

MISSISSIPPI SUPREME COURT

Jordan v. State

213 So. 3d 40 (Miss. 2016) · Decided December 8, 2016

SUMMARY

The Mississippi Supreme Court denied Kelvin Jordan’s successive petition for post-conviction relief challenging his capital-murder convictions and death sentences. The court held that his claims concerning trial counsel’s effectiveness, sentence proportionality, and evidentiary rulings were barred as untimely, successive, or barred by res judicata. The court also held that his current counsel could not assert a claim alleging her own ineffective assistance in Jordan’s prior post-conviction proceedings.

CASE DETAILS

COURT	Mississippi Supreme Court
WRITING FOR THE COURT	Coleman, Justice; Waller, Chief Justice; Dickinson, Presiding Justice; Lamar, Justice; Kitchens, Justice; Maxwell, Justice; Beam, Justice; King, Justice; Randolph, Presiding Justice
JURISDICTION	Mississippi
DECIDED	December 8, 2016
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Jordan filed a successive petition for post-conviction relief in the Mississippi Supreme Court following his convictions and death sentences for two counts of capital murder and the denial of his first post-conviction petition.
STANDARD OF REVIEW	The court applied Mississippi's statutory and procedural bars governing post-conviction petitions, including the one-year time bar, the bar on successive petitions, and res judicata.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kelvin Jordan v. State

TOPICS

- state post-conviction relief
- successive petitions
- post-conviction relief
- ineffective assistance
- sentencing

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Jordan's renewed ineffective-assistance claims against trial counsel were barred as successive, untimely, and res judicata because the same claim had been raised and rejected in his first post-conviction proceeding.
2. Whether Jordan's current post-conviction counsel could assert a claim that the same attorney had been constitutionally ineffective during Jordan's earlier post-conviction proceedings.
3. Whether Jordan's renewed challenge to the proportionality of his death sentences was barred by res judicata and applicable post-conviction procedural bars.
4. Whether Jordan's claims concerning evidentiary rulings at trial were barred because they had previously been raised and rejected and because they were untimely or successive.

HOLDINGS

1. Jordan's renewed ineffective-assistance claim against trial counsel was barred because the same issue had been raised and rejected in his first post-conviction proceeding and any claim against counsel was also untimely.
2. Jordan's current counsel could not proceed with a claim alleging that she herself had rendered ineffective assistance during Jordan's earlier post-conviction proceedings.
3. Jordan's renewed challenge to the proportionality of his death sentences was barred by res judicata.
4. Jordan's claims concerning evidentiary rulings at trial remained procedurally barred because they had been raised and rejected in the first post-conviction proceeding and were also subject to the time and successive-petition bars.

KEY QUOTATIONS

"The claim that trial counsel were ineffective (the first indirect claim) is barred by res judicata." (43)

"[A] self-ineffectiveness claim is absolutely inappropriate and must not be permitted." (43)

FACTUAL BACKGROUND

Jordan and his cousin, Frontrell Edwards, planned to rob someone and discussed killing the victim to prevent identification. They obtained a ride from Tony Roberts, shot and killed Roberts, and then killed Roberts's two-year-old son, Codera Bradley, before taking the vehicle and other property and burning the car. Jordan made incriminating statements, admitted firing at Roberts, helped police locate the bodies, and helped recover the guns. The jury found the capital-murder aggravating circumstances and imposed death sentences for both killings.

PROCEDURAL HISTORY

A jury convicted Jordan of two counts of capital murder and imposed two death sentences in 1996. The Mississippi Supreme Court affirmed on direct appeal in *Jordan I* and denied Jordan's first post-conviction

petition in Jordan II. Jordan filed the present successive petition in July 2015, asserting ineffective assistance of trial and post-conviction counsel, disproportionality of his death sentence, and errors in evidentiary rulings; the court denied leave to proceed.

DISPOSITION

writ_denied

CASES CITED

- Jordan v. State, 728 So. 2d 1088 (Miss. 1999)
- Jordan v. State, 918 So. 2d 636 (Miss. 2005)
- Havard v. State, 86 So. 3d 896, 899 (Miss. 2012)
- Rowland v. State, 42 So. 3d 503, 507 (Miss. 2010)
- Howard v. State, 945 So. 2d 326, 353 (Miss. 2006)
- Jackson v. State, 860 So. 2d 653, 660-61 (Miss. 2003)
- Lockett v. State, 614 So. 2d 888, 893 (Miss. 1992)
- Grayson v. State, 118 So. 3d 118, 141 (Miss. 2013)
- Brawner v. State, 166 So. 3d 22, 23 (Miss. 2012)
- Archer v. State, 986 So. 2d 951, 956-57 (Miss. 2008)
- Bishop v. State, 882 So. 2d 135, 153 (Miss. 2004)

OPINION

COLEMAN, J.

COLEMAN, JUSTICE, FOR THE COURT: ¶1. A jury convicted Kelvin Jordan of two counts of capital murder in 1996 and determined that he should be sentenced to death for both killings. The Court affirmed the convictions and sentences. Jordan v. State, 728 So.2d 1088 (1999) (Jordan I). Jordan sought post-conviction relief (PCR), and we denied his petition. Jordan v. State, 918 So.2d 636 (Miss.

2005) (Jordan II). He now has filed a successive petition for post-conviction relief in which he argues that his previous attorneys were constitutionally ineffective, that the death sentence is disproportionate, and that the trial judge erred in evidentiary decisions at trial.

We hold that all of Jordan’s claims except his claim of ineffective post-conviction relief counsel are barred as untimely, as successive, by res judicata, or a combination of all three. His claim of ineffective assistance of post-conviction relief counsel may not proceed because attorneys are not permitted to raise claims of their own ineffectiveness. FACTUAL AND PROCEDURAL BACKGROUND ¶2.

The facts of the case are set out in Jordan I and Jordan II. Kelvin Jordan and his cousin Frontrell Edwards wanted to go to a football game, but they needed money. They decided to find someone to rob. They realized that they were known in the small town of Pachuta, so they discussed killing the victim in order prevent any identification. Each armed himself with a handgun.

They found Tony Roberts at a truck stop and asked him for a ride. Roberts had his two-year-old son Codera Bradley with him in the car. Roberts agreed to give Jordan and Edwards a ride. When Roberts stopped his vehicle on the side of the highway to let them out, Edwards shot Roberts in the face. Roberts got out of the car and Edwards and Jordan both fired their handguns at him again.

One of them inflicted a fatal wound to the back of the victim's head, although it is not known who fired the mortal shot. In any event, Jordan admitted that he shot at Roberts. In separate statements he claimed that he shot at Roberts with his own gun and also with Roberts's pistol. 113. Jordan helped put the body into the back of the vehicle. He and Edwards drove a short distance down the road and then dragged the body into the woods away from the highway.

The two then took the child into the woods and murdered him next to his father, execution style, with a shot to the back of the head. Jordan and Edwards left in Roberts's car. They later stole the car's radio and speakers, Roberts's .380 caliber pistol, and other items from the vehicle. They took the car to a dirt pit where they set it on fire. ¶4. Based on an anonymous phone calls and other tips, officers eventually questioned Jordan and Edwards.

Jordan gave several incriminating statements to law enforcement officers. He admitted that he and Edwards had discussed robbing and killing someone. He admitted that he had a .25 caliber pistol with him when he and Edwards confronted Roberts. He also admitted that he had fired two shots at Roberts, but he denied knowing whether his shots struck Roberts. He also confessed that he and Edwards had stolen the car and other items that belonged to Roberts.

Jordan showed law enforcement officers where the shooting occurred and he took them to the bodies. He also helped them recover the guns. ¶5. Edwards also gave statements to police. He claimed that he and Jordan both had shot Roberts but that Jordan alone had killed the child. ¶6.

In the sentencing phase, the jury found that Jordan had attempted to kill Roberts, that he had intended that both killings take place, and that he had contemplated that lethal force would be used. The jury then found that the aggravating factors outweighed the evidence in mitigation and that Jordan should suffer death on both capital murder counts. PROCEDURAL BARS ¶7.

The mandate in Jordan's direct appeal issued in 1999. He filed this petition in July 2015. The petition is subject to the one-year time bar. Miss. Code Ann. § 99-39—5(2)(b) (Rev. 2015). See also *Havard v. State*, 86 So.3d 896, 899 (Miss. 2012). Failing to file a post-conviction claim within

the time period amounts to a waiver of relief unless the claim presented meets an exception to the time bar.

M.R.A.P. 22(c)(5)(i). Unless Jordan can show that his claims are excepted, the petition is barred. A successive petition for post-conviction relief likewise is barred. Miss. Code Ann. § 99-39-27(9) (Rev. 2015); see also *Rowland v. State*, 42 So.3d 503, 507 (Miss. 2010).

We denied Jordan's first petition. *Jordan II*, 918 So.2d 636. ¶8. Finally, certain issues raised in the petition have been raised in prior proceedings. "Rephrasing direct appeal issues for post-conviction purposes will not defeat the procedural bar of res judicata.

The Petitioner carries the burden of demonstrating that his claim is not procedurally barred." *Howard v. State*, 945 So.2d 326, 353 (Miss. 2006) (quoting *Jackson v. State*, 860 So.2d 653, 660-61 (Miss. 2003); *Lockett v. State*, 614 So.2d 888, 893 (Miss. 1992)).

In *Grayson v. State*, 118 So.3d 118 (Miss. 2013), the Court held that the petitioner's second attempt to argue that trial counsel had been ineffective in presenting in the sentencing phase "has been considered and rejected and, therefore, his claims are barred by the doctrine of res judicata." *Id.* at 141.

In *Brawner v. State*, 166 So.3d 22, 23 (Miss. 2012), the Court declined to revisit claims that previously had been addressed. The Court held that "these claims have been substantially reviewed in prior proceedings and are now procedurally barred and barred by the doctrine of res judicata." I. Ineffectiveness of Trial Counsel ¶9.

In *Jordan II*, as quoted above, this Court found that Jordan's trial court attorneys' representation at the sentencing phase was constitutionally sufficient. Jordan now seeks to relitigate that claim. He argues that: Had trial counsel performed their duties in accordance with prevailing standards, by contacting witnesses available and *43willing to testify, obtaining readily available social and medical history records, and having Kelvin properly evaluated by appropriate experts, the jury would have learned that Kelvin Jordan's development and journey up to his eighteenth birthday occurred in the context of 1) severe and pervasive organic brain damage that began during Kelvin's infancy; 2) extremely low intelligence and low intellectual functioning; and 3) severe post-traumatic stress disorder ("PTSD")....

The claim that trial counsel were ineffective (the first indirect claim) is barred by res judicata. This exact issue was raised in the first petition. It was considered by the Court and rejected. Ineffective assistance of counsel claims in capital cases are subject to the procedural bars. See *Grayson v. State*, 118 So.3d 118 (Miss. 2013). ¶10.

We conclude that the claim as to the trial attorneys' deficiencies is barred. First, as noted previously, this exact issue has been asked and answered in *Jordan II*. It is barred by res judicata

and as successive. Second, the trial attorneys completed their representation of Jordan in early 1999, Any claim against them could and should have been brought well before now.

II. Ineffectiveness of Post-Conviction Relief Counsel ¶11. Jordan's claim that his post-conviction relief counsel rendered constitutionally ineffective assistance may not proceed with his current counsel because he cannot claim the attorney who represents him in the current petition was ineffective when the same attorney represented him during the proceedings in question.

On February 20, 2003, Louwlynn Williams, who also represents Jordan in the successive petition now pending before the Court, filed an entry of appearance as one of Jordan's attorneys during his first post-conviction proceedings. ¶12. Williams now comes before the Court arguing her own ineffectiveness, but she may not do so. "[A] self-ineffectiveness claim is absolutely inappropriate and must not be permitted." *Archer v. State*, 986 So.2d 951, 956 (¶ 20) (Miss.

2008). It does not matter that Williams now seeks to argue her involvement in the initial proceedings was limited. The *Archer* Court held that the lead attorney's performance is imputed to all attorneys involved in the case. *Id.* at 956-57 (¶ 22) ("[H]is participation in the appellant's defense at trial regardless of his role, by imputation, ascribes any potential claim of deficient and prejudicial trial performance unto himself as well, and consequently constitutes a self-ineffectiveness claim.") III.

The Claim that the Death Sentence is Disproportionate ¶13. The Court has determined on two prior occasions that Jordan's death sentence is not disproportionate. The claim is now barred by *res judicata*. The mandate in Jordan's direct appeal issued in March of 1999. Frontrell Edwards pleaded guilty in January 2000. Jordan's final amended petition for post-conviction relief was filed in March 2004.

To the extent that there are new issues here, there is no conceivable reason that these claims could not have been brought well before now. ¶14. Jordan raised the proportionality of his sentence in the direct appeal (*Jordan I*) and in the initial post-conviction relief action (*Jordan II*).

The Court rejected both challenges. Any question as to the proportionality of the sentences has been asked and answered and now is barred by *res judicata*. *Bishop v. State*, 882 So.2d 135, 153 (Miss. 2004); see also Miss. Code Ann. § 99-29-21(3) (Rev. 2015). *44IV.

The Claimed Error Involving Evidentiary Rulings ¶15. Jordan's claim dealing with certain evidentiary rulings at trial already has been addressed and is precluded. The State argues that these claims are time barred and successive-writ barred. Further, these claims have been addressed and rejected by this Court. They were raised in the initial PCR.

In those proceedings, this Court found that these issues were barred for failure to raise them in the direct appeal and also that they were without merit, *Jordan II*, 918 So.2d at 657. We agree that the

claims remain barred. CONCLUSION ¶16.

For the reasons given above, we deny Jordan's petition. ¶17. LEAVE TO FILE SUCCESSIVE PETITION FOR POST-CONVICTION RELIEF DENIED. WALLER, C.J., DICKINSON, P.J., LAMAR, KITCHENS, MAXWELL AND BEAM, JJ., CONCUR. KING, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, J. RANDOLPH, P.J., NOT PARTICIPATING.