

THE MISSISSIPPI SUPREME COURT PLAYS “HOT POTATO” WITH CONSTITUTIONAL RIGHTS IN POST- CONVICTION—TELLS THE LEGISLATURE IT IS ITS JOB TO PROTECT RIGHTS

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INTRODUCTION

In 2015, Marcus Taylor was sentenced to fifteen years for a drug-related offense. The legislative maximum for that offense was five years. Thus, under state law, Taylor should have been released from prison in 2020. He wasn’t. In 2023, an attorney for Taylor filed a petition for post-conviction relief under Mississippi’s Uniform Post-Conviction Collateral Relief Act (“PCR Act”).¹ All judges with the Mississippi Court of Appeals agreed that Taylor was sentenced illegally and that he should not be in prison. Even so, in May 2025, the lead opinion for the court originally held that the court had no authority to correct Taylor’s illegal sentence. That too was the position of the Mississippi Attorney General’s Office. Taylor was thus left to sit in jail illegally.

The idea that the Judiciary has no authority to remedy an illegal sentence in post-conviction is disquieting. It is also out of step with a long history and tradition in Mississippi of protecting fundamental constitutional rights in post-conviction. The Mississippi Supreme Court upended that tradition in 2023 in *Howell v. State*.² *Howell* is the reason Marcus Taylor was initially

¹ Miss. Code Ann. § 99-39-1 *et seq.*
² *Howell v. State*, 358 So. 3d 613 (Miss. 2023).

denied post-conviction relief. This Article argues that *Howell* was wrongly decided. The Judiciary always has authority to administer justice and remedy wrongs caused by the judicial system.

Post-conviction collateral relief is provided by the courts after a person has been convicted and after the initial direct appeal. The relief is “collateral” to the initial criminal process. Post-conviction is a crucial tool in overturning wrongful convictions and mitigating unfair sentences. But gaining relief in post-conviction is challenging. This is in large part due to the array of “bars” blocking a litigant’s path to having a claim heard on the merits. In Mississippi, these bars include a time bar (providing a time period after direct appeal to bring a claim), a successive-writ bar (barring certain second-in-time petitions), waiver (the claim could have been brought previously), and a res judicata bar (barring a claim that was previously decided by the court).

Deeply rooted in Mississippi history is a judicial tradition of protecting a person’s fundamental constitutional rights during a criminal trial, on direct appeal, and in post-conviction, regardless of a bar to the claim. As the Mississippi Supreme Court stated over seventy-five years ago, “[c]onstitutional rights in serious criminal cases rise above mere rules of procedure. Errors affecting fundamental rights are exceptions to the rule that questions not raised in the trial court cannot be raised for the first time on appeal.”³ This makes sense given the type of wrong one seeks to remedy in post-conviction is a wrong caused in some way by the judicial system.⁴

In 2023, the Mississippi Supreme Court radically changed course in *Howell*.⁵ In *Howell*, the Court discarded the fundamental rights exception to the bars in post-conviction.⁶ Under the *Howell* regime, the Judiciary says it has no authority to protect

³ *Brooks v. State*, 46 So. 2d 94, 97 (Miss. 1950) (citations omitted); *Rowland v. State*, 42 So. 3d 503, 506 (Miss. 2010), *overruled by* *Howell v. State*, 358 So. 3d 613 (Miss. 2023) (discussing the fundamental rights exception to post-conviction bars).

⁴ *Fugitt v. State*, 37 So. 554, 556 (Miss. 1904) (“[T]he appropriate use of [post-conviction relief] is to enable a court to correct its own errors” (quoting *Pickett’s Heirs v. Legerwood*, 32 U.S. 144, 147 (1833))).

⁵ *Howell*, 358 So. 3d at 613.

⁶ *Id.* at 616.

fundamental constitutional rights in post-conviction (even when those rights are violated) if a bar exists to granting relief.⁷

To achieve its result, the *Howell* Court branded Mississippi’s PCR Act as substantive law for only the Legislature.⁸ According to the Court, because the PCR Act is substantive law for the Legislature, the Judiciary can in no way create exceptions to it.⁹ *Howell* reasons that the PCR Act *must be* substantive law because it was drafted by the Legislature, regardless of the nature of the legislation.¹⁰ The *Howell* opinion thus creates a truncated “who wrote it” test to evaluate state separation of powers. In an opinion relying on *Howell*, the Court also told the Legislature that it is its job to protect constitutional rights in post-conviction.¹¹

Howell was incorrectly decided, and the rationale it uses turns separation of powers on its head. Granting post-conviction relief in Mississippi lies at the core of judicial authority. As one Court of Appeals judge explained in *Taylor v. State*, “[the Judiciary] should not require grace from the Legislature for the Judiciary to fix a judiciary problem.”¹²

The *Taylor* case exposes the perilous consequences of *Howell*. In *Taylor*, the Mississippi Court of Appeals initially held it had no authority to correct Taylor’s illegal sentence. Taylor moved for rehearing and the Mississippi Office of Capital Post-Conviction Counsel filed an amicus brief.¹³ The Mississippi Court of Appeals granted rehearing and finally granted relief to Taylor.¹⁴ But the Mississippi Attorney General’s Office filed another rehearing

⁷ *Id.*

⁸ See Miss. Code Ann. § 99-39-1 *et seq.*

⁹ See *Howell*, 358 So. 3d at 616.

¹⁰ *Id.* at 615 (explaining that “the Legislature only can enact substantive law”).

¹¹ *Ronk v. State*, 391 So. 3d 785, 795 (Miss. 2024) (whether fundamental rights should remain protected in post-conviction “is a decision for the Legislature, not us”).

¹² *Taylor v. State*, No. 2023-CA-00738-COA, 2025 WL 1303363, at *7 (Miss. Ct. App. May 6, 2025) (Lawrence, J., concurring in part and in result).

¹³ Appellant’s Motion for Rehearing, *Taylor v. State*, No. 2023-CA-00738-COA (Miss. Ct. App. May 6, 2025); see Brief for Mississippi Office of Capital Post-Conviction Counsel as Amici Curiae Supporting Motion for Rehearing, *Taylor v. State*, No. 2023-CA-00738-COA (Miss. Ct. App. May 6, 2025). The authors of this Article authored the amicus brief filed by the Mississippi Office of Capital Post-Conviction Counsel.

¹⁴ *Taylor*, 2025 WL 3213028, at *8.

motion, arguing that the “Court’s decision conflicts with *Howell*.”¹⁵ Taylor, thus, continued to sit in jail illegally.

On December 10, 2025, Mississippi Governor Tate Reeves intervened. Governor Reeves “signed Executive Order 1590 which grants executive clemency to Marcus Taylor.”¹⁶ Under Executive Order 1590, the Commissioner of the Mississippi Department of Corrections had to release Taylor within five days. Due to the executive clemency, Taylor was released from prison around December 11, 2025.¹⁷ Even so, the Attorney General’s Office remained undeterred—seeking certiorari review of the Court of Appeals decision in the Mississippi Supreme Court. On March 18, 2026, the Mississippi Supreme Court denied certiorari, without comment, leaving in place the Court of Appeals’ decision.¹⁸

Although all branches of government have roles to play in our justice system, the Judiciary is best suited to correct individual wrongs caused by that system. This is what Mississippi’s constitution contemplates.¹⁹ *Howell* should thus be overturned, and the Judiciary should continue to exercise its judicial authority to correct fundamental injustice in post-conviction proceedings.

That said, just as the governor intervened with Marcus Taylor’s case, the executive or legislative branches should be prepared to step in if the Judiciary refuses to fix “judiciary

¹⁵ Mississippi Attorney General’s Motion for Rehearing at 9, *Taylor v. State*, No. 2023-CA-00738-COA (Dec. 2, 2025).

¹⁶ *Governor Reeves Grants Executive Clemency for First Time Since Taking Office*, OFF. OF GOVERNOR TATE REEVES (Dec. 10, 2025), <https://governorreeves.ms.gov/governor-reeves-grants-executive-clemency-for-first-time-since-taking-office> [<https://perma.cc/25EK-DXCK>]; Miss. Exec. Order No. 1590 (Dec. 10, 2025), <https://www.sos.ms.gov/content/executive%20orders/1590.pdf> [<https://perma.cc/4EPE-4ZY2>].

¹⁷ As it turns out, Marcus Taylor’s brother, Maurice Taylor, was sentenced illegally also. Governor Tate Reeves granted clemency to Maurice on December 31, 2025. *Governor Reeves Grants Executive Clemency for Second Time Since Taking Office*, OFF. OF GOVERNOR TATE REEVES (Dec. 31, 2025), <https://governorreeves.ms.gov/governor-reeves-grants-executive-clemency-for-second-time-since-taking-office/> [<https://perma.cc/2TG7-DBZ6>]. Marcus Taylor’s grant of clemency was the first grant of clemency for Governor Reeves. The clemency to Maurice Taylor was the second.

¹⁸ Order Denying Certiorari, *Taylor v. Mississippi*, No. 2023-CA-00738-SCT (Mar. 18, 2026). The Mississippi Supreme Court has not commented post-*Taylor* on *Howell* and its progeny.

¹⁹ *E.g.*, MISS. CONST. art. 3, § 25 (access to courts); MISS. CONST. art. 6, § 155 (obligation to “administer justice”).

problem[s].”²⁰ One option for the Mississippi Legislature, as the voice of the people, is to protect Mississippians’ constitutional rights by enshrining the fundamental rights exception in statute. Another option is to provide an inmate with counsel during a person’s initial post-conviction proceeding. This would allow counsel to assist an incarcerated person with meeting the statutory bars in the PCR Act.

I. THE BACKGROUND AND DEVELOPMENT OF COLLATERAL RELIEF IN MISSISSIPPI SHOWS THAT GRANTING COLLATERAL RELIEF HAS ALWAYS BEEN AT THE CORE OF JUDICIAL AUTHORITY

A. *Historical Development of Collateral Relief in Mississippi*

“Meaningful access to the courts is a fundamental constitutional right[.]”²¹ In Mississippi, it is also an express right in our Constitution.²² Correcting errors caused by the judicial system is the proper use for collateral relief in Mississippi.²³ Our State’s current vehicle for accessing the courts via collateral relief is set out in a series of statutes entitled the Mississippi Uniform Post-Conviction Collateral Relief Act.²⁴ But for most of Mississippi’s history, there was not a uniform statutory mechanism. Instead, a person sought collateral relief by filing a petition for a judicial writ with the court—specifically, a writ of habeas corpus or the judicial writs of error. The former writ, the writ of habeas corpus, is the most well-known.

²⁰ Taylor v. State, No. 2023-CA-00738-COA, 2025 WL 1303363, at *7 (Miss. Ct. App. May 6, 2025) (Lawrence, J., concurring in part and in result).

²¹ Chrissy F. *ex rel.* Medley v. Miss. Dep’t of Pub. Welfare, 925 F.2d 844, 851 (5th Cir. 1991).

²² MISS. CONST. art. 3, § 25.

²³ See, e.g., Fugitt v. State, 37 So. 554, 556 (Miss. 1904) (“[T]he appropriate use of . . . [post-conviction relief] is to enable a court to correct its own errors . . .” (quoting Pickett’s Heirs v. Legerwood, 32 U.S. 144, 147 (1833))); *In re Broom*, 168 So. 2d 44, 48 (Miss. 1964) (“[T]he general scope . . . is to bring before a court a judgment previously rendered by it, for the purpose of review or modification.”); Jones v. State, 346 So. 2d 376, 376 (Miss. 1977), *superseded by statute*, Mississippi Uniform Post-Conviction Collateral Relief Act, 1984 Miss. Laws 116, *as recognized in* Chapman v. State, 250 So. 3d 429, 438 (Miss. 2018).

²⁴ See generally MISS. CODE ANN. § 99-39-1. The PCR Act is often referred to as the “UPCCRA.” This Article refers to it as the “PCR Act.”

On the federal level, the writ of habeas corpus is a centuries-old device entrusted to courts to preserve an individual's right to liberty.²⁵ In Mississippi, our state constitutional writ of habeas corpus is narrower than its federal counterpart.²⁶ Mississippi's writ of habeas corpus serves "the principal function of testing the legality of . . . detention [*before* a defendant's] conviction."²⁷ But constitutional habeas corpus also provides a *post*-conviction remedy to release a petitioner from imprisonment when convicted under an invalid statute or by a court lacking power or authority to enter the judgment.²⁸

Given the narrow scope of Mississippi's constitutional habeas provision, the habeas writ does not provide a remedy in *post*-conviction for violations of many constitutional rights. That said, as the Mississippi Supreme Court has explained, federal "[d]ue process requires adequate post conviction remedies."²⁹ The U.S. Supreme Court has held that every state must afford prisoners "some clearly defined method by which they may raise claims of denial of federal rights."³⁰ States "may provide that the protection of rights granted by the Federal Constitution be sought through the writ of habeas corpus or coram nobis . . . or, it may afford remedy by a simple motion brought either in the court of original conviction or at the place of detention."³¹ In answer to the commands of due process, states took more than one route: (1) some states expanded available relief under their habeas corpus provisions while (2) other states relied on writs of error/writs of error coram nobis.³² Because Mississippi's writ of habeas corpus has been interpreted narrowly, our state chose the latter route—*i.e.*, to rely on writs of error—to comply with due process.³³

²⁵ See U.S. CONST. art. 1, § 9, cl. 2; Magna Carta cl. 39 (1215).

²⁶ See MISS. CONST. art. 3, § 21; *Nelson v. Tullos*, 323 So. 2d 539, 542-43 (Miss. 1975).

²⁷ *Nelson*, 323 So. 2d at 542-43.

²⁸ *McHenry v. State*, 44 So. 831, 833-34 (Miss. 1907); *Ex parte Burden*, 45 So. 1, 1-3 (Miss. 1907) (discussing a "sentence [the court] had no power . . . to impose").

²⁹ *Jones v. State*, 346 So. 2d 376, 377 (Miss. 1977) (quoting *In re Broom*, 168 So. 2d 44, 46 (Miss. 1964)); see *Mooney v. Holohan*, 294 U.S. 103 (1935).

³⁰ *Young v. Ragen*, 337 U.S. 235, 239 (1949).

³¹ *Carter v. Illinois*, 329 U.S. 173, 175-76 (1946).

³² See *Commonwealth ex rel. Stevens v. Myers*, 213 A.2d 613, 622 n.19 (Pa. 1965).

³³ See *Rogers v. Jones*, 128 So. 2d 547 (Miss. 1961); see *Nelson v. Tullos*, 323 So. 2d 539 (Miss. 1975).

