

By: Representative Fleming

To: Judiciary En Banc

HOUSE BILL NO. 73

1 AN ACT TO AMEND SECTIONS 99-39-5 AND 99-39-9, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE FOR POST-CONVICTION MOTIONS FOR DNA FOR
3 ALL CAPITAL DEATH PENALTY CASES; AND FOR 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 article shall be made
33 within three (3) years after the time in which the prisoner's
34 direct appeal is ruled upon by the Supreme Court of Mississippi
35 or, in case no appeal is taken, within three (3) years after the
36 time for taking an appeal from the judgment of conviction or
37 sentence has expired, or in case of a guilty plea, within three
38 (3) years after entry of the judgment of conviction. Excepted
39 from this three-year statute of limitations are those cases in
40 which the prisoner can demonstrate either that there has been an
41 intervening decision of the Supreme Court of either the State of
42 Mississippi or the United States which would have actually
43 adversely affected the outcome of his conviction or sentence or
44 that he has evidence, not reasonably discoverable at the time of
45 trial, which is of such nature that it would be practically
46 conclusive that had such been introduced at trial it would have
47 caused a different result in the conviction or sentence. Likewise
48 excepted are those cases in which the prisoner claims that his
49 sentence has expired or his probation, parole or conditional
50 release has been unlawfully revoked. Likewise excepted are
51 filings for post-conviction relief in capital cases which shall be
52 made within one (1) year after conviction.

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

56 (4) Proceedings under this article shall be subject to the
57 provisions of Section 99-19-42.

58 (5) All prisoners in custody for a capital death penalty
59 conviction shall have the right to file a post-conviction motion
60 for DNA testing.

61 **SECTION 2.** Section 99-39-9, Mississippi Code of 1972, is
62 amended as follows:

63 99-39-9. (1) A motion under this article shall name the
64 State of Mississippi as respondent and shall contain all of the
65 following:

66 (a) The identity of the proceedings in which the
67 prisoner was convicted.

68 (b) The date of the entry of the judgment of conviction
69 and sentence of which complaint is made.

70 (c) A concise statement of the claims or grounds upon
71 which the motion is based.

72 (d) A separate statement of the specific facts which
73 are within the personal knowledge of the prisoner and which shall
74 be sworn to by the prisoner.

75 (e) A specific statement of the facts which are not
76 within the prisoner's personal knowledge. The motion shall state
77 how or by whom said facts will be proven. Affidavits of the
78 witnesses who will testify and copies of documents or records that
79 will be offered shall be attached to the motion. The affidavits
80 of other persons and the copies of documents and records may be
81 excused upon a showing, which shall be specifically detailed in
82 the motion, of good cause why they cannot be obtained. This
83 showing shall state what the prisoner has done to attempt to
84 obtain the affidavits, records and documents, the production of
85 which he requests the court to excuse.

86 (f) The identity of any previous proceedings in federal
87 or state courts that the prisoner may have taken to secure relief
88 from his conviction and sentence.

89 (2) A motion shall be limited to the assertion of a claim
90 for relief against one (1) judgment only unless such motion is for
91 DNA testing as provided in subsection (5) of Section 99-39-5. If
92 a prisoner desires to attack the validity of other judgments under
93 which he is in custody, he shall do so by separate motions.

94 (3) The motion shall be verified by the oath of the
95 prisoner.

96 (4) If the motion received by the clerk does not
97 substantially comply with the requirements of this section, it
98 shall be returned to the prisoner if a judge of the court so
99 directs, together with a statement of the reason for its return.
100 The clerk shall retain a copy of the motion so returned.

101 (5) The prisoner shall deliver or serve a copy of the
102 motion, together with a notice of its filing, on the state. The
103 filing of the motion shall not require an answer or other motion
104 unless so ordered by the court under Section 99-39-11(3).

105 **SECTION 3.** This act shall take effect and be in force from
106 and after July 1, 2005.