IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2010-CP-01305-COA

WILL ROBERTSON BROWN **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

DATE OF JUDGMENT:	07/27/2010
TRIAL JUDGE:	HON. KATHY KING JACKSON
COURT FROM WHICH APPEALED:	JACKSON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	WILL ROBERTSON BROWN (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BILLY L. GORE
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
TRIAL COURT DISPOSITION:	MOTION FOR POST-CONVICTION RELIEF DISMISSED
DISPOSITION:	AFFIRMED – 03/20/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE IRVING, P.J., BARNES AND ROBERTS, JJ.

IRVING, P.J., FOR THE COURT:

¶1. On July 19, 2010, Will Robertson Brown filed, in the Circuit Court of Jackson County, a motion for post-conviction relief (PCR), a seeking to set aside several guilty pleas that he had entered more than fifteen years earlier. The circuit court dismissed Brown's PCR motion as being time-barred pursuant to Mississippi Code Annotated section 99-39-5(2) (Supp. 2011). Feeling aggrieved, Brown appeals, asserting that his trial counsel was ineffective, his guilty pleas were involuntary, and the circuit court erred by accepting his guilty pleas without a factual basis and without informing him of the elements of the offenses to which he pleaded guilty.

¶2. We hold that the circuit court correctly found that Brown's PCR motion was time-barred. Therefore, we affirm the judgment of the circuit court dismissing Brown's PCR motion.

FACTS

¶3. On April 18, 1995, Brown pleaded guilty to two counts of aggravated assault (one on a law-enforcement officer) and third-degree arson. The circuit court accepted his guilty pleas and sentenced him to serve seventeen years for aggravated assault, seventeen years for arson, and three years for aggravated assault on a law-enforcement officer, all to be served in the custody of the Mississippi Department of Corrections (MDOC). The circuit court ordered the sentences to run concurrently to one another and concurrently with the federal sentence that Brown was presently serving.

¶4. Over fifteen years later, on July 19, 2010, Brown filed a PCR motion attacking the voluntariness of his guilty pleas entered on April 19, 1995. He also alleged that his lawyer was ineffective and that the circuit court failed to inform him of the elements of the offenses. He further alleges that the circuit court had no factual basis to accept his guilty pleas. The circuit court "reviewed the pleadings and the court files and determined that no evidentiary hearing was necessary." As stated, the court held that Brown's PCR motion was time-barred because it was filed more than three years after the entry of the judgment of conviction, and Brown did not demonstrate that any of the enumerated exceptions to the time bar were applicable. Therefore, the circuit court entered an order on July 27, 2010, summarily dismissing Brown's PCR motion.

ANALYSIS AND DISCUSSION OF THE ISSUES

¶5. An appellate court will not reverse the circuit court's dismissal of a PCR motion absent a finding that the decision was clearly erroneous. *Jackson v. State*, 67 So. 3d 725, 730 (¶16) (Miss. 2011). Questions of law are reviewed de novo. *Id.*

¶6. The circuit court correctly found that Brown's PCR motion was time-barred. Brown entered his guilty plea on April 18, 1995, but he did not file his PCR motion until over fifteen years later. Section 99-39-5(2) provides that PCR motions "shall be made . . . within three (3) years after entry of the judgment of conviction" in cases involving guilty pleas. This section also provides certain exceptions to the time bar, such as intervening decisions of the United States Supreme Court or the Mississippi Supreme Court, newly discovered evidence, DNA evidence subject to testing, claims that the sentence has expired, and claims that parole or conditional release has been unlawfully revoked. Miss. Code. Ann. § 99-39-5(2)(a)-(b). Additionally, "errors affecting fundamental constitutional rights are excepted from the procedural bars . . . ." *Rowland v. State*, 42 So. 3d 503, 506 (¶9) (Miss. 2010).

¶7. Brown has failed to prove that one of the exceptions to the time bar applies or that the circuit court committed any error affecting any of his fundamental rights when it accepted his guilty pleas. The record contains no guilty-plea transcript and no affidavits to support any of the issues that Brown has raised on appeal. Brown has only provided mere assertions in his brief and no authority to support his assertions. On review, "we limit our inquiry to those facts 'contained strictly in the record, and not upon mere assertions in the briefs.'" *Ross v. State*, 16 So. 3d 47, 60 (¶35) (Miss. Ct. App. 2009) (quoting *Ward v. State*, 935 So. 2d

1047, 1057 (¶29) (Miss. Ct. App. 2005)). Pursuant to Rule 28(a)(6) of the Mississippi Rules of Appellate Procedure, an appellant must support his contentions regarding the issues presented with "citations to authorities, statutes, and *parts of the record relied on*." (Emphasis added). Therefore, we hold that the circuit court properly dismissed Brown's PCR motion.