In Mississippi, judicial writs of error and error coram nobis provide inmates with the ability to seek redress of errors of law and fact.³⁴ The writs evolved in sixteenth century English common law to remedy judicial wrongs. The term "coram nobis" is of Latin origin and literally means "in our presence" or "before us."³⁵ A writ of coram nobis was directed to the English common law Court of King's Bench, and thus "before us (the King)" in the royal sense. A similar writ, directed to the Court of Common Pleas, was called "coram vobis," meaning "before you." These historical distinctions have no practical significance in modern American practice.³⁶

"[T]he writ coram nobis has always been recognized in [Mississippi] as a common-law remedy in appropriate cases."³⁷ For example, in *Howie v. State*, an inmate with a death sentence raised by petition that he was insane at the time of trial.³⁸ Because the Court found that a circuit court judge had the power to issue writs of error coram nobis where it appeared that the prisoner was insane, the Court reversed the circuit court's acceptance of a demurrer and remanded the case for further proceedings.³⁹ Eventually, courts in Mississippi recognized that the same type of relief could be obtained by an inmate simply moving to vacate or set aside the conviction or for a new trial.⁴⁰ "Th[e] practice [was] both simple and convenient."⁴¹ Thus, the use of the writ of error coram nobis soon became almost obsolete due to the ability to simply file a motion with the court.⁴²

³⁴ See *Fugitt v. State*, 37 So. 554, 555 (Miss. 1904); *United States v. Morgan*, 346 U.S. 502, 507 (1954).

³⁵ *Coram nobis*, BLACK'S LAW DICTIONARY (5th ed. 1979).

³⁶ See, e.g., 18 AM. JUR. TRIALS *Coram Nobis* §§ 1, 3 (1971).

³⁷ *Howie v. State*, 83 So. 158, 161 (Miss. 1919), *overruled by* *Mitchell v. State*, 176 So. 743, 744-46 (Miss. 1937).

³⁸ *Id.* at 158-59.

³⁹ *Id.* at 161; *Fugitt*, 37 So. at 555.

⁴⁰ *In re Broom*, 168 So. 2d 44, 47 (Miss. 1964).

⁴¹ *Id.* (quoting *Miss. & Tenn. R.R. v. Wynne*, 42 Miss. 315, 316 (Err. & App. 1868)).

⁴² *Id.* (citing *Carraway v. State*, 141 So. 342 (1932)).

*B. The Judicial Branch Has Always Had the Inherent
Authority to Grant Collateral Relief When Appropriate and
Necessary*

The “[j]ustification” for granting collateral relief “is properly founded upon the inherent power of the court over its judgments and proceedings.”⁴³

That courts possess inherent powers not derived from any statute is undeniably true. Among these powers are the right to correct their records so as to make them speak the truth, to pass upon the constitutionality of statutes, to prevent the abuse of their authority or process, and to enforce obedience to their mandates.⁴⁴

The Judiciary thus needs no authorization from the Legislature before it may provide a judicial remedy in post-conviction. Additionally, a statute cannot prohibit the Judiciary from exercising its constitutional obligation “to administer justice.”⁴⁵

Mississippi has thus always recognized the right of an inmate to have a meaningful opportunity to be heard post-conviction. In *Broom’s* case, for example, the Mississippi Supreme Court proclaimed that:

[A] prisoner in [the] custody of the state, claiming the right to be released or to a new trial upon the ground that his sentence was imposed in violation of the Constitution of the United States or the State of Mississippi, or that the court was without

⁴³ *Howie*, 83 So. at 161.

⁴⁴ *Id.* (quoting *Sanders v. State*, 85 Ind. 318, 328-29 (1882)); *S. Pac. Lumber Co. v. Reynolds*, 206 So. 2d 334, 335 (Miss. 1968); *Brooks v. State*, 46 So. 2d 94, 97 (Miss. 1950) (en banc) (“[T]he dispensing of justice is the object of courts.” (citing *Floyd v. State*, 148 So. 226, 232 (Miss. 1933))).

⁴⁵ See MISS. CONST. art. VI, § 155; *Howie*, 83 So. at 161; see also *Mitchell v. Fearn*, 4 Miss. 122, 123 (Err. & App. 1839) (“I have sought diligently through the statutes of Mississippi, and can find no mention of, or even allusion to writs of error *coram nobis* . . . we must, of course, look to the common law.”); *James v. Williams*, 44 Miss. 47, 47 (1870) (“Although there is no reference in the Revised Code to a writ of error *coram nobis*, it is nevertheless a common law remedy, and may be adopted in a proper case.”); *Fugitt v. State*, 37 So. 554, 555-56 (Miss. 1904) (discussing the “necessity” for the writ); *Mitchell v. State*, 176 So. 743, 745 (Miss. 1937) (“[The writ] was devised, not by legislation, but by the judiciary . . .”).

jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence and grant a new trial, or may file a petition of like nature for a writ of error coram nobis for similar relief.⁴⁶

Just as collateral relief itself derived from a judicial remedy, so too did the bars to that relief.⁴⁷ Despite the development of bars to collateral relief, the Mississippi Supreme Court always exercised its power to remedy judicial wrongs when appropriate. *Fondren v. State* is a good example.⁴⁸ In that case, Fondren was tried and convicted of burglary. The Mississippi Supreme Court affirmed the result.⁴⁹ Two years later, Fondren sought release via writ of error coram nobis. He assigned an alleged denial of his constitutional right to trial before a jury, drawn from a fair cross-section of the community. He alleged that Black citizens had long been excluded systematically from juries in his county and that this exclusion rendered constitutionally infirm his conviction and sentence. Fondren had not timely raised this issue at trial nor on direct appeal. Despite these purported failures, when the case reached the Court via error coram nobis, the Court addressed the merits and granted relief.⁵⁰

⁴⁶ *In re Broom*, 168 So. 2d 44, 48 (Miss. 1964).

⁴⁷ *Wheat v. Thigpen*, 431 So. 2d 486, 487 (Miss. 1983) (explaining that res judicata “procedurally barred . . . further consideration” of the claim); *Edwards v. State*, 441 So. 2d 84, 90 (Miss. 1983) (same); *Gilliard v. State*, 446 So. 2d 590, 592-93 (Miss. 1984) (claims were “procedurally barred”); *In re Hill*, 460 So. 2d 792, 798 (Miss. 1984) (same); *Cannaday v. State*, 455 So. 2d 713, 721 (Miss. 1984) (“[W]e address the state’s contention on this assignment that the question is procedurally barred . . .”); see also JEFFREY JACKSON ET AL., *ENCYCLOPEDIA OF MISSISSIPPI LAW* § 56:26 (2d ed. 2025) (“The application of this type of post-conviction affirmative defense or procedural bar predates the enactment of the UPCCRA. Similar bars were applied to proceedings under the prior error *coram nobis* provisions for post-conviction relief.”).

⁴⁸ *Fondren v. State*, 199 So. 2d 625 (Miss. 1967).

⁴⁹ *Fondren v. State*, 175 So. 2d 628, 637-38 (Miss. 1965).

⁵⁰ *Fondren*, 199 So. 2d at 626-27; see also *Fisher v. State*, 110 So. 361, 365 (Miss. 1926) (failure to object to a confession did not preclude reversal because of the “constitutional rights of a person on trial for his life”).

C. Legislative Enactment Cannot “Abolish” Constitutional Habeas Corpus nor the Judiciary’s Authority to Grant the Type of Relief Embodied in the Judicial Writs of Error

Although our State’s PCR Act purports to “abolish” all common law writs, including the writ of post-conviction habeas corpus,⁵¹ a statute cannot abolish a constitutionally protected right. In an unbroken line of cases, Mississippi courts have acknowledged that this state’s constitutional writ of habeas corpus is “alive.”⁵² As former Mississippi Court of Appeals Judge Leslie Southwick explained, the PCR Act’s “phrasing is unfortunate, as the constitutionally protected writ of habeas corpus cannot be abolished by statute It is more accurate to say that the procedures for the writ of habeas corpus in post-conviction matters have been established by these statutes.”⁵³ “[B]ut the writ itself remains alive.”⁵⁴

A holding that a state statute may abolish the constitutional right to habeas corpus would also unlawfully “suspend” the writ in violation of Mississippi Constitution Article 3, Section 21.⁵⁵ Thus, Mississippi’s constitutional writ of habeas corpus was not frozen in time when the PCR Act was enacted. That a statute cannot abrogate the Mississippi Constitution is an imbedded principle. For example, in *Clark v. Bryant*, the Mississippi Supreme Court held that the state’s budget cut statute did not and could not override the Executive Branch’s constitutional power.⁵⁶ In *Clark*, two legislators claimed that the Executive’s budget reductions under Mississippi Code § 27-104-13 ran afoul of separation of

⁵¹ See MISS. CODE ANN. § 99-39-3.

⁵² *Carson v. Hargett*, 689 So. 2d 753, 755 (Miss. 1996) (“[T]he State is incorrect in its argument that the writ of habeas corpus was abolished by the [PCR] Act.”); *Edmonson v. State*, 238 So. 3d 1218, 1222 (Miss. Ct. App. 2018) (“Further, the writ of habeas corpus was not abolished by the [PCR] Act.”); *Hill v. State*, 838 So. 2d 994, 997 (Miss. Ct. App. 2002) (“[T]he writ of habeas corpus remains available . . .”).

⁵³ *Norwood v. State*, 846 So. 2d 1048, 1056 (Miss. Ct. App. 2003) (Southwick, P.J., concurring) (citations omitted).

⁵⁴ *Id.*

⁵⁵ See MISS. CONST. art. 3, § 21 (“[H]abeas corpus shall not be suspended, unless when in the case of rebellion or invasion, the public safety may require it”); accord *Carson*, 689 So. 2d at 755 (explaining that “nothing in the Post-Conviction Relief Act . . . purports to suspend . . . [habeas corpus], nor could the right ever be suspended except in the limited circumstance provided for by the constitution” (emphasis added)).

⁵⁶ *Clark v. Bryant*, 253 So. 3d 297, 303 (Miss. 2018).

powers. The Court rejected that claim—holding that § 27-104-13 and the Executive’s actions taken under that statute, are constitutional because the budget control process is a core executive function.⁵⁷

The Mississippi Supreme Court has repeatedly stressed that “[w]hile . . . the legislature possesses the power to take away by statute what has been given by statute, the same can not be said for that created by the Constitution. To allow this would be an affront to our Constitution.”⁵⁸ In other words, “a [state] statute cannot trump the Mississippi Constitution.”⁵⁹ “The legislature may add new equity powers to those established by the Constitution, but it can not by statute subtract from such constitutional powers.”⁶⁰

While the judicial writs of error are not expressly protected by the Mississippi Constitution, the Mississippi Supreme Court has held that legislative enactment cannot abolish the judicial writs. *Howie v. State* is instructive.⁶¹ At the time *Howie* was decided, the Legislature had expressly abolished writs of error.⁶² Despite then-existing legislation abolishing all writs of error, the Mississippi Supreme Court provided a remedy to the petitioner through the writ of error coram nobis.⁶³ The Court in *Howie v. State* provided a judicial remedy and reversed the lower court judgment.⁶⁴

Eventually, the Mississippi Supreme Court overruled *Howie* in part—but only to the extent that it allowed a plea of insanity to be raised for the first time after conviction.⁶⁵ The Court observed

⁵⁷ *Id.*

⁵⁸ Bd. of Trs. of State Inst. of Higher Learning v. Ray, 809 So. 2d 627, 637 (Miss. 2002).

⁵⁹ Pickering v. Langston L. Firm, 88 So. 3d 1269, 1288 (Miss. 2012); *see also, e.g.*, Initiative Measure No. 65: Mayor Butler v. Watson, 338 So. 3d 599, 612 (Miss. 2021); Saxon v. Harvey, 223 So. 2d 620, 624 (Miss. 1969).

⁶⁰ Davis v. Davis, 12 So. 2d 435, 436 (Miss. 1943) (citation omitted).

⁶¹ *Howie v. State*, 83 So. 158, 161 (Miss. 1919), *overruled by* Mitchell v. State, 176 So. 743, 744-46 (Miss. 1937).

⁶² *See* MISS. CODE § 32 (1906), 1906 Miss. Laws 147 (“Writs of error, as heretofore used, are abolished . . .”).

⁶³ *Howie*, 83 So. at 160-61 (“No statute of our state affords relief in the case made by the petitioner . . . It is sufficient to say that a writ in the nature of the writ coram nobis has always been recognized in our state as a common-law remedy in appropriate cases.”).

⁶⁴ *Id.*

⁶⁵ *Mitchell*, 176 So. at 744-45.

in *Mitchel v. State* that it was returning to its original position of allowing suspension of a judgment or sentence because of insanity only when it has developed since trial.⁶⁶ But *Mitchell* also reiterated that the writ of error coram nobis is controlled by judicial decision rather than legislative action.⁶⁷

Several years later, in 1952, the Legislature provided another statutory mechanism to channel writs of error.⁶⁸ The former legislative vehicle for enforcing the writ, however, did not override the Court's power to grant a judicial remedy or even extend the writ when appropriate. Rather, the Judiciary "has the plain duty to invoke its inherent powers . . . when a situation develops demanding that a judicial inquiry be made to determine whether a judgment should be vacated."⁶⁹

II. THE PCR ACT WAS ENACTED TO CORRECT THE DISARRAY IN THE PROCEDURES USED TO FILE POST-CONVICTION PETITIONS; IT ADDED NOTHING SUBSTANTIVELY NEW TO MISSISSIPPI LAW

In *Edwards v. Thigpen*, the Mississippi Supreme Court commented on the "degree of disarray . . . in Mississippi's post-conviction relief procedures."⁷⁰ Sometimes writs of error were filed under common law procedures, while other times simple motions were filed under court-adopted rules. One year after *Edwards v. Thigpen*, the 1984 PCR Act was enacted. The PCR Act created no substantive rights and added nothing substantively new to Mississippi law.⁷¹ Rather, the PCR Act "provide[s] . . . a

⁶⁶ *Id.* at 745.

⁶⁷ *Id.*

⁶⁸ See H.B. 775, 1952 Gen. Assemb., Reg. Sess., 1952 Miss. Laws 281; see *Love v. State*, 221 So. 2d 92, 94-95 (Miss. 1969) (explaining that the statute provided a "procedure" to enforce the "writ of error coram nobis"); see also MISS. R. APP. P. 38.

⁶⁹ *Lang v. State*, 92 So. 2d 670, 674 (Miss. 1957).

⁷⁰ *Edwards v. Thigpen*, 433 So. 2d 906, 907 n.1 (Miss. 1983) ("Obviously, there is a need for a revision of the rules and statutes to streamline and clarify post-conviction relief law and procedures and to resolve any conflicting provisions. It is hoped that this matter will be given the studious and thoughtful attention of the entire bench and bar of this state, as well as of the members of this Court."); *id.* at 910 (Bowling, J., specially concurring) ("The majority opinion's footnote number 1 correctly sets out a part of the confusion that now exists in the practice of law in the various courts of this state.")

