

## IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 2023-DR-01076-SCT

No. 95-DP-00066-SCT

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WILLIE JEROME MANNING, *Petitioner*,

*v.*

STATE OF MISSISSIPPI, *Respondent*

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RESPONSE TO MOTION TO LIFT STAY OF EXECUTION,  
SET EXECUTION DATE, AND DISMISS SECOND SUCCESSIVE  
PETITION FOR POST-CONVICTION RELIEF

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Petitioner, Willie Manning, files this response in opposition to the State's motion to lift stay of execution, set execution date, and dismiss second successive petition for post-conviction relief.

A. Summary of Prior Filings Regarding this Successive Petition

Based on newly available evidence further undermining the entirety of the State's case against him, Manning filed a successive petition for post-conviction relief on September 29, 2023. *See* Mot. 2023-3074 and accompanying exhibits. The State's response to the successive petition was due October 30, 2023. Citing "technical difficulties," the State filed a motion requesting an additional 60 days to file a response, or until December 29, 2023 after the due date. (Motion #2023-3462, filed Nov. 3, 2023).

In the request for additional time, the State represented to the Court that "[d]espite working diligently on the State's response, undersigned counsel will be

unable to complete a meaningful response before the current deadline.” Motion #2023-3462 at 1. Based on these representations, the Court granted the State’s motion and gave it until December 29, 2023, to file its response. Order, filed Nov. 7, 2023.

Just two days later, *and without even mentioning the order granting its request for additional time*, the State filed the motion to set an execution date and dismiss the successive petition.

The State provides no reason for this drastic action except to declare that Manning’s “motion is prohibited by the Mississippi Post-Conviction Collateral Relief Act, and the Act also requires this Court to reset an execution date when—like here—there has been a stay of execution followed by a denial of PCR. Mot. 2023-3512 at 6. The State devotes the remainder of the motion discussing the State’s authority to set an execution date. Nowhere does the State even allude to the contents of the petition.

B. The PCR Statute Clearly Provides a Remedy for Newly Discovered Evidence.

The State is plainly wrong to suggest the post-conviction relief statute “prohibits” the filing of this successive petition. On the contrary, the statute unambiguously allows for the filing of a successive PCR petition based on “evidence, not reasonably discoverable at the time of trial.” Miss. Code Ann. § 99-39-27(9); *see also* § 99-39-5(2).

When reviewing the petition, the Court must accept the well-pled allegations as true. *Simon v. State*, 857 So. 2d 668, 678 (Miss. 2003). Manning’s allegations covered both the merits of the claims raised as well as why the evidence is newly

discovered. For instance, Manning alleged that his conviction was based on false evidence. Earl Jordan, the jailhouse informant who testified that Manning confessed to him, has recanted his testimony. Jordan explained that he testified falsely to get favorable treatment on charges pending against him. *See* Mot. 2023-3074, filed Sept. 29, 2023, Exhibit 1. Jordan also noted that he did not previously recant because he was afraid of the sheriff. *Id.*

Similarly, Manning presented an affidavit from Henry Richardson (aka “Miami”) recalling that he and Manning never discussed the crime, contrary to the testimony of another informant. *Id.*, Exhibit 2. Despite exercising diligence, Manning was unable to locate Richardson prior to filing his initial PCR petition. *Id.*, at 80-86 and Exhibits 5, 6, 47, 48. Newly available evidence, such as the affidavits from Jordan and Richardson, is sufficient to overcome bars to filing successive petitions. *See, e.g., Bass v. State*, 4 So. 3d 353, 357-58 (Miss. App. 2008). Moreover, under well-established case law, Manning should be entitled to at least an evidentiary hearing based on Jordan’s sworn recantation. “[T]he presentation of affidavits in which key witnesses recanted their testimony require[s] that an evidentiary hearing be held.” *Hardiman v. State*, 789 So. 2d 814, 816 (Miss. App. 2001) (discussing *Tobias v. State*, 505 So. 2d 1014, 1015 (Miss. 1987)); *see also Manning v. State*, 884 So. 2d 717, 723 (Miss. 2004) (“When an important witness to a crime recanted his testimony and offered a reason for having given false testimony at trial, the defendant/petitioner is entitled to an evidentiary hearing to determine whether the witness lied at trial or on his affidavit.”); *Woods v. State*, 141 So. 3d 14,

16-17 (Miss. App. 2014) (“Recanted testimony is . . . adequate to entitle a petitioner to an evidentiary hearing.”).

Manning also asserted that some of the expert ballistic evidence used against him has been thoroughly discredited by scientific advances. *See* Mot. 2023-3074, Exhibit 4 (affidavit of William Tobin). This Court has allowed a successive petition based on scientific advances in fields of forensic science. *See generally Howard v. State*, 300 So. 3d 1011 (Miss. 2020) (citing a study by the National Academy of Sciences Report reporting the lack of scientific basis for bite-mark evidence and research concluding that even board-certified forensic dentists could not reliably identify a human bite mark on human skin, much less compare and accurately match an alleged bite mark to the teeth of a single individual to the exclusion of all others).

Contrary to the State’s naked assertion, the PCR statute allows for successive petitions similar to the successive petition Manning filed on September 29, 2023.

C. This Court is Not Statutorily Required to Set an Execution Date if there is Pending Litigation.

The State also erroneously suggests that this Court must set an execution date since litigation regarding DNA testing concluded. This, too, is incorrect. If a petitioner has exhausted all avenues for relief and no litigation is pending, then this Court may set an execution date upon motion of the State. If, however, a petitioner is seeking relief, the Court need not set a date, especially if a pending petition contains “a substantial showing of merit.” Miss. Code Ann. § 99-39-29.

As noted in the previous section, the pending successive petition contains new evidence, not previously available, that demonstrates that the reliability of

Manning's trial was undermined by substantial constitutional violations and that there is also new evidence further undermining confidence in the result at trial.

In addition, the State has implicitly suggested that the successive petition is at least potentially meritorious. Despite diligently working on the response, the State informed the Court that it required an additional 60 days "to complete a meaningful response." Mot. 2023-3462 at 1. This Court granted the request. Order, filed Nov. 7, 2023.

Nothing changed in the two days between the Court granting the motion for time and the State's filing of a motion to set a date. Obviously, the State recognized the seriousness of the grounds for relief raised in the successive petition and determined that it required time to provide a meaningful response. Having determined that an adequate response requires more time, the State does not make any attempt to make any specific arguments attacking the successive. Instead, it can only rely on two dubious legal assertions: that a successive petition is "prohibited" and that the Court is statutorily obligated to set an execution date. Neither is correct.

This Court has already granted post-conviction relief to Manning in another post-conviction case based on evidence that a key witness testified falsely because the witness was desperate to obtain a benefit from the State. *Manning v. State*, 158 So. 3d 302 (Miss. 2015). Here, Manning has shown that many of the same officials bargaining with desperate informants again resulted in a trial marred by false testimony. In its motion for additional time to file a response, even the State implicitly acknowledged the seriousness of the allegations. Based on these

circumstances, the Court should deny the State's motion to summarily dismiss the successive petition and set an execution date.

Respectfully submitted,