

**JERRY BRUNSON** Petitioner

v.

**STATE OF MISSISSIPPI** Respondent

**No. 2018-M-01113**

**Supreme Court of Mississippi, En Banc**

**August 11, 2022**

**ORDER**

Dawn H. Beam, Justice

Before the Court is the Petition for Post-Conviction Relief filed pro se by Jerry Brunson. Brunson's conviction of selling cocaine and sentence to a term of sixty years in prison as a habitual offender were affirmed on direct appeal, and the mandate issued on January 2, 2007. *Brunson v. State*, 944 So.2d 922 (Miss. Ct. App. 2006). This is Brunson's fifth application for leave, and the panel finds it to be time-barred and successive, without exception. Miss. Code Ann. §§ 99-39-5(2), -27(9) (Rev. 2020). Notwithstanding these bars, the Court finds no merit to Brunson's claims. Accordingly, the Petition for Post-Conviction Relief should be denied.

Brunson has been warned that "future filings deemed frivolous may result not only in additional monetary sanctions, but also in restrictions on filing applications for postconviction collateral relief (or pleadings in that nature) *in forma pauperis*." Order, *Brunson v. State*, No. 2018-M-01113 (Miss. Nov. 1, 2018). The Court finds that the instant filing is frivolous and that Brunson should be restricted from filing further applications for post-conviction collateral relief (or pleadings in that nature) that are related to this conviction and sentence *in forma pauperis*. See En Banc Order, *Dunn v. State*, No. 2016-M-01514 (Miss. April 11, 2019).

IT IS THEREFORE ORDERED that Jerry Brunson's Petition for Post-Conviction Relief is denied.

IT IS FURTHER ORDERED that Jerry Brunson is hereby restricted from filing further applications for post-conviction collateral relief (or pleadings in that nature) that are related to this conviction and sentence *in forma pauperis*. The Clerk of this Court shall not accept for filing any further applications for post-conviction collateral relief (or pleadings in that nature) from Brunson that are related to this conviction and sentence unless he pays the applicable docket fee.

SO ORDERED.

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

TO DENY: KITCHENS AND KING, P.JJ.

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

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

¶1. Today, this Court prioritizes efficiency over justice and bars Jerry Brunson 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 Brunson 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. . .  
." Miss. Const. art. 6, § 155. Yet this Court  
deems the frequency of Brunson's filings to be  
too onerous a burden and decides to restrict  
Brunson from filing subsequent applications

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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, § 25  
(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. 2020).  
Therefore, this State's Constitution grants  
unfettered access in civil causes to any tribunal  
in the State. The Court's decision to deny  
Brunson'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,

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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 Brunson 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/> (emphasis added) (last visited Sept. 9, 2021). 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.

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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](http://wapo.st/1SGHcyd?tid=ss_mail&utm_term=.4bed8ad6f2cc).

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

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

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