

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-CA-01756-COA

JOSEPH LANDON BLANKENSHIP

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT: 11/01/2019
TRIAL JUDGE: HON. GERALD W. CHATHAM SR.
COURT FROM WHICH APPEALED: DESOTO COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT: CHRISTOPHER MICHAEL FINN
CHERYL ANN WEBSTER
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BARBARA WAKELAND BYRD
NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
DISPOSITION: AFFIRMED - 12/01/2020
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

BEFORE BARNES, C.J., McDONALD AND LAWRENCE, JJ.

LAWRENCE, J., FOR THE COURT:

¶1. On November 21, 2017, Joseph Blankenship pled guilty to one count of child exploitation pursuant to Mississippi Code Annotated section 97-5-33(5) (Rev. 2014). The DeSoto County Circuit Court sentenced him to forty years in the custody of the Mississippi Department of Corrections, with thirty years suspended and ten years to serve, followed by thirty years of post-release supervision (PRS).¹

¶2. On April 5, 2019, Blankenship filed a motion for post-conviction relief (PCR),

¹ Specifically, the court sentenced Blankenship to five years of reporting PRS and twenty-five years of non-reporting PRS.

arguing that his parole ineligibility pursuant to Mississippi Code Annotated sections 47-7-3(1)(g)(i) (Rev. 2015) and 97-3-2(1)(r) (Rev. 2014) violated his due process rights. He further argued that the issue of whether he committed a crime of violence should have been submitted to a jury. The circuit court ordered the State to file a response, and the State complied. After review, the circuit court summarily denied Blankenship's motion. Blankenship appealed. We find no error and affirm.

STANDARD OF REVIEW

¶3. “When reviewing a trial court’s denial or dismissal of a [PCR motion], we will only disturb the trial court’s factual findings if they are clearly erroneous; however, we review legal conclusions under a de novo standard of review.” *Chapman v. State*, 167 So. 3d 1170, 1172 (¶3) (Miss. 2015).

ANALYSIS

¶4. Blankenship was convicted of child exploitation pursuant to section 97-5-33(5) in 2017. Section 47-7-3(1)(g)(i) states, “No person who, on or after July 1, 2014, is convicted of a crime of violence pursuant to Section 97-3-2, a sex crime[,] or an offense that specifically prohibits parole release shall be eligible for parole.” Section 97-3-2(1)(r) classifies child exploitation as a crime of violence. As a result, Blankenship was classified as a violent offender and a sex offender. *See* Miss. Code Ann. § 45-33-23(h)(viii) (Rev. 2015).

1. Blankenship has no constitutional right to parole.

¶5. Blankenship first argues that his parole ineligibility based on his violent-offender

status violates his constitutional right to due process. However, both the Mississippi Supreme Court and this Court have held that “prisoners have no constitutionally recognized liberty interest in parole.” *Ducksworth v. State*, 174 So. 3d 323, 324 (¶8) (Miss. Ct. App. 2015) (quoting *Vice v. State*, 679 So. 2d 205, 208 (Miss. 1996)). This is because “[p]arole is not a judicial matter, but one of legislative grace.” *Id.* at 325 (¶8) (citing *Mitchell v. State*, 795 So. 2d 620, 623 (¶8) (Miss. Ct. App. 2001)).

¶6. Equally important, Blankenship’s argument is without merit because he was convicted of a sex crime, which also renders him ineligible for parole. Mississippi Code Annotated section 47-7-3(1)(b) (Rev. 2015) states, “Any person who shall have been convicted of a sex crime shall not be released on parole except for a person under the age of nineteen (19) who has been convicted under Section 97-3-67.” Blankenship clearly does not fall within that exception. Further, section 47-7-3(1)(g)(i), stated above, explicitly provides that any person convicted of a sex crime after July 1, 2014, is ineligible for parole. Accordingly, his argument is without merit.

2. The circuit court was not required to submit to a jury the issue of whether Blankenship committed a crime of violence.

¶7. Blankenship also argues that a jury should have decided whether the crime he committed was a crime of violence in accordance with section 97-3-2. The Mississippi Supreme Court squarely addressed this issue in *Bowman v. State*, 283 So. 3d 154, 168 (¶55) (Miss. 2019), stating that section 97-3-2 “does not impose any *sentence* on a criminal defendant that would require a jury’s determination of guilt Rather, section 97-3-2 is an *enhancement* that, along with Mississippi Code Section 47-7-3(1)(g)(i) . . . in specific

instances, deals solely with parole eligibility and early release.” *Id.* (citing *Fogleman v. State*, 283 So. 3d 685, 692 (¶25) (Miss. 2019)). Finally, the supreme court held in *Bowman* that there was no violation of the defendant’s “constitutional rights to due process, trial by an impartial jury, or a jury finding guilt on all elements of the offense beyond a reasonable doubt.” *Id.* As a result of the clear rulings in *Bowman* and *Fogleman*, this issue is without merit.

CONCLUSION

¶8. Because Blankenship was convicted of a sex crime and a per se crime of violence in accordance with section 97-3-2(1)(r), he is ineligible for parole. *See* Miss. Code Ann. §§ 47-7-3(1)(g)(i) & 97-5-33(5). Accordingly, we affirm the circuit court’s judgment.

¶9. **AFFIRMED.**

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