

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-CA-01328-SCT

WILLIAM MATTHEW WILSON a/k/a WILLIE

v.

STATE OF MISSISSIPPI

DATE OF JUDGMENT:	07/15/2019
TRIAL JUDGE:	HON. LARRY E. ROBERTS
TRIAL COURT ATTORNEYS:	WILLIAM R. LABARRE KATHERINE ELIZABETH POOR CAMERON LEIGH BENTON LADONNA C. HOLLAND SCOTT A. C. JOHNSON THOMAS M. FORTNER
COURT FROM WHICH APPEALED:	LEE COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: WILLIAM R. LABARRE KATHERINE ELIZABETH POOR
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: CANDICE LEIGH RUCKER
NATURE OF THE CASE:	CIVIL - DEATH PENALTY - POST CONVICTION
DISPOSITION:	AFFIRMED - 12/03/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

COLEMAN, JUSTICE, FOR THE COURT:

¶1. The case *sub judice* is an appeal from an evidentiary hearing in Lee County Circuit Court. The court set aside William Matthew Wilson's death sentence; however, the court declined to set aside Wilson's guilty plea. Wilson did not appeal that decision in the time allowed under Mississippi Rule of Appellate Procedure 4. Wilson argued that the failure to

file an appeal was through no fault of his own and that good cause existed to grant his out-of-time appeal. The circuit court found that it did not have jurisdiction to grant the out-of-time appeal or, in the alternative, that Wilson had failed to demonstrate that good cause existed to grant an out-of-time appeal. Wilson appeals.

FACTS AND PROCEDURAL HISTORY

¶2. Wilson was charged with capital murder and felonious child abuse. During the pendency of Wilson's case, he expressed dissatisfaction with his trial counsel's failure to visit or communicate with him. When Wilson initially attempted to plead guilty to capital murder and the separate child-abuse count based on a plea agreement, the judge refused the guilty plea because Wilson claimed he was taking the plea because he did not think he could get a fair trial. The State withdrew its sentencing recommendation and stated that it would seek the death penalty. Wilson pled guilty once again, and he was sentenced to death for capital murder and twenty years for felonious child abuse. Wilson's direct appeal was denied, and the Mississippi Supreme Court declined to address arguments pertaining to ineffective assistance of counsel and loss of Wilson's plea agreement, stating that such arguments were better suited to post-conviction review. *Wilson v. State*, 21 So. 3d 572, 580 (¶ 23) (Miss. 2009). The Mississippi Office of Capital Post-Conviction Counsel filed a petition for post-conviction relief on behalf of Wilson, challenging the validity of Wilson's guilty plea. It also filed a motion for leave to proceed in the trial court with a petition for post-conviction relief challenging the validity of Wilson's death sentence. On post-conviction review, the Mississippi Supreme Court addressed the validity of the death

sentence. The Court held that Wilson was entitled to an evidentiary hearing to address the following claims:

that his trial counsel did not properly communicate with him; that his trial counsel did not properly investigate the case; that his trial counsel did not prepare for the penalty phase; that his trial counsel did not present adequate mitigation evidence; and that his trial counsel did not adequately prepare for Wilson's case, including researching the consequences of a defendant's waiver of a jury at sentencing. Wilson also is entitled to an evidentiary hearing on his claims that his waiver of a jury during his sentencing trial was not knowingly, intelligently, and voluntarily entered and whether that waiver was procedurally flawed.

Wilson v. State, 81 So. 3d 1067, 1096-97 (¶ 54) (Miss. 2012).