¶8. **THE JUDGMENT OF THE JACKSON COUNTY CIRCUIT COURT DISMISSING THE MOTION FOR POST-CONVICTION RELIEF IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO JACKSON COUNTY.**

LEE, C.J., RUSSELL AND FAIR, JJ., CONCUR. MAXWELL, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. ISHEE, J., CONCURS IN PART WITHOUT SEPARATE WRITTEN OPINION. ROBERTS, J., CONCURS IN RESULT ONLY WITH SEPARATE WRITTEN OPINION JOINED BY GRIFFIS, P.J., MAXWELL AND FAIR, JJ. BARNES, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY ISHEE, J. CARLTON, J., NOT PARTICIPATING.

ROBERTS, J., CONCURRING IN RESULT ONLY:

¶9. I concur with the majority's analysis that Brown is time barred from pursuing his post-conviction relief (PCR) petition under Mississippi Code Annotated section 99-39-5 (Supp. 2011) with no applicable exceptions; however, I write separately to address an unspoken concern fundamental to this Court's authority to even address Brown's PCR petition on appeal. My concern lies in the determination that Brown has standing to bring his PCR petition at all. Circuit Court Judge Kathy King Jackson summarily dismissed Brown's PCR petition because it was filed more than "three (3) years after the time in which the petitioner's direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of

conviction or sentence has expired, or in case of a guilty plea, within three (3) years after entry of the judgment of conviction." Miss. Code Ann. §99-39-5(2). The circuit judge found that none of the exceptions found in Mississippi Code Annotated section 99-39-5(2)(a)(i-ii) or Mississippi Code Annotated section 99-39-5(2)(b) permitted Brown to bring his out-of-time PCR petition. The circuit judge was imminently correct in her findings.

¶10. From its enactment in 1984 until its March 16, 2009, amendment, the Mississippi Uniform Post-Conviction Collateral Relief Act required any convicted offender who filed a PCR petition be "in custody under sentence of a court of record of the State of Mississippi." If not, he would have no standing to even file a PCR motion attempting to collaterally attack his conviction. This Court has articulated this notion on numerous occasions. *See Gates v. State*, 904 So. 2d 216, 218 (¶7) (Miss. Ct. App. 2005), *Torns v. State*, 866 So. 2d 486, 489 (¶11) (Miss. Ct. App. 2004), *Weaver v. State*, 852 So. 2d 82, 85 (¶7) (Miss. Ct. App. 2003). However, on March 16, 2009, the Mississippi Legislature passed S.B. 2709 amending the above-quoted language and replacing it with the following language: "*Any person sentenced by a court of record of the State of Mississippi*, including a person currently incarcerated, civilly committed, on parole or probation or subject to sex offender registration for the period of the registration or for the first five (5) years of the registration, whichever is the shorter period . . . ." Miss. Code Ann. § 99-39-5(1)(emphasis added). Recently, we hinted at the Legislature's expansion of the standing requirement in *Parker v. State*, 47 So. 3d 732, 734 (¶8) (Miss. Ct. App. 2010) (quoting Mississippi Code Annotated section 99-39-5 (Rev. 2007)), when we stated "[p]rior to March 16, 2009, to be eligible to seek post-conviction

relief under section 99-39-5, a prisoner had to be '*in custody under sentence of a court of record of the State of Mississippi*.'" After March 16, 2009, the Legislature "expand[ed] the availability of post-conviction relief to a broader range of previously convicted individuals." *Id.* In that case, Charles Lee Parker filed his PCR petition *prior* to the amendment's effective date, and the amendment was not retroactive; therefore, he did not have standing to file. *Id.* at (¶¶9-12).