⁷¹ *Irving v. State*, 498 So. 2d 305, 308 (Miss. 1986) ("[T]he . . . Act is not a new concept in Mississippi jurisprudence; it merely codifies existing constraints on review traditionally practiced by this Court." (emphasis added)); *State v. Read*, 544 So. 2d 810, 813 (Miss. 1989)

procedural mechanism within which to bring claims recognizable under a variety of writs.”⁷²

The PCR Act itself declares that its purpose is “to provide the courts of this state with an exclusive and uniform *procedure* for the collateral review of convictions and sentences.”⁷³ The comment to the Mississippi Supreme Court’s Rules of Appellate Procedure also provides that Rule 22 “incorporates the comprehensive *procedure* reflected in the [PCR Act].”⁷⁴ As the Mississippi Supreme Court has often held, “motion[s] for post-conviction relief . . . [are] subject to the *procedural* rules promulgated [in the PCR Act].”⁷⁵ Thus, both before and after the PCR Act was enacted, the Judiciary and the Legislature were in accord that the PCR Act is a rule of procedure enacted by the Legislature and accepted as a matter of comity by the Judiciary.⁷⁶

III. BECAUSE GRANTING COLLATERAL RELIEF IS FOUNDED UPON THE JUDICIARY’S INHERENT AUTHORITY, AND THE PCR ACT IS A PROCEDURAL VEHICLE FOR GRANTING THAT RELIEF, THE JUDICIARY PERMISSIBLY CRAFTED A FUNDAMENTAL RIGHTS EXCEPTION

A. *The Fundamental Rights Exception Was Properly Adopted to Prevent Miscarriages of Justice*

The history and tradition in Mississippi is to protect fundamental constitutional rights during a criminal trial, on

(noting the Court’s “acceptance of the Post-Conviction Collateral Relief Act” and that “*it introduces nothing new* into our jurisprudence” (emphasis added)).

⁷² Edmond v. State, 845 So. 2d 701, 702 (Miss. Ct. App. 2003).

⁷³ MISS. CODE ANN. § 99-39-3 (1984) (emphasis added).

⁷⁴ MISS. R. APP. P. 22 cmt. (emphasis added).

⁷⁵ See, e.g., Knox v. State, 75 So. 3d 1030, 1035 (Miss. 2011) (emphasis added); Sykes v. State, 757 So. 2d 997, 1000 (Miss. 2000) (explaining that the “overriding intent and purpose of the [PCR Act]” is to “guide and assist the judiciary *in its duty* to provide an orderly means of administering the post-conviction claims” (emphasis added)).

⁷⁶ See, e.g., Grubb v. State, 584 So. 2d 786, 788 (Miss. 1991) (noting the Court’s “acceptance of” the PCR Act); McClendon v. State, 539 So. 2d 1375, 1377 n.2 (Miss. 1989) (“The provisions of the [PCR] [A]ct . . . enjoy enforceability, not because of any legal validity conferred upon them by the legislature but because we have adopted them in prior proceedings . . .”).

appeal, and in post-conviction, regardless of a bar to the claim.⁷⁷ As one Mississippi Court of Appeals judge recently explained, “our nation’s practice and our State’s history have recognized the right of a prisoner to have a meaningful opportunity to be heard [in] post-conviction.”⁷⁸

This enduring tradition continued after the enactment of the PCR Act. Indeed, the Mississippi Supreme Court has recognized that the Act’s statutory bars could sustain a miscarriage of justice in certain circumstances by letting unlawful convictions or sentences lie.⁷⁹ Because of that, the Mississippi Supreme Court routinely has held that “[e]rrors affecting fundamental constitutional rights may be excepted from procedural bars which would otherwise prohibit their consideration, and this case discloses a denial of due process in sentencing.”⁸⁰ In *Lockett v. State*, the defendant pled guilty to forcible rape in 1980 and was sentenced by the trial court to life imprisonment.⁸¹ More than nine years later, the defendant moved to vacate or set aside his conviction.⁸² Although his post-conviction motion was time barred under Mississippi Code § 99-39-5(2),⁸³ the Mississippi Supreme Court addressed Lockett’s allegedly erroneous life sentence because the Legislature had explicitly given the power to issue a

⁷⁷ *Carter v. State*, 21 So. 2d 404, 404 (Miss. 1945) (protecting “errors affecting fundamental rights of the parties . . . or affecting public policy”); *Brooks v. State*, 46 So. 2d 94 97 (Miss. 1950) (“Constitutional rights in serious criminal cases rise above mere rules of procedure. Errors affecting fundamental rights are exceptions to the rule that questions not raised in the trial court cannot be raised for the first time on appeal.” (citations omitted)).

⁷⁸ *Hall v. State*, 370 So. 3d 214, 220 (Miss. Ct. App. 2023) (Westbrooks, J., specially concurring).

⁷⁹ *E.g.*, *Fulgham v. State*, 47 So. 3d 698, 700 (Miss. 2010); *Stevenson v. State*, 674 So. 2d 501, 505-06 (Miss. 1996).

⁸⁰ *Lockett v. State*, 582 So. 2d 428, 430 (Miss. 1991), *overruled on other grounds by Bester v. State*, 188 So. 3d 526, 529-30 (Miss. 2016).

⁸¹ *Id.* at 429.

⁸² *Id.*

⁸³ Under Mississippi’s PCR Act, the general time limitation to file for post-conviction relief is three years. In the death penalty context, it is one year. *See* MISS. CODE ANN. § 99-39-5(2) (West 2009) (“A motion for relief under this article shall be made within three (3) years after the time in which the petitioner’s direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired, or in case of a guilty plea, within three (3) years after entry of the judgment of conviction.”); MISS. CODE ANN. § 99-39-5(2)(b) (West 2009) (capital cases).

life sentence to the jury.⁸⁴ Because the trial court did not sentence “[Lockett] to a definite term reasonably expected to be less than life,” the Court held that Lockett’s motion was “excepted from the time limitation.”⁸⁵

The *Lockett* decision cited *Smith v. State*,⁸⁶ which was decided the year following the PCR Act. *Smith* reiterated that “errors affecting fundamental rights are exceptions to the rule that questions not raised in the trial court cannot be raised for the first time on appeal.”⁸⁷ In *Smith*, the applicable statute was Mississippi Code § 99-39-21, which, unlike § 99-39-5(2), expressly provided that the failure to raise constitutional issues at trial or on appeal constitutes as a waiver; however, the Court could grant relief from the waiver “upon a showing of cause and actual prejudice.”⁸⁸ Thus, in *Smith*, when presented with a scenario where the defendant had been erroneously sentenced to life imprisonment as a habitual offender, the Court held that there was a denial of due process in sentencing.⁸⁹ Specifically, the Court recognized that “[t]he comparison of a seven year sentence, as opposed to a life sentence, without probation or parole is too significant a deprivation of liberty to be subjected to a procedural bar.”⁹⁰ Through plain error review, the Court addressed the issue and reversed a portion of Smith’s sentence.⁹¹ Even though Smith’s challenge to his sentence was brought four years after his conviction was affirmed, the Mississippi Supreme Court addressed the merits and did not address the PCR Act’s three-year time bar.⁹²

A few years after *Smith* and *Lockett*, the Mississippi Supreme Court held again that “errors affecting fundamental constitutional rights, such as the right to a legal sentence, may be excepted from procedural bars which would otherwise prevent

⁸⁴ *Lockett*, 582 So. 2d at 430 (citing MISS. CODE ANN. § 97-3-65 (West 1985)).

⁸⁵ *Id.* (explaining that Lockett’s case “discloses a denial of due process in sentencing”).

⁸⁶ *Smith v. State*, 477 So. 2d 191, 195 (Miss. 1985).

⁸⁷ *Id.* at 195.

⁸⁸ *Id.* (quoting MISS. CODE ANN. § 99-39-21 (West 1984)).

⁸⁹ *Id.* at 195-96.

⁹⁰ *Id.* at 195.

⁹¹ *Id.* at 196.

⁹² *Id.*

their consideration.”⁹³ Even though the petitioner in *Ivy v. State* did not file a motion for relief within the three-year time period, the Court held that because the petitioner had “alleged . . . he was serving time under an illegal sentence[,] . . . [he] was . . . not subject to the time bar.”⁹⁴ As a result, the Court remanded the motion to be reviewed on the merits.⁹⁵

In 2010, in *Rowland v. State* (“*Rowland I*”),⁹⁶ the Mississippi Supreme Court again emphasized the Judiciary’s time-honored authority and legitimate need to protect fundamental rights in post-conviction. *Rowland I* held that “no discretion is afforded when deciding whether to except a claim involving a fundamental constitutional right from procedural bars.”⁹⁷ In that case, Robert Rowland pled guilty to two armed robberies and two capital murders.⁹⁸ Rowland had been sentenced to life imprisonment for each capital murder conviction and to serve two twenty-four-year terms for the armed robberies.⁹⁹ More than twenty-eight years later, Rowland filed a post-conviction motion raising a double jeopardy challenge.¹⁰⁰ The circuit court dismissed Rowland’s motion as time-barred.¹⁰¹ The Court of Appeals, when reviewing Rowland’s appeal, acknowledged *Lockett* but decided not to apply the fundamental rights exception in this particular case.¹⁰² Rowland petitioned the Mississippi Supreme Court for a writ of certiorari, and the Court unequivocally held “that errors affecting fundamental constitutional rights are excepted from the procedural bars” in the PCR Act.¹⁰³ *Rowland I* came to this

⁹³ *Ivy v. State*, 731 So. 2d 601, 603 (Miss. 1999).

⁹⁴ *Id.*

⁹⁵ *Id.* at 604; see also *Sneed v. State*, 722 So. 2d 1255, 1257 (Miss. 1998) (explaining that where it is necessary to protect fundamental rights, the statutory bar may not apply to a motion for post-conviction relief).

⁹⁶ *Rowland v. State*, 42 So. 3d 503, 506 (Miss. 2010), *overruled by* *Howell v. State*, 358 So. 3d 613, 615 (Miss. 2023).

⁹⁷ *Id.* at 507.

⁹⁸ *Id.* at 504.

⁹⁹ *Id.* at 505.

¹⁰⁰ *Id.* at 504.

¹⁰¹ *Id.*

¹⁰² *Id.* at 506 (citing *Rowland v. State*, 42 So. 3d 545, 553 (Miss. Ct. App. 2009)).

¹⁰³ *Id.*

conclusion by relying on *Brooks v. State*,¹⁰⁴ where the Supreme Court emphasized:

Constitutional rights in serious criminal cases rise above mere rules of procedure. Errors affecting fundamental rights are exceptions to the rule that questions not raised in the trial court cannot be raised for the first time on appeal.

Besides, no person can be deprived of his liberty except by due process of law. Section 14, Article 3, Mississippi Constitution. This prohibition is intended to guarantee the protection of fundamental and constitutional rights, so that a fair trial shall result. Every person is entitled to a fair and impartial trial, and the dispensing of justice is the object of courts. Thus, where fundamental and constitutional rights are ignored, due process does not exist, and a fair trial in contemplation of law cannot be had¹⁰⁵

Thus, in *Rowland I*, the Court reversed and remanded the case for an evidentiary hearing.¹⁰⁶

On remand, the circuit court denied Rowland’s motion after reviewing his double jeopardy claim on the merits.¹⁰⁷ Faced with Rowland’s appeal again, the Mississippi Supreme Court considered Mississippi Code §§ 99-39-5(2) (time-bar), 99-39-21(1) (waiver and res judicata), and 99-39-23(6) (successive-writ bar) together.¹⁰⁸ The Court held that the circuit court erred by denying Rowland’s PCR petition.¹⁰⁹ The Court addressed Rowland’s appeal from the order denying his untimely motion on the merits, concluded that Rowland had been placed in double jeopardy, and vacated his armed robbery convictions.¹¹⁰

While the Mississippi Supreme Court did not exhaustively list the fundamental rights exempted from the bars in post-conviction, there was never a question about the Judiciary’s

¹⁰⁴ *Brooks v. State*, 46 So. 2d 94, 97 (Miss. 1950).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 507 (quoting *Brooks v. State*, 46 So. 2d 94, 97 (Miss. 1950) (en banc)); cf. *Howell v. State*, 358 So. 3d 613, 617 (Kitchens, P.J., dissenting) (explaining that *Rowland* “followed existing precedent on fundamental rights claims”).

¹⁰⁷ *Rowland v. State (Rowland II)*, 98 So. 3d 1032, 1036 (Miss. 2012).

¹⁰⁸ *Id.* at 1035.

¹⁰⁹ *Id.* at 1039.

¹¹⁰ *Id.*

authority to protect those rights. In *Rowland II*, for example, the Court delineated cases harkening back to instances in which a court granted relief in situations in which the court had no lawful authority to enter the initial judgment.¹¹¹ The *Rowland II* Court specifically mentioned the protection against double jeopardy, the right to be free of an “illegal sentence,” and the right to “due process at sentencing.”¹¹² The Court stated that “[t]he deprivation of liberty—that unalienable, natural right inherent in all persons since time immemorial—without authority of law” is what “distinguishes these three [rights] from all other [rights].”¹¹³ Later, the Mississippi Supreme Court also said that a claim of ineffective assistance of counsel, as well as the right not to be subject to ex post facto laws, may be exempted from statutory bars.¹¹⁴

B. Just as the Court Adopted Mississippi Rule of Civil Procedure 60(b), the Court Could Have Initially Crafted the Procedures for Post-Conviction Relief

Granting collateral relief is a matter for the Judiciary.¹¹⁵ Because of that, the Mississippi Supreme Court could tomorrow enact comprehensive post-conviction petition rules that include reasonable time limitations as well as exceptions to those limitations. Such rules would neither infringe on legislative authority nor offend separation of powers.¹¹⁶ Given the Judicial

¹¹¹ *Id.* at 1036.

¹¹² *Id.*

¹¹³ *Id.* (footnote omitted).

¹¹⁴ *Chapman v. State*, 167 So. 3d 1170, 1174 (Miss. 2015), *abrogated by* *Ronk v. State*, 391 So. 3d 785, 797 (Miss. 2024) (stating that an ineffective assistance claim was excepted from the procedural bars due to that case’s “extraordinary circumstances”); *Wheeler v. State*, 306 So. 3d 751, 757 (Miss. Ct. App. 2020) (explaining there is no “exhaustive list” of fundamental rights, but the “right not to be subject to ex post facto laws” is included in the non-exhaustive list).

¹¹⁵ See MISS. CODE ANN. §99-39-3 (“The purpose of the [post-conviction Act] is to provide the courts of this state with an exclusive and uniform procedure for the collateral review of convictions and sentences.”)

¹¹⁶ See *Matthews v. State*, 288 So. 2d 714, 715 (Miss. 1974) (first citing MISS. CONST. art. I, § 1 (1890); and then citing MISS. CONST. art. VI, § 144 (1890)) (“The inherent power of the Supreme Court to promulgate procedural rules for the efficient disposition of its case load stems from the fundamental constitutional precepts of separation of powers and the vesting of judicial powers in the Courts.”).

Branch may enact rules governing the procedures for post-conviction relief in the first instance, it, of course, may fasten a fundamental rights exception to the bars suggested in the PCR Act and accepted by the Court. In other words, because the Judiciary could itself enact the rules, it also can enact exceptions.

Indeed, an application for post-conviction relief is the “functional equivalent” of a motion for relief under Mississippi Rule of Civil Procedure 60(b).¹¹⁷ The Court validly adopted Rule 60(b) under its constitutional authority to make rules of practice and procedure.¹¹⁸ And because Rule 60(b) and the PCR Act are “functionally equivalent[.]” the PCR Act, in general, and its statutory bars, in particular, are also procedural.¹¹⁹

Rule 60(b)(6) is of particular importance because it is a “grand reservoir of equitable power to do justice in a particular case.”¹²⁰ Under Rule 60(b)(6), a court may grant relief from a judgment for any reason other than those in Rule 60(b)(1)-(5) or when it is unclear whether any of the grounds for relief in Rule 60(b)(1)-(5) applies.¹²¹ It “is designed for cases of extreme hardship not covered under any of the other subsections.”¹²² Simply stated, Rule 60(b) provides the court with the discretionary capacity to right wrong—without undermining procedural mechanisms.