¶3. On remand, the two post-conviction actions were consolidated. After the evidentiary hearing, the circuit court issued conclusions of law and findings of fact on January 4, 2018, and found, "Not only did trial counsel fail to communicate with Mr. Wilson, they also failed to conduct an adequate mitigation investigation and likewise failed to prepare for the penalty phase which followed Mr. Wilson's guilty plea." Accordingly, the court set aside Wilson's sentence of death. The circuit court further found that, "separate and apart from the failure-to-communicate issue, the forensic clinical psychologist who performed Mr. Wilson's competency evaluation was unequivocal that Mr. Wilson was competent to consider and enter a plea in his case." Accordingly, the circuit court did not set aside Wilson's guilty plea. The circuit court issued an opinion and final judgment on post-conviction relief on January 25, 2018, remanding the case for resentencing. No notice of appeal was filed by the Office of Post-Conviction Counsel on behalf of Wilson. Wilson claims he was unaware that he could appeal the circuit court's decision. On April 4, 2019, Wilson filed a motion for leave

to file an out-of-time appeal. The circuit court found that it did not have jurisdiction to reopen the time for filing an appeal. In the alternative, the circuit court found that Wilson failed to demonstrate good cause to grant an out-of-time appeal. Wilson appeals.

STANDARD OF REVIEW

¶4. “This Court reviews the findings of an evidentiary hearing in a post-conviction relief case for clear error.” *Diggs v. State*, 784 So. 2d 955, 956 (¶ 4) (Miss. 2001). “However, questions of law raised in such evidentiary hearings are reviewed de novo.” *Id.* (citing *Brown v. State*, 731 So. 2d 595, 598 (¶ 6) (Miss. 1999)). “Jurisdiction is a question of law, and the Court review[s] questions of law de novo.” *Era Franchise Sys., Inc. v. Mathis*, 931 So. 2d 1278, 1280 (¶ 7) (Miss. 2006) (alteration in original) (internal quotation marks omitted) (quoting *Union Nat’l Life Ins. Co. v. Crosby*, 870 So. 2d 1175, 1178 (¶ 2) (Miss. 2004)).

DISCUSSION

¶5. Wilson argues that he wished to pursue an appeal but that he did not believe he had an attorney; thus, he says, through no fault of his own, no appeal was filed. The circuit court found that it did not have jurisdiction to grant the out-of-time appeal or, in the alternative, that Wilson did not demonstrate good cause to grant the out-of-time appeal.

I. The circuit court did not have the authority to grant an out-of-time appeal.

¶6. Under Mississippi Rule of Appellate Procedure 4(a), a notice of appeal must be filed within thirty days of the entry of judgment. M.R.A.P. 4(a). Rule 4(g) allows an extension of thirty days for a party to file a notice of appeal if good cause exists. M.R.A.P. 4(g).

Finally, Rule 4(h) allows for 180 days to file a notice of appeal but only if a party that was entitled to a notice of entry of judgment did not receive one. M.R.A.P. 4(h). Wilson was beyond all of the applicable deadlines when he filed his out of time appeal; thus, the appeal can only be granted under Mississippi Rule of Appellate Procedure 2(c). Rule 2(c) states,

In the interest of expediting decision, or for other good cause shown, the Supreme Court . . . may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction. The time for taking an appeal under Rules 4 or 5 may be extended in criminal and post-conviction cases, but not in civil cases.

M.R.A.P. 2(c).

¶7. Under Rule 2(c), the Supreme Court may suspend the requirements and grant an out-of-time appeal. However, Wilson cites the Court’s recent unanimous decision in *Smith v. State*, 290 So. 3d 1244, 1246 (Miss. 2020), which states that under Mississippi Code Section 99-39-5(1) (Rev. 2015), a circuit court has jurisdiction to hear an out-of-time appeal under the Uniform Post-Conviction Collateral Relief Act. Under Mississippi Code Section 99-39-7 (Rev. 2015), a motion filed under UPCCRA “shall be filed as an original civil action in the trial court” However, in the case *sub judice*, Wilson’s appeal was not a post-conviction motion for an out-of-time appeal. Instead, his appeal was a normal motion for an out-of-time appeal filed under the normal Rules of Appellate Procedure. “We find that the motion was filed more than 180 days after the entry of the order[;] therefore, the trial court had no jurisdiction to consider the motion.” *Edmond v. State*, 991 So. 2d 588, 592 (¶ 18) (Miss. 2008) (citing *McGruder v. State*, 886 So. 2d 1, 2 (¶ 4) (Miss. 2003)). Additionally, the Court has stated,

The rules makes provision for an extension to be granted in the trial court upon motion filed within thirty days after the expiration of the time otherwise allowed. No provision is made authorizing the trial court, sua sponte or on motion filed in that court, to thereafter grant an out-of-time appeal.

