
IN THE SUPREME COURT OF MISSISSIPPI

NO. 2024-DR-01272-SCT

RICHARD GERALD JORDAN

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

**MOTION FOR REHEARING AS TO DENIAL OF POST-
CONVICTION RELIEF**

KRISSY C. NOBILE, MSB # 103577
S. BETH WINDHAM, MSB # 100981
MISSISSIPPI OFFICE OF CAPITAL
POST-CONVICTION COUNSEL
239 North Lamar Street, Suite 404
Jackson, Mississippi 39201
601-359-5733 (phone)
knobile@pcc.state.ms.us
bwindham@pcc.state.ms.us

Counsel for Richard Gerald Jordan

In denying Richard Jordan’s Petition for Post-Conviction Relief, a majority of the Court misapprehended the facts and the law. Rehearing under MRAP 40 is warranted. Jordan thus respectfully requests that the Court rehear this case and vacate his death sentence—or, at a minimum, remand the matter to the circuit court.

The Court did not address the merits of Richard Jordan’s *ex post facto* claims. The Court instead found that *Howell v. State*, 358 So. 3d 613 (Miss. 2023) and *Ronk v. State*, 391 So. 3d 785 (Miss. 2024) are not intervening decisions under the PCR Act. But the decisions in *Howell* and *Ronk* upset forty years of settled precedent, overturned more than fifteen hundred cases, and transformed the way the Court understands basic concepts of separation of powers and substantive law. *See Howell v. State*, 358 So. 3d 613, 620 (Miss. 2023) (Kitchens, P.J., dissenting and joined by P.J. King and J. Ishee) (discussing the Court’s “harsh and unjustified departure from our precedent”). As the State recently put it, *Howell* and *Ronk* constitute a “significant change in [Mississippi] state law.”¹

The PCR Act allows a petitioner to overcome the successive writ bar and the time bar where they can demonstrate an intervening decision would have adversely affected the outcome of the petitioner’s conviction or sentence. *See* Miss. Code Ann. § 99-39-5(2)(a)(i); Miss. Code Ann. § 99-39-27(9). *Howell* and *Ronk* fit comfortably within the intervening decision exception. Indeed, that is how the Court has treated *Howell* and *Ronk* since the respective holdings. For example, in *Hutto v. State*, 391 So. 3d 1192 (Miss. 2024), the Court

¹ *See* State Response Brief in *Batiste v. Cain*, U.S. District Court for the Northern District of Mississippi, Case No. 1:22-cv-00108, [Doc. 71], p. 4.

denied the petitioner's claims solely based on the decision in *Ronk. Id.* at 1195 ("Because *Ronk* overruled *Grayson*'s exception to the bars of the UPCCRA, Hutto's claims of ineffective assistance of post-conviction counsel, which are based solely on *Grayson*, are barred."). The same is true in *Carr v. State*, No. 2023-DR-00503-SCT, 2025 WL 275680, at *1 (Miss. Jan. 16, 2025).

Additionally, Jordan argued that, under *Hathorne v. State*, 376 So. 3d 1209 (Miss. 2023), application of the statutory bars would be unconstitutional as applied to Jordan. The Court did not address *Hathorne* or the constitutionality of the statutory bars.

Under *Howell* and *Ronk*, Jordan's death sentence violates *ex post facto* and due process proscriptions. The date of Jordan's offense was January 12, 1976. That date matters because a person "convicted should be sentenced pursuant to the statute existing on the date of his offense to avoid an *ex post facto* problem." *Johnston v. State*, 618 So. 2d 90, 94 (Miss. 1993). Jordan was tried and sentenced under the 1974 version of Mississippi Code § 97-3-21, which read as follows:

Every person who shall be convicted of murder shall be sentenced by the court to imprisonment for life in the state penitentiary.

Every person who shall be convicted of capital murder shall be sentenced by the court to death.

Laws, 1974, ch. 576, § 7.

