

By: Representative Smith (39th)

To: Judiciary B

HOUSE BILL NO. 510

1 AN ACT TO AMEND SECTION 99-39-5, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE TIME LIMITATION ON POST-CONVICTION RELIEF; AND FOR  
3 RELATED PURPOSES. BE IT ENACTED BY THE LEGISLATURE OF THE STATE  
4 OF MISSISSIPPI:

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6 SECTION 1. Section 99-39-5, Mississippi Code of 1972, is  
7 amended as follows:

8 99-39-5. (1) Any prisoner in custody under sentence of a  
9 court of record of the State of Mississippi who claims:

10 (a) That the conviction or the sentence was imposed in  
11 violation of the Constitution of the United States or the  
12 Constitution or laws of Mississippi;

13 (b) That the trial court was without jurisdiction to  
14 impose sentence;

15 (c) That the statute under which the conviction and/or  
16 sentence was obtained is unconstitutional;

17 (d) That the sentence exceeds the maximum authorized by  
18 law;

19 (e) That there exists evidence of material facts, not  
20 previously presented and heard, that requires vacation of the  
21 conviction or sentence in the interest of justice;

22 (f) That his plea was made involuntarily;

23 (g) That his sentence has expired; his probation,  
24 parole or conditional release unlawfully revoked; or he is  
25 otherwise unlawfully held in custody;

26 (h) That he is entitled to an out-of-time appeal; or

27 (i) That the conviction or sentence is otherwise

28 subject to collateral attack upon any grounds of alleged error  
29 heretofore available under any common law, statutory or other  
30 writ, motion, petition, proceeding or remedy; may file a motion to  
31 vacate, set aside or correct the judgment or sentence, or for an  
32 out-of-time appeal.

33 (2) A motion for relief under this chapter shall be made  
34 within one (1) year after the time in which the prisoner's direct  
35 appeal is ruled upon by the Supreme Court of Mississippi or, in  
36 case no appeal is taken, within one (1) year after the time for  
37 taking an appeal from the judgment of conviction or sentence has  
38 expired, or in case of a guilty plea, within one (1) year after  
39 entry of the judgment of conviction. Excepted from this one-year  
40 statute of limitations are those cases in which the prisoner can  
41 demonstrate either that there has been an intervening decision of  
42 the Supreme Court of either the State of Mississippi or the United  
43 States which would have actually adversely affected the outcome of  
44 his conviction or sentence or that he has evidence, not reasonably  
45 discoverable at the time of trial, which is of such nature that it  
46 would be practically conclusive that had such been introduced at  
47 trial it would have caused a different result in the conviction or  
48 sentence. Likewise excepted are those cases in which the prisoner  
49 claims that his sentence has expired or his probation, parole or  
50 conditional release has been unlawfully revoked.

51 (3) This motion is not a substitute for, nor does it affect,  
52 any remedy incident to the proceeding in the trial court, or  
53 direct review of the conviction or sentence.

54 (4) Proceedings under this chapter shall be subject to the  
55 provisions of Section 99-19-42.

56 SECTION 2. This act shall take effect and be in force from  
57 and after July 1, 1999.