

Serial: **221434**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2016-M-00507

***DAVID LEE RICE A/K/A DAVID L. RICE
A/K/A DAVID RICE***

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

EN BANC ORDER

This matter is before the Court, en banc, on the “Motion to Rescind Order as Unconstitutional and a Violation of Article 3, Section 25, Mississippi Constitution” filed pro se by David Lee Rice. Rice seeks to have the Court rescind its October 23, 2017, Order in this case number, in which the Court held that Rice

is hereby restricted from filing further petitions for post-conviction collateral relief (or pleadings in that nature) that are related to this conviction and sentence *in forma pauperis* until he has paid all outstanding sanctions. The Clerk of this Court shall not accept for filing any further petitions for post-conviction collateral relief (or pleading in that nature) from Rice that are related to this conviction and sentence unless he pays the applicable docket fees.

Having duly considered the motion, the Court finds that it should be denied.

Further, Rice’s application for leave to file a motion for post-conviction relief filed May 1, 2018, which is Rice’s sixteenth application for leave, should be dismissed for his failing to pay the applicable docket fee.

IT IS THEREFORE ORDERED that the “Motion to Rescind Order as Unconstitutional and a Violation of Article 3, Section 25, Mississippi Constitution” is hereby denied.

IT IS FURTHER ORDERED that the Application for Leave to Proceed is hereby dismissed for failure to pay the required docket fee.

SO ORDERED, this the 27th day of November, 2018.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR.,
CHIEF JUSTICE
FOR THE COURT

AGREE: WALLER, C.J., RANDOLPH, P.J., COLEMAN, MAXWELL, BEAM,
CHAMBERLIN, AND ISHEE, JJ.

KING, J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT
JOINED BY KITCHENS, P.J.

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KING, JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:

¶1. Today, this Court prioritizes efficiency over justice and bars David Lee Rice from its doors. On October 23, 2017, this Court found that Rice, an indigent defendant, had filed a frivolous petition for post-conviction relief and sanctioned Rice in the amount of \$2,000. The Court then restricted Rice from filing further petitions for post-conviction relief until Rice paid all outstanding sanctions. Rice now moves this Court to rescind its previous order. Because the imposition of monetary sanctions against indigent defendants and the restriction of access to the court system serve only to punish those defendants and to violate rights guaranteed by the United States and Mississippi Constitutions, I strongly oppose this Court’s order denying Rice’s motion to rescind this Court’s October 23, 2017, order.

¶2. This Court seems to tire of reading motions that it deems “frivolous” and imposes monetary sanctions on indigent defendants. The Court then bars those defendants, who in all likelihood are unable to pay the imposed sanctions, from future filings. In choosing to prioritize efficiency over justice, this Court forgets the oath that each justice took before assuming office. That oath stated in relevant part, “I . . . solemnly swear (or affirm) that I will

administer justice without respect to persons, and do equal right to the poor and to the rich. . . .” The Court ordered Rice, an indigent defendant, to pay a \$2,000 sanction. The Eighth Amendment of the United States Constitution provides that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. Surely a \$2,000 sanction imposed against an indigent defendant meets the definition of an excessive fine.

¶3. Yet even more concerning than the imposition of monetary sanctions on indigent defendants is this Court’s decision to restrict Rice from filing subsequent applications for post-conviction collateral relief. Article 3, section 25, of the Mississippi Constitution provides that “no person shall be debarred from prosecuting or defending *any civil cause for or against him or herself*, before any tribunal in the state, by him or herself, or counsel, or both.” Miss. Const. art. 3, § 26 (emphasis added). Pursuant to Mississippi Code Section 99-39-7, actions under the Uniform Post-Conviction Collateral Relief Act *are civil actions*. Miss. Code Ann. § 99-39-7 (Rev. 2007). Therefore, this State’s Constitution grants unfettered access in civil causes to any tribunal in the State.

¶4. The decision to cut off an indigent defendant’s right to proceed *in forma pauperis* is also a violation of that defendant’s fundamental right, for

Among the rights recognized by the Court as being fundamental are the rights to be free from invidious racial discrimination, to marry, to practice their religion, to communicate with free persons, to have due process in disciplinary proceedings, and to be free from cruel and unusual punishment. As a result of the recognition of these and other rights, the right of access to courts, which is necessary to vindicate all constitutional rights, also became a fundamental right.

Joseph T. Lukens, *The Prison Litigation Reform Act: Three Strikes and You're Out of Court-It May Be Effective, but Is It Constitutional?*, 70 Temp. L. Rev. 471, 474–75 (1997).

As United States Supreme Court Justice Thurgood Marshall stated,

In closing its doors today to another indigent litigant, the Court moves ever closer to the day when it leaves an indigent litigant with a meritorious claim out in the cold. And with each barrier that it places in the way of indigent litigants, and with each instance in which it castigates such litigants for having “abused the system,” . . . the Court can only reinforce in the hearts and minds of our society’s less fortunate members the unsettling message that their pleas are not welcome here.

In re Demos, 500 U.S. 16, 19, 111 S. Ct. 1569, 1571, 114 L. Ed. 2d 20 (1991) (Marshall, J., dissenting).

¶5. Instead of simply denying or dismissing those motions which lack merit, the Court seeks to punish the defendant for the frequency of his motion filing. See *In re McDonald*, 489 U.S. 180, 186–87, 109 S. Ct. 993, 997, 103 L. Ed. 2d 158 (1989) (Brennan, J., dissenting) (per curiam) (“I continue to find puzzling the Court’s fervor in ensuring that rights granted to the poor are not abused, even when so doing actually increases the drain on our limited resources.”). However, an individual who, even incorrectly, believes that she has been deprived of her freedom should not be expected to sit silently by and wait to be forgotten. “Historically, the convictions with the best chances of being overturned were those that got *repeatedly reviewed on appeal* or those chosen by legal institutions such as the Innocence Project and the Center on Wrongful Convictions.” Emily Barone, *The Wrongly Convicted: Why more falsely accused people are being exonerated today than ever before*,

Time, <http://time.com/wrongly-convicted/> (last visited November 1, 2018) (emphasis added).

The Washington Post reports that

the average time served for the 1,625 exonerated individuals in the registry is more than nine years. Last year, three innocent murder defendants in Cleveland were exonerated 39 years after they were convicted—they spent their entire adult lives in prison—and even they were lucky: We know without doubt that the vast majority of innocent defendants who are convicted of crimes are never identified and cleared.

Samuel Gross, Opinion, *The Staggering Number of Wrongful Convictions in America*, Washington Post (July 24, 2015), http://wapo.st/1SGHcyd?tid=ss_mail&utm_term=.4bed8ad6f2cc. Rather than imposing harsh sanctions and restricting access to the courts, I would rescind this Court's prior order and simply dismiss or deny motions which lack merit. Accordingly, I disagree with the Court's order denying Rice's requested relief.

KITCHENS, P.J., JOINS THIS SEPARATE WRITTEN STATEMENT.