As to time limits, motions under Rule 60(b)(1)-(3) must be made within six months after judgment.¹²³ Motions under Rule 60(b)(4)-(6), however, must be made “within a reasonable time.”¹²⁴ What constitutes a “reasonable time” is determined on a case-by-case basis, so the time to seek relief in theory may be unlimited.¹²⁵ Additionally, because courts have inherent authority to hear an

¹¹⁷ *Bruce v. Bruce*, 587 So. 2d 898, 904 (Miss. 1991).

¹¹⁸ See *Matthews*, 288 So. 2d at 715.

¹¹⁹ *Bruce*, 587 So. 3d at 904.

¹²⁰ *S. Healthcare Servs., Inc. v. Lloyd's of Lond.*, 110 So. 3d 735, 742 (Miss. 2013) (quoting *Briney v. U.S. Fid. & Guar. Co.*, 714 So. 2d 962, 966 (Miss. 1998)).

¹²¹ *Burkett v. Burkett*, 537 So. 2d 443, 445 (Miss. 1989).

¹²² *Hartford Underwriters Ins. Co. v. Williams*, 936 So. 2d 888, 893 (Miss. 2006) (citing *Burkett*, 537 So. 2d at 445).

¹²³ MISS. R. CIV. P. 60(b)(1)-(3).

¹²⁴ MISS. R. CIV. P. 60(b)(4)-(6).

¹²⁵ *Ravenstein v. Ravenstein*, 167 So. 3d 210, 216 (Miss. 2014).

independent action under Rule 60(b), there is no time limit, except laches,¹²⁶ on when such an action can be brought.¹²⁷

Given the similarities between Rule 60(b) and the PCR Act, there should be no doubt that the PCR Act is a matter for the Judiciary. Just as it adopted Rule 60(b), the Mississippi Supreme Court could have crafted the procedures for post-conviction relief—rather than adopt the legislative suggestions in the PCR Act.

IV. THE JUDICIARY'S AUTHORITY TO CORRECT A COURT
JUDGMENT IN POST-CONVICTION, ESPECIALLY WHEN
FUNDAMENTAL RIGHTS ARE IMPAIRED, ADVANCES SEPARATION
OF POWERS AND ALIGNS WITH THE MISSISSIPPI SUPREME
COURT'S SEMINAL DECISION IN *NEWELL V. STATE*

A. *Newell Drew a Line Between the Judicial Power to Make
Procedural Rules and the Legislative Power to Make
Substantive Law While Still Recognizing That the Court May
Accept Rules of Judicial Procedure in a Statute Unless Those
Rules Cause an Impediment to Justice*

The Mississippi Supreme Court embraced its inherent authority to promulgate procedural rules in *Newell v. State*.¹²⁸ *Newell* held unconstitutional a statute of 1857 vintage that purported to prohibit judges from instructing the jury except at the request of a party.¹²⁹ The statute in *Newell* left the jury uninstructed on the issue of reasonable doubt.¹³⁰

Newell's analysis started by criticizing the statute for “contraven[ing] the constitutional mandates imposed upon the judiciary for the fair administration of justice.”¹³¹ The Court then claimed an “inherent power” over procedural mechanisms rooted in the separation of powers provisions of Mississippi’s

¹²⁶ Laches does not apply to the Court’s power to remedy a void judgment under Rule 60(b)(4). No amount of time or delay may cure a void judgment.

¹²⁷ *Hester v. State*, 749 So. 2d 1221, 1222-24 (Miss. Ct. App. 1999).

¹²⁸ *Newell v. State*, 308 So. 2d 71 (Miss. 1975).

¹²⁹ *Id.* at 77-78.

¹³⁰ *Id.* at 73-74.

¹³¹ *Id.* at 77.

Constitution.¹³² After determining that the statute in *Newell* regulated procedure, and thus fell within the Judiciary’s sphere of power, the Court reasoned that:

[A]s long as rules of judicial procedure enacted by the legislature coincide with fair and efficient administration of justice, the Court will consider them in a cooperative spirit to further the state’s best interest, but when, as here, the decades have evidenced a constitutional impingement, impairing justice, it remains our duty to correct it.¹³³

This reasoning is compelling and logical. The Mississippi Supreme Court can accept rules of judicial procedure in a statute by virtue of *its* constitutional authority to craft such rules. But the Court could not wield that authority in *Newell* because the statute regulated procedure in a manner that thwarted justice and caused a constitutional impingement.¹³⁴ The statute was thus unconstitutional.

B. Enforcing Fundamental Rights in Post-Conviction is Acceptable and Necessary Under Any Approach to Newell

Since 1975, the Mississippi Supreme Court has cited *Newell* approximately 150 times (as of this writing). A reading of all cases shows that, over the years, the Court has used essentially three approaches to solving a *Newell* problem. *First*, and the most common approach, asks whether the nature of the governmental action is substantive or procedural. *Second*, the Court has examined the governmental action’s relationship to the complete administration of justice. *Third*, the Court at least once has examined whether there is a policy—*i.e.*, the Legislature’s “police power”—meriting preclusion of judicial authority. Each approach is consistent with the Court’s authority to craft appropriate relief in post-conviction cases.

¹³² *Id.*

¹³³ *Id.* at 78.

¹³⁴ *Id.* at 77-78.

1. Under the Procedural/Substantive Approach to *Newell*, the PCR Act is a Procedural Vehicle Used to Channel Constitutional Habeas Corpus and the Judicial Writs of Error

Distinguishing between procedural and substantive government actions is the approach most often invoked by the Mississippi Supreme Court. For example, after *Newell*, the Court again exerted its inherent authority in *Hall v. State*.¹³⁵ In *Hall*, the Evidence of Child Sexual Abuse Act¹³⁶ was held invalid because the statute commanded that certain hearsay statements of minor victims were admissible against alleged sex offenders at trial.¹³⁷ The Court held that its judicial authority included power to make rules of evidence.¹³⁸

More recently, the Court invoked this approach in *Jones v. Ridgeland*.¹³⁹ *Jones* dealt with a statute that allowed litigants in counties without municipal or justice courts to appeal to the Mississippi Supreme Court.¹⁴⁰ In the counties with municipal or justice courts, appeals could eventually go to circuit court, but that was it, unless specific criteria were satisfied.¹⁴¹ The Court found that this so-called “three-court rule” was procedural, impeded justice, and thus violated separation of powers.¹⁴²

Invoking *Newell*’s procedural/substantive approach to evaluate the PCR Act and, in particular, its statutory bars, demonstrates that the statute is a procedural rule that the Court could have crafted in the first instance—but instead chose to accept. The text of the PCR Act expressly recognizes this, providing that it is a “*procedure*, limited in nature, to review those objections, defenses, claims, questions, issues or errors which in practical reality could not be or should not have been raised at trial or on direct appeal.”¹⁴³ Much like the text of the PCR Act,

¹³⁵ *Hall v. State*, 539 So. 2d 1338, 1345 (Miss. 1989).

¹³⁶ *See generally* MISS. CODE ANN. § 13-1-401.

¹³⁷ *Hall*, 539 So. 2d at 1339-41.

¹³⁸ *Id.* at 1345.

¹³⁹ *Jones v. Ridgeland*, 48 So. 3d 530 (Miss. 2010).

¹⁴⁰ *Id.* at 534-35.

¹⁴¹ *Id.*

¹⁴² *Id.* at 535-37.

¹⁴³ MISS. CODE ANN. § 99-39-3(2) (West 1984) (emphasis added); *see also id.* § 99-39-3(1) (providing a “uniform *procedure* for the collateral review of convictions and sentences” (emphasis added)).

courts in Mississippi also have labeled the PCR Act as a procedural mechanism for channeling claims for collateral relief.¹⁴⁴ In perhaps what is a rare circumstance, then, the Judiciary and the Legislature agreed (at least until *Howell v. State*¹⁴⁵ in 2023) that the PCR Act is a rule of judicial procedure. This is thus not a circumstance, as in *Newell*, where one branch of government may be perceived as trying to enlarge its authority at the expense of another branch.

Employing the procedural/substantive inquiry by turning to legal dictionary definitions also shows that the PCR Act is a procedural rule. In *Jones*, for example, the Mississippi Supreme Court turned to Black’s Law Dictionary to define procedure as “[t]he mode of proceeding by which a legal right is enforced, as distinguished from the substantive law which gives or defines the rights.”¹⁴⁶ Here, the PCR Act is the “mode of proceeding” by which to enforce claims for collateral review. In *Jones*, the “three-court rule” dealt with the “machinery” of the appeal process; the PCR Act deals with the machinery used to enforce judicial writs.¹⁴⁷

The same result is achieved by using the test to distinguish between a procedural or substantive rule in the choice of law context.¹⁴⁸ In like measure to *Newell*, analyzing a choice of law issue is a multi-step process involving a determination of whether the law is procedural or substantive.¹⁴⁹ Even when it comes to the limitations period in the PCR Act—the statutory bar at issue in *Howell*—the definition of procedural “include[s] statutes of limitations.”¹⁵⁰ The exception to the general rule that statutes of limitation are procedural is when the time period is an “integral

¹⁴⁴ See *Knox v. State*, 75 So. 3d 1030, 1035 (Miss. 2011) (“[M]otion[s] for post-conviction relief . . . [are] subject to the *procedural rules* promulgated [in the PCR Act].” (emphasis added)); *Edmond v. State*, 845 So. 2d 701, 702 (Miss. Ct. App. 2003).

¹⁴⁵ *Howell v. State*, 358 So. 3d 613 (Miss. 2023).

¹⁴⁶ *Jones*, 48 So. 3d at 537 (quoting *Procedure*, BLACK’S LAW DICTIONARY (6th ed. 1990)); *Metro. Life Ins. Co. v. McSwain*, 115 So. 555, 557 (Miss. 1928) (stating that substantive law is law which creates and defines rights).

¹⁴⁷ *Jones*, 48 So. 3d at 537.

¹⁴⁸ *Zurich Am. Ins. Co. v. Goodwin*, 920 So. 2d 427, 433 (Miss. 2006).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*; *Ford v. State Farm Ins. Co.*, 625 So. 2d 792, 793-94 (Miss. 1993); *Williams v. Taylor Mach., Inc.*, 529 So. 2d 606, 609 (Miss. 1988), *superseded by statute*, 1987 Miss. Laws 560, *as recognized in*, *S. Pac. Transp. Co. v. Fox*, 609 So. 2d 357, 362 (Miss. 1992); *Christmas v. State*, 700 So. 2d 262, 266 (Miss. 1997).

part of the right thus created,” such that the expiration of the time period extinguishes the right.¹⁵¹

Here, as discussed, the PCR Act creates no substantive rights at all. It instead provides procedural parameters to enforce claims always recognized in Mississippi. That the PCR Act creates no substantive rights means the statute’s time limitations cannot be integral to any right. The same is true for other bars—e.g., res judicata, waiver, successive-writ bar. The bars to post-conviction relief originated with the Judiciary. Those bars did not mutate from matters of procedure for the Judiciary to substantive law for the Legislature simply by being placed in statute.

Notably, too, in one the first orders after the PCR Act was enacted, the Court “indulge[d] the inherent powers of the court to abate State’s motion for a new date of execution.”¹⁵² The State had moved to set an execution date under the mandatory provisions (*i.e.*, “shall”) of the PCR Act. Exercising its inherent authority, the Court granted the request for a 60-day delay.¹⁵³ Thus, as the *Tokman* case illustrates, the Court originally and correctly viewed the PCR Act for what it is: judicial procedure accepted by the Court and subject to its inherent authority.¹⁵⁴

2. Under the Administration of Justice Approach to *Newell*, the Court Has Inherent Authority to Enforce Fundamental Rights in Post-Conviction

A second approach to *Newell* focuses on a governmental action’s relationship to the administration of justice in the court system.¹⁵⁵ In *Jackson v. State*,¹⁵⁶ the Court invoked its inherent power to hold that “cases involving the death penalty shall be conducted at a bifurcated trial—a guilt-finding phase and a

¹⁵¹ *Ramsay v. Boeing Co.*, 432 F.2d 592, 597 (5th Cir. 1970); *see Williams*, 529 So. 2d at 609 (“[W]here a statute creates a right of action which previously did not exist and . . . fixes the time to commence the action, the time so fixed is not a statute of limitations but an integral part of the right created.”).

¹⁵² *Tokman v. State*, 462 So. 2d 687, 688 (Miss. 1984) (citation omitted).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Jackson v. State*, 337 So. 2d 1242, 1253 (Miss. 1976), *superseded by statute*, 1977 Miss. Laws 817, *as recognized in* *Gray v. State*, 351 So. 2d 1342, 1349 (Miss. 1977).

¹⁵⁶ *Id.*

sentence-determining phase.”¹⁵⁷ Similarly, in addressing a statute prohibiting jury instructions as to lesser included offenses, *Jackson* held that the statute “constitutes an impediment to full and complete administration of justice in the trial of capital cases and is therefore not binding.”¹⁵⁸

The fundamental rights exception comports with *Newell*’s administration of justice approach. Constitutional rights in serious criminal cases rise above statutory bars.¹⁵⁹ And statutory bars blocking a person’s ability to correct a court judgment—*without an exception for when that judgment impairs fundamental rights*—would constitute only an impediment to the administration of justice.

3. There is No Particular Legislative Power at Issue Meriting Preclusion of Judicial Authority Under *Newell*

The third approach is only a slight deviation from the substantive/procedural analysis. It differs in that the Court will not address the issue with only a strict focus on the statute’s particular substantive or procedural classification. This approach evaluates whether there is some particular policy in the governmental act, such as the exercise of legislative police power, that merits preclusion of judicial authority.¹⁶⁰

Claypool v. Mladineo was a medical malpractice case in which the lower court ruled that certain documents were protected under statutes affording hospitals a right to keep certain peer review documents from being discovered in litigation.¹⁶¹ Because the statutes were particularly enacted to protect public health and safety, they fell within the “police powers” of the Legislature.¹⁶² In contrast, the PCR Act channels claims always recognized by the Judiciary in Mississippi.¹⁶³ Thus, here, there is the opposite of in

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 1255.

¹⁵⁹ See generally *Newell v. State*, 308 So. 2d 71 (Miss. 1975).

¹⁶⁰ *Claypool v. Mladineo*, 724 So. 2d 373 (Miss. 1998).

¹⁶¹ *Id.* at 375-76.

¹⁶² *Id.* at 389.

