Serial: 225435

IN THE SUPREME COURT OF MISSISSIPPI

No. 2016-M-00454

THOMAS TAYLOR A/K/A THOMAS EDWARD TAYLOR A/K/A TINKER ***Petitioner***

v.

STATE OF MISSISSIPPI ***Respondent***

ORDER

Before the en banc Court is Thomas Taylor's *pro se* Application for Leave to Proceed in the Trial Court. In his application, Taylor requests leave from this Court to file a motion for post-conviction relief in the trial court on the ground that there is existing DNA evidence available for testing.

Taylor was convicted of capital rape and sentenced to life in prison in the custody of the Mississippi Department of Corrections, and the Court of Appeals affirmed Taylor's conviction and sentence. ***Taylor v. State***, 744 So. 2d 306 (Miss. Ct. App. 1999). Since 1999, Taylor has filed approximately thirty petitions in the nature of post-conviction relief petitions, and each has been dismissed or denied. On June 5, 2018, a panel consisting of Chief Justice Waller and Justice Coleman and Justice Maxwell dismissed Taylor's Application for Leave to Proceed in the Trial Court, which requested DNA testing, as time-barred and barred as a successive application. We find that Taylor's instant application raises the identical ground for relief; therefore, the instant application warrants a similar result— deny as time-barred and barred as a successive writ.

Also in our June 5, 2018 order, Taylor was warned that any future filings deemed

frivolous may result in the imposition of monetary sanctions or restrictions on filing applications for post-conviction relief (or pleadings in that nature) *in forma pauperis*. We find that Taylor's instant application is frivolous; therefore, Taylor should be restricted from filing further petitions for post-conviction relief (or pleadings in that nature) *in forma pauperis* that are related to this conviction and sentence. *See* Order, ***Walton v. State***, 2009-M-00329 (Miss. April 12, 2018).

IT IS THEREFORE ORDERED that Thomas Taylor's *pro se* Application for Leave to Proceed in the Trial Court is hereby denied.

IT IS FURTHER ORDERED that Thomas Taylor is hereby restricted from filing further petitions for post-conviction relief (or pleadings in that nature) that are related to his conviction of capital rape and corresponding sentence. The Clerk of this Court shall not accept for filing any further petitions for post-conviction relief (or pleadings in that nature) *in forma pauperis* from Taylor that are related to his conviction and sentence.

SO ORDERED, this the 25th day of July, 2019.

/s/ James D. Maxwell II

JAMES D. MAXWELL II, JUSTICE
FOR THE COURT

TO DENY AND ISSUE SANCTIONS: RANDOLPH, C.J., MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ.

TO DENY AND ISSUE SANCTIONS WARNING: COLEMAN, J.

TO DISMISS: KITCHENS AND KING, P.JJ.

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

IN THE SUPREME COURT OF MISSISSIPPI

No. 2016-M-00454

THOMAS TAYLOR A/K/A THOMAS EDWARD TAYLOR A/K/A TINKER

v.

STATE OF MISSISSIPPI

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

¶1. Today, this Court prioritizes efficiency over justice and bars Thomas Taylor from its doors. 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 restricting Taylor from filing further petitions for post-conviction collateral relief *in forma pauperis*.

¶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. . . ." Yet this Court deems the frequency of Taylor's filing to be too onerous a burden and

decides to restrict Taylor from filing subsequent applications for post-conviction collateral relief. *See* ***In re McDonald***, 489 U.S. 180, 186–87, 109 S. Ct. 993, 997, 103 L. Ed. 2d 158 (1989) (Brennan, J., dissenting) ("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.").

¶3. 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). Mississippi Code Section 99-39-7 provides that actions under the Uniform Post-Conviction Collateral Relief Act *are civil actions*. Miss. Code Ann. § 99-39-7 (Rev. 2015). Therefore, this State's Constitution grants unfettered access in civil causes to any tribunal in the State. The Court's decision to deny Taylor's filing actions *in forma pauperis* is a violation of his State constitutional right to access to the courts.

¶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 to vindicate his constitutional rights, 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). Instead of simply denying or dismissing those motions that lack merit, the Court seeks to punish Taylor for arguing his claims.

¶5. Although each justice took an oath to do equal right to the poor and rich, this Court does not deny access to the court defendants who are fortunate enough to have monetary resources. Those defendants may file endless petitions, while indigent defendants are forced to sit silently by. 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 Nov. 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.

¶6. Rather than violating Taylor's fundamental rights by restricting his access to the courts, I would simply dismiss his petition for post-conviction relief.

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