, 46 So.2d 94,97 (Miss.1950).

CONCLUSION

In conclusion, for the foregoing reasons, Mr. MaGee respectfully requests that this Court issue a writ of certiorari to review the judgment of the Mississippi Supreme Court.

Joshua MaGee

Joshua MaGee,
Petitioner, pro se

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: November 21, 2025

(Signature)

Joshua MaGee

CERTIFICATE OF SERVICE

This is to hereby certify that I, Joshua MaGee, have on this date served a true and correct copy of the above and foregoing PETITION FOR WRIT OF CERTIORARI AND ATTACHMENTS, by United States Postal Service, first class postage prepaid, to:

Honorable Lynn Fitch
P. O. Box 220
Jackson, MS 39205

This, the 21 day of November, 2025

BY:

Joshua MaGee

Joshua MaGee
SMCI, MDOC# 483761-123773

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