

Patrick Fluker v. State , No. 2015-CP-00713-COA (Miss. Ct. App. August 4, 2016)

CASE: Petition for Writ of Habeas Corpus - Exploitation of a Child

COURT: Forrest County Circuit Court

TRIAL JUDGE: Hon. Robert B. Helfrich

APPELLANT ATTORNEYS: Patrick Fluker (Pro Se)

APPELLEE ATTORNEY: Billy L. Gore

DISPOSITION: Denial of Petition, affirmed. Wilson, J., for the Court. Lee, C.J., Griffis, P.J., Barnes, Ishee, Fair, and Greenlee, JJ., Concur. Irving, P.J., Concur in Part and in Result Without Separate Written Opinion. Carlton, J., Concur in the Result Only Without Separate Written Opinion. James, J., Dissents with Separate Written Opinion, Joined in Part by Irving, P.J.

ISSUE: Whether the Court had jurisdiction to affirm the trial court's decision on the merits.

FACTS: Patrick Fluker pled guilty to armed robbery in 2007 and was sentenced to 15 years in MDOC. By law, he is ineligible for parole. He filed a petition for writ of habeas corpus, alleging that the legislation passed in 2014 expanded parole eligibility for robbery convictions after July 1, 2014 but not for persons, like himself, convicted on or before July 1, 2014. Fluker claimed this violated his equal protection rights. The circuit court summarily denied his petition, citing that his claim was without merit.

HELD: Majority agreed that Fluker's claims fail on the merits, as a matter of law. Agreed with dissent that Fluker's petition is best viewed as a regular civil action against Parole Board, and not as a motion for post-conviction relief. However, other than in certain special classes of "local actions", venue is not jurisdictional and the fact that case was not filed in proper venue, "does not of itself affect the right of the court to hear and determine" the case on the merits. Improper venue is a reason to transfer a case, not to dismiss it. Court of Appeals is not deprived of jurisdiction to decide the case on the merits.

DISSENT: Fluker filed petition in Forrest County where he was convicted. Fluker's case is against the MS Parole Board. Fluker did not challenge his conviction or sentence so this was not a motion for post-conviction relief. Fluker's petition should have not have been filed in Forrest County Circuit Court. The trial court did not have jurisdiction to hear the case. In order for the trial court to have jurisdiction to hear the case against the Parole Board on the merits, the defendant must name and serve the actual parties in interest. Fluker named the Parole Board as the proper party, but no process was issued in this case. No appearance or answer filed on behalf of the Parole Board. The State treated this as a PCR but neither the trial court nor the Court of Appeals had jurisdiction to consider the case on the merits.