

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 1999-CP-00530-COA**

DANNY TOWNSEND

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT: 02/22/1999
TRIAL JUDGE: HON. W. SWAN YERGER
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT: PRO SE
ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: MIKE MOORE
JEFFREY A. KLINGFUSS
NATURE OF THE CASE: CRIMINAL - POST-CONVICTION RELIEF
TRIAL COURT DISPOSITION: 02/22/1999: THE MOTION FOR POST CONVICTION
RELIEF IS DISMISSED WITH PREJUDICE. 02/22/1999.
DISPOSITION: AFFIRMED-11/21/00
MOTION FOR REHEARING FILED: 12/4/2000; denied 1/30/2001
CERTIORARI FILED: 2/23/2001; denied 4/26/2001
MANDATE ISSUED: 2/20/2001

BEFORE KING, P.J., LEE, AND MYERS, JJ.

KING, P.J., FOR THE COURT:

¶1. Danny Townsend (Townsend) perfected this appeal from an order of the Circuit Court of Hinds County, Mississippi denying post-conviction relief. Townsend was convicted of murder and sentenced to serve life in prison. This sentence was to run concurrently with a previous sentence of twenty-two years for robbery. The following allegations of error are taken verbatim from appellant's brief: 1). Whether petitioner's plea of guilty to murder was voluntarily and intelligently entered; 2) whether petitioner was subjected to the imposition of an *ex post facto* law; and 3) whether petitioner was denied his constitutional right to effective assistance of counsel as guaranteed by the sixth amendment.

FACTS

¶2. In 1979, Townsend was convicted of two counts of armed robbery. He received two concurrent twenty-two year sentences with nineteen years suspended, three years to serve and five years of supervised probation. In 1982 while on probation, Townsend was indicted by the Grand Jury of Hinds County for murder. In September 1982, Townsend pled guilty to this charge and was sentenced to life in prison in the custody of the Mississippi Department of Corrections. Townsend's suspended robbery sentences were

revoked, and he was required to serve them concurrently with his life sentence for murder.

¶3. In 1985, Townsend filed a motion to withdraw his guilty plea. The Hinds County Circuit Court denied Townsend's motion. Townsend appealed that denial to the Mississippi Supreme Court. That court affirmed the circuit court's decision denying post-conviction relief. In 1988, Townsend again sought post-conviction relief from his 1982 guilty plea. The circuit court denied post-conviction relief because Townsend's request was successive and therefore barred. He appealed that denial to the Mississippi Supreme Court which again affirmed the circuit court's decision. In May 1998, Townsend filed a motion to vacate sentence with the Hinds County Circuit Court. That motion was denied. Aggrieved by the circuit court's denial of his motion, Townsend filed this appeal.

ANALYSIS

¶4. While Townsend has raised several issues, the record indicates that he has filed two previous post-conviction relief petitions. In 1985, Townsend filed a petition claiming the trial court erred by failing to grant him an evidentiary hearing to withdraw his guilty plea. In 1988, Townsend filed his second request for post-conviction relief citing ineffective assistance of counsel and that his plea was not knowingly and intelligently made. Both cases were appealed to the Mississippi Supreme Court. The court denied relief in both instances.

¶5. Townsend again seeks post-conviction relief raising the same claims as his 1988 motion. Successive petitions for post-conviction relief are barred. Miss. Code Ann. §99-39-27(9)(Supp. 1999) states that a dismissal or denial of post-conviction relief is a final judgment and is a bar to a second or successive motion. However, he has raised the additional claim of subjection to an ex post facto law. The failure to raise a claim either at trial or on direct appeal is a procedural bar to the consideration of that. Miss. Code Ann. §99-39-21(Rev. 1994). Accordingly, this action is procedurally barred.

¶6. Townsend's claim is also time barred. He was sentenced in 1982 prior to the enactment of Miss. Code Ann. § 99-39-5(2)(Rev. 1994)(The Post Conviction Relief Collateral Act) in April 1984. The act created a three-year time period within which relief must be sought for convictions prior to its enactment. *Id.* Townsend did not file his petition until May 1998, thirteen years after the expiration of the statute of limitation. Finding Townsend to be procedurally and time barred, we affirm.

¶7. THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY DENYING POST-CONVICTION RELIEF IS HEREBY AFFIRMED. HINDS COUNTY IS TAXED WITH ALL COSTS OF THIS APPEAL.

**McMILLIN, C.J., SOUTHWICK, P.J., BRIDGES, IRVING, LEE, MOORE, MYERS,
PAYNE, AND THOMAS, JJ., CONCUR.**