

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2018-CP-01494-COA

**WILLIAM ANTONIO AVERY A/K/A WILLIAM
A. AVERY A/K/A WILLIAM KEN AVERY A/K/A
WILLIAM A. KEN AVERY A/K/A WILLIAM
AVERY A/K/A KEN AVERY**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT: 10/03/2018
TRIAL JUDGE: HON. LESTER F. WILLIAMSON JR.
COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT: WILLIAM ANTONIO AVERY (PRO SE)
ATTORNEY FOR APPELLEE: ALICIA MARIE AINSWORTH
NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
DISPOSITION: AFFIRMED - 11/05/2019
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

BEFORE J. WILSON, P.J., WESTBROOKS AND LAWRENCE, JJ.

J. WILSON, P.J., FOR THE COURT:

¶1. William Antonio Avery is serving sentences totaling ninety-nine-plus years for felonies that he committed between 2002 and 2010. Avery has filed a number of motions for post-conviction relief (PCR) attacking his convictions and sentences. The circuit court has denied all of Avery's motions, and we have affirmed when Avery has appealed. Avery's convictions, sentences, and prior PCR motions are discussed in *Avery v. State*, No. 2017-CP-00187-COA, 2019 WL 350636, at *1-*2 (¶¶2-8) (Miss. Ct. App. Jan. 29, 2019), *cert. dismissed*, 276 So. 3d 661 (Miss. 2019).

¶2. Avery's present PCR motion attacks his 2003 guilty plea to possession of

methamphetamine. As part of Avery's plea bargain, the district attorney recommended a sentence of five years. However, Avery acknowledged in his plea petition that he was entering a "blind plea" and that the court was not required to follow the district attorney's recommendation. After accepting Avery's plea, the court sentenced Avery to serve fifteen years in the custody of the Department of Corrections with ten years suspended, five years to serve, and five years of reporting probation.

¶3. In his present PCR motion, which he filed in April 2018, Avery alleged that his attorney provided ineffective assistance of counsel by failing to move the court to allow him to withdraw his guilty plea after his sentence was pronounced. The circuit court denied his motion as time-barred, successive, and without merit. The circuit court also observed that Avery was facing a possible sentence of one hundred twenty years if he had not pled guilty¹ and that Avery would not have served more than five years in prison if he had not violated his probation by committing additional crimes. Avery filed a notice of appeal.

¶4. We affirm. Avery's present PCR motion is barred because it was filed more than three years after he pled guilty and because he has attacked the same conviction without success in prior motions. Miss. Code Ann. § 99-39-5(2) (Rev. 2015) (PCR motions are subject to a three-year statute of limitations.); Miss. Code Ann. § 99-39-23(6) (Rev. 2015)

¹ Avery was indicted for possession with the intent to transfer, which at the time was punishable by imprisonment for up to thirty years. Miss. Code Ann. § 41-21-139(b)(1) (Rev. 2001). The indictment also charged that Avery committed the crime while in possession of a firearm and that Avery had been convicted of a prior drug offense. Each of those circumstances, if proven, would have authorized the court to double Avery's sentence, for a total sentence of up to one hundred twenty years. Miss. Code Ann. §§ 41-29-147 & -152 (Rev. 2018); *Mosley v. State*, 930 So. 2d 459, 462-65 (¶¶15-24) (Miss. Ct. App. 2006) (concluding that "stacking" of these sentencing enhancements was permitted).

(An order denying a PCR motion “shall be a bar to a second or successive [PCR] motion.”). In addition, in a prior appeal this Court held that Avery’s plea was intelligent, knowing, and voluntary, and we rejected Avery’s claim that his attorney provided ineffective assistance in connection with the plea. *Avery v. State*, 102 So. 3d 1178, 1181-82 (¶¶10-12) (Miss. Ct. App. 2012), *cert. denied*, 102 So. 3d 272 (Miss. 2012). Avery’s present PCR motion simply repackages claims that we have already rejected. Thus, the circuit court correctly denied Avery’s motion as time-barred, successive, and without merit.

¶5. **AFFIRMED.**

BARNES, C.J., CARLTON, P.J., GREENLEE, WESTBROOKS, TINDELL, McDONALD, LAWRENCE, McCARTY AND C. WILSON, JJ., CONCUR.