The second sentence of that statute was and is unconstitutional under *Woodson v. North Carolina*, 428 U.S. 280 (1976) and its progeny. "An unconstitutional law is void, and is as no law." *Tatro v. State*, 372 So. 2d 283 (Miss. 1979); *E.g., Bd. of Liquidation v. McComb*,

92 U.S. 531, 541, 23 L. Ed. 623 (1875) (“An unconstitutional law will be treated by the courts as null and void.”); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (“[A]n act of the legislature, repugnant to the constitution, is void.”); *id.* (“[A] legislative act contrary to the constitution is not law.”).

Thus, as of the date of Jordan’s offense, the only provision providing for a death sentence *was void*. Because the only provision of state law providing for a death sentence was void—not just voidable—application of the statutory bars is unconstitutional as applied here under *Hathorne*.

Hathorne dealt with defective indictments. The Court of Appeals denied Hathorne relief because the claim was statutorily barred under the PCR Act, as “a defective indictment is not an enumerated exception to the procedural bars of the UPCCRA.” *Hathorne*, 376 So. 3d at 1213. Under *Howell*, the fundamental rights “exception” to the PCR Act’s statutory bars purportedly did not apply because “defective indictments” is not expressly written into the statute. In any event, the *Hathorne* Court reaffirmed that constitutional rights may and do overcome statutory bars—irrespective of whether the statutory bar is “procedural” or “substantive” law.

The Court in *Hathorne* did not invoke the “fundamental rights exception.” Instead, in light of *Howell*, the Court reframed the issue as a challenge to the “constitutionality of the statutory bar[s]” “as applied to [Hathorne’s] particular case.” *Id.* at 1214. Notably, the Court in *Hathorne* also reframed the issue *sua sponte*—as Hathorne’s brief, even his supplemental brief after *Howell*, did not assert an as-applied challenge to the statutory bars.

(Hathorne’s supplemental brief, even after *Howell*, presented the issues as “whether the fundamental rights exception applies to post-conviction bars that are procedural in nature” and “whether § 99-39-21 is a procedural enactment”).

Because Hathorne’s indictment was defective, and thus violated Hathorne’s constitutional rights, the PCR’s Act statutory waiver bar had to yield to the Constitution. This was so even though Hathorne’s claim, per statute, was barred because it was capable of determination at trial and/or on direct appeal. *Id.* As this Court put it, the PCR Act’s statutory bar (even if labeled as substantive law), did not apply in *Hathorne* because:

- “[A] challenge to an indictment for failure to charge the essential elements of a criminal offense *affects a fundamental right*, and may not be waived.” *Hathorne*, 376 So. 3d at 1215 (emphasis in original; internal quotation marks removed).
- The Court’s “precedent places great emphasis on the protection of the right to challenge the sufficiency of an indictment.” *Id.*
- Hathorne’s continued imprisonment would “constitute ‘cruel or unusual punishment’ and an ‘excessive fine[],’ which is expressly prohibited under our Constitution. Miss. Const. art. 3, § 28.” *Id.*

Here, because there was no constitutional provision for the death penalty at the time of Jordan’s offense, his death sentence is unconstitutional. Jordan’s constitutional claims are not statutorily barred, and any bar would be unconstitutional as applied to Jordan in this case. Rehearing should be granted, and the Court should address the merits of Jordan’s Petition for Post-Conviction Relief.

Respectfully submitted, this the 15th day of May 2025.

/s/ Krissy C. Nobile

Krissy C. Nobile, MSB # 103577

S. Beth Windham, MSB # 100981

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POST-CONVICTION COUNSEL

239 North Lamar Street, Suite 404

Jackson, Mississippi 39201

601-359-5733 (phone)

knobile@pcc.state.ms.us

bwindham@pcc.state.ms.us

Counsel for Richard Jordan

CERTIFICATE OF SERVICE

The undersigned counsel certified that I have served the foregoing motion using the Court's MEC system, which sent notification to the following:

Ashley Sulser
LaDonna Holland
Allison Hartman
Special Assistants Attorney General
PO Box 220
Jackson, MS 39205

Respectfully submitted, this the 15th day of May 2025.

/s/ Krissy C. Nobile
Krissy C. Nobile