¹⁶³ *Howie v. State*, 83 So. 158, 161 (Miss. 1919), *overruled by* *Mitchell v. State*, 176 So. 743, 744-46 (Miss. 1937) (“It is sufficient to say that a writ in the nature of the writ coram nobis has always been recognized in our state as a common-law remedy in appropriate cases.” (citation omitted))

Claypool: a policy of correcting a court judgment when it impairs fundamental constitutional rights only *merits* judicial authority.¹⁶⁴

V. THE RATIONALE IN *HOWELL* IS FAULTY, AND IT DOES NOT COMPORT WITH *NEWELL* OR ANY PRINCIPLE OF SEPARATION OF POWERS

Howell discarded the fundamental rights exception to the bars in post-conviction, claiming that the Judiciary lacks authority to shape post-conviction remedies when the Legislature enacts legislation governing the circumstances under which courts may address petitions for relief. In reaching that decision, the *Howell* Court sharply broke with *Newell*, yielded power to the Legislature to enact provisions dictating judicial procedure, and abdicated its responsibility to ensure justice in proceedings before the courts in this state.¹⁶⁵

A. *The Facts in Marlon Howell's Non-Capital, Post-Conviction Case*

Marlon Howell is a Mississippi death row inmate.¹⁶⁶ But the 2023 *Howell* decision stems from Howell's non-capital, drug-related case.¹⁶⁷ When Howell was seventeen years old, a peer persuaded him into securing a small amount of marijuana for a "friend," which he did.¹⁶⁸ That "friend" was an undercover officer.¹⁶⁹ In January 1998, a grand jury indicted Howell for possessing 6.8 grams of marijuana with the intent to distribute.¹⁷⁰ Later, Howell filed a Petition to Enter Plea of Guilty to

¹⁶⁴ *Id.*

¹⁶⁵ See generally *Howell v. State*, 358 So. 3d 614 (Miss. 2023).

¹⁶⁶ Proceedings in Marlon Howell's capital case are ongoing, and Howell always has maintained his innocence. See generally *Howell v. State*, No. 2023-DR-00455-SCT (Miss. Aug. 17, 2023).

¹⁶⁷ *Howell*, 358 So. 3d at 614.

¹⁶⁸ See Appellant Marlon Howell's Corrected Primary Brief at 4-5, *Howell v. State*, 358 So. 3d 613 (Miss. 2023) (No. 2020-CA-00868-SCT), 2021 WL 4271085.

¹⁶⁹ *Id.*

¹⁷⁰ Corrected Rec. Excerpts Filed by Marlon Howell at 12, *Howell v. State*, 358 So. 3d 613 (Miss. 2023) (No. 2020-CA-00868-SCT). The record excerpts containing the documents in Howell's non-capital case are available at <https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=web0001.SCT.2020-CA-868.47766.1.pdf&c=92395&a=N&s=2> [<https://perma.cc/44YZ-XUHM>] (last visited June 1, 2026) (containing the record excerpts of the documents in Howell's non-capital case).

“possession of a control substances [sic]” through his attorney.¹⁷¹ Howell and the State then filed an Agreed Motion to Reduce Charge; the parties moved the Court to reduce the charge from that of “sale of controlled substance” to that of “possession of controlled substance.”¹⁷²

In March 1999, the trial court entered its order reducing the charge:

FILED IN THE <u>3rd</u> DAY OF <u>March</u> 19 <u>99</u> THOMAS ST. INFORD CIRCUIT COURT, MD. <u>Phonda Williams</u> D.C.	Attorney for Defendant <u>Shawn V. [Signature]</u>
<u>ORDER REDUCING CHARGE</u>	
On this day this cause came on to be heard on an agreed motion and it is by the Court ordered that said charge be reduced from that of <u>Sale of Controlled Substance</u> to that of <u>Possession</u> .	
SO ORDERED this <u>3</u> day of <u>March</u> , 19 <u>99</u> .	
39-305	<u>[Signature]</u> P47 CIRCUIT JUDGE

Consistent with this order, Howell’s sentencing order states that Howell had “been adjudicated guilty of the crime of possession of [a] controlled substance.”¹⁷³

<u>SENTENCING ORDER</u>
<u>INTENSIVE SUPERVISION PROGRAM/HOUSE ARREST</u>
This cause, having been brought before the Court for sentencing of the defendant, <u>Marion Howell</u> , who has been adjudicated guilty of the crime of <u>Possession of Controlled Substance</u> .

At the time, the statutory punishment for possessing 6.8 grams of marijuana was a maximum fine of \$250.¹⁷⁴ In March 1999, the court sentenced Howell to three years of imprisonment—the first year to be served under house arrest and upon completion, the following two to be on post-release

¹⁷¹ *Id.* at 16.

¹⁷² *Id.* at 23.

¹⁷³ *Id.* at 25.

¹⁷⁴ MISS. CODE ANN. § 41-29-139(c)(2)(A).

supervision.¹⁷⁵ Howell did not appeal his marijuana possession conviction or the sentence.

In May 2000, the murder for which Howell was convicted occurred.¹⁷⁶ This Article does not examine Howell's capital conviction or death sentence, other than to show how his marijuana possession impacted his death sentence. Howell was indicted for capital murder in June 2000. He was then tried and convicted.¹⁷⁷ During the sentencing phase of trial, the prosecution relied on Howell's three-year sentence for merely possessing marijuana as an aggravating factor in favor of a death sentence: "[t]he capital offense was committed by a person under sentence of imprisonment."¹⁷⁸ The jury sentenced Howell to death.¹⁷⁹

In 2016, Howell challenged his sentence in his marijuana case.¹⁸⁰ Howell claimed he received an illegal sentence.¹⁸¹ According to Howell, since the court was sentencing him for the reduced charge of simple possession of a small amount of marijuana, the court exceeded its statutory authority in sentencing him to three years in custody of the Mississippi Department of Corrections.¹⁸² Howell's post-conviction challenge in the marijuana case is procedurally complicated, but eventually the case weaved its way to the Mississippi Supreme Court on the issue of an illegal sentence.¹⁸³ Because Mississippi law holds that an illegal sentence is "void," Howell argued that his post-conviction claim was not statutorily barred—even though it was filed more than three years after he was sentenced.¹⁸⁴ Both before and after the PCR Act was enacted, the rule in Mississippi was "that a void decree or judgment c[an] be attacked collaterally at any time."¹⁸⁵

¹⁷⁵ Howell v. State, 860 So. 2d 704, 755 (Miss. 2003).

¹⁷⁶ *Id.* at 712.

¹⁷⁷ *Howell*, 860 So. 2d at 712.

¹⁷⁸ *Howell*, 860 So. 2d at 754 (quoting MISS. CODE ANN. § 99-19-101(5)(a) (West 1994)).

¹⁷⁹ *Id.* at 712.

¹⁸⁰ Howell v. State, 283 So. 3d 1100, 1102 (Miss. 2019).

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Howell v. State, 358 So. 3d 613 (Miss. 2023).

¹⁸⁴ *Ex parte Burden*, 45 So. 1, 3 (Miss. 1907).

¹⁸⁵ Krohn v. Miguez, 274 So. 2d 654, 656 (Miss. 1973); Ivy v. State, 731 So. 2d 601, 603 (Miss. 1999) (correcting an illegal sentence).

On March 31, 2022, the Mississippi Supreme Court *sua sponte* requested supplemental briefing in Howell’s case.¹⁸⁶ The Court’s request for briefing reads:

Having carefully considered the instant case, the Court finds that supplemental briefing is necessary.

The Court directs the parties to brief the following issue: Whether the Court should overrule *Rowland v. State*, 42 So. 3d 503 (Miss. 2010), and any other case in which, and to the extent that, we have held the fundamental rights exception to the procedural bars may be applied to the three-year statute of limitations codified by the Legislature in the Uniform Post-Conviction Collateral Relief Act.¹⁸⁷

Even though the Court’s briefing order labels the PCR Act’s bars as “procedural,” the *Howell* Court held that the PCR Act’s time bar is a matter of “substantive law” for only the Legislature.¹⁸⁸ Because *Howell* (re)branded the statutory bar as “substantive law,” the Court held that the Judiciary has no authority to craft any exceptions to the bar.¹⁸⁹ *Howell* thus discarded the Judiciary’s ability to enforce fundamental rights in post-conviction if there is a time bar applicable. After holding that Howell’s petition was barred, the Court also held that Howell did not suffer an illegal sentence.¹⁹⁰

B. The Howell Decision Scarcely Cites Newell and Does Damage to Mississippi’s Constitutional Doctrine of Separation of Powers

Howell conjures principles of separation of powers by labeling the PCR Act as “substantive law” for only the Legislature.¹⁹¹ In doing so, *Howell* overturns at least 1,500 reported cases¹⁹² construing the PCR Act’s statutory bars as “procedural” matters

¹⁸⁶ See Order, *Howell v. State*, 358 So. 3d 613 (Miss. 2023) (No. 2020-CA-00868-SCT).

¹⁸⁷ See Order, *Howell v. State*, 358 So. 3d 613 (Miss. 2023) (No. 2020-CA-00868-SCT).

¹⁸⁸ *Howell*, 358 So. 3d at 615.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 617. Howell’s merits holding that there was no illegal sentence is questionable, but it is not a subject explored in this Article.

¹⁹¹ *Id.* at 615.

¹⁹² This number comes from a standard search on Westlaw.

for the Judiciary. As the dissent in *Howell* explains, “[u]ntil today, th[e] Court has consistently, correctly, and without controversy characterized the UPCCRA’s three-year limitations period as *procedural*.”¹⁹³

The decision in *Howell* claims that the PCR Act *must be* substantive law simply because the Legislature drafted it.¹⁹⁴ According to the Court, the statute’s time bar “cannot be” procedural because “[t]he Legislature has no Constitutional authority to enact rules of procedure.”¹⁹⁵ But separation of powers is a constitutional principle. Its test is not superficial enough to hinge on the question of ‘who wrote it.’¹⁹⁶ What is more, no court has previously labeled a legislative act as “substantive” without examining the particular legislation to ascertain whether the Legislature intended to create a substantive right or whether the provision instead addresses the circumstances under which a right may be vindicated. Indeed, examining the particular government act is the very point of *Newell*, as well as all approaches to a *Newell* inquiry.¹⁹⁷ The dissent is thus rightly critical of *Howell*’s truncated approach to separation of powers, stating, “I do not follow the majority’s logic that the three-year bar must be substantive because ‘the Legislature only can enact substantive law[.]’ If the mere circumstance that a law has been enacted makes it incontrovertibly substantive in nature, then this Court’s constitutional prerogative to govern procedure is in jeopardy.”¹⁹⁸

Additionally, if the *Howell* rationale were the correct one, then it begs two competing questions: is the test ‘who wrote it first?’ or ‘who wrote it last?’ If it is the former, then *Howell* must come out differently. After all, the Judiciary first created and enforced the writs underpinning collateral relief—along with the

¹⁹³ *Id.* at 618 (Kitchens, P.J., dissenting).

¹⁹⁴ *Id.* at 615.

¹⁹⁵ *Id.* at 615 (“[T]he Legislature only can enact substantive law . . .”).

¹⁹⁶ *See, e.g.,* Clark v. Bryant, 253 So. 3d 297 (Miss. 2018) (noting that the budget control power belongs to the Executive even though detailed in a legislatively enacted law); *cf. Howell*, 358 So. 3d at 619 (Kitchens, P.J., dissenting) (“Today’s holding that the Legislature is capable of enacting nothing but substantive laws can impact many areas of state law.”).

¹⁹⁷ *See supra* Section IV(B).

¹⁹⁸ *Howell*, 358 So. 3d at 619 (Kitchens, P.J., dissenting) (citation omitted).

bars to such relief.¹⁹⁹ *Howell* is similarly interesting for another question it does not answer: if the Court must entirely defer to the legislative enactment, must the Court not also defer to the Legislature’s pronouncement that its statute is indeed a matter of “procedure?”²⁰⁰ In Mississippi, the Judiciary “presume[s] that the legislature, when it passes a statute, knows the existing laws.”²⁰¹

Howell also does not address whether, under state rules of statutory construction, the fundamental rights exception became an integral part of the PCR Act. Mississippi state law on this point is clear:

[W]hen the highest court in the state construes a statute of that state, the construction so placed thereon becomes as much a part and parcel of the statute as if specifically incorporated therein, and that when the Legislature re-enacts the statute it adopts the construction so made by the courts.²⁰²

As the Mississippi Supreme Court has held in a different context, “by reenacting Section 11-46-11(3) without addressing or countermanding this Court’s decision in *Barnes*, the Legislature acquiesced and tacitly approved and incorporated into the statute a discovery rule as announced in *Barnes*.”²⁰³

A version of the fundamental rights exception not only existed before the 1984 PCR Act, but the Mississippi Supreme Court applied the exception before and after legislative amendments to the Act in 1985, 1995, 2000, 2008, 2009, and 2015. As the dissent in *Howell* explains:

Litigants and the legal profession, including the Mississippi Office of Capital Post-Conviction Counsel, have for years trusted and followed this standard as this Court’s definitive ruling on how to navigate the UPCCRA’s procedures for seeking redress. Today’s abrupt abandonment of a functioning and well-founded

¹⁹⁹ *Id.* at 618 (Kitchens, P.J., dissenting) (explaining that the PCR Act “did not create substantive rights that did not exist previously”).

²⁰⁰ *See* MISS. CODE ANN. § 99-39-3 (1984) (explaining that the PCR Act provides “an exclusive and uniform procedure for the collateral review of convictions and sentences”).

²⁰¹ *Arant v. Hubbard*, 824 So. 2d 611, 615 (Miss. 2002); *see also* *Reed v. Beall*, 42 Miss. 472 (1869) (noting the Legislature’s presumed knowledge of “the general law”).

²⁰² *Hamner v. Yazoo Delta Lumber Co.*, 56 So. 466, 490 (Miss. 1911).

²⁰³ *Caves v. Yarbrough*, 991 So. 2d 142, 154 (Miss. 2008) (citing *Barnes v. Singing River Hosp.*, 733 So. 2d 199 (Miss. 1999)).

seminal standard leaves litigants and attorneys with no clear guidance for on what grounds and by what mechanism a legitimate claim for out-of-time post conviction relief can be pursued in Mississippi courts.²⁰⁴

Mississippi is already suffering the repercussions from *Howell*. A year after *Howell*, in *Ronk v. State*, the Mississippi Supreme Court discarded the ability to remedy the state constitutional right to effective assistance of capital post-conviction counsel.²⁰⁵ Over twenty-five years ago, in *Jackson v. State*, the Mississippi Supreme Court held that the State's post-conviction proceedings became part of the death penalty appeal process in Mississippi as a means of fairly administering the State's capital punishment scheme.²⁰⁶ Under *Jackson*, there is a constitutional and statutory right to post-conviction counsel in death penalty cases. Specifically, *Jackson* is rooted on the rights embodied in multiple provisions of the Mississippi Constitution—including Article III, Section 14 (due process); 24 (rights to access the court system and have grievances redressed); 25 (no person shall be “debarred from prosecuting or defending any civil cause”); and 26 (rights of the accused). Additionally, because capital post-conviction is part of the state “appeal process,” *Jackson* relied on Mississippi Code § 99-15-15 for an additional, statutory right to counsel.²⁰⁷ In 2013, in *Grayson v. State*, the Court again reiterated the right to effective assistance of post-conviction counsel in capital cases.²⁰⁸

In *Ronk*, a death-sentenced inmate claimed a violation of the right to effective assistance of capital post-conviction counsel. While a time bar was at issue in *Howell*, the PCR Act's successive-writ bar was at issue in *Ronk*.²⁰⁹ *Ronk* accepts the Court's prior

²⁰⁴ *Howell*, 358 So. 3d at 620 (Kitchens, P.J., dissenting).

²⁰⁵ See *Ronk v. State*, 391 So. 3d 785, 794 (Miss. 2024).

