Serial: 252832

IN THE SUPREME COURT OF MISSISSIPPI

No. 2023-DR-01076-SCT

WILLIE JEROME MANNING A/K/A FLY **Petitioner**

v.

STATE OF MISSISSIPPI **Respondent**

EN BANC ORDER

¶1. Willie Jerome Manning was convicted and sentenced to death in 1994 for murdering two Mississippi State University students, Tiffany Miller and Jon Steckler, in 1992. Before the Court, en banc, is petitioner's Motion for Leave to File Successive Petition for Post-Conviction Relief—his third petition in this Court for post-conviction relief. The State of Mississippi has filed a Response, and petitioner has filed a Reply. Also before the Court is another successive Motion to Amend Successive Petition for Post-Conviction Relief in Light of Intervening Decisions of this Court: ***Howell v. State***, 358 So. 3d 613 (Miss. 2023), and ***Ronk v. State***, No. 2021-DR-00269-SCT, 2024 WL 131639 (Miss. 2024). The State has responded, and petitioner has replied.

¶2. The State of Mississippi established post-conviction relief proceedings as a statutory mechanism "to provide prisoners with a procedure, limited in nature, to review those objections, defenses, claims, questions, issues, or errors which in practical reality could not be or should not have been raised at trial or on direct appeal." Miss. Code Ann. § 99-39-3(2) (Rev. 2020). Following the Uniform Post-Conviction Collateral Relief Act (UPCCRA),

Mississippi Code Sections 99-39-1 to -29 (Rev. 2020), this Court will grant leave on a successive petition to proceed only if petitioner's application, exhibits, and the prior record show that his claims are not procedurally barred and that they "present a substantial showing of the denial of a state or federal right[.]" Miss. Code Ann. § 99-39-27(5) (Rev. 2020).

Procedural Bars

Successive Writ Bar

¶3. Pursuant to Mississippi Code Section 99-39-27(9), "[t]he dismissal or denial of an application under this section is a final judgment and shall be a bar to a second or successive application under this article." Miss. Code Ann. § 99-39-27(9) (Rev. 2020). Absent a meritorious claim meeting an exception set forth in Mississippi Code Section 99-39-27(9), "successive writs are barred." ***Ronk***, 2023 WL 131639, at *2 (citing § 99-39-27(9)).

Res Judicata Bar

¶4. "*Res judicata* also extends to those claims that could have been raised in prior proceedings but were not." ***Brown v. State***, 306 So. 3d 719, 730 (Miss. 2020) (citing ***Ronk v. State***, 267 So. 3d 1239, 1288 (Miss. 2019)). Pursuant to Mississippi Code Section 99-39-21(3), "the doctrine of res judicata shall apply to all issues, both factual and legal, decided at trial and on direct appeal." Miss. Code Ann. § 99-39-21(3) (Rev. 2020). "The burden is upon the prisoner to allege in his motion such facts as are necessary to demonstrate that his claims are not procedurally barred under this section." Miss. Code Ann. § 99-39-21(6) (Rev.

2020). To overcome these procedural bars, petitioner must meet an exception set forth in Mississippi Code Sections 99-39-5(2) and -27(9).

Time Bar

¶5. Pursuant to Mississippi Code Section 99-39-5(2)(b), "filings for post-conviction relief in capital cases . . . shall be made within one (1) year after conviction." Miss. Code Ann. § 99-39-5(2)(b) (Rev. 2020). This Court has held that "absent an applicable exception, an untimely filed motion for post-conviction relief is procedurally time-barred." ***Havard v. State***, 86 So. 3d 896, 899 (Miss. 2012). Accordingly, absent an exception, petitioner's instant application is time barred.

Whether any present claim meets an exception.

¶6. Notwithstanding the procedural bars, which preclude relief, petitioner's claims of ***Brady***[1] violations and claims of newly discovered evidence are examined. Such claims might qualify as an exception from the procedural bars. *See* Miss. Code Ann. § 99-39-5(2)(a)(i), -27(9) (Rev. 2020). Because the aforementioned claims lack merit, however, they do not qualify as an exception.

I. Petitioner's Claim under *Brady*[2]

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[1] ***Brady v. Maryland***, 373 U.S. 83, 87, 83 S. Ct. 119, 10 L. Ed. 2d 215 (1963).

[2] Petitioner has prevailed in this Court on a ***Brady*** claim in an unrelated matter, two other murders. ***Manning v. State***, 158 So. 3d 302 (Miss. 2015). In that opinion, the current Chief Justice, then a Presiding Justice, wrote for the majority to reverse petitioner's murder convictions of two elderly women, protecting the right to obtain exculpatory evidence. ***Id.*** at 306-07.

¶7. We first examine petitioner's ***Brady*** claims: failure to disclose exculpatory evidence regarding his cousin Earl Jordan, his former cellmate Henry Richardson, and his girlfriend at the time of the crime, Paula Hathorn.

¶8. Petitioner's arguments related to Paula Hathorn have twice been rejected by this Court in petitioner's previous applications for post-conviction relief. In petitioner's first application for post-conviction relief, he argued "a violation of ***Brady*** for the State's failure to disclose information associated with Hathorn's testimony." ***Manning v. State***, 929 So. 2d 885, 892 (Miss. 2006). This Court found "all exculpatory issues raised by [petitioner] regarding . . . Paula Hathorn to be without merit." ***Id.*** Moreover, in petitioner's second, successive application for post-conviction relief in 2013, petitioner pleaded Hathorn's "Undisclosed Deal with the State" and "Role as an Informant." This Court denied all claims except petitioner's request to proceed in the trial court for DNA testing and fingerprint comparison. Order, ***Manning v. State***, No. 2013-DR-00491-SCT (Miss. July 23, 2013). Federal courts have also refused ***Brady*** relief regarding Paula Hathorn. *See* ***Manning v. Epps***, 695 F. Supp. 2d 323, 359-61 (N.D. Miss. 2009), *rev'd by* ***Manning v. Epps***, 688 F.3d 177, 190 (5th Cir. 2012) ("AEDPA's one-year statute of limitations bars his petition for a writ of habeas corpus. We cannot consider Manning's application for post-conviction relief."). The United States Supreme Court denied petitioner's application for writ of certiorari. ***Manning v. Epps***, 568 U.S. 1251, 133 S. Ct. 1633, 185 L. Ed. 2d 620 (2013)

(mem.). Federal courts found that petitioner's application for collateral relief was untimely, thus, procedurally barred.