¶11. It is my judgment the new statute's language "[a]ny person sentenced by a court of record in the State of Mississippi" is clear and unambiguous. It is not the duty of this Court to determine the wisdom of the Legislature's actions in amending the statute's language. Instead, it is our duty to interpret and apply the statute as written. *See Russell Inv. Corp. v. Russell*, 182 Miss. 385, 419, 182 So. 102, 107 (1938); *Clark v. State*, 169 Miss. 369, 384-85, 152 So. 820, 824 (1934). Further, the supreme court has stated that "[w]hen the words of a statute are plain and unambiguous there is no room for interpretation or construction, and we apply the statute according to the meaning of those words." *Coleman v. State*, 947 So. 2d 878, 881 (¶10) (Miss. 2006) (citing *Harrison v. State*, 800 So. 2d 1134, 1137 (¶12) (Miss. 2001)). It is patently obvious that any convicted offender presently on parole, probation or subject to sex offender registration is not a "prisoner in custody" as the previous statute required; yet, such offenders now have standing to file a PCR petition under the amended language of the statute. Also rather obvious to me is the fact that the Legislature chose, through its amendment, to expand the scope of standing to permit those rare individuals, such as those with newly discovered evidence (i.e., DNA), an opportunity to prove innocence even

though at the time of filing they are not in custody, on parole or probation, or subject to sex offender registration. This is especially true for those individuals who, though maintaining actual innocence, entered a "best interest" guilty plea under the principles established in *North Carolina v. Alford*, 400 U.S. 25, 37 (1970). In such rare cases, these individuals who proved their claim would be restored to their pre-conviction status without the innumerable collateral consequences of being a convicted felon. I also recognize the reality that the overwhelming majority of PCR petitioners no longer in custody will be either time or subsequent writ barred from bringing their PCR petitions.

¶12. In the current case, the majority fails to mention facts relevant and essential to this Court's exercise of its jurisdiction. It is undisputed that Brown was a federal inmate serving a federal sentence in a federal facility in the state of Indiana when he filed his PCR petition on July 19, 2010, attacking his April 19, 1995, convictions of aggravated assault, arson, and assault on a law enforcement officer. Brown's federal sentence was enhanced under the federal sentencing guidelines, in part, based on his prior circuit court felony convictions. It appears from Brown's PCR petition that he is attempting to lay a foundation for a future reduction in his federal sentence if he is successful in having his state court convictions overturned. Although neither Brown nor the State raise any jurisdictional issues on appeal, such as Brown's standing to file a PCR petition, it is the affirmative duty of this Court to ensure we have proper jurisdiction over the matter before addressing its merits. *Winborn v. State*, 213 Miss. 322, 323, 56 So. 2d 885, 885 (1952). In *Winborne*, the supreme court stated: "We are confronted in the outset with the question of our jurisdiction of this appeal, and

while the question is not raised by either party, it becomes our duty to raise it of our own motion." *Id.* "A lack of standing 'robs the court of jurisdiction to hear the case[;]'" therefore, the appropriate disposition would be to dismiss the case. *Pruitt v. Hancock Med. Ctr.*, 942 So. 2d 797, 801 (¶14) (quoting *McNair v. U.S. Postal Serv.*, 768 F. 2d 730, 737 (5th Cir. 1985)). By failing to address the issue of standing and also reaching the merits of Brown's PCR petition, the majority is, at least impliedly, concluding that we have jurisdiction. I agree that Brown does have standing under the amended PCR statute and that the circuit court and this Court have jurisdiction to address the merits.

¶13. Regrettably, twice within the last year we have stated directly, if not inferentially, that a PCR petitioner who files his petition after March 16, 2009, must still be a "prisoner in custody under sentence of a court of record of the State of Mississippi." In both cases, the PCR petitioners filed their petitions after the effective date of the amendment; therefore, I would find that these petitioners were entitled to the benefit of the expanded language found in the amended PCR statute and that our conclusions were incorrect. The first case is *Wilson v. State*, 76 So. 3d 733 (Miss. Ct. App. 2011). In June 2011, this Court affirmed the circuit court's dismissal of Bobby Earl Wilson Jr.'s PCR petition on the ground that Wilson lacked standing to challenge his 1994 conviction. *Id.* at 735 (¶11). Wilson originally filed a "Motion to Amend Petition for a Writ of Coram Nobis" in November 2009 acknowledging he was not eligible to file a PCR motion because he was no longer "in custody" for the 1994 conviction he was attacking. *Id.* at 734-5 (¶6). This Court found that Wilson's motion should be construed as a PCR petition but that "[e]ven if Wilson's motion is treated as a PCR

[petition], Wilson lacks standing to bring the [petition] because he is no longer 'serving time under the sentence he complains of.'" *Id.* at 735-6 (¶¶10-11). Further, in footnote 3, we acknowledged the 2009 amendment, but stated that "even under the expanded standing requirements, Wilson lacks standing. When Wilson filed his motion in 2009 challenging his 1994 conviction, he was no longer incarcerated for that conviction, nor was he on parole or probation for that conviction." *Id.* at 736 n.3 (¶11).

