

410 So.3d 1066
Supreme Court of Mississippi.

Clyde Wendell SMITH

v.

STATE of Mississippi

No. 2019-DR-01492-SCT

|

February 04, 2025

Synopsis

Background: Defendant filed motion for leave to file successive petition for post-conviction relief.

Holdings: The Supreme Court, [Chamberlin, J.](#), held that:

petition was barred as untimely, and

defendant waived claims raised in petition.

Motion denied.

Procedural Posture(s): Post-Conviction Review.

EN BANC ORDER

[ROBERT P. CHAMBERLIN](#), JUSTICE

This matter is before the Court on the Motion for Leave to File Successive Petition for Post-Conviction Relief filed by Clyde Wendell Smith. Smith was convicted of capital murder in Leflore County in 1993. He was sentenced to death. The direct appeal of Smith's conviction and sentence was affirmed in [Smith v. State](#), 729 So. 2d 1191 (Miss. 1998). Smith's first petition for post-conviction relief was denied in part in [Smith v. State](#), 877 So. 2d 369 (Miss. 2004). Smith voluntarily dismissed the remaining [Atkins](#)¹ issue in 2016. At that point, the initial post-conviction proceedings came to a conclusion.

Now before the Court is Smith's second petition for post-conviction relief. Smith raises three issues in his petition. In response, the State maintains that each of Smith's claims is barred at this point.

Leave to proceed should be granted only if Smith's petition, exhibits, and the prior record show that Smith's claims are not procedurally barred and that they “present a substantial showing of the denial of a state or federal right[.]” [Miss. Code Ann. § 99-39-27\(5\)](#) (Rev. 2020); *see also* [Ronk v. State](#), 267 So. 3d 1239, 1247 (Miss. 2019). “Direct appeal [is] the principal means of reviewing all criminal convictions and sentences” [Miss. Code Ann. § 99-39-3\(2\)](#) (Rev. 2020). Review at this stage, with *1067 certain exceptions, is limited to issues that could not or should not have been reviewed at trial and in the direct appeal. [Miss. Code Ann. § 99-39-3\(2\)](#) (Rev. 2020); [Moffett v. State](#), 351 So. 3d 936, 942 (Miss. 2022); [Brown v. State](#), 798 So. 2d 481, 491 (Miss. 2001).

The petitioner must overcome several procedural or substantive bars. First, the mandate in Smith's direct appeal issued on April 12, 1999. The petition presently before the court was filed in November of 2023. This filing is subject to the one-year time bar. [Miss. Code Ann. § 99-39-5\(2\)\(b\)](#) (Rev. 2020); *see also* [Brown v. State](#), 306 So. 3d 719, 729 (Miss. 2020); [Jordan v. State](#), 213 So. 3d 40, 42 (Miss. 2016); [Havard v. State](#), 86 So. 3d 896, 899 (Miss. 2012). Further, Smith listed the “unexhausted” issues he raises now in a federal court filing submitted in December of 2018. Yet he waited five years to file this petition. Unless Smith can show that his claims are excepted, the petition is barred as untimely.

Second, as mentioned above, Smith has filed a previous petition for post-conviction relief. The claims raised in that petition were ultimately denied or dismissed. The petition now before the Court is subject to the successive writ bar set out in [Mississippi Code Section 99-39-27\(9\)](#) (Rev. 2020). “Absent an applicable exception, a successive motion for post-conviction relief is procedurally barred.” [Brown](#), 306 So. 3d at 729. Unless Smith meets an exception to the successive writ bar, his claims are precluded at this point.

Third, Smith is prohibited from re-raising claims that have been addressed in prior proceedings. “The doctrine of res judicata shall apply to all issues, both factual and legal, decided at trial and on direct appeal.” [Miss. Code Ann. § 99-39-21\(3\)](#) (Rev. 2020). “Res judicata also extends to those claims that could have been raised in prior proceedings but were not.” [Ambrose v. State](#), 323 So. 3d 482, 493 (Miss. 2021)(internal quotation marks omitted)(quoting [Brown](#), 306 So. 3d at 730).

Attachment A

Finally, Miss. Code Ann. § 99-3 9-21(2) (Rev. 2020) provides that “[t]he litigation of a factual issue at trial and on direct appeal of a specific state or federal legal theory or theories shall constitute a waiver of all other state or federal legal theories which could have been raised under said factual issue” Reframing an issue that has previously been considered and rejected is not allowed. *See Foster v. State*, 687 So. 2d 1124, 1136 (Miss. 1996); *Wiley v. State*, 517 So. 2d 1373, 1377 (Miss. 1987). Each of the three claims presented now either has been raised and rejected in prior proceedings or was capable of being raised.

After a complete review of Smith's petition, we find that all of the claims now before the Court are barred.

Additionally, in his petition, Smith made no attempt to argue that his present claims should be excepted from the bars.

We find that there is no applicable exception under the circumstances here.

Finally, Smith's claims do not contain merit entitling him to relief.

IT IS THEREFORE ORDERED that the Motion for Leave to File Successive Petition for Post-Conviction Relief filed by Clyde Wendell Smith is denied.

SO ORDERED, this the 4 day of February, 2025.

ALL JUSTICES AGREE.

All Citations

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Footnotes

¹ *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002).