¶9. Nor has petitioner established a ***Brady*** violation concerning an affidavit of Henry Richardson, a.k.a. Miami. Petitioner was aware of Richardson at trial through Frank Parker's testimony. *See* ***King v. State***, 656 So. 2d 1168, 1174 (Miss. 1995) ("To establish a ***Brady*** violation a defendant must prove . . . he [could not] obtain [the evidence] himself with any reasonable diligence[.]") Richardson was in the same jail cell as a detainee with Parker and petitioner. Parker testified that he overheard petitioner tell Richardson how he disposed of the murder weapon. Richardson's affidavit relates that he was not contacted until 2023, although petitioner knew of him at trial almost thirty years ago. Petitioner's arguments fail to meet the requirements for establishing a claim under ***Brady***.

¶10. Finally, petitioner's ***Brady*** claim that the prosecution suppressed evidence of an alleged deal with Earl Jordan is barred by *res judicata*. Petitioner has raised the same argument in his direct appeal and a prior application for post-conviction relief, and it was denied. ***Manning v. State***, 726 So. 2d 1152, 1178 (Miss. 1998) ("there was . . . evidence before the jury that Jordan was hoping for some sort of deal to be made in exchange for his testimony. He admitted as much."); Order, ***Manning v. State***, No. 2013-DR-00491-SCT (Miss. Apr. 25, 2013) (denying claim based on affidavit of paralegal/investigator for the Office of the State Public Defender, Capital Defense Division, that Jordan cooperated with the prosecution in exchange for favorable treatment). "Reframing an issue that previously

has been considered and rejected is not allowed." Order, ***Underwood v. State***, No. 2015-DR-01378-SCT, at *3-4 (Miss. Dec. 16, 2021) (citing ***Carr v. State***, 873 So. 2d 991, 1002 (Miss. 2004)). Notwithstanding the procedural bars, we find that each claim of a ***Brady*** violation lacks merit.

II. Intervening Decisions: *Howell v. State* and *Ronk v. State*

¶11. One exception to the procedural bars of the UPCCRA is "[t]hat there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States which would have actually *adversely affected* the outcome of *his conviction or sentence* . . . ." Miss. Code Ann. § 99-39-5(2)(a)(i) (Rev. 2020). Without leave of this Court, on May 3, 2024, petitioner pleaded an amended successive application for post-conviction relief referencing ***Howell*** and ***Ronk***.

¶12. In June 1998, petitioner's convictions were affirmed on direct appeal. ***Manning***, 726 So. 2d at 1152. An assignment of error raised by petitioner was that the trial judge permitted the prosecution to introduce evidence that Jordan had volunteered to take a polygraph examination, i.e., a lie-detector test. ***Id.*** at 1179. Citing this Court's decision in ***Conner v. State***, 632 So. 2d 1239, 1257 (Miss. 1993), *overruled by* ***Weatherspoon v. State***, 732 So. 2d 158, 162 (Miss. 1999), the Court found that

> In the case before us, the prosecutor made no attempt to disclose to the jury whether a test was actually taken or what the results of the test were. He only elicited that Jordan had volunteered to take one. This was proper redirect after Jordan's credibility had been attacked on cross-examination by the defense.

Id. Petitioner's motion for rehearing was denied in October 1998.

¶13. In January 1999, this Court handed down ***Weatherspoon***, holding that

> [W]e find that testimony pertaining to a witness's offer to take a polygraph, whether it be a witness for the State or the defense, is not admissible at trial. To the extent that this holding affects [two other cases] and ***Manning v. State***, cited *supra*, those cases are overruled.

732 So. 2d at 162.

¶14. Petitioner filed his first application for post-conviction relief *pro se* in February 2001. Over the ensuing years, petitioner filed numerous motions and supplements, and the State filed multiple responses, resulting in a total of forty orders between this Court and the trial court—the majority of which were for time extensions and leave to obtain post-conviction relief counsel. In 2004, the Court vacated petitioner's conviction and sentence in light of ***Weatherspoon***, remanding the matter for a new trial. ***Manning v. State***, 903 So. 2d 29 (Miss. 2004) (citation generated before opinion withdrawn).

¶15. On motion for rehearing, the Court announced that "[t]he original opinion is withdrawn, and this opinion is substituted therefor." ***Manning v. State***, 929 So. 2d 885, 888 (Miss. 2006). As petitioner's direct appeal was final, the question before the Court was whether ***Weatherspoon*** could be applied retroactively. ***Manning***, 929 So. 2d at 896. The Court held that "[a]pplying the rules found in ***Teague*** [***v. Lane***, 489 U.S. 288, 311, 109 S. Ct. 1060, 103 L. Ed. 2d 344, 356 (1989)[3]], ***Schriro*** and ***Nixon*** [***v. State***, 641 So. 2d 751

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[3]The portion of ***Teague*** relevant to petitioner's application limits retroactive application of new rules of constitutional law to instances of "'watershed rules of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding[.]" ***Schriro v. Summerlin***, 542 U.S. 348, 352, 124 S. Ct. 2519, 159 L. Ed. 2d 556 (2004)

(Miss. 1994)], we find that ***Weatherspoon*** announced a procedural rule which does not retroactively apply to cases already final on direct review." ***Manning***, 929 So. 2d at 899.

¶16. The Court found that ***Weatherspoon***, like ***Nixon***, did create a new rule of law. ***Manning***, 929 So. 2d 899. Accordingly, that "element of cause was met by the intervening decision." ***Id.*** at 900. The Court found, however, that "[a]s to actual prejudice, neither of the two elements enumerated in ***Teague*** are met." ***Manning***, 929 So. 2d at 900. The Court first determined that "the new rule does not place a category of primary conduct beyond the reach of the criminal law nor does it prohibit punishment for a class of defendants." ***Id.*** (quoting ***Teague***, 489 U.S. at 311). Second, the Court found that "this procedural rule does not diminish the likelihood of an accurate conviction." ***Id.*** (citing ***Teague***, 489 U.S. at 315). As the Court determined that petitioner suffered no actual prejudice, ***Weatherspoon*** afforded him no relief. ***Manning***, 929 So. 2d at 900. The Court concluded that "[b]ecause ***Weatherspoon*** was a procedural rule and it did not announce a watershed rule of criminal procedure, its holding may not be retroactively applied to Manning's case which was final on direct review. Therefore, this issue is without merit." ***Manning***, 929 So. 2d at 900.

¶17. Now, in 2024, petitioner contends that this Court's mention of ***Teague*** in reviewing his first application for post-conviction relief in 2006 violates the Court's holding in ***Howell***

(internal quotation marks omitted) (quoting ***Saffle v. Parks***, 494 U.S. 484, 495, 110 S. Ct. 1257, 108 L. Ed. 2d 415 (1990)). The United States Supreme Court has identified only one case to date as a watershed rule of criminal procedure, ***Gideon v. Wainwright***, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963).

and ***Ronk***, which abolished the judicially crafted fundamental rights exception to the statutory bars of the UPCCRA. His contention is ill-advised. Petitioner's reading of ***Howell*** and ***Ronk*** exceeds the words of either. The Court's mention of ***Teague*** was for guidance in *interpreting* the UPCCRA. Petitioner's claim that the Court amended the UPCCRA is without merit.

¶18. Pursuant to Mississippi Code Section 99-39-21(2),

> The litigation of a factual issue at trial and on direct appeal of a specific state or federal legal theory or theories shall constitute a waiver of all other state or federal legal theories which could have been raised under said factual issue; and any relief sought under this article upon said facts but upon different state or federal legal theories shall be procedurally barred *absent a showing of cause and actual prejudice*.

Miss. Code Ann. § 99-39-21(2) (Rev. 2020) (emphasis added). The statute defines "cause" as "those cases where the legal foundation upon which the claim for relief is based could not have been discovered with reasonable diligence at the time of trial or direct appeal." Miss. Code Ann. § 99-39-21(4) (Rev. 2020) (internal quotation marks omitted). And "actual prejudice" is defined as "those errors which would have actually adversely affected the ultimate outcome of the conviction or sentence." Miss. Code Ann. § 99-39-21(5) (Rev. 2020) (internal quotation marks omitted). The Court held in 2006 that petitioner must demonstrate cause and actual prejudice before being afforded relief under an intervening

decision. The Court did not amend the unambiguous language of the UPCCRA in light of ***Howell***'s abolition of judicially crafted fundamental rights exceptions.[4]

¶19. Following the denial of his first application for post-conviction relief, petitioner then raised in his federal *habeas* petition that the trial court erred when it "admitted testimony that Jordan was willing to take a polygraph examination while denying counsel the right to cross-examine Jordan on that issue." ***Manning***, 695 F. Supp. 2d at 363; *see infra* ¶ 26. The federal district court judge held that

> The Mississippi Supreme Court *used the principles of cause and prejudice in* ***Teague*** *to guide its application of the cause and prejudice test in the Mississippi Uniform Post-Conviction Collateral Relief Act*, which requires a prisoner wishing to avail himself to an intervening decision to show that he is entitled to relief based on *cause* and *prejudice*. *See* Miss. Code Ann. § 99-39-21. At the time of [Manning's] trial, the rule in Mississippi was that neither the fact of a polygraph examination nor its results were admissible into evidence unless it was admitted to support the credibility of a witness whose credibility had been attacked. *See* ***Conner v. State***, 632 So. 2d 1239, 1257 (Miss. 1993).

Manning, 695 F. Supp. 2d at 365 (emphasis added). Furthermore, petitioner "ha[d] not shown that the decision by the Mississippi Supreme Court is objectively unreasonable." ***Id.*** at 366.

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[4]In ***Howell***, the Court held that the fundamental rights exception no longer overcomes the UPCCRA's statutory bars. Citing the legislature's authority to "enact substantive law," the Court overruled cases "in which the Mississippi Supreme Court has held that the courts of Mississippi can apply the judicially crafted fundamental-rights exception to constitutional, substantive enactments of the Legislature such as the three-year statute of limitations applicable to petitions for post-conviction relief." ***Howell***, 358 So. 3d at 615.

¶20. This Court's 2006 opinion did not alter or amend the UPCCRA. Accordingly, notwithstanding the procedural bars, petitioner's claim for relief based on the intervening decisions of ***Howell*** and ***Ronk*** lacks merit.

III. Claim of Newly Discovered Evidence

¶21. Next, we examine petitioner's separate claims of newly discovered evidence: Earl Jordan's recantation and "newly discovered and developed firearms identification evidence[.]" The attachments submitted offer neither new nor recently discovered evidence. Our rules govern untimely post-conviction relief applications ensuring cases proceed to finality in judgments. The Mississippi Legislature established a one-year statute of limitations for filing a motion for relief in capital cases. *See* Miss. Code Ann. § 99-39-5(2). Section 99-39-5(2) provides other exceptions from the three year statute of limitations. Section 99-39-5(2)(a)(i) reads:

> (a)(i) That there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence or *that he has evidence, not reasonably discoverable at the time of trial, which is of such nature that it would be practically conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence*[.]

§ 99-39-5(2)(a)(i), -27(9) (emphasis added). Notwithstanding procedural bars, to receive relief for a claim of newly discovered evidence, petitioner must show that "he has evidence, not reasonably discoverable at the time of trial, that is of such a nature that it would be *practically conclusive* that, if it had been introduced at trial, it would have caused a different

result in the conviction or sentence[.]" Miss. Code Ann. §§ 99-39-5(2)(a)(i), -27(9) (emphasis added).

A. Affidavit of William Tobin

¶22. Petitioner first raised a 2013 affidavit from William Tobin. The affidavit cast doubt on the scientific validity of firearm examinations and the conclusions drawn from such examinations. This Court denied that relief in 2013. Order, ***Manning v. State***, No. 2013-DR-00491-SCT (Miss. July 23, 2013). Petitioner now repackages Tobin's nearly identical opinion as "newly discovered" or "developed firearms evidence." This Court adjudicated what is now claimed in 2013. Notwithstanding the procedural bars, petitioner's present claim also lacks merit.

B. The claim of newly discovered evidence based on Earl Jordan's recantation is not new.

¶23. On November 8, 1994, upon return of the jury's verdict, the trial judge sentenced petitioner to death by lethal injection and set the date of petitioner's execution on December 16, 1994. On April 25, 2013, we granted the State's motion to reset petitioner's execution date. Order, ***Manning v. State***, No. 95-DP-00066-SCT (Miss. Apr. 25, 2013). That very day this Court *unanimously* ruled "TO DENY AS TO THE CLAIMS OF RECANTATION OF A WITNESS AND INEFFECTIVE ASSISTANCE OF COUNSEL: ALL JUSTICES." Order, ***Manning v. State***, No. 2013-DR-00491-SCT, at *6 (Miss. Apr. 25, 2013). Eleven years ago, this Court held that "Manning's conviction and sentence were based on substantially more evidence than he now challenges or is referenced in the objections to this

order. Our examination anew of the record reveals that conclusive, overwhelming evidence of guilt was presented to the jury." ***Id.*** at *2.

¶24. The very next day of 2013, petitioner sought rehearing and primarily raised a "request for DNA and other forensic testing and a separate claim arising under ***Batson v. Kentucky***, 476 U.S. 83 (1986)." *See infra* ¶ 28 n.6. Subsequently, petitioner filed yet another supplemental motion for leave to file a successive petition for post-conviction relief. The Court granted petitioner's specific request for DNA testing and fingerprint comparison. Order, ***Manning v. State***, No. 2013-DR-00491-SCT (Miss. July 23, 2013). The Court further ordered that "the Second Motion for Leave to File Successive Petition for Post-Conviction Relief, as supplemented, is hereby *denied in all other respects*." ***Id.*** (emphasis added). This Court has ruled against the petitioner on multiple occasions regarding Earl Jordan.

(i) Petitioner has had his days in court.

¶25. Petitioner was tried as an habitual offender in 1994.[5] ***Manning***, 726 So. 2d at 1162. In 1994, petitioner was found guilty of two counts of capital murder. The jury determined that each count merited the death penalty. His direct appeal raised twenty-one assignments of error. This Court unanimously affirmed the verdict. ***Id.*** at 1198. In April 1999, the United States Supreme Court denied petitioner's application for writ of certiorari. ***Manning v. Mississippi***, 526 U.S. 1056, 119 S. Ct. 1368, 143 L. Ed. 2d 528 (1999) (mem.). In 2006,

[5]Petitioner was previously convicted of burglary of a dwelling in January 1989, robbery in December 1992, and grand larceny in April 1992, which subjected him to life without parole upon conviction of the murders.

this Court unanimously denied all claims raised in petitioner's first application for post-conviction relief. ***Manning***, 929 So. 2d at 907.

¶26. After this Court denied relief in 2006, the petitioner turned to the federal courts for collateral relief. *See supra* ¶ 19. The petitioner filed a habeas corpus suit in the United States District Court for the Northern District of Mississippi. The United States District judge found:

> Petitioner's convictions and death sentences were affirmed on direct appeal [in 1998 and 1999]. Petitioner filed a pro se petition for post-conviction relief in State Court on February 2, 2001, almost a year and ten months following the Supreme Court's denial of certiorari. On October 8, 2001, Petitioner filed an application for leave to file a motion for post-conviction relief in the trial court, which was almost two and one half years after the denial of certiorari on direct appeal. Post-conviction relief was denied on March 9, 2006 in a substitute opinion. Petitioner did not seek a writ of certiorari from the decision. Petitioner filed his federal habeas petition on October 12, 2005, prior to the completion of the State post-conviction process. Respondents moved to dismiss the petition for failure to comply with the time limitations under the AEDPA. On December 28, 2006, . . . this Court denied Respondents' motion for summary judgment based on the statute of limitations, finding that equitable tolling should allow Petitioner and opportunity to present his claims.

Manning, 695 F. Supp. 2d at 342-43 (citations omitted), *rev'd*, 688 F.3d 177. The United States Court of Appeals for the Fifth Circuit overruled the decision of the district court, holding that petitioner did not establish that he diligently pursued his habeas claims, the district court abused its discretion when it found that equitable tolling was available to him. ***Manning***, 688 F.3d at 190. The district court conducted a thorough analysis of *thirteen assignments* of error raised and their subparts and found not a single ground for relief. ***Manning***, 695 F. Supp. 2d at 410.

¶27. Following the Fifth Circuit's decision, petitioner sought relief in the United States Supreme Court for certiorari. Again certiorari was denied by the United States Supreme Court. ***Manning***, 568 U.S. 1251. On the same day, March 25, 2013, the State moved for this Court to reset his execution date. On April 25, 2013, the Court granted the State's motion to set petitioner's execution date for May 7, 2013. Order, ***Manning v. State***, No. 95-DP-00066-SCT (Miss. Apr. 25, 2013). During the period of May 6, 2013, through May 21, 2013, petitioner filed another Motion to Set Aside Convictions, Second Motion for Leave to File Successive Petitions for Post-Conviction Relief, and Motion in the Alternative for Other Forms of Relief, as well as supplements to the second motion filed. This Court granted Manning's motion to stay his execution. Corrected Order, ***Manning v. State***, No. 95-DP-00066-SCT (Miss. May 7, 2013).

¶28. In 2013, petitioner sought DNA and fingerprint testing and another review of ***Batson***,[6] an ineffective-assistance-of-counsel claim, a claim of cumulative error, and an allegation that Earl Jordan had recanted his testimony. This Court denied every claim except two. This Court unanimously granted leave for petitioner to proceed in the circuit court on the issues of DNA and fingerprint comparison *only*. Order, ***Manning v. State***, No. 2013-DR-00491-SCT (Miss. July 25, 2013). By that order, the case was returned to the trial court.

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[6]***Batson v. Kentucky***, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986). Petitioner had received two reviews of specific ***Batson*** challenges and a third review that considered if his defense counsel failed to preserve ***Batson*** challenges. All challenges were found to be without merit.

¶29. As noted by the Court in 2022, "[petitioner] was allowed sixty days from the date of issuance of this Court's mandate to file his petition for DNA testing and fingerprint analysis in the Oktibbeha County Circuit Court." ***Manning v. State***, 371 So. 3d 117, 122 (Miss. 2022). "The mandate issued on August 15, 2013, and [petitioner] timely filed a petition on October 14, 2013, requesting that the circuit court assist him in locating biological evidence suitable for DNA testing [inter alia] . . . ." ***Id.***

¶30. The Court revealed that petitioner was "able to test the evidence of his choice at the lab of his choice." ***Id.*** at 138. Petitioner wanted Bode Technologies to test the evidence in its lab, while the State favored Orchid Cellmark. The Court wrote that "the circuit court allowed [petitioner] three rounds of testing: one at Orchid and two at Bode. After almost six years of testing, the circuit court stated that Bode delivered two reports that "show that the testing did not produce results from the DNA that the [p]etitioner selected to be tested." ***Id.*** at 131-32.

¶31. Six years after receiving partial relief from this Court in 2013, petitioner filed in the trial court a Motion to Allow Transfer of Evidence for Conclusion of DNA Testing. The trial court set forth that "[t]he movant must show how a different testing method would produce more probative results than the method originally used to overcome the procedural bar." ***Id.*** at 126 (citing ***Green v. State***, 242 So. 3d 176, 179 (Miss. Ct. App. 2017), Accordingly, based on repeated inconclusive results over a six year period, the trial court found that "there is not a reasonable likelihood of probative results with a transfer or that a transfer would result in

new evidence." ***Id.*** Dissatisfied with the trial court's ruling, petitioner again appealed to this Court, seeking to begin yet another round of testing at yet another laboratory.

¶32. This Court evaluated the petitioner's issues and found no error in the circuit court's decisions. ***Manning***, 371 So. 3d at 125. Determining that petitioner had been allowed extensive testing, the Court held that

> [Petitioner] has pursued DNA testing and fingerprint analysis on many occasions prior to this Court's granting of his request. Before [petitioner's] trial in 1994, a motion was granted that allowed him to inspect, examine and test all the physical evidence in possession of the State. *See* Order, ***Manning v. State***, No. 2013-DR-00491-SCT (Miss. Apr. 25, 2013). After trial and during the course of [petitioner's] first PCR, [petitioner] filed a motion to allow him leave for discovery and inspection of evidence. Petition for Review of Lower Court's Order Denying Motion for Expert Assistance, Discovery, and Inspection of Evidence, ***Manning***, 929 So. 2d 885. This Court denied [petitioner's] discovery motions. [Petitioner] again pursued testing of DNA evidence in his request for federal habeas corpus relief. ***Manning*** [***v. Epps***, No. 1:05CV256-P] 2008 WL 4516386, at *1 (N.D. Miss. 2008). The federal court granted [petitioner] leave to inspect the Oktibbeha County Sheriff's Department evidence and obtain evidence records from the Mississippi Crime Lab. ***Id.*** However, the federal court denied [petitioner] leave for testing of the evidence. ***Id.*** at *2. [Petitioner] then filed his successive motion for PCR requesting DNA analysis and fingerprint comparison, which gave rise to the issues presented in this appeal. As Chief Justice Randolph stated in his objection to granting [petitioner's] Motion to Stay Execution, [petitioner] 'should not be allowed to take a gambler's risk and complain if the cards [fall] the wrong way.' ***Manning v. State***, 112 So. 3d 1082, 1083-84 (Miss. 2013) (Randolph, P.J., objecting to the order with separate written statement) (alteration in original) (internal quotation mark omitted) (quoting ***Dist. Atty's Office for Third Jud. Dist. v. Osborne***, 557 U.S. 52, 86, 129 S. Ct. 2308, 174 L. Ed. 2d 38 (2009) (Alito, J., concurring)).

Id. at 140-41. Petitioner sought a writ of certiorari from the United States Supreme Court for a *third* time and again was denied. ***Manning v. Mississippi***, 144 S. Ct. 135, 217 L. Ed. 2d 45 (2023) (mem.).

¶33. Petitioner had three filings in the United States Supreme Court. In this Court, in which two requests for writs of certiorari resulted, petitioner received a direct appeal, filed three applications for post-conviction relief, and had reviewed of the trial court's decision to deny his motion to transfer DNA evidence. In federal courts, petitioner received habeas corpus review, ***Manning***, 695 F. Supp. 2d 323, and separately received an order from the district court allowing leave to inspect the Oktibbeha County Sheriff's Department evidence in addition to permission to obtain evidence records from the Mississippi Crime Lab, ***Manning***, 2008 WL 4516386. Additionally, petitioner received consideration of his extensive pleadings in the Oktibbeha County Circuit Court. Petitioner has received the "heightened scrutiny" required by all death penalty cases. ***Cox v. State***, 183 So. 3d 36, 44 (Miss. 2015) (internal quotation marks omitted) (quoting ***Moffett v. State***, 49 So. 3d 1073, 1079 (Miss. 2010)). Petitioner has received more than a full measure of due process.

¶34. A state's interest in the finality of its convictions shall not be overlooked by appellate courts that engage in collateral review. The United States Supreme Court has held that "[b]oth the State and the victims of crime have an important interest in the timely enforcement of a sentence." ***Hill v. McDonough***, 547 U.S. 573, 584, 126 S. Ct. 2096, 165 L. Ed. 2d 44 (2006) (citing ***Calderon v. Thompson***, 523 U.S. 538, 556, 118 S. Ct. 1489, 140

L. Ed. 2d 728 (1998)). "Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out." ***Calderon***, 523 U.S. at 556 (citing ***Payne v. Tennessee***, 501 U.S. 808, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991)). Accordingly, "Courts should police carefully against attempts to use such challenges as tools to interpose unjustified delay." ***Bucklew v. Precythe***, 587 U.S. 119, 150, 139 S. Ct. 1112, 203 L. Ed. 2d 521 (2019).

(ii) ***Res Judicata***

¶35. During petitioner's 2013 application, petitioner argued in his second motion for leave to file successive petition for post-conviction relief, that Jordan had recanted his trial testimony. On April 25, 2013, this Court unanimously voted to deny petitioner's claims of recantation of the witness Earl Jordan and ineffective assistance of counsel. Order, ***Manning v. State***, No. 2013-DR-00491-SCT (Miss. Apr. 25, 2013). After receiving petitioner's motion for rehearing and supplemental second motion for leave to file successive petition for post-conviction relief, this Court denied *all* claims regarding Jordan's recantation. Order, ***Manning v. State***, No. 2013-DR-00491-SCT (Miss. July 23, 2013). Petitioner's renewal of this claim in 2023 is barred by the doctrine of *res judicata*.

¶36. The issue of whether Jordan's testimony was false was vigorously contested *at trial*, when petitioner argued that Jordan provided false testimony on cross-examination. ***Manning***, 726 So. 2d at 1178. Petitioner's cousin Jordan explicitly testified at trial that he

had hoped for lenient treatment in exchange for testifying against petitioner.[7] At trial, petitioner's counsel laid out the timeline for Jordan's cooperation. He first established that Jordan was familiar with the criminal justice system and that Jordan had previously accused two other individuals of committing the murders. Then he detailed how, on May 20, 1993, petitioner was arrested for the murders, and on May 21, 1993, Jordan went to the sheriff to make his statement. Jordan's testimony was severely discredited at trial.

¶37. The trial court gave jury instruction DGP-7A, which instructed that

> Earl Jordan has testified in this case and his testimony is to be considered and weighed with great care and caution. In making this determination you may consider this witness' bias or interest. You may give it such weight and credit as you deem it is entitled.

The jury was instructed by the trial judge that they should be cautious with Jordan's testimony. No similar instruction was given about any other witness. With the trial court's instruction cautioning of Jordan's testimony, the jury returned a unanimous guilty verdict.

(iii) Jordan's recantation is not of such a nature that it would be *practically conclusive* that had it been introduced at trial it would have caused a different result.

¶38. Even if today's separate statement were valid,[8] it is a longstanding principle that direct and circumstantial evidence carry the same weight. ***Nevels v. State***, 325 So. 3d 627, 632 (Miss. 2021); *see* ***Bogard v. State***, 233 So. 2d 102, 105 (Miss. 1970) ("[I]t is pointed out that

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[7]Q. You knew you were going to get a little help, didn't you, after you testified?

A. Well, you know, for me myself, speaking for myself, I was hoping.

[8]Frank Parker's testimony was direct evidence. *See* Separate Statement ¶ 3 n.1.

'circumstantial evidence, ordinarily, is entitled to the same effect and weight as direct evidence and may, in the concrete, be the more reliable and stronger.'" (quoting 23 C.J.S. *Criminal Law* § 907)). *Minus Jordan's testimony*, "Manning's conviction and sentence were based on substantially more evidence than he now challenges . . . . [T]he record reveals that conclusive, overwhelming evidence of guilt was presented to the jury." Order, ***Manning v. State***, 2013-DR-00491-SCT, at *2 (Miss. Apr. 25, 2013). As mentioned *supra* ¶ 36, consideration of Jordan's recantation is procedurally barred by the doctrine of *res judicata*, i.e., the thing has been judged.

¶39. Reflecting the Court's April 25, 2013, order and petitioner's direct appeal in 1998, Justice Chamberlin wrote for the Court in 2022 that

> *Inter alia*, three items were stolen from burglary victim John Wise's car (parked in the same lot as Tiffany Miller's (murder victim) car that night) – a CD player, a leather jacket and a unique bathroom token. In addition, Steckler's watch and class ring were missing. A witness who had known Manning for years testified that, within a week of the murders, Manning showed up at her house and wanted to sell her a watch and ring matching the exemplars. An electronic store owner identified Manning as the man who attempted to pawn the CD player and a separate witness testified that he actually purchased the CD player from Manning. The witness later pawned it in Jackson. It was recovered and matched by serial number as Wise's. The token taken from Wise's car was recovered at the murder scene.
>
> . . . .
>
> Manning's live-in girlfriend testified that she last saw Manning before the murders leaving the house with a handgun and gloves. He returned to the house a few days after the murders [without the] handgun and gloves, but with a CD player, a watch and a leather jacket, *inter alia*. She later turned over Wise's jacket to authorities. She further testified that, just days before the

> murders, she observed Manning firing a handgun into a tree behind the house in which they lived . . . .

Manning, 371 So. 3d at 137-38 (third alteration in original) (quoting Order, ***Manning v. State***, No. 2013-DR-00491-SCT, at *2-4 (Miss. Apr. 25 2013).

¶40. Another claim of recantation of Jordan's testimony does not satisfy the statutorily mandated standard requiring practically conclusive evidence that would change the verdict of the jury. And, as the Court has previously considered the issue of Jordan's recantation, the matter cannot be revisited because it is barred by *res judicata*.

¶41. Mississippi Code Section 99-39-27(9) governs the application process and mandates that successive applications are barred unless the Mississippi Supreme Court finds one of the exceptions to be met. The statute is clear:

> The dismissal or denial of an application under this section is a final judgment and shall be a bar to a second or successive application under this article. . . . [E]xcepted from this prohibition are those cases in which the prisoner can demonstrate . . . that he has evidence, not reasonably discoverable at the time of trial, that is of such nature that *it would be practically conclusive* that, if it had been introduced at trial, it would have caused a different result in the conviction or sentence.

§ 99-39-27(9). As this Court concluded in 2013, we do not find that Jordan's recantation would be practically conclusive to have produced a different result for petitioner based on the abundance of evidence presented against him at trial.

¶42. In the last twenty-six years, a majority of this Court has never held that the evidence at trial was anything but overwhelming. Jordan's recanted testimony would not have

changed the verdict. Additionally, Jordan's recantation has been decided by this Court and is barred by the doctrine of *res judicata*.

IV. A Claim for Relief Based on the Cumulative Effect of the Evidence

¶43. A majority of this Court never has determined that the cumulative effect of the evidence undermined the reliability of petitioner's conviction. Petitioner has had more than a full measure of justice. Tiffany Miller and Jon Steckler have not. Their families have not. The citizens of Mississippi have not. Finality of justice is of great import in all cases. As this Court has held, "[u]nnecessary and unjustified delays affect the justice and fairness owed to victims and defendants alike." ***Moffett v. State***, 351 So. 3d 936, 943 (Miss. 2022). The justices on this Court are charged with guarding this state's constitution. ***Id.*** (citing ***Payton v. State***, 266 So. 3d 630, 641 (Miss. 2019)). Because the Mississippi Constitution balances the rights of victims and defendants, we must do likewise. ***Id.***

IT IS, THEREFORE, ORDERED that Willie Jerome Manning is denied leave to proceed in the circuit court with his claim of newly discovered evidence based on Earl Jordan's recantation.

IT IS FURTHER ORDERED that all other claims for relief set forth in Willie Jerome Manning's Motion for Leave to File Successive Petition for Post-Conviction Relief are denied.

IT IS FURTHER ORDERED that Willie Jerome Manning's Motion to Amend Successive Petition for Post-Conviction Relief in Light of Intervening Decisions of this Court: ***Howell v. State*** and ***Ronk v. State*** is hereby denied.

SO ORDERED, this the 16 day of September, ~~2024~~.

MICHAEL K. RANDOLPH,
CHIEF JUSTICE
FOR THE COURT

AGREE: RANDOLPH, C.J., MAXWELL, BEAM, ISHEE AND GRIFFIS, JJ.

DISAGREE: KITCHENS AND KING, P.JJ., COLEMAN AND CHAMBERLIN, JJ.

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

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2023-DR-01076-SCT

Willie Jerome Manning a/k/a Fly

v.

State of Mississippi

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

¶1. Today the Court perverts its function as an appellate court and makes factual determinations that belong squarely within the purview of the circuit court judge. This Court has held explicitly that "[w]hen an important witness to a crime recant[s] his testimony and offer[s] a reason for having given false testimony at trial, the defendant/petitioner *is entitled to an evidentiary hearing* to determine whether the witness lied at trial or on his affidavit." ***Manning v. State***, 884 So. 2d 717, 723 (Miss. 2004) (emphasis added) (citing ***Hardiman v. State***, 789 So. 2d 814 (Miss. Ct. App. 2001)).

¶2. In the death-penalty case ***Howell v. State***, 989 So. 2d 372, 384 (Miss. 2008), this Court ordered an evidentiary hearing to consider the credibility of a crucial witness who recanted his trial testimony but then withdrew his recantation. We stated:

> This issue can be resolved by the trial judge, who will have the opportunity not only to hear [the witness's] testimony, but also observe [his] demeanor as [he] is subjected to both direct examination and cross-examination. This also is certainly true of other witnesses who might testify on this issue.

Id. Ultimately, the trial court denied Howell relief, and this Court affirmed. ***Howell v. State***, 163 So. 3d 240 (Miss. 2014). Today's case offers an even stronger reason to grant an

evidentiary hearing than was present in ***Howell***. In ***Howell***, we found that a hearing was required even though the witness had withdrawn his recantation. ***Id.*** As we discussed in that opinion, essential to a determination of credibility is the opportunity to observe the witness's demeanor under examination. ***Howell***, 989 So. 2d at 384.

¶3. Earl Jordan was the only witness to provide direct evidence testimony against Manning at trial. Prior to Manning's indictment for capital murder, Manning was incarcerated with Jordan in the Oktibbeha County jail. According to Jordan's trial testimony, Manning confessed to killing the two victims and described the course of events leading to the shootings. When this Court affirmed Manning's conviction on direct appeal, we noted that "Manning's confession to Jordan removed this case from the circumstantial realm." ***Manning v. State***, 726 So. 2d 1152, 1194 (Miss. 1998), *overruled on other grounds by* ***Weatherspoon v. State***, 732 So. 2d 158 (Miss. 1999). Inexplicably, the Court now declares its previous stance on this to not be "valid."[1] *See* Maj. Order ¶ 38.

¶4. Manning first raised the issue of Jordan's recantation in his second application for post-conviction relief. Because Jordan refused to provide a sworn statement to submit with Manning's petition, Manning presented Jordan's recantation through an investigator's affidavit. The investigator said Jordan recanted in December 2012 but refused to sign a statement and that he refused to meet again when investigators returned to his home in 2013. This Court denied relief because Manning had "fail[ed] to present any *competent* evidence Earl Jordan [had] recanted his trial testimony." Order, ***Manning***, No. 2013-DR-00491-SCT,

[1] The witness Frank Parker did not testify that Manning confessed to the murder. Parker testified that he overheard Manning talk to another inmate about pawning some guns.

at *5 (Miss. Apr. 25, 2013) (emphasis added). But here, with the inclusion of Jordan's affidavit, Manning has done exactly what this Court indicated would warrant an evidentiary hearing. Jordan's affidavit avers in relevant part:

> 2. I testified against Willie Manning in his trial for the murder of two college students in Starkville, MS. I testified that Manning confessed to me. I had told the sheriff that Manning said that he was with Jessie Lawrence at the time of the murders.
>
> 3. My trial testimony was not true. My statements to the sheriff about Manning's confession were also not true. Manning never told me he killed anyone.
>
> 4. When I spoke to the sheriff about what Manning supposedly told me, I was in jail and could have been charged as a habitual offender.
>
> 5. The sheriff never came out and told me directly that he would help me with the charges, but he had a way of making it clear that he would help me out if I helped him with Manning. The sheriff said he knew I could be charged as a habitual offender and that time was running out.
>
> 6. I talked to the sheriff about four or five times. The sheriff told me the way he though[t] Willie Manning had done the murder, and I changed some words to the way the sheriff said he thought it happened. The sheriff was satisfied.
>
> 7. I was not charged as a habitual offender, and I also received some reward money. Over the years, Manning's lawyers came to ask me about my statement, but I always told them that I was not going to give a statement. I was afraid to tell the truth. But Dolph Bryan is no longer the sheriff. I am telling the truth now.

¶5. "In capital cases, non-procedurally barred claims are reviewed using 'heightened scrutiny under which all bona fide doubts are resolved in favor of the accused.'" ***Ronk v. State***, 267 So. 3d 1239, 1247 (Miss. 2019) (quoting ***Crawford v. State***, 218 So. 3d 1142, 1150 (Miss. 2016)). While "[e]xperience teaches all courts a healthy skepticism toward

recanted testimony. . . , [o]ur skepticism does not translate into callousness, however." ***Yarborough v. State***, 514 So. 2d 1215, 1220 (Miss. 1987). Regardless of whether Manning's arguments are or are not found ultimately to be meritorious, Jordan's affidavit raises questions of fact that entitle Manning to an evidentiary hearing, especially in light of the heightened standard that applies in death penalty cases.

¶6. This is particularly true given that, without Jordan's original testimony, the case against Manning was circumstantial. If determined to be credible, Jordan's recantation would carry great weight in the analysis of whether Manning "has evidence, not reasonably discoverable at the time of trial, that is of such a nature that it would be practically conclusive that, if it had been introduced at trial, it would have caused a different result in the conviction or sentence." Miss. Code Ann. §§ 99-39-5(2)(a)(i), -27(9) (Rev. 2020); *see also* ***Brown v. State***, 306 So. 3d 719, 744 (Miss. 2020) (citing ***Crawford v. State***, 867 So. 2d 196, 203-04 (Miss. 2003)).

¶7. This Court should remand this case for an evidentiary hearing during which the circuit court determines: (1) whether Manning's motion is timely, given Jordan's alleged reason for not submitting an affidavit until now and Sheriff Dolph Bryan's having left office in January 2012; (2) the truthfulness of Jordan's recantation and whether "it would probably produce a different result or verdict in [a] new trial[;]" and (3) whether Manning's counsel acted diligently in obtaining and presenting Jordan's affidavit, especially considering Manning would have been aware of Jordan's supposed lying on the stand at the time of trial. As in the many other cases in which this Court has granted a post-conviction evidentiary hearing, the

grant of an evidentiary hearing would not be a comment on whether Manning has demonstrated that Jordan's recantation is "of such a nature that it would practically be conclusive that had such been introduced at trial it would have caused a different result in the conviction or sentence." Miss. Code Ann. § 99-39-5(2)(a)(i). Facilitation of that determination is the purpose of an evidentiary hearing. This Court "intimate[s] no view on the permissible outcomes" of such hearings. ***Hardiman***, 789 So. 2d at 817.

¶8. This Court's precedent dictates the necessity of an evidentiary hearing under these circumstances, and we err by making factual determinations regarding Jordan's recantation without the benefit of a trial court's prior ruling. Clearly, it is the trial court—not this Court—that is tasked not only with determining the likeliness of a different outcome absent Jordan's testimony but also the truthfulness and timeliness of the recantation itself. Only then should this Court consider—under the appropriate standard of review—the merits of Manning's request for post-conviction relief.

KING, P.J., COLEMAN AND CHAMBERLIN, JJ., JOIN THIS SEPARATE WRITTEN STATEMENT.