¶14. The second case involves the very same defendant as the current case, but Brown then was attacking a 1986 arson conviction through a 2010 PCR motion. In *Brown v. State*, 71 So. 3d 1267, 1269 (¶7) (Miss. Ct. App. 2011) (citing *Smith v. State*, 914 So. 2d 1248, 1250 (¶7) (Miss. Ct. App. 2005)), we stated: "Post-conviction relief applies only to a prisoner who is in the custody of the State, serving a sentence imposed by a Mississippi court." This Court ultimately affirmed the circuit court's denial of Brown's PCR motion on the ground that Brown was "not currently in the custody of the MDOC and [was] also procedurally time-barred from filing a PCR motion." *Id.* at (¶8).

¶15. In a genuine effort to maintain the jurisprudential integrity of this Court, I would now acknowledge our prior errors. To the extent that *Wilson* and *Brown* state or imply that a PCR petitioner who filed a PCR petition after March 16, 2009, must still be in custody for the conviction he is currently attacking, I submit that those two cases should be overruled. Otherwise, I concur with result reached by the majority.

GRIFFIS, P.J., MAXWELL AND FAIR, JJ., JOIN THIS OPINION.

BARNES, J., SPECIALLY CONCURRING:

¶16. I fully concur with the majority that Brown's motion for post-conviction relief (PCR) is time-barred. However, I cannot leave unchallenged Judge Roberts's conclusion in his separate opinion that the amendment to Mississippi Code Annotated section 99-39-5 eliminated the requirement that a person be in custody under the Mississippi sentence that he is challenging, and thus, Brown had standing to bring a motion for post-conviction relief. While the amendment alters the definition of custody to some extent, it does not delete the requirement of custody.

¶17. The 2009 amendment to section 99-39-5 was a "technical correction" passed by the Legislature in Senate Bill 2709, which was partially titled, "An Act to Improve the Preservation and Accessibility of Biological Evidence" (hereafter "the Act"). The declared Legislative intent was to preserve "biological evidence" in order to assist law enforcement in "'cold' case investigations" and "[i]nnocent people mistakenly convicted of the serious crimes for which biological evidence is probative." 2009 Miss. Law Ch. 339 (S.B. 2709).[1] The Mississippi Supreme Court has stated: "It is a general rule in construing statutes that this Court will not only interpret the words used, but will consider the purpose and policy which the legislature had in view of enacting the law. The court will then give effect to the intent of the legislature." *Kelly v. Int'l Games Tech.*, 874 So. 2d 977, 979 (¶7) (Miss. 2004) (quoting *Sec. of State v. Wiesenberg,* 633 So. 2d 983, 990 (Miss. 1994)). Also, the supreme court has held that "ordinarily[,] a new statute will not be considered as reversing long-

[1] Section 1 of the Act is now codified in Mississippi Code Annotated section 99-49-1 (Supp. 2011).

established principles of law and equity unless the legislative intention to do so clearly appears." *Thorp Commercial Corp. v. Miss. Road Supply Co.*, 348 So. 2d 1016, 1018 (Miss. 1977).

> In the construction of a statute[,] the object is to get at its spirit and meaning, its design and scope; and that construction will be justified which evidently embraces the meaning and carries out the object of the law, although it is against the letter and the grammatical construction of the act. In determining the proper construction of a statute, the entire legislation on the subject-matter, its policy, reason, as well as the text, must be looked to.

Miss. Ins. Guar. Ass'n v. Gandy, 289 So. 2d 677, 680 (Miss. 1973) (quoting *Ott v. Lowery*, 78 Miss. 487, 499-500, 29 So. 520, 521 (1901)).

¶18. The previous language of Mississippi Code Annotated section 99-39-5 (Rev. 2007) allowed "[a]ny *prisoner in custody* under sentence of a court of record of the State of Mississippi" to bring a PCR motion, provided one of nine situations existed. (Emphasis added showing language deleted in 2009). As Judge Roberts notes in his separate opinion, this subsection of the statute was revised in 2009 to allow a PCR motion to be filed by:

> *Any person sentenced by* a court of record of the State of Mississippi, *including a person currently incarcerated, civilly committed, on parole or probation or subject to sex offender registration for the period of the registration or for the first five (5) years of the registration, whichever is the shorter period, may file a motion to vacate, set aside or correct the judgment or sentence, a motion to request forensic DNA testing of biological evidence, or a motion for an out-of-time appeal . . . .*

Miss. Code Ann. §99-39-5(1) (Supp. 2011) (emphasis added showing language added in 2009). The following was added to the list of situations in which a PCR motion could be filed:

> (f) That there exists biological evidence secured in relation to the investigation or prosecution attendant to the petitioner's conviction not tested, or, if previously tested, that can be subjected to additional DNA testing, that would provide a reasonable likelihood of more probative results, and that testing would demonstrate by reasonable probability that the petitioner would not have been convicted or would have received a lesser sentence if favorable results had been obtained through such forensic DNA testing at the time of the original prosecution.

Miss. Code Ann. 99-49-5-(1)(f) (Supp. 2011). While the amended language broadens the scope of custody to those still suffering the effects of their sentence even after their physical release from prison, in my opinion, this amended language does not afford any person who has ever been convicted by a court in Mississippi to challenge his completed sentence through PCR merely because the Mississippi sentence enhances his subsequent sentence.

¶19. Prior to the amendment, this Court held that a prisoner seeking post-conviction relief from a prior expired conviction used "as a basis for his habitual offender status" was not considered to be in custody under section 99-39-5. *Wilson v. State*, 990 So. 2d 828, 830 (¶6) (Miss. Ct. App. 2008). Also, in *Parker v. State*, 47 So. 3d 732, 734 (¶¶11-12) (Miss. Ct. App. 2010), this Court, in discussing the prior version of the statute, stated:

> It is undisputed that Parker was incarcerated in a federal correctional facility - and not under custody of a sentence of a court of record of the State of Mississippi - when he filed his 2008 PCR motion. Therefore, this court, like the circuit court, lacks jurisdiction to consider his request for post-conviction relief.
>
> [W]e decline Parker's invitation to expand the reach of the *pre-March 16, 2009, version* of section 99-39-5(1) to all petitioners whose sentences are based on prior Mississippi convictions. Restraint dictates that we follow *our established precedent* and the Legislature's explicit mandate that to seek post-conviction relief petitioners must be "in custody under sentence of a court of record of the State of Mississippi," which Parker was not.

(Emphasis added).

¶20. Even more recently, this Court held that a person must still be considered in custody of his Mississippi sentence, even after the enactment of the 2009 amendment. In *Wilson v. State*, 76 So. 3d 733 (Miss. Ct. App. 2011), this Court reviewed a petitioner's challenge to a previous conviction that enhanced his sentence as a habitual offender. Noting the 2009 amendment to section 99-39-5, we concluded that "even under the expanded standing requirements, Wilson lacked standing. When Wilson filed his motion in 2009 challenging his 1994 conviction, he was no longer incarcerated *for that conviction*, nor was he on parole or probation *for that conviction*." *Id*. at 736, n. 3 (¶11) (emphasis added). In *Brown v. State*, 71 So. 3d 1267, 1269 (¶7) (Miss. Ct. App. 2011), we discussed this issue of standing in regard to the same prisoner and clearly found that Brown was not considered to be in custody under the revised language of section 99-39-5. While that case dealt with different convictions than the ones in the present case, I find no distinction relating to the "in custody" issue. *See also Reed v. State*, 70 So. 3d 1174, 1176 (¶5) (Miss. Ct. App. 2011) (since the petitioner "was not incarcerated or on parole or probation[,] . . . . [he] was not entitled to maintain a motion for post-conviction relief.").

¶21. While no longer explicitly stated, I find the amended language of section 99-39-5 indicates that the petitioner must be currently "in custody" for the sentence he is challenging. In interpreting a statute, we must look at the context of the wording in order to determine the Legislature's intent. *Claypool v. Mladineo*, 724 So. 2d 373, 382 (¶32) (Miss. 1998) (citation omitted).

¶22. Custody is the primary factor in determining how long the State must preserve biological evidence under the Act. In the "Definitions" section of the Act, "custody" is defined as "persons currently incarcerated; civilly committed; on parole or probation; or subject to sex offender registration for the period of the registration or for the first five (5) years of the registration, whichever is the shorter period." *See* Miss. Code Ann. § 99-49-1(2)(c) (Supp. 2011). This is precisely the same terminology included in section 99-39-5 to replace the term "custody." The Legislature merely deleted the term "custody" from section 99-39-5 and replaced it with the *definition* of "custody" from the Act. Thus, the revision is a "technical correction" to the PCR process to make it correspond to the other provisions of the Act.

¶23. Under the Act, biological evidence must be preserved only as long as the person or co-defendants "remain in custody." The term "remain" is defined as "continu[ing] in the same state or condition." The American Heritage Dictionary 1525 (3rd ed. 1992). When the person no longer "remains in custody," the State may destroy the biological evidence related to the conviction.[2] *See* Miss. Code 99-49-1(3)(a)(ii),(c),(f)(ii)(1),(g). As the biological evidence – the preservation of which is the primary purpose of the Act – can be destroyed upon a person's release from custody (as defined by the Act), it does not make sense that the

[2] The State may destroy biological evidence *prior* to a person's release from custody, provided he is given notice. 2009 Miss. Laws Ch. 339 §3(f) (S.B. 2709) (codified in Miss. Code Ann. § 99-49-1(3)(f)). However, "[i]f, after providing notice under paragraph (f)(ii) of this subsection of its intent to destroy evidence, the state receives a written request for retention of the evidence, the state shall retain the evidence while the person *remains in custody*." *Id*. at § 3(g) (emphasis added).

technical correction to the PCR process would extend standing beyond that same point in time.[3] Accordingly, I cannot envision that the Legislature intended to amend section 99-39-5 to provide any person sentenced by a Mississippi court, and who is now free from any constraints of that sentence, standing to challenge the completed sentence.

¶24. Although Brown argues that the Mississippi convictions enhanced his federal sentence and that he is still suffering the effect of the Mississippi sentences, this is not sufficient to give him standing for post-conviction relief. In *Maleng v. Cook*, 490 U.S. 488, 492 (1989), the United States Supreme Court addressed the issue of whether a federal sentence may be challenged by attacking a prior conviction that had expired. It held that once a petitioner's sentence has "fully expired," the mere fact that the prior conviction may be used to enhance a subsequent sentence does not render him still "in custody" for that conviction. The Supreme Court later expanded its holding in *Daniels v. United States,* 532 U.S. 374 (2001) and *Lackawanna County District Attorney v. Coss*, 532 U.S. 394 (2001). In *Daniels*, it stated:

> If . . . a prior conviction used to enhance a federal sentence is no longer open to direct or collateral attack in its own right because the defendant failed to pursue those remedies while they were available (or because the defendant did so unsuccessfully), then the defendant is without recourse. The presumption of validity that attached to the prior conviction at the time of sentencing is conclusive, and the defendant may not collaterally attack his prior conviction through a motion under [28 United States Code section] 2255.

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[3] Mississippi Code Annotated section 99-39-9 (Supp. 2011) also states that a motion by a petitioner must be limited to one judgment, and "[i]f a petitioner desires to attack the validity of other judgments *under which he is in custody*, he shall do so by separate motions." (Emphasis added).

Daniels, 532 U.S. at 382. This holding in *Daniels* is grounded "on considerations relating to the need for finality of convictions and ease of administration." *Coss*, 532 U.S. at 402.

¶25. While these Supreme Court cases concern federal law, I find them instructive as to the policy underlying our prior jurisprudence. I believe that if the Legislature had intended to make such an extensive change to Mississippi law – to allow a person to file a PCR motion on a conviction for which he is not currently in custody but that is being used to enhance a subsequent sentence – it would have used clear language to do so. *See Thorp*, 348 So. 2d at1018. Nothing in the 2009 Act indicates that allowing relief for an enhanced sentence was ever the intent of the Legislature. Therefore, I do not find Judge Roberts's position on Brown's standing complies with the spirit or meaning of the amendment.

ISHEE, J., JOINS THIS OPINION.