McGruder, 886 So. 2d at 2 (¶ 4).

¶8. Wilson incorrectly filed his motion for an out-of-time appeal in the circuit court. Accordingly, the circuit court did not have jurisdiction to grant an out-of-time appeal.

CONCLUSION

¶9. Under the Mississippi Rules of Appellate Procedure, the Supreme Court may suspend the rules and grant an out-of-time appeal. The circuit court has no jurisdiction to do so. Accordingly, the judgment of the Lee County Circuit Court is affirmed.

¶10. **AFFIRMED.**

RANDOLPH, C.J., MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR. KING, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, P.J.

KING, PRESIDING JUSTICE, DISSENTING:

¶11. I believe that this Court should suspend the Rules of Appellate Procedure and allow Wilson’s out-of-time appeal; therefore, I respectfully dissent.

¶12. The majority’s decision seems to rest entirely on semantics. It states that “Wilson incorrectly filed his motion for an out-of-time appeal in the circuit court.” Maj. Op. ¶ 8. In his brief, Wilson acknowledges that the circuit court lacked jurisdiction to allow an out of time appeal, but he asks this Court to use its authority to suspend the Rules of Appellate Procedure to allow his out-of-time appeal. The majority’s opinion seems to hinge on the notion that Wilson’s brief is not styled a Rule 27 motion. M.R.A.P. 27(a).

¶13. Mississippi Rule of Appellate Procedure 2(c) allows this Court to “suspend the requirements or provisions of any of these rules” “[i]n the interest of expediting decision, or for other good cause shown[.]” M.R.A.P. 2(c). The Court may do so “on application of a party or on its own motion.” *Id.* The rule provides that “[t]he time for taking an appeal under Rules 4 or 5 may be extended in criminal and post-conviction cases” *Id.* Wilson’s specific requests in his brief that this Court suspend the rules under M.R.A.P. 2(c) constitute an “application of a party” to suspend the rules. Even if the rules contemplate that a formal motion be filed, we should suspend the rules and treat Wilson’s brief as a Rule 27 motion in the interest of justice and judicial economy, or we should suspend the rules on our own motion. The majority instead seems to want to force Wilson to file a motion styled a Rule 27 motion in this Court that would make the same arguments he already makes in his brief. This is a waste of judicial resources and a waste of resources for both Wilson’s attorneys and the State’s attorneys.

¶14. In treating Wilson’s brief as a proper application to suspend the rules, this Court should allow his out-of-time appeal. “We may suspend Rules 2 and 4 ‘when justice demands’ to allow an out-of-time appeal in criminal cases.” *McGruder v. State*, 886 So. 2d 1, 2 (Miss. 2003) (quoting *Fair v. State*, 571 So. 2d 965, 966 (Miss. 1990)). When a criminal defendant “through no fault of his own is effectively denied his right to perfect his appeal within the time prescribed by law by the acts of his attorney or the trial court[.]” this Court should grant an out-of-time appeal. *McGruder*, 886 So. 2d at 2 (quoting *Jones v. State*, 355 So. 2d 89, 90 (Miss. 1978), *superseded by statute on other grounds as recognized in*

Chapman v. State, 250 So. 3d 429 (Miss. 2018)). Wilson’s attorney failed to advise him regarding his right to appeal the trial court’s refusal to set aside his guilty plea. He also advised him that he was no longer his attorney.¹ Wilson, therefore, not knowing he could appeal the refusal to set aside the guilty plea, and believing that he did not have an attorney, failed to timely perfect his appeal. We should consequently grant Wilson’s application for an out-of-time appeal and allow the case to proceed on the merits.

KITCHENS, P.J., JOINS THIS OPINION.

¹Because Wilson’s case was placed back on the active docket and because he was no longer on death row, statutory law provided that the Office of Capital Post-Conviction Counsel could no longer represent him.