²⁰⁶ *Jackson v. State*, 732 So. 2d 187, 190 (Miss. 1999); see also *id.* at 190 (“[T]he state post-conviction stage is particularly important in capital cases, and . . . indigent death row inmates are simply not able, on their own, to competently engage in this type of litigation.”).

²⁰⁷ *Id.* at 189; MISS. CODE ANN. § 99-15-15 (2001) (“The accused shall have such representation available at every critical stage of the proceeding against him where a substantial right may be affected.”).

²⁰⁸ *Grayson v. State*, 118 So. 3d 118 (Miss. 2013).

²⁰⁹ This Article does not address in depth the state guarantee to effective assistance of post-conviction counsel in capital cases. The Article also does not address the statutory

holding that there is a state constitutional and statutory *right* to effective assistance of capital post-conviction counsel.²¹⁰ Nonetheless, because of *Howell*, the *Ronk* Court concludes that it is without authority to *remedy* a violation of that right.²¹¹ Like the time bar at issue in *Howell*, the *Ronk* Court also labels the successive-writ bar as “substantive law.”

Ronk relies entirely on *Howell*’s faulty separation of powers inquiry. The PCR Act is not substantive law simply because the Legislature drafted it. Subsection C below explains that the Judiciary may accept statutes that are procedural in nature and make exceptions to those statutes as necessary to protect fundamental rights.

C. The Judiciary May Accept Suggested Rules of Judicial Procedure in a Statute, Like the PCR Act, and Create Exceptions to Those Rules When the Rules Cause an Impediment to Justice

Howell’s conclusion that a statute must be substantive because “the Legislature only can enact substantive law” is an incorrect statement of state law.²¹² Under *Newell*, the Mississippi Supreme Court must correct legislative rules when “determined to be an impediment to justice or an impingement upon the

differences between the varying bars in Mississippi’s PCR Act. Several entities, practitioners, and law professors filed an amicus brief discussing these issues in *Ronk v. State*. See Brief of Mississippi Office of Capital Post-Conviction Counsel et al. as Amici Curiae in Support of Petitioner’s Motion for Rehearing, *Ronk v. State*, 391 So. 3d 785 (Miss. 2024) (No. 2021-DR-269-SCT). The amicus brief is available at <https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=web0001.SCT.2021-DR-269.95464.0.pdf&c=93259&a=N&s=2> [<https://perma.cc/4ZV8-FFD9>] (last visited June 1, 2026).

²¹⁰ *Ronk*, 391 So. 3d at 794.

²¹¹ *Ronk*, 391 So. 3d at 794; *id.* at 793 (accepting the argument that, after *Howell*, the “right to the effective assistance of post-conviction counsel is no longer an exception to the [PCR Act’s] bars”); *id.* at 795 (noting that under *Howell*, the Judiciary “exceeded its bounds by judicially crafting an exception to the [PCR Act’s] substantive, constitutional bars”).

Ronk’s holding runs headlong into settled Mississippi law that “[t]here cannot be a right without a remedy.” *Smith v. Williams-Brooke Co.*, 71 So. 648, 650 (Miss. 1916); see also *e.g.*, *Clarksdale Mun. Sch. Dist. v. State*, 233 So. 3d 299, 307 (Miss. 2017) (Maxwell, J., specially concurring) (explaining that the Court has “long held ‘[t]here cannot be a right without a remedy’” (quoting *Smith v. Williams-Brooke Co.*, 71 So. 648, 650 (1916) (alteration in original))).

²¹² *Howell v. State*, 358 So. 3d 613, 615 (Miss. 2023).

constitution.”²¹³ Otherwise, the Court may defer to legislative expressions, not out of obligation or accession to authority, but out of comity.²¹⁴

That the Court may defer to legislative expressions of procedure in this manner is a well-settled constitutional concept. For example, the Mississippi Supreme Court in *Hall v. State* lists relevant examples and explains that “[d]eference ought to be given such legislative expressions, not out of obligation but comity.”²¹⁵ This constitutional concept has also withstood the test of time in Mississippi. As the current Chief Justice of the Mississippi Supreme Court has reasoned, the Judiciary has a “relationship akin to comity with our Legislature,” and the Court may accept certain legislative expressions as long as they “do not run afoul of the claimant’s constitutional right to seek redress.”²¹⁶

Here, in both opinions and rules, the Mississippi Supreme Court has “[f]irst by implication and then expressly, . . . held that it will adhere to the provisions of [the PCR Act].”²¹⁷ The Court has done the same by enacting Mississippi Rule of Appellate Procedure 22.²¹⁸ Mississippi Rule of Criminal Procedure 31 also explains this very point, noting that post-conviction relief is governed by statute, “as supplemented and modified by Rule 22.”

In the same vein, the acceptance of a legislative suggestion is not an unconstitutional sharing of “any power” under Article 1, Section 2 of the Mississippi Constitution. The opposite: when the Judicial Branch accepts a procedural rule, it exercises *its* inherent constitutional authority. The Mississippi Supreme Court has

²¹³ *Newell v. State*, 308 So. 2d 71, 76 (Miss. 1975).

²¹⁴ *Id.*; *McCarty v. State*, 554 So. 2d 909, 914 (Miss. 1989); *Alexander v. Alexander*, 493 So. 2d 978, 981 (Miss. 1986) (Robertson, J., concurring) (noting that the Court has “deferred to” legislative procedures, but “do[es] this . . . out of considerations of comity.”); *Hall v. State*, 539 So. 2d 1338, 1346 n.20 (Miss. 1989).

²¹⁵ *Hall*, 539 So. 2d at 1346 n.20; *see also* MISS. R. CIV. P. 81(a); 3 *ENCYCLOPEDIA OF MISSISSIPPI LAW* § 19:23 (2026) (“[T]he supreme court has the judicial power to make rules governing all proceedings itemized in Rule 81(a)(1) through 81(a)(12). Yet the court has elected to accept statutory procedures instead.”).

²¹⁶ *Wimley v. Reid*, 991 So. 2d 135, 140 (Miss. 2008) (Randolph, J., specially concurring) (footnote omitted).

²¹⁷ *State v. Read*, 544 So. 2d 810, 812 (Miss. 1989); *see also* *Grubb v. State*, 584 So. 2d 786, 788 (Miss. 1991).

²¹⁸ *McClendon v. State*, 539 So. 2d 1375, 1377 n.2 (Miss. 1989); MISS. R. APP. P. 22 cmt. (“Rule 22 incorporates the comprehensive *procedure* reflected in the [PCR Act].” (emphasis added)).

routinely upheld this principle. For example, in *Hudspeth v. State Highway Comm’n of Mississippi*, the Court reasoned that the Judiciary “ha[s] the authority to make the rules governing trial procedure” and, “[j]ust as we had the authority to abrogate M.C.A. § 11–27–89, we have the authority to adopt it as a part of our rules of evidence. There is good reason why we should do so.”²¹⁹

The Mississippi Supreme Court adopted a fundamental rights exception in post-conviction because the PCR Act’s statutory bars can create an impediment to justice in certain cases. As the Court in an exoneration case from 2007 explained: “rules are made to secure justice, not defeat it[,]” and “[a]ll courts have the inherent power to correct and make their judgments speak the truth.”²²⁰ The dissent in *Howell* highlights this as well:

This Court has the plenary constitutional authority over judicial procedure and to reject legislation that treads on that authority. Our application of the fundamental rights exception . . . is squarely within our prerogative and is necessary to cure the ‘constitutional impingement, impairing justice’ that is manifest in the absence of such exception in the statute.²²¹

Cole v. State,²²² cited by the majority in *Howell* for the proposition that time limitations must be substantive, does not dictate otherwise. *Cole* did not address whether the PCR Act’s time limitations are procedural or substantive. And *Cole* did not address the Court’s inherent authority to craft a constitutionally necessary exception to such time limitations. *Cole* did, however,

²¹⁹ *Hudspeth v. State Highway Comm’n of Miss.*, 534 So. 2d 210, 213 (Miss. 1988)

²²⁰ *Gill v. State*, 962 So. 2d 552, 554 (Miss. 2007) (citations omitted).

²²¹ *Howell v. State*, 358 So. 3d 613, 617 (Miss. 2023) (Kitchens, J., dissenting) (citation omitted) (quoting *Newell v. State*, 308 So. 2d 71, 78 (Miss. 1975)); *id.* at 619 (Kitchens, J., dissenting) (“[T]he absence in the [PCR Act] of a mechanism for seeking out-of-time redress for a violation of a fundamental right is a constitutional impingement, triggering our ‘duty to correct it.’ Our duty to protect people from violations of fundamental constitutional rights is so profound and essential to our core purpose as a branch of government that we are without discretion to refuse to permit meritorious claims no matter when they are brought. We exercised that duty by our recognition and application of the fundamental rights exception.”); *Hall v. State*, 370 So. 3d 214, 224 (Miss. Ct. App. 2023) (Westbrooks, J., specially concurring) (expressing concern that “post-*Howell*” the “strict application” of the statutory bars in the PCR Act may “run afoul of the prisoner’s individual liberty interest and the right to meaningfully access the courts to collaterally attack (re-dress) his conviction or sentence”).

²²² *Cole v. State*, 608 So. 2d 1313 (Miss. 1992).

note that “time boundaries is a legislative prerogative.”²²³ Although *Cole* did not elaborate on that conclusion, it did provide insight into its reasoning when explaining that the purpose of time limitations “is to compel the exercise of a *right of action* within a reasonable time.”²²⁴ That is true enough—but any such “right of action” here is *not* created by the Legislature. As *Cole* recognizes, the PCR Act “did not create new notions of jurisprudence.”²²⁵

The actual issue in *Cole* concerned the suspension of habeas corpus. *Cole* held that the PCR Act’s time limitation is not an unconstitutional suspension of habeas corpus. To reach this conclusion, *Cole* relied entirely on *Davis v. State*.²²⁶ *Davis* concluded that time limits may be placed on the exercise of a state constitutional right.²²⁷ But *Davis* also explained: “Such *reasonable* regulations are proper so long as no constitutional right is *materially impaired*.”²²⁸ Properly understood, *Davis* does not stand for the broad proposition that the time limitation in the Iowa PCR Act is constitutional in all cases. Instead, it holds that if a petitioner seeks relief beyond the time limit, a court must evaluate whether, *on the facts of the case*, the time limit is unreasonable and materially impairs a constitutional right. After *Cole*, the Court recognized in *Puckett v. State*, a capital case, that it has the power to and should equitably toll the time limitations in the PCR Act in appropriate cases.²²⁹ In granting a motion to file an out-of-time petition, *Puckett* noted “that the equities [were] based on the unique facts of [the] case.”²³⁰

Under *Newell*, the PCR Act is a procedural mechanism used to channel a variety of judicial writs. The Mississippi Supreme Court may accept statutes that are procedural in nature (the PCR Act) and make exceptions to those statutes as necessary to protect

²²³ *Cole*, 608 So. 2d at 1317-18.

²²⁴ *Id.* at 1317 (emphasis added).

²²⁵ *Id.*

²²⁶ *Davis v. State*, 443 N.W.2d 707 (Iowa 1989).

²²⁷ *Davis*, 443 N.W.2d at 709-10.

²²⁸ *Id.* at 709 (emphasis added) (citing *Schloemer v. Uhlenhopp*, 21 N.W.2d 457, 458 (1946)).

²²⁹ *Puckett v. State*, 834 So. 2d 676, 678-81 (Miss. 2002).

²³⁰ *Puckett*, 834 So. 2d at 681 (“[T]he actions of former counsel were such as to rise to the deprivation of fundamental due process.”).

fundamental rights (the fundamental rights exception). *Howell* should be overturned.

VI. INNOCENCE CASES AND A RECENT ILLEGAL SENTENCE CASE
EXPOSE WHY THE JUDICIARY SHOULD CONTINUE TO EXERCISE
ITS JUDICIAL AUTHORITY TO CORRECT FUNDAMENTAL
INJUSTICE

A. *Innocence Cases Strike at the Fairness and Integrity of the
Judicial System as a Whole*

“Nothing is perfect. There are lumps in it.”²³¹

“The power of such a court to correct its records so as to make them speak the truth is inherent.”²³² That the Judiciary possesses such power is not a novel proposition—nor is it one that either time or statute may erode. Rather, the Court’s power “enable[s] it to amend in whatever may be necessary to make the record speak the truth, whenever the ends of justice require.”²³³ “The authority of the court, in such cases, does not arise from [] statute.”²³⁴

²³¹ JAMES STEPHENS, *THE CROCK OF GOLD* 36 (1912). The criminal justice system is fundamentally human, in not only its purpose and structure, but also in its capacity for error. Indeed, “like any human endeavor,” the criminal justice system “cannot be perfect.” *Dist. Atty’s Off. for the Third Jud. Dist. v. Osborne*, 557 U.S. 52, 75 (2009); *Kansas v. Marsh*, 548 U.S. 163, 199 (2006) (Scalia, J., concurring) (“Like other human institutions, courts and juries are not perfect.”).

²³² *Brown v. Sutton*, 121 So. 835, 837 (Miss. 1929).

²³³ *Wilson v. Town of Hansboro*, 54 So. 845, 846-47 (Miss. 1911).

²³⁴ *Id.*; *Wetzel v. State*, 76 So. 2d 194, 198 (Miss. 1954) (noting the “inherent constitutional powers of the Court in its revisory capacity with reference to a case pending before it”); *cf. In re Lewis*, 654 So. 2d 1379, 1382-83 (Miss. 1995) (discussing the Court’s inherent power in other contexts even “without statutory provisions”); *State v. Blenden*, 748 So. 2d 77, 89 n.1 (Miss. 1999) (explaining the Court’s inherent power to “take such steps as are necessary to accord due process in accordance with the Constitution of the State of Mississippi and the Constitution of the United States” (citing *Jackson v. State*, 732 So.2d 187 (Miss. 1999), *abrogated by Ronk v. State*, 391 So. 3d 785 (Miss. 2024))).

“Suffice it to say that when the need for the writ arises its importance looms large, for as a rule it involves matter that goes to the very foundation of the judgment or the fairness of the trial When the judgment of our courts takes one’s life, liberty or property and that judgment is vitiated by force, fraud, unfairness, or invalidity, it should be blotted out forever, and the courts should find the remedy, even to the extremity of impinging on judicial convenience and procedure.” Wm. I. McKay, *Appeal from Denial of Writ of Error Coram Nobis*, 6 MISS. L.J. 143, 144, 148 (1933).

In no better place is the Court's judicial power seen and needed than in actual innocence cases. Innocence cases glaringly strike at the fairness and integrity of the judicial system on the whole. And it is an unfortunate truism that every wrongly convicted person has an unknown number of overlooked counterparts, alive or dead. As the United States Supreme Court explained in *Schlup v. Delo*, "[t]he quintessential miscarriage of justice is the execution of a person who is entirely innocent."²³⁵ Given this reality, it is important that older and newer cases alike recognize the Judiciary's reservoir of power to administer justice and remedy judicial wrongs.

For example, the writ of error in Mississippi originally was unavailable for newly discovered evidence.²³⁶ No matter: the Court in *Lang v. State* exercised the judicial power to remedy the judicial wrong presented in the case. The Mississippi Supreme Court explained that justice demanded such a result given the "grave doubt . . . as to petitioner's guilt that no enlightened court dedicated to the plainest principles of justice should deny a judicial inquiry to determine whether the judgment should be vacated and a new trial granted."²³⁷ And "[i]f there is no parallel case in the books, and if it can be said that there is no clear precedent for the entertainment of this petition, such should not deter us from the performance of our duty."²³⁸

The Judiciary's power to correct fundamental injustice was more recently on display in the long-overdue judicial exoneration of the late Clyde Kennard.²³⁹ In 1960, Kennard (a Black man) was indicted by an all-white Forrest County grand jury. His ostensible offense was burglary; Kennard stood accused of stealing chicken feed from the Forrest County Cooperative warehouse. In reality, Kennard was the target of an effort by the State Sovereignty Commission to discredit him. Kennard had raised the ire of the Commission because he had applied several times for admission to

²³⁵ *Schlup v. Delo*, 513 U.S. 298, 324-25 (1995) (footnote omitted). *Schlup* is a judicially created means to correct a miscarriage of justice despite procedural bars. Similarly, innocence provides an exception to a statute of limitations in federal habeas proceedings.

²³⁶ *Lang v. State*, 92 So. 2d 670, 675 (Miss. 1957); *Lang v. State*, 100 So. 2d 138, 142 (Miss. 1958).

²³⁷ *Lang*, 92 So. 2d at 675.

²³⁸ *Id.*

²³⁹ *Gill v. State*, 962 So. 2d 552, 553 (Miss. 2007).

what was then Mississippi Southern College, now Southern Mississippi. Kennard was falsely accused of planning a burglary. He was convicted and sentenced to seven years in the Mississippi State Penitentiary. Kennard became ill in prison and died in 1963. He was thirty-six.

Many years after his death, several parties sought to have Kennard posthumously exonerated.²⁴⁰ The circuit court granted the petition—writing that the court was “compelled to do the right thing, and that is to declare Mr. Kennard innocent and to declare that the conviction of Mr. Kennard is hereby null and void.”²⁴¹ On appeal, the Mississippi Supreme Court explained that “[r]ules are made to secure justice, not defeat it.”²⁴² The Court added, “[a]ll courts have the inherent power to correct and make their judgments speak the truth.”²⁴³ Finally, the Court noted that there was long-standing precedent for the principle that the court system has the “[inherent] power to correct an error in the record of a judgment rendered by it at a former term.”²⁴⁴

If *Howell* had been the law at the time of Clyde Kennard’s exoneration case, there likely would have been no justice for Kennard. Indeed, the parties who proceeded as amicus in Kennard’s case, and sought to right an injustice, could not have advanced the ball to have Kennard exonerated without the Court exercising its inherent authority to administer justice. Kennard’s plight, like all cases of fundamental injustice, also depicts not only a singular instance of harm or even a singular instance of harm carrying collateral consequences. Rather, there is a larger aspect to innocence cases—one that exposes the noxious material that generated a verdict so unjust in the first instance. Perhaps there is no better example than one of the most recent: the exposure of the years-long, substandard forensics debacle orchestrated in large measure by Drs. Steven Hayne and Michael West, who exploited the vacuum in the state medical examiner’s office.²⁴⁵

²⁴⁰ See *In re Clyde Kennard*, No. 2006-M-00053 (Miss. Feb. 17, 2006).

²⁴¹ *Gill*, 962 So. 2d at 553.

²⁴² *Id.* at 554 (quoting *Brewer v. Browning*, 76 So. 267 (Miss. 1917)).

²⁴³ *Gill*, 962 So. 2d at 554 (quoting *Turner v. State*, 55 So. 2d 228 (Miss. 1951)).

²⁴⁴ *Id.* (citing *Claughton v. Ford*, 30 So. 2d 805 (Miss. 1947)).

²⁴⁵ *Brewer v. State*, 819 So. 2d 1169 (Miss. 2002); *Howard v. State*, 300 So. 3d 1011 (Miss. 2020). See generally RADLEY BALKO & TUCKER CARRINGTON, *THE CADAVER KING AND THE COUNTRY DENTIST: A TRUE STORY OF INJUSTICE IN THE AMERICAN SOUTH* (2018) (illustrating

Mississippi also knows too well the grave consequences of wrongful convictions and the corresponding need of a Judiciary to correct such wrongs. Take the cases of Kennedy Brewer and Levon Brooks. Brewer spent thirteen years in prison, much of it under a death sentence; Brooks spent sixteen. Neither committed the crime for which they were convicted. Indeed, because Brooks was wrongfully convicted, the man actually responsible for the rape and murder of the three-year-old victim in his case went on to commit additional offenses—including the rape and murder of three-year-old Christine Jackson, for which Brewer was wrongly convicted and sentenced to death.²⁴⁶

Then, there are the cases of Larry Ruffin, Phillip Bivens, and Bobby Ray Dixon. Larry Ruffin was convicted of the rape and murder of Eva Patterson.²⁴⁷ Ruffin, a Black man, twice made written confessions. Two other men pleaded guilty to the crime and testified in exchange for life sentences.²⁴⁸ In 2010 and 2011, Ruffin and his co-defendants “were exonerated by DNA testing.”²⁴⁹ As in Brooks’ and Brewer’s cases, the DNA profile implicated another man who was convicted of rape in the same county two years later.

It took thirty years—thirty years of three lives—before Ruffin, Dixon, and Bivens were exonerated.

- ❖ Ruffin died in prison in 2002. On February 18, 2011, Ruffin was posthumously exonerated and declared innocent of capital murder.
- ❖ Dixon died in 2010 while awaiting exoneration. He was exonerated in 2010.

the plague of institutional racism and junk forensic science in and on our criminal justice system in Mississippi, and telling the story of inmates finally freed after their wrongful convictions based on the testimony of Mississippi’s controversial medical examiner); *cf.* Lee v. Tennis, No. 4:08-CV-1972, 2014 WL 3894306, at *1 (M.D. Pa. June 13, 2014) (“Slow and painful has been man’s progress from magic to law.”).

²⁴⁶ See *Kennedy Brewer*, NAT’L REGISTRY OF EXONERATIONS, <https://exonerationregistry.org/cases/10283> [<https://perma.cc/868J-XWH5>] (last visited Jan. 7, 2026).

²⁴⁷ *Ruffin v. State*, 447 So. 2d 113, 114-15 (Miss. 1984).

²⁴⁸ *Id.* at 115.

²⁴⁹ *Bivens v. Forrest Cnty.*, No. 2:13-CV-8-KS-MTP, 2015 WL 1457529, at *3 (S.D. Miss. Mar. 30, 2015).

❖ Bivens passed away in 2014 after being exonerated in 2010.

There is also Jimmy Bass, who wrongfully spent twenty-two years of his life in prison. Bass finally proved his innocence via a successor petition for post-conviction relief. In response to Bass’ innocence petition, the State asked the Court to ignore innocence and instead focus only on the PCR Act’s “successive-writ and time bar.”²⁵⁰ Exercising its authority to remedy a grievous judicial wrong, the Court overturned Bass’ conviction, and he was released in 2010.

Like Bass, other Mississippi citizens spent years wrongfully incarcerated. This Article does not attempt an exhaustive list of all such persons, but they include John Alexander (twenty-one years wrongfully incarcerated), Roland Anderson (ten years wrongfully incarcerated), Arthur Johnson (fifteen years wrongfully incarcerated), and Cedric Willis (nine years wrongfully incarcerated). Then there are still additional Mississippians wrongfully sentenced to death: Larry Fisher. Sabrina Butler Smith. Curtis Flowers. Eddie Lee Howard. Sherwood Brown. Without a judicial system willing to protect fundamental rights, some of these individuals may well have been executed in the name of the State of Mississippi.

B. Marcus Taylor v. State: An Illegal Sentence Case Exposing the Serious Repercussions from Howell

Marcus Taylor was sentenced to a term of fifteen years in prison. The maximum term authorized by the Legislature for his drug-related offense was five years. Taylor, thus, received an illegal sentence of ten years beyond the allowed maximum sentence.²⁵¹ When the trial court advised Taylor, wrongly, that the maximum sentence was actually twenty years for his offense, neither the prosecution nor Taylor’s counsel objected or corrected the court.²⁵² Taylor’s illegal sentence thus went into effect in 2015.

²⁵⁰ State v. Bass, 4 So. 3d 353, 357 (Miss. Ct. App. 2008) (citing MISS. CODE ANN. § 99-39-5(2) (2000)).

²⁵¹ Taylor v. State, No. 2023-CA-00738-COA, 2025 WL 3213028, at *1 (Miss. Ct. App. Nov. 18, 2025) (on rehearing).

²⁵² See generally *id.*

Approximately eight years then passed. Meanwhile, Taylor sat in jail. In March 2023, the Court of Appeals noted that Taylor's counsel "filed a rather unusual [post-conviction] motion [in the trial court]. Although it was styled as a PCR motion and cited the Uniform Post-Conviction Collateral Relief Act, the motion did not articulate any cognizable ground for relief under the Act The trial court denied Taylor's motion."²⁵³ The trial court held that Taylor's post-conviction motion "was barred by the statute of limitations, that none of the statutory exceptions to the statute of limitations applied, and that the court had no authority to modify Taylor's sentence."²⁵⁴

Taylor timely filed an appeal. After briefing, and although Taylor did not raise the issue, the Mississippi Court of Appeals directed the parties to provide supplemental briefing.²⁵⁵ The appellate court requested briefing on two points:

1. Is the maximum prison sentence for Taylor's offense five years? If so, is Taylor's fifteen-year prison sentence illegal?
2. Is Taylor's PCR motion nonetheless barred by the three-year statute of limitations of the Uniform Post-Conviction Collateral Relief Act, Miss. Code Ann. § 99-39-5(2) (Rev. 2020)? *See Howell v. State*, 358 So. 3d 613, 616 (¶12) (Miss. 2023).²⁵⁶

The Mississippi Court of Appeals later issued an evenly divided opinion, "ultimately resulting in affirming the trial court's denial of Taylor's motion for post-conviction relief."²⁵⁷ The lead opinion explained that while "it is apparent that Taylor's fifteen-year sentence exceeds the five-year maximum sentence for the crime to which he pled guilty[.]" he "filed his PCR motion *eight years* after his judgment was entered"—in other words, five years too late.²⁵⁸

Even though Taylor was serving an illegal sentence, the court held that Taylor's post-conviction motion was barred by the time

²⁵³ *Id.* at *2-3.

²⁵⁴ *Id.* at *3.

²⁵⁵ *See Order*, Taylor v. State, No. 2023-CA-00738-COA (Miss. Ct. App. July 19, 2024).

²⁵⁶ *Taylor*, 2025 WL 3213028, at *3 (citation omitted).

²⁵⁷ *Id.*

²⁵⁸ Taylor v. State, No. 2023-CA-00738-COA, 2025 WL 1303363, at *5 (Miss. Ct. App. May 6, 2025) (opinion withdrawn and superseded on rehearing).

limitation in the PCR Act. This is true even though, prior to *Howell*, an illegal sentence claim was not subject to any statutory bars.²⁵⁹ But according to the original lead opinion in *Taylor*, after *Howell*, courts in Mississippi have no authority to rectify an illegal sentence. Taylor was thus left to sit in jail—even though he should have been released in 2020.

“Taylor timely filed a motion for rehearing. Two days later, the Mississippi Office of Capital Post-Conviction Counsel sought leave to file an amicus curiae brief in support of Taylor’s motion for rehearing, which was granted.”²⁶⁰ The primary argument at rehearing in the amicus brief was that an illegal sentence is void and claims for an illegal sentence fit within Mississippi’s narrow constitutional writ of habeas corpus.²⁶¹ The Mississippi Attorney General’s Office argued against this position, and against amicus participation.²⁶²

As explained in the *Taylor* amicus brief filed at rehearing,²⁶³ Mississippi’s constitutional writ of habeas corpus centers on judgments the court had “no power to render.”²⁶⁴ *Ex parte Burden* explains the circumstances that warrant state habeas relief.²⁶⁵ In *Ex parte Burden*, the jury found Burden “guilty of assault and battery with intent to commit manslaughter.”²⁶⁶ The circuit court judge “misinterpreted this verdict, held it to be a conviction for a felony, and sentenced [Burden] to six years in the penitentiary.”²⁶⁷

²⁵⁹ See *Ivy v. State*, 731 So. 2d 601, 603 (Miss. 1999).

²⁶⁰ *Taylor*, 2025 WL 3213028, at *3.

²⁶¹ Brief of Mississippi Office of Capital Post-Conviction Counsel as Amicus Curiae in Support of Motion for Rehearing at 1, *Taylor v. State*, No. 2023-CA-00738-COA (Miss. Ct. App. June 4, 2025). The amicus brief is available at: <https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=web0001.COA.2023-CA-738.113202.0.pdf&c=96725&a=N&s=2> [<https://perma.cc/Q5HH-CZZA>] (last visited Jan. 13, 2026).

²⁶² See generally Brief of Mississippi Attorney General in Opposition to Amicus, *Taylor v. State*, No. 2023-CA-00738-COA (Miss. Ct. App. June 5, 2025).

²⁶³ See generally Brief of Mississippi Office of Capital Post-Conviction Counsel as Amicus Curiae in Support of Motion for Rehearing, *Taylor v. State*, No. 2023-CA-00738-COA (Miss. Ct. App. June 4, 2025).

²⁶⁴ *Ex parte Lange*, 85 U.S. 163, 176 (1873); *McHenry v. State*, 44 So. 831, 834 (Miss. 1907); *State v. Chambliss*, 107 So. 200, 206 (Miss. 1926).

²⁶⁵ *Ex parte Burden*, 45 So. 1 (Miss. 1907).

²⁶⁶ *Id.* at 1.

²⁶⁷ *Id.*

But Burden was “convict[ed] for a misdemeanor.”²⁶⁸ In granting the writ of habeas corpus and vacating Burden’s sentence, the Mississippi Supreme Court explained that the sentence was not just voidable, but void.²⁶⁹ Thus, even if a conviction is valid, habeas relief may still be proper for an illegal sentence:

[E]ven where a court has jurisdiction of the offense charged and of the person of the accused, it may so far transcend its powers in assessing the penalty for the offense by imposing a punishment of a character different from that prescribed by law, or otherwise, that the sentence will be void and furnish no authority for holding the accused in custody, though the conviction on which the sentence was entered was valid²⁷⁰

In *Taylor*, all judges with the Mississippi Court of Appeals agreed that “the maximum sentence for the offense that Taylor pled guilty to committing was five years.”²⁷¹ Thus, Marcus Taylor legally could be in the custody of the Mississippi Department of Corrections from approximately 2015-2020. But there’s the rub—since 2020, Taylor was in jail illegally.

Ex parte Burden speaks to this circumstance. *Ex parte Burden* distinguishes between an erroneous sentence and one that is illegal:

In the case of a judgment or sentence which is merely excessive, it seems to be well settled that, “if the court was one of general jurisdiction, such judgment or sentence is not void ab initio because of the excess, but that it is good *so far as* the power of the court extends, and is *invalid only as to the excess*, and therefore that a person in custody under such a sentence cannot be *discharged on habeas corpus until he has suffered or performed so much of it as it was within the power of the court to impose*.”²⁷²

The *Burden* Court later explained:

²⁶⁸ *Id.*

²⁶⁹ *Id.* at 2 (citation omitted).

²⁷⁰ *Id.*

²⁷¹ *Taylor v. State*, No. 2023-CA-00738-COA, 2025 WL 1303363, at *3 (original opinion that was later withdrawn and superseded on rehearing).

²⁷² *Ex parte Burden*, 45 So. 1, 2 (Miss. 1907) (emphasis added).

A sentence of a different character than that authorized by law to be imposed for the crime of which the accused has been found guilty is void, while a sentence which imposes the statutory kind of punishment is not absolutely void, although excessive. In the former case the entire judgment is invalid, while as to the latter the excessive portion is alone erroneous, and not void in such a sense as to *be available on habeas corpus, at least until after the valid portion of the judgment has been executed.*²⁷³

Under *Ex parte Burden*, Taylor “suffered” the only sentence “within the power of the court to impose” when he served five years in prison, which was the legislative maximum.²⁷⁴ Habeas relief was thus proper in Taylor’s case since 2020.²⁷⁵ On rehearing, the Mississippi Court of Appeals accepted this reasoning, withdrew the order denying relief, and held that, “in this extraordinary case[,] the Judiciary must act to correct a manifest injustice.”²⁷⁶ Yet, there was a dissent by two judges. The dissent would leave Marcus Taylor sitting in jail illegally and hold that his illegal sentence claim is statutorily barred under the *Howell* regime.²⁷⁷

That two experienced appellate judges read *Howell* to prohibit a court from correcting an illegal sentence is disconcerting. Similarly troubling is that the Mississippi Attorney General’s Office agreed with the dissent on *Howell*. After the Mississippi Court of Appeals granted relief to Marcus Taylor, the Mississippi Attorney General’s Office filed an additional rehearing motion, arguing that the “Court’s decision conflicts with

²⁷³ *Id.* at 3 (emphasis added) (quoting *In re Fanton*, 76 N.W. 447 (Neb. 1898)).

²⁷⁴ *Ex parte Burden*, 45 So. at 2-3 (noting that a “sentence is absolutely void” when a court lacks “power to pronounce that particular sentence”).

²⁷⁵ See *McHenry v. State*, 44 So. 831, 834 (Miss. 1907) (discussing judgments the court “had no power to render”) (citing with approval *Ex parte Lange*, 85 U.S. 165, 177 (1873)); see also *State v. Chambliss*, 107 So. 200, 205 (Miss. 1926) (discussing habeas relief when “the court had no power to enter any order further restraining [the defendant] of his liberty”); *Jaquith v. Beckwith*, 157 So. 2d 403, 411 (Miss. 1963) (“A defendant may also obtain relief by habeas corpus for an order which the court had no power to make”); *Krohn v. Miguez*, 274 So. 2d 654, 655 (Miss. 1973) (“The writ of habeas corpus will issue . . . to release persons illegally confined . . .”).

²⁷⁶ *Taylor v. State*, No. 2023-CA-00738-COA, 2025 WL 3213028, at *8 (Miss. Ct. App. May 6, 2025).

²⁷⁷ *Id.* at *10 (Wilson, J., dissenting from the grant of rehearing) (“*Howell* definitively answers the dispositive question in this case.”).

Howell.²⁷⁸ Because of the Attorney General's rehearing motion, which was eventually denied, Taylor continued to sit in jail illegally.

Finally, on December 10, 2025, the Mississippi Governor intervened. The Governor "signed Executive Order 1590 which grants executive clemency to Marcus Taylor."²⁷⁹ The grant of clemency to Taylor was the first time Governor Reeves granted clemency since taking office. The executive order directed the Commissioner of the Mississippi Department of Corrections to release Taylor within five days. Due to executive clemency, Taylor was released from prison around December 11, 2025.

Even so, on December 23, 2025, the Attorney General's Office filed for certiorari review in the Mississippi Supreme Court seeking to vacate the Court of Appeals opinion granting relief. According to the Attorney General's petition, granting relief from an illegal sentence conflicts with *Howell*, and "certiorari is [] warranted to correct a legal defect in the Court of Appeals' holding."²⁸⁰ On March 18, 2026, the Mississippi Supreme Court denied certiorari, without comment, leaving in place the Court of Appeals' decision.²⁸¹ The Mississippi Supreme Court did not explain why it denied certiorari. It is possible the Court denied certiorari because the primary issue was moot after the Governor's grant of clemency—it is thus possible that the Court may not agree with the Court of Appeals' reasoning. At any rate, the Mississippi Supreme Court has not commended post-*Taylor* on *Howell* and its progeny.

Marcus Taylor's case shows the dangers of *Howell*. Prior to *Howell*, there was no dispute that courts could correct an illegal sentence regardless of a bar to granting relief. Under *Howell*,

²⁷⁸ Rehearing Brief of Attorney General at 9, *Taylor v. State*, No. 2023-CA-00738-COA (Miss. Ct. App. Dec. 2, 2025).

²⁷⁹ *Governor Reeves Grants Executive Clemency for First Time Since Taking Office*, OFF. OF GOVERNOR TATE REEVES (Dec. 10, 2025), <https://governorreeves.ms.gov/governor-reeves-grants-executive-clemency-for-first-time-since-taking-office/> [<https://perma.cc/QK2C-KFV3>]; Miss. Exec. Order No. 1590 (Dec. 10, 2025), https://mcusercontent.com/08cb3e52aa1308600f84d49ea/files/0d92b793-e916-afb3-e9f0-0f38b7f1d5be/Executive_Order_1590_Marcus_Taylor_12_10_25.pdf [<https://perma.cc/M87B-M5LV>] (on file with the Mississippi Law Journal).

²⁸⁰ Attorney General's Petition for Certiorari at 6, *Taylor v. State*, No. 2023-CA-00738-COA (Miss. Ct. App. Dec. 23, 2025).

²⁸¹ Order Denying Certiorari, *Taylor v. State*, 2023-CA-00738-SCT (Miss. Mar. 18, 2026).

there is now a serious dispute about the Judiciary’s authority to fix harms caused by the judicial system. As one Court of Appeals judge commented in Taylor’s case:

I do not believe the Legislature can strip this Court of its inherent power to correct an obviously illegal order providing for an obviously illegal sentence. Until the supreme court affirms such an inherent power to correct an illegal sentencing completely contrary to the law, this error-correction Court’s hands are tied. We are forced to accept an unjust result in a legal world where results such as this could easily be fixed by simply being told we have the authority to do what we were designed to do—correct an illegal result.²⁸²

Howell and its progeny should be overturned.

VII. *HOWELL* SHOULD BE OVERTURNED; BUT IF THE JUDICIAL
BRANCH FAILS IN ITS OBLIGATION TO PROTECT FUNDAMENTAL
RIGHTS IN POST-CONVICTION, A SEPARATE BRANCH OF
GOVERNMENT MAY AND SHOULD INTERVENE

All three branches of government have differing roles to play in our justice system. Yet it is the Judiciary that is best suited to correct individual wrongs caused by the judicial system, including in post-conviction. That is what the Mississippi Constitution contemplates.²⁸³

Howell was incorrectly decided, and the Judiciary should continue to administer justice and remedy wrongs in post-conviction caused by the judicial system. That said, just as the Governor intervened with Marcus Taylor, the executive or legislative branches should be prepared to step in if the Judiciary refuses to fix “judiciary problem[s].”²⁸⁴ One option is for the Mississippi Legislature to amend the PCR Act to include a fundamental rights exception as an express statutory exception to

²⁸² See *Taylor*, 2025 WL 1303363, at *9 (original opinion) (Lawrence, J., concurring).

²⁸³ MISS. CONST. art. 3, § 25 (access to courts); see *Turner v. State*, 364 So. 3d 601, 602 (Miss. 2021) (King, J., objecting to order) (“In choosing to prioritize efficiency over justice, this Court forgets the oath that each justice took before assuming office. That oath stated in relevant part, ‘I solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich . . .’ MISS. CONST. art. 6, § 155.”).

²⁸⁴ See *Taylor*, 2025 WL 1303363, at *7 (Lawrence, J., concurring).

the PCR Act's statutory bars. After all, the Mississippi Supreme Court has now told the Mississippi Legislature it is its job to protect fundamental rights in post-conviction.²⁸⁵

There are two constitutional bases on which the Legislature could enact such an amendment. First, as discussed above, the Legislature may enact rules of procedure that are then subject to acceptance by the Judicial Branch. Thus, at a minimum to protect the constitutional rights of persons in Mississippi, the Legislature should enshrine the fundamental rights exception in statute to then be enforced by the Judiciary. As one Mississippi Court of Appeals judge recently wrote, “[i]deally, our Legislature would look to other state’s post-conviction statutes as a guide and amend section 99-39-5(2) to include constitutional violations in the list of exceptions.”²⁸⁶

There is also a second constitutional basis on which the Legislature could enshrine the fundamental rights exception in statute. When one branch of government does not fulfill its constitutional obligations, an appropriate separate branch of government may sometimes intervene. The Mississippi Supreme Court has long recognized this principle. For example, in *Hosford v. State*, a trial judge petitioned the Mississippi Supreme Court for direction regarding how to handle external noise affecting trial court proceedings.²⁸⁷ Examining the Constitution and state law, the Mississippi Supreme Court held that it is the statutory duty of boards of supervisors and the sheriff to provide adequate court facilities and security for each county.²⁸⁸ The *Hosford* Court held that if either the board of supervisors, sheriff, or the Legislature fail in their constitutional and statutory obligations to enable the judicial branch to operate, “the Judicial branch has the authority as well as the duty to see that courts do not atrophy.”²⁸⁹ The Court explained the same in *In re Fiscal Year 2010 Jud. Branch Appropriations*, reasoning that the Judiciary cannot “compromis[e] the operation of a judiciary that can carry out its

²⁸⁵ *Ronk v. State*, 391 So. 3d 785, 795 (stating that whether fundamental rights should remain protected in post-conviction “is a decision for the Legislature, not us”).

²⁸⁶ *Hall v. State*, 370 So. 3d 214, 227 (Miss. Ct. App. 2023) (Westbrooks, J., specially concurring).

²⁸⁷ *Hosford v. State*, 525 So. 2d 789, 797 (Miss. 1988).

²⁸⁸ *Id.*

²⁸⁹ *Id.* at 798.

constitutional mandate to administer justice fairly and efficiently.”²⁹⁰

Although court opinions in this arena involve a branch of government that potentially cannot operate, similar logic can and should apply when a branch of government abdicates its constitutional authority to another branch. And protecting constitutional rights encompasses more than one branch of government. The Legislature represents “the voice of the people, charged with the responsibility of enacting statutes for the inhabitants of our State.”²⁹¹ Thus, should the Judiciary refuse to enforce fundamental constitutional rights in post-conviction, the Legislature should enshrine those rights in statute.

An additional option is to provide an inmate with counsel during a person’s initial post-conviction proceeding. This would allow counsel to assist an incarcerated person with satisfying the PCR Act’s statutory bars. As the Mississippi Supreme Court has explained, “[a]pplications for post-conviction relief often raise issues which require investigation, analysis and presentation of facts outside the appellate record. The inmate is confined, unable to investigate, and often without training in the law or the mental ability to comprehend the requirements of the [PCR Act].”²⁹²

Several states provide indigent persons with counsel in post-conviction, including outside the death penalty context. This Article does not attempt to list all state laws, but a few examples are provided. Texas’s Office of Capital and Forensic Writs may provide counsel to criminal defendants who file changed science writs and are referred by the Texas Forensic Science

²⁹⁰ *In re Fiscal Year 2010 Jud. Branch Appropriations*, 27 So. 3d 394, 395-96 (Miss. 2010).

²⁹¹ *W. Line Consol. Sch. Dist. v. Greenville Mun. Separate Sch. Dist.*, 433 So. 2d 954, 957-58 (Miss. 1983) (quoted positively in *Clark v. Bryant*, 253 So. 3d 297, 301-02 (Miss. 2018)); *Burrell v. Miss. State Tax Comm’n*, 536 So. 2d 848, 858 (Miss. 1988) (“[L]egislators . . . take[] the same oath as [the Court] to uphold and support the Constitution.”), *overruled on other grounds* by *Commonwealth Brands, Inc. v. Morgan*, 110 So. 3d 752 (Miss. 2013).

²⁹² *Jackson v. State*, 732 So. 2d 187, 190 (Miss. 1999), *abrogated by* *Ronk v. State*, 391 So. 3d 785 (Miss. 2024)); *see also* *Halbert v. Michigan*, 545 U.S. 605, 621 (2005) (“[Sixty-eight percent] of the state prison populatio[n] did not complete high school, and many lack the most basic literacy skills [S]even out of ten inmates fall in the lowest two out of five levels of literacy—marked by an inability to do such basic tasks as write a brief letter to explain an error on a credit card bill, use a bus schedule, or state in writing an argument made in a lengthy newspaper article Many, Halbert among them, have learning disabilities and mental impairments.” (citations omitted)).

Commission.²⁹³ Texas habeas courts also appoint counsel if the court “concludes that the interests of justice require representation.”²⁹⁴ Kentucky also provides for counsel in many post-conviction cases.²⁹⁵ In Missouri, post-conviction litigants are entitled to appointed counsel in felony cases.²⁹⁶ Pennsylvania is similar—there is a right to appointed counsel in initial state post-conviction petitions and permitted in subsequent state post-conviction petitions.²⁹⁷ Other states also require or allow appointment of counsel for indigent persons in post-conviction.²⁹⁸ This is one avenue Mississippi could take and should consider to protect Mississippians’ fundamental constitutional rights in post-conviction—if the Judiciary continues to apply *Howell* and refuses to protect those rights.

CONCLUSION

Howell does damage to Mississippians and Mississippi law. Mississippi’s criminal justice system is more just with a Judiciary that continues to exercise its time-honored power to correct fundamental injustices when they occur. This is so even though the State, without question, has a legitimate interest in achieving finality in litigation. Indeed, contemporaneous objection and other types of rules, when fairly enforced, no doubt promote legitimate interests, especially in non-capital cases. But when a person’s criminal case is infected with constitutional defects, especially when a verdict is made unsafe as a result, finality is not a legitimate interest. In that event, finality is a fiction, and all that exists is an interest in expediency.

²⁹³ TEX. CODE CRIM. PROC. ANN. art. 38.01(4)(h) (West 2021).

²⁹⁴ *Id.* art. 1.051(d)(3).

²⁹⁵ See KY. REV. STAT. ANN. § 31.110(2)(c) (West 2026); KY. R. CRIM. PRO. 11.42(5).

²⁹⁶ See MO. REV. STAT. § 29.15(e) (2026) (trial cases); MO. REV. STAT. § 24.035(e) (2026) (guilty plea cases).

²⁹⁷ See 234 PA. CODE R. 904. See generally 42 PA. STAT. AND CONS. STAT. ANN. § 9541 (West 2026).

²⁹⁸ *E.g.*, KAN. STAT. ANN. § 22-4506(d)(1) (2026); MONT. CODE ANN. § 47-1-104 (4)(a)(iv) (2026); MONT. CODE ANN. 46-21-201(2) (2026); S.C. CODE ANN. § 71.1(d) (2026).