

By: Ross

To: Judiciary

SENATE BILL NO. 2080

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.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

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

7 99-39-5. (1) Any prisoner in custody under sentence of a
8 court of record of the State of Mississippi who claims:

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

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

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

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

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

21 (f) That his plea was made involuntarily;

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

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

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

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

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

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

55 SECTION 2. This act shall take effect and be in force from
56 and after July 1, 2000.