IN THE SUPREME COURT OF MISSISSIPPI

MICHELLE BYROM, *Petitioner*

versus **No. 2014-DR-00230-SCT**

STATE OF MISSISSIPPI, *Respondent*

MOTION TO HAVE THE COURT WRITE A REASONED OPINION STATING THE REASONS FOR THE REVERSAL OF THIS CONVICTION FOR CAPITAL MURDER AND SENTENCE OF DEATH

COMES NOW the State of Mississippi, by and through counsel, and moves this Court to enter a reasoned opinion stating the basis the reversal of the conviction of capital murder and sentence of death in the above styled and numbered cause.

On February 24, 2014, the United States Supreme Court denied certiorari in petitioner's federal habeas challenge to her conviction and sentence of death. Pursuant to MISS. CODE ANN. § 99-39-29, the State of Mississippi filed a motion to reset the execution date in the original direct appeal case, *Byrom v. State*, 2001-DP-00529-SCT, contending that the normal litigation of this case had come to an end. The State made this assertion because

1. This case had been presented to this Court on direct appeal and the conviction and sentence had been affirmed, and the United States Supreme Court denied certiorari. *See Byrom v. State*, 863 So.2d 836 (Miss. 2003), *cert. denied,* 543 U.S. 826 (2004).

2. This case had been presented to this Court on post-conviction review and relief was denied, and the United States Supreme Court denied certiorari. *See Byrom v. State*, 927 So.2d 709 (Miss. 2006), *cert. denied*, 549 U.S. 1056 (2006).

3. This case had been presented to the United States District Court for the Northern District of Mississippi in a federal habeas corpus petition and relief was denied. *See Byrom v. Epps*, 817 F.Supp.2d 868 (N.D. Miss. 2011).

4. This case was appealed to the United States Court of Appeals for the Fifth Circuit and the decision of the district court was affirmed and certiorari was denied. *See Byrom v. Epps*, 518 Fed.Appx. 243 (5th Cir. 2013), *cert. denied*, ___ U.S. ___, 134 S.Ct. 1275 (2014).

In each of these decisions, save the denials of certiorari by the United States Supreme Court, a reasoned written opinion explaining the basis of decision of the court was entered. Neither the conviction nor the sentence of death was disturbed by any Court.

On the day certiorari was denied, February 24, 2014, petitioner filed a motion for leave to file a successive petition for post-conviction relief in the trial court with this Court. In this motion, petitioner presented the Court with four main claims with sub-claims. The State responded to this motion, as ordered by the Court, on March 3, 2014, with a ninety-five (95) page response.

The main claims raised in the successive petition were, (1) that prior to trial Byrom had not been furnished a statement made by her son to Dr. Lott that he alone was the killer of his father; (2) that the two physical letters written by Junior, which were withheld from the jury because of a discovery violation, should have been admitted at trial; (3) that trial counsel was ineffective in for failing to disclose these letters and other issues of ineffective assistance of counsel; and (4) the ineffective assistance of counsel regarding the investigation for and the presentation of mitigation evidence in the sentence phase of her trial. **Each and every claim that Byrom presented to this Court had been addressed on the merits**

either by this Court or the federal courts on habeas corpus review.

On March 27, 2014, this Court entered an en banc order simply denying the State's motion to reset the execution date in No. 2001-DP-00529-SCT. This order was signed by a single justice with no indication as to the vote of the Court.

On March 31, 2014, this Court entered an en banc order simply stating that the conviction for capital murder is "reversed" and the case was to be remanded to the circuit court for a "new trial". Again signed by a single justice with no indication of the vote of the remaining justices. The Court stated no reason for this reversal of a conviction and sentence of death that it has twice upheld with reasoned opinions and which was upheld on federal habeas review with reasoned opinions. **The State submits there is an absolute need to know the reasoning behind this decision so as to avoid the same errors at the new trial?**

M.R.A.P. 35-A states, in part:

> **(a) Written Opinions**. The Supreme Court may write opinions on all cases heard by that Court and shall publish all such written opinions. In cases where the judgment of the trial court is affirmed, an opinion will be written in all cases where the Supreme Court assesses damages for a frivolous appeal and in other cases if a majority of the justices deciding the case determine that a written opinion will add to the value of the jurisprudence of this state *or be useful to the parties or to the trial court.* [Emphasis added.]

The State submits that a written opinion will be useful to the parties and to the trial court assigned to retry this case. Without knowing what this Court considers to be reversible error in this case, where each and every issue has been previously found not to be error the prosecution and the trial court will be at a loss with how to proceed on the various issues that

will surely arise once again in the ordered new trial.[1]

Further, the failure to enter a reasoned opinion in the reversal of a death penalty case is unprecedented in the modern jurisprudence of this Court. Since this Court's decision in *Jackson v. State*, 337 So.2d 1242 (Miss. 1976), which created a bifurcated scheme for trying death penalty cases, not a single death penalty case has been reversed without a reasoned opinion setting forth the reasons for the reversal.[2] In fact, the State can think of no case in which a criminal conviction has been reversed without the entry of a reasoned opinion stating why the conviction was being reversed. **The State would assert that the Court has embarked on an unprecedented course of action that leaves everyone questioning why.**

> The Court states that it has before it, and has considered:
> all pertinent materials, including the petition and attached exhibits, the State's response, Byrom's rebuttal, the record filed and opinion issued in Byrom's direct appeal,[1] Byrom's original petition for post-conviction relief with exhibits, and the Court's opinion issued therein.[2]
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> Order at 1. [Footnotes omitted.][3]

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[1]The Court also removed Judge Thomas Gardner from the case. Would it not be important to inform the trial judge of the Court's reasoning for his removal from the case. Where did he go wrong, what did he do that has caused the Court to remove him from the case? What ruling did he make that was improper or reversible? These are things that a trial judge should be informed of so that he or she does not make the same mistake again. However, this Court has chosen to summarily remove him from the case without explanation.

[2]The prior rules of this Court required the Court to enter a written opinion in which a conviction was reversed.

[3]We presume that the federal court opinions were considered as they were extensively quoted from in the State's response, but the Court makes no specific mention of their existence.

Then the Court simply states "the motion is well taken and should be granted." Almost as an aside the Court then states:

> The relief afforded herein is extraordinary and extremely rare in the context of a petition for leave to purse post conviction relief, and we limit the relief we today grant to the facts of the above-styled case.
>
> Order at 1.

Not only is it extraordinary and extremely rare in a post-conviction case, it is unprecedented in a motion to file a successive petition for post-conviction relief, especially when it is done without giving a single reason for doing so.

Finally, without the finding of reversible error, does this Court have the authority to reverse a criminal conviction? From a reading of the Order of the Court the State can find no mention of a reversible error on which this case is being reversed. This Court has held that the standard of general review for criminal convictions is to consider all of the evidence in the light most favorable to the State. *See Strahan v. State*, 729 So.2d 800 (Miss.,1998); *Harveston v. State*, 493 So.2d 365, 370 (Miss.1986). The Court has also held that it can reverse where, under the evidence, a reasonable juror could only find the defendant not guilty. *See Jones v. State*, 606 So.2d 1051, 1060 (Miss.1992). To reverse a case for no reason of law is the essence of arbitrariness and capriciousness, a profound misuse of judicial authority. It sets a terrible precedent for a system that prides itself on the rule of law.

Further, in *Grayson v. State,* 118 So.3d 118 (Miss. 2013), this Court held:

> ¶ 10. In considering a successive motion seeking post-conviction collateral relief, this Court will

> deny relief unless the claims are not procedurally barred and they make a substantial showing of the denial of a state or federal right. MISS .CODE ANN. § 99–39–27 (Supp.2011). Absent an applicable exception, a successive motion for post-conviction relief is procedurally barred. MISS. CODE ANN. § 99–39–[27(9)] (Supp.2011); *Rowland v. State*, 42 So.3d 503, 507 (Miss.2010).

118 So.3d at 125.

How are these claims not procedurally barred from consideration? What showing of the denial of a state or federal right was shown? The Court has given us no clue.

In addition, in *Havard v. State*, 86 So.3d 896, 899 (Miss.2012) (quoting *Knox v. State*, 75 So.3d 1030, 1036 (Miss.2011)), the Court held:

> The issue before this Court is whether Havard has newly discovered evidence that would exempt him from the procedural time-bar and the successive-writ bar. The new evidence must be "evidence, not reasonably discoverable at the time of trial, that is of such nature that it would be practically conclusive that, if it had been introduced at trial, it would have caused a different result in the conviction or sentence." MISS. CODE ANN. § 99–39–27(9) (Rev.2007). In this task, Havard fails."

86 So. 3d at 906.

The alleged newly discovered evidence was considered by the federal courts on habeas review and found not to meet any test of reversible error, especially not the "practically conclusive" test set forth in § 99-39-27. The statement of Junior to Dr. Lott was fully litigated in federal court. The two additional family member affidavits do not meet the test of newly discovered evidence as they were discoverable at the time of trial and the first post-conviction petition. The question remains - **Why is this conviction and sentence being reversed?** We are left only to speculate at the Court's reasoning. This is not the manner in

which cases are reversed. Without any guidance from this Court, the State is doomed to repeat the presumed errors upon which this conviction was reversed

With all due respect the State would respectfully submit that the Court should stay the proceedings in this case until such time that a reasoned written opinion issues from the Court stating the basis for the reversal of this death penalty conviction that has survived all previous challenges in this Court and the Federal courts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I, Marvin White, Special Assistant Attorney General for the State of Mississippi, have electronically filed, this **MOTION TO HAVE THE COURT WRITE A REASONED OPINION STATING THE REASONS FOR THE REVERSAL OF THIS CONVICTION FOR CAPITAL MURDER AND SENTENCE OF DEATH** to the following:

David L. Calder, Esquire
P.O. Box 1799
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This, the 1st day of April, 2014.

Respectfully submitted,

s/ *Marvin L. White, Jr.*

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