

**SYNOPSIS OF OPINION IN DEATH PENALTY CASE IN THE MISSISSIPPI SUPREME COURT HANDED DOWN December 8, 2016**

*Kelvin Jordan a/k/a Kelvin L. Jordan v. State of Mississippi*, No. 2015-DR-01082-SCT (Miss. Dec. 8, 2016)

**CASE:** Civil (involving a criminal conviction) - Death Penalty – Post-conviction (successor)

**SENTENCE:** Death

**COURT:** Clarke County Circuit Court

**TRIAL JUDGE:** Hon. Robert Walter Bailey

**APPELLANT ATTORNEYS:** Louwlynn V. Williams, Dellwyn K. Smith

**APPELLEE ATTORNEY:** Brad Allen Smith

**DISTRICT ATTORNEY:** E.J. (Bilbo) Mitchell

**DISPOSITION:** Leave to file successive petition for post-conviction relief denied.

Waller, C.J., Dickinson, P.J., Lamar, Kitchens, Maxwell and Beam, JJ., concur. King, J., specially concurs with separate written opinion joined by Kitchens, J. Randolph, P.J., not participating.

**ISSUE:** Whether Jordan was entitled to have a hearing in the circuit court on his petition for successive post-conviction relief claiming ineffectiveness of trial and earlier post-conviction counsel, disproportionality of his sentence and evidentiary errors in the trial court affecting his original conviction and death sentence.

**FACTS:** A jury convicted Kelvin Jordan of two counts of capital murder in 1996 and determined that he should be sentenced to death for both killings. The Court affirmed the convictions and sentences. *Jordan v. State*, 728 So. 2d 1088 (1999) (*Jordan I*). Jordan sought post-conviction relief (PCR) and that petition was denied. *Jordan v. State*, 918 So. 2d 636 (Miss. 2005) (*Jordan II*). Jordan then filed for habeas corpus review in the federal district court. That court stayed those proceedings to permit Jordan to file a successive petition for post-conviction relief in the Mississippi Supreme Court on certain issues. Lead counsel on the successor petition had entered an appearance in the original post-conviction matter, but did not perform any substantive work in that original proceeding.

**HELD:** All of Jordan’s claims except his claim of ineffective post-conviction relief counsel are barred as untimely, as successive, by res judicata, or a combination of all three. Jordan’s claim of ineffective assistance of post-conviction relief counsel “fails” because counsel are not permitted to raise claims of their own ineffectiveness. The mere entry of appearance in the earlier post-conviction proceedings was sufficient to impute all conduct of the earlier post-conviction counsel to the counsel in the present case. *Archer v. State*, 986 So. 2d 951, 956-57 (¶ 20, ¶ 22) (Miss. 2008).

**King, Justice, specially concurring:** The concurring opinion takes issue with the majority’s use of the word “fails” to describe the outcome the ineffectiveness of post-conviction-relief counsel claim. Under these circumstances, the Court simply does not consider the claim at all and it could be considered if there were other counsel. (**Kitchens, J.** joins this opinion)

To read the full opinion, click here: <https://courts.ms.gov/Images/Opinions/CO117255.pdf>

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