

Serial: 222096

IN THE SUPREME COURT OF MISSISSIPPI

No. 2016-CT-01785-SCT

*EDMOND DENTON REEVES A/K/A
EDMOND D. REEVES*

Appellant/Petitioner

v.

STATE OF MISSISSIPPI

Appellee/Respondent

ORDER

Before the Court is Edmond Reeves's Motion for Rehearing, which is in the nature of a petition for writ of certiorari and will be treated as such. After due consideration, the Court finds the petition should be denied.

IT IS THEREFORE ORDERED that Edmond Reeves's Motion for Rehearing, which is in the nature of a petition for writ of certiorari, is hereby denied.

SO ORDERED, this the 31st day of October, 2018.

/s/ Josiah Dennis Coleman

JOSIAH DENNIS COLEMAN, JUSTICE

ALL JUSTICES AGREE TO DENY.

KITCHENS, P.J., SPECIALLY CONCURS WITH SEPARATE WRITTEN STATEMENT
JOINED BY KING, J.

IN THE SUPREME COURT OF MISSISSIPPI

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EDMOND DENTON REEVES

v.

STATE OF MISSISSIPPI

KITCHENS, PRESIDING JUSTICE, SPECIALLY CONCURRING WITH THE ORDER WITH SEPARATE WRITTEN STATEMENT:

- ¶1. I concur with the order out of deference to the doctrine of *stare decisis*.
- ¶2. On October 23, 2012, Edmond Reeves was indicted for, *inter alia*, murder under Mississippi Code Annotated Section 97-3-19(1)(a). As of July 1, 2013, the legislature amended Section 97-3-19 to create the crime of second-degree murder. Miss. Code Ann. § 97-3-19(1)(b) (Rev. 2014) (amended by 2013 Miss. Laws ch. 555 (S.B. 2377), § 1, eff. July 1, 2013). On October 17, 2013, Reeves signed a “waiver of indictment and agreement to prosecution by information” on the charge of second-degree murder and a “waiver of constitutional rights and ex post facto law.” On the same day, Reeves pled guilty to second-degree murder.
- ¶3. Reeves appealed, arguing his conviction violates both the federal and state Constitutions’ prohibition on *ex post facto* laws.¹ The record shows that Reeves’s attorney explained to him the issues of *ex post facto* laws as they relate to his charges and further that Reeves had signed a waiver ostensibly surrendering his right to object to any *ex post facto*

¹Reeves raises the same issue in his petition for a writ of *certiorari*.

violations. I acknowledge the waiver, but I question whether an individual can waive an *ex post facto* violation.²

¶4. When presented with the same question, the Texas Criminal Court of Appeals observed,

The United States Constitution provides categorically that “[n]o ... ex post facto Law shall be passed.” U.S. Const. art. I § 9 cl. 3. So does the Texas Constitution. Tex. Const. art. I § 16. It is clear, both from the plain language of these provisions and from the way in which this Court has implemented them in the past, that ex post facto prohibitions do not merely confer upon the people a waivable or forfeitable right not to have their conduct penalized retroactively. Indeed, the constitutional prohibition against ex post facto legislation is not really an individual right at all. It is a categorical prohibition directed by the people to their government. Short of a constitutional amendment, the people may not waive this prohibition, either individually or collectively, any more than they may consent to be imprisoned for conduct which does not constitute a crime.

Jeppert v. State, 908 S.W.2d 217, 220 (Tex. Crim. App. 1995); see also *Charles v. State*, 287 P.3d 779, 788 (Alaska Ct. App. 2012) (making a similar observation: “[T]he constitutional prohibition on ex post facto punishments is not premised on an individual defendant’s right to a lesser punishment. Rather, the ex post facto clause is a restraint on the authority of the legislature itself[.]”).

¶5. The *Jeppert* court’s well-reasoned opinion expresses what likely was the intent of the framers of the federal Constitution, given the strong opposition of the framers to *ex post facto* laws:

The establishment of the writ of habeas corpus, *the prohibition of ex-post-facto laws*, and of [titles of nobility, to which we have no corresponding provision

²The United States Supreme Court has not addressed yet the issue before us with respect to the federal Constitution.

in our constitution], are perhaps greater securities to liberty and republicanism than any it contains. The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishments for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, *the favorite and most formidable instruments of tyranny*.

The Federalist, No. 84 (Alexander Hamilton) (emphasis added).

¶6. Nevertheless, this Court has held that an individual can waive *ex post facto* violations.

Twillie v. State, 892 So. 2d 187, 190 (¶ 11) (Miss. 2004). Therefore, I am constrained to join the above order.

KING, J., JOINS THIS SEPARATE WRITTEN